



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 33

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

6 November 2018

CLERK (Mulrooney): All rise.

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

Please be seated.

THE COMMISSIONER: All right, good morning.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

First, I'd like to have the following exhibits entered into the record: P-00905 through P-00912; P-00914 through P-00921; and P-00923 through P-00943.

THE COMMISSIONER: What were the first group again?

MR. LEARMONTH: 00905 to 00912.

THE COMMISSIONER: All right, those will be marked as entered.

And your witness this morning?

MR. LEARMONTH: Tom – Thomas Marshall.

THE COMMISSIONER: All right.

Please just stand, Sir, and you will be affirmed this morning.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. T. MARSHALL: Yes.

CLERK: Please state your name for the record.

MR. T. MARSHALL: Thomas Marshall.

CLERK: Thank you.

UNIDENTIFIED MALE SPEAKER: His mic's not on.

THE COMMISSIONER: If you could just press the button there on your mic?

That's great, thank you.

Mr. Learmonth.

MR. LEARMONTH: Yes.

Mr. Marshall, where do you live?

MR. T. MARSHALL: Corner Brook.

MR. LEARMONTH: Are you a full-time resident of Corner Brook? Yes.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And you were a Member of the House of Assembly from October 21, 2013, to November 3, 2014? Is that correct?

MR. T. MARSHALL: No.

MR. LEARMONTH: All right.

MR. T. MARSHALL: 2003.

MR. LEARMONTH: Yeah, that's what I said.

MR. T. MARSHALL: No, you said '13. Yeah.

MR. LEARMONTH: Oh, '13. Okay, I meant 2003, yes.

MR. T. MARSHALL: Yeah. So the last date is correct.

MR. LEARMONTH: Okay. Thank you for correcting me.

And I know that you held a number of portfolios. You were always a minister, is that correct, throughout your life in politics?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And I'll just go through some – give you some dates to see whether they appear to be generally correct. I think they are.

So from November 6, 2003, to December 2006 you were minister of Justice?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Is that correct?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: And while minister of Justice, I think during that period I just stated you were also at times minister of Intergovernmental Affairs and Attorney General?

MR. T. MARSHALL: I was Attorney General full time.

MR. LEARMONTH: Full time.

MR. T. MARSHALL: But I was minister of Intergovernmental Affairs for about a year during that time period.

MR. LEARMONTH: Yes.

And then you were minister of Finance from December 2006 to October 2008, correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And then back to being minister of Justice from October 2008 'til October 2009?

MR. T. MARSHALL: Yes, and Attorney General also.

MR. LEARMONTH: And Attorney General.

And then minister of Finance from October 7, 2009, to January 24, 2013?

MR. T. MARSHALL: No – yes. Yes.

MR. LEARMONTH: Yeah.

And then minister of Natural Resources from January 2013 'til October 2013?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And then minister of Finance from October 2013 to January 2014?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And then premier from January 24, 2014 'til September 26, 2014.

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: That's your – the offices you held during your career. Is that correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

I'd like you to – okay, at – so at the time of the sanctioning of the Muskrat Falls Project – the Cabinet decision was made on December 7, sanctioning was announced by Nalcor on December 17, 2012. So, at that time, you were the minister of Finance. Is that correct?

MR. T. MARSHALL: It is.

MR. LEARMONTH: Yes.

Okay, I'd like to bring up the Grant Thornton report. You're familiar with that, are you, Mr. Marshall?

MR. T. MARSHALL: The first one.

MR. LEARMONTH: Yeah, the first Grant Thornton report? Yes.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: That's P-00014.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: You can just bring that up on your screen.

Just before we get into this, so you were present and voted for the sanctioning of the project, Muskrat Falls Project –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – on December 7, 2012.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. Now, if we can go to page 9.

Now, I'm just going to read lines 4 to 6 on page 9: "Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor's Project Team, that strategic risk exposure was to be funded through contingent equity from GNL."

When is the first time that you found out about that or learned about that?

MR. T. MARSHALL: The strategic risk exposure –

MR. LEARMONTH: Well –

MR. T. MARSHALL: – or the fact it was excluded?

MR. LEARMONTH: Yes.

MR. T. MARSHALL: When I read the report.

MR. LEARMONTH: When you read the Grant Thornton report?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: But the time that you voted to sanction this project, you weren't aware of this strategic risk exposure?

MR. T. MARSHALL: I wasn't aware that any contingency built into the estimates had been excluded from the estimate.

MR. LEARMONTH: Okay.

Well, the actual amount we – it's referred to as \$500 million; it's actually \$497. That's just a rounded figure. But do you – what was your reaction to having read that in the Grant Thornton report?

MR. T. MARSHALL: Well, you would expect that the – I guess the question is: Was that included when they did all the analysis, the – you know, the current present worth analysis when they were comparing the options to make sure that the chosen option was the least-cost option. Because that was obviously the most important thing, I think, to me and my colleagues, that we went with the least-cost option.

MR. LEARMONTH: But what about the actual project cost separate from the CPW analysis? You approved – the government approved this on the basis that the estimated capital costs, the total capital costs, were \$6.2 billion.

MR. T. MARSHALL: That's correct, plus interest during construction of another 1.2.

MR. LEARMONTH: Yeah, so if there was a strategic risk exposure, do you not believe it should've been added on to or included in the estimate of 6.2?

MR. T. MARSHALL: I think any calculation for contingency or risk, any allowance or provision, would obviously be in the total estimate.

MR. LEARMONTH: Yeah. Well, it wasn't in this case. Does that give you any concern?

MR. T. MARSHALL: Well, that's – I understand that's what Grant Thornton is saying. I would like to hear from the people that did the estimate –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – whether it was excluded or not.

MR. LEARMONTH: Well, assuming Grant Thornton's position on that is correct, that it was excluded – just assume that for the sake of your answer – would that give you any concern?

MR. T. MARSHALL: Obviously, I'd want to know why it wasn't there.

MR. LEARMONTH: Because you think it should be there?

MR. T. MARSHALL: All the costs, including contingencies for risk, should obviously be in the estimate.

MR. LEARMONTH: Okay.

And did you ever at the – up until the time of sanction, did you ever hear any discussion about a strategic risk in the area of – or in the – you know, around \$500 million?

MR. T. MARSHALL: No. I knew that when they do their – build the estimates, after they do the first estimate, you know, the base estimate, there is a consideration of what's going to happen in the future and what risk there, and there's contingencies or provisions or risk premiums put in the estimates for these risks, but I didn't have a discussion about what the different – you know, what's a strategic risk and what's a tactical risk or ... They were looking at risks for what adverse events that could happen and affect the project in the future.

MR. LEARMONTH: Yeah, but whether it's tactical risk or exposure risk, if there's a dollar sign assigned to it, it doesn't really make much difference under what category you put it. Do you agree?

MR. T. MARSHALL: That's right. That's right.

MR. LEARMONTH: Yeah. Okay.

So just before we leave that, if there was an exposure of approximately \$500 million for exposure risk – for strategic risk, you're saying, I take it, that that should've been included in the cost estimate that was provided to Cabinet for consideration on the sanction question?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yes. Okay. And it – and if it wasn't, that would be a matter of concern for you?

MR. T. MARSHALL: If it wasn't, yes.

MR. LEARMONTH: Yes. Okay. Because the announcement to the public that was made by government was that the total cost for the province was 6.2 billion. Correct?

MR. T. MARSHALL: Capital cost.

MR. LEARMONTH: Yeah, the cost of the – the capital cost of the project. So if there was a \$500 million amount that was not included, that would not be a full disclosure to the public. Do you agree with that?

MR. T. MARSHALL: I do.

MR. LEARMONTH: You do. Okay, thank you.

And that's a problem – fundamental problem for a Cabinet minister such as yourself, is it not? That if you're giving information to the public – even though you may believe it's true, if you find out later that it isn't really true or accurate, that is an item of concern, is it?

MR. T. MARSHALL: It would be. You know, you get information, you know, there's financial information – you know, it changes, cost estimates change from time to time. So it's important that you give the right number that you have at the time from the best people there are –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – based on the best evidence they have. You get the right number – obviously get the right number out to the public.

MR. LEARMONTH: Because you want to make sure that you're telling – giving it straight to the public. Is that right?

MR. T. MARSHALL: Correct.

MR. LEARMONTH: Right. Okay.

Please turn to the bottom of page 64 on the Grant Thornton report, P-00014.

Okay, now this is a – I'm going to ask you questions about the completion date issue. We already discussed that at the interview, so I think you're generally familiar with it?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Well, that's a chart that was prepared by Westney, a consultant that was retained by Nalcor for the purpose of this risk assessment and other matters.

Now, if you could just turn over to the top of page 65. So I'll just read it. "The above image notes" – and that's the one at the bottom of page 64 – "that July 15, 2017 schedule was a P1. This meant that there was a 99% chance that the schedule for first power would not be met. The LCP Project Team noted that *'there was a there*

was a low probability that a mid-2017 First Power date would be met.” As a result, “the PMT recommended to Nalcor Executive that” after “provisional schedule reserve allowance should be made to account for ...” Well, you can read the rest of that.

You’re familiar with the issue, are you?

MR. T. MARSHALL: Yes. You asked if I was aware of this P1 number.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And that it – that there was a 99 per cent chance that the schedule couldn’t be met. And I was not aware of that.

MR. LEARMONTH: Did you have –

MR. T. MARSHALL: Well, I became aware of it, I think, when the government Oversight Committee – there was a report from the independent engineer. I think I was aware of it then. But not before sanction.

MR. LEARMONTH: Not before sanction.

MR. T. MARSHALL: No.

MR. LEARMONTH: Or at the time of sanction.

Now, is that the type – if that information was available at the time of sanction, is it a matter of concern for you that this information was not disclosed to you by Nalcor?

MR. T. MARSHALL: Yeah, I – Nalcor were constantly meeting with government and giving us information. They’re pretty thorough in the information but I don’t recall that, that there was a 99 per cent chance they wouldn’t meet their schedule.

MR. LEARMONTH: Yeah. Well, okay, well even – okay, I understand what you’re saying there, but do you recall any discussion about a possible or potential problem in meeting schedule?

MR. T. MARSHALL: Not then.

MR. LEARMONTH: Not then?

MR. T. MARSHALL: Not at that point.

MR. LEARMONTH: Yeah.

So on that basis, based on your answer, can I conclude that when you voted to approve or sanction this project on December 7, 2012, do you believe that the July 15, 2017, schedule was achievable and was likely to be met?

MR. T. MARSHALL: At the time of sanction I voted for the project because I thought it was the one that was going to provide the power to the citizens at the least cost.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: That’s what I thought.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And I also thought that the project would also provide value to the people of the province. I thought it was a great project. We knew what the cost – we were told what the costs were going to be.

The cost estimates were done by the project team and SNC-Lavalin had done the base estimate. Then they had it reviewed by independent reviewers like Validation Estimating. They then had a different company do the risk analysis and they had that reviewed. And, yes, we were satisfied that that number was right and they were going to get it done on time.

MR. LEARMONTH: By July 15, 2017.

MR. T. MARSHALL: Well, I – well, that was the date. The year ’17 was the date. Now, you mean you always recognize that there could be cost overruns and there could be cost underruns and there could be cost – there could be schedule overruns and underruns as well.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But, at the time, we – obviously, we thought it was the best project and that if it wasn’t, we wouldn’t have voted for it.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: We would have done something else.

MR. LEARMONTH: Yeah, but so the July – you believed that the 2017 – July 15, 2017, date was the date that was on the table as being doable?

MR. T. MARSHALL: I don't remember July 15. I remember –

MR. LEARMONTH: Do you remember 2017?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

And just to carry a little further with your last answer, I mean, I think anyone realizes that no matter how good of a cost estimate you have that there's always the potential for cost overruns. I mean that's just the nature of the business. But –

MR. T. MARSHALL: And underruns.

MR. LEARMONTH: Yeah, but I'm talking about things that were known. I'm not talking about unknowns. And I'm suggesting to you that anything that was known that could possibly affect the capital cost – anything known to Nalcor that could possibly affect the capital cost estimate at the date of sanction should have been disclosed to government. Do you agree with that?

MR. T. MARSHALL: Well, they would have provided for that through their – in doing their risk analysis. They would have had contingencies for what future risk that could have, you know, affect the project in a (inaudible) way would be.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So that would be built into the estimate.

MR. LEARMONTH: Well, it should be built into the estimate.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: But I'm suggesting to you it wasn't built into the estimate.

MR. T. MARSHALL: Well, we discussed that previously.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But you're asking me now if they went through every risk with me? Is that your question?

MR. LEARMONTH: Well, I'm – you can approach it from any way. What I'm – but the point I'm trying to get you to answer is that at 6.2 billion, which was the total cost estimate at the time of sanction, did you believe that all risks were accounted for in that number?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: You did.

MR. T. MARSHALL: With this caveat, of course: We cannot predict the future.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Mankind – man cannot and woman cannot predict the future.

MR. LEARMONTH: No.

MR. T. MARSHALL: And you look at the situation, you get the best people out. There are experts in this area of risk analysis. I'm not one, I wasn't familiar with it, but I'm sure that whatever risks they were, they did best practices in dealing with it, in coming up with a number.

MR. LEARMONTH: Well, how are you sure of that?

MR. T. MARSHALL: Well, I had confidence in them, let's put it that way.

MR. LEARMONTH: You believed them, about what – is that correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And you trusted Nalcor –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – to do that.

MR. T. MARSHALL: Yes. And they were very thorough in coming to government and updating us and letting government know and letting officials know –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – what was going on with the project as it went along. So I –

MR. LEARMONTH: Yeah but –

MR. T. MARSHALL: – did have confidence in them.

MR. LEARMONTH: Yes, okay. That's fair enough. But when I show you the Grant Thornton report which speaks of a 500 million known strategic risk that was not included in the 6.2 capital cost estimate, when I refer you to that doesn't that change your assessment of the situation?

MR. T. MARSHALL: I think before I come to a conclusion on that I would certainly like to hear what the management and the CEO of Nalcor have to say.

MR. LEARMONTH: Yeah. Well, can't you – I mean, if you're saying that the known risks should be included in the capital cost estimate, correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And if I'm telling you for the sake of answering your question that there were known risk amounts that were not included, I don't see why you'd have to defer to the project team to answer that question.

MR. T. MARSHALL: Well, if you're telling me that it's – there's no question about the fact that it was excluded, as I said earlier, it should have been included.

MR. LEARMONTH: Okay. Yeah.

Okay and also the schedule, if there was – if it was known to Nalcor that the – there was a very low probability that the July 15, 2017, completion date could be met, if Nalcor knew that, was it not necessary for Nalcor or incumbent on Nalcor to disclose that to

government before the sanction decision was taken?

MR. T. MARSHALL: Yes –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – to government.

MR. LEARMONTH: Okay, thank you.

And there was no discussion about the completion date, to your knowledge, in the DG3 documents that you received?

MR. T. MARSHALL: Not that I can recall, no.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: There were lots of documents. There were lots of documents and numbers would change as we got closer to the sanction date, but I don't recall that.

MR. LEARMONTH: You don't recall it. And is it reasonable for one to conclude that if items, such as those we discussed, were brought to your attention that it's likely you would have recalled it and done something about it?

MR. T. MARSHALL: Yes, and would've asked that the analysis be redone, recalculated.

MR. LEARMONTH: Yeah.

For example, if a senior executive of Nalcor had come in to you the day before Cabinet considered the sanction decision and said: Oh, by the way, here's a strategic risk report we have which recommends a \$497 million strategic risk reserve or management reserve, we just wanted you to know, wouldn't that have triggered a response from you?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

What would you have done in that situation, to the best of your knowledge?

MR. T. MARSHALL: Put it back in, do the recalculations and give out the correct numbers.

MR. LEARMONTH: Okay. Thank you.

Okay, there's some documents I want you to – I want to go through with you, but first I wanted to ask you a few questions about the role of the Department of Finance in the Muskrat Falls Project.

We were told yesterday by Terry Paddon, who served as deputy minister throughout – on all occasions when you were minister of Finance, I think?

MR. T. MARSHALL: No. No, he was there –

MR. LEARMONTH: 2004 he became deputy minister, I think, until 2012.

MR. T. MARSHALL: Well, he was there – when I got there he was there.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And so I was there for two years, he was there. Then I went to Justice for a year, came back for three years. He was there and then he ultimately became Auditor General.

MR. LEARMONTH: Yeah, and then Laurie Skinner –

MR. T. MARSHALL: Laurie Skinner took over and then when I went back the last time, in Justice, Donna Brewer was the deputy.

MR. LEARMONTH: Okay, thank you.

MR. T. MARSHALL: That would have been in –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – '13 – late '13.

MR. LEARMONTH: Now, Mr. – I don't know if you saw Mr. Paddon's evidence. Did you see it?

MR. T. MARSHALL: I saw some, but I didn't watch the whole thing.

MR. LEARMONTH: Okay.

But Mr. Paddon said quite clearly that the Department of Finance did not undertake any review or analysis of Nalcor's capital cost estimates at any time when he was deputy minister of Finance. Does that accord with your recollection?

MR. T. MARSHALL: The role of the defence department – the Department of Finance, the minister of Finance, is to find the financing to fund the government programs and the capital expenditure programs and to fund its investments in government business enterprises.

But government – in the department – the departments have a project – the department's utilizing, say, the works – the works division of the Department of Transportation and Works – and if the project is bigger, then they will go and hire expertise – you know, consulting engineers, architects who have the capacity and the experience in costing these things.

MR. LEARMONTH: Mm-hmm.

So the –

MR. T. MARSHALL: So the Department of Finance does not cost them; it doesn't do the estimates. We get the estimates, and we review them; we look at them as we do the financial analysis.

MR. LEARMONTH: Well, then, why didn't you do that for the Muskrat Falls Project?

MR. T. MARSHALL: Well, the numbers came in like they would come in from any other department. The numbers come in; they're done by the department, and Nalcor in one sense is like a government department. They were part of government. They were our people. They were a group that were put together to carry out the government's energy policy.

MR. LEARMONTH: Mm-hmm.

MR. T. MARSHALL: And that included the development on the Lower Churchill River. They were hired specifically to carry this – to carry out this role, and they were the people to prepare the business case. They were the people to do the analysis, and they hired experts just like any department would in – you know, if we

built a courthouse or if we built a long-term care facility, experts would be hired to help the departments do that analysis.

So government was reviewing.

MR. LEARMONTH: Well, if you're – but – so you don't see that there should have been some kind of a distinction between government, in an oversight role, and Nalcor, as a Crown corporation?

MR. T. MARSHALL: Well, both, but Nalcor's specific role was to carry out this project. They were the experts put together to do this project – to do the business case, to do the analysis. They – matter of fact, they – of the total cost, they borrowed the 5 billion. The government didn't borrow the 5 billion. The government only would have to borrow for its equity contribution.

So Nalcor, in many ways, were like a government department, and in other ways, being a Crown corporation, they're different because they have their own experts. You know, if a department is doing, as I said, like, a courthouse or a long-term care facility, they would come to Justice for legal advice; they'd come to Finance for all the money.

But Nalcor was set up the – they had all the expertise. They had, you know, their own lawyers internally. They had their downtown lawyers. They had lawyers in Ontario and Quebec. They had – I don't know how many engineers. Cost accountants. Cost estimators. And then they would get their numbers reviewed, as I mentioned, by people that would review them and MHI and Navigant and estimation validation [sp Validation Estimating] and IPA and IPC.

They were doing all that. They were part of government doing that. And then those numbers, as any department would do, brings those to Finance. And Finance looks at them and questions them, and there were a lot of meetings that – a lot of meetings in the Office of the Premier with senior ministers there, the clerk of the Executive Council there, questioning – constantly questioning – constantly questioning the Nalcor executives about the project.

MR. LEARMONTH: Yeah. But I'm talking about an independent review. I understand what you're saying.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: There was like a government department. I'm not talking about that. I understand that. But I'm talking about the – what I suggest to you is an absolute necessity, in order to protect the taxpayers of Newfoundland –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – that government have an independent review. And independent means no involvement from Nalcor except providing information to the independent person that you – or entity – that you choose. That's what I'm suggesting.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: And I'm somewhat surprised by your answer when I look at a memorandum and a recommendation that you made in 2011 to do exactly what I'm suggesting –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – an independent review.

MR. T. MARSHALL: Because, to finish what I was saying about them being part of government, then there is the oversight piece.

MR. LEARMONTH: Okay. Well –

MR. T. MARSHALL: And that has to happen as well and –

MR. LEARMONTH: Okay. What is the oversight piece? Describe to us how you feel that the government should have discharged its obligation to oversee the work of Nalcor on the Muskrat Falls Project.

MR. T. MARSHALL: On a project of that size, you'd want an independent – a cold eyes review – an independent review. And based on advice from some excellent civil servants like Terry Paddon and Charles Bown, Minister Skinner,

who is the minister of Natural Resources and had, you know, lead for the file, and I, as minister of Finance, signed a paper to government or to the premier recommending that there be an independent financial analysis. And I think we recommended, like, senior or top-level accounting firms, management-consulting firms, like Ernst & Young, Pricewaterhouse, Grant Thornton.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: We recommended that be done.

MR. LEARMONTH: Yeah. So you believed that that was necessary?

MR. T. MARSHALL: Yes, I did.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: And maybe we'll just turn to that. That's at tab 10, Mr. Marshall, and it's 00807 – Exhibit. If we bring it up. And we can go to page 4, please.

So this in – this is prepared by Paul Myrden of the Department of Finance.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Correct?

MR. T. MARSHALL: Yes. He's –

MR. LEARMONTH: Approved by two deputy ministers.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Terry Paddon and Charles Bown.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: And approved by two ministers: you and Shawn Skinner.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. So this is a high-level document, isn't it?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. And in this document, you go through in a fairly detailed way to make the point that an independent review should be carried out by government. There's nothing – no equivocation –

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: – in this document. That's correct?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: And you say at the beginning on page 2, "**Decision ... Required:** Whether to approve the selection and retention of a qualified consultant to provide an independent review and report on the detailed project analysis prepared or commissioned by Nalcor, including an assessment of the various risks associated with the Muskrat Falls Hydro Development Project ... and their potential implications for the province."

I'm not gonna go through it word-for-word, but you go through – you're talking about things like the capital costs, the estimate of the capital costs. You're talking about credit ratings. You're talking about due diligence. And I suggest to you that this document is exactly what should have been done. Do you agree? At the time, you signed it. You must have thought it was necessary.

MR. T. MARSHALL: I certainly do agree, obviously.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I thought it should be done as well.

MR. LEARMONTH: Okay. Well, was it done?

MR. T. MARSHALL: No. But the date on this is May 11?

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Okay. I can't recall exactly who might have told me or what the response to this was, but I think the decision was to go to the PUB instead and have the PUB, the Public Utilities Board of the province, do this, do the analysis.

MR. LEARMONTH: But – so did this go – did this recommendation, this document that I referred to, P-00807, did that go to Cabinet?

