



COMMISSION OF INQUIRY  
RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 1

Volume 47

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*Commissioner: Honourable Justice Richard LeBlanc*

Tuesday

27 November 2018

**CLERK:** All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** Good morning.

**MS. O'BRIEN:** Good morning.

**THE COMMISSIONER:** Good morning, Mr.  
Bennett.

**MR. BENNETT:** Good morning,  
Commissioner.

**THE COMMISSIONER:** You remain under  
oath at this time, Sir.

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** Thank you.

Good morning, Mr. Bennett.

This morning I'm going to begin by looking at  
Indigenous consultation on the project as well as  
the JRP process. Now, I understand that you  
were Nalcor's primary person on both  
Indigenous consultation – in particular, with the  
Innu Nation – and also on the environmental  
aspect in terms of going before the JRP. Is that  
right?

**MR. BENNETT:** Yes, that's correct.

**MS. O'BRIEN:** So why – who made the  
decision to make you the primary point person  
on both of those files?

**MR. BENNETT:** In terms of the project, that  
role evolved over a number of years. We knew  
that it was an issue of strategic importance,  
critical importance to the project and getting it  
through the environmental assessment process.  
So that was a role that evolved as part of my  
responsibility for the project. It was fully  
understood by Mr. Martin as we worked through  
our work plan over the years.

**MS. O'BRIEN:** Okay.

So am I understanding correctly that you – as  
vice-president of Lower Churchill Project, it's  
you who would have made the decision to take  
on those roles because you felt they were  
important? And Mr. Martin was fine with that?  
Is that the way ...?

**MR. BENNETT:** Yeah, they were important.  
We were making commitments on behalf of the  
project and that role certainly evolved that way,  
yes.

**MS. O'BRIEN:** Okay, but, I'm just – I'll put  
that question to you again, okay? Is it that you  
made the decision that you would be the primary  
point on those two files?

**MR. BENNETT:** Yes, that's fair.

**MS. O'BRIEN:** Okay.

Now, I understand it was a fair – you put in a  
fair bit of work on both those aspects. And I'm  
raising them together because I understand  
there's a certain amount of interrelation between  
the two. Can you give the Commissioner some  
sense that when you – you know, to the extent  
that the IBA negotiations and your involvement  
with the JRP, you know, what amount of time  
did that take for you?

**MR. BENNETT:** Through the process it was a  
significant effort. The environmental assessment  
process began in later 2006 with the registration  
for EA for the generation project. The  
negotiations with Innu Nation, the New Dawn  
Agreement, the – and then the three agreements  
that flowed from that, were carried on until late  
2011.

The environmental assessment approval for  
Muskrat didn't happen – and Gull Island, for  
that matter, didn't happen until early 2012. And  
the environmental assessment for the  
transmission line, if I recall, started in 2009 and  
continued until 2013. So if we look at all of the  
processes there and the other hearings that were  
held – the judicial reviews and the court  
proceedings – there was a significant effort put  
into those.

**MS. O'BRIEN:** Okay, well, we'll review some  
of those now.

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** And at tab 31 of the binder before you, Exhibit 00271: This is a paper that was submitted by Nalcor Energy to the Commission of Inquiry regarding Indigenous consultation. Did you have any input into this document, Mr. Bennett?

**MR. BENNETT:** I reviewed it toward the end of its compilation. I didn't write much of it, but I'm generally familiar with the material.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** And as best as I can tell, it conforms to my understanding of how the process unfolded and the other documentation that's very deep in it. I think this document is about 3,000 pages. Many of the documents that are attached as appendices – in fact all of them – we've seen at one time or another in a previous proceeding.

**MS. O'BRIEN:** Now, I'm not going to ask you to take us through the entire document and all the appendices, but the first – most of the document is made up of the appendices. The substantive portion of the submission is the first 18 pages that are before us and that really summarizes Nalcor's efforts in Indigenous consultation. So I'd ask you if you could please take the Commissioner through the highlights of that with reference to the report that's before you.

**MR. BENNETT:** Okay. And if I'm too detailed or not detailed enough, help me along the way so that I can cover the key points to your satisfaction.

I guess if we look back in general, the duty to consult Aboriginal or Indigenous groups arises and it lies with the Crown. So either the province or Canada ultimately holds the duty to consult. From our perspective as the proponent of various projects, much of that activity in terms of explaining the project, trying to understand these issues, they get delegated to us.

And during the planning phase of the project, that happens through the environmental assessment. So our role, in terms of gathering information, developing an understanding of

concerns and trying to explain what we have done to mitigate those, ultimately falls to us and has been discharged through the environmental assessment process. It continues past EA, it continues into the permitting process. And, certainly, both governments will have a long-term relationship with Indigenous groups and they've still maintained that obligation.

So we came into this process in the earliest days of the environmental assessment with specific requirements in the environmental assessment guidelines to gather information and provide it to the EA process. And, you know, that – we started with an understanding of that in the registration. We had some thoughts on some of those concerns, but the – our actual requirements and obligations for information delivery came out of the environmental assessment guidelines, so what we call the environmental impact statement guidelines.

So, at a high level, our requirement was to gather information about historic land resource use, contemporary land and resource use, try to understand what we thought that the effects of the project would be on those activities – excuse me – to collect information about concerns that groups might have in various aspects of the project, and try to explain what our perspective was on those and then to help identify if there were an opportunity to mitigate those effects. At the highest level, that was our role.

In the Joint Review Panel, if we go to their work, they were collecting data directly and information directly from those groups – each of the 10 Indigenous groups that participated in the process; three from Newfoundland and Labrador, seven from Quebec participated in the Joint Review Panel process to varying degrees and provided information to the Joint Review Panel. That information was then passed on to the two governments as part of their report.

Maybe to give a little detail on the 10 groups that were involved, we'll start with – and I'm on page 8 at this point, but to start – so a long body of work, a long relationship with the Innu of Labrador, who's represented by Innu Nation. Their land claim was actively – had been accepted for negotiation by both Canada and the province. Those discussions were underway.

As we were carrying through our consultation process, there was a – given their proximity to the project – their land use in Labrador – the discussions that had been had previously about their interests – it was very clear that there was going to be a deep level of consultation and ultimately, accommodation in the form of an IBA – an Impacts and Benefits Agreement – that was negotiated with the Innu of Labrador along with a settlement for impacts associated with Churchill Falls which, you recall, the Upper Churchill Redress Agreement and also the agreement in principle for their comprehensive land claim.

So those three agreements were addressed during the planning phase of the project, and we have two – all three agreements were completed. The treaty is subject to ratification. It was an agreement in principle at the time. But the other two agreements were ratified by the Labrador Innu through the process.

**MS. O'BRIEN:** So these are the three agreements making up the New Dawn Agreement?

**MR. BENNETT:** That's correct.

The other, the next group in Newfoundland and Labrador that we had consulted with was Nanatsiavut Government. And we know that Nanatsiavut has a comprehensive land claim agreement of their own – they've – the Labrador Innu Land Claim Agreement has been – is implemented and was in place when we were going through the planning phases of the project. So it lays out specific requirements for activities that are in their land claim area.

An early discussion with the Labrador Innu and – with the Nanatsiavut Government rather – that arose early in the EA process, concerns about methylmercury, and not necessarily in the project – the direct project area – in the reservoir. That is outside their treaty area, but it's of course a discussion about potential impacts in their land claim area.

**MS. O'BRIEN:** But downstream.

**MR. BENNETT:** Downstream.

**MS. O'BRIEN:** Impacts.

**MR. BENNETT:** Exactly.

**MS. O'BRIEN:** So that was raised early on by Nanatsiavut Government before the – even prior to the JRP proceedings or during?

**MR. BENNETT:** That – the issue of methylmercury was a topic that was understood to be an important issue by Nalcor from day one. It was discussed in the environmental assessment guidelines. It was discussed through the environmental assessment process and continues today.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** The next group that we have in this report, on page 10, NunatuKavut, NunatuKavut Community Council, historically referred to as either Labrador Metis Association or Labrador Metis Nation. There is a – there was ongoing dialogue – at the time, they had asserted a land claim that covered a large portion of Labrador. But during the environmental assessment phase for the project, neither the Government of Canada nor the province had accepted that claim for negotiation.

But we were consulting with them, gathering information and we'll see a little bit later in the appendices issues about the concerns that they were raising were documented. We gathered information and tried to have an understanding of the impacts of the project on their land use.

And then we go to the seven groups in – on the north shore of Quebec and eastern Quebec. We reached out to all seven; it was required in the EA – gathered information to varying degrees based on the level of co-operation that we had with the various groups or, in some cases, the actual interest that they have.

**MS. O'BRIEN:** So, in terms of the Indigenous groups that you did consult – as – am I correct, that the groups that you consulted was essentially dictated by the requirements of the EIS guidelines. Is that –

**MR. BENNETT:** Yeah, the –

**MS. O'BRIEN:** – the correct understanding?

**MR. BENNETT:** I think we have most of the group – if not all the groups in northeastern Quebec or Labrador covered in the – in our consultation record.

But you're right. The ones that we were required to consult with were identified in the environmental assessment process.

**MS. O'BRIEN:** And those are the ones that you consulted with.

**MR. BENNETT:** Yes, that's right.

**MS. O'BRIEN:** Thank you.

**MR. BENNETT:** So, in the remainder of the document, we have a lot of information about the concerns that were raised by each of the groups. So –

**MS. O'BRIEN:** So I would like to talk – you to talk about your approach to consultation and how you went about it. And I understand – on page 6, you outline what your consult – the – findings and groundings of your consultation principles. And these are honesty, trust, open communication, respect and dignity and teamwork.

So can you just please explain for the Commissioner what was the importance of those principles and how they informed the – how you believe they informed the consultation process?

**MR. BENNETT:** And those principles are directly out of our corporate core values. What we're trying to do is make sure that we're openly reaching out to each organization or each group to provide project information in an appropriate way. We know that there is a lot of technical detail. In the groups we worked with, we shared plain-language summaries to try to summarize and condense the issues so that a broader cross-section of the communities could understand the material.

We did that in – with translations of that material so that we could work in the appropriate languages for each group at the plain-language level.

We were trying to share information, balancing that information sharing with some assessment

of what we thought the relevant points were for each community – so trying to understand what the, you know, what the issues of concern to the community were. And there were – I mean – I think lots of issues that got raised at a very technical level, but we really tried to assess, you know, what we felt was important to the community so we could have a more open discussion.

In various – at various times, we were in the community, we had a team on the ground trying to sort of do this in a more – in a personal manner for people who could have an opportunity to come out and talk to our subject matter experts and try to understand some of these issues.

**MS. O'BRIEN:** So would you – have people – when you talk about in the community, I know you'd be talking about the communities of the Labrador Innu, but would you also have had people in, say, Quebec, the communities –

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** – in Quebec? So you were reaching out to communities –

**MR. BENNETT:** Absolutely.

**MS. O'BRIEN:** – and all the indigenous groups?

**MR. BENNETT:** And we have varying – varying degrees of interest but yes, we tried to go into the communities and have sort of an open house or more extensive dialogue.

**MS. O'BRIEN:** Just want to summarize here to make sure the evidence is clear, but I understand that you divided the project into two components in terms of the environmental assessment. So the generation station – the Muskrat Falls generation station [sp station] – and the LTA were dealt with with one registration for environmental purposes and the Labrador-Island Link was a separate registration.

**MR. BENNETT:** Right – so just to clarify, Gull Island was also included in the generation undertaking.

**MS. O'BRIEN:** Right. So, it was Muskrat Falls and Gull Island, I apologize.

Yes. Okay. So why did you choose to do it as two separate registrations?

**MR. BENNETT:** So in 2006, when we started the process, we were starting to look at Gull Island and Muskrat Falls. It was apparent that there would be a very high level of environmental assessment required for that undertaking. We expected that there would be a joint review panel associated with the process.

**MS. O'BRIEN:** And maybe we can just explain that for a moment – so when you register a project for environmental review, this was – you have to do a registration with both levels of government – federal and provincial, right?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay. And then, it's essentially though it's the – it's the government that decides the type of review they wanna have?

**MR. BENNETT:** That's correct.

**MS. O'BRIEN:** And for the generation stations and the LTA, they wanted a – they decided to have a joint review panel – so this would be a joint federally-provincially appointed panel. There would be public hearings and, you know, finally a full report given by that panel.

**MR. BENNETT:** That's correct.

**MS. O'BRIEN:** Okay. But it was a different procedure for the Labrador-Island Link –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – so can you just explain how that differed, please?

**MR. BENNETT:** Certainly. And maybe to – just to look at the generation project for a second, we also had different market access options available to us in those early days. So, at the time, we were still running down potential industrial development, we had – we were looking at exporting power through Quebec, we had the possibility of coming to the Island.

So the transmission alternatives for that generation project weren't entirely clear, and later, as our planning evolved, we ultimately registered the Labrador-Island Transmission Link. I think the registration went in in 2009, if I recall. And that registration was then reviewed by the province and Canada.

The province required that we file an environmental impact statement for that, and, for their environmental assessment, Canada required that we file what they call a comprehensive study review, which is essentially comparable to the environmental impact statement. They did not require a hearing for that undertaking.

**MS. O'BRIEN:** So just to be clear, when the JRP takes place, it didn't include the Labrador-Island Link?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay, and I believe the terms of the date you just – it was January 2009, and that's on page 7 of Exhibit P-00271, for when the LIL was registered.

So I think – I believe you have answered the question, and I just want to make sure I'm clear that the reason you decided to separate the project into two aspects for registration, I'm understanding it, at the beginning you weren't sure what transmission would be used for the generating stations. You knew that there would be a transmission line to Churchill Falls, but at that point, you were still exploring whether there'd be a Quebec route or whether it would be a Maritime route, is that –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – fair to say?

**MR. BENNETT:** Or a use in Labrador for industrial purposes.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** That hadn't been taken off the table at that point in time.

**MS. O'BRIEN:** One of the topics that has been spoken of from time to time is the concern about project splitting. Are you aware of that term?

**MR. BENNETT:** Yes, I'm familiar with it.

**MS. O'BRIEN:** Can you please explain that for the Commissioner and whether that was something that was considered by Nalcor and how you dealt with that issue?

**MR. BENNETT:** So the – in general terms, the concept is that you would take a project that would require a high level of environmental assessment, and try to divide it or organize it so that you then end up with multiple undertakings that see a lower level of assessment. It's a – it's ultimately a legal question for both governments, and ultimately the proponent.

If somebody concluded – if the court concludes, if you're challenged, that you try to undermine or – to use a colloquial term – to sneak your way through the environmental assessment without having all of the issues covered off and considered. If you take a piece of it – of what is really a part of an undertaking and take it out of the environmental assessment process, then you're subject to challenge for the concept of project splitting.

**MS. O'BRIEN:** Okay, and was that a risk that you considered – a risk being that someone might challenge the environmental assessment for project splitting – was that a risk that you identified before you decided to do the two registrations, and if you could please, you know, give the Commissioner –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – a little bit more on that.

**MR. BENNETT:** So we had considered the possibility of a challenge in that regard, but we discussed that with counsel at the time and noted that we did have multiple market options that would need to be considered once we knew what they were.

We were also aware, at the time, that the generation project was subject – already subject – to the highest level of environmental assessment review. There was nothing that was going to be missed in that process.

And then the final point is that, as part of an environmental assessment, we're required to

look at the cumulative effects of whatever projects are happening at the time, or have happened in the past, so that you have an analysis of all of the effects associated with the other – with this project and the other projects that are going on in the area.

**MS. O'BRIEN:** And ultimately was there ever a challenge launched for project splitting?

**MR. BENNETT:** The – I'm stopping to think now. We were never stopped, I guess, as a result of the project splitting decision. And I'm struggling now to remember whether in the challenge that was launched in 2012 where the topic came up as a fundamental point.

I think the – if I recall on this – the topic had been raised during a couple of the judicial reviews. I don't recall it being the primary argument, and ultimately, those judicial reviews were unsuccessful.

**MS. O'BRIEN:** Okay, and we'll come back to those judicial reviews in just one moment. Okay.

In terms of the paper at P-00271, is there more that you would like to talk about in terms of the different levels of consultation? Because we know that, obviously, the highest amount of consultation took place with the Innu Nation of Labrador – the Innu of Labrador. Is that correct?

**MR. BENNETT:** Absolutely.

**MS. O'BRIEN:** Okay. And perhaps you can address, for the Commissioner, why the different level of consultation with the Innu Nation as opposed to Nunatsiavut, NunatuKavut and the Quebec Innu.

**MR. BENNETT:** So with Innu Nation, their – because the record, you know, was fairly clear at the time that there was an understanding by both governments that the Innu of Labrador had a significant interest in the Churchill River. They also have a record of significant interest and – for that matter, in the Churchill Falls area.

And you know, during the course of the completion of the Tshash Petapen Agreement, it became evident from their land use and from previous government decisions that they were going to have – they were able to demonstrate a

high degree of usage, interest and association with the Churchill Valley, and I think that conversation – or that issue, rather – had been understood by both governments for quite some time.

**MS. O'BRIEN:** And Tshash Petapen is the New Dawn?

**MR. BENNETT:** New Dawn Agreement, that's right.

**MS. O'BRIEN:** Yes. Okay.

**MR. BENNETT:** So their interest, the expectation of an IBA, was not a new topic for us. It had arisen in previous iterations of the development of the Churchill River. We could look back to work in 1998, early in 2000 with previous iterations of the development.

It was clearly understood that the Innu were going to be consulted very deeply and that their primary interest was in the river valley.

**MS. O'BRIEN:** And what about the other groups in comparison?

**MR. BENNETT:** So, in terms of Nunatsiavut, I'll go there for a second. Their treaty area is, for the most part – and I'll simplify them, of course, there's detailed maps, and there's lots of information on the extent of their land claim. But for the most part, their treaty lands are on the Coast of Labrador and, generally, don't overlap with the project area, either in the case of the generation project or in the case of the transmission line which runs to the south.

From that perspective, the impacts of the project – the project and its immediate activity – on their treaty really focused around downstream effects and that was a more, I guess, a more specific issue for them as opposed to the general interest of having the project developed, what I'll say, on their land.

So we shared information but didn't find – we shared and collected information but didn't find that there was a basis, for example, for an impacts and benefits agreement given that the project wasn't on their project footprint – or on their land claim footprint.

**MS. O'BRIEN:** And NunatuKavut?

**MR. BENNETT:** NunatuKavut has asserted their land claim covered, at the time, a large portion of Labrador. The body of information supporting their land use was actually developed – was being developed – during the environmental assessment process and more information became available, but we didn't have a clear indication of the extent of their deep land use in the project area.

Much of that information was gathered through the environmental assessment. We're going to find that information was provided through the environmental assessment hearings on land use. Much of that information was accumulated directly through the EA process for us. We didn't get – again, we didn't reach a conclusion that accommodation in the form of an IBA was warranted for the project.

**MS. O'BRIEN:** Okay, so, even after that additional information came out during the JRP, you didn't believe that an IBA was warranted?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay. That group. And just briefly, with respect to the Quebec Innu?

**MR. BENNETT:** Most of the – well, all of the Quebec Innu groups have some level of land use that intersects with the project footprint; be it either generation through the generation EA or in the transmission line. But we were unable to identify a significant impact that, again, would warrant accommodation in the form of an IBA.

**MS. O'BRIEN:** Okay. Please go to Exhibit P-00264, please. It'll come up on your screen, Mr. Bennett. This is one of the papers that was put together by the project management team: Mr. Harrington, Mr. Kean, and a few others. I know you've seen it before. This is the one on pre-sanction.

Can we please just go to page 12, please? I'd like you to address this. This is where it talks – this paper, in particular, is addressing the environmental assessment. And it talks about "Aboriginal Opposition – Quebec Innu (comprised of six separate bands)" Now, am I to understand there's seven, not six?



**MR. BENNETT:** There are seven.

**MS. O'BRIEN:** Okay, "... and LMN (... now referred to as NunatuKavut) claims of lack of recognition of their land use and traditional knowledge, which if realized could add one year to the EA schedule. Risk level was considered high, primarily because Nalcor had not been given the mandate by GNL to engage in consultation with these aboriginal groups as it did not recognize their land claims. It would take some months to bring GNL on board to the fact ..." – that – I believe that should say that – "Nalcor, as the proponent, had an obligation to perform such consultation and offered consultation funding to these groups."

I'd like to get – that's the position that's been put forward by the project management team to the Commission. Do you agree with that paragraph?

**MR. BENNETT:** I don't agree that we didn't have a mandate or an obligation to consult – we did. I mean, that obligation came earlier. A conversation about accommodation, that would be – you know, might be an area where someone would say: Well, that's the most expeditious way to get through the environmental assessment, from my perspective.

**MS. O'BRIEN:** Sorry, just to give me – accommodation?

**MR. BENNETT:** Accommodation means that you're actually providing compensation for some issue associated with Indigenous rights or Aboriginal rights or title. The consultation guidelines were fairly clear in my view. The historical position on land claims was understood and we were consulting in accordance with the guidelines.

So I'm – I can't say that we didn't have a mandate to engage in consultation.

**MS. O'BRIEN:** Okay.

This paragraph would suggest that Government of Newfoundland – for at least the groups other than the Innu Nation, that the government – it was Government of Newfoundland and Labrador that was essentially holding Nalcor back and that there – that work was taken to

bring Government of Newfoundland and Labrador on board –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – by Nalcor.

**MR. BENNETT:** I didn't see it that way, okay? There is a – a province has, and I think Mr. Gover has explained this fairly well – province understands its duty to consult. There were some groups that didn't – particularly in Quebec, who didn't necessarily agree with the depth of consultation that was happening and what might be required as a form of accommodation. But from my point of view, there was a process laid out in the environmental assessment process and we followed through it.

**MS. O'BRIEN:** Okay, so are you saying that there was never any point of disagreement between Nalcor and government and Newfoundland and Labrador as to the level of consultation with these groups.

**MR. BENNETT:** The level of consultation? No, there was no debate from my perspective. I think, again, the conversation might come back to what accommodation might be required and whether life could be easier in the environmental assessment if somebody had, you know, accepted a land claim for negotiation for NunatuKavut.

But that from my perspective is a significant decision on the part of the Crown and one that would have to be taken very carefully. Ultimately, today both the Government of Canada and the Government of Newfoundland and Labrador have opened up that conversation–

**MS. O'BRIEN:** Okay –

**MR. BENNETT:** – with NunatuKavut.

**MS. O'BRIEN:** – so was that a point – was accommodation a point of debate between Nalcor and Government of Newfoundland and Labrador.

**MR. BENNETT:** From my perspective, I didn't see the impact that would warrant accommodation either. So from my view, I was

not misaligned with the province at all in this point.

**MS. O'BRIEN:** Were there others in Nalcor who took a different view?

**MR. BENNETT:** They may have had a different view. Whether they were thinking about, sort of, the full context and importance of this question, that's debatable. Certainly, members of the project team were saying okay, here's a risk. We'd like to find a way to get rid of that as quickly as possible.

From my point of view, I'll look at it and say this is a very important question for the Crown and one that we're going to work very carefully and maintain close alignment with the province and Canada as appropriate –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – in working through this process.

**MS. O'BRIEN:** Okay, I wanna make sure I'm understanding your evidence correctly, Mr. Bennett. So what I hear you saying is that, yes, you were aware that other – you were in alignment, or agreement, with the government's position with respect to accommodation. But you knew that there were other people at Nalcor who were taking a view – look, this is a risk here we have with these Indigenous groups; we'd like to mitigate that risk. And one – the way to mitigate it is to provide them some accommodation.

**MR. BENNETT:** That's one way to do it, yes.

**MS. O'BRIEN:** But is that a – one way that people within Nalcor – some people within Nalcor were advocating for?

**MR. BENNETT:** I think some people at the project team. And – not at the senior level in the organization – in the project team said, yes, you can mitigate this risk if you make a payment.

**MS. O'BRIEN:** Okay. I understand. So – now that's clearer. So that's – so this would have been from the project team's perspective; their preference would be to make a payment. Let's

get this risk off – taken care of and that's the best way to mitigate it.

**MR. BENNETT:** That – yeah that's right – on a one-off basis for the project. The consequences for the province – what that means in terms of setting a precedent – understanding what the basis for that accommodation might be, understanding what the impacts for other projects or relationship between the Indigenous groups and the Crown – that's a much bigger question that warrants a lot of careful consideration by the province.

**MS. O'BRIEN:** That's right.

And – I do understand that – and ultimately that is a decision for the province, not for Nalcor, is that –

**MR. BENNETT:** Yes –

**MS. O'BRIEN:** – right?

**MR. BENNETT:** – yes, it is.

**MS. O'BRIEN:** Okay.

But let's talk, then, a little more about that risk that the project team was concerned about. So, what risk – give us a few more words about the risk that they were concerned about.

**MR. BENNETT:** Well, it ultimately ties to – I mean, basically, what we're seeing here – that there may be a problem in the environmental assessment if we don't have groups on board.

**MS. O'BRIEN:** Okay.

So the environmental assessment – it may take longer, so that's –

**MR. BENNETT:** It may take longer –

**MS. O'BRIEN:** – so could –

**MR. BENNETT:** – it may stall – that's right.

**MS. O'BRIEN:** – could affect the schedule, and ultimately maybe you won't clear it.

Or there may be more requirements that you have to meet in order to clear it; is that a fair assessment of what some of the risks would be?

**MR. BENNETT:** That's fair.

**MS. O'BRIEN:** Okay.

And what about the risk of protests?

**MR. BENNETT:** That risk, at the time, was thinking more about the environmental assessment. Needless to say, if there was a significant debate at the end of the environmental assessment process, that would be a concern. No question.

**MS. O'BRIEN:** Okay.

We'll get to it in a moment, but ultimately there was, wasn't there, at the end (inaudible)?

**MR. BENNETT:** There was, but it was, if I recall, four years after the environmental assessment. And I don't think we can tie a direct connection between that activity and what happened in the EA.

**MS. O'BRIEN:** Okay, well we will look at that in a little more detail.

Can we go to P-00041, please? This is the JRP report. I'm just – I'm not going to ask you any detailed questions, but I will ask you at this point to just give the Commissioner a sense of how long did you expect this environmental assessment process to take versus how long did it take?

**MR. BENNETT:** The – if I get the dates straight here, now – the Joint Review Panel process started with a registration in November 2006, maybe December 2006, and ran until, ultimately, we received our authorizing regulation in March of 2012. Joint Review Panel, as we see here on the title, issued their report in August of '11.

In between August of '11 and early 2012, the province and Canada considered their, you know, considered their response to the environmental assessment. It did take longer than we had thought. There was certainly more detail than we had expected in the environmental

assessment process. There was a long list of information requests and requests for further information through the environmental assessment.

**MS. O'BRIEN:** Okay, so ultimately it took – for the, at least for the generating station and the LTA – five years, approximately, from those dates you just gave me.

**MR. BENNETT:** Approximately. That's right.

**MS. O'BRIEN:** From the end of 2006 to early 2012. And so five years, and then was there – there was additional time before the LIL was released as well?

**MR. BENNETT:** LIL was released from environmental assessment in late 2013. Whether it was November or December, it was one of those two months, I think it was November.

**MS. O'BRIEN:** So another almost two years there waiting for that one to be released?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. So add that up to approximately seven years. Initially, when you were doing the early planning, how long did you anticipate it would take?

**MR. BENNETT:** I think we were looking at release from EA in early days back as early as 2009.

**MS. O'BRIEN:** So you were thinking a three-year process.

**MR. BENNETT:** We were hoping for a three-year process.

**MS. O'BRIEN:** Okay.

So during this period of time when obviously you were doing a fair amount of work – and I'm talking about you personally now – doing a fair amount of work on the – for the Joint Review Panel, the environmental assessments, generally, we will get to it, but we know there was a number of judicial reviews that came out of this. And I understand you were involved in the judicial reviews as well. Is that right?

**MR. BENNETT:** Yes, that's right.

**MS. O'BRIEN:** Okay, and your involvement with the negotiation of the agreements with the Innu Nation and just generally Indigenous consultation, in terms of those – the issues that are covered, generally, by environmental and Indigenous consultation, what percentage – during this period of time that this was all ongoing – well, like, how was your time divided between those activities versus other activities that you were undertaking for the Lower Churchill Project?

**MR. BENNETT:** Now, if I look at, you know, the things I was involved in – let's say if I looked at – over the course of the years that I was, you know, involved in the planning process of the environmental assessment, Aboriginal consultation, some of the commercial engagements – took the majority of my time.

**MS. O'BRIEN:** Majority of your time.

**MR. BENNETT:** Majority of my time.

**MS. O'BRIEN:** So you know, are we up to 80 per cent of your time, that sort of level?

**MR. BENNETT:** Oh boy. You know, it's hard for me to look back to 10 years ago and say – was it, you know, was it 80, was it 70, was it 60? No question it was a significant effort.

**MS. O'BRIEN:** And was a lot of that – were you having to travel a fair bit for some of that work or was this all work you were undertaking, sort of, from your home office here in St. John's?

**MR. BENNETT:** It varied. I mean, the job encompasses a fair bit of travel. If we're in Labrador, the – certainly the judicial reviews were – they were away for the most part. The federal government – the federal ones – there was, you know, a – we were on the road for the hearings for 45 days, for example, so you're almost as long as you're in this one. And many of those sessions were in Labrador. Labrador –

**MS. O'BRIEN:** And so did you attend all 45 days?

**MR. BENNETT:** I attended the majority of them. I didn't miss too many. There may have been a couple of days in there that I wasn't there for, but for the most part, I was present at the hearing.

**MS. O'BRIEN:** And then during this period I know you were also heavily – when I talk – you know this long – it's – I know it's a significant period of time I'm talking about here, but you were also involved, heavily, with the Emera negotiations as well?

**MR. BENNETT:** Absolutely.

**MS. O'BRIEN:** And working closely with Derrick Sturge on the financing piece?

**MR. BENNETT:** Yeah. Less so on the financing.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** So I think what we'll find there is that other members of the project management team were with Derrick providing information, you know, to rating agencies and presentations to Government of Canada. So, at that point, we were actually – I think Paul Harrington and Jason spent some time with Mr. Sturge in those financing efforts.

**MS. O'BRIEN:** Okay. But Emera was a bigger piece for you?

**MR. BENNETT:** Emera was important. Yes.

**MS. O'BRIEN:** And I take it took up a fair bit of your time as well?

**MR. BENNETT:** Right.

**MS. O'BRIEN:** I'm going to bring up P-00051, please.

This is the Government of Newfoundland and Labrador's response to the JRP recommendations.

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** Are you familiar with this document?

**MR. BENNETT:** I have seen this document, yes.

**MS. O'BRIEN:** What – did Nalcor have any contribution to this document?

**MR. BENNETT:** No. This is the province's response. We didn't participate in the development of their response. The response is coordinated within the province, if I recall. Department of Environment and Conservation, at the time, ultimately owns the response and they would coordinate with multiple departments involved, but this is their response, not ours.

**MS. O'BRIEN:** Did they consult with you at all?

**MR. BENNETT:** I remember having, you know, one or two conversations, I think, with Mr. Bown about, you know, where they might go, but I had no input into their decision-making process. He may have had a couple of questions about some of the potential ideas, but we were not certainly involved in driving the province's response.

**MS. O'BRIEN:** I'm not going to look at every recommendation here, but there are a few I would like to review with you. And the first one is a Recommendation 4.1: Government confirmation of projected long-term returns.

And the Recommendation 4.1 is here, and it is really – it says: "The panel recommends that, if the Project is approved, before making the sanction decision for each of Muskrat Falls and Gull Island, the Government of Newfoundland and Labrador undertake a separate and formal review of the projected cash flow of the Project component being considered for sanctioning (either Muskrat Falls or Gull Island) to confirm whether that component would in fact provide significant long-term financial returns to Government for the benefit of the people of the Province."

So what I understand that this recommendation was, was they were – you had applied as – for both Gull Island and Muskrat Falls together. Is that correct?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** And then, sort of – it was during the JRP process – we've already talked about how the decision to go with Muskrat Falls first came in the spring of 2010, really with – around the time of Régie decision. So it was kind of during this JRP process that the project went – you know, got crystalized from a – you know, a Gull Island-first to a Muskrat Falls-first project?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** So that would have been ongoing developments as the JRP was performing its work. So I understand this recommendation is that the JRP is – was saying look, if you're going to just be sanctioning Muskrat Falls, for example, before you do that you should do an independent review of the, you know, long-term financial benefits of the project independently?

**MR. BENNETT:** Yeah, their words are separate and formal. But, yes, before you sanction, you should look at the projected cash flow.

**MS. O'BRIEN:** Okay.

So now, the Government of Newfoundland and Labrador did not fully accept that recommendation. Is that correct?

**MR. BENNETT:** They said they accepted the principle prior to – of doing a review prior to sanction.

**MS. O'BRIEN:** Right. So they accept "... the principle that a review of the Project's financial viability is required ... but does not support the Panel's assumption that the information provided by the proponent was inadequate. Based on information that Nalcor has already provided, the Government is satisfied that the development of each component of the Project will result in significant financial benefits to the Government for the people of the Province, over and above revenues required to fund ... mitigation measures and monitoring activities ... the Project requires."

The way I would read that response is the government was saying, yes, we believe financial viability review is very important, but

essentially we are satisfied that that has been done based on what Nalcor has already provided us to date.

**MR. BENNETT:** No –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – I don't see it that way.

**MS. O'BRIEN:** Okay, how – what's your view of it?

**MR. BENNETT:** My view is that, if they want to have a look at that prior to sanction with further definition, then – and further detail, they want to do that –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – but I don't think they're saying that that was already done; that their – one of the challenges with environmental assessment is it, too, is a planning process, and is necessarily undertaken before you've made all of your decisions to whether to proceed with a project.

So you never have perfect information in the environmental assessment. What you're trying to do is consider the effects of the development on various aspects of the environment, and that includes socio-economic considerations, but you're using this as a planning tool, and ultimately you're – you are making predictions, but the final sanction decision lies with, ultimately the proponent and any requirements that it has before it moves forward.

So, there's going to be a point in time in the future where there is more detailed information available that somebody can then make a decision.

**MS. O'BRIEN:** So, at that time then, and prior to sanction, your understanding here was that, yes, there will be and should be a financial viability review done prior to making that sanction decision.

**MR. BENNETT:** That's what the province is saying here.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** They accept the principle that a review is required prior to sanction.

**MS. O'BRIEN:** Okay.

And, did you understand that that financial viability review would be done by Government of Newfoundland and Labrador, or would that be done by Nalcor?

**MR. BENNETT:** I think, from our perspective, we knew that we had to look at it; the province will need to take a decision at the appropriate time as to what level of review it wants.

So I know we, from – in terms of our Decision Gate process, we will need to do a review of the detailed business case before we move forward and make a recommendation. The province – we didn't have a particular view as to whether they would simply rely on ours or do their own.

**MS. O'BRIEN:** And just in terms of discharging that requirement or duty then, what was it that Nalcor undertook to fulfill that requirement?

**MR. BENNETT:** Well, this recommendation is directed to the province, not to Nalcor.

**MS. O'BRIEN:** Okay, so this was – so what do you understand that the government did to fulfill that requirement?

**MR. BENNETT:** So from their perspective, they did reviews prior to sanction – we'll probably get to this – but they commissioned MHI among other things in order to review the project prior to sanction.

**MS. O'BRIEN:** Okay, and just briefly, MHI being one review that Government of Newfoundland and Labrador did, which of course we're familiar with. Any others that you can think of in terms of the financial liability?

**MR. BENNETT:** That's the major one, and you know, I don't – whether they thought that the PUB review might help that, I don't necessarily see that because that was based on similar information that went to the joint review panel.

**MS. O'BRIEN:** Okay, so you can't think of anything other than the MHI right now?

**MR. BENNETT:** No.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** Anyway, I think, you know, from our perspective, this recommendation is with the province. The province needs to review to the level of detail that they deem appropriate. Panel is making a recommendation and the province needed to consider that.

**MS. O'BRIEN:** I'd like to go also – whoops, my apologies – Recommendation 4.2, “The Panel recommends that, before governments make their decision on the Project, the Government of Newfoundland and Labrador and Nalcor commission an independent analysis to address the question ‘What would be the best way to meet domestic demand under the “No Project” option, including the possibility of a Labrador-Island interconnection no later than 2041 to access Churchill Falls power at that time, or earlier, based on available recall?’ The analysis should address the following considerations” – and there’s a bunch of them listed there that I’m not going to read out.

So essentially, here I understand this recommendation – I just want to ensure that you believe I’ve got a correct understanding – was that the panel was recommending that the broader question of what is the best way to meet the electricity requirements of the province, be analyzed in some detail including the 2041 option, which they specifically address here prior to the sanction decision. Is that – does that agree with your understanding of this recommendation?

**MR. BENNETT:** That summarizes what they’re saying, yes.

**MS. O'BRIEN:** So this was – and this was a recommendation both – just to be clear on this – this was a recommendation to both government and Nalcor?

**MR. BENNETT:** This was a – nope. This was a recommendation to government.

**MS. O'BRIEN:** Okay, but the recommendation was that a review be carried out both by government and Nalcor?

**MR. BENNETT:** That’s what they recommended, yes.

**MS. O'BRIEN:** Okay. Do you recall any specific consultation with the government on this particular recommendation with Nalcor before they issued their response?

**MR. BENNETT:** Oh, I can’t say I do.

**MS. O'BRIEN:** And so this one was not – was not accepted by the Government of Newfoundland and Labrador. Is that right?

**MR. BENNETT:** That’s right.

**MS. O'BRIEN:** Do you know why not?

**MR. BENNETT:** Well in terms of the environmental assessment, (inaudible) purpose and rationale is a topic that has to be considered in the environmental assessment. And that point was considered. I guess, ultimately, you could look at some of these questions and link back to the 4.1 recommendation that says the province should look at this before they make a decision to sanction.

But many of these options here were considered through the planning phases of our work and there was information available on these points.

**MS. O'BRIEN:** Is the – the inference from that that government was satisfied that the information they had already was sufficient.

**MR. BENNETT:** At the – for the planning process as outlined by the environmental assessment. That’s what they’re saying here, yes.

**MS. O'BRIEN:** Recommendation 4.3 is about integrated resource planning. Now, I know this was not the first time that integrated resource planning had been recommended for Nalcor, is that correct?

**MR. BENNETT:** For Hydro, I think.

**MS. O'BRIEN:** For Hydro. Okay.

And so that’s what the recommendation was, “... that the Government of Newfoundland and Labrador and Nalcor consider using Integrated

Resource Planning, a concept successfully used in other jurisdictions. Such an approach would involved interested shareholders and look simultaneously at demand and supply solutions and alternative uses of resources over the medium and long term.”

And this was a recommendation that the government accepted.

**MR. BENNETT:** Yes they did.

**MS. O'BRIEN:** Okay.

Is Nalcor using integrated resource planning right now?

**MR. BENNETT:** The – well, it's not Nalcor, it's Hydro. And that process would be implemented and undertaken by the Public Utilities Board as part of its regulatory oversight for Hydro.

So I don't know anything further about what government was thinking, about how that recommendation would ultimately be implemented or whether they thought that it was, in fact, already implemented because this concept is available to the PUB as part of its regulatory oversight of Hydro.

**MS. O'BRIEN:** Okay. I want to just take you to some evidence that we've heard from Bob Moulton –

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** – who is with Newfoundland and Labrador Hydro, and I do – I understand that sometimes I use Nalcor and Newfoundland and Labrador Hydro somewhat interchangeably but one is a wholly-owned subsidiary of the other, right?

**MR. BENNETT:** It is, but I may not be able to give you much insight into sort of the regulatory underpinnings of what's going on inside Hydro.

**MS. O'BRIEN:** Okay.

So I was – so Mr. Moulton – this is evidence that he gave here in the hearing room on this topic. He said: Well, what we're doing typically right now, it's called – I'll say supply-side

planning, where we're basically looking at satisfying criteria and load by, inaudible, generate and supply-side generation. Typically, integrated resource planning is a couple of things. One is – one of the factors was, yeah, you would look at including more CDM options, more demand-side management options. But one of the other things, as well, would also – it would also look at bringing, I'll say, more stakeholders into the planning process, contacting, having committees of stakeholders, looking at everything. So it – and again, it would end up being a much more involved process.

And then I said: Okay. Does Newfoundland and Labrador Hydro – do you use integrated resource planning? And Mr. Moulton responded: No, we don't.