MR. T. MARSHALL: No, I don't believe it did.

MR. LEARMONTH: Well, okay, after it was signed, what did you do with it?

MR. T. MARSHALL: It was a direction note. So that would go through the premier's office.

MR. LEARMONTH: So that would have gone to the premier's office?

MR. T. MARSHALL: And the clerk of the Executive Council, the –

MR. LEARMONTH: That would have been Premier Dunderdale at the time?

MR. T. MARSHALL: And Robert Thompson.

MR. LEARMONTH: Robert Thompson.

MR. T. MARSHALL: Mmm.

MR. LEARMONTH: So what – after it went to the premier's office, what did you get in way of a response?

MR. T. MARSHALL: I don't recall, but I know it went to the PUB instead.

MR. LEARMONTH: Okay, but that's not a substitute, is it –

MR. T. MARSHALL: No.

MR. LEARMONTH: – going to the PUB.

MR. T. MARSHALL: Well, the PUB – you know, energy policy in the province is set by the government and by the Department of Natural Resources. And to implement the policy they –

one of ways they do that is to – is through the Public Utilities Board.

MR. LEARMONTH: Hmm.

MR. T. MARSHALL: And so I guess it was referred to the Public Utilities but the matter of Muskrat Falls Project, I think, had been exempted. And, again, if the government, in the exercise of its public policy, decides that it wants to do this – for example, I know in the PUB act, I think the standard is, you know, to come up with a project that has the least cost consistent with reliability, but there's an exemption made – there's an (inaudible) legislation for nuclear, for example.

MR. LEARMONTH: Right.

MR. T. MARSHALL: So the government can say: No, we don't want you to do this one; we just want you to look at some of them. And that's, I think, is what happened here. So it went –

MR. LEARMONTH: All right –

MR. T. MARSHALL: It did go the PUB? To do that, the analysis that the Public Utilities Board would normally do, except it was limited to comparing what we thought were the two cheapest options and which one was truly was the least cost.

MR. LEARMONTH: And did you believe that the reference – I think it was June 17, 2011, or thereabouts – that the reference of that limited question to the PUB was a proper substitute for what you had recommended in this P-00807? In other words, did you – you prepared this document. You did not get the approval of the premier's office? Instead, the premier's office, you're saying, sent it the PUB. Were you satisfied with that course of action?

MR. T. MARSHALL: I was satisfied with the idea that it was going to the PUB.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: But then I found out that it was a limited reference and I looked at that and I thought that the key thing for us and my colleagues was which one's the least cost. That

was the key thing, which one would have the lowest rates for the people of the province. That was the key thing for us.

And we thought that it came down to, really, two options, so which of those two was the least cost? And that's when it went to the PUB. And government, in the exercise of its public policy, I think, can do that. I mean I can see government of today amending the Electrical Power Control Act to say: Look, you know, we're not going to have any projects that burn fossil fuels. Like, it's just the way they limited, in the legislation, nuclear. And if that was the case, then the Isolated Island Option would be gone.

So I think in the exercise of its public policy, the people who have responsibility for public policy and energy policy is the government. They would obviously look to the experts of the PUB for advice, but I think it was in government's right as – in the exercise of public policy to say we want you to look at this particular question. The other options we're not doing.

MR. LEARMONTH: Well, okay, I don't think anyone is saying that the government was acting illegally; I don't think anyone was saying that the government didn't have the right to do it. I'm talking about the wisdom and reasonableness, not the legality of it.

So, you know –

MR. T. MARSHALL: Well, Nalcor had screened out a lot of the other options.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And, you know, Grant Thornton has looked at that and only had a problem with, I think, two: one was dealing with Hydro-Québec about purchasing power from Hydro-Québec and the other one was, as you know, waiting 'til 2041.

I disagree with the Grant Thornton report on those two issues. So Grant Thornton agreed with the reasonableness of Nalcor screening out all the other options. So it came down, I guess, to those four.

MR. LEARMONTH: Well, based on Grant Thornton's analysis, there's been other evidence

on natural gas that may put Grant Thornton's analysis of the natural gas issue in issue. I just wanted to clarify that.

MR. T. MARSHALL: So I wasn't upset or disappointed in any way that the reference question was dealing with those two options.

MR. LEARMONTH: Okay.

But were you satisfied – I've asked you this a couple times. Were you satisfied that by referring the matter to the Public Utilities Board that it wasn't necessary for government to follow the recommendations that you made in the document P-00807?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: So that was a – you were fully satisfied –

MR. T. MARSHALL: As long as there is an independent review. That's what I was looking for.

MR. LEARMONTH: Yeah.

But did you realize that the amount of engineering that had been completed for this project when it went to the Public Utilities Board was 5 per cent of the total project? Were you aware of that at the time?

MR. T. MARSHALL: Yes, the DG2 numbers –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – were 5 per cent and then it was about 50 at the DG3 numbers.

MR. LEARMONTH: Yeah, but it was the 5 per cent, so you feel that the Public Utilities Board could sign off based on having only 5 per cent of the project definition before them?

MR. T. MARSHALL: Well, you know, when you're asked to make a decision, you're asked to give an opinion. All of us –

MR. LEARMONTH: Mmm.

MR. T. MARSHALL: – I'm not just speaking to the PUB, you're asked to do it on the basis of the best information you could have at the time.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Because we can't predict the future.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And they hired, as their expert and advisor, Manitoba Hydro and they did a report. And government then hired them to do a report afterwards when the PUB's report indicated they didn't feel they could do – they could give a decision based on those earlier numbers.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: They were asked to do a decision based on the numbers and I'd say – I'm wondering if a way that they were rewriting the terms of reference by saying, no, we want something else, we'll do something else.

Now having said that, the – if the DG3 numbers were going to be available soon, you know, asking for more time is certainly not unreasonable on the part of the PUB. But they were, you know, given a mandate to make a decision and they said, well, we're not making the decision until we get these other numbers.

MR. LEARMONTH: Well, was there something illogical or flawed in that response, given they only had 5 per cent of the engineering work before them? Was there anything wrong with that response by the PUB in your view?

MR. T. MARSHALL: Well, their experts did it.

MR. LEARMONTH: Pardon?

MR. T. MARSHALL: Well, you know, they were asked to make a decision based on the information they had, like we all have to do when we make decisions. Should, you know, you have waited until the additional information? That certainly would have been helpful.

MR. LEARMONTH: It would have been preferable, wouldn't it – not only helpful, preferable.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yes.

Did you raise any objection to the fact that government would not allow the PUB to take sufficient time so that they could review the DG3 numbers which were very close to being ready?

MR. T. MARSHALL: I wasn't really involved in – you know, a part of this – being a Cabinet minister when decisions are made, I wasn't part of the discussions between the PUB and the Department of Natural Resources as to time periods and extensions. I know they were – I think, they were given a year to make their decision – or six months to make a decision, which is the same time period that the Nova Scotia UARB was given.

I know they asked for an extension and it was granted and then they asked for the third extension and there was a determination that it would be –

MR. LEARMONTH: Well, I don't think – I'll just correct you. I think – I don't think you have that completely correct so I just wanted to correct the record. The reference went on – in the middle of June 2011 with a deadline of December 31 or December 30. And the Public Utilities Board in December wrote Minister Skinner saying that, look, we're not going to be able to get this work done, we're going to need an extension and we don't know what it is. And then eventually it was set at March 30, 2012, even though the Public Utilities Board said they wanted to go 'til June 2012.

MR. T. MARSHALL: I see.

MR. LEARMONTH: But a slight difference to what you're saying.

MR. T. MARSHALL: All right, a slight difference. I wasn't involved in that back and forth. That was the department. That wasn't my role.

MR. LEARMONTH: Yeah.

But you must have had a view as to whether additional time should have been given to the Public Utilities Board to complete its work? I mean you were in government, you're a senior minister, you're a minister of Finance.

MR. T. MARSHALL: That's right. Yes, I had a view.

MR. LEARMONTH: What is the view?

MR. T. MARSHALL: Well, it would have been better to allow the extension, but that was not the decision of the government.

MR. LEARMONTH: Right.

And the extension would have allowed the – instead of reviewing project definition at a 5 per cent level of engineering, it would have allowed Public Utilities Board to review DG3 numbers –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – which would have had a 40 or 50 per cent?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And you get a better picture at that point, don't you?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Now, when you're talking about the CPW analysis, are you saying that it was your view that if the Interconnected Island Option came ahead of the Isolated Island Option even by \$100,000, that government would have selected the Interconnected Island Option?

MR. T. MARSHALL: I'm a little confused.

MR. LEARMONTH: Well, you know, the information, I think, at the – at one point the information was that the Interconnected Muskrat Falls –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – was \$2.2 billion –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – cheaper over the 57-year term than –

MR. T. MARSHALL: That's right.

MR. LEARMONTH: – the Isolated Island.

MR. T. MARSHALL: That's right.

MR. LEARMONTH: And there were a number of – the CPW analysis involved a number of inputs, price of oil, roads, things like that. So are you saying that – it came out at \$2.2 billion better.

MR. T. MARSHALL: Right.

MR. LEARMONTH: So are you suggesting that as long as the Interconnected Island Option came out ahead of the Isolated Island – in other words, instead of being 2.2 billion it was 100,000 – that government would have selected that?

MR. T. MARSHALL: Well, I don't know what government would have done, but I – if that was the least-cost option that was the big factor in what would the rates be for the people. I think that's what was on, like, you know, my colleague's minds the most. But there were other factors as well and one was is that the Isolated Option is going to be burning oil and burning carbons.

MR. LEARMONTH: Right.

MR. T. MARSHALL: And relying on a 40-year-old plant.

MR. LEARMONTH: But –

MR. T. MARSHALL: There's no reliability there. And, yes, so it was a – I think if it came down to an equal match, I think for the fact that you – that through the Muskrat Project you would be connected to Canada, you'd be connected to the national grid, the grid both through Labrador and through Nova Scotia, and the fact that you're not burning carbons, that

would be big factors, if the least-cost option – if the CPWs were the same.

MR. LEARMONTH: So if it – I'll just use 100,000 as an arbitrary – if the Interconnected instead of –

MR. T. MARSHALL: Essentially they're equal.

MR. LEARMONTH: – instead of being 2.2 billion –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – ahead of the Isolated Island, if it had been 100,000, you're saying that, no matter what, government would have proceeded with Muskrat Falls?

MR. T. MARSHALL: I don't know what government would do. You're asking me a hypothetical here.

MR. LEARMONTH: No, but you're –

MR. T. MARSHALL: I –

MR. LEARMONTH: You mentioned that the – that that was the main thing, the CPW analysis.

MR. T. MARSHALL: It was –

MR. LEARMONTH: I just want to push that as far as I can.

MR. T. MARSHALL: Okay, there were, obviously, a number of factors on both sides –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – pro and con, both projects, but the – you know, if Muskrat was the least-cost option, the lowest rates for the ratepayer and would connect us nationally and would not burn carbons and would be more reliable than relying on – you know, the other option was essentially, it was described to me as muddling through to 2041; bit of wind, three small hydro projects, some conservation management, demand management. But mainly it was still thermal and you're relying on oil.

You're relying on oil; you're paying for oil prices which were predicted to rise. They were very volatile. And the taxpayer or the ratepayer's money was then going into a – was mainly then going to pay oil companies throughout the world, foreign oil companies, when it could be going into a project that – you know, like Petty Harbour can last over a hundred years. Yes, there are a lot of arguments in favour if the two were equal.

MR. LEARMONTH: Well, let's – I haven't got the math, but I think you'll understand the principle that because this was over such a long period of time –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – over 50 years that an increase in the capital costs as being an input into the CPW wouldn't have a dramatic effect. In other words, it could be that if the estimated capital cost was 8.5 billion, okay, then given the present value calculation the Isolated Island still would've come ahead, all other things being equal, compared to the Isolated Island. Do you see what I mean?

In other words, instead –

MR. T. MARSHALL: You're saying –

MR. LEARMONTH: – of being –

MR. T. MARSHALL: – so even if the Muskrat Falls Option –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – was 8.5 billion –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – it would still be the – have the lowest current present value, or current present worth.

MR. LEARMONTH: Assume that for the purpose of the question.

MR. T. MARSHALL: Assume that, okay. Yeah.

MR. LEARMONTH: So are you saying that in that situation the government may not say, well, hold on now, we know that on the CP value – CPW analysis, the Interconnected Island comes out ahead, but we can't afford to commit \$8.5 billion so the option is too expensive for us to consider.

MR. T. MARSHALL: Mmm.

MR. LEARMONTH: Are you saying that that was not a possibility?

MR. T. MARSHALL: Well, the size of the Muskrat Falls option and the amount of money that had to go into it was obviously a concern and a risk.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But the – to try to compare apples and apples, they went through this current present value analysis and, you know, the biggest factor for us was getting the rates down.

MR. LEARMONTH: Yeah.

So even if the – even if by applying the present – the CPW analysis, if the input for capital costs had been 8.5 billion, I just picked that out of the air, and the CPW with 8.5 billion came out ahead, you're saying the province still would've sanctioned the Muskrat Falls Project?

MR. T. MARSHALL: Provided we were satisfied that we could afford it.

MR. LEARMONTH: Yes. That's what I'm getting at.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yeah.

And so that would've been something you would've had to study, right?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: On the basis that, well, it's still lower in the CPW, but have we got the money to commit to this? Is that the type of approach you would take to it?

MR. T. MARSHALL: Well, of course, it's fundamental.

MR. LEARMONTH: Okay. Thank you.

Now, MHI were, as you pointed out, retained by the Public Utilities Board to do the DG3 – 2 –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – assessment.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: And they filed their – did their work.

MR. T. MARSHALL: They were their expert, their advisor.

MR. LEARMONTH: Pardon?

MR. T. MARSHALL: They were the – as I understand it they were the board's advisor.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Right.

MR. LEARMONTH: That's right. They were selected by the board.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: Mmm.

And they did the DG2 analysis and the estimated (inaudible).

Were you aware that one of the problems that the board encountered – and this has been acknowledged by Nalcor, to some degree anyway – was that Nalcor was very late in delivering documents and responding to RFIs and filing their submissions? And that was the fundamental reason why the board required additional time.

Were you aware of that until these hearings commenced?

MR. T. MARSHALL: Not then.

MR. LEARMONTH: Not –

MR. T. MARSHALL: I've heard about it since, but not at the time.

MR. LEARMONTH: Is that a – would that've been a concern for you, that Nalcor wasn't meeting the deadlines or its commitments to file documents on a timely basis?

MR. T. MARSHALL: Yes, yes.

MR. LEARMONTH: And that would have supported the position that you indicated earlier, that perhaps they should have been given greater time, is that right? The Public Utilities Board should have been given greater time to file their report?

MR. T. MARSHALL: I think it would have been – if – yes, if they had more time to do the report based on the DG3 numbers, obviously it would help make a – maybe not a perfect decision but maybe a more realistic decision.

MR. LEARMONTH: Yes.

More helpful to government because –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – you'd – there'd be – a higher project definition would –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – be the basis of the –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – review.

Now we know that immediately after the MHI – or the PUB report had been delivered to government, which was at 10 o'clock on a Friday night, March 30, 2012, within 44 hours of that Nalcor was promoting the use – promoting to government the retaining of MHI to complete the DG3 works?

MR. T. MARSHALL: I was not.

MR. LEARMONTH: You weren't aware of that?

MR. T. MARSHALL: I wasn't – I was not aware of that. I know that government did retain them, but the Department of Natural Resources did retain MHI afterwards –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – to do an analysis.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But I was not aware of, you know, how it happened or who suggested who –

MR. LEARMONTH: Well, I can show you the documents, but I think I can remember it well enough to (inaudible), so I said: a Friday night at May 30 – excuse me, March 30, 2012, the Public Utilities Board delivered its report to government. On Sunday, April – whatever, two days after, Gilbert Bennett sent a letter – or an email to Charles Bown – you know who he is?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Saying you should give so-and-so a call at Manitoba Hydro. In other words, they were recommending the government retain them for the work – for the DG3 work. And you weren't aware of that –

MR. T. MARSHALL: No.

MR. LEARMONTH: – until recently?

MR. T. MARSHALL: No, I – all I can tell you is that, you know, not being the minister on file –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I wouldn't know what's going on in other departments unless something –

MR. LEARMONTH: Right.

MR. T. MARSHALL: – came to Cabinet for discussion.

MR. LEARMONTH: But you are a lawyer –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – a senior lawyer? Do you see any conflict there?

MR. T. MARSHALL: Well the idea was that it should be independent –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – and there'd be suggestion that – well no, they were hired by the PUB –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and then government hired them to act for government.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: What Mr. Gilbert Higgins would have said, I mean, obviously they – government wanted to get on with it. They wanted somebody to do an independent analysis and somebody made the suggestion why don't you get MHI to do it. They were – the board had selected them, so why doesn't the government select them.

MR. LEARMONTH: Yeah. Well –

MR. T. MARSHALL: I don't know – I –

MR. LEARMONTH: – but they're being promoted – they're being recommended – the word recommendation –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – is implied, I suggest, in that email.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: That Mr. Bennett said –

MR. FITZGERALD: Commissioner – sorry –

You know, and just a point here – and I don't mean to interrupt Mr. Learmonth but – if it was just one flippant question I wouldn't have such an issue with it – but there's been a lot of questions put to Mr. Marshall regarding that exhibit and that email, and I think to put it in

context, it should be put in front of the witness so he actually has it there.

MR. LEARMONTH: That's fine with me.

THE COMMISSIONER: Okay.

MR. LEARMONTH: We can bring up that – I don't have – we can take a minute to get the reference. It's in the PUB documents. It's an April 2, I think, email from Gilbert Bennett to Charles Bown, 4:44 p.m. I think.

UNIDENTIFIED MALE SPEAKER: Try 00739.

THE COMMISSIONER: Pardon me?

UNIDENTIFIED MALE SPEAKER: Try 00739.

THE COMMISSIONER: 00739.

Yes, that looks like it.

MR. LEARMONTH: Oh, it's 4:43, Sir. I'm off a bit.

So this is April 1, so that would be the Sunday. The report was delivered on Friday night at 10 o'clock. This would be April 1.

So Gilbert Bennett's writing an email – yeah I'm a little bit off on that – but it's to Paul – Paul is the lead person at MHI – saying, "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. He can be reached at ..."

So, you know, obviously Gilbert Bennett had been speaking to Charles Bown – don't you think that that's obvious from reading the email?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Within a very short time frame – and then he's writing Wilson saying give Charles Bown a call. Does that email – the connection, you know, the – right after the report was (inaudible) – does that give you any concern in terms of an appearance or a perceived conflict of interest? Here you have Nalcor

recommending MHI to the government for an independent report.

MR. T. MARSHALL: Well –

MR. LEARMONTH: Does that give you any concern?

MR. T. MARSHALL: Well that's not what it says. It says that –

MR. RALPH: Sorry, excuse me.

Mr. Commissioner, I'm not sure that Mr. Learmonth is sort of correctly describing that email – it doesn't look to me as though Mr. Bennett is promoting MHI –

MR. LEARMONTH: I'm saying it's inferred. I think it's obvious if you read it that there's some –

THE COMMISSIONER: Well –

MR. RALPH: I'm not sure –

THE COMMISSIONER: Well, everybody's got different conclusions about what this may or may not say so, you know, I think I will just basically indicate I've read the email so I'll make my –

MR. LEARMONTH: Okay.

THE COMMISSIONER: – own conclusions with regard to whether there was a referral or there wasn't a referral. We're gonna hear from Mr. Bennett, I assume, at some point in time, so we shall see.

But, let Mr. – Mr. Marshall may well want to answer what his view of the email is.

MR. T. MARSHALL: I mean it could've been that Charles and his department had had an idea to retain MHI, and asked Gilbert Bennett how can he get in touch with them. Could've been as simple as that.

But I don't know, I'm speculating here.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Well I don't wanna remain too long on this.

So you don't see that the – that there was any perception or potential of that conflict of interest by Nalcor communicating with government as to – on this subject?

MR. T. MARSHALL: Not based on this email.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: I wouldn't jump to that conclusion.

MR. LEARMONTH: Yeah, well, and the government did eventually retain MHI.

MR. T. MARSHALL: Yes they did.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: They did.

MR. LEARMONTH: Yeah.

But anyway that doesn't give you any concern, is it – that your position?

MR. T. MARSHALL: Not based on this here.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: What about based on the fact that – you've heard of the term confirmation bias, have you?

MR. T. MARSHALL: Only, I think, this is something Professor Flyvbjerg referred to?

MR. LEARMONTH: Yes. Well, I think he mentioned that. Yeah, he did. Yeah.

MR. T. MARSHALL: He talked about bias, I don't know if I know what confirmation bias means, but –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – he talked about people doing estimates have a bias, and they tend to

underestimate estimates and overestimate benefits.

MR. LEARMONTH: Well anyway, the – what I’m saying here is that MHI had already accepted the DG2 figures prepared by Nalcor. They’d already approved them, and all – and as it turned out all they were asked to do was to provide an update.

I’m suggesting to you that that’s not really independent; that it would’ve been preferable for a government to hire someone who had no involvement whatsoever with Nalcor, or their figures, so they could do a thorough review, not just an update of, you know, positions they had already set forth or taken.

Do you have any comment on that?

MR. T. MARSHALL: No. No, I – I mean, I – I mean MHI was asked – you know, they’re a reputable corporation – they were asked to do an analysis of the DG3 numbers, and I assume they looked at both sets. They would’ve – I don’t know if they just did an update, but I’m sure they did a thorough analysis of the (inaudible) or I think they would probably do a thorough analysis of the DG3 number.

MR. LEARMONTH: Yeah.

Okay, so, in summary then, I take it that you don’t have any problem with the fact that government retained MHI to do some work on the DG3 numbers? You don’t have any problem with that?

MR. T. MARSHALL: No, not based on this.

MR. LEARMONTH: On anything you know?

MR. T. MARSHALL: I’d have – I mean, all I know – and, you know, not being closely involved with the back and forth with the PUB and with MHI, all I know is that the Public Utilities Board, if you see them as independent, they were using MHI. So if the government was using MHI why would it not now be independent?

MR. LEARMONTH: Okay. Well, that’s your answer.

MR. T. MARSHALL: It wasn’t – they weren’t doing it for Nalcor. MHI wasn’t doing it for Nalcor; they were doing it for the PUB. Am I correct in that?

MR. LEARMONTH: Well, in – yes, that’s right.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: They’re retained by the PUB.

MR. T. MARSHALL: Yeah.

You know, you could argue that the PUB is not independent because the government appoints them. You know, I believe they’re independent.

MR. LEARMONTH: Okay, well, we’ll leave that. Make sure you’ve given your answer. Thank you.

Now, in your – in the exhibit we referred to, which was signed by you and Mr. Skinner where you wanted an independent review, that would have been of the capital cost estimates, would have been included in that review. Am I correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Now – so did you expect that MHI would do a detailed review, an independent review of the capital costs of the Muskrat Falls Project when they were retained by government to review the DG3 numbers?