So this was obviously in September of this year. Do you have any information that is inconsistent with Mr. Moulton's testimony that Integrated Resource Planning is not being used by Newfoundland and Labrador Hydro?

**MR. BENNETT:** As I understand the process, the Public Utilities Board has not launched an integrated resource planning process that Hydro would participate in or that other stakeholders would participate in. So I think what Mr. Moulton is saying is accurate.

But there is another point. It's not something we would do independently – or that Hydro would do independently. There would be a process that the PUB, I think, would launch in order to facilitate that process.

**MS. O'BRIEN:** I note that this was a recommendation that was to the Government of Newfoundland and Labrador about what the Government of Newfoundland and Labrador and Nalcor should do?

**MR. BENNETT:** Well, that we should consider. That's right.

**MS. O'BRIEN:** Yes. But – so it wasn't a recommendation to the PUB?

**MR. BENNETT:** But my point is that that process is implemented through the PUB. It's a regulatory process that the PUB would take



Hydro and other stakeholders through after they've started that process.

**MS. O'BRIEN:** Okay. Are you suggesting that Newfoundland and Labrador Hydro couldn't start using any integrated resource planning without the PUB –?

**MR. BENNETT:** I'm thinking that, typically, this is a broader process and that something that's just done independently by Hydro. My understanding of this is that there are other participants in the process and that it's typically a more formalized process. So I don't have a lot more information for you on how IRP is undertaken –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – right? I'm just pointing out that the parties involved are, first of all, not us as a project developer. It involves Hydro, and, typically, it's a regulatory process, as I understand it.

**MS. O'BRIEN:** Had IRP been undertaken prior to project sanction, is it fair to say that the outcome of the economic analysis would've been different?

**MR. BENNETT:** I don't know.

**MS. O'BRIEN:** Okay. So maybe we can break that down a little bit, because I understand one of the main focuses of IRP is that you – by looking at both the generation and supply sides part of the equation, that you look at reducing, essentially, the demand using energy efficiency, so you can bring down – reduce the need for generation. Is that consistent with your understanding?

**MR. BENNETT:** That's the notion: that you can either reduce energy, find demand reductions from other sources and have an integrated process that considers all of those in some detail

**MS. O'BRIEN:** Okay. So the idea is IRP, essentially, will reduce the demand forecast?

**MR. BENNETT:** It has the potential to, yes.

**MS. O'BRIEN:** And, I mean, we understand, from evidence we've had already, from Mr. Raphals, that IRP is used successfully in more or less – it's more or less standard practice among utilities in North America, at least. Do you have any information that's inconsistent with that?

**MR. BENNETT:** I don't have much information on how IRP has been implemented in other utilities. That's not something I've looked at.

**MS. O'BRIEN:** Okay. That's fine.

So for right now, I'm just going to get you to assume that, you know, if IRP was undertaken here, it would be some successful, at least in some measure, and it would tend to reduce that load forecast, okay? So if you could just accept that, for a moment, if IRP was introduced, we would be like other jurisdictions, and it would be successful?

**MR. BENNETT:** I don't know to what extent it would be successful. I'll just point that out before we start.

**MS. O'BRIEN:** Yes, that's fine. But if it was successful at all, it would reduce – tend to reduce the demand forecast, and then, ultimately, would that not have, for the Isolated Island, reduced the CPW value?

**MR. BENNETT:** It could have.

**MS. O'BRIEN:** Wouldn't it necessarily have –

**MR. BENNETT:** I don't –

**MS. O'BRIEN:** – because if less energy was being consumed, that would be less oil – fuel being consumed?

**MR. BENNETT:** So –

**MS. O'BRIEN:** And that is such a significant part of the Isolated Island CPW –

**MR. BENNETT:** But –

**MS. O'BRIEN:** – is it not?

**MR. BENNETT:** – we don't know to what extent it was reduced.

**MS. O'BRIEN:** No, but we know it would be reduced.

**MR. BENNETT:** Again, if I don't know to what extent, I don't know if it's meaningful in the CPW analysis and the difference between the two alternatives.

**MS. O'BRIEN:** How could it not possibly be reduced?

**MR. BENNETT:** If – I think the point is how much could it be reduced and to what extent would it change, and that's where I'm having the trouble. Yes, if somebody turns off a lightbulb, it will be reduced, but that's a very small amount, and I guess that's the point. I can't give you any insight into how much it would be reduced and whether it materially changes the CPW comparison between the two alternatives.

**MS. O'BRIEN:** Okay, but it would – to some extent, even if it's only a small amount, it would reduce the CPW?

**MR. BENNETT:** It could, yes.

**MS. O'BRIEN:** Is there any way it could not?

**MR. BENNETT:** I'm really having a tough time speculating on this scenario and whether it's material in the sense of the CPW analysis.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** That's my problem, I –

**MS. O'BRIEN:** Okay. Are you able to think of any scenario where it would not reduce –

**MR. BENNETT:** I think –

**MS. O'BRIEN:** – the CPW right now?

**MR. BENNETT:** Algebraically, we can probably get to the point where we could assume there's some benefit, but I have no insight into whether that benefit could or would be material.

**MS. O'BRIEN:** I understand that. You don't know how much and whether it would be material, but by the basic math of it, it would be reduced?

**MR. BENNETT:** If you saved any, you reduced it, yes, and it's hard to imagine –

**MS. O'BRIEN:** Yes.

**MR. BENNETT:** – the process would cost us more.

**MS. O'BRIEN:** Okay, exactly. All right, thank you.

I want to look now at – mindful of the time. I think we have another 15 minutes left in our morning session – look at Recommendation 4.5.

So this was a recommendation that Nalcor be required to apply full clearing to the reservoir prior to the Muskrat Falls option being completed. Government really did not agree with this recommendation, is that correct?

**MR. BENNETT:** That's right. They concluded that partial clearing was going to be acceptable.

**MS. O'BRIEN:** So was this – the clearing is directly related to the methylmercury issue, is it not?

**MR. BENNETT:** Peripherally. It's peripherally related. I think the evidence that we provided to the Joint Review Panel was that there would be an insignificant reduction in mercury levels in the reservoir associated with the difference between the two clearing alternatives.

And the distinction here is the extent to which you're actually reducing organic material in the reservoir. Wood doesn't decompose very quickly. And my recollection on this is that the evidence provided by our consultants was that trees decompose very slowly and were a – were not a significant contributor to methylmercury production in the reservoir.

**MS. O'BRIEN:** Okay, and I don't want to delve too deeply into the science, because I don't – I believe the Commissioner is going to need to give a recommendation on the science of methylmercury, but I want to – sort of at a – without getting too much into the details of how it works, is it fair to say that this recommendation was not well accepted by some of the Indigenous groups?

The – sorry, the response of only partial clearing. I think, the recommendation might have been well accepted by them but the government's response to only go with partial clearing. Was this – did you understand at the time that, for example, Nunatsiavut, NunatuKavut, those Indigenous groups were not happy with the way government responded to this recommendation?

**MR. BENNETT:** I don't recall this being the same hot button at the time as some of the other questions on downstream effects and methylmercury. I think if we pull up the Joint Review Panel Report on this, the – some of the commentary – the commentary here also includes a consideration. The Joint Review Panel thought that it would be economical and economically feasible to remove more wood from the reservoir.

That thought by the Joint Review Panel has not borne out in reality. There are tens and hundreds of thousands of cubic metres of wood that's already been removed from the reservoir at Muskrat Falls around the shoreline of the reservoir not being used. So, if we go back and look at what the Joint Review Panel said in the lead up to this recommendation, they also had a view that this was an opportunity to utilize the resource, as opposed to simply saying: You're going to reduce methylmercury levels in the reservoir.

**MS. O'BRIEN:** Okay, I'm just going to make sure I'm understanding your evidence clearly.

So what I'm hearing you saying was that the underlying – the recommendation of a full clearing was two aspects: one, that by fully clearing you were – instead of having trees flooded out by water, we can harvest those trees and make use of the wood –

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** – so it's a more responsible use of resources –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – so that was one; and the other – but I'm still understanding you to say, that the other reason underlying this was that the more

organic material that you get out by doing a full clearing reduces downstream methylmercury effects.

**MR. BENNETT:** That – the panel made that point and they qualified the methylmercury reduction associated with the full clearing, but they did make the comment in the detailed response that they provided. So in their report, they did have some commentary about the potential for also reducing mercury levels downstream.

**MS. O'BRIEN:** Okay.

So those – and are –

**MR. BENNETT:** Both points were there.

**MS. O'BRIEN:** Both points were there. Any other points? Have I captured them?

**MR. BENNETT:** Um, the report's in here – I can't think of any other points off my – off the top of my head here.

**MS. O'BRIEN:** Okay.

And my question to you a few minutes ago and I'm not certain I got an answer was – I had put to you that some of the Indigenous groups were not happy with this response from government. That when government decided only to do a partial clearing, the – when – I'm particularly thinking of Nunatsiavut Government and NunatuKavut – that they were not – pleased with the –

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** – response to only – is that clear?

**MR. BENNETT:** Certainly.

I don't recall what happened specifically at the release of the EA in terms of this recommendation, but certainly, since then, there has been more commentary about clearing. There's no doubt about that.

**MS. O'BRIEN:** Okay.

And we will look, perhaps, a little more there.

But before we leave, there's only one more recommendation that I want to go to and that is 6.7 and it's on a related issue.

So, this is the "...Assessment of downstream effects". So, this is – if you could just explain how you understood this recommendation. And we see here the response says: The Government of Newfoundland and Labrador notes this recommendation is directed to federal Fisheries and Oceans, the federal Department of DFO and Nalcor.

So, can you explain what you understood this recommendation to be and what did that response mean to Nalcor from the Government of Newfoundland and Labrador?

**MR. BENNETT:** Well, the point on this one is that we're continuing to do what I would characterize as environment assessment work beyond the project. So, the – the approach that was, you know, and that has been used for every other hydro development in Canada is that this modeling work is done. We get an insight into what we think, what we predict – it's more than think – what we predict to be the affects he downstream and we continue to monitor the results. And then, in terms of mitigation or adapted management the approach that is classically used is to look at the mercury levels in fish, understand how people are consuming those and make sure that we advise if there's a concern.

**MS. O'BRIEN:** So has this recommendation been fully implemented?

**MR. BENNETT:** It is now and there has been considerable work done by us through the IEAC and through others to continue to inform the situation with respect to methylmercury.

**MS. O'BRIEN:** So when you say it is now – has there been a change in the amount of monitoring and the downstream – an assessment of downstream affects since the protest happened on the site in the –

**MR. BENNETT:** Yeah, there is.

**MS. O'BRIEN:** Okay, so –

**MR. BENNETT:** We have new information there, absolutely.

**MS. O'BRIEN:** All right.

So, at the time of sanction, the plan was not to fully – I just want to make sure I'm clear on this – the plan was not to fully implement this recommendation but then, during the construction period when we had protests on the site, and ultimately the site was shut down and then government met with the leaders of the Labrador Aboriginal groups, that – then the IEAC process was put in place, as a result of all that now this has been fully implemented.

Is that fair?

**MR. BENNETT:** And some of these recommendations were identified early on, so the baseline mercury data collection in fish, in seals –

**MS. O'BRIEN:** Yeah, but I'm just gonna – rather than go to the details of them, am I understanding correctly that at the – when this ultimately got sanctioned, the plan was not to – and I'm not saying you didn't do any of this, but –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – you weren't doing all of this, at the time – the plan wasn't to do all of this at the time of sanction, but then subsequent events triggered by the protests has since resulted in this recommendation being fully implemented –

**MR. BENNETT:** I can –

**MS. O'BRIEN:** – is that fair?

**MR. BENNETT:** – safely say it's fully implemented today, yeah.

**MS. O'BRIEN:** Today –

**MR. BENNETT:** We have pathways that we go far beyond what we would've expected an environmental assessment. We have comprehensive, probably more data than is statistically required in relation to mercury data and water sediment, fish and seals. We have a

complete quantification of changes in the environment downstream, multiple locations.

We have not identified additional mitigations, but we've certainly been thinking about that.

**MS. O'BRIEN:** Okay, but then at the time of sanction it was only a partial – a plan for a partial implementation – that –

**MR. BENNETT:** Our primary focus was on baseline data collection.

**MS. O'BRIEN:** So at the time of sanction it would – the plan was only for a partial implementation?

I believe you're saying –

**MR. BENNETT:** Yeah, no, that's –

**MS. O'BRIEN:** – the same (inaudible).

**MR. BENNETT:** – what I'm saying. I am saying the same thing, because the pathways had already been identified from our view in the environmental assessment.

**MS. O'BRIEN:** So the answer to my question was yes?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** The response to the JRP, that – the response from the Indigenous and the grassroots or community-based organization, I understand that there was a number of judicial reviews launched.

**MR. BENNETT:** Yes, there were.

**MS. O'BRIEN:** Now, just briefly – my – the – these are listed in a footnote in your paper, I do believe, so if I – I wrote – find – I believe they're at page 9, the top of page 9 of P-00271.

Okay, so it says multiple judicial reviews. "Multiple judicial reviews for the Generation and LITL Projects challenging the adequacy of consultation were undertaken. None of these judicial reviews were successful."

And there in the footnote here you have listed the citations for those judicial reviews. They

have all been – Commissioner, we've filed all those decisions into evidence.

Have these – so just so that people understand, a judicial review – when you have an administrative process like you did before the JRP, those types of decisions from that type of administrative body are not subject to appeal as people would normally understand that term when we're talking about court processes. Is that correct?

**MR. BENNETT:** That's correct.

**MS. O'BRIEN:** But the courts do still maintain some oversight over administrative bodies, and so one of – the law is slightly different, but you – people can ask the courts to do a review of the decisions of administrative bodies such as the JRP.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** That's – okay. And I'm just trying to – so people watching will understand what we're talking about here. So it's similar to an appeal but, of course, it's different law and I – you know, I don't want to oversimplify it.

So, ultimately, when it comes down to it, these various groups, which include the – at least one of the Quebec Innu group, which would be the Innu of Ekuanitshit, who has standing before this hearing. It also included Nunatsiavut, NunatuKavut and also the Grand Riverkeeper of Labrador.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay.

So these reviews were – if – just to state it simply and ensure that you agree – they were challenging the JRP process before the courts.

**MR. BENNETT:** They either challenged the JRP process or challenged permits that were granted by either the province or Canada subsequent to the EA process.

**MS. O'BRIEN:** Yes, I believe it was one decision that was challenging a permit after.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. And that's – I don't believe that's included in this list, but I'll clarify that point on the break.

So had these judicial reviews been resolved by the time of sanction?

**MR. BENNETT:** No, they had not.

**MS. O'BRIEN:** Okay.

And is it fair to say that of the six that are listed in the footnote of your paper, actually a decision had only been rendered in one of those six prior to sanction?

**MR. BENNETT:** That's right. The – I think the Grand River case was settled in – or it was – the decision was issued around December of '12.

**MS. O'BRIEN:** Yes, I believe the Grand Riverkeeper was actually just after sanction date. It – decision came on December 20th of 2012.

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** The one I have recorded as the decision coming out earlier was NunatuKavut Community Council vs. Newfoundland and Labrador Hydro. And it was in the Trial Division of the Supreme Court here; it was a challenge decision.

**MR. BENNETT:** Right. And I believe that was – produced more of a procedural issue during the EA process itself, if I recall.

**MS. O'BRIEN:** Okay. And that is – that decision – that was rendered in March of 2011, so well before sanction.

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** But the other ones, you know, the dates that I have here – and, again, they're all filed – but, you know, the decisions came out in April of 2013, August 2014, April 2015, August 2015 and then that December 20th of 2012. So for six of them it was after sanction.

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay.

**MR. SIMMONS:** Commissioner, I'm watching the clock. I notice it's 10:14 so I don't know if that's a convenient place to break.

**MS. O'BRIEN:** It is.

**THE COMMISSIONER:** Okay.

So let's take our break now so that Mr. Bennett can attend to his other business this morning. And we're coming back, as I said, I think at 2:15 this afternoon.

All right (inaudible) thank you.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right, Ms. O'Brien.

**MS. O'BRIEN:** Thank you.

Mr. Bennett, I want to give you an opportunity to respond to some evidence that we heard early in the Inquiry from Carl McLean of the Nunatsiavut Government. He – his – I'm just going to summarize what his evidence was, but it was that for a period of time when you were the lead for Nalcor on environmental issues and Indigenous consultations, his testimony was that he found your attitude toward the concerns being raised by Nunatsiavut Government as dismissive in tone. Were you aware that you were being perceived in this way by at least one of the Indigenous groups?

**MR. BENNETT:** No, I wasn't. I think from, you know, our perspective we're always trying to, you know, make information available as best we knew it. I'm certainly aware that there's a concern that's been expressed for quite some time by Nunatsiavut Government before, during and after the environmental assessment process about, you know, their concerns with respect to downstream effects of methylmercury.

We, supported by our consultants, have a different view of that – the magnitude of the risk

and the extent to which it may exist, but we've never, certainly knowingly, just simply dismissed a concern and said the concern is not important.

Concern that's been raised is a known issue with any hydro development, was known at the earliest days of the environmental assessment. And we understood that it was a concern and we've tried to share information as we knew it, as best we have. Yet, at the same time, there is a different perspective between our respective organizations, but never, never knowingly just simply dismissed that concern.

**MS. O'BRIEN:** Another further question I just want to ask – we talked yesterday a little bit about the accounting for the Gull Island portion of the project and the Muskrat Falls portion of the project. I just want to clarify something. The costs associated with the LIL or the Labrador-Island Transmission Link, were all those costs attributed to the Muskrat Falls Project –

**MR. BENNETT:** No.

**MS. O'BRIEN:** – in terms of was any – for example, we know the Muskrat – sorry, the Maritime Link is a separate entity, so I'm trying to get a sense of: Were all the LIL costs attributed to the Muskrat Falls Project instead of being split between, say, Muskrat Falls Project and a Maritime Link?

**MR. BENNETT:** Okay.

Just in terms of the accounting, the accounting and costs associated with LIL are captured onto themselves, and those are included in the Muskrat Falls business case. So if we look at the corporate entities, they're, in fact, separate, they're separate companies, there's separate financing for both. But the costs associated with the Link are included in our accounting insofar as our projected cost to ratepayers and so on are concerned.

**MS. O'BRIEN:** For this project. So that was all accounted for in the CPW analysis?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay, thank you. I just wanted to confirm that.

I'm going to ask you some questions now about the PUB reference. Was Nalcor consulted prior to the reference being made?

**MR. BENNETT:** I understand that there was some communication back and forth between government and Nalcor in relation to the reference.

**MS. O'BRIEN:** What was the nature of that consultation?

**MR. BENNETT:** I remember seeing email correspondence, I guess, in, you know, my preparation for this proceeding. I wasn't heavily engaged in that – in that – in the establishment of the terms of reference or that correspondence, but I am aware that there was email back and forth.

**MS. O'BRIEN:** And what was the subject of the emails?

**MR. BENNETT:** I think there were – there was some commentary about, you know, what the terms of reference might include. But, again, it's a peripheral view. I'm aware of the existence and I've seen it in the preparation for this proceeding.

**MS. O'BRIEN:** What about timelines? Was there any consultation between the Government of Newfoundland and Labrador and Nalcor with respect to timelines for the PUB reference?

**MR. BENNETT:** There wasn't with me. So I think, you know, from – all I'm saying from my perspective is I was aware of correspondence. I wasn't, to my knowledge, included in that correspondence. And I'm just saying that I can remember seeing correspondence; I don't have any insight into the details.

**MS. O'BRIEN:** Okay, so you don't remember whether it was – it addressed timelines or not?

**MR. BENNETT:** No, that's right.

**MS. O'BRIEN:** And who at Nalcor was on that correspondence?

**MR. BENNETT:** I think there was correspondence with Mr. Martin. I don't know if Mr. Sturge was there. I don't have much in the

way of detail. I guess just to be responsive, all I'm – all I was saying is I'm aware of the traffic.

**MS. O'BRIEN:** Okay.

What was your involvement in the PUB reference?

**MR. BENNETT:** It grew over time. I think, you know, our role – we had information, we were participating in the process. There was going to be certainly information requested of the project team so – I mean, inclusively with respect to the project. Later, in the process, I had a more active role in coordinating the delivery of that information; I think we have correspondence to that effect. And toward the end of the process I was involved in the hearings.