MR. T. MARSHALL: Yes. Both when they were retained by the PUB and later when they were retained by government. I would expect them to do that.

MR. LEARMONTH: But they didn’t. They said they didn’t.

MR. T. MARSHALL: Well, that’s –

MS. E. BEST: Sorry, is that really what they said?

MR. LEARMONTH: Oh, they said that the – what MHI said, their representative said that due

to deletions made by government from the scope of work that MHI had proposed to government for the DG3 review, they did not conduct a detailed examination of the estimated project costs of the –

MS. E. BEST: Sir, what are we reading out from?

MR. LEARMONTH: No, wait until I finish talking.

MS. E. BEST: Okay.

MR. LEARMONTH: I'll give you time, too.

I said that MHI did not conduct a detailed examination of the estimated project costs of the Muskrat Falls Project before sanction. That's what they said here.

MS. E. BEST: Is that from the transcript or ...?

MR. LEARMONTH: No, that's what they said.

THE COMMISSIONER: My recollection of MHI is that they were – their scope of work was reduced by government with regards to the DG3 numbers. I'm not certain that Mr. Learmonth's characterization of what was said by various witnesses, because to be quite honest with you, I have concerns about the evidence that I heard with regard to MHI.

But, you know, I will assess the situation as we see it, but I'm going to allow Mr. Learmonth to ask the question. If it's proven or I find that there was another conclusion to take from MHI's evidence, well then, I'll consider it.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay, well, I'll put it to you maybe an easier way.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: MHI, after they had established a line of communication with Charles Bown, sent to Charles Bown a proposed scope of work for the DG3 review.

MR. T. MARSHALL: All right.

MR. LEARMONTH: Included in that document, in that draft scope of work, were at least three paragraphs which indicated that Manitoba Hydro anticipated in doing a review of risk and detailed cost analysis. When the draft was reviewed by Mr. Bown it appears, he sent it back with those three paragraphs dealing with risk review deleted, taken out.

MR. T. MARSHALL: Okay, I wasn't aware of that.

MR. LEARMONTH: Yeah. And as a result of that, MHI believed that they weren't being asked to do a detailed examination of the risk assessment which would form part of the capital cost estimates. Were you aware of that?

MR. T. MARSHALL: No.

MR. LEARMONTH: Yeah, so –

MR. T. MARSHALL: All I – at sanction I was given a copy of the MHI report which I read.

MR. LEARMONTH: Yeah. Well, I'm talking about – well, there may be –

MR. T. MARSHALL: These back-and-forths between the department and MHI –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I would have no knowledge of.

MR. LEARMONTH: Yeah, well, you know, it's possible that there may be a discrepancy between the report and the evidence that MHI gave, but that's not for me to decide. But, anyway, they did say that, that because those paragraphs were taken out from their scope of work, they understood that their review of the capital cost analysis would be less robust or vigorous than it would have been if those three clauses had –

MR. T. MARSHALL: But they didn't say that in the report at sanction.

MR. LEARMONTH: No, they didn't.

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: No, they didn't, but they did clearly in their evidence. So in the result I suggest to you that taking the MHI evidence at its face value, there was no review done of the capital cost estimates of the Muskrat Falls Project.

MS. E. BEST: So I object to that characterization. If – and I'm sorry to go into it again, but I do have a problem with that. If what we're talking about is the risk – then we're talking about the risk being exempted from the scope – that's one thing. That doesn't mean that all the other cost estimates that were included, all the – that when into the inputs into the CPW weren't analyzed by MHI and found to be reasonable.

THE COMMISSIONER: Right.

MR. LEARMONTH: I'm not – I never mentioned the CPW analysis. I talked about the capital cost estimates.

MS. E. BEST: Yeah, sorry, and I can speak to that. I mean the capital cost estimates that were part of the CPW.

THE COMMISSIONER: So it's going to be for me to decide ultimately what analysis was done by MHI. It sounds to me like there's different interpretations by counsel with regards to what MHI did or what they said they did. So I can't prevent questions being asked based upon one's own interpretation. I'm sure other counsel will have thoughts about or interpretations or given interpretations with regards to what I said.

Because this is an Inquiry I – you know, I think I have to leave this pretty wide. I'm not saying –

MR. LEARMONTH: But I'm almost at –

THE COMMISSIONER: Excuse me.

MR. LEARMONTH: – the end of it.

THE COMMISSIONER: Well, just a second.

I'm not saying that I agree with Mr. Learmonth's characterization or your characterization, Ms. Best. I need to go back. I need to go back and look at it. I'm trying to – you know, I do have some concerns. You know, as I said earlier, I do have some concerns about the evidence that I heard from MHI. I will be – put that right on the record now. But that may well be explained as we go along with other evidence or whatever.

But if people want to say this is my interpretation and, you know, if this is correct what would happen, I don't think I can prevent any one of you from asking that sort of a question.

MS. E. BEST: And I accept that. Thank you.

I think, in fairness, if it is going to be put to a witness that it needs to be characterized as one person's interpretation, as opposed to it being characterized as something that's factual.

THE COMMISSIONER: Okay.

Go ahead, Mr. Learmonth.

MR. LEARMONTH: Okay.

Well, okay, so we'll – you're not aware of exactly what the evidence was MHI gave at this hearing so I'm not going to pursue that any further. But I will – I want to ask you a question: Do you believe that it was important that the Government of Newfoundland obtain a detailed examination of the estimated project costs of the Muskrat Falls Project before sanction? Do you believe that was important –?

MR. T. MARSHALL: Who obtains it?

MR. LEARMONTH: The Government of Newfoundland.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: You do?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Okay.

And you thought that that had been done, is that right? You believed, at the time of sanction, that that had been done, that there had been such an independent detailed examination of the estimated project costs?

MR. T. MARSHALL: An examination, not a recalculation, but a review of what had been done.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: And a review of what third-party reviewers had said to ensure the likelihood was that the estimate, including the risk analysis, was correct.

MR. LEARMONTH: Right.

And that's certainly consistent with the exhibit that we just saw where you were asking for such an independent review. Is that correct?

MR. T. MARSHALL: Yes, yeah

MR. LEARMONTH: Okay.

Now, there's some documents I'd like to take you to, Mr. Marshall, at tab 2, which is exhibit 00906. Have you got that, Mr. Marshall?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay, page 4.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: Now this is a September 2, 2010 document prepared by Nalcor and presented to the Department of Finance, so you would have seen this document. Is that correct?

MR. T. MARSHALL: When we discussed this during the interview, I said I didn't think I'd seen it. It didn't – it was because of this particular page – \$3 billion base equity. I'd never seen – I don't recall seeing that number – that the equity would be – the base equity would be ever so high as that number.

MR. LEARMONTH: Okay.

Well, do you see on page 4 that the – there's a reference to a \$3 to \$6 billion [sp \$0.3 to \$0.6 billion] contingent equity –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – do you recall seeing that?

MR. T. MARSHALL: No. Not then.

MR. LEARMONTH: Do you recall being aware of that?

MR. T. MARSHALL: I was aware that there were contingencies in their estimates.

MR. LEARMONTH: They were in the estimates.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

Well, the information we have is that in – based on a quantitative review – qualitative review analysis prepared by Westney, there was a recommendation – this is before the term sheet was signed – there was a recommendation for a strategic reserve of \$3 to \$6 billion and that's referred there.

And in a draft document for the DG3 numbers there was a – the – Nalcor did include 300 million as a strategic risk. But then, the information we have is that – from the project management team – is that during the negotiations for the term sheet, which was signed November 18, 2010, Emera expressed concern about there being an amount in the strategic – an amount in the cost estimates for strategic reserve – strategic risk. And, as a result, Nalcor removed that – any amount for strategic risk from the \$5 billion figure that was presented to the public of Newfoundland at the time of the signing of the November 18, 2010 term sheet.

In other words, an amount from between \$3 to \$6 billion was not included in the \$5 billion that was announced to the public on November 18 –

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: – and we went over this at the interview –

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: – did we not?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yeah, were you aware of that?

MR. T. MARSHALL: No.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: No.

MR. LEARMONTH: Now, what – do you have any reaction to that? Assuming what I’ve said is true – that it was removed and not included in the \$5 billion announcement to the public –

MR. T. MARSHALL: We were aware that there was a 15 per cent contingency in the numbers. I think that’s at DG3 numbers. There’s a 15 per cent contingency. But I – we were never aware –

MR. LEARMONTH: Well there – there wasn’t. I’m just going to correct it. There wasn’t a 15 per cent contingency. There was a 7 per cent contingency in the DG3 numbers.

MR. T. MARSHALL: Well, there’s one of the decks, it says 15 per cent.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: You know, there’s are so many of these decks and it’s a question of when you were told it. But I recall there was a contingency. I was not – I do not ever being recalled saying that we’re – we have a contingency number and we’re not including it in the total.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: So I would know that, in terms of paying out the money, that, I think, I recall saying that, you know, certain money would be held by the Gatekeeper. And would

only be paid out if the Gatekeeper thought it was appropriate. But I never thought that the budget – the number that was in the budget would be taken out of it.

MR. LEARMONTH: Yeah. So would that be a concern if there was an amount that, we’ll say should have been in there for strategic reserve, but it was not included?

MR. T. MARSHALL: As I said previously – the total number should have been disclosed to the public. This is the government giving numbers to the people of the province. This is not like a private corporation that you can hide some of the money from some of your other employees or whatnot. This is different. This is different.

MR. LEARMONTH: Well there should be full disclosure

MR. T. MARSHALL: Yes.

MR. LEARMONTH: to the public

MR. T. MARSHALL: Yes.

MR. LEARMONTH: when these figures are announced.

MR. T. MARSHALL: Of course.

MR. LEARMONTH: So would that give you concern if something had been not –

MR. T. MARSHALL: Yes, it would.

MR. LEARMONTH: It would give you concern. Okay.

For the same reasons you gave earlier, I guess.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah. Okay. Thank you.

And then in this same document at pages 8 and 9 there are a number of references to – well on page 9, for example, under the heading Island Link it says: “Will require ‘contingent equity’ to back-stop any shortfall in capital cost” estimates

And it also says – the bottom of that page 9: “cost-overruns will be covered by contingent equity” So there are a number of references to contingent equity in this document –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – and you were aware of – were you aware of the concept generally?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: You were. But you thought that the amounts that had been suggested by Westney would have been included in the figures that you were presented, and communicated to the public.

MR. T. MARSHALL: Okay. I didn’t see the Westney analysis. I didn’t take part in that, but I was aware that the project team and their advisor, Lavalin, were preparing the estimate, and then I was aware that somebody else – or Westney – did the risk analysis.

MR. LEARMONTH: Right. Okay.

MR. T. MARSHALL: And that was in – and both were included in the estimate and then there was another item called escalation, and that was included as well.

MR. LEARMONTH: But they were included in the estimate, to your knowledge.

MR. T. MARSHALL: I would have expected them to be.

MR. LEARMONTH: Yes, thank you.

Tab 3 –

MR. T. MARSHALL: But you’re asking me about equity – base – contingent equity. And, you know, base equity was the money the province would have to put in based on the – \$7.4 million number – the 6.2 plus the 1.2 at DG3.

MR. LEARMONTH: Right.

MR. T. MARSHALL: And contingent equity would be the money the province would have to

come up with if there were overruns in the future.

MR. LEARMONTH: Right.

MR. T. MARSHALL: Unless Nalcor could borrow more money.

MR. LEARMONTH: Right. And then you wouldn’t have –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – government wouldn’t have to come up –

MR. T. MARSHALL: – and no – and debt is cheaper than equity to the ratepayer.

MR. LEARMONTH: Right.

Tab 3 is a document dated October 1, 2010. This is just before the term sheet was signed. There’s a reference to – it’s from you to Terry Paddon, about the guarantee from the federal government. Is this the first – it’s the first indication, I think, that you were involved in the discussion about the federal loan guarantee?

MR. T. MARSHALL: Um –

MR. LEARMONTH: Is that correct?

MR. T. MARSHALL: I – what was it, 2010? Yeah, I would think so.

THE COMMISSIONER: What – what exhibit are we on?

MR. LEARMONTH: That’s P-00907.

THE COMMISSIONER: So tab 3.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Basically, it was how to go about applying for – apply to the federal government for the guarantee.

MR. LEARMONTH: The next document I want to refer to is Exhibit P-00909, which is at tab 5.

This reference to \$600 million per year – you wrote this email to “adamc” – I guess it’s just a constituent – but what – what are you referring to when you use 600 million?

MR. T. MARSHALL: There were a number of cash flows prepared about what the free cash flow would be to the province. And that number changed from time to time, but I think originally it talked about that, on average – over the life of the project – on average the annual dividend would be in – the 600 million range. And that was subsequently – years later that was reduced to between 4 and 5.

MR. LEARMONTH: And it’s reduced more at this point, is it not?

MR. T. MARSHALL: Oh, of course.

MR. LEARMONTH: Yep.

MR. T. MARSHALL: Of course.

MR. LEARMONTH: But anyway –

MR. T. MARSHALL: That – that – you see, with that, you know, electric – companies that, you know, are regulated like – the electricity companies and the telephone companies and the cable companies – and I have some knowledge of that, because I was involved in that business.

Unlike, you know, the free enterprise system where there’s total competition, and the people providing the product or the service have to compete and that keeps the prices down, have to offer a good service to attract your business. These things you have natural monopolies, so you don’t want the monopoly to gouge the customer. So the PUBs are set up and the CRTC’s are set up to ensure that that doesn’t happen.

But the formula allows the cost to be covered and a profit to go to the proponent of the project, and you know, you can see, when you look at utilities across the country, you can see how wealthy they become and how their investors do extremely well.

So when the province does it, that return, and you can see the size of the return, that would go back to the people of the province to either

lower their rates or to build hospitals or maybe to go through – you know, to do Gull Island, whatever the government of the day wants to do with it.

So yeah, I was aware of that number.

MR. LEARMONTH: Okay.

Tab 6 is Exhibit P-00910. I just wonder, where do you get these figures? You’re sending out emails with figures, are these figures provided to you by officials at the –

MR. T. MARSHALL: Which figures (inaudible) –

MR. LEARMONTH: Well, in the bottom paragraph, for example, just “Add to our prosperity by providing ... on an average ...,” just half-way down the page. Do you see that, P-00910, tab 6?

MR. T. MARSHALL: I’m looking at it.

MR. LEARMONTH: You say the deal will. Do you see “This deal will ...”?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: And then the third paragraph down. “Add to our prosperity by providing ...”

MR. T. MARSHALL: (Inaudible) the numbers, the cash-flow numbers, showed that in the early years it wouldn’t be as high; at the end of the project, it would be much higher, but on average it was around the 600 million figure at the time. And that money would be used to pay off any debt that the province took on.

As I said earlier, you know, Nalcor are borrowing most of the money. The province just had to come up with this equity share, and you know, it had that in cash at the time of this. But it was presumed that government would have to borrow to finance its equity, and the equity would be put in to the company over time. And that brief cash flow would be used to pay off that debt that the government took out, and the rest would be used for the benefit of the province.

MR. LEARMONTH: That was the plan, anyway, at the time.

MR. T. MARSHALL: That was the plan.

MR. LEARMONTH: Yeah.

Now we'll go to tab 9, please, Exhibit P-00842.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Which is a presentation to the caucus on April 13, 2011, by Nalcor.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Throughout this process leading – the years leading up to Muskrat Falls, I take it that Nalcor made regular presentations to both Cabinet and caucus, is that right?

MR. T. MARSHALL: Yes, and to the premier's office.

MR. LEARMONTH: Directly –?

MR. T. MARSHALL: Oh, there were many.

MR. LEARMONTH: Directly to the premier's office?

MR. T. MARSHALL: Yes, many meetings there.

MR. LEARMONTH: Yeah.

And they were – always use these slide shows or whatever they're –

MR. T. MARSHALL: Always.

MR. LEARMONTH: Slide decks?

MR. T. MARSHALL: Always.

MR. LEARMONTH: Every time?

The –

MR. T. MARSHALL: Not every time, but mostly.

MR. LEARMONTH: Okay. I stand corrected on that.

The – on page 30 of that exhibit, 00842, you can see that the second from the bottom – second line from the bottom “Robust cost/schedule estimates.” Am I correct in listening to you that at all times up to the point of time of sanction that you believed that Nalcor was providing robust and, you know, accurate cost estimates to the best of their ability?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

And did you believe that these cost estimates were conservative? You know what I mean by that?

MR. T. MARSHALL: Yeah –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I do. I believe that they were using best practices. They had obtained experts, like SNC-Lavalin and Westney, and – you know, I wouldn't know how to cost a hydro plant, and I wouldn't know – I had never heard of some of these risk analysis techniques using P-factors or Monte Carlo stimulations and probabilistic analysis. I – that was not part of my world.

So I was satisfied that through the use of their experts that they were using best practices to come up with a number.

MR. LEARMONTH: You never doubted the – you never questioned whether you could rely on Nalcor's presentation on cost estimates, is that fair enough?

MR. T. MARSHALL: Well, you always wonder – a cost estimate – you know, you would always wonder. But I felt that we had – you know, in Nalcor we had gotten top people who in turn had gotten other experts to verify, to independently review their work. Yes, I was certainly satisfied with what Mr. Martin was presenting.

MR. LEARMONTH: Yeah. But nevertheless you believe there should have been an independent review of these items?

MR. T. MARSHALL: Yeah, a cold eyes review.

MR. LEARMONTH: Cold eyes, independent review.

MR. T. MARSHALL: Given the size of the project.

MR. LEARMONTH: Yes.

And also on the page 30, this a “Disciplined risk management program.” So you know, once again they’re – Nalcor is suggesting that they are following a disciplined risk management program. And you accepted that, did you?

MR. T. MARSHALL: Well, I had read – I remember when John Ottenheimer was the chair, I had read a report – I think it was 2010 or 2011 – where they talked about in their – you know, where the management talks about and analyses and discusses the results.

It talks about how after Nalcor was created that they had hired an expert to put in a risk management program right throughout the company. Now, that was – the idea of that was foreign to me, but I did read it, and I was impressed. And later on I learned that that was actually Westney.

So I was aware, based on what was written in that report, that – and also comments made in the chair’s report, like comments by Mr. Ottenheimer, comments by Cathy Bennett later that they felt they had the people to provide oversight of the company.

MR. LEARMONTH: Who had the people to provide oversight, Nalcor?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: How can you provide oversight over yourself?

MR. T. MARSHALL: Well, the board.

MR. LEARMONTH: The board.

MR. T. MARSHALL: I think she was saying – no, I’m sorry, I think I’ve got that wrong. That it was the – is that they had the people to do the project.

MR. LEARMONTH: Yeah. I think they were touted as being world-class.

MR. T. MARSHALL: That phrase was used a lot.

MR. LEARMONTH: Yeah. Did you uses the phrase world-class?

MR. T. MARSHALL: A lot of the material that I was given, whether in messages or in speeches or – there’s a lot of language – and I, you know, if I had time before I delivered a speech, I’d try to tone some of these things down.

MR. LEARMONTH: But did you describe the Nalcor team as being world-class (inaudible)?

MR. T. MARSHALL: You know what, I probably did.

MR. LEARMONTH: Yeah. But on what basis would you have made that statement, that they’re world class?

MR. T. MARSHALL: Best practices. People like SNC-Lavalin were – you know, it’s –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – one of the largest engineering companies in the world I think. They were doing the contract management, they were doing their engineering and their procurement.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Westney – I didn’t know who Westney – I think they’re from somewhere in the US, I think, Texas possibly. But they would have gone to get the best, I think. I think that’s the way they operated. They were very thorough and, I mean, I’ll say this, is that, you know, as Finance Minister, I, you know, I was not the minister for the department, but I – and in that sense that, you know, I would see what was happening as a Cabinet minister – like every Cabinet minister – but there were

certain things that I felt I had to satisfy myself about.

One was that, you know, what was the number, so that I can determine how much money we – the province would have to come up with and that we could get it. I also wanted assurances that, in their financing, that they could get their money, because if they couldn't get their money that would mean the project wouldn't go ahead, or, you know, there would be pressure on government to do it.

And I had some involvement in reviewing the loan guarantee, but in the financing, I watched how they did it, and they kept me up-to-date in terms of the documentation and what – the process they went through, and I found that process extremely vigorous, extremely robust, and it was very successful. But they came – the financing came in cheaper. And I was very impressed with Ed Martin and his team at the way they did that. It gave me a lot of confidence.

And – now the guarantee, I had no involvement in the negotiation of the guarantee, but Premier Dunderdale was successful. I mean, she led that, and she got the guarantee from a federal government that had about \$1 billion and went right to the rate holders in reducing the – reduced the costs, it would reduce the rates. So that was successful as well.

So, it's disappointing with what's happened since that time with the other contracts.

MR. LEARMONTH: Yes.

Now, you've mentioned at least once that – well, I take it from your evidence that you believe that Nalcor was retaining Westney and, perhaps, other consultants?

MR. T. MARSHALL: They seemed to – Westney – the government, seemed to retain an awful lot of consultants.

MR. LEARMONTH: And would you have believed that Nalcor was following the advice and recommendation of Westney?

MR. T. MARSHALL: I would think so.

MR. LEARMONTH: You would think so, yeah.

Did you ever question the use of a P50 factor at – for the project cost estimates at the time of sanction?

MR. T. MARSHALL: No, I would not know what a – at that time, I wouldn't know what a P50 meant.

MR. LEARMONTH: Did you know that Westney had recommended a P75?

MR. T. MARSHALL: No, I did not.

MR. LEARMONTH: You didn't.

MR. T. MARSHALL: I think at that stage the only P I knew was the P3s and our government was not in favour of P3s.

MR. LEARMONTH: Well, that's a completely different –

MR. T. MARSHALL: Completely different, yeah.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: Is this a good place to take our morning break, Mr. Learmonth?

MR. LEARMONTH: We can. That's fine.

THE COMMISSIONER: So we'll take our break now this morning for 10 minutes or so.

CLERK: All rise.

Recess

CLERK: Please be seated.

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

MR. LEARMONTH: Thank you.

Please turn to tab 11, Mr. Marshall. Which is Exhibit 00913.

Now here on June 9, 2011, your deputy minister Terry Paddon suggesting you want meeting with – to concern the MF arrangement, as it's stated. Do you recall this email?

MR. T. MARSHALL: I do.

MR. LEARMONTH: Okay.

Why did you want a meeting?

MR. T. MARSHALL: I wasn't the minister – you know, the Natural Resources minister would lead on the file and – but as Finance minister and what I had to do to do my job – I felt – I mean, I was getting briefed just like every other Cabinet minister but I just wanted to know more. You know, I didn't know a lot about the hydroelectricity industry and I wanted to learn more. I was following what some of the critics were saying in the media and I was just trying to educate myself more about this project and the industry.

And the officials in the departments I were in, they didn't have that information so when I asked for it, it had to go to Natural Resources and in many times Natural Resources would pass it on to Nalcor.