**MS. O'BRIEN:** And then – at the outset was it anticipated that you would have the level of involvement that you did in coordinating the communication of information?

**MR. BENNETT:** I think we – once we saw the reference we knew that we were going to be providing information. I don't think we had a clear view of the magnitude of that effort, the extent or level of detail that would be required. We – I think it's fair to say we struggled early on to meet the expectations of the board in terms of the volume, organization and detail that they were looking for. But I think in general terms I can say that it wasn't something that we had in our work plan and that we're – we were being, you know, prepared that this was going to unfold.

**MS. O'BRIEN:** So are you suggesting that as Nalcor was struggling to meet the expectations of the PUB in terms of disclosure information, it was as a result of that difficulty that Nalcor was having that you got more deeply involved in the process?

**MR. BENNETT:** I think collectively, you know, the process came on fairly quickly. We had not planned for it as a, sort of, long-term initiative and we were struggling and I don't – I think it's fair to say we didn't meet the board's expectations in terms of the timeliness or level of detail – timeliness of information, delivery of level of detail that they were looking for.

**MS. O'BRIEN:** Okay, that wasn't my question.

**MR. BENNETT:** Oh, I'm sorry.

**MS. O'BRIEN:** My question was whether – you said at the outset you got more involved as the process went on –

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** – right? So my question was: Is the reason you got more involved because there was – Nalcor was struggling to meet the PUB's expectations?

**MR. BENNETT:** I think there were other individuals who were also playing a role that had to step aside for personal reasons and I became more directly involved in coordinating that activity.

**MS. O'BRIEN:** Okay so you're saying as – if I'm understanding, there was – we understand that Geoff Young was one of the legal counsel with Nalcor. He was involved in the file for some time –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – but for personal reasons he had to step back.

**MR. BENNETT:** Right.

**MS. O'BRIEN:** And so is that the reason you became more involved?

**MR. BENNETT:** That is – yes, that's definitely a reason. And I guess what I'm also trying to point out is that in terms of the activity within the team and the volume of work that we were taking on earlier in the process we weren't planning for that. So we weren't necessarily expecting to be in the PUB process at the outset. So there – I think there are two points to that: one, we were struggling with the initial start-up; and then, secondly, I became more heavily involved than I would have expected a little bit later.

**MS. O'BRIEN:** Okay.

We have had a lot of – we've reviewed a lot of correspondence already back and forth on the



PUB reference and discussed it in some detail here in the hearing room. I'm just going to bring up now P-00572, it's at tab 14 in your book. It just summarizes – it's a letter we've looked at.

The letter does take – it's from Maureen Greene, I believe, to Geoff Young. I believe Maureen Greene signed it, I know she wrote it. No, it was signed by Sharon Blundon [sp Cheryl Blundon] but I believe Ms. Greene's evidence is that she was heavily involved in drafting this.

But it kind of reviews some of the issues that were arising. And what I understand was that in the early stages, Nalcor advised that it would have a comprehensive and meaningful package available by June 30 and that, later, it committed to having its submission by the end of July. Would you agree with that?

**MR. BENNETT:** Yes, I agree that that was the conclusion.

**MS. O'BRIEN:** Okay. And then, ultimately, the submission from Nalcor wasn't received until November?

**MR. BENNETT:** Right.

**MS. O'BRIEN:** Okay. So, I know you've said – you've probably given – answered the question a little bit already, but the question is: You know, why wasn't Nalcor able to provide the information in a timely manner and when they initially said that they would provide it? So I've heard a little bit from you already that it wasn't in your work plan, so this was not a review that you were expecting?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** We didn't start the year where – you know, lay out our planning process to say: Okay, we're going to have a submission to the PUB by such and such a day.

**MS. O'BRIEN:** Okay.

And, also, you say you struggled to meet the expectations for the volume and the types of information? So was there – in the early days of Nalcor's engagement, when you believed you

could get the submission in by the end of June or – and – or even that little bit later in July, were you clear on the type of information you were being asked to pull together?

**MR. BENNETT:** I don't think we had really good clarity in terms of the organization, extent, magnitude of the submission.

**MS. O'BRIEN:** And to what extent – I mean, you know – you knew that the PUB was being asked to review the analysis that had been done and the determination that between the two alternatives, that the Interconnected Island was the least cost. When you knew that that's what they were going to be doing, and they were going to be doing it in a – you know, a serious and detailed way, why would you not have understood, you know, what that would've entailed the kind of information that they would need to see to be able to satisfy themselves that this was, in fact, the least-cost option?

**MR. BENNETT:** So I think that's the key point, that if you look at the detailed information that we had – the spreadsheets, the analysis – I don't think there was, certainly, as much of a problem with the work that had been done. But to sit back, draft a submission, put the context in place, organize the material, explain it, provide the additional context and background they were looking for, that was certainly a much larger exercise than we had been thinking at the beginning. So, like –

**MS. O'BRIEN:** So, you were surprised by the amount of detail that the –

**MR. BENNETT:** No.

**MS. O'BRIEN:** – you know, the amount of detail that the PUB –

**MR. BENNETT:** No.

**MS. O'BRIEN:** – was requiring or ...?

**MR. BENNETT:** No, not the amount of detail –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – or the extent of the work that had been done, but more so here's a

submission that's an inch thick, organized to tell that story.

**MS. O'BRIEN:** Okay, but the terms of reference themselves did anticipate a submission by Nalcor.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** So you knew that right from the beginning.

**MR. BENNETT:** I did.

**MS. O'BRIEN:** I'm just trying to understand why you wouldn't have known that this was going to be a lot of information that had to be pulled together and that the PUB –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – would be looking at it in detail.

**MR. BENNETT:** I don't think – I'm not debating the detailed information, the spreadsheets, the other details, I'm talking about the other parts that go around – that were expected to go around the PUB proceeding, namely the – if I look at, you know, for example, the documents that support the general rate application, there are mountains of analyses and spreadsheets and details underneath, but there's also a fairly significant filing that's put together to put context around that.

**MS. O'BRIEN:** Sure, and you would've – that knowledge would've been known certainly at the Hydro – when the people in Hydro that you were working with.

**MR. BENNETT:** Right and that was given to us in May.

**MS. O'BRIEN:** Right, so that's what I'm saying – that I guess I'm –

**MR. BENNETT:** So there's –

**MS. O'BRIEN:** And just –

**MR. BENNETT:** There's the problem, right? So we have – now we have to put that information together, prepare the filing, write

that narrative to support that and we hadn't been planning for that.

**MS. O'BRIEN:** Okay, you're – am I to understand that you're saying that this is – what you ultimately submitted was something similar to what would be done for a general rate application.

**MR. BENNETT:** It's a similar process, yes.

**MS. O'BRIEN:** A similar level of detail and form of presentation? Similar, yes?

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** Okay.

So here you are, you're working on – you're at Nalcor but you have people on – working on the Lower Churchill Project, some of which are Hydro people, right?

**MR. BENNETT:** There are some people from Hydro, yes.

**MS. O'BRIEN:** Okay, well, I understood there was a number of people –

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** – from Hydro.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay, so they would've had that PUB experience?

**MR. BENNETT:** No, no.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** They're the engineering and technical people. They're not the regulatory team –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – on the project team. So we had to assemble our team and get ready to prepare the necessary submissions and details and supporting explanation of documentation that goes with the proceeding and it took us longer than we had originally hoped or planned.

**MS. O'BRIEN:** I do understand that was the outcome, but you're there, you have – certainly you have a lot of people at Hydro who have a lot of experience before the PUB.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** And they have a lot of experience about the type of detail the PUB would be looking for, the amount of work that goes in to preparing a submission for the PUB. So within your Nalcor home you have people who have that expertise.

**MR. BENNETT:** Yes, that's fair.

**MS. O'BRIEN:** Okay. So you know that – you know in advance that the PUB reference is coming?

**MR. BENNETT:** Not significantly in advance.

**MS. O'BRIEN:** Okay, like, in May, a few weeks? Or what – like, how far in advance?

**MR. BENNETT:** So here we go. It's just a few weeks, right, and not an official reference. So, you know, we get the reference to work on when the reference is delivered.

**MS. O'BRIEN:** I know, but you know in May it's coming. Is that fair to say or not?

**MR. BENNETT:** Well, there was some commentary about it, yes. But are we going to – we were not in a position to have any detail, we don't – we're not ready to – you know, we don't have resources committed at that point in time, we're waiting for the reference question.

**MS. O'BRIEN:** But –

**MR. BENNETT:** And not waiting very long because this process is unfolding very quickly.

**MS. O'BRIEN:** But why wouldn't – if you knew it was coming – I'm just putting together what – I'm maybe oversimplifying but it seems – I'm going to put it to you it seems a little obvious that, okay, you know this is coming, we're going to be going before the PUB, it's – the reference is going to be coming up formally very soon, what do we need to get together here?

Well, let's talk to our people who have regulatory experience. Let's get their view on how long it takes the type of material it's going to take. Let's make sure that we communicate to government or communicate to the PUB very early on, look, it's going to take us – we've taken a look at this to get that type of material that we're anticipating, it's going to – we expect it's going to take X number of months. Or why wouldn't you be giving them, you know, some assessment and then communicating to people how long –

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** – it would be taking?

**MR. BENNETT:** I wasn't asked for that level of assessment in the planning for the referral. And I wasn't engaged in that conversation about planning for the referral.

**MS. O'BRIEN:** Okay, so who at Nalcor would have been engaged?

**MR. BENNETT:** I don't know.

**MS. O'BRIEN:** Is it –

**MR. BENNETT:** And the other thing to keep in mind is we're just coming out of the environmental assessment hearings as well. So –

**MS. O'BRIEN:** So you were very busy with those.

**MR. BENNETT:** – that's my other file, yeah.

**MS. O'BRIEN:** Okay, so you're very busy with those. So you don't know – so you don't have any – you don't have any knowledge as to why Nalcor didn't communicate – didn't figure out earlier on that it was going to take more effort to do a proper –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – response.

**MR. BENNETT:** Because there was not a lot of – I didn't have a lot of engagement at all in the run-up to the PUB referral.

**MS. O'BRIEN:** Okay.

We anticipate evidence coming from Charles Bown. We anticipate he will testify that Nalcor exhibited some resistance to the PUB reference. Were you resistant to the reference or did you sense any resistance on the part of anyone else at Nalcor to the PUB reference?

**MR. BENNETT:** I can't – I can't put my finger on any specific examples of resistance to the referral or the process.

**MS. O'BRIEN:** Okay.

Even if you can't put your finger on any specific examples, generally, were you aware that there was some resistance within the organization, even if it was just within the PMT, the project management team, that this – they – this reference was going to be required?

**MR. BENNETT:** I can't – as I said, I can't nail anything there and to the extent once the referral comes we have to work with the referral. So we're going to do the best we can.

**MS. O'BRIEN:** Can we bring up P-01070, please?

So this is a Briefing Note. It's a draft Briefing Note and this is taking place April 27, 2011, so this is before the PUB reference is called.

And if we go to page 3, please, it summarizes here an affidavit of Nalcor's related to an injunction that was being sought by the NunatuKavut Community Council. And they say that "there will be substantial harm to Nalcor and the Project if completing the PUB ... results in a delay" to the project.

And then it gives further detail on – I'm assuming it was the information set out in that affidavit – as to why the affidavit was putting forward that there would be substantial harm to Nalcor and the project and, you know, direct financial harm to the project talking about each month of the delay, that termination or increased costs of contracts, loss of key project management team members, higher financing and insurance cost, postponement of key project timelines.

Are you – I know you were very involved in the judicial reviews. Are you aware of this affidavit?

**MR. BENNETT:** So is this affidavit in relation to the NunatuKavut intervention in the Joint Review Panel process? Just so I understand where –

**MS. O'BRIEN:** Yes, that could be because of the time, because this is being written in April 2011 so it would have to be prior to that.

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** Yeah.

**MR. BENNETT:** So I would have been aware of this.

**MS. O'BRIEN:** Would you have been the affiant? Would you have sworn that?

**MR. BENNETT:** Probably would have, yeah.

**MS. O'BRIEN:** So this would have been your affidavit. Okay.

**MR. BENNETT:** Right. Yeah.

**MS. O'BRIEN:** And so in this affidavit you are swearing facts. And the position you were swearing to be true was that there would be substantial harm to Nalcor and the project if the completing the PUB review resulted in –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – a delay?

**MR. BENNETT:** So it stands to reason that –

**MR. SIMMONS:** Mr. Commissioner, we're dealing with a Briefing Note that's summarizing something from an affidavit. I think it would be much preferable if we had the affidavit available. Because the legal matter that's being dealt with there I don't think had anything to do with the PUB matter, I think it was an entirely different proceeding. And I don't know if in the affidavit the same connection is made that's made in the Briefing Note.

**THE COMMISSIONER:** Okay, so do we – I'm not certain if we even have the affidavit.

**MS. O'BRIEN:** We will endeavour to get the affidavit. So I understood this had to do with the PUB review, but maybe that's –

**THE COMMISSIONER:** Oh no.

**MS. O'BRIEN:** – not correct information. What's your information – what's your recollection about it, Mr. Bennett?

**MR. BENNETT:** So just putting the pieces together, and I think where the only thing I can acknowledge that this note would likely refresh my memory is that we knew something about the PUB review a little bit earlier than I was thinking a minute ago, right, that there was going to be a review.

**MS. O'BRIEN:** Mm-hmm.

**MR. BENNETT:** Right? So this event – this injunction application sought by NunatuKavut happened during the environmental assessment process.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** And the concern was if the Joint Review Panel stops their work, and if there are – if there's a problem with the review further on, then there's going to be a delay to the project.

**MS. O'BRIEN:** Was it about the PUB review?

**MR. BENNETT:** No, it was about NunatuKavut and their intervention in the Joint Review Panel. As I recall, NunatuKavut, at the time, requested that the Joint Review Panel stand down. And I think that's the, if we check, that may be the 2011 case that's in – it's in the information here.

**MS. O'BRIEN:** Okay, so are you suggesting that this PUB review was – this is a mistake in this – in the note, if this –

**MR. BENNETT:** No.

**MS. O'BRIEN:** – affidavit didn't – okay, how did it link to the PUB?

**MR. BENNETT:** Oh, oh, I'm sorry. Yeah, yes, we probably should go to the affidavit because

it's the Joint Review Panel review that was being delayed here.

**MS. O'BRIEN:** Okay, so we will check that, of course, because we want to be accurate.

Any – but what – did you have any – would those same concerns, though, have applied to the PUB review?

**MR. BENNETT:** If it resulted in a delay in the project, we would have similar concerns.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** No question.

But that affidavit would have been connected to the NunatuKavut – I don't recall any scenario or any event where NunatuKavut challenged the PUB review; they did challenge the JRP.

**MS. O'BRIEN:** Okay, but the same – but if the PUB review had caused delays – so if – for example, if the PUB had received a time extension, which we know they looked for and ultimately didn't get, and if that caused some delay to the project, would your position had been the same in terms of the negative effects, the substantial harm?

**MR. BENNETT:** Those considerations are, I think, equally relevant. Needless to say, if the province decided that it wanted a review and asked us to pause, hold, stand down – whatever – then they would – we would have the necessary information that they might need to support that decision.

**MS. O'BRIEN:** Okay.

Now, why didn't Nalcor provide its most up-to-date information to the PUB? At DG2, only about 5 per cent or so of the engineering had been done. A lot – by the time you get to the PUB review in June of 2011, a lot more work had been done since the estimates that had been developed at DG2.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. So why would you not have provided the PUB your latest and best information?

**MR. BENNETT:** So, you know, when we look at the process, there was a body of information that was gathered to support a decision. And there was another body of information being gathered to support another decision that's gonna happen in the future.

Yes, there's some work done, but you have to then ask yourself, well, what does the filing look like? Why does a body of information that is logically connected from one to the next and – you know, maybe to make a specific point: If you took out one capital cost estimate and put in another capital cost estimate, unless you're gonna rerun all the CPW numbers and do all the work necessary to support the DG3 decision, that new information may not be logically connected to the conclusions that were drawn with the other set of information.

So it's almost – if I try another regulatory example, it's like you're doing a general rate application, and you're doing the math for one test year, and then you start feeding in new information. It's not – and, all of a sudden now, you don't have a complete and comprehensive filing for what you started with.

**MS. O'BRIEN:** But could you not have said: Look, here's the information we had at DG2, and this is the analysis we ran based on that information. Please take a look. Since then we have done further engineering, and we have some, you know, new – some further information that we can give you. We haven't yet got all the information that we'll be running at our CPW for DG3 yet, but we're working towards it. Please take a look at whatever of this – our latest information that we have that you want to look at – you know, have at it.

**MR. BENNETT:** Well, the DG3 decision is quite some time away. And you know, not all that information is available, and not all of it is connected to the other material in the filing.

**MS. O'BRIEN:** I know. But why wouldn't you just give them access to whatever you did have available?

**MR. BENNETT:** It – I guess there were two points. We interpreted the points of reference as looking at the DG2 information as it was there. And secondly, I think we would be gravely

concerned that we're going to be confusing the file.

**MS. O'BRIEN:** And I should get – maybe ask someone to just give me the exhibit number for the terms of reference. So you're saying you interpreted the terms of reference as only requiring the DG2 estimate?

And, sorry, what was the other reason?

**MR. BENNETT:** Well, the point I made first, that you don't have a complete and logically interconnected file.

**MS. O'BRIEN:** So if you didn't have everything, you didn't see any value in giving them what you had?

**MR. BENNETT:** The question becomes what is it that's necessary and where is it going in the analysis.

**MS. O'BRIEN:** Why not just let the PUB determine what it wanted to look at?

**MR. BENNETT:** That would have – if they had – if there were specific information that were asked for, obviously we would have co-operated. But again, you get back to where's the supporting information, where's the explanation, where's the context? (Inaudible) going to have another stack of spreadsheets that don't relate to the information and material that's already filed and the analysis that was done and presented to the PUB.

**MS. O'BRIEN:** So you don't – sorry, I'm going to ask you to repeat that answer, 'cause I'm just not sure that it's responsive. I'm wanting to know why you wouldn't just let the PUB have the information that they wanted to have, if you had it.

**MR. BENNETT:** Ultimately, there was a view taken about the terms of reference that – and I think it's helpful to put them up.

**MS. O'BRIEN:** Okay, so that's the answer, then? It's your –

**MR. BENNETT:** That's clear –

**MS. O'BRIEN:** – view of the terms of reference?

**MR. BENNETT:** That's a clear answer that the – that I think the words in the terms of reference were it has been determined that this is a preferred course of action or the preferred alternative.

**MS. O'BRIEN:** Okay. I'll – I just asked Mr. Learmonth to get the exhibit number for the terms of reference. While he's doing that, I will move on.

P-01319, please.

Okay, so this is a email. There's –

**THE COMMISSIONER:** (Inaudible.)

**MS. O'BRIEN:** Sorry, I don't – yeah. Thank you, Commissioner – from Steve Goulding, Dave Parry, Jason Kean, Mark Turpin. You're not on this email. It says the – there's a – it says – the subject is "Notes from our PUB strategy meeting." And the attachment is PUB strategy – PUB HEARING STRATEGY. So it's – that's what's being circulated. You are on the earlier copy of the email that's being forwarded here. And what I want to look at here is the strategy itself. So this is notes from a strategy meeting that are being circulated.

Would you have been at – would you have been involved in this PUB strategy meeting?

**MR. BENNETT:** I'm not sure. I'd have to check my calendar.

**MS. O'BRIEN:** Okay. Would you have – I mean, you obviously would have known about it, do you – because this is forwarded to you.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** So I'm going to go ahead and ask you the questions.

Generally, do you recall that this strategy session was being held to address these objectives that are listed here at the top of the document?

**MR. BENNETT:** It was – yes, I'm – this is becoming a little clearer for me. This was in preparation for the hearing: how we present ourselves; how we work, interact and deal with the hearing process.

**MS. O'BRIEN:** Okay.

So we talk here about – I see that, like, little bit about the tone. So that would be when you're presenting your evidence before the PUB.

And here it does talk a bit about the – you know, the strategy that you'll be undertaking. And I wanna look – this is the steering committee. So what was the steering committee doing? You were a member of it.

**MR. BENNETT:** I was a member of it. Dawn Dalley would have been prime on that. I think I would be on the – more on the receiving end of these points in terms of how we interact in the proceeding. We also had our legal counsel there as well.

**MS. O'BRIEN:** So – but what – would – what was the steering committee doing? Was it steering Nalcor through the PUB hearings? Is that –

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** That's the idea.

**MS. O'BRIEN:** All right.

So we see there's two members of government here. One from Justice – Don Burrage, as he then was – and Charles Bown from the Department of Natural Resources.

Why would government members have been involved in this – these strategy sessions to steer Nalcor through the PUB hearings?

**MR. BENNETT:** I don't have a clear memory of – I don't have any memory of what they were doing in those roles.

**MS. O'BRIEN:** Okay.

What, generally, did you see as the purpose of the PUB review?

**MR. BENNETT:** The PUB review was undertaken by the province. I can – I wasn't looking for anything more than what they had done. They wanted to do a review through the board of the decision, and we were working in that process.

**MS. O'BRIEN:** Did you see this as part of the Government of Newfoundland and Labrador's oversight of the project and the decision?

**MR. BENNETT:** I would see it as, you know, a process that helps them, sort of, have some confidence in the process, absolutely (inaudible)

–

**MS. O'BRIEN:** Okay.

And would you understand that they chose the PUB because they were looking for an independent review?

**MR. BENNETT:** Sure.

**MS. O'BRIEN:** Okay.

So if we look at – you know, this is government looking to an independent body to do a review of Nalcor's work. I just put the question to you again: Like, what purpose – do you have any knowledge of what purpose there would be for government working with Nalcor on its strategy for that review and those hearings?

**MR. BENNETT:** Yeah, I don't recall any particular insight from the government participation here. This was about us being in a position to properly present information to the board.

**MS. O'BRIEN:** Their involvement, do you see that as potentially undermining the independence of government from the process?

**MR. BENNETT:** It's their process. I mean, at the end of the day, the process that they've established is one that they want discharged.

**MS. O'BRIEN:** But if they're working on strategy with the proponent, do you not see that

some people might feel that that would undermine their independence from the process?

**MR. BENNETT:** But they own the process so, I mean, I don't have a particular perspective on them being there. I mean, that's – they set the terms of reference. The PUB is established, you know, from their legislation.

**MS. O'BRIEN:** Do you know if it was government that asked that two of their members be involved in the strategy session, or do you know whether this was Nalcor who asked that these people be involved?

**MR. BENNETT:** I don't know.

**MS. O'BRIEN:** Okay.

We – if I can bring up P-00038, now. So these are the – this is the Terms of Reference. So I'm just going to ask you to point to them, Mr. Bennett, and it'll come up on your screen there. And if you want, actually, I have a paper copy I can give you, if it's easier.

**MR. BENNETT:** Oh, it's okay. Thank you.

**MS. O'BRIEN:** So, you say you interpreted this to only include the DG2 numbers. So can you please point to the Commissioner as to what here limited the review to DG2 numbers?

**MR. BENNETT:** What led me to that conclusion was the second sentence: It's been determined that the least-cost option was the Interconnected alternative. And the only determination that had been made at this time was the DG2 work.

**MS. O'BRIEN:** Oh, there was work done on the Energy Plan that determined that.

**MR. BENNETT:** But the most recent work was DG2.

**MS. O'BRIEN:** Okay.

So you believe – because it says here that it has been determined that the least-cost option – that is what led – required it only to be DG2 numbers.



**MR. BENNETT:** That was my basis for understanding that, yes.

**MS. O'BRIEN:** Okay and did others at Nalcor share your basis of understanding?

**MR. BENNETT:** I never heard anybody – nobody expressed a different opinion to me.

**MS. O'BRIEN:** Okay. So do you recall back and forth – you'll agree with me here, this doesn't say DG2 numbers only anywhere?

**MR. BENNETT:** No, it's just the determination had been made.

**MS. O'BRIEN:** Okay. Had you made the final determination?

**MR. BENNETT:** Oh, the final determination?

**MS. O'BRIEN:** That –

**MR. BENNETT:** No.

**MS. O'BRIEN:** Okay.

When the – I understand, from the evidence we've heard to date, that there was some disagreement between the PUB and Nalcor as to whether these terms of reference only required DG2 numbers.

**MR. BENNETT:** I understand that to be the case, yeah.

**MS. O'BRIEN:** Okay.

So you say this was your understanding based on that sentence or that portion of a sentence. Did you go to government to get clarification?

**MR. BENNETT:** I'm pausing because I'm asking myself was there, in fact, a conversation with government on that? I mean, we did – I think I did ask government on a couple of occasions, through Mr. Bown, whether some of the questions that were being raised were consistent with the terms of reference.

**MS. O'BRIEN:** Okay, so –

**MR. BENNETT:** So – but whether I specifically said: Are you limiting the

conversation to DG2 or DG3, at this point in time from six years ago, I don't recall asking that specific question. But I do –

**MS. O'BRIEN:** But, yeah, that's the position you took with the PUB.

**MR. BENNETT:** That was our view, yes, that this was a DG2 question.

**MS. O'BRIEN:** Okay.

And when you spoke to Mr. Bown regarding the scope of some of the questions that were being asked by the PUB, what was his response?

**MR. BENNETT:** There were some questions that we had raised, whether they're in terms of conditions or the terms of reference of the PUB, or whether they would simply – we should just simply deliver the answer. And in some of those situations, we received guidance and we filed the information requests as, you know – into the process.

**MS. O'BRIEN:** So I just want to make sure I'm clear. So in some cases you said to Mr. Bown, look, this is what the PUB is asking for, we don't believe we should give it.

**MR. BENNETT:** We're not sure. That's right.

**MS. O'BRIEN:** What's your view on it?

**MR. BENNETT:** Right.

**MS. O'BRIEN:** And he said: Yes, go ahead, give it.

**MR. BENNETT:** Whatever – I guess whatever he said in response to a number of RFIs would be on record with the PUB in our responses that are posted on their website. So the response that came back – and I don't have the details over specifically which question might have referred to which aspect of the terms of reference, but what we did do is we filed a response with the PUB.

**MS. O'BRIEN:** But was there any – ever any time that Mr. Bown said, no, you don't have to answer that question?

**MR. BENNETT:** I think there were times when we actually replied in that manner to the board.

**MS. O'BRIEN:** And that would've been with Charles Bown's knowledge and consent?

**MR. BENNETT:** We would've identified that and we would've responded accordingly to the PUB. And those answers are on the record in the proceeding.

**MS. O'BRIEN:** Okay, so for any response that you – that is back with the PUB where you've said we're not answering because we believe it's outside your scope, you would have gotten input from Charles Bown?

**MR. BENNETT:** I would have mentioned that to him.

**MS. O'BRIEN:** Okay, and would he have agreed with you making that response?

**MR. BENNETT:** So his agree – whatever he said at the time in relation to the specific RFI is contained in the RFI response and filed with the board. So, sometimes, I seem to recall there were a couple occasions that this question or this RFI seems to be outside the terms of reference.

**MS. O'BRIEN:** Okay. And if you said that in your response, can we take from that that Charles Bown agreed with that response?

**MR. BENNETT:** I wouldn't say that unilaterally. There may be – have some – in some of the questions that we have looked at ourselves and we said, we don't believe that's in the terms of reference and we would respond accordingly.

**MS. O'BRIEN:** Okay, so when we see that we don't know – we can't know, just from looking at the questions, whether or not Mr. Bown was consulted.

**MR. BENNETT:** That's correct.

**MS. O'BRIEN:** But at least on some of them, he was consulted?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** And at least on some of them he agreed that you shouldn't provide a response.

**MR. BENNETT:** Well, I'm saying whatever he agreed, we responded in like kind.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** There were hundreds of RFIs in the process, and I – it's difficult for me to say here today whether there were two or three of those where Charles said, yes, that's outside – I believe that's outside – or, no, I think it's inside, you should respond and give them the information requested.

**MS. O'BRIEN:** I'm not looking for an exact –

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** – number, and maybe you don't know the answer to this question, but the question is: Do you recall any case ever where you went to Charles Bown and said, look, we believe this is outside the scope and Mr. Bown said I agree?

**MR. BENNETT:** I think there were examples of that, yes.

**MS. O'BRIEN:** Okay.

Now, Nalcor retained Navigant to do a review of its DG2 numbers and that was presented at the PUB.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** And I understand that Nalcor put out an RFP for this work. Is that consistent with your understanding?

**MR. BENNETT:** That is consistent with my understanding.

**MS. O'BRIEN:** Had you done that process – were you – had you started that process before you became aware of the PUB review or did you engage Nalcor specifically because you knew you were going before the PUB?

**MR. BENNETT:** My recollection was that the Navigant work was part of the process. I thought

that that RFP was issued after the PUB process had started.

**MS. O'BRIEN:** Well, when we look – I'm going to bring up –

**MR. BENNETT:** But if you can pull it up.

**MS. O'BRIEN:** Yes, absolutely.

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** It's P-01461.

**THE COMMISSIONER:** Tab 66.

**MR. BENNETT:** Thank you.

**MS. O'BRIEN:** So this is the request for proposals. So it's called Independent Supply Decision Review and can we go to page 6 there, please? It's the best – I think that we can get a date from here. We can see that your request for responses is for May 20, 2011, so this is – you know, at this time probably Nalcor would have known about the PUB review, but it's not necessarily clear that it – this was done – that you wouldn't have been doing this anyway.

**MR. BENNETT:** Right.

**MS. O'BRIEN:** Would you not recall that whether you had planned to get – I mean, this was – this was to do – review, to some extent, the DG2 numbers but, of course, this was well after you'd passed DG2.

**MR. BENNETT:** Yes, it was. It was past DG2, that's right.

**MS. O'BRIEN:** So to your best recollection was this specifically done at this time because of the PUB or do you just not remember?

**MR. BENNETT:** I don't remember that detail.

**MS. O'BRIEN:** Okay.

If we go to page 56, the Scope of Work; so the scope of work does talk about doing – it says: "Nalcor's Decision Gate process is designed to ensure decisions are made at appropriate times, with the appropriate level of information, and at appropriate levels of expenditure. Nalcor's

Decision Gate process focuses on key milestones to achieve gateway readiness and builds in 'cold eyes' reviews at key decision points throughout" this project.

"The Lower Churchill Project ... recently passed through Decision Gate 2 ... which is Concept Selection. At that time, to select a preferred concept, Nalcor completed the appropriate activities and gathered the required information including field work, engineering and design, finalization of Labrador Innu Impacts and Benefits Agreement ..., environmental assessment progression, execution of water management agreement, completion of the Emera Term Sheet, financing preparation and economic analysis."

"Decision Gate 3 ... which is Project Sanction requires the advancement of project activities and work streams to a level of progression which provides the certainty needed to sanction the Project." And then it says, "The intent of DG3 is to validate the concept selected before committing the largest dollars."

"Independent reviews are carried out in accordance with established Nalcor decision-making processes with each Decision Gate having differing requirements. For DG3, one such independent review is an independent review of the reasonableness of the Island supply decision as described below" and you refer to that as the 'Supply Decision Review' "using the latest available project cost and schedule information."

So that information that I've read out today, is that accurate?

**MR. BENNETT:** That description is accurate, yes.

**MS. O'BRIEN:** Okay. Does talk about "The Supply Decision Review will be conducted by an external consultant ... with a focus on the reasonableness of the Island supply decision. For purposes of clarification, the scope of the Supply Decision Review does not extend to a review of the financing decision or the monetization of the excess power."

“The Consultant will review the following: Reasonableness of the long-term ... Island supply options considered; Reasonableness of the process followed to screen and evaluate the appropriate Island supply” – assumptions [sp options] – “and Assumptions used by Nalcor in assessing the Island supply options.”

“Based upon this review, the Consultant will provide” – whether the – sorry, “will provide an opinion on:

whether the Project represents the least cost Island supply option which also fulfills the additional ... requirements of security of supply and reliability, environmental responsibility, and risk and uncertainty; and the reasonableness of the related rate impact analysis.”

And then it goes on to say what the inputs they will use.

It says, these are the criteria that your – Nalcor’s being used. And then it’s these same four items again, including risk and uncertainty.

“The Consultant will provide a report using DG2 estimates. The Consultant will provide a second report using DG3 estimates and assumptions prior to the conclusion of the DG3 process. These reports will be made public.”

So is this ultimately the contract that was awarded to Navigant?

**MR. BENNETT:** So –

**MS. O’BRIEN:** (Inaudible.)

**MR. BENNETT:** – the work – yeah, the work for DG2 was awarded, and that while we contemplated the DG3 estimate, I don’t recall that the DG3 work was actually undertaken.

**MS. O’BRIEN:** It wasn’t undertaken, and I will have a question for that in just a moment, but first, before we go that, why did the RFP for DG2 cold eyes, you know, independent review, go out after DG2 had been passed?

**MR. BENNETT:** So the – this was, I think we’ve answered the question in terms of the PUB review. This document was ultimately provided to the PUB in their review process.

**MS. O’BRIEN:** But if, as this document says, that your, you know, Decision Gate process required independent reviews at each gate, wouldn’t it make more sense to have that independent review prior to passing the project through Gate 2?

**MR. BENNETT:** As I said, this was done for the PUB review. This wasn’t an independent, stand-alone look at DG2, this was done as part of that review process and was worded accordingly.

**MS. O’BRIEN:** And so but for the PUB review, you wouldn’t have engaged that work?

**MR. BENNETT:** I don’t think – I’m not sure that we would’ve, at that time.

**MS. O’BRIEN:** All right.

Now, when we go – I’m gonna bring up the Navigant report, P-00042, please, and I’m just gonna bring up that report just to look at what they say – they anticipate doing work at DG3 – in that report.

Page 7, please. And it’s just there in the second – so this is their report, it says: “Decision Gate 3 ... Project Sanction is the next step in the process. DG3 requires the advancement of project activities and work streams to a level of progression which provides the certainty needed to sanction or go ahead with the Project. Nalcor has retained Navigant to conduct an initial review using DG2 estimates. This report presents Navigant’s findings related to Nalcor’s recent DG2 decision. Navigant will provide a second report using DG3 project costs and schedule information as input to the DG3 decision.”

So we know that Nalcor didn’t do that work at DG3.

**MR. BENNETT:** Right.

**MS. O’BRIEN:** Why not?

**MR. BENNETT:** Because we had MHI in process then.

**MS. O’BRIEN:** But –

**MR. BENNETT:** The province had commissioned MHI to do a very similar review.

**MS. O'BRIEN:** And, if you had already intended to be using Navigant at Nalcor, why would you not have continued on with Navigant?

**MR. BENNETT:** 'Cause the province wanted to do its own review.

**MS. O'BRIEN:** Okay, and so you considered that as a substitution for the review that Nalcor was gonna do?

**MR. BENNETT:** I think that's fair, yes.

**MS. O'BRIEN:** Okay.

And, so, it – and you – why wouldn't government have retained Navigant? Was there any reason for that?

**MR. BENNETT:** I – I can't explain how government decided to retain their consultant.

**MS. O'BRIEN:** Okay.

Now, Navigant has – had done work for you on the Lower Churchill Project prior to this engagement that we're looking at here for the DG2 review, had it not?

**MR. BENNETT:** Yes, they had.

**MS. O'BRIEN:** Okay. So when you were getting them for the DG2 review before the PUB, did you have any concerns about their independence given that they'd already worked with you on the Lower Churchill Project?

**MR. BENNETT:** They were providing, as I recall, market price information. They're an external consultant to us. They – they are engaged from time to time. From my view this is a – they're a contractor who works in this business. I didn't see any – any new concern, because they had previously done work from – for us.

**MS. O'BRIEN:** Okay. I'm gonna bring up an email – P-01449, please. Tab 54, I believe, of your book.

So this is an email chain – and you're gonna have to bear with me as I bring you through it a bit. I'm gonna start with page three.

First of all, who's Joanna Harris?

**MR. BENNETT:** Joanna Harris today is in – the Churchill Falls Organization. She had been involved in market development work for Gull Island, primarily. She participated in the Régie process, in the open access application. So you'd see her on the – what I'll call the market development side of the project.

**MS. O'BRIEN:** All right. Here it shows by her signature line – “Manager Policy and Planning Lower Churchill”?

**MR. BENNETT:** Right.

**MS. O'BRIEN:** So is – she was part of the Lower Churchill Project team?

**MR. BENNETT:** She was (inaudible) part of the team, yeah.

**MS. O'BRIEN:** Okay. And in a manager-level position?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** She had been around for – Joanna's been with our organization for some time. Her engagement in Lower Churchill goes back to at least 1998.

**MS. O'BRIEN:** Okay.

So this is – we have an email from Todd Williams of Navigant to Ms. Harris. Its subject is “Strange Request” and it's May 18, 2011. So this would be just a couple of days before the RFP was due.

**MR. BENNETT:** Right.

**MS. O'BRIEN:** (Inaudible) – “Hi Joanna, Sorry that I couldn't attend your de-brief,” this morning, “but I'm glad to hear ... things,” are well. “You may be aware that Nalcor has an RFP out for an independent review of the Island supply decision (Decision Gates 2 and 3)

regarding power from Muskrat Falls. We are going to submit a proposal to do this work. Many of the aspects of the review are similar to what we have been doing for you with respect to export opportunities for Lower Churchill power – review supply mix projections, review demand forecast,” – access [sp assess] – “cost-effective opportunities, etc.

“Given these similarities, I would like to include you as a reference for our work. I know it is a bit unusual, but I think you have a good sense of how we approach these sorts of questions.

“Would you be OK with us including you as a reference.”

And then if we go to page 2 we’ll see Ms. Harris’s response: Todd, sorry for delayed response, “it’s been a busy week. It is a strange request – you can include me, however given that Navigant has an ongoing consulting arrangement with Nalcor I am not sure if that would be a problem in terms of independence for purposes of this particular analysis.”

And then if we go to page 1: “Thanks for the offer, Joanna.

“It turns out that RFP didn’t ask for references (I thought it did), so don’t worry about it.

“However, Paul Kennedy” – may be asked about our work – “may ask about our work with you because we mentioned it in our proposal.

“Sorry for the confusion and have a great weekend.”

Would you consider it a fair interpretation of this email chain that Joanna Harris, at least that time, was questioning whether Navigant was sufficiently independent to be conducting this review?

**MR. BENNETT:** I interpreted that as she wasn’t sure it made sense for her to be a reference, given that she’s actually part of the team. We would know, internally, what work Navigant has done for Nalcor.

**MS. O’BRIEN:** Okay. So you don’t see that she was questioning Navigant’s independence?

**MR. BENNETT:** No, right.

**MS. O’BRIEN:** They have an ongoing consulting arrangement as she points out.

**MR. BENNETT:** We hire them from –

**MS. O’BRIEN:** She does say, you know, given that Navigant has an –

**MR. BENNETT:** Yeah.

**MS. O’BRIEN:** – ongoing consulting arrangement. She doesn’t say, you know, given that I am involved –

**MR. BENNETT:** I understand.

**MS. O’BRIEN:** – in the project.

**MR. BENNETT:** We have engaged Navigant for some period of time. They provide us advice in that area.

**MS. O’BRIEN:** Okay.

**MR. BENNETT:** Also in markets and market development.

**MS. O’BRIEN:** Okay.

So they’ve already had input into some of the work on the Lower Churchill Project.

**MR. BENNETT:** They had input into markets, competitive pricing information in relation to our other export opportunities.

**MS. O’BRIEN:** And it would have been – they said looking at the forecasts and things like that.

**MR. BENNETT:** In those markets.

**MS. O’BRIEN:** Okay.

**MR. BENNETT:** So not the, you know, not the cost, not the construction side of the project, but in the export markets that we were evaluating.

**MS. O’BRIEN:** Okay, but that was an ongoing consultation contract they had.

**MR. BENNETT:** They were engaged – I’m not sure if they were on a continuous retainer or if

they were engaged for specific activities in given markets.

**MS. O'BRIEN:** Okay. Is it fair to say that Ms. Harris felt it was for an ongoing consulting arrangement?

**MR. BENNETT:** That's what she says there. So she's used them quite a bit over the years.

**MS. O'BRIEN:** Okay.

So, I mean, would it be safe to presume that Navigant would want to ensure that they kept good relations with an ongoing client?