MR. LEARMONTH: So the people in your department or in the Department of Natural Resources couldn't provide you with answers.

MR. T. MARSHALL: No, I'm talking about when I was in Justice and Finance. This is when I was – this, I believe, is when I was in Finance. Yes.

MR. LEARMONTH: Yeah. So the people in Finance couldn't provide you with the information you needed?

MR. T. MARSHALL: Well, I was asking a lot of questions, and what Terry Paddon did was go to Charles Bown, who was the deputy minister of Natural Resources, and ask if they would come in or have Nalcor come in to give me a kind of a more detailed briefing.

MR. LEARMONTH: And did you have this meeting?

MR. T. MARSHALL: I believe we did.

MR. LEARMONTH: What was the outcome of it?

MR. T. MARSHALL: They gave me information and, hopefully, I absorbed it.

MR. LEARMONTH: Okay.

So was this to ask – answer questions in the House of Assembly?

MR. T. MARSHALL: Could have been. What – the date again? The date of the meeting was June 15?

MR. LEARMONTH: That's the date of the email, yes, I believe.

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: No, the date of the email is June 9.

MR. T. MARSHALL: June 9.

MR. LEARMONTH: 2011.

MR. T. MARSHALL: Yes, it could have been. There's a reference to Yvonne Jones. It could have been that, you know, I was being questioned in the House by the Opposition and they were asking questions relating to finance in terms of – if I recall correctly – in terms of questions about what equity has government put in; what equity are you putting in this year; how much have you put in so far; what are you going to be putting in in the future. So I remember looking for that information. But I don't know if it was this particular time or another time.

MR. LEARMONTH: But wouldn't Department of Finance, your own officials, be able to tell you that without meeting with Nalcor? Or ...

MR. T. MARSHALL: There might be conversations with Nalcor about what the future's going to be – future numbers. Because the equity we were doing in Nalcor, it wasn't just for the Muskrat Falls Project of course. It was for other hydro matters. And it was for their oil and gas as well. So we had to get that – how much have you got in; what's coming in this year; what – or what have you got in so far this

year; what's gonna come the rest of the year; and what's gonna come next year and the year after.

But I think that meeting was I just wanted – I just wanted to be able to question them about the industry and about – questions that may be – excuse me – as minister of Finance I wanted – you know, I was probably briefed enough to know the answers to what questions would come in my capacity as Finance minister. I just wanted to know more.

MR. LEARMONTH: At tab 12 is Exhibit 00914. And this is yet another presentation by Nalcor dated June 15, 2011.

MR. T. MARSHALL: (Inaudible) this is probably it.

MR. LEARMONTH: Do you recall seeing this document?

MR. T. MARSHALL: I would say yes.

MR. LEARMONTH: So would this be a presentation – would Nalcor have just sent this in to government or would it have been the basis for a presentation to Cabinet or caucus? Do you know?

MR. T. MARSHALL: This could have been a presentation – you know, you could see this deck in different forms. In other words, there could be other decks where a lot of the information is included and some isn't. So this could have been the one to me, the one they gave to me that I was requesting, or it could have been – it just says Lower Churchill Project. It doesn't say, you know, briefing for minister. It doesn't say briefing for Cabinet. It doesn't say briefing for caucus. It just says Lower Churchill Project deck put together by someone.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And I would suggest that, given the fact that it was only a few days after that email, it was probably for me.

MR. LEARMONTH: Okay.

In this report there's the same type of reference – like on page 31, "Robust cost/schedule estimates."

Page 41, the bottom, "Robust business case – very good project for" Newfoundland and Labrador. So –

MR. T. MARSHALL: So there's a page that was in the previous one we talked about earlier, the previous deck.

MR. LEARMONTH: Pardon?

MR. T. MARSHALL: It's the same page that was –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – in the previous –

MR. LEARMONTH: The same thing, yeah. It's just a repetition.

Was there any schedule for Nalcor to make presentations to Cabinet, like was it something that was done every month or was it just when the need arises? Or was –?

MR. T. MARSHALL: No, there would be – you know, we would get a message that they're coming in or there's gonna be a meeting in the premier's office or the Cabinet room and we'd attend.

MR. LEARMONTH: Okay.

Who would normally be at these meetings?

MR. T. MARSHALL: You would have – well, it would happen under both premiers, Williams and Dunderdale. And you would have the premier there and you'd have the premier's staff there – key members of the premier's staff would be there, like the chiefs –

MR. LEARMONTH: How many people?

MR. T. MARSHALL: In total?

MR. LEARMONTH: Yeah – no, normally, of the premier's staff.

MR. T. MARSHALL: Oh, I can name them. There'd be the deputy – the chief of staff, the premier's chief of staff, the premier's deputy chief of staff, maybe the director of operations, I think, for the premier's office, the – and the premier's communication advisor.

MR. LEARMONTH: Okay. And then who?

MR. T. MARSHALL: And then you would have the clerk, you know, the head civil servant would be there. And he or she would have them – the – maybe the assistant secretary because the clerk is the secretary of Cabinet and they would – might have the assistant secretary for energy or for Economic Policy would also be there. And in many cases, the chief communication officer for the civil service, for Cabinet Secretariat.

Then there would be – I could be there or the minister of Finance would be there, the deputy would be there, the deputy minister of Natural Resources, of course, would be there and the minister of Natural Resources. And, of course, Nalcor would be there making their presentation and that would be usually Ed Martin and he would have other people with him from time to time.

And there were numerous meetings like this and – in the premier's office, in Natural Resources and, occasionally, on rare occasions, like the briefing he did for me in Finance.

MR. LEARMONTH: Okay.

On this document, 00914, I'm just looking on page 35 and 36 where Nalcor's talking about dividends: MF and LIL cash flow on page 35 of 00914. "Dividends from both MF and LIL are available to service any Provincial debt borrowings made to provide equity."

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: And all these dividends, I just wanted you to acknowledge, will be coming from the ratepayers, is that right?

MR. T. MARSHALL: Yeah, of course. I mean, the ratepayers pay for everything in every project, not just Muskrat Falls. That's the way cost of service works; the cost of service methodology works. People who use electricity

pay for it and they cover the cost. They cover the operating cost, the cost – you know, the construction cost to build it, the operating cost to operate and maintain it. They cover the interest on the debt and they cover the return for the owner.

And – but every project is like that, and the return for the owner, if it's a private company, the owners will pocket that, that's a profit and when it's a public company, the money will go back to the owners or the people of the province.

MR. LEARMONTH: Right.

At tab 14, which is Exhibit P-00916, page 4. At the bottom, the fourth line from the bottom – or fifth line from the bottom, you ask the question – this is an interview with Pete Soucy – say: "Most of the people working at Nalcor, they are Newfoundlanders and Labradorians who are going to have to pay out of their pockets their electricity rates and their heating rates as well. Why would they mislead us? It makes no sense."

Why would you raise that question as to why Nalcor would mislead you?

MR. T. MARSHALL: Well, it was – I think it had to do with the forecasts of demand. And the forecasts of demand – and that's how it all started with – we need more power.

And the forecasts of demand were done by people in Hydro; people who had, you know, worked there for years. People who had been doing this forecast every year, this long-term forecast and short-term forecast. And I think there was criticism in the media about the forecast, and I would think these people have been doing it for so long, there's no – they would have no reason, you know, they're Newfoundlanders and Labradorians like the rest of us. They live here. They pay rates. They would have no reason to mislead us in their forecasts.

Now, they may not be accurate, but some of the negativity, some of the criticism of them, of – I just felt that they shouldn't be criticized. I'm sure that they did the best they could.

MR. LEARMONTH: You don't think they should've been criticized?

MR. T. MARSHALL: I certainly believe that the people that were working at – I’m talking about people that have worked for Hydro for years doing forecasting. I’m sure that they wouldn’t mislead us. I have every confidence they wouldn’t mislead us. I’m sure that they would do the best job they could, based on their education and based on the information they had, and based on the experts they talked to.

MR. LEARMONTH: Okay. You believed that at the time.

MR. T. MARSHALL: Yes. I still believe it.

MR. LEARMONTH: Okay.

And do you think you were ever misled by Nalcor in this whole saga, right up to the time of sanction?

MR. T. MARSHALL: As I said, I had confidence in Ed Martin, I had confidence in his team, that they were – they had a very difficult task to do; an important task to do, and I’m confident that they did the best they could based on the information they had.

MR. LEARMONTH: Yeah, but I’m asking you whether you believe that you were misled by Nalcor –

MR. T. MARSHALL: I don’t –

MR. LEARMONTH: – at any time?

MR. T. MARSHALL: – I wouldn’t think so.

MR. LEARMONTH: You don’t think you were? What about the exclusion of the 500 million strategic risk?

MR. T. MARSHALL: Well, obviously, I would be concerned about that. But, again, I’m waiting to hear what they have to say.

MR. LEARMONTH: Yeah, but if it – I mean –

MR. T. MARSHALL: If it’s correct, as you’ve said – assume that it’s correct, if it’s correct, yes, I would feel misled.

MR. LEARMONTH: Yeah. Likewise –

MR. T. MARSHALL: I wanna hear from them, right, I mean –

MR. LEARMONTH: – like – they’re gonna have an opportunity. This is not just, you know, one side. But I wanted to – I have that information, and I wanted to put it to you, and I’ve said that you can assume it’s correct. If it isn’t correct, we’ll find out in due course.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: But I suggest to you that that is an example of being misled. Not –

MR. T. WILLIAMS: Mr. Commissioner, I take some objection to this line of questioning, as I did at the interview. We pursued the same line. And Mr. Learmonth is speaking as if there’s proven fact of somebody being misled.

We have not heard if there’s – there has been a difference that something has not been included, which we all acknowledge, but the tone of the question is to suggest that there’s an intentional desire to mislead without having heard any other side, and I raised this objection with him during the interview. And I don’t think it’s a fair question to put to the witness.

THE COMMISSIONER: Mr. Learmonth.

MR. LEARMONTH: Oh, I don’t see why not. I don’t see why I can’t put that question to him.

THE COMMISSIONER: So again –

MR. LEARMONTH: He’s on the stand and I’m asking whether he believed that he was misled. I’m telling him he can assume that the fact that I put to him is correct. I don’t see any problem. I don’t see anything inappropriate with the question.

THE COMMISSIONER: I think, to some degree, the witness has already answered this question in the sense that he obviously was – would not be happy – and that’s my words – if, in fact, he wasn’t told something that he should have been told.

You know, we’re – again, we’re early in the process and, you know, I – there is sufficient evidence before me now to suggest that there is

a question about whether or not the 500 million was included – the 497 million was included. There's other numbers as well that were talked about.

So, you know, I think the idea of putting to a minister, who was in Finance or Natural Resources and/or Justice at the time, a question, and he was in government at one of the decision makers about whether or not, you know, the impact of being misled doesn't mean that he was misled, but what would be the impact of being misled. I don't think that's an improper question for an inquiry. Again, I'm trying to – this is a pretty wide ambit that is followed at an inquiry. It's not like a trial.

So, I really can't say that the question is problematic for me, so if you want to ask the question you can. I think the witness has, to some degree, answered it. But if you want to ask it, you can go ahead.

MR. LEARMONTH: Okay. Do you want me to ask the question again?

MR. T. MARSHALL: Go ahead.

MR. LEARMONTH: Okay. Assuming that the \$500 million or 497 million of strategic risk was not included in the capital cost estimate when Nalcor knew by having a document that it was a recommendation from Westney. Now, if you weren't told that, do you believe you were misled by Nalcor?

MR. T. MARSHALL: That is – if those facts are right, yes.

MR. LEARMONTH: You do. Okay. Thank you very much.

And likewise about the P1 for the scheduling. If you weren't told –

MR. T. MARSHALL: I have no recollection of the P1 at all.

MR. LEARMONTH: Well, if Nalcor had that information in their possession at the time of sanction and you weren't told about it, don't you agree that you were misled?

MR. T. MARSHALL: I would expect to be told exactly what the numbers are and what's happened.

MR. LEARMONTH: And that if you weren't you'd be misled. Is that correct?

MR. T. MARSHALL: That would be correct. Unless there was some reason I can't think of.

MR. LEARMONTH: Okay. Thank you.

Tab 17, Mr. Marshall, is Exhibit P-00043. It's the memorandum to Cabinet concerning Commitment Letter to Assist Financing of Phase One of the Lower Churchill Project. Do you have any familiarity with this document?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And what was your portfolio at the time that this document was submitted, which is – let's see – I know it's 2011.

MR. T. MARSHALL: I would've been Finance in 2011.

MR. LEARMONTH: So you would have been minister of Finance at the time this document –?

MR. T. MARSHALL: Who signed the paper? I'd assume the minister of Natural Resources signed the paper.

MR. LEARMONTH: It would have been Shawn Skinner –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – who signed it.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: So you would have been in Finance at the time.

MR. T. MARSHALL: Right.

MR. LEARMONTH: Okay.

What – can you describe to – for us the general nature of this document?

MR. T. MARSHALL: It was asking the premier to sign the commitment letter to assure the credit ratings that the government would put in the base equity and put in contingent equity necessary to bring the project to commissioning –

MR. LEARMONTH: And –

MR. T. MARSHALL: – bring it in service.

MR. LEARMONTH: And this was tied to the federal loan guarantee, was it?

MR. T. MARSHALL: This appears to be for the rating agency – oh, yes, and the Government of Canada and –

MR. LEARMONTH: (Inaudible.)

MR. T. MARSHALL: – potential lenders, yes.

MR. LEARMONTH: Okay.

Now in this letter, if we go to page 3, one of the items, if we read – look halfway down the page, the paragraph starting “In summary” – do you see that, Mr. Marshall?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: “In summary, the Commitment Letter states Government’s intent to do the following, all of which are critical for financing.” The second one: “Provide the Government investment into the Project, which includes the amount determined during the financing process (currently estimated at \$1.5 to \$2.0 billion – see Financial Considerations section for more detail) and any additional Government investment needed to address any contingencies required to ensure Project completion.”

So that’s a completion guarantee, do you agree?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

And did you have any concern about providing or voting on whether the premier should be authorized to sign such a letter?

MR. T. MARSHALL: In a project like this, you know, it’s always the case that your banker is only going to provide you with so much money. In this case, Nalcor’s the banker – or your subsidiary’s money. Or a company you own – provide them with money. And the owner has to come up with the rest, the equity.

And the banks will always tell you, you have to come up with the equity and if there’s any overruns before you’re finished, you’re gonna have to come up with that and it’s – and that was the case here. And if that – and if there were overruns and Nalcor couldn’t arrange financing somewhere else, then government would have to come up with the money to bring it to completion. That was the commitment given.

MR. LEARMONTH: Well, before the commitment letter was signed, was – to your knowledge, when you were minister of Finance, was there any discussion with Nalcor as to whether there was any exposure at that time which would trigger payment by government of contingent equity?

MR. T. MARSHALL: What’s the date on this again – 11th?

MR. LEARMONTH: Yes. Before October – I’ll get you the exact date if you’ll just give me a second. I know it’s – I think it’s August 2011, but I want – August 31, 2011. That’s on page 8.

MR. T. MARSHALL: So this would have been – this would – in August?

MR. LEARMONTH: August 31. So yeah, the end of August.

MR. T. MARSHALL: Okay.

So it was just before the election.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: On the 11th. And it was after the term sheet. We would have been satisfied that the province could come up with its – I mean, we were in a good financial position at the time. We had a strong cash position. I think we had enough cash we could have paid it ourselves.

But in terms of estimates, we – knowing that there, in the future, there could be estimates, there could be underestimates – or, I'm sorry, you know, it could go below estimates. And not being able to see the future or predict the future, you don't know and you have to be satisfied that, you know, you've got a good estimate and that the risk analysis is appropriate.

MR. LEARMONTH: Okay.

But did you discuss this with Nalcor to, you know, to find out whether they had – they were able to foresee or had incurred any matters that might be required to be covered by this commitment?

MR. T. MARSHALL: We would discuss that. That would come up very often as part of general discussion, you know. What do you think? How's it going? How does it look? And Mr. Martin would tell us, you know, about how – what they're doing to try to de-risk the situation. And how they're dealing with potential labour matters that would come up.

Yes, there were discussions.

MR. LEARMONTH: On an ongoing basis, were there?

MR. T. MARSHALL: There was numerous discussions about what the risk – what are the risks? You know, like the rock knoll or the north spur. There were concerns about a hot market. The interest rate was going to offset the – you know, the guarantee was going to upset a lot of that – or offset a lot of that.

But obviously, there were concerns, these are the risks and they would say how they were going to manage them. And, I mean, some you had to accept, and they would go in the estimate. Others you could try to avoid, like a hydro project is – we've been building hydro projects in this province for over a hundred years, so they're kind of tried and true, rather than doing some new technology that would be more risky.

The fact that labour was in demand in Alberta and on the Hebron project as well, that came up a lot. We discussed SNC-Lavalin because there were concerns about things happening in other

places, like in Africa and in Montreal, where there's allegations of bribery and whatnot.

So there were constant discussions about things like that.

MR. LEARMONTH: Well, were you – you speak of SNC-Lavalin. Were you aware that the EPCM arrangement with – between Nalcor and SNC-Lavalin had been changed well before DG3?

MR. T. MARSHALL: No, I was –

MR. LEARMONTH: Or, excuse me, before project sanction, I should say.

MR. T. MARSHALL: No. I was aware of that – I became aware of that afterwards.

MR. LEARMONTH: Yeah. Would have that given you any concern? I mean, you said earlier that, you know, part of your reliance on the capital cost figures, I understood you to say, was based on the expertise provided to some extent by SNC-Lavalin?

MR. T. MARSHALL: Well, I knew – the – reading the Grant Thornton report, I knew that, you know, SNC-Lavalin and the project team had done the base estimate, and I knew that that the – and Validation estimating had called it one of the best estimates they had seen in some – in quite a while.

MR. LEARMONTH: That's the base estimate you're talking about?

MR. T. MARSHALL: That was the base estimate, yes.

MR. LEARMONTH: It's not the risk assessment?

MR. T. MARSHALL: No, I understand the risk assessment was done by Westney.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Who were somebody that they had put in the original risk management scheme they had in their – into government shortly after they were incorporated.

MR. LEARMONTH: And were you aware that SNC-Lavalin played no role in the risk-assessment part of the DG3 numbers?

MR. T. MARSHALL: I knew that Westney were doing the – did the risk assessment.

MR. LEARMONTH: Did you know that DG3 had no part in the preparation of the risk assessment for the DG3 numbers?

THE COMMISSIONER: Sorry. You might wanna just repeat that, because I think you just said DG3 twice. You mean SNC?

MR. LEARMONTH: SNC, yeah. That SNC played no role in the risk assessment for the DG3 numbers.

MR. T. MARSHALL: Well, they had Westney, and I understood Westney to be a well-known American risk analyst company. And no, I would have been satisfied.

MR. LEARMONTH: Yeah. But – did it give you any concern that Nalcor that SNC's role – it was originally an EPCM contract –

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: – right?

MR. T. MARSHALL: Yeah, we ...

MR. LEARMONTH: Okay. And that role changed well before sanction.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: Whereby an integrated management team was –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – replaced – was substituted for the prior arrangement –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – between Nalcor. Were you aware of that?

MR. T. MARSHALL: I was aware that later in – because when I became minister in January of

'13 – this was after sanction. It was in – sometime in '13 that I became aware that they had changed the model.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: And the model – I mean, I had heard of an EPCM previously, because I had read Philip Smith's book about the Upper Churchill. And it talked about the EPC contractor, but I was not aware about what this integrated project management system was, so I looked it up.

MR. LEARMONTH: Yeah.

No, but the role of SNC-Lavalin changed before sanction.

MR. T. MARSHALL: From EPCM to –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – this integrated –?

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And you weren't aware of that –

MR. T. MARSHALL: No.

MR. LEARMONTH: – before sanction?

MR. T. MARSHALL: No.

MR. LEARMONTH: Would that give you any concern, that this, you know, well-known company with lots of experience in hydroelectric dams –

MR. T. MARSHALL: Well–

MR. LEARMONTH: – their role had been changed?

MR. T. MARSHALL: If it had come up, I would have at some point asked Mr. Martin: Why the change? And – which I did do later when I became aware of it.

MR. LEARMONTH: But not before sanction?

MR. T. MARSHALL: Not before sanction.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: And he explained why he did it, and it made sense to me.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: That you took your contractor, and you put your – you know, they're working for your project team. And what you did here is you put – take everybody to – take the best from your project team; you take the best from SNC-Lavalin; put them together as one team all pulling on the same oar. So I didn't have any reason to be concerned about that.

I mean, they're – I assume that SNC-Lavalin were doing the same work. In one case they were doing it as a contractor or contract manager and on the other case they're doing it – the same work but as part of the team, and they're still getting paid.

MR. LEARMONTH: Well, you're not suggesting that with this change to an integrated management arrangement that SNC was doing exactly the same work that they were doing before their role was changed –

MR. T. MARSHALL: I wouldn't –

MR. LEARMONTH: – are you?

MR. T. MARSHALL: – know enough about the difference –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – between the two methodologies or the –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – two methods of managing a building project. But I mean, you know, on the one hand, they're the contract manager, and they're being paid, and on the other hand, they're part of your team. I would think they would be doing the same work. They're getting paid there, too.

MR. LEARMONTH: Well, why would there be any point in changing the structure then –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – if SNC was doing the same thing after the change?

MR. T. MARSHALL: I mean, I don't know, but it's – you know, it's possible that they were working in two different places. Maybe they were – maybe Nalcor didn't feel that they were working closely together enough. Maybe the idea was to get everyone together and make sure everybody was aligned and on the – heading in the same direction.

MR. LEARMONTH: You're just guessing, right?

MR. T. MARSHALL: I'm – I don't know.

MR. LEARMONTH: You're guessing.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: So please don't guess.

MR. T. MARSHALL: Okay, I won't.

MR. LEARMONTH: But I think you can say – can you say you don't know?

MR. T. MARSHALL: I don't know.

MR. LEARMONTH: Okay. Thank you.

Tab 20, Mr. Marshall. This is an information note from Natural Resources.

MR. T. MARSHALL: Tab 20?

MR. LEARMONTH: Yes, please. It's Exhibit 00921.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: And it's a December 21, 2011, information note about the JRP – the Joint Review Panel – report.

Now, first, were you – what involvement, if any, did you have in the – generally in the Joint Review Panel report? Well, the report – the Joint

Review Panel hearings and recommendations and so on?

MR. T. MARSHALL: None.

MR. LEARMONTH: Zero?

MR. T. MARSHALL: Zero.

MR. LEARMONTH: Okay. So the – just to make sure – who – were you consulted, or was your department consulted, on the responses to the numerous recommendations contained in the Joint Review Panel report?

MR. T. MARSHALL: There's – one of the recommendations – number 4.1 – talked about "confirmation of projected long-term returns."

Now, this was a Natural Resources paper, and I would assume – I don't know, but I would assume there would be some discussions with Finance. I mean, Finance and Justice, just about everything that came up somebody might be consulting with officials in those two departments.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But I don't know for sure. But I would make the assumption that there was discussions.