**MR. BENNETT:** I think first and foremost they want to make sure that they do good work for us.

**MS. O'BRIEN:** Okay. Do you think they would also want to ensure that they keep good relations with an ongoing client?

**MR. BENNETT:** I mean, needless to say, anybody is going to want to, if they have a relationship to – it's okay to maintain that relationship, but the way they do that is through doing appropriate work. I mean we have ongoing relationships with SNC-Lavalin, with Hatch, with Stantec, with the Wood Group who used to be Amec. So, I mean, there are any number of consultants that are retained for a period of time to do specific activities in their area of expertise associated with the project.

**MS. O'BRIEN:** Okay, I certainly understand that if you're getting – hiring someone to do engineering work, if they do good engineering work, next time you need engineering work you're likely to go back with them.

**MR. BENNETT:** Right.

**MS. O'BRIEN:** But we're not talking about ongoing work for the project, we're talking about an independent review. So it's a very different situation, is it not?

**MR. BENNETT:** I'm not sure it is. It's a third-party review of the work that's been done by the project team.

**MS. O'BRIEN:** But the idea of an independent review is that that independence allows that

reviewer to bring a critical eye, and that reviewer should feel independent enough so they can state the negative if they find it.

**MR. BENNETT:** I totally agree. And I expect that, you know, a consultant that we understand, that has a reputation, would do exactly that.

**MS. O'BRIEN:** Do you not see that a reasonable person might question that there may be a tendency of someone who has an ongoing relationship to be a little more reluctant to give negative feedback on a review?

**MR. BENNETT:** I'm not sure – no, I don't share that opinion.

**MS. O'BRIEN:** Okay, so you don't see –

**MR. BENNETT:** I expect a consultant or a professional organization who's doing work for us to tell it the way it should be told.

**MS. O'BRIEN:** Then why bother with independence at all?

**MR. BENNETT:** There are other times – you mean in terms of when somebody actually has conflict, which I think is a little different. But –

**MS. O'BRIEN:** How – well, I mean, tell me what's the importance of the independent part of an independent review?

**MR. BENNETT:** The important part, in my view, is that they're taking a cold eyes look at the work. It's not – for an engineering, for example, it would not be unusual for us to have another consultant take a look at a situation, see if they have different recommendations than our engineer of record, for example.

**MS. O'BRIEN:** Okay. So you do not believe that independence in a review requires that that person not have any financial independence or ongoing financial contractual arrangements with Nalcor?

**MR. BENNETT:** We can never find a consultant who doesn't have some commercial arrangement with us.

**MS. O'BRIEN:** Ongoing?

**MR. BENNETT:** Again, for specific scopes of work in given areas.

**MS. O'BRIEN:** Okay.

All right and is – does that view, your view of independence as you've just expressed it to the Commissioner, is that a view that you would have – you believe is – was consistent across Nalcor?

**MR. BENNETT:** I think that you'd have – if others had differing opinions on that, you know, it would be important to hear from them. I can't – I have not heard anybody, in terms of our external views, say anything different to me than that.

**MS. O'BRIEN:** Okay. Can we go to P-01451, please? So this is an email. It says: Hard copy –

**THE COMMISSIONER:** Tab 56.

**MS. O'BRIEN:** Sorry, thank you.

Hard copy – it's Auburn Warren to Todd Williams, who we've already been introduced with from Navigant: "Re: Hardcopy of latest version of the report." And there's an attachment: Nalcor discussion points. And there's a date there, I believe, would be September 9.

Can we go to page 10, please? So – yeah, Mr. Bennett, that's good, you have a hard copy before you. So you can see this a markup, a Nalcor markup of the latest version of Nalcor's report?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. So, here, I want to take you to this. This was – this is under a section entitled: Key Findings.

"Navigant recognizes that further analysis will be undertaken by Nalcor in the period leading up to the Decision Gate 3 ... decision. In order to provide a more robust decision, Navigant recommends that Nalcor undertake a more holistic, integrated approach in its development of options for and analysis for DG3 that would include:

Additional renewables, CDM and transmission expansions/upgrades, with a primary focus on their application in the Isolated Island case. Explicit consideration of the impact of ... GHG legislation on costs. Explicit identification and consideration of scenarios (plausible combinations of key assumptions) in its analysis with re-optimized expansion plans for each of the scenarios." And "Monte Carlo analysis of assumptions to more fully explore the variability in costs in the alternative cases being considered."

There is a note here. It says: To review with Gilbert. Do you recall that in at least this draft, that this – that these were some of the key findings of Navigant?

**MR. BENNETT:** Do I recall until I've seen it in this proceeding? No, I wouldn't have recalled that.

**MS. O'BRIEN:** Okay. All right.

Would you – we've had some evidence here, by Philip Raphals, who's talked about integrated resource planning, and how that works. And he actually brought the Commissioner to an example of how you – essentially, you develop various scenarios for your option plans using things like CDM and, you know, additional renewables and you put together a lot of different scenarios and are evaluated.

Did you hear his evidence in that regard?

**MR. BENNETT:** No, but I've heard some of his commentary previously.

**MS. O'BRIEN:** Okay.

So would you agree with me that what's, sort of, being – what is being described here is an integrated resource planning activity?

**MR. BENNETT:** It's similar to or consistent with that approach.

**MS. O'BRIEN:** Okay.

So here we have – Navigant is recommending for DG3 a number of things, including that you look at more – at least a similar approach to integrated resource management – you look at



CDM, and those are the ones, in particular, that I want to focus on.

Now, when we compare, it does say here it's going to be reviewed with Gilbert. Do you recall anybody reviewing this with you?

**MR. BENNETT:** Not this specific document from seven years ago. No.

**MS. O'BRIEN:** Okay. What about reviewing – you don't recall them reviewing these specific key findings with respect to Navigant?

**MR. BENNETT:** No.

**MS. O'BRIEN:** Okay.

Do you have any information why – if we went to P-00042 – that recommendation is gone from the final version of the report? I can show you what remains of the CDM. P-00042 – and if I go – page 11.

There is – this is what we have here, point 24: “Nalcor could consider the impact of a longer term CDM initiative.” So much different than: We recommend at DG3 you do this.

Now, this is – would you agree with me – a much softer recommendation with respect to the CDM?

**MR. BENNETT:** Yeah, fair enough, it is, it is.

**MS. O'BRIEN:** Okay.

So what we know is – the key finding that they had in their initial report, we know it's not in their final report. We know it is in the notes from people within Nalcor that they wanna discuss it with you.

Do you have any knowledge as to why that key finding did not make it into the final report?

**MR. BENNETT:** No, I don't. And I guess the key point here is that, at this point in time, they're doing the DG2 review and that, you know, any work to be undertaken later with DG3 we will be talking about that at that time.

**MS. O'BRIEN:** You weren't interested in what their recommendations were for DG3 at this time?

**MR. BENNETT:** We're gonna get – we will get there for DG3. And as it turned out we didn't engage Navigant at all. The review was done by MHI.

**MS. O'BRIEN:** Yes, that's true.

But why would you not – you know, why would you not – if that's – if they had ideas, even in their DG2 review, for how DG3 would be best – review would best be – or your – Nalcor's analysis –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – for DG3 would best be carried out. What's the harm in keeping it there?

**MR. BENNETT:** As a general statement – talk about that when we retain them for DG3, so other than that we're, at this point in time, a little bit – in my view, if you're looking at any of those consultants' reports today where somebody says: Yes, we'd like to do more work. You know, take it under advisement to a point, but when you actually contract for that additional work, then we can have that conversation then.

**MS. O'BRIEN:** What's the harm of just putting it out there now anyway?

**MR. BENNETT:** There's probably no harm, but this is a – the philosophical approach that we're gonna have a really good discussion about the scope of work when we contract it.

**MS. O'BRIEN:** Can we go to P-01164, please?

**THE COMMISSIONER:** Tab 7.

**MS. O'BRIEN:** Thank you.

We're going back a bit in time. There's a letter attached here and I just wanna make sure – so this – it says: “Attached is an electronic copy of Hydro's submission regarding Integrated Resource Planning.” Now, we're going back in time, this is in November 28 [sp 12], 2008. And this is a letter that's signed by Geoff Young.

Nalcor has no – it is about, “Re: Integrated Resource Planning.” Nalcor – “... has no objection to participating in appropriate processes to assist the Board in carrying out its responsibility to ensure that adequate planning takes place. To that end, Hydro has filed with the Board and upon interested parties information on planning matters .... However, in Hydro’s view, the Board and the parties are constrained from undertaking a full ranging IRP because, (1) under the Province’s Energy Plan, the Province’s preferred view is to meet the longer term electrical generation needs through the development of the Lower Churchill Project, and (2) the Board’s jurisdiction to review Hydro’s planning and surrounding this project is” – outlined [sp “ousted”] – “by the Labrador Hydro Project Exemption Order.”

He goes on to say: “Were time and money unlimited, it would be possible to carry out full planning and engineering processes for two possible contingencies: a future where the island’s long term needs are met by the Lower Churchill Project and an HVDC link, and a future where the Island Interconnected System remains an isolated electrical system ....

“In Hydro’s view, this would” – be – “this would unavoidably involve a considerable amount of engineering and support work” – and he’s talking about the effort to do the integrated resource planning – “to prepare for a future that, very likely, will not materialize.” So the full letter is in there and it speaks for itself.

But is it fair to take from this that even in 2008 Newfoundland and Labrador Hydro’s view was that the Interconnected Island was very likely to – sorry, the Interconnected Island was very likely to prevail over the Isolated Island?

**MR. BENNETT:** As I recall, Hydro had information in its System Planning team that indicated an economic preference for the Interconnected case.

**MS. O’BRIEN:** Okay.

**MR. BENNETT:** I don’t think – so I’m drawing a distinction between they thought that it was a given, compared to whether they thought there was an economic preference.

**MS. O’BRIEN:** Okay.

**MR. BENNETT:** That there’s a – my perspective of the Decision Gate process and what it actually takes to get to the end would take a lot more than what’s being articulated in this letter.

**MS. O’BRIEN:** And this suggests, though, that Nalcor’s position is that: Look, the preferred view here is to go for a Lower Churchill Project, it’s – there’s no benefit in doing IRP for the Lower Churchill Project because we’re gonna have so much energy we’ll be able to meet the load whatever it is.

**MR. BENNETT:** So just a little clarification, this is what Hydro wrote, not Nalcor.

**MS. O’BRIEN:** I understand.

**MR. BENNETT:** Okay.

**MS. O’BRIEN:** Okay, but you – you know, we have talked already about integrated resource planning, right, and so we talked about it this morning about –

**MR. BENNETT:** Yes.

**MS. O’BRIEN:** – and you said Hydro was involved. So this was the Hydro view from –

**MR. BENNETT:** Yes, I was just correcting, I think you said Nalcor.

**MS. O’BRIEN:** Oh, I’m sorry, okay. All right.

So the – you know, what I understand from this, they’re saying – that Mr. Young is saying: Look, doing a full-ranging IRP doesn’t make much sense if we’re going ahead with the Lower Churchill Project.

**MR. BENNETT:** That’s what he said there.

**MS. O’BRIEN:** Okay.

Do you agree with that position?

**MR. BENNETT:** I’ve never put my mind to this question in terms of how much effort would be required and what the benefits were. I vaguely remember that – I think is – this is back

to the board, I believe. So the board did launch a process to inquire and to ask whether it was worth going through an IRP process, and I understood that input was solicited on that topic.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** So I don't have any background or insight into what that process would've entailed, how much effort, what the cost of the process and what the benefits were. I didn't follow the development of an IRP process at the PUB.

**MS. O'BRIEN:** Okay.

Would you agree with me that if you were going ahead with the Lower Churchill Project that you – you know, and you were gonna be building Muskrat Falls and it has the capacity that it has, the 864 megawatts, that that is ample power to supply the Island load; therefore, there's not a – if you – even if you did a lot of IRP and reduced the load, that's not going to reduce the cost of power from Muskrat Falls, is it?

**MR. BENNETT:** I would agree that there's a less compelling argument or a less compelling business case with IRP, because instead of displacing fuel at Holyrood you could be generating some revenue in an export market and those prices are likely quite different. So the benefit of going through the process and either having more energy available for export, or reducing our capacity requirements on the Island, and therefore having more capacity to use in the export market, would be lower than if we're talking about Holyrood.

**MS. O'BRIEN:** And if we're doing a CPW analysis between the two options that excludes any export energy, is it fair to say that IRP would not benefit the Interconnected option CPW at all, but it would tend to lower the CPW for the Isolated Island case.

**MR. BENNETT:** That would be the case. However, the fulsome business case perspective would be that there would be a benefit arising from that export opportunity, even though in this – in the analysis that was done at DG2 and 3, that export revenue wasn't included in the CPW calculation.

**MS. O'BRIEN:** I might bring up P-00739, please.

**THE COMMISSIONER:** Don't have that there?

**MR. BENNETT:** Oh.

**MS. O'BRIEN:** This is an email on – that's been looked at in evidence already, Mr. Bennett. It's from you to Mr. Wilson and this is on April 1, 2012. For context, I can tell you that the evidence is that the PUB's report was submitted late on Friday, March 30, 2012. So this is an email coming two days later, it's over the weekend.

And you're connecting with Paul Wilson and telling him that "Charles Bown, the Associate Deputy Minister for Energy with the Government of Newfoundland and Labrador, asked me to pass a message along to you.

"He would like to have a conversation with you some time today." And you provide the contact information.

Can you explain, please, what was going on here? Why were you connecting Mr. Wilson with Mr. Bown?

**MR. BENNETT:** So I don't have any recollection of anything beyond what's in that email. I had previous contact with Mr. Wilson through the PUB process and the only thing I can say is what's said there, that Charles was looking for his contact information.

**MS. O'BRIEN:** So you don't recall who reached out to you and asked you to make this connection?

**MR. BENNETT:** Other than me acknowledging in this email that it was Charles who asked me to have Paul contact him.

**MS. O'BRIEN:** Okay, but you don't know if – okay, so you don't know – so would the – do you believe, looking at this, that it was Mr. Bown who approached you to say, look, we're interested in hiring MHI, can you give me a contact? Or can you not even give ...?

**MR. BENNETT:** That's all I have, right?

**MS. O'BRIEN:** Just this email? Okay.

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** Commissioner, I don't know what time this afternoon you want to take the break. I notice it's just – it's getting close to quarter to 4.

**THE COMMISSIONER:** I'm fine to take a break here if you wish.

**MS. O'BRIEN:** Okay.

**THE COMMISSIONER:** Yeah.

I see some anxious heads shaking yes, so I think we should.

**CLERK:** All rise.

**THE COMMISSIONER:** Ten minutes.

Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right.

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

**MS. O'BRIEN:** Thank you.

Mr. Bennett, we have found the affidavit, and it's one you swore on in March of 2011. It does reference the JRP proceeding –

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** – not the PUB. It was misquoted there, and we're getting it processed as an exhibit, and that'll be filed, so –

**MR. BENNETT:** That's great.

**MS. O'BRIEN:** – that'll be there.

Okay. Let's go to P-00130, please.

**THE COMMISSIONER:** Tab 23.

**MR. BENNETT:** Yeah.

**THE COMMISSIONER:** It's actually only the first page; you'll have to see your screen.

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** Yeah, this is fairly extensive – this is the QRA work done at DG3. Can we go to page 8, please? I should have – sorry, if we can just go back to page 1 there for one moment? There we go.

I just want to confirm this is a document that you have reviewed and signed off on –

**MR. BENNETT:** I've seen before, yes.

**MS. O'BRIEN:** – Mr. Bennett?

Okay. And now we can actually go to page 287.

Okay. So this is a slide from an appendix to this QRA document. This is from the work that Westney Consulting did. Are you generally familiar with this slide?

**MR. BENNETT:** Generally, yes.

**MS. O'BRIEN:** Okay.

So we have already had testimony from Jason Kean and Paul Harrington that, at DG2, there had been a fairly extensive list of strategic risks that have been identified and then ranged or quantified and then inputted into the Monte Carlo simulation but, by DG3, Nalcor had considered that many of these risks had been addressed or mitigated and thus they were considered retired and that, by DG3, you were essentially down to three strategic risks that you believed could still have impact on cost and schedule and had to be considered. Is that consistent with your understanding?

**MR. BENNETT:** Those are the – these were the big ones, I agree, yes.

**MS. O'BRIEN:** Okay. But these are the only ones that were – an analysis was done on?

**MR. BENNETT:** Right.

**MS. O'BRIEN:** Okay. And so these are schedule risk, of course, productivity and skilled labour availability. Okay.

Do you believe that these were the only strategic risks facing the Lower Churchill Project at Gate 3 that could impact on cost or schedule?

**MR. BENNETT:** I think those were the big ones. I think there were still – you know, as – I think there were others that fall in, generally, into this category. So, for example, you know, if there is a delay in approval, that turns up in time extension. You know –

**MS. O'BRIEN:** And that would be a delay in approval, like, for an environmental process or –

**MR. BENNETT:** For either environmental assessment, the financing or the province's sanction decision, they would typically turn up in these areas.

**MS. O'BRIEN:** So that would be –

**MR. BENNETT:** In terms of the – yeah. In terms of the big-ticket ones, these are the ones that we were thinking of.

**MS. O'BRIEN:** Okay. But – so something like a delay in approval, would you consider that something that was outside the project team's control?

**MR. BENNETT:** I think in terms – outside their control?

**MS. O'BRIEN:** Yes.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. So that would be classified – in the Nalcor classification of strategic versus tactical, that would be classified –

**MR. BENNETT:** Right.

**MS. O'BRIEN:** – as a strategic risk?

**MR. BENNETT:** Correct.

**MS. O'BRIEN:** What about – you know, Mr. Westney has testified that this list of three did not capture all the strategic risks, and he talked about non-tactical risks for non-financial stakeholders, so I think, like, protest risks would be one he would have been considering there,

political risks, market-condition risks. Did you hear his evidence on that point?

**MR. BENNETT:** No, I didn't.

**MS. O'BRIEN:** Okay. So you've said that, you know, at least one other risk that you might have been facing is a delay in approval. What other strategic risks do you think that the project was facing at DG3?

**MR. BENNETT:** I think we could – I mean, we could think of a long list and you can back and look at sort of the extensive spreadsheet and then start quantifying or trying to compare those to these that are here. I mean, that was the whole purpose of the exercise that the team was going through, to identify the major ones. So, I mean, there are – there's any number of smaller ones, or ones that have much smaller impact that you could begin to think of.

**MS. O'BRIEN:** So the evidence we had to date is that the other ones – the – would be – would have been considered mitigated enough or to be small enough so that there was – you know, that the impact would be so low it didn't need to be considered –

**MR. BENNETT:** It didn't –

**MS. O'BRIEN:** – in this analysis?

**MR. BENNETT:** It didn't bubble up into the analysis.

**MS. O'BRIEN:** Okay. And is that consistent with your understanding? I mean, did you really believe that there weren't any significant strategic risks that could face this project that really – that weren't, you know, fully mitigated or weren't so low that they really could still have an impact on project costs?

**MR. BENNETT:** Well, these are important ones here.

**MS. O'BRIEN:** Yes, but why not – but why are these the only ones here?

**MR. BENNETT:** I'm not sure that they're the only ones. I mean, I'm thinking about the process that Westney took us through, and these are the ones that were highlighted.

**MS. O'BRIEN:** But the evidence we have is that these are the only ones that were considered in the Monte Carlo analysis. Are you aware of that?

**MR. BENNETT:** I'm aware that these were the major ones that came out of the analysis, and I'm aware that these are the ones that factored into the analysis, and I'm not sure how many – how the others, be they small or of less duration, depending on time, would have factored into the Monte Carlo analysis.

**MS. O'BRIEN:** Okay. So you weren't aware that all those other –

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** – strategic risks there were accounted for as zero dollars –

**MR. BENNETT:** So I –

**MS. O'BRIEN:** – in the – in this estimation of what ultimately becomes the management reserve or –?

**MR. BENNETT:** Just – the challenge I have here, now: I'm looking at one slide in a 332-page exhibit that was filed six years ago and trying to refresh my memory on what was else in that report.