MR. LEARMONTH: You're guessing, are you?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah, okay.

Now, the – on page 3 there's a – of 00921 – there's a "*Recommendation 4.1 – Government confirmation of projected long-term returns.*" And then there's the recommendation which the government didn't follow. You can just have a look through that.

The recommendation that "if the Project was approved, before making a sanction decision ... the Government of Newfoundland ... undertake a separate and formal review of the projected cash flow of the Project component being considered for sanctioning," et cetera. If you want some time to read that you can.

But anyway, the response of the government was: "The Government of Newfoundland ... accepts the principle that a review of the Project's financial viability is required prior to sanction, but does not support the Panel's assumption that the information provided by the proponent was" adequate [sp 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 ... people of the Province."

So do you know why government didn't follow that recommendation?

MR. T. MARSHALL: I do not.

MR. LEARMONTH: And did you – when did you first become aware that government had prepared this response?

MR. T. MARSHALL: At some point I must have been given a copy of this paper. And I would have read the paper.

MR. LEARMONTH: You mean during the work of the Commission?

MR. T. MARSHALL: I, no, I –

MR. LEARMONTH: When's the first time –

MR. T. MARSHALL: Again, the – no, I would have seen it. It was an information note from Natural Resources. So it's possible that I saw it when I was finance minister.

MR. LEARMONTH: But you don't know?

MR. T. MARSHALL: I don't remember.

MR. LEARMONTH: You don't remember?

MR. T. MARSHALL: No.

MR. LEARMONTH: Okay. Fair enough.

There's a document at tab 21 that's Exhibit P-00922. Now this is – I think we discussed that. It's – this is a document prepared, approved by W. Tymchak, Department of Finance, M. O'Reilly, Department of Finance and K. Hicks, Department of Finance.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: This is – their names appear on this January 19, 2012 document on page 6.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. Are you familiar with this document?

MR. T. MARSHALL: I remember seeing that document, yes.

MR. LEARMONTH: When?

MR. T. MARSHALL: Well I guess – what's the date on it? Must have been sometime in 2012.

MR. LEARMONTH: You remember seeing it? Back then?

MR. T. MARSHALL: I remember reading that document, yes.

MR. LEARMONTH: Okay. And what did you do with it?

MR. T. MARSHALL: Well I also recall asking what do I do with it because I – it was an information note where they were – they had reviewed some papers that Dr. Vardy had written and Jim Feehan and Dr. Locke. And Dr. Feehan, I should say. And then at the end they gave me their opinion.

And I think – I think I had a discussion with the assistant deputy minister about well, what do they want? Do they want to meet with me to discuss it? And the answer was no, they didn't want to meet with me. They just were giving me their views. And I read them. And I read them and they didn't want to come up to see me, and I would say thank you for your opinion.

MR. LEARMONTH: So you have a distinct recollection of that, do you?

MR. T. MARSHALL: Yeah. My recollection is I didn't know what to do with it. I didn't know what's the next – what do they want? Did they want to come in and talk about it or ... And it was no, they just wanted me to have it.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: So I do recollect that.

MR. LEARMONTH: Did you read it?

MR. T. MARSHALL: I did.

MR. LEARMONTH: Okay. Well, let's just go to the conclusions on page 5.

MR. T. MARSHALL: Sure.

MR. LEARMONTH: Conclusion – the second paragraph, under the heading "Conclusion":

The current review process of Muskrat Falls, and the Lower Churchill potential in general, is too narrow in scope to be informative in any meaningful way. The current review being undertaken by the PUB only considers Muskrat Falls versus an Isolated Island Option with the development of small hydroelectric, wind and thermal-generating projects on the island as needed. The scope of independent review should be expanded, to include all possible options to supply Newfoundland and Labrador with the lowest electricity prices to meet future demand, which could include et cetera, et cetera.

Did you agree with that recommendation or disagree with it – or with that conclusion, I should say?

MR. T. MARSHALL: I would have disagreed that doing the – I mean, I had requested a full review, but referring the – this question to the PUB, I thought these were the two main ones, these were the least-cost options and that the PUB would properly deal with it and determine what was the least-cost option – consistent with reliable service.

MR. LEARMONTH: So – but you favoured a wider review; is that what you're –

MR. T. MARSHALL: Well, I did, because I had asked previously for it, right – the – you know, the thing we talked about before when Shawn Skinner and I signed the paper to – I guess that was in May '11 – March '11.

MR. LEARMONTH: May 11 –

MR. T. MARSHALL: May 11, and (inaudible)

—

MR. LEARMONTH: May 2011.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So it went to the PUB, and I was satisfied that Nalcor had screened out – the ones they had screened out – that they – it was reasonable for what they had done, and these were the two main ones. And a decision had to be made and the PUB certainly would be a good place to deal with it.

MR. LEARMONTH: But, originally, you thought it should be a wider review?

MR. T. MARSHALL: That was the suggestion we made, yes.

MR. LEARMONTH: Yes.

But what about natural gas? You said Nalcor excluded certain things, and natural gas was one of them?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: So what information did you have that supported the exclusion of natural gas?

MR. T. MARSHALL: Well, there were – Minister Kennedy had reports done on natural gas – concerning – I think there were two reports – one dealing with natural gas offshore and one dealing with liquefied natural gas. And I understand both of those said it wasn't a reasonable option for the province.

MR. LEARMONTH: The – but then after – in October 2012, there was another report made by Ziff, but if government had already concluded that it was proper to exclude natural gas, why would another report have been necessary?

MR. T. MARSHALL: I – again, I'm not the one – I wasn't the Minister of Natural Resources. I didn't call for those reports. You'll have to talk to Natural Resources about that.

MR. LEARMONTH: Okay, you don't know.

MR. T. MARSHALL: I don't know.

MR. LEARMONTH: No, okay.

And then these three gentlemen say: "By limiting the scope and time for the PUB to conduct its independent review and maintaining Lower Churchill's exemption from the purview of the PUB government is abdicating its responsibility to the people of Newfoundland and Labrador to do everything in their power to provide them with the highest standard of living and greatest degree of economic opportunity at the lowest cost and least risk, which are not equivalent."

Any comment on that? What is your reaction to that? You read it at the time; did you have any reaction to that statement?

MR. T. MARSHALL: The – I did not agree that the full purview – that – I was satisfied that the review that the PUB was asked to do was the question that we needed answered.

MR. LEARMONTH: So you didn't agree with that comment?

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

And then: "To ensure government is fully insulated from criticism and, more importantly, is absolved of any responsibility (to the extent that all current information allows) for potentially saddling the people of Newfoundland ... with a massive unnecessary debt burden, government should delay a decision" –

MR. T. MARSHALL: I've lost –

MR. LEARMONTH: Bottom of page –

MR. T. MARSHALL: Okay.

MR. LEARMONTH: – bottom of page 5.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: Do you have (inaudible)?

MR. T. MARSHALL: Yeah okay. To ensure – okay, I’ve got it – I got it.

MR. LEARMONTH: You got that?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: – “should delay a decision ... for 1-2 years to allow a full assessment of alternatives and a complete analysis of the potential burden to taxpayers if development of Muskrat Falls has substantial cost overruns.”

What was your reaction to seeing that comment?

MR. T. MARSHALL: Well, it was fair comment.

We can’t insulate government from criticism. Government will always be criticized by somebody but the concern about the debt would obviously be a concern. But we were – as I said, we were – and the delay for one or two years, we – this all started with us being told that there was a need for power and if we didn’t get the power by a certain date that there were going to be outages. There were going to be outages, I think, by 2015 at peak times and there were going to be outages post-2020 or 2019 – that there were going to be outages all the time. Or –

MR. LEARMONTH: Who supplied that information to you?

MR. T. MARSHALL: Nalcor.

MR. LEARMONTH: Yeah, Nalcor. Yeah.

MR. T. MARSHALL: Or Hydro – or Hydro. I think it –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – it came from the generation planning or forecast load from officials in Hydro.

MR. LEARMONTH: Right.

MR. T. MARSHALL: So to wait two years to allow the further assessment of alternatives, that had consequences. So I think we – you know, having that report on our desk and if we didn’t

do something, you know, and we had the outages people would be saying: You knew we were going to have outages, why didn’t you do something about?

So if you waited two years that would be – well, this report, this opinion was delivered in 2012, two years later would be 2014; if you make a decision then, then you got to build it, we’d be well past the outages – the time when these outages were supposed to start. So I didn’t agree.

MR. LEARMONTH: But they – those outages or the load projections never panned out, did they?

MR. T. MARSHALL: Well, there’s concern expressed given the age of Holyrood, you know, it’s some of the – I don’t know if all the units, but they’re well passed their useful life. And I think there was something – I only read it in the paper, but something recently about concern that there’s going to be – there’s not enough – they may not be able to handle the demand this winter.

MR. LEARMONTH: (Inaudible) –

MR. T. MARSHALL: And again this was then and you’re predicting, you know, so you’ve got to go on what –

MR. LEARMONTH: Right.

MR. T. MARSHALL: – you’re told and –

MR. LEARMONTH: I know.

MR. T. MARSHALL: – they were telling us this was going to happen. I had no reason to disbelieve them. And again, we had it on our desk and people would say later on: You knew this was going to happen; you did nothing about it.

MR. LEARMONTH: All right. Tab 22.

MR. T. MARSHALL: Is there more? There’s more, isn’t there? In the conclusions?

MR. LEARMONTH: Oh, okay. Do you want to speak to –?

MR. T. MARSHALL: They said it's critical to pursue to build the link. Critical to build the link; I agree with that.

And they also talked about waiting for – it's not here, maybe it's at the top of the conclusion.

MR. LEARMONTH: Next page we can turn that up –

MR. T. MARSHALL: No, no. I think it's – waiting for 2041 – waiting until 2041.

In other words, this was the Isolated Island Option, to do some hydro – to kind of patch Holyrood, to try to keep it going and conservation management. And it was, as I said, it was described to me as the muddle through to 2041 when all this power would be available. And to me there was risk in doing that. And the risk was that the thermal – you're still relying on thermal for those, what, 20, 25 years – or whatever it is. And I didn't think – I thought that was too big a risk to rely on that thermal. And you're burning, you know, you're burning oil, you're putting greenhouse gas emissions up into the air.

And there was a big question whether that power – I know everybody thought that there would be this cheap power available in 2041, but that's not the case. That's not the case. So that's why I didn't agree with that.

MR. LEARMONTH: Okay.

Anything more you want to say on that document, Mr. Marshall?

MR. T. MARSHALL: No, that's it.

MR. LEARMONTH: Okay. So you met with those three gentlemen?

MR. T. MARSHALL: No, no. I –

MR. LEARMONTH: (Inaudible) as to whether –

MR. T. MARSHALL: – asked if they wanted the meeting. I would've met with them. I'd be happy to. But it was no – this is just opinion – that these, you know, officials in the government they wanted me to be aware of, and I was

appreciative of receiving it. And – but I didn't necessarily agree with everything they were saying. But I did agree with some of what they were saying, obviously. Obviously they pointed out, once again, something we knew and always considered was the risk of the big debt, large debt.

MR. LEARMONTH: Okay, now tab 22 is a – Exhibit 00923: Muskrat Falls Technical Briefing, March 28 and 29.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Do you know whose handwriting is on this?

MR. T. MARSHALL: No, I don't. It's not mine.

MR. LEARMONTH: So this is another technical briefing. Would this have been requested by government or Nalcor?

MR. T. MARSHALL: I really can't remember. There were so many of these, right?

MR. LEARMONTH: Yeah. I was going to ask you: Why were there so many of these? There's – it seems like it's a lot of repetitive information. Do you know why?

MR. T. MARSHALL: Some of them can be, you know – sometimes they may brief the premier and then brief the Cabinet two days later and brief the caucus the day after. Sometimes that would happen.

MR. LEARMONTH: Yeah. I just note on – I'm not gonna question you on it, but page 3 there's a reference to the Titanic, which is – I don't know if it's ironic or not but there is a reference there to the Titanic. The –

MR. T. MARSHALL: Well, we'll know 50 years after it – now won't we?

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: That's when we'll know. Everything now is talk and estimates and projections. What happens, we'll know at the end.

MR. LEARMONTH: We'll know it sometime for sure, Mr. Marshall.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: At page 34 of this document, 00923, there's reference to a \$602 million upgrade, or whatever you want to call it, at the Holyrood facility.

MR. T. MARSHALL: Right.

MR. LEARMONTH: And this figure, as I understand it, was put into the CPW analysis which would've driven up the cost of the Isolated Island. But the information I have – and I stand to be corrected – is that this work was not necessary in order to comply with existing environmental standards. So it wasn't something that had to be done?

MR. T. MARSHALL: Yeah, I knew the precipitators and scrubbers – that had to be done.

MR. LEARMONTH: Well, I think there was an – I'm suggesting to you that there was an – that this work was not required to comply with existing environmental laws and regulations.

MR. T. MARSHALL: Even the first one?

MR. LEARMONTH: And you could correct me on –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – that – yeah. But –

MR. T. MARSHALL: Another –

MR. LEARMONTH: – there was a \$600 billion [sp million] input into the CPW analysis for the Isolated Island to upgrade the Holyrood facility and I'm asking you whether you have any comment on the position that I put forward? That it wasn't necessary to do this work; it was just optional?

MR. T. MARSHALL: I think there may have been a political commitment to do something

about Holyrood and the stuff that was coming up in the air, you know, and the – so the precipitators, I think, either that was gonna be done or we were gonna replace Holyrood. That's my only comment.

MR. LEARMONTH: All right. Thank you.

Next, please turn to tab 23, Exhibit 00924.

MR. T. MARSHALL: Twenty-three.

MR. LEARMONTH: Now this is a –

MR. T. MARSHALL: I don't think I have that.

MR. LEARMONTH: 00924 –

MR. T. MARSHALL: Oh, yeah. Yeah.

MR. LEARMONTH: Now there's a – this is an email exchange between Ed Martin and Vic Young. And I just wanted to – I know that you recommended an independent review, and we'll get back to that later, but do you see at the bottom of – at the top of page 2 of Exhibit 00924, Victor Young – you know Victor Young, do you?

MR. T. MARSHALL: I certainly know of him.

MR. LEARMONTH: Yeah. But do you know he is a very –

MR. T. MARSHALL: Former president of Hydro.

MR. LEARMONTH: Excellent reputation and –

MR. T. MARSHALL: Yes. Director of the Royal Bank, I believe.

MR. LEARMONTH: Yeah. Experienced in – not only in – as president, or – of Hydro, but also senior civil service, I believe he was –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – clerk and – or maybe deputy – anyway, a very senior person.

MR. T. MARSHALL: Right.

MR. LEARMONTH: And he's writing here – this is March 29, 2012. This is to Ed Martin:

“This is very helpful in wrapping my mind around all the important risks to the Province of proceeding. The attached is my rather simple summary, recognizing that all numbers are subject to change. Mentally, I add a 30% cost overrun (\$1.65 billion) and take off \$500 million for the anticipated federal ‘guarantee equivalent’ and come up with \$6.65 billion to be financed by the Province/Nalcor in the bond market or from budgetary surpluses over the next five or six years. In the end, it is the people's money that will be financing a high cost/high risk project which will not start producing power before 2016 and will be redundant by 2041...less than a 25 year life with probably a 50 year plus playback! These are the kinds of numbers that need public understanding and debate. I would appreciate your view on their ... accuracy.”

Now, that's (inaudible) and that – would you have any comment to what Mr. Young was saying there? I mean, here's an experienced person, respected person known for good judgment, I would suspect, and he's adding on a 30 per cent cost overrun.

Does that give you – did you see this email?

MR. T. MARSHALL: I don't –

MR. LEARMONTH: No.

MR. T. MARSHALL: – think I've ever saw (inaudible) –

MR. LEARMONTH: No. But does that give you any –

MR. T. MARSHALL: I saw it, what, yesterday or today –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – or the day before.

MR. LEARMONTH: Did you have any comment on what he's saying here – and then I'll – let me finish the whole part of it. The next paragraph:

“Given the magnitude of the numbers, it is imperative that the potential impact on the fiscal position of the Province be at the top of the decision making chain...even more important than power rates at this stage. It is the Province that needs the potential financial consequences independently assessed” – and then in brackets – “(independent from Nalcor) and it is this independent financial review that should be tabled and debated in the House of Assembly so that the people of the Province do not end up with a big negative fiscal surprise, as they did with Churchill Falls. Government must, therefore, be brutally frank and transparent about the potential fiscal risks and presumably Tom Marshall will start that process in his upcoming budget...just a personal view!”

Do you –

MR. T. MARSHALL: (Inaudible) – sorry.

MR. LEARMONTH: Do you – he refers to you in this, but you say you never saw the email.

MR. T. MARSHALL: I can't recall seeing this email.

MR. LEARMONTH: You can't?

MR. T. MARSHALL: No.

MR. LEARMONTH: Do you have any comment on what he – what Mr. Young is saying here?

MR. T. MARSHALL: Well, again, I have the same opinion of Mr. Young as you do. I wish it had been sent to me – if it has not been sent to me. I think it echoes what Mr. Skinner and I did in March of 2011 when we asked for (inaudible) we think was similar. But government decided to go in a different direction of the PUB, as you know.

MR. LEARMONTH: Yeah. Well, anyway we'll get back –

MR. T. MARSHALL: He points out that later – he points out the consequences of the high debt. And that was obviously something that we took in consideration, but we also took other factors into consideration – particularly the cost – the cost of what the rates would be to the ratepayer.

MR. LEARMONTH: But it's almost when you – when one reads it, do you agree that it's right on the mark, given what has happened?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

Okay, tab 24, Exhibit 00925. This is the formal agreement –

MR. T. MARSHALL: I just – you know, I've got to make the comment, I – you know, if Mr. Young felt that way, and was using my name in that way, I would wonder why he didn't contact me; suggest that to me. 'Cause I don't think I saw this.

MR. LEARMONTH: Yeah. Well, I respect your point, but one also could ask why it wasn't forwarded on to you.

Tab 25, is another document from Nalcor: DG3 Alignment Session, August 3, 2012.

THE COMMISSIONER: 00926.

MR. LEARMONTH: 00926, yes.

Do you recall ever having seen this document before the Commission?

MR. T. MARSHALL: Sorry, would you repeat the date of this?

MR. LEARMONTH: August 3, 2012. It's on – it's at tab 25.

MR. T. MARSHALL: It's not my writing there.

MR. LEARMONTH: But did – you know, in some of the earlier documents, I think you said it would've gone to Cabinet or whatever –

MR. T. MARSHALL: Not all of them. Some of them just would've been briefings of the minister, the Natural Resources minister.

MR. LEARMONTH: Yeah. Well, I can't help you on that, unfortunately.

MR. T. MARSHALL: Yeah. I don't recall it. I mean, information in here is things that I

would've been told at some point. But I could've seen it, but I ...

MR. LEARMONTH: I think the writing looks to be that of – like I'm looking at page 4 and 5 – Jerome Kennedy. Is that ...?

MR. T. MARSHALL: I wouldn't ...

MR. LEARMONTH: I'll retract that if I'm wrong, of course, but it looks like his.

In any event, on page 5 of Exhibit 00926 – if you could turn to that – see it says: Anchoring back to DG2, March 30, 2012. And then on the right it says: Notes, excludes IDC and then, two, includes contingencies and escalation.

But at 6.2, it doesn't include the strategic risk.

Do you see that?

MR. T. MARSHALL: Yes, I – (inaudible) –

MR. LEARMONTH: 'Cause it says it includes contingency –

MR. T. MARSHALL: – 6.2 – that 6.2 number is the one (inaudible) –

MR. LEARMONTH: The one that was used, yeah.

MR. T. MARSHALL: It excludes the IDC, which I knew was (inaudible) –

MR. LEARMONTH: Which we knew, yeah.

MR. T. MARSHALL: – 1.2.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And includes contingency and escalation.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So there's nothing there that would jump out and say there is a particular risk that was left out.

MR. LEARMONTH: No, that's right. But if it didn't include strategic risk, do you agree that it would not be an accurate statement?

MR. T. MARSHALL: I do, if it does truly not – if it's truly not in there.

MR. LEARMONTH: Then you would agree with me?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah, okay.

Now, we talked a little bit about, you know, this P-factor – I don't want to dwell on it – but did I hear you correctly that you weren't – you didn't have any working knowledge of what a P-factor was at any time up to sanction of this project?

MR. T. MARSHALL: That's right. No knowledge at all.

MR. LEARMONTH: So in all these discussions with Nalcor and all the presentations, the subject of the P-factor never arose? Is that what you're saying?

MR. T. MARSHALL: I don't recall it. I – all I recall would be talk about contingencies and total amounts – and escalation.

MR. LEARMONTH: Pardon?

MR. T. MARSHALL: There would be a percentage, I should say, for contingencies.

MR. LEARMONTH: Okay. If you can go to page 17 of 00926.

It says, "What does this mean for DG3?" And we know we're talking about the 6.2 billion, right? This estimate does not include: Incremental tax revenue, so that's a positive; return of equity; net NL labour and business income benefit of 500 to 600 million; use of PIRA expected price forecast vs PIRA reference case as per ...

And I suggest to you, if there was nothing in the 6.2 for strategic risk, that wasn't included either and should've been listed on this. Do you agree?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Now, this is Nalcor reporting to government, I mean, it's a Crown corporation and they're talking about – they're

suggesting, later on in the document, how government should do the – quote – messaging for this, for the Muskrat Falls Project.

I mean, isn't it up to government to do messaging, not Nalcor?

MR. T. MARSHALL: Yeah and I would – I'd go back to comments I made earlier about – that Nalcor were part of the government; they were like a department. And they were given a mandate in a – you know, from the energy policy to do this project, to gather the resources necessary to do it and to do it. And it was a major, major project.

So they had so many people working there, so many different – you know, they had their lawyers, they had their accountants, they had their engineers, they had their communications people. So, no, in this particular case, it's not unusual for the communications people in a department of government to make recommendations on messages. I would not have thought it odd. If they were strangers to us, if it was some company we didn't know who were doing this project, then, yes.

MR. LEARMONTH: Well, one – what my question whether this – you know, this thing about messaging is a further example, or an example of there being no separation between government and Nalcor to speak of.

Do you agree with that?

MR. T. MARSHALL: Well, the oversight – the responsibility for energy policy rests with Natural Resources. And I said earlier that the PUB was an instrument where Natural Resources, or the government, implements its energy policy. Hydro and Nalcor were – would be another one.

I mean, you know, years ago it was only the private sector that would do these projects. Then, the government started doing the projects because government wanted, you know, to try to control what the rates were and that the return would then come back to the people of the province instead of going to these investors.

MR. LEARMONTH: We turn to page 20, and that's preceded by page 19 of 00926, which is

under the heading: Issues and Messaging, Additional issues requiring discussion. The first one: “Strength of ‘Quebec’ messaging.” What’s that?

MR. T. MARSHALL: I don’t know.

MR. LEARMONTH: No idea?

MR. T. MARSHALL: Well, I mean, I can just speculate. And the last time I did that you said: You mean you don’t know? And I don’t know.

MR. LEARMONTH: You don’t know.

So when you read that, you’re a Cabinet minister, you’d question what are they talking about?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Okay.

And then: Release of capital costs on page 21. So why would Nalcor –

MR. T. MARSHALL: Wait, I don’t have that yet.

MR. LEARMONTH: Twenty-one of 00926?

MR. T. MARSHALL: Yes, okay.

MR. LEARMONTH: So what business would it be of Nalcor to advise government on when to release the capital cost?

MR. T. MARSHALL: Not their business at all.

MR. LEARMONTH: Hmm?

MR. T. MARSHALL: It wouldn’t be their business at all.

MR. LEARMONTH: Yet it was done?

MR. T. MARSHALL: It was done.

MR. LEARMONTH: Yeah. Do you find that unusual or striking?

MR. T. MARSHALL: I do, yeah. That I do.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I mean government has to be transparent and open. You know, if government is going to do a program or project it has to disclose it.

MR. LEARMONTH: Yeah.

And then on page 23: Release of capital costs, Methodology: “Order of magnitude in a speech, with appropriate commentary; Full cost details in a news conference; Full cost details + CPW in a news conference.” I mean isn’t – aren’t these items that government should decide on its own?

MR. T. MARSHALL: Again, they’re making recommendations to government as a part of government’s team. And I guess the Natural Resources and the people – the communications people in Natural Resources would put their own slant on it.

MR. LEARMONTH: And then page 27 – well, page 26 they’re talking about the “Strength of ‘Quebec’ messaging.” You don’t know – have any idea what they’re talking about there, do you? That’s page 26 of 00926 under the heading: Additional issues requiring –

MR. T. MARSHALL: I guess the idea that this project is a way around Quebec which is not the real intent of the project. The project – this was just a hydro project for the citizens in the province. That’s what it was. It stood on its own even if you didn’t sell the surplus power because it could make more power than we needed.

But because of the arrangement with Emera, because of the Link, we can now sell power into the US without going through Quebec because to do the Upper Churchill, to do Gull, we had to get through Quebec. And so maybe they would be saying emphasize that particular point.

Although, it bears mentioning that the recall power, there was an arrangement made between Premier Tobin and Bouchard, I think, about 250 megawatts of transmission so that the recall – some of the recall power could go down and be sold in the US.

MR. LEARMONTH: Yeah.

So that’s what you think Quebec messaging means?

MR. T. MARSHALL: The fact that we're getting around the fact that we're blocking Quebec, because we are being blocked in Quebec.

MR. LEARMONTH: Yeah, but how is that relevant to the Muskrat Falls sanctioning decision? I mean a decision has already been made to go ahead with Muskrat Falls. What place does that have in the discussion at the time of sanction or near the time of sanction?

MR. T. MARSHALL: So this is before sanction or after?

MR. LEARMONTH: Before. This document is August 3, 2012, so it's, you know, five – say, five months before sanction.

MR. T. MARSHALL: Again, this is a product for the – for domestic and – this is for the province. This was not export, except that rather than spill the water and get nothing for it, we now, with Emera and Nova Scotia and New Brunswick – we can get the product, get it through to the US and sell it in the Maritimes.

So – and that could auger well maybe in 2041 when – you know, considering that the link and the – the Maritime Link and the LIL – they'll be upgraded at some point and with more capacity. This could auger well in the – help the negotiations when the Upper Churchill contract – power contract does come to an end in 2041.

MR. LEARMONTH: So then further, starting on page 27, Nalcor is giving you advice on how to structure the House of Assembly debate? Do you find anything unusual about that? I'll ask the same question: What business is that of Nalcor?

MR. T. MARSHALL: Well, I guess they were attempting to be helpful. But, you know, I don't think anyone – that's something – debate – timing of debate is something that, you know, the Members of the House of Assembly, the parties, they agree to things like that, right? So ...

MR. LEARMONTH: But wouldn't someone like the House Leader say what are they –

MR. T. MARSHALL: Yeah, exactly.

MR. LEARMONTH: What are they talking about this for?

MR. T. MARSHALL: Well, if the House Leader actually saw this, is the –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – question.

MR. LEARMONTH: Yeah. Okay, fair enough. But you expect that if you were the House Leader and you got this that you'd have some kind of reaction, would you?

MR. T. MARSHALL: I would say I'm gonna do what I want to do. I'm gonna do what I negotiate with the leaders of the other parties and I don't care what they say.

MR. LEARMONTH: Right.

MR. T. MARSHALL: But, you know, in government you have a lot of people who – you know, they make suggestions. They make – if they don't like their terms of reference, they'll suggest to make them broader.

MR. LEARMONTH: Yeah.

And, then, if we go to page 31, there's a phrase there that I'd like you to look at. And that's on the bottom: Hit squad. What on earth is that?

MR. T. MARSHALL: We don't have those in our party. I have no idea what that is.

MR. LEARMONTH: Well, it says – you know, here it is, plain as day.

MR. T. MARSHALL: It's, I guess, getting people to hit the Grimes deal in 2003.

MR. LEARMONTH: Well, it says – and it's used other places too, it's not just the Grimes deal. It's hit squad including Grimes deal. And then you go to page 32 and it puts in sampling – sample messaging.

And then you go to page 34 and it says – of 00926 – House of Assembly debate, "Sample messaging for hit squad: The Liberals have no credibility when it comes to the Lower Churchill, and neither do the NDP. Their own

federal parties support it. They are just interested in opposing for the sake of opposing it.” Now –

MR. T. MARSHALL: There was – I certainly wasn’t aware of the existence of any hit squad. In response –

MR. LEARMONTH: Well, I don’t think – you know, I’m not trying to –

MR. T. MARSHALL: No.

MR. LEARMONTH: – suggest that it was some kind of a physical group or –

MR. T. MARSHALL: No, I know that. I know, I know.

MR. LEARMONTH: But I just find – I just suggest that the use of the term in, you know, in the context of a recommendation to government to put out a message on the Muskrat Falls Project is – I’ll be generous to Nalcor and say unusual. Do you agree?

MR. T. MARSHALL: I’ll simply say there were no hit squads.

MR. LEARMONTH: Yeah.

Well – and in – you know, in promoting this project, I realize government has to, you know, do the – what do they – what’s the modern term – messaging or whatever you want to call it. But I mean the NDP and the Liberals, all other parties, they have duly elected officials. I mean why would there be an attack on them to promote a project like Muskrat Falls? This is what’s recommended here.

MR. T. MARSHALL: Well, the – in the House of Assembly you don’t know where the debate is going. It can go anywhere. But what we tried to do is that – we knew – you know, when you bring in a policy or you’re bringing legislation in the House, you’re going to be attacked by the Opposition. And what we try to do is positively put out our message about what we were trying to do and get that message out to the people of the province, then they can decide.

MR. LEARMONTH: Okay.

And this is the last reference I found – there may be others – to the hit squad. Thirty-five; so this House of Assembly debate – this is 35, 00926 – sample messaging for hit squad: 2000 agreement continued. No guarantee of ownership. This was the Grimes deal, right, that was –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – I guess.

Quebec courts decide major financial. “NL can only recall power ... NL could lose the Lower Churchill project to Quebec under financing conditions” What do you think of that? That being part of the message?

MR. T. MARSHALL: Message for someone in a debate. You can attack the other party for something that their previous government did.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And, I mean, Barry, this is – I wouldn’t pay much attention to this.

MR. LEARMONTH: Well, five minutes is not a lot of attention, okay? Anyway, that’s over for that.

Tab 26; this is another document prepared. It’s an updated presentation to caucus, Department of Natural Resources, August 9, 2012.

So this is another presentation. Do you – the previous one from Nalcor was dated August 3, 2012. So this is, you know, about six days after. Do you recall seeing this document?

UNIDENTIFIED FEMALE SPEAKER:
Exhibit number?

MR. LEARMONTH: It’s Exhibit 00927.

THE COMMISSIONER: 00927.

MR. T. MARSHALL: Well, I don’t know if it was a presentation from the Department of Natural Resources – it was. And it was to caucus.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I would go to these.
So I was probably there.

MR. LEARMONTH: Yeah.

And on – but you don’t have a recollection of it.

MR. T. MARSHALL: No. I mean, as I’ve said,
there’s so many of these. And I’m sure I saw –
I’ve seen most of them.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And those that I didn’t
see, I probably read the material that you both
have.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: So ...

MR. LEARMONTH: Now, on page 8, there’s
a – the – towards the second line from the
bottom of page 8 of 00927 it says: “I remain
confident MF is the best option.” Do you know
who that would be?

MR. T. MARSHALL: I’m – that was page 7.

MR. LEARMONTH: Pardon?

MR. T. MARSHALL: You were on page 8?

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: On the screen – that’s
page 7.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: It’s page 7.

MR. LEARMONTH: It’s 8 on mine.

THE COMMISSIONER: It’s – yeah. He’s
looking at –

MR. LEARMONTH: Okay.

THE COMMISSIONER: – the top of the page,
and there’s two numbers, page numbers, on the
pages. So I think we just need to get coordinated
here (inaudible).

MR. LEARMONTH: Okay, well –

MR. T. MARSHALL: Okay.

MR. LEARMONTH: – mine says 8, but is that
–

MS. O’BRIEN: The exhibit number is 8.

MR. LEARMONTH: Yeah.

MS. O’BRIEN: Page 8 on these.

MR. LEARMONTH: Yeah, page 8 on the
exhibit –

MR. T. MARSHALL: Okay.

MR. LEARMONTH: – Mr. Marshall.

MR. T. MARSHALL: Which line is it?

MR. LEARMONTH: The second-to-last line –

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: The last – after the
period at the end at the right, it says: “I remain
confident” Do you know who the I is?
Would that be the minister, the deputy minister,
or do you just not know?

MR. T. MARSHALL: I can only guess if
Natural Resources are making the presentation,
it would have been the minister of that
department.

MR. LEARMONTH: Okay.

Tab 27; this is a reference – August 13 and
Exhibit 00928 – a reference to: “Province
Receives Stable Grade from Credit Rating
Agency.” It’s August 13, 2012.

It says: “As many jurisdictions around the world
see their credit ratings lowered, Newfoundland
and Labrador has received a stable rating from
Dominion Bonds and Rating Service ... in their
most recent report.” And so – and you’re quoted
in this. So, Mr. Marshall, it appears that at the
time just before sanction the province was in a
good financial position. Is that correct?

MR. T. MARSHALL: I think we're – I think we were probably in the best financial position we may have been in history.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: You know, our – 2012 I think our credit rating was upgraded at a time when the credit rating of the United States was lower. Net debt had been – you know, we had a string of surpluses, I think cumulative, 4.1 billion. Net debt was down about 3.1 billion at one point.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: We had – I think at one point we had 3 billion in the bank. The economy was booming. There was confidence – tremendous confidence, consumer confidence and corporate confidence. People were working, the economy was – had doubled.

Our rate of growth in 2012-'13 – the rate of growth of our economy was – we led the country. The rate of growth in private investment, which is the driver in this economy of economic growth, was leading the country; it was the fastest in the country.

People were working, they were getting – the average weekly wages were very high. We used to be down at the bottom and now they're up – they were up to, like, maybe not the best but, like, second one year and the next, third, another year.

And taxes – we could lower taxes and so people had more disposable income and they were confident and they were spending. And retail sales were up, car sales were up, housing starts were up, so business was investing. It was a – it was a good time.

MR. LEARMONTH: It was a very buoyant time –

MR. T. MARSHALL: Yeah, it was.

MR. LEARMONTH: – in the economy and there was a lot of optimism and –

MR. T. MARSHALL: A lot of optimism. People were coming home from away and starting new businesses and –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – it was wonderful and it kept going. Even when the great recession hit, it kept going. The confidence kept going. But once you destroy that confidence by, you know, an enormous tax hike or – once you destroy that confidence, the economy can freeze quickly.

MR. LEARMONTH: And this is just before sanction so the –

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: It captures, probably, the atmosphere of the – in the province at the time, just before sanction, doesn't it?

Well, anyway, you said that at this time, that the province was in the best economic or fiscal position that it had been in since Confederation. Did you say that?

MR. T. MARSHALL: Based on what I –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – said earlier, we'll say it was in a very strong position.

MR. LEARMONTH: Yeah. Okay. I'm not going to hold you to that.

MR. T. MARSHALL: I won't go – I won't say world class but I – it was good.

MR. LEARMONTH: Yeah. Yeah. Okay.

Now tab 29 is a Net Benefit Analysis. Exhibit P-0930.

So why would Nalcor send you this document on September 19, 2012? Would you know?

MR. T. MARSHALL: Okay. This wasn't current present value. This is net –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – net value. Net present value.

This is what they did. They sent us information from time to time. I don't know why this particular piece was –

MR. LEARMONTH: You don't have any recollection of receiving this, I take it?

MR. T. MARSHALL: Again, there were so many of them, right?

MR. LEARMONTH: Okay.

The – I'm just going to switch gears a little bit here. Tab 30 is a document. It's 00881 and it's Lower Churchill Project Indicative Rating Presentation – November 2011.

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: So I'm going back a little bit. We heard some information about this with Derrick Sturge and also with Terry Paddon, yesterday.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Can you give us an overview of what this – of your participation, if any, in this indicative rating trip to Toronto, I understand?

MR. T. MARSHALL: As I said, I wasn't part of that group that went to Toronto for this. As I said earlier – in this project, it was 7.4 billion, and Nalcor were borrowing 5 billion, and the province would not be borrowing that 5 billion and the province had not guaranteed that 5 billion. The federal government did. The province had to come up and the province – and Emera had to come up with 2.4 billion. That was the equity.

So they were going up back then to get a – what's known as a – shadow bond rating. In other words without the guarantee, and just based on what they had then – could they get a rating that would be – that would lead to their bonds being sold? And what would the interest rates likely be? And they went up – so Nalcor would have done that and I believe that they – Terry Paddon went with them and Charles Bown

went with them to keep the government in tune with what was happening.

MR. LEARMONTH: Yeah, well, like on page 2 all the people who attended are identified as being on the Nalcor team.

MR. T. MARSHALL: Right.

MR. LEARMONTH: And they're – Terry Paddon, Charles Bown from government and the others are from Nalcor, I take it. Yeah.

So this was to get a shadow rating, which is just like a preliminary –

MR. T. MARSHALL: Yeah, they would be going back after DG3, and if they got the federal government guarantee, they would be going back again.

MR. LEARMONTH: So it's not a formal commitment from the credit agencies at this time.

MR. T. MARSHALL: No, it's an idea of what –

MR. LEARMONTH: Just testing the waters?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yeah.

Okay. Now page – tab 35, which is exhibit 00935.

Will we break now?

THE COMMISSIONER: Oh, yes. Okay, I just noticed it's 25 to.

Bearing in mind now what our schedule is like, how much longer do you expect to be; do you know, Mr. Learmonth?

MR. LEARMONTH: Maybe half an hour.

THE COMMISSIONER: Okay.

All right. So we'll come back at 2 o'clock then and we'll deal with that then at that stage.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Mr. Learmonth, when you're ready.

MR. LEARMONTH: Thank you.

Please turn to tab 35, Mr. Marshall, it's P-00935.

This is your speech, the House of Assembly, November 9, 2012, so it's just roughly a month before sanction decision was made – your speaking points.

Page 1 of Exhibit 00935 you say: "I've reviewed the materials. I've met with the experts." So what experts are you referring to there?

MR. T. MARSHALL: I'm referring to the Nalcor – the executives of Nalcor.

MR. LEARMONTH: That's who you're referring to there?

And on page 3 of that exhibit, 00935, you say: "Nalcor has completed detailed analysis and has refined its estimates. The level of project definition and the detail in the cost estimates provides a high degree of confidence to support a decision to move forward with the project. This detailed and sound analysis has also been validated by external consultants particularly in the most recent report from MHI."

So do you – I take that, that you believe that MHI did a full review of the costs and the risks of the project?

MR. T. MARSHALL: I do. I do, subject to what you've told me about certain risks not being included, yes.

MR. LEARMONTH: Yeah. I'm going to come back to that.

MR. T. MARSHALL: At the time –

MR. LEARMONTH: I think Ms. Best was right when she said I should put the documents

to you, and I will. The ones where the scope was changed, just to – so you'll know what I'm talking about, okay.

MR. T. MARSHALL: Yes, I thought that the estimates that was done by (inaudible) and the project team and had been reviewed, and then the risk analysis was done with Westney and that had been reviewed and then others: Navigant; MHI, twice; and then in '12 there were numerous reports that Minister Kennedy brought out which gave us confidence that the – that this analysis was – that this project was, you know, potentially something that would provide the least cost to the ratepayers and would also provide value or money to the province that could be – that the government could distribute to its citizens.

MR. LEARMONTH: Yeah. Okay. Well, maybe we'll have a look at Exhibit P-00741. It's not in your book, but I'll show you what I was talking about this morning. That's Exhibit P-00741.

Okay. So this is an email. Do you remember we went through those – the emails this morning for April 1 or whatever – Mr. – there was an exchange of emails between Charles Bown and Paul – you know, involving Paul Wilson of MHI?

MR. T. MARSHALL: Yes, okay.

MR. LEARMONTH: Do you remember that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. So this is April 3, shortly thereafter.

Mr. Wilson is sending an email to Charles Bown. "Charles, thanks for the update and we can talk tomorrow. I have a 9:00 am conference call tomorrow on another matter but I am available the rest of the day.

"I saw the printed news release tonight and it was as ... discussed.

"Attached is a draft SOW to get our discussions started and I have begun to identify what information we are going to request under each area of review."

So SOW is a scope of work? Okay.

Now, if you turn to page – what is it – it lists – if you turn to page 5 of that report. Do you see at the top, there's risk analysis – this is the scope he's proposing. "Risk Analysis Review. Review Nalcor most recent risk analysis assessment for gaps, suitability to task, and appropriateness of reserve margins for costs estimate contingency." And then: "Information required: Strategic Risk Assessment Updated Report, and Westney update if" reported.

So this would – this is, you know, it speaks for itself. He's proposing that that's what Manitoba Hydro is going to do.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. So then we get a reply from Charles Bown. And that's P-00742.

And if you go through this report, on page 7, the last item is number viii. Do you see that?

MR. T. MARSHALL: No.

MR. LEARMONTH: Roman numeral viii?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Now, the paragraph that I referred to earlier about the risk analysis has disappeared. Do you see that? It's not in this document.

MR. T. MARSHALL: Not in under: Information required? Is that –?

MR. LEARMONTH: No, the paragraph's gone. Never to reappear – in the scope. And that was sent by Charles Bown to Mr. Wilson. So – what I'm – I think the only reasonable interpretation one can place in that is that – well it's obvious that Wilson thought he was going to do – or, MHI – was going to do a risk analysis review and when it came back from the Government of Newfoundland, the risk analysis review had been removed.

MR. T. MARSHALL: Yeah, I was not aware of that, and I've never seen this before.

MR. LEARMONTH: Yeah. But do you see – that's what I was talking about this morning. Does that cause you any concern?

MR. T. MARSHALL: It would. If they're gonna do a thorough analysis of the numbers, they would look at the, you know, the base estimation. They'd look at the risk and analysis and they'd look at the escalation.

MR. LEARMONTH: Yeah. So that – I suggest to you that – do you agree with me that's a logical approach to take – you have to – in doing the capital cost estimates you have to take into account the risk assessment also?

MR. T. MARSHALL: Yes, yes.

MR. LEARMONTH: Yeah. Do you have any explanation as to why that was removed by the Government of Newfoundland?

MR. T. MARSHALL: No, no, I'm learning this from you. So no.

MR. LEARMONTH: Are you surprised by that, Sir?

MR. T. MARSHALL: Yes. But again, I'd like to hear the other side as well before I finalize my opinion.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But yes, it would be concerning.

MR. LEARMONTH: Yeah. Because it's gone.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: And that's what I was talking about this morning. I should have referred you to the documents this morning, but anyway you have them now.

And just one further document I want to refer you to, just to show the consistency in what – Mr. Wilson's approach. If we go to Exhibit P-00740.

Now this was a letter, a draft letter – I don't believe it was ever sent – but it's a draft letter from Mr. Wilson of Manitoba Hydro

International to Maureen Greene, the legal counsel of the Public Utilities Board, dated February 22, 2012. It refers to –

MR. T. MARSHALL: Who's the letter from?

MR. LEARMONTH: This is from Manitoba Hydro, the same Paul Wilson. You see that on page 3?

MR. T. MARSHALL: I see the top of the letter, yes.

MR. LEARMONTH: Yeah. So then we go to – so there was some – there must have been some discussion or, you know, he didn't write her out of the blue, there must have been some discussion about doing a DG3 report for the PUB. That's all – the only conclusion I can draw.

But anyway, rightly or wrongly – if you go to page 3. You see the fourth paragraph down, fourth dot down. He's proposing the scope of work, and once again: "Update of the Project Risk Assessment and an appropriate strategic reserve amount to be applied to the project."

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: So I suggest to you there's some consistency – it's not the exact same wording, but Mr. Wilson sends this to the Public Utilities Board. Then he expands on it when he sends the first draft to Mr. Bown. And then Mr. Bown comes back and it's taken out.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: Anyway, if – you know, if you don't – if you didn't know about that, I hope you know about it now.

MR. T. MARSHALL: No. Now – and, again, I'd like to hear what Charles Bown has to say.

MR. LEARMONTH: Yeah. Well, he'll certainly be given an opportunity –

MR. T. MARSHALL: He's a very highly regarded public servant.

MR. LEARMONTH: Yeah.

But – and that's why, Mr. Marshall, when I look at P-00935, page 3 –

THE COMMISSIONER: 00935 tab ...?

MR. LEARMONTH: 00935, page 3.

THE COMMISSIONER: Tab – oh, tab –

MR. LEARMONTH: That's tab 35 –

THE COMMISSIONER: Tab 35.

MR. LEARMONTH: – page 3.

I – while I don't question the sincerity with which you wrote this, I question the accuracy of this statement that – at the top: "This detailed and sound analysis has also been validated by external consultants particularly in the most recent report from MHI."

Do you see where I'm coming from?

MR. T. MARSHALL: Yes, I do.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I do.

MR. LEARMONTH: Well, anyway, we'll have to ask – we'll have to speak to Mr. Bown about that. And he'll be given a full opportunity, of course, to provide an answer.

Next, please turn to tab 36, Exhibit 00936. And can you identify this document, Mr. Marshall?

MR. T. MARSHALL: Run through it, just wait now.

MR. LEARMONTH: Yeah, take your time.

MR. T. MARSHALL: This email note? You want me to ...?

MR. LEARMONTH: Well, not the email –

MR. T. MARSHALL: No.

MR. LEARMONTH: – but the attached document.

MR. T. MARSHALL: Yeah.

Yes, I certainly do.