**MS. O'BRIEN:** Okay. But let me put it to you that – I'm telling you the evidence we have to date was that for any number of strategic risks – many of which Nalcor had previously identified – but by the time it came to Decision Gate 3, the only risks that were considered in this probabilistic analysis and, thus, the only risks that had dollar values associated with them for strategic risk reserve are these three and that every other strategic risk out there had zero dollars accounted for in the strategic risk reserve.

**MR. BENNETT:** So –

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

**MR. BENNETT:** So is it that they had zero dollars in the reserve or that the – in the effect of putting those relatively small numbers in the

Monte Carlo simulation would have not had anything come out?

**MS. O'BRIEN:** I –

**MR. BENNETT:** I have not reviewed this report before today.

**MS. O'BRIEN:** Okay. Did you hear Mr. Kean's evidence?

**MR. BENNETT:** I heard some of it.

**MS. O'BRIEN:** Okay. Did you hear him – me go through a number of risks with him and him confirm that zero dollars in the strategic reserve for –?

**MR. BENNETT:** I can't say I did.

**MS. O'BRIEN:** Okay. So what I'm hearing you say is you don't know whether there was zero dollars or not for those other strategic risks?

**MR. BENNETT:** The report would show what that is, and I'm not gonna argue with the report.

**MS. O'BRIEN:** Okay.

All right. But you don't know. You don't –

**MR. BENNETT:** Sitting here right now, I –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – can't be sure looking at the one page.

**MS. O'BRIEN:** Well, let's go to page 145.

And this is an attachment to the QRA, and it says "Updated Key Risk Status Report from 24-May Workshop." The evidence is that this – these key risks are the strategic risks.

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** Okay, so that's the evidence that we've had from Jason Kean and others. And I wanna go first to – if – can you get to the page – scroll down, please, Madam Clerk, to go to where risks 18 and 19 are considered, please?

Great. Thank you.

So, these are risks that I reviewed with Mr. Kean, and I believe also Mr. Harrington, and these are risk of: “Lack of support from other Aboriginal groups” and risk 19 is “Non-governmental organization / stakeholder protest.”

And, ultimately, the decision here – the evidence we have from Mr. Kean was that these risks were considered to not be there – to be fully mitigated at DG3 – that there was no dollar amount considered in the strategic risk reserve for them, and that it would have been you who gave that direction because this would really have fallen under your bailiwick, giving it was Aboriginal group and, I think, related to that, the community grassroots stakeholder involvement.

Would you – does that – do you agree with that?

**MR. BENNETT:** We had – just to put some context – I mean, I would agree with – I would agree that we felt that – and that I felt that the – that this risk was diminishing as we worked our way through the environmental assessment and the consultation process. There’s no doubt about that, that the information we were gathering was consistent with the position that we were taking with various Indigenous groups. And it was consistent with the province’s view as well in terms of whether mitigation – or accommodation, to use the right term – in the form of an IPA was warranted with those groups.

**MS. O’BRIEN:** Okay.

But I think Mr. Kean said, look, we didn’t count them; we counted zero dollars for them because – to put it succinctly – ’cause Gil Bennett told us that’s what we should do – that these risks were taken care of and they didn’t need to be accounted for in the – you know, financial analysis of strategic risk.

**MR. BENNETT:** In the large-scale analysis.

Whether I directly said zero or some small number that didn’t fall out of the analysis, this page is accurate. So I’m, you know – but...

**MS. O’BRIEN:** Did you believe at DG3 there was any significant amount of risk associated with these risks, which would be lack of support

from other Aboriginal groups or non-governmental organization stakeholder protests.

**MR. BENNETT:** No, I –

**MS. O’BRIEN:** Did you believe there was any risk facing the (inaudible) –

**MR. BENNETT:** I didn’t believe there was a significant risk associated with either one of these at DG3.

**MS. O’BRIEN:** Okay. And so insignificant you didn’t believe that it would have to be accounted for in terms of a reserve analysis?

**MR. BENNETT:** In the big context, that’s right.

**MS. O’BRIEN:** Okay. But now at this point, when we go to DG3, you knew that the JRP had recommended full clearing of the reserve?

**MR. BENNETT:** The JRP had made a recommendation. The province had a response. There was a well-founded explanation for their response. So ...

**MS. O’BRIEN:** And the – you knew the JRP’s recommendation on that had not been accepted by government?

**MR. BENNETT:** That’s – so – and I also – and I think it’s also –

**MS. O’BRIEN:** Yes or no? You knew that.

**MR. BENNETT:** I knew that, yes.

**MS. O’BRIEN:** Okay. All right. You knew that the Grand Riverkeeper and other Indigenous groups were challenging the JRP process by the means of judicial review in the courts.

**MR. BENNETT:** Yes.

**MS. O’BRIEN:** So you knew you had five outstanding challenges that had not yet been determined?

**MR. BENNETT:** At that time we had one.

**MS. O’BRIEN:** Pardon?

**MR. BENNETT:** We had one.

**MS. O'BRIEN:** One what?

**MR. BENNETT:** One challenge.

**MS. O'BRIEN:** But we – when we reviewed the dates this –

**MR. BENNETT:** I think they were all post-DG3.

**MS. O'BRIEN:** Oh, they were all filed. They were all filed prior to –

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** – okay, we have –

**MR. BENNETT:** Oh post – no, they were filed after DG3.

**MS. O'BRIEN:** They were all filed after DG3, the reviews.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. So you did – so only one review was ongoing at the time?

**MR. BENNETT:** We had one active judicial review at the time.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** In relation to – actually, the work of the Joint Review Panel. That was the Grand Riverkeeper, Sierra Club, NunatuKavut challenge to the Joint Review Panel report.

**MS. O'BRIEN:** Okay. So that – you got the decision just after sanction.

**MR. BENNETT:** Just after sanction.

**MS. O'BRIEN:** Okay. So that was still outstanding.

**MR. BENNETT:** It was.

**MS. O'BRIEN:** Okay. So you knew you had one judicial review application outstanding.

If we bring up P-01001 please. This is a report, a news report. Essentially it's the Nunatsiavut Government – I believe is – this is just prior to sanction, I think maybe in November. Yeah, November 2012.

This is the Nunatsiavut – the Inuit in Labrador, “An aboriginal group in Labrador is concerned that the Muskrat Falls project could contaminate its food supply downstream.”

So you can see the Nunatsiavut Government was raising concerns at this time. They were raising them with government. They were looking for more funding to do more analysis. You would have been aware of that?

**MR. BENNETT:** Yes. This was an ongoing concern with Nunatsiavut.

**MS. O'BRIEN:** Okay.

I understand from Mr. Harrington, you – or I forget if it was Mr. Harrington or Mr. Kean – one of them testified that you had your first site disruption on the – in the fall of 2012 on the North Spur. Someone came and tried to – attempted to cut down a pole with an axe. Do you recall that?

**MR. BENNETT:** Yes, an individual came onto the site –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – and attempted to cut down a pole.

**MS. O'BRIEN:** Okay, some early concerns about the North Spur, we're starting – North Spur stability were starting to be raised around this time?

**MR. BENNETT:** Nope, they were ongoing for quite some time.

**MS. O'BRIEN:** Prior?

**MR. BENNETT:** Yup.

**MS. O'BRIEN:** Okay, so you knew that – you knew there were people out there who were very concerned about the stability of the North Spur?



**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay, so in light of all these things, you know, you have – you know that there's groups out there that are not happy with the outcome of how government has chosen to deal with the JRP recommendations. You know that at least one of them is actively challenging in court – you must've known it was still possible then for further judicial reviews to be filed.

**MR. BENNETT:** And we were also looking at the process that we participated in, the thoroughness of that process, the rigour that the material that we filed both with the province and Canada was – the rigour that was applied to that work – and the outcome of, you know, the extensive and intensive and inclusive environmental assessment process.

**MS. O'BRIEN:** Right, but this risk, as I understand it, is not about whether you did the right things on the environmental review panel, and it's not about whether you made the right decisions in implementing the – or in implementing – or whether government made the right decisions in implementing the JRP recommendations.

These risks are about how other groups feel and are responding to your reaction to the environmental assessment and the work that was ongoing and the way you were dealing with the issues of North Spur stability and downstream methylmercury contamination. The issues that they were raising, they were raising them in the media.

They – you had people who were up protesting by cutting down poles on the North Spur. I mean, this was the environment. How reasonable is it to say, look, we've got this fully mitigated. This is not a risk for the project that we have to consider at all in the financial reserve at this time.

**MR. BENNETT:** I didn't think it was a significant risk at the time and we've had a fulsome engagement process, we've discussed these issues at length, we've looked at the situation with the province – the regulatory process, and we felt – I felt as if we were working our way through the process in a

transparent way and that we had explained the rationale for the decision-making that was being taken, and ultimately the approval that the government – both governments had granted us in relation to the project.

**MS. O'BRIEN:** I'm going to put it to you, Mr. Bennett, that at this time you didn't even know the outcome of the Grand Riverkeeper's joint review –

**MR. BENNETT:** I would say we didn't know the outcome but –

**MS. O'BRIEN:** The judicial review outcome.

**MR. BENNETT:** – I recall that the hearing was held.

**MS. O'BRIEN:** Okay. You were confident you were going to be successful, is that what –

**MR. BENNETT:** We –

**MS. O'BRIEN:** – we're to understand?

**MR. BENNETT:** We had – you know, we had an extensive legal process. Our counsel that was involved in the process had taken us through the environmental assessment. We thought we had a – we were in a good place there.

**MS. O'BRIEN:** Okay.

So notwithstanding the fact that you have people speaking out publicly, governments – the Nunatsiavut Government, one of the – you know, one of the governments in this province, is speaking out publicly about this issue; notwithstanding people in the community of Happy Valley-Goose Bay and the other – in the surrounding environments are expressing concerns about North Spur stability, you dismissed those concerns and when it came to analyzing what your – what you should consider here as a strategic risk facing this project. Is that what I'm to understand?

**MR. BENNETT:** I did not see it as a major strategic risk at sanction.

**MS. O'BRIEN:** All right, I want to look back – if we can go back to risk number 1, please, and

that is at page – I believe it will be at page 145, or maybe page 146, actually.

Okay, no, there we go. Okay, so this is another one that I've also reviewed with Paul Harrington and Jason Kean; I think a little more with Mr. Harrington. And this is – has to do with the risk of organizational experience and resources for a project of this size. Did you hear any of the evidence when Mr. Harrington was speaking about this one?

**MR. BENNETT:** I don't think I did.

**MS. O'BRIEN:** Okay.

So as I'm just going to summarize what I understand the evidence to be of Mr. Harrington and Mr. Kean, but my understanding is that this risk here was assessed at zero at DG3. And that was despite the fact that problems with SNC had been arising throughout 2010 and 2011, including a perception at Nalcor that SNC had failed to bring their A team. And I just point out to you here that one of the action plans for this response was contractors, including SNC, bringing their A team.

And, you know, they said despite – you know, the evidence is that SNC was not meeting their deliverable expectations during this period. Do you have – take any issue with that evidence? Would you generally agree with – that that was the case?

**MR. BENNETT:** There were issues with – you know, with the mobilization of SNC-Lavalin. Yes, they were particularly in relation to construction management and that risk, from my recollection, was beginning to unfold, you know, as this risk status report was being finalized. So –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – all would've had – Mr. Harrington would've had, you know, first-hand insight into how this risk was being managed, you know, at the working level on the team.

**MS. O'BRIEN:** Okay.

Were you aware that there was zero dollars allocated in the strategic risk analysis for this risk?

**MR. BENNETT:** I was aware that the three major risks that we talked about earlier were the ones that went into the Monte Carlo analysis.

**MS. O'BRIEN:** Okay, so you don't know whether – you knew this was either a zero amount, or a very low amount?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Is that fair to say from what you know? Okay. Their evidence is that there was no amount, so ...

All right, I would like to bring up P-00887, please. And this is a presentation that the project management team has prepared. And this one specifically addresses SNC and it covers some of the issues that the project management team were reporting with SNC-Lavalin.

00887? Okay, so, here it is. Have you seen this slide deck before?

**MR. BENNETT:** I'm not sure that I have.

**MS. O'BRIEN:** Okay. Bring us down, please, to page 15, Madam Clerk. Great.

So this is – there's two slides here. And I believe this might be tab 51 in the book in front of you, Mr. Bennett, if that's helpful.

**THE COMMISSIONER:** Not so sure.

**MS. O'BRIEN:** Oh.

**MR. BENNETT:** No, it's –

**MS. O'BRIEN:** Okay, so I'll keep it for you on the screen. This is – there are two pages here that talk about "serious SNC-Lavalin Inc. performance issues in 2011/2012." Resource issues, issues with the Decision Gate 3 deliverables, implementation, issues with respect to some of their – whoops, oh, page 15, sorry, fingers are jumpy – with their implementation of some of SNC-Lavalin's – I don't know what I'm doing here – some of their software tools and

processes they were supposed to be bringing in, interface issues, execution ideology issues.

If we go on to the next page, that huge reputational issues that were happening during this period – SNC-Lavalin. This would relate to some of the turmoil that was happening for SNC-Lavalin on the international front, accusations of corruption and such, issues with the contracting strategy, engineering and how they were doing change management.

Generally, were you aware that during this period of 2011 and 2012 that the project management team was – you know, believed they were having these sorts of difficulties with SNC-Lavalin?

**MR. BENNETT:** I understood that there were some challenges and I also understood that they were being managed by the team in a reasonable manner.

**MS. O'BRIEN:** Okay. How did you understand they were being managed by the team?

**MR. BENNETT:** I knew that there was engagement with individuals at SNC-Lavalin. There was a push to get their systems implemented in an expeditious manner, that the – that there were processes that were being implemented. I understand that we added resources, particularly in procurement, to the team.

**MS. O'BRIEN:** Okay. And who – all of this understanding that you were getting, where was it coming from?

**MR. BENNETT:** Be through Paul, Mr. Harrington.

**MS. O'BRIEN:** It would be from Paul. This would be Paul –

**MR. BENNETT:** Mr. Harrington, correct.

**MS. O'BRIEN:** – reporting to you, Mr. Harrington reporting to you.

Okay, can we go then to page 32, please? So this is what the team integration initiatives and mitigation efforts that they have reported being taken in this slide presentation. And they talk

about this is where they moved essentially from the EPCM contract into the integrated management team.

**MR. BENNETT:** They started that process, yes.

**MS. O'BRIEN:** Okay. And you were aware that they were starting that process in even as early as 2011 and in through 2012.

**MR. BENNETT:** That there were functions that needed to be integrated in order to advance the work. And I knew that we were taking steps to get additional personnel from Hatch to supplement the team from SNC-Lavalin.

**MS. O'BRIEN:** Okay. So did you – you understood that Nalcor had entered into an EPCM contract with SNC-Lavalin, right?

**MR. BENNETT:** Yes, that's right.

**MS. O'BRIEN:** Okay.

And did you understand that this move to the integrated management team was a change in that contracting strategy from an EPCM contract. It was going to be a change in the contracting strategy to an integrated management team strategy. Did you understand that?

**MR. BENNETT:** I understood that functions needed to be integrated and that additional resources needed to be brought to bear in order to successfully look after these functions.

**MS. O'BRIEN:** Okay. And did you understand that those changes meant that you were changing strategy from an EPCM contracting strategy to an integrated management team strategy?

**MR. BENNETT:** I would, at this stage – with some of these integration efforts, we were beginning to integrate some functions.

**MS. O'BRIEN:** Did you understand that you were changing from an EPCM contracting strategy to an integrated management team strategy?

**MR. BENNETT:** There is no change to E; there was, at this point, not much activity on CM. So while parts of the functions were being

rearranged and integrated, it wasn't as if we said let's take the whole contract and throw it away and let's start again.

**MS. O'BRIEN:** No, I –

**MR. BENNETT:** So yes –

**MS. O'BRIEN:** – that wasn't my question –

**MR. BENNETT:** – my point is – my point is that areas of integration were being identified and being integrated in order to advance the work.

**MS. O'BRIEN:** Did you understand that was a change in the contracting strategy – the contract strategy?

**MR. BENNETT:** In the sense that yes, it's – if it's – it's no longer 100 per cent EPCM, I acknowledge that. So the integration is beginning. So if that's the total change in the contracting strategy – okay, there is a change happening in the contracting strategy, I acknowledge that.

**MS. O'BRIEN:** Okay. All right. So you knew that that change was starting to happen in 2012?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay.

Who made the decision to make this change? Who ultimately made the decision to say: Okay, instead of going with the full EPCM strategy here, we're going to move to an integrated management team strategy?

**MR. BENNETT:** So –

**MS. O'BRIEN:** Who made that decision?

**MR. BENNETT:** There's – it's interesting because there's no actual significant change to the contract, although a change order is signed much later –

**MS. O'BRIEN:** Yes, we'll look at that.

**MR. BENNETT:** – we'll get to that. But this, you know, this was happening as a response to their performance. This, I think, happened

actually at the working level. So this would've been within the contract team and the day-to-day management of this contract by the project team.

**MS. O'BRIEN:** Okay. So you're saying that this was not something that was authorized by you. This was a decision that was made at Paul Harrington's level?

**MR. BENNETT:** It's within – this would be within the project team scope.

**MS. O'BRIEN:** Okay, so this is not a change that you believed that you had to approve?

**MR. BENNETT:** Had to ratify or approve? No. But, I mean, I would agree that this – these were the things that needed to have been done in order to ensure that the work gets done in a quality way.

**MS. O'BRIEN:** Okay.

You know, you had an ongoing contract with SNC-Lavalin, and that contract was between Nalcor and SNC-Lavalin, was it not?

**MR. BENNETT:** Yes. So I suspect –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – it was with Nalcor, that's right. I'm thinking later it'll be reassigned to another Nalcor entity, but I suspect – I believe at the time it was Nalcor.

**MS. O'BRIEN:** Okay.

And so you understood that these changes would've been de-scoping some of the work that had been in that EPCM contract – de-scoping it from SNC-Lavalin?

**MR. BENNETT:** Yes, in some areas.

**MS. O'BRIEN:** (Inaudible.)

**MR. BENNETT:** The –

**MS. O'BRIEN:** Okay, that's good that you understood.

**MR. BENNETT:** – well the – but the engineering work – (inaudible) moved the

engineering work to Montreal, that specialized work that wasn't a change in scope, that was simply a change in location.

**MS. O'BRIEN:** Yes, we're going to see engineering stayed with SNC-Lavalin. But the other elements, the procurement and the contract management, that was de-scoped from the project – from the contract.

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay.

So you were aware that change was happening, and you're saying that's not a change that you would've had to approve. That was a change that could be approved at Paul Harrington's level?

**MR. BENNETT:** Absolutely, this was contract administration with the supply chain team and the contract – and the contract representatives.

**MS. O'BRIEN:** Okay.

Did – so is this a case where the project management team, you know, said: Look, this is what we're doing or this is what we've done. Did they come to you before they made the decision or after?

**MR. BENNETT:** I was aware as these decisions were being made that these types of changes were being made.

**MS. O'BRIEN:** Okay.

When I – do you recall me asking you about this in your interview in August of this year?

**MR. BENNETT:** Yes, I think we did talk about it.

**MS. O'BRIEN:** Okay.

Now, you were talking about this and I'm just gonna read a little bit – I'm looking at page 225 to 226. Maybe I'll start at the top of 226. You're talking about the project management team. Now, they have a good deal of autonomy in that – and we're talking about this issue of the change in the contracting strategy, the de-scoping of SNC-Lavalin.

They have a good deal of autonomy in that. That's not something I'm doing day to day and, you know, there are lots of other activities going on where our focus – where my focus is and others on the leadership team, if you look at other things we've talked about, that other streams of activities, okay; PUB review.

So, you know, I was focused on the PUB review during the latter part of 2011. Yes. Was I day-to-day managing SNC-Lavalin at the same time? No, not possible. That's what the – that's what the project team is for. They have a high degree of autonomy in relation to their organization managing the megaproject.

Now I say, mm-hmm.

And you say: And, you know, my role, keep an eye on them. Understand – try to understand what's going on, on a high level, understand with a – that they have a good degree of autonomy in terms of their ability to implement programs and work with contractors. They don't need to come to me everyday to understand what SNC-Lavalin is doing.

I'm expecting them to work the plan, to get to it, to get the problem resolved. And they did. They worked through that plan and they ultimately got to a point where they concluded that SNC-Lavalin was not working too well – needed to be an improvement. It was a critical issue; need to be dealt with in a timely manner, and they came up with the solution, and the solution was accepted.