MR. LEARMONTH: Yeah, and that's from Deputy Minister Skinner. Correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. And do you know – do you –?

MR. T. MARSHALL: This document originated much earlier. I think the first draft of this document was done much previously by Bob Constantine who was the assistant deputy minister at the time. But there's been a number of reiterations of it and Laurie did the final drafts.

MR. LEARMONTH: I don't pick that up by looking at the document. Do you – how do you know that, that there were previous drafts?

MR. T. MARSHALL: I remember.

MR. LEARMONTH: Oh, you remembered. Okay.

MR. T. MARSHALL: Yeah, yeah.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: I remember when – because I was asking – I was asking for this analysis. And I remember when it came, when Bob brought it to me and it was relatively compact and it got expanded later.

MR. LEARMONTH: Yeah.

And, once again – not that I want to dwell on it, but if you look on page 2 under the heading: Background, one, two, three, four – the second sentence says: "The 6.2B represents the total cost to the Province and excludes interest during construction and financing costs."

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: Yeah, so that was the message the government was relying on, or that was the fact that the government was relying on to sanction the project. Is that correct?

MR. T. MARSHALL: Yes and that interest figure was 1.2 billion.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So a 7.4-billion project.

MR. LEARMONTH: Yeah.

So was it – this document was prepared by – I know you said it was – there were previous drafts but, anyway, this seems to be the final document and it's dated –

MR. T. MARSHALL: Yes, and –

MR. LEARMONTH: November 15.

MR. T. MARSHALL: – Laurie Skinner would have been the deputy minister of Finance at this time.

MR. LEARMONTH: So what would have been the purpose of preparing this document? The – I mean for whose benefit would it be?

MR. T. MARSHALL: Mine.

MR. LEARMONTH: Oh, for you?

MR. T. MARSHALL: Yeah and it would have gone up. It would have gone up to the premier's office as well.

MR. LEARMONTH: Okay.

Is there any significance to the fact that this was not approved by anyone?

MR. T. MARSHALL: No, it was – as I said to you, that, you know, this is a project of Nalcor and they reported to Natural Resources. My role as Finance minister – the role of a Finance minister is to find the funding for the programs and the capital works projects and the business enterprises of the government.

And I was always adamant that I needed to know a final number and I needed assurances that we could raise whatever we had to put in, which turned out to be \$2.4 billion, less what Emera was producing or contributing. And this was what – all this information was what Laurie

prepared to give me the information that I would need.

MR. LEARMONTH: Okay. At tab 38, is this a further update of the document we earlier referred to? That's tab 9. That's –

MR. T. MARSHALL: Yes, I think –

MR. LEARMONTH: – P-00938.

MR. T. MARSHALL: – the other one was – the first one was the 15th and the other one is the – this one was the 19th of November.

MR. LEARMONTH: Yeah, okay.

Tab 39, Exhibit 00939; these are – well, I'm going to ask: Are these – these are speaking notes for you –

MR. T. MARSHALL: Yes. There must have been a debate on a –

MR. LEARMONTH: Private –

MR. T. MARSHALL: – private Member's motion and I was provided with speaking notes.

MR. LEARMONTH: Yeah. Now, there's a lot of discussion here about the PUB.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: Why, at this stage, having decided that you weren't going to – government wasn't going to send the DG3 numbers to the PUB, would that have been a subject of (inaudible)?

MR. T. MARSHALL: I don't recall. I'll have to read it in more detail.

I think it was explaining why they went to the PUB and why, after the PUB said that they did not feel they could provide the answer that was being sought, why government went to – went elsewhere.

MR. LEARMONTH: Yeah, but why – I mean the PUB report had been submitted to government March 30, 2012. At this stage, I just wonder why you'd want to revisit the subject.

MR. T. MARSHALL: Okay, so people – many people still had the view – or were of the view that it should have gone to the PUB, the PUB should have been able to look at the whole – the whole – all of it, look at all of the options rather than just the reference question.

MR. LEARMONTH: Okay. So that was an ongoing concern of government, I take it, that there was this point of view out there?

MR. T. MARSHALL: Yeah, there's a point of view out there and governments would be – government would, you know, put out its policy and defend it.

MR. LEARMONTH: Yeah.

So what – on page 3 of Exhibit 00930 you go into detail about –

MR. T. MARSHALL: 00930?

MR. LEARMONTH: At page 3 of 00939, I should say.

You refer to, at the top part, an initial RFI request was received on such and such, Nalcor had over 20 ... there's no mention here about the fact that part of the – the main reason for the delay in the delivery of the report by the PUB to government was the delay caused by Nalcor's failure to submit documents when they had committed to do so.

I mean that was the – I feel confident saying that's the evidence. It's very clear from the evidence and now it's even acknowledged by Nalcor as being correct. So why isn't there any mention here? It looks like you're trying to put the blame on the PUB?

MR. T. MARSHALL: I wasn't trying to blame anyone. I was trying to defend our policy and what we were doing. We were disappointed that the PUB took the position it did but, again, I wasn't the minister that was making these decisions.

And this was a debate – I took part in the debate and, you know, I would speak about what I knew. And maybe I didn't know enough of the nuances or –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – the details or the intricacies. You know, it's a debate.

MR. LEARMONTH: Yeah.

But do you see the point of the – well, the main reason that the PUB report, you know, the PUB failed to sanction the project was they didn't think they had enough detailed cost estimates and so on. That was what they said in their report. There are other reasons but that was the main thrust of their report, I think. They only had 5 per cent project definition.

So accepting that, what is unusual about the report that the PUB submitted to government? That we can't do it, we don't have confidence in the cost estimates?

MR. T. MARSHALL: It was they felt that the numbers they had were meant for an earlier stage and, I mean, you've heard from, I guess you've heard from former members of the PUB and their members and their staff and – so they didn't do what government asked them to do. And they said we should wait for further engineering and for their numbers.

So they didn't follow the terms of reference, as I understood them to be. And they also wanted – I think they made a point – a good point was that the numbers will be available soon, it won't be that long, so why don't we give us some more time and we'll wait for that, and that's not – it was not an unreasonable request but that's not what they're asked to do.

MR. LEARMONTH: Yeah. So you don't think that the PUB report was satisfactory? You don't think it was a reasonable answer to the question that was put to it?

MR. T. MARSHALL: No, I – we were looking for an answer. And we didn't get it.

MR. LEARMONTH: But to provide – to get an answer, don't you have to ensure that the Public Utilities Board had a reasonable amount of documentation and analysis in order to come up with an answer?

MR. T. MARSHALL: Of course.

MR. LEARMONTH: And you think at 5 per cent of engineering that that was sufficient?

MR. T. MARSHALL: The – again, it's not what I thought, it's what was requested by the government. The government had put the question to the board, asked for a decision, and was not given one.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: Or was given one, but it wasn't the one – it wasn't – they didn't answer the question they were asked to answer.

MR. LEARMONTH: So would it have been acceptable if they had said: No, it's not the least cost.

MR. T. MARSHALL: We'd like their opinion. Whatever their opinion was, would be acceptable.

MR. LEARMONTH: Anyhow, once again on page – if we're going to exhibit P-00067, this is the memorandum from the Department of Natural Resources for – on the sanctioning question. And, once again, you're repeating the same information on page 10, Financial Considerations: The \$6.2 represents the total cost to the province and Nalcor and excludes So that seems to be consistent throughout the delivery of information to the public that was –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – that was the total cost.

THE COMMISSIONER: Tab 41.

MR. LEARMONTH: Tab 67 – oh, tab 41, yes, Exhibit 00067.

MR. T. MARSHALL: Yes, the sanction decision, yeah.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I'm looking at that, they were the numbers, 6.2 plus the interest.

MR. LEARMONTH: Yeah, the total cost.

MR. T. MARSHALL: 7.4 was the total cost.

MR. LEARMONTH: Yeah.

Now, the –

MR. T. MARSHALL: Including contingencies and escalation.

MR. LEARMONTH: Yeah. That's what you thought, isn't it?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And that's what you communicated to the public?

MR. T. MARSHALL: Correct.

MR. LEARMONTH: Your government – (inaudible) you personally – your government communicated to the public.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Just want to take you back for a moment to tab 22, Mr. Marshall, which was that press release that we discussed earlier today about the financial situation in the province. I thought it was – is it tab 22? Maybe not.

Well, anyways, let's go to tab 43, which is Exhibit 00942.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Now, the earlier press release that we – which we talked about just before our break at noon, the – you know, we discussed how the – at that time the outlook for the province appeared to be very favourable in terms of physical capacity and so on.

MR. T. MARSHALL: Well, that was the opinion of the – that particular credit-rating –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – agency.

MR. LEARMONTH: Yeah, but a very short time later, on December 13, it appears things have turned around, would you agree with that?

MR. T. MARSHALL: No.

MR. LEARMONTH: No?

MR. T. MARSHALL: No. What – well, let me rephrase that. The – on December 13, we did what's known as the fall update. You do the budget in April or – March or April and in the budget you give a 12-month forecast. You give a forecast, a prediction, an estimate of what the revenues are going to be and the expenses are going to be. And the number – there was a forecast that at the end of that 12-year – 12-month period, there'd be a deficit of, I think it was, \$258 million.

At the fiscal forecast, you now have six months of actual results but you still have six months to go in the year. And at that point, the forecast is revised and based on the fact that the world economy was having trouble and demand was down, oil and commodity prices were down, and that impacted us negatively. At the same time, the provincial economy was very strong. But that was a forecast at December. But at the end of the year, when the 12 months were up, the actual deficit was 195 million or 190 million.

MR. LEARMONTH: But there was talk about cuts in the next budget on the bottom – second last paragraph of P-00942.

MR. T. MARSHALL: Well, there was – again, it's a forecast and, I think, the message was that if this continues and the deficit gets bigger, we're going to have to reduce spending to get back in line.

MR. LEARMONTH: Yeah.

I just – the – do you remember that article or that paper that was written by Mr. Tymchak?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: That we referred to earlier.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Tab 21.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: And you gave your evidence as to your recollection of it and that you remember seeing and discussing it –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – with your ADM.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: But I checked your transcript of your interview on September 13 and your evidence was quite different as to your recollection of that document.

MR. T. MARSHALL: All right, tell me the difference and I'll –

MR. LEARMONTH: Well, you said you didn't remember it.

MR. T. MARSHALL: Well, I didn't but now after reading it – you know, that's happened a lot when you're looking at documents from, you know, a lot of years ago. You don't remember. I mean I didn't remember that when I was first asked if I was involved in the federal loan guarantee, I said no. And then I saw a picture of me with the federal minister. I said: Oh my God, I was involved.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And that's what happens. And that's what happened when I read this one. It comes, you know – it'll come back.

MR. LEARMONTH: But you read this at the interview.

MR. T. MARSHALL: I did.

MR. LEARMONTH: Yeah. And it didn't – you never (inaudible).

MR. T. MARSHALL: And I looked at it. I looked at the front – I looked at the first page and I said I don't remember this. But after reading it, subsequently, I do remember. So I can only tell you what I remember.

MR. LEARMONTH: Okay. Do you acknowledge that you said you couldn't remember –

MR. T. MARSHALL: I do.

MR. LEARMONTH: – seeing the document at the –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – interview?

MR. T. MARSHALL: And I'm sorry I didn't remember at the time.

MR. LEARMONTH: Okay.

Now, I want to take you back to Exhibit 00807. See if I can find the tab for that.

THE COMMISSIONER: Tab 10.

MR. LEARMONTH: Ten.

If you go to page 2, you're referring to – at the bottom of page 2 of 00807 – that, "In addition to the above, Nalcor is also planning to undertake additional due diligence as follows: Completion of a project cost analysis by Independent Project Analysis ... an international organization that specializes in the review of large scale projects."

Who – what information did you have to ground that statement or support that statement or make the statement?

MR. T. MARSHALL: I would've been – I mean, Paul Myrden, who was the director of debt management in the Department of Finance, wrote that paper and so he would've had that information and would've told me.

MR. LEARMONTH: Well, he may have had information, but he didn't have the document 'cause it was never done, as far as we know, before DG3. Nalcor never did it.

Surprise you?

MR. T. MARSHALL: It does. I mean, that Independent Project Analysis, that IPA, that's come up a number of times. As a matter of fact, you know, I think I've read a couple of books on megaprojects written by the chairman of that company.

MR. LEARMONTH: But before DG3, the information we have is that was never done. Does that give you any concern?

MR. T. MARSHALL: Well, it said it was being completed, and if you say it hasn't been completed, yeah, it's a surprise.

MR. LEARMONTH: Yeah, 'cause you think it should've been completed. Is that right?

MR. T. MARSHALL: Well, any analysis and reviews they were doing, you know, cold-eyed reviews, would be helpful. I don't know where you draw the line, where you stop, but – yeah, if they were doing it and we thought they were doing it, it's unfortunate it wasn't completed.

MR. LEARMONTH: Yeah.

And the next – at the top of page 3, you refer to, “Completion of a thorough review and commentary on the readiness of the project to proceed by Independent Project Review, a group recognized for their knowledge and experience in particular aspects of large scale project delivery.”

Did you ever see that report?

MR. T. MARSHALL: No, I thought that might've been the group that had testified here earlier.

MR. LEARMONTH: Mr. Owen?

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Well, maybe we're going to have a look at it. It's P-00504. It's not in your book. This is the document, and maybe we can turn to tab – page 40.

That's page 40, yeah, of the document – of the document.

Yeah, now, do you see that, Mr. Marshall?

MR. T. MARSHALL: What paragraph are you referring to?

MR. LEARMONTH: Okay, well, it says – the second dot: “The IPR Team provides the following findings and recommendations

concerning the use of Management Reserve and Schedule Reserve to account for the strategic project risks associated with mega-projects such as LCP.”

And then, if you're going down, the second dash: “Nalcor LCP management ... has long recognized these risks and the need to account their potential impact on project cost and schedule. The LCP Project Execution and Project Risk Management Plans describe the use of Management Reserve and Schedule Reserve for this purpose.”

Then at the bottom: “The IPR Team concurs with the expectations set by the LCP Project Execution and Risk Management Plans that adequate provisions for Management Reserve and Schedule Reserve be included in the Project Sanction costs and schedules.”

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: And that's what you would've expected also, right?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: So we have here a recommendation made in, you know, the beginning – around the beginning of September, and I suggest to you that Nalcor did not follow that advice because the strategic reserve of \$497 million was not included in the cost estimate.

So they were told to do it, or recommended – it was recommended to them and they still didn't do it. Does that cause you any concern?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Why?

MR. T. MARSHALL: Because, as I said earlier, the total cost, you know, the base and the risk and the contingencies and the reserves should be totalled, and the total would be included in the analysis of comparing the options.

MR. LEARMONTH: So that – what the last paragraph on that page says is in accordance with what your expectations would be?

MR. T. MARSHALL: Correct.

MR. LEARMONTH: Yeah.

Now, just getting back to this Exhibit P-00807 – and, by the way, that’s the IPR that I referred to at the top of page 3. Remember when we went to page 3 of this report?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah, that’s the report. This is the report, the one I just brought up.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Okay.

Now, I just want to cover – go back to this one last time because I understood, generally, your evidence to be that the government’s decision to refer or, you know, send the reference question to the PUB was an adequate substitute for what you were looking for in this document? Did you not say that?

MR. T. MARSHALL: I did. The proposal to Mr. Skinner and I was that there be a – based on the recommendations of our deputies, that there would be an independent analysis done.

MR. LEARMONTH: Now –

MR. T. MARSHALL: And when it wasn’t done, then my understanding of it is that – I don’t remember – I don’t remember any – I can’t remember anybody specifically telling me, but my assumption is, is that they didn’t do it because it was going to the PUB.

MR. LEARMONTH: Yeah. But you’re sure – you know, you remembered that document by Tymchak. Are you sure you can’t remember exactly what you were told as to why –

MR. T. MARSHALL: No, and I can’t.

MR. LEARMONTH: – this recommendation –

MR. T. MARSHALL: I’ve thought –

MR. LEARMONTH: – wasn’t accepted?

MR. T. MARSHALL: – about it and I just do not recall it. But, I guess, when it was sent to the premier’s office, I guess the decision was: Well, we’ll go to the PUB. And I would’ve been completely happy with that.

MR. LEARMONTH: And you would have been happy with that?

MR. T. MARSHALL: That would have satisfied.

MR. LEARMONTH: Yeah, but I suggest to you that the scope of the review done by the PUB – even by retaining MHI – was much more narrow than the scope identified in this document.

MR. T. MARSHALL: I would agree.

MR. LEARMONTH: So if you think the – if you thought when you wrote – you and Minister Skinner and your deputies – when you wrote this memo on May 9, 2011, if the scope was broader than what the Public Utilities Board was asked to do, how could you be satisfied? Because it would mean that some of the things that you asked to be done were not gonna be done.

MR. T. MARSHALL: Again, I did not have any role in making the decision to limit the scope.

MR. LEARMONTH: But you said earlier that you thought that the PUB reference was an adequate substitute for what you were asking in this document. Did you not say that?

MR. T. MARSHALL: (Inaudible) – yes, because I thought there would be – it would be the same.

MR. LEARMONTH: (Inaudible.)

MR. T. MARSHALL: Just a different group would do it. But they’d be independent of government.

MR. LEARMONTH: So you thought it would be exactly the same as this?

MR. T. MARSHALL: Well, a complete analysis.

MR. LEARMONTH: The same as this? Cover the same points?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. Financial risk, contractual risk – I don't think –

MR. T. MARSHALL: (Inaudible) two projects.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: And if you were – you've said consistently that you were – well, until the time of sanction, anyway, you were satisfied to and content to rely on the estimates provided by Nalcor –

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: – and that you trusted them and you thought that they were –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – conservative. Would that be a fair way to put it?

MR. T. MARSHALL: Well, they would've used an analysis, a risk analysis, that I wouldn't be familiar with –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – with mathematical formulas and P-factors. And that was not part of my previous life; that was foreign to me. So I would assume that that would be best practice in the business community today, best practice in project management, and that they – I had every confidence that they would ensure that the best practices were followed.

MR. LEARMONTH: Yeah, but if you had every confidence, why would you think it would be necessary to do an independent review?

MR. T. MARSHALL: Because it's always wise to do that for big projects. It's good to have reviews done. You have reviews done by your own people and it's good to have somebody independent to come in and have a look.

MR. LEARMONTH: Like MHI?

MR. T. MARSHALL: If MHI were independent – they were hired by the government, they were hired by the PUB. So if they're good enough for the PUB, they'd be good enough to for the government.

MR. LEARMONTH: If they did the work that you thought that they were – should've done.

MR. T. MARSHALL: Well, they're – I mean, I would expect them to do the right and proper thing.

MR. LEARMONTH: Even with those – with that paragraph removed from the scope of work?

MR. T. MARSHALL: But I didn't know the paragraph was removed.

MR. LEARMONTH: Yeah, but now you do know.

MR. T. MARSHALL: But they should've known.

MR. LEARMONTH: Who should've known?

MR. T. MARSHALL: It should've been told.

MR. LEARMONTH: By government?

MR. T. MARSHALL: By government, but government didn't know.

MR. LEARMONTH: Government didn't know?

MR. T. MARSHALL: We didn't know the risk wasn't included. We didn't know some of the contingency wasn't included.

MR. LEARMONTH: No, but I'm talking about in the scope of work that government sent back to MHI where the paragraph dealing with the risk analysis was taken out.

MR. T. MARSHALL: Oh, I didn't know that.

MR. LEARMONTH: Yeah, and that gives you concern, does it?

MR. T. MARSHALL: Yes, it does. I said that previously.

MR. LEARMONTH: Yeah, okay.

Those are all my questions. Thank you very much.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: Province of Newfoundland and Labrador?

MR. RALPH: No questions.

THE COMMISSIONER: Okay.

Nalcor Energy?

MR. SIMMONS: Good afternoon, Mr. Marshall, Dan Simmons for Nalcor Energy.

So if I recall correctly from the outset of your evidence, you were minister of Finance for the province from October 2009 'til January 2013.

MR. T. MARSHALL: Correct.

MR. SIMMONS: And that would've included the time period in which the Emera term sheet was put in place –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – federal loan guarantee term sheet, I believe, and actually the sanction decision for the Muskrat Falls Project.

MR. T. MARSHALL: That's correct, yeah.

MR. SIMMONS: Right, so three big events occurring during that time period.

And you've told us about various presentations from people at Nalcor, information you received and so on. So, generally, I wanted to get a better idea of what sources of information you had during that time period about the project.

So, first of all, from Nalcor, you told us you had one meeting you recalled in particular, one-on-one with Mr. Ed Martin –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – in which he gave you a presentation. That was at your request.

MR. T. MARSHALL: That's correct. When –

MR. SIMMONS: Yes.

MR. T. MARSHALL: – I was in Finance, yes.

MR. SIMMONS: Yes, in Finance in that time period.

And you attended presentations to Cabinet, presentations to caucus, presentations made in the premier's office.

MR. T. MARSHALL: Many.

MR. SIMMONS: Yes.

And those presentations would have been given by – the Nalcor ones, from whom? Mr. Martin –

MR. T. MARSHALL: It was Martin or –

MR. SIMMONS: – would have been one person.

MR. T. MARSHALL: I think Derrick Sturge may have been with him.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: Maybe Gilbert, Gilbert Bennett.

MR. SIMMONS: Yes.

MR. T. MARSHALL: Gilbert Bennett, I remember, came over and briefed me on the – I had concerns about the underwater, the Straits, the SOBI as it's called.

MR. SIMMONS: Yes.

MR. T. MARSHALL: And he came over and explained the technology and compared it to other parts of the world and how this technology was now –

MR. SIMMONS: Right. So –

MR. T. MARSHALL: – for the (inaudible).

MR. SIMMONS: So –

MR. T. MARSHALL: So I remember that.

MR. SIMMONS: So Mr. Bennett came directly to you to explain that because you had a concern you'd expressed about it, did he?

MR. T. MARSHALL: Yeah, well, it was – yeah, it was one of their –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: From time to time when these – you know, these – I'd learn about the different risks and I'd ask someone to come in and explain.

MR. SIMMONS: Right. So even though Natural Resources was the department primarily responsible –

MR. T. MARSHALL: Right.

MR. SIMMONS: – for Nalcor and for the project –

MR. T. MARSHALL: Yeah.

MR. SIMMONS: – within government, as minister of Finance, you had no trouble if you had a question, I gather, having someone from Nalcor made available to answer those questions for you?

MR. T. MARSHALL: Well, I would usually ask the deputy.

MR. SIMMONS: Yes.

MR. T. MARSHALL: And the deputy would contact Natural Resources.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And Natural Resources would either answer them or –

MR. SIMMONS: Mm.

MR. T. MARSHALL: – Nalcor would answer them.

MR. SIMMONS: Okay. All right.

Did they ever refuse to –

MR. T. MARSHALL: Never.

MR. SIMMONS: – provide you information?

MR. T. MARSHALL: No.

MR. SIMMONS: When someone – when you had a meeting with someone from Nalcor to get this sort of information, were you ever dissatisfied with how forthcoming they were or with their willingness to provide you with information that you wanted?

MR. T. MARSHALL: No, it's just that I had to go through this process to –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – get them in, right?

MR. SIMMONS: Right.

MR. T. MARSHALL: Where – and then when I became minister of Natural Resources, well, then they were – they were available –

MR. SIMMONS: Certainly.

MR. T. MARSHALL: – quickly.

MR. SIMMONS: Okay.

MR. T. MARSHALL: Okay.

MR. SIMMONS: When there were presentations made at the level of the premier's office – I think you've described to us who some of the people –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – were who would typically be there.

MR. T. MARSHALL: Right.

MR. SIMMONS: The collection of people who were – and Cabinet Secretariat, I guess and –

MR. T. MARSHALL: Right.

MR. SIMMONS: Generally, high-ranking civil service servants and politicians.

MR. T. MARSHALL: Well, the top – the head of the –

MR. SIMMONS: Yeah.

MR. T. MARSHALL: The top of the political –

MR. SIMMONS: Right.

So these would generally be long-service people who had a fair depth of knowledge in the areas in which they were working, expertise. Not afraid to ask questions, I presume.

MR. T. MARSHALL: Not at all. It was encouraged.

MR. SIMMONS: Okay.

MR. T. MARSHALL: It was encouraged by the premiers to challenge the officials from Nalcor –

MR. SIMMONS: Yes.

MR. T. MARSHALL: – to push back and –

MR. SIMMONS: Yes.

MR. T. MARSHALL: And so there was a lot of question asking.

MR. SIMMONS: What was the format for the discussion in these meetings? Is it a presentation where no one asks questions, a question period at the end? Is it open, structured? Does it narrate?

MR. T. MARSHALL: Pretty open. Nalcor officials would present and there'd be questions as they went along and questions at the end also.

MR. SIMMONS: Mm-hmm.

Okay.

MR. T. MARSHALL: Lots – there were lots of questioning.

MR. SIMMONS: Would you consider them informed questions? In the sense that they would

be questions from people who knew what the right questions were to ask to get at what the important issues were.

MR. T. MARSHALL: Well, different people had different –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – were at different levels.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I can remember in the early days I didn't know a lot about the –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – electricity business and you learn. A lot of my questions would be basic information: What's happening here? Why are you doing this? And others would be informed –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – would have a lot of experience.

MR. SIMMONS: Yeah.

In those sessions – in the premier's boardroom, I guess, those probably occurred in?

MR. T. MARSHALL: Yes.

MR. SIMMONS: In those sessions were there ever any difficulties getting answers to questions or getting the information that the people in those meetings wanted to get from Nalcor?

MR. T. MARSHALL: No. No.

MR. SIMMONS: Were things like capital costs discussed in those sessions?

MR. T. MARSHALL: The total numbers were discussed.

MR. SIMMONS: Yes.

MR. T. MARSHALL: And I recall a contingency number and an escalation number.

But how – you know, nobody got down into the weeds about how the base estimate was done. We knew who did it.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And in terms of the rate analysis and determining the contingencies, I don't recall being at a meeting where they got down into these probabilistic risk assessments and Monte Carlo simulations and things like that. I – but there was a risk, there were numbers.

MR. SIMMONS: Yes.

And was there full opportunity to have asked questions or to look – have asked for more information about how those numbers were prepared and what made them up?

MR. T. MARSHALL: Yes.

MR. SIMMONS: Now, Natural Resources was the department primarily responsible for Nalcor and for, I guess, the prime communicator with Nalcor on the project. Did information also come to you about the project through Natural Resources?

MR. T. MARSHALL: Oh, yes.

MR. SIMMONS: Or did you have occasion to make inquiries of Natural Resources when you needed information?

MR. T. MARSHALL: My understanding is that when I would ask Finance officials –

MR. SIMMONS: Mmm.

MR. T. MARSHALL: – they would go to Natural Resources.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And Natural Resources would either deal with it or they would put it down to Nalcor and then wait for the information to come back from Nalcor and then they'd give it to me.

MR. SIMMONS: Right.

So that's a, sort of, step-removed –

MR. T. MARSHALL: Yeah.

MR. SIMMONS: – process to get to Nalcor for their requests. But in that context, did you ever encounter any difficulty getting the information that you had asked your officials to find for you from Natural Resources?

MR. T. MARSHALL: No, I never found a refusal to give the information. I – there were times I may have not got it as quickly as I would have liked.

MR. SIMMONS: Yeah.

MR. T. MARSHALL: And what happens, of course, you get some information that answers one question and it leads to three other questions. And then you want to go back again.

MR. SIMMONS: Sure. Were you ever reluctant to go back again and look for those answers?

MR. T. MARSHALL: No.

MR. SIMMONS: Can we bring up Exhibit P-0906, please? This is just one of the presentations. I'm not going to look at very many. It's really a kind of a queue.

THE COMMISSIONER: Tab 2.

MR. SIMMONS: Oh, yes. Okay.

So this is a presentation. It's dated September 2, 2010. So you'd been minister for almost a year; minister of Finance for almost a year by that time.

MR. T. MARSHALL: Mm-hmm.

MR. SIMMONS: It's a Nalcor presentation stamped confidential and it says it concerns financing considerations for the Lower Churchill and it's a presentation to the NL Department of Finance.

MR. T. MARSHALL: Yes.

MR. SIMMONS: When you looked at this before, do I recall correctly that you didn't actually recognize this –

MR. T. MARSHALL: I –

MR. SIMMONS: – particular presentation?

MR. T. MARSHALL: I did not.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I did not. I don't, and I wondered whether it was made to me or whether it was made – just made to officials.

MR. SIMMONS: Right. Okay.

MR. T. MARSHALL: Right.

MR. SIMMONS: And you were directed to page 4. So can we go to page –

MR. T. MARSHALL: Sure.

MR. SIMMONS: – page 4, please? Page 4 says: Equity Requirement, 3 billion base equity –

MR. T. MARSHALL: Mm-hmm.

MR. SIMMONS: – which you said you didn't recall, and then 0.3 to 0.6 billion contingent equity. Is this the sort of information that you would have expected to have been brought up to you, as minister, by your officials? 'Cause this seems to be the core of what you were really concerned about, was what the cost to the province was going to be.

MR. T. MARSHALL: Exactly. And whether they could get the funding.

MR. SIMMONS: Right. So do you have any recollection of – apart from this not seeing the presentation – of your officials having come to you and reported up, in any way, that this was the sort of information that was being provided to them by Nalcor?

MR. T. MARSHALL: I knew that officials in the Department of Finance and officials when I was in Natural Resources – officials in the department – were also meeting with Nalcor officials.

MR. SIMMONS: Yes.

MR. T. MARSHALL: And I knew that there was a committee that Nalcor was on – Nalcor officials were on and government officials were on, a committee chaired by the clerk to – it was an oversight committee but it was to ensure that what had to be done – the necessary steps – the necessary departments were dealing with.

MR. SIMMONS: Mm-hmm. So that was a means for officials in your department to obtain kind of a fuller view of information about how the project was progressing.

MR. T. MARSHALL: Yes.

MR. SIMMONS: But this particular presentation here seems to have been one directly made to your department and I'm just surprised that you would not have been aware of these numbers.

MR. T. MARSHALL: Well –

MR. SIMMONS: If this came into your department, your officials, after you've been there about a year and –

MR. T. MARSHALL: Right.

MR. SIMMONS: – it's an area you're concerned with.

MR. T. MARSHALL: Right, and I didn't remember the \$3 billion number.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I thought the equity number was always lower than that.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: The contingency numbers I knew. I knew there was a contingency of 15 per cent.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I did know that.

MR. SIMMONS: Well, this is not – this is contingent equity here, this one here, which I understand to be a bit different than contingency on the estimate.

MR. T. MARSHALL: Okay.

MR. SIMMONS: Contingent equity being the amount of equity the province may have to put in –

MR. T. MARSHALL: Okay.

MR. SIMMONS: – over and above the total cost package that –

MR. T. MARSHALL: Mm-hmm.

MR. SIMMONS: – with financing all the rest –

MR. T. MARSHALL: Mm-hmm.

MR. SIMMONS: – after the –

MR. T. MARSHALL: Okay.

MR. SIMMONS: – project's been financed.

MR. T. MARSHALL: Right. Again, in – my memory is that it's – there was a point when Mr. Martin and the premier and Minister Dunderdale, at the time, came in and briefed the Cabinet –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – about the Emera deal.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And that's my – that's how I remember that, that's thinking: Oh, that's great, we're now going to learn about what's going on, on the Churchill River.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And I'm not sure what date that was, and it just seemed to me that it was subsequent to that date that I would've been getting these briefings. And this page didn't seem familiar with them, but there's other pages – or didn't seem familiar to me, but there's other pages that are, that I think I might've seen before.

MR. SIMMONS: Okay, all right. We'll leave that.

In your direct examination, you did mention at one point this morning that – something to the effect of that you were aware that there was money or contingency being held by the Gatekeeper, that you had heard discussion of that. Do you recall making that statement this morning?

MR. T. MARSHALL: Yes, yes.

MR. SIMMONS: Okay. What were you referring to you when you said that?

MR. T. MARSHALL: I was thinking that there was certain money that the project team would not have to spend. It could only be spent – it had to go to the top –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – to have it spent.

MR. SIMMONS: So what – do you know what your source of that understanding or information was?

MR. T. MARSHALL: I would suspect Mr. Martin told me that.

MR. SIMMONS: Okay. Do you have any more specific recollection of what that discussion was or how that money being held by the Gatekeeper was going to be treated within the project?

MR. T. MARSHALL: Just that it had to go to him –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – to get that money, and it was his decision whether it was going to be spent or not.

MR. SIMMONS: Mm-hmm. Any discussion about how much money would be within the Gatekeeper's hands to make that determination?

MR. T. MARSHALL: No.

MR. SIMMONS: No.

MR. T. MARSHALL: I don't recall that.

MR. SIMMONS: Okay.

Any recollection of whether that discussion tied in or related in any way to things like the strategic risk or the management reserve that you had been asked about?

MR. T. MARSHALL: I don't recall.

MR. SIMMONS: You don't recall.

MR. T. MARSHALL: I don't recall that.

MR. SIMMONS: Okay. Thank you.

MR. T. MARSHALL: We talked about risk, we talked about, you know, estimates of risk, risk –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – money, but I don't recall strategic or tactical (inaudible) strategic.

MR. SIMMONS: You – there's been discussion in your evidence so far about various consultants who were retained to prepare reports, opinions. There's MHI, IPA was one referred to a little while ago, there's various other ones, Navigant and so on.

I'm just interested in your views of how information that's – how recommendations that are made by consultants should properly be taken into account when important decisions are being made. And what I'm interested in is, you can hire a consultant that has expertise, that you value their expertise and their independence. They can provide recommendations, but in the end, someone has to decide.

So I'm just interested in your view on how recommendations like that are properly taken into account, whether you accept them at face value, whether you look at them critically, how you approach making decisions based on that.

MR. T. MARSHALL: You're not necessarily gonna agree all the time –

MR. SIMMONS: Hmm.

MR. T. MARSHALL: – with your consultant, but you hire him to do a particular job, or her to do a particular job, and if you're not going to

accept the recommendations, you have to have a good reason for not accepting them.

MR. SIMMONS: Right.

MR. T. MARSHALL: But you're not bound to accept them.

MR. SIMMONS: And you've been asked a series of questions through here about strategic risk, evaluation of strategic risk at about \$500 million, and one of the things that you'd said this morning was that you haven't heard the other side –

MR. T. MARSHALL: Yep.

MR. SIMMONS: – of why decisions were made around that.

MR. T. MARSHALL: That's right.

MR. SIMMONS: Right. And would you accept that the decision maker, while recommendations are made, has to make the decision and may have other factors to take into account when deciding whether to accept a recommendation or not?

MR. T. MARSHALL: Yes.

MR. SIMMONS: Okay.

You've been asked some questions about the role of SNC in the project and about the change in SNC's role from being the EPCM contractor to being a participant in an integrated project team along with people supplied by Nalcor. And I think you'd said you weren't aware that that change had taken place or was underway prior to sanction.

MR. T. MARSHALL: I was not.

MR. SIMMONS: Yep, okay.

What was your understanding, or what's your understanding now, about what happened with the actual engineering design, as to who remained responsible for the engineering work on the project?

MR. T. MARSHALL: I believe that SNC-Lavalin continued to do the engineering work.

MR. SIMMONS: Right. And do you have any understanding of who continued to do the base estimate work on the project?

MR. T. MARSHALL: I know from the Grant Thornton report that it was SNC-Lavalin and the project team.

MR. SIMMONS: Right.

MR. T. MARSHALL: They did it together.

MR. SIMMONS: Okay, so that's something you've gathered from reading that report.

MR. T. MARSHALL: Right.

MR. SIMMONS: So if I were to suggest to you that the main change that was made in the structure, away from EPCM to the integrated project team, was in the procurement function and the contract management function –

MR. T. MARSHALL: Mmm.

MR. SIMMONS: – and not in the engineering function. So at the point of sanction, would a change like that have caused you to have any concern about the reliability that could've been placed on the estimate or the cost – capital cost estimate that was in play at the time of sanction?

MR. T. MARSHALL: No, because they were still doing it, the same people were still doing it. And it was reviewed. There was an independent review done by Validation Estimating, I believe.

MR. SIMMONS: You were asked a few questions about some of the potential alternatives other than the Isolated Island Option and the Interconnected Island Option that was put to the PUB.

MR. T. MARSHALL: Right.

MR. SIMMONS: And one of – in discussion around that, there was mention or there was a quote about whether there would be cheap power in 2041 when the Upper Churchill project –

MR. T. MARSHALL: Mm-hmm.

MR. SIMMONS: – when the Upper Churchill contract expired. And I noted that you said that it would not necessarily be the case that there would be cheap power in 2041. I wonder if you can tell us a little bit more about why you think it's not necessarily the case, or what considerations there are that you were taking into account when you considered that?

MR. T. MARSHALL: The Churchill Falls (Labrador) Corporation is owned 66 per cent by Nalcor –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – and 34 per cent by Hydro-Québec. And the corporation would be run by its board of directors, a number of them appointed by Hydro-Québec. So when the contract – the power contract with Hydro-Québec comes to an end in 2041, CF(L)Co is gonna have all this power and they're gonna want to find a new purchaser. And I think we were all under the impression that, oh, it'll be good, cheap power for us, it'll be great. But CF(L)Co will continue to make that power and it will continue to have a water lease for over 100 years after 2041. So there's a long way to go.

And so if CF(L)Co says: We're gonna sell this power to Hydro for a cent or two cents. Hydro-Québec are gonna say: No, there are other buyers, potential buyers that may pay you more – maybe a lot more.

So CF(L)Co would be – the board of CF(L)Co would be under a duty – a fiduciary duty to the company, to the corporation, to do the best for the corporation; and if it were to do otherwise by signing a lower contract with someone else, they would be – there's a remedy in our corporate law, an oppression remedy, where'd we have to pay the money, the extra money, to make up the difference.

So the power could be sold elsewhere, but there's gonna be a lot of power and a lot of customers, and we'll be one of them.

MR. SIMMONS: There were questions you were asked about the Holyrood plant, and in particular about the cost of installing scrubbers and precipitators if it were the Isolated Island Option that was being –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – being pursued.

MR. T. MARSHALL: Yes.

MR. SIMMONS: Do you recall whether there was any policy statements made in the Energy Plan about that?

MR. T. MARSHALL: There was – I don't recall it exactly. I think there was something about – there was a commitment –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – to put them in –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – to stop the discharge of the contaminants –

MR. SIMMONS: Right.

MR. T. MARSHALL: – unless an alternative was found.

MR. SIMMONS: Okay.

MR. T. MARSHALL: And I assume it was Labrador.

MR. SIMMONS: Right.

So that commitment, that was a commitment made by the government of the province, was it?

MR. T. MARSHALL: Yes.

MR. SIMMONS: Yeah.

In your time in government, up to the time you left as premier, did the province ever back away from that commitment or consider –

MR. T. MARSHALL: Not that I'm aware of, no.

MR. SIMMONS: – or consider not doing it?

MR. T. MARSHALL: No.

MR. SIMMONS: Mmm.

You were shown some – an exchange of email messages between Mr. Vic Young and Mr. Ed Martin –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – asked some questions regarding that. And you'd said, I believe, that as far as you could recall, the message had not been sent to you at the time, that you hadn't seen it prior to these proceedings.

MR. T. MARSHALL: I don't recall it. I don't recall seeing it.

MR. SIMMONS: And if I were to suggest that the message had been sent in to the Department of Natural Resources, and in particular to Mr. Bown, would – and since you're mentioned in it –

MR. T. MARSHALL: Right.

MR. SIMMONS: – would you have had any expectation, one way or another, as to whether it would've found its way to you from the Department of Natural Resources?

MR. T. MARSHALL: I don't think so, unless I was the minister in that department, which I wasn't until January 2013.

MR. SIMMONS: Now, you were also shown a presentation from – and I think it's from around August of 2012, which dealt with the House of Assembly debate, which was upcoming. It was a Nalcor presentation –

MR. T. MARSHALL: Right.

MR. SIMMONS: – planned out or made – included information in there about how the debate might proceed, what arguments could be made.

MR. T. MARSHALL: Right.

MR. SIMMONS: And I gather you hadn't seen that one before this proceeding either.

MR. T. MARSHALL: I don't recall that, and I don't think I would've paid much attention to it, quite frankly.

MR. SIMMONS: Right.

MR. T. MARSHALL: Yeah.

MR. SIMMONS: So do you know whether, at that time, there was a communications committee in place, which had representatives from the Executive Council, Natural Resources and Nalcor?

MR. T. MARSHALL: No.

MR. SIMMONS: You didn't know about that?

MR. T. MARSHALL: No.

MR. SIMMONS: Okay.

So you wouldn't know whether that committee played any role in preparing for the debate at the House, in that case, if you didn't know about the committee.

MR. T. MARSHALL: I didn't. You know, I was in Finance. I had a – I was quite busy there.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And that debate, you know, it was – Natural Resources led that file.

MR. SIMMONS: Right.

MR. T. MARSHALL: And –

MR. SIMMONS: Okay.

So do you have any reason to believe that that presentation, the information in it, was generated at the initiative of Nalcor or whether it was requested or done co-operatively with government?

MR. T. MARSHALL: I don't know. I don't know. All I know is I don't believe it came to me, and if it did, I would've said, well, we'll handle the debate our own way.

MR. SIMMONS: Okay.

Thank you very much.

I don't have any other questions.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: Good afternoon, Mr. Marshall. (Inaudible.)

MR. T. MARSHALL: How are you, Mr. Budden?

MR. BUDDEN: Well, thank you.

MR. T. MARSHALL: I know you and I know who you represent.

MR. BUDDEN: Thank you.

MR. T. MARSHALL: I watch your show.

MR. BUDDEN: Good to know.

As you know, then, I represent the Concerned Citizens Coalition.

MR. T. MARSHALL: Right.

MR. BUDDEN: I believe you probably know a couple of the individuals associated with the commission –

MR. T. MARSHALL: I do.

MR. BUDDEN: – with the Coalition. Mr. Vardy, for instance; you know David Vardy?

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay, well, how do you know – what do you know of Mr. Vardy?

MR. T. MARSHALL: Well, I know that he was a former chair of the PUB.

MR. BUDDEN: Yes.

MR. T. MARSHALL: And I know he – has a doctorate in education, or I think his masters and maybe he just didn't write the thesis at the end of the Ph.D. I'm not sure. I thought I heard – I thought I read he said that or something.

MR. BUDDEN: Yes, he has an honour doctorate in – from Memorial, but he is – his academic work is in economics, actually.

MR. T. MARSHALL: Yes, he's an economist.

MR. BUDDEN: Yes, and Mr. –

MR. T. MARSHALL: I've read his articles –

MR. BUDDEN: Yes.

MR. T. MARSHALL: – and I've followed his – when he'd write letters, you know, in the newspaper, I'd read them.

MR. BUDDEN: Sure. We'll get to that in a couple of minutes.

And Mr. Ron Penney; Mr. Penney is known to you also?

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay, how do you know Mr. Penney?

MR. T. MARSHALL: I knew Mr. Penney when I was at Memorial, a few years ago.

MR. BUDDEN: Okay, fair enough.

Another name from the past: you and Mr. Danny Williams, before he went into politics.

MR. T. MARSHALL: Yes.

MR. BUDDEN: What – did you know him on a personal level, on a business level? What were your dealings with Mr. Williams?

MR. T. MARSHALL: I met Danny Williams – I didn't know him when I was at Memorial, but I met him when I was in my last year of law school, Dalhousie law school, and I think that was fall of '71. And he had completed a law degree at Oxford University in England, and he had come to Dal to do some Canadian law courses and that's where I met him.

MR. BUDDEN: Okay and you later had some business dealings with him, I understand.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay. What were the nature of those, approximately?

MR. T. MARSHALL: Well, I got involved on the West Coast in cable television when it first started, and through that – you know, Mr. Williams was involved in St. John's, and there were others in Gander and Grand Falls and we were in Port aux Basques as well.

And when the industry was just starting here, you know, we had issues with the – you know, we needed to get on the wires, the poles and so we had issues with the telephone company and the power company in order to get there, so – issues with municipalities about taxation and things like that. So, through that, I'd have contact with Mr. Williams and we'd worked on some of those things together.

MR. BUDDEN: Okay.

Were you at all involved in the decision to hire Ed Martin as CEO of Nalcor?

MR. T. MARSHALL: No, I had nothing to do with that.

MR. BUDDEN: Sure, okay.

Up to the time of sanction, which is obviously what we are concerned with here today –

MR. T. MARSHALL: Right.

MR. BUDDEN: – so that is up until the end of December 2012, what were the extent of your personal dealings with Mr. Martin and the other senior members of the Muskrat Falls Project team?

MR. T. MARSHALL: Up until sanction?

MR. BUDDEN: The – up until sanction.

MR. T. MARSHALL: Well – you know, I was a Member of the Cabinet, of the government, and I started off in Justice. So at that point, three years I was in Justice, I knew that Mr. Martin and one of the lawyers in Justice was negotiating the New Dawn Agreement with the Innu and I know Mr. Martin was involved in that. And I knew that from time to time Nalcor officials would come and talk to different lawyers in the

department. For example, Todd Stanley was the lawyer for the – you know, for Natural Resources.

MR. BUDDEN: Yes.

MR. T. MARSHALL: And there were others, through constitutional issues, and they would consult, even though Nalcor had their own lawyers, their internal lawyers, their downtown lawyers – they had lots of lawyers.

MR. BUDDEN: So you would – and in person you would meet with Mr. Martin, or you've indicated you've met with him for briefings on at least one occasion.

MR. T. MARSHALL: Not then. Not then.

MR. BUDDEN: Okay.

MR. T. MARSHALL