And then when I come down a little later we talk about the executive. When you said that there, who – when you say "accepted," accepted by whom? You say they came up with the solution and the solution was accepted.

**MR. BENNETT:** So they worked their solution

–

**MS. O'BRIEN:** Mm-hmm.

**MR. BENNETT:** – they integrated various functions here in order to improve performance.

**MS. O'BRIEN:** Yeah.

**MR. BENNETT:** I had no issue with it. I accepted their plan.

And I know during the course of this period the – at the senior level Mr. Martin would be aware of this – SNC-Lavalin is an important contractor; I do believe during this period when they had their new CEO appointed he met with them. But, you know, I think what I said here this afternoon is not inconsistent with what I had previously said.

Like, I'm not going to be the one to sit down and say: Okay, let's approve that we're going to add some people into the supply chain team.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** So I – just to put a really specific point on this integration activity that's going on here.

**MS. O'BRIEN:** Okay.

So – and it may be my misunderstanding. I had understood that they made a recommendation to you, or you and Mr. Martin, and you'd accepted that recommendation. From what I'm hearing from you now and it's – you know, the wording there may be ambiguous, is that you felt you didn't have to approve it. They made the decision and whatever decision they made would've been fine with you, because that was within their authority.

**MR. BENNETT:** If they had – if they were to let SNC-Lavalin go, terminate the contact, replace them with a new contractor then that would've been a new commitment that definitely would've had to have been explicitly approved in advance by – given it's more than \$100 million – by Mr. Martin.

**MS. O'BRIEN:** Okay. But ultimately there had to be some changes, amendments to the contract because of this de-scoping, correct?

**MR. BENNETT:** Well, there's actually a difference of opinion on that and the view within our commercial team is that I actually didn't need to do anything with the contract; that the contract provided for services from SNC-Lavalin to the extent we needed them and that

we didn't have a problem with adding resources in given areas.

There was an amendment signed and it was signed quite a bit later than – at the time. And I do remember there was conversation back and forth between the commercial team within the project team and representatives of SNC-Lavalin to see what a change order might need to look like.

**MS. O'BRIEN:** Well, if we could just bring up P-01146 and this, I understand, is the amendment agreement that deals with this issue.

**MR. BENNETT:** Right, so it was eventually signed.

**MS. O'BRIEN:** Yes.

**THE COMMISSIONER:** You don't have that one.

**MR. BENNETT:** Oh, 46?

**MS. O'BRIEN:** 01146, it's –

**MR. BENNETT:** I'm sorry. Yeah, tab 51.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** Oh, 01446.

**MS. O'BRIEN:** 01446, sorry. Thank you.

**THE COMMISSIONER:** (Inaudible.)

**MS. O'BRIEN:** 01446, please, Madam Clerk.

**MR. BENNETT:** Sorry, Commissioner.

**THE COMMISSIONER:** 01446.

**MS. O'BRIEN:** Okay. So this is the amendment agreement. So this is – by this point, the contract had been assigned to Lower Churchill Management Corporation. Is that right?

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay. So it's between that entity and SNC-Lavalin Inc. And if we just go to page 3.

So this is a – amendments that are being to – made to Article 27.1.1 of the original contract, is that right?

**MR. BENNETT:** Yes, that’s right.

**MS. O’BRIEN:** Okay. So that was deleted, and it was replaced with the following: “Subject to” these articles, “the Consultant shall indemnify Company” – and here, would you agree with me, Company is the Nalcor entity, right?

**MR. BENNETT:** Yes.

**MS. O’BRIEN:** Okay. So SNC shall indemnify Nalcor entity “from and against any and all Liability which” Nalcor as entity “suffers, sustains or incurs arising out of or in connection with: ... any error, act or omission of the Consultant or its Personnel arising: ... prior to April 1, 2012, in respect of all of the Services; ... on” or “after April 1, 2012, in respect of Engineering Services only.”

So that was a change that was ultimately made to the contract?

**MR. BENNETT:** Yes, it was.

**MS. O’BRIEN:** Okay. So when you no longer have an indemnity from SNC-Lavalin with respect to any error, act or omission of SNC-Lavalin arising in respect of any services other than engineering services after that date, would you not agree with me that that signifies that Nalcor’s taking on greater risk here?

**MR. BENNETT:** To some extent, yes. But we’d have to look at what the limits of liability were in the original contract to understand how much is associated with engineering service –

**MS. O’BRIEN:** Mm-hmm.

**MR. BENNETT:** – and what liability the – that SNC-Lavalin held in relation to the other services. But, yes, in general, we’re limiting the liability to engineering explicitly with this change.

**MS. O’BRIEN:** Okay. And so – and that gets back-dated to April 1 of 2012?

**MR. BENNETT:** Right.

**MS. O’BRIEN:** Okay. The amendment here – just for completeness; just to show when it was done. If we go to page 5, I think, we’ll see when the amendment was done. This was an ongoing issue between SNC-Lavalin and Nalcor for some time, was it not?

**MR. BENNETT:** Yes, it was.

**MS. O’BRIEN:** Okay. So it’s – we – this copy we have here is – the date it’s stamped by legal affairs at SNC-Lavalin is in September 2017, but, of course, the amendment is made effective back to that first date of April 2012. So it was ongoing for quite some time?

**MR. BENNETT:** Yes.

**MS. O’BRIEN:** So even though that this change would’ve meant there was a, you know, a transfer of risk from what risk that was clearly in the lap of the consultant, SNC-Lavalin, and you’re taking that risk now, and we’re going to put it over in the lap of Nalcor. Those kinds of changes, you would have given full autonomy to Mr. Harrington and his team to make?

**MR. BENNETT:** The project team and the contract administrators within the context of their commitment on the contract have that authority.

**MS. O’BRIEN:** Okay.

Now, when you know that – so let’s go back to Decision – where I started here was really about this risk assessment at Decision Gate 3, you know, the idea was it reasonable to count zero risk for this R1, risk one, that was identified, given that this was the environment it was taking place in, right? One of the ways that risk – you know, whether you had the organizational resources, one of the key ways you would address that was by bringing in, you know, SNC-Lavalin with all their experience in hydro projects; they were going to be bringing their A team and whatnot.

You’re having, during this period, such problems with SNC-Lavalin that you begin to de-scope their work, and ultimately the legal back and forth between the two companies for

what – how that de-scoping is going to play out in the contractual amendments is ongoing for another five years before you ultimately get to a result. So, you know, at the time it was still very much up in the air as to how that was going to play out, would you agree?

**MR. BENNETT:** It certainly wasn't – it wasn't concluded. I would say, just to make the point, that the activities and the opportunity for SNC-Lavalin to provide resources in any functional area was never taken away from it. So I'm just reacting to the word de-scope.

**MS. O'BRIEN:** Well, we've already talked about de-scope.

**MR. BENNETT:** No, but the point I'm getting at is, in the integrated environment, if they had resources available that were good for the team or good for the project, we would have taken them. The whole point in this exercise was to get additional resources from other sources to supplement the SNC-Lavalin capability. I don't know if that point had come out before.

**MS. O'BRIEN:** Okay. It has come out before, and the contrary point has also come out that, some of the key people with SNC-Lavalin, when they were no longer working for the EPCM contract, staying on the Lower Churchill Project was less attractive for them. Were you aware of that as well?

**MR. BENNETT:** Yeah, for a limited number of people who were in the, I guess, the most senior role on the team.

**MS. O'BRIEN:** Yeah.

**MR. BENNETT:** I can accept that.

**MS. O'BRIEN:** All right, so some people were lost as a result of this transition? Were lost to the Lower Churchill Project?

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. All right.

So – but the point is when all this is going on prior to sanction, when there's certainly – well, I'm going to say there – you know, this is not a settled issue. It's an – there's some turmoil

going on here, lot of problems going on between Nalcor and SNC-Lavalin. Was it reasonable, then, to say well, look, we know this is all ongoing, but we – you know, we don't – there's no risk here. This isn't going to arise; let's count it at zero. Was that reasonable –

**MR. BENNETT:** So –

**MS. O'BRIEN:** – at the time?

**MR. BENNETT:** I guess to put that in context and, you know, looking at Mr. Harrington as the owner of that risk, it would – if he thought that that was a significant issue and beyond what they were managing at the project team level, it would have been helpful to – if he thought it was a big number in terms of risk to the project, it would have been helpful to note that at the time.

This wasn't a situation where I came and said: Okay, make that zero please.

**MS. O'BRIEN:** Okay. So you're saying you would have left that for Mr. Harrington's judgment?

**MR. BENNETT:** He was – I think – in the risk report, I think he was the owner of that specific risk.

**MS. O'BRIEN:** So you would have just left him to –

**MR. BENNETT:** I would have said –

**MS. O'BRIEN:** – decide that?

**MR. BENNETT:** I would be looking for him to say if I – if he thought that it was something beyond his ability to manage and that there was going to be a significant impact that – arising from this situation, then it would have been helpful to bring that forward. I would have looked to him to bring that to me.

**MS. O'BRIEN:** Okay. Did you ever look at that work that was being done and question him about it? I mean, he obviously made the decision to count it as zero. Did you ever question him about him?

**MR. BENNETT:** I can't remember a specific conversation.



**MS. O'BRIEN:** Now, as a result of this change, is it fair to say that the project management team's responsibility increased?

**MR. BENNETT:** The scope of things that we were being asked to take on was increasing, yes.

**MS. O'BRIEN:** Okay. So say contract management hours, which originally you anticipated would have been work undertaken by SNC-Lavalin personnel, would now have been undertaken by the consultants on the project management team?

**MR. BENNETT:** Yes. That's fair.

**MS. O'BRIEN:** Now – so you have the project management team coming to you; they're reporting problems. Their solution to you is look, we want to take away responsibility from SNC-Lavalin; we'd like to take that on ourselves.

**MR. BENNETT:** We would like to add people from other teams to the SNC capability. So I think it's really important to continue to point out that there were still SNC-Lavalin people in a variety of these functions, including supply chain.

**MS. O'BRIEN:** Oh, yeah, we are aware of that, definitely.

**MR. BENNETT:** Okay.

**MS. O'BRIEN:** But we are still – but I think it is also still true that they were saying to you, look, we're having problems with SNC. We wanna take some of the work that SNC was doing, and is doing and was planning to do, and we wanna do that – take that back inside and do it ourselves. Is that not right?

**MR. BENNETT:** There were SNC people still on major procurement packages for the work, so I'm not necessarily accepting that we simply took work away from SNC and gave it to others.

**MS. O'BRIEN:** Okay.

The expected number of hours that – the breakup of the hours that you would've been expecting to pay for contract management to SNC, is it not true that a lot of those hours were

ultimately paid to people on the project management team?

**MR. BENNETT:** Some of those hours were paid to the PMT. Yes, I agree with that.

**MS. O'BRIEN:** Okay. So their work and responsibility in that area increased in scope – the project management team?

**MR. BENNETT:** Yes, okay.

**MS. O'BRIEN:** Okay. And in other areas too. In procurement, it would be the other area – contract management and procurement.

**MR. BENNETT:** Right.

**MS. O'BRIEN:** Okay. All right.

Now – so you have your project management team coming to you. They're experiencing this problems. This is what they're reporting to as the solution. Did you reach out – prior to this decision being made to move to integrated management, did you reach out to anybody from SNC-Lavalin?

**MR. BENNETT:** I believe there were a couple of meetings along the way, but I didn't jump deeply into the contractor relationship. I know that in 2012, I was in a team functionality workshop where we were trying to improve relations across the team. I remember that specifically.

**MS. O'BRIEN:** With Deloitte, yes; one of those workshops, yes.

**MR. BENNETT:** That's right, I remember that one specifically. But, as I said earlier, this – you know, the administration of this contract and the administration of the relationship between, you know, between us and SNC-Lavalin was being managed, for the most part, at the project team level.

**MS. O'BRIEN:** Okay.

So that might be your answer, but let me put the question to you this way. So you are there – the project management team are consultants to Nalcor, right? You are the – you are not a

consultant to Nalcor, you are employed by Nalcor.

**MR. BENNETT:** That's right.

**MS. O'BRIEN:** Okay. And not only that, you're an officer of Nalcor, right? It's –

**MR. BENNETT:** Yes.

**MS. O'BRIEN:** Okay. So your company has contracted with SNC-Lavalin Inc. – and SNC-Lavalin Inc. is one of the largest engineering firms, globally. Well known, has done a lot of work in this area, and you have – one of the reasons you have reached out to get SNC-Lavalin on this project is because they have lots of experience on hydroelectric projects. Is that fair to say?

**MR. BENNETT:** Yep.

**MS. O'BRIEN:** Okay.

So now you have – so you've got a contract with SNC-Lavalin. They're gonna be playing a major role – an EPCM role is a major role for the Lower Churchill Project. And, all of a sudden, that you're getting feedback from your project management team that SNC is not performing.

One might expect that you, as the vice-president of the Lower Churchill Project, would say, what the heck is going on here? And you might call up on the phone and get, you know, your equivalent, a vice-president at SNC-Lavalin on the phone and say, you know, what's going on here? I'm hearing that our team is having a terrible time dealing with SNC-Lavalin and you're not doing – you're not delivering the product as expected.

**MR. BENNETT:** So –

**MS. O'BRIEN:** Why wouldn't you have made that type of call?

**MR. BENNETT:** 'Cause the first contact – and I guess the first effort – is for the team to manage the contractor that they are responsible for administering.

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** Okay? So they are the ones who have the day-to-day relationship with SNC-Lavalin. At the time, Lance Clarke was our representative to work with SNC-Lavalin. And he's in a, you know, in a – in the commercial organization, he's the senior person for commercial. He is the right person to have that conversation with his counterpart at SNC-Lavalin.

**MS. O'BRIEN:** But when he's not successful, when they're not able to – when it's still not working, and it's gotten to the point that they're looking at changing contracting strategies and de-scoping work, before that decision is made, why wouldn't it have escalated up to –

**MR. BENNETT:** Because –

**MS. O'BRIEN:** – your level –

**MR. BENNETT:** – it – the –

**MS. O'BRIEN:** – and then you would reach out then to a VP over at SNC-Lavalin.

**MR. BENNETT:** Because the –

**MS. O'BRIEN:** Why wouldn't that have happened?

**MR. BENNETT:** – designated contract counterpart for this package was Mr. Clarke, and he was – he's done, if I recall, approximately \$30 billion worth of procurement. He is the right person who understands this in detail, and has all of the issues and facts in a – and he's in a position to deal with that issue.

Eventually, we do have a conversation; there are a couple of meetings between myself and counterparts at SNC-Lavalin, but in terms of the day-of-day admin –

**MS. O'BRIEN:** That's not until 2013 though, right?

**MR. BENNETT:** That does get later – I think there may have been a couple of other informal meetings before that.

**MS. O'BRIEN:** So – to discuss these issues, these performance issues?

**MR. BENNETT:** To continue to raise the concern. Yes, I think there was – I do believe that there was a meeting or two in 2012, and maybe I can confirm my calendar on that point because I –

**MS. O'BRIEN:** You do recall that I asked you for that information in our interview –

**MR. BENNETT:** And I though –

**MS. O'BRIEN:** – in August.

**MR. BENNETT:** – I knew about the 2013 event –

**MS. O'BRIEN:** Yes.

**MR. BENNETT:** – right? I –

**MS. O'BRIEN:** And you didn't provide it for me following the interview in August, and I asked you again –

**MR. BENNETT:** – I –

**MS. O'BRIEN:** – this past weekend, on Sunday whether you had that information –

**MR. BENNETT:** I'm sorry.

**MS. O'BRIEN:** Okay. So you still haven't provided it to me.

**MR. BENNETT:** Right.

**MS. O'BRIEN:** But now you're saying here, when you're giving the – your second day of evidence –

**MR. BENNETT:** I'm continuing to –

**MS. O'BRIEN:** – that now you have a memory of it?

**MR. BENNETT:** So this issue is continuing to, you know, bounce through my memory here, and I'm asking whether – I'm asking myself – I talked about the 2012 event – the Deloitte event –

**MS. O'BRIEN:** Okay.

**MR. BENNETT:** – whether there are any others, I do need to check.

**MS. O'BRIEN:** Okay. So –

**MR. BENNETT:** I'll reconfirm that.

**MS. O'BRIEN:** – the Deloitte event was – this was a workshop that was being held (inaudible).

**MR. BENNETT:** That's correct. So we were into it.

**MS. O'BRIEN:** No, I'm talking about a reach out from you, Mr. Bennett, to someone, sort of a vice-president at SNC-Lavalin, to talk about the issues you're –

**MR. BENNETT:** Yeah.

**MS. O'BRIEN:** – having in their performance of a contract with Nalcor Energy.

**MR. BENNETT:** So, initially, in 2011 when this issue started, the – as I said, the designated counterparty is Mr. Clarke and he is, in my view, the right person to be talking to SNC-Lavalin about the specifics of this contract.

**MS. O'BRIEN:** And you didn't see it as your role, as vice-president of the Lower Churchill Project, to –

**MR. BENNETT:** If –

**MS. O'BRIEN:** – reach out to a vice-president at SNC-Lavalin and raise these concerns prior to the decision being made to de-scope SNC-Lavalin's work. Is that correct?

**MR. BENNETT:** Until the team needed my assistance in administering this contract, they're the right people to do it. They're the people with the expertise, experience and capability to deal with this contract.

**MS. O'BRIEN:** Okay.

You – and I'm just going to put something and ask if you agree with it. You didn't see it as your role, as part of being vice-president of Lower Churchill Project, to reach out to your counterpart at SNC-Lavalin to discuss performance problems on the contact prior to the

decision being made by the project management team to de-scope the work under that project?

**MR. BENNETT:** To –

**MS. O'BRIEN:** Under that contract?

**MR. BENNETT:** To the contrary. The person who's best equipped to have that conversation with SNC-Lavalin in these early days was the contract representative, was a member of the project team.

**MS. O'BRIEN:** Okay. So is your answer to my question: Yes, I did not see that as my responsibility?

**MR. BENNETT:** I do not see that as my role at the time.

**MS. O'BRIEN:** Okay, all right.

**MR. BENNETT:** That the project team is the designated contact for administering this contract with SNC-Lavalin, and they are the right people to start that conversation. To the extent they needed to escalate to me and need my support in getting beyond the day-to-day administration of the contract, that's their role.

**MS. O'BRIEN:** So they just decided they didn't need to escalate it to you prior to making the decision to de-scope, and that was within their responsibility to do that?

**MR. BENNETT:** They were making headway with the issue and that was their responsibility.

**MS. O'BRIEN:** Okay.

Commissioner, it is – it's quarter to 5. I can certainly keep going. I don't believe I'll finish entirely before 5 o'clock, I would anticipate needing some time tomorrow. So you can just, please, give me guidance for – do you want me to continue for another period of time or stop here?

**THE COMMISSIONER:** How long do you think you'll be tomorrow?

**MS. O'BRIEN:** I would say I'd be about an hour to an hour and a half.

**MR. SIMMONS:** Under the circumstances, Mr. Commissioner, I'd suggest that Mr. Bennett has had a long day, so we're certainly not going to finish today the direct examination so I think the preference would be to continue it tomorrow.

**THE COMMISSIONER:** Right. My biggest worry is to make sure we're finished by Thursday afternoon with Mr. Bennett. So I'm going to assume we're going to do that and we'll sit late if we have to. But we'll break here now then and come back tomorrow morning.

And should we start tomorrow morning at 9?

**MS. O'BRIEN:** I can start at 9.

**THE COMMISSIONER:** Okay, let's start at 9, then, tomorrow morning if that works.

**MR. SIMMONS:** And, Commissioner, one other item. Ms. O'Brien had just mentioned to Mr. Bennett that she had made a request for him to follow up on a diary entry. I don't want to leave that on Mr. Bennett's desk because as counsel we had not followed up on that item with him since then either. So I just wanted to make sure the record is clear on that.

**THE COMMISSIONER:** So I'm assuming that's going to be done tonight.

**MR. SIMMONS:** I don't see that being a problem.

**THE COMMISSIONER:** Okay.

All right, good.

**MS. O'BRIEN:** Thank you.

**THE COMMISSIONER:** All right, so we're adjourned until tomorrow morning at 9 o'clock.

**MS. O'BRIEN:** Okay, thank you.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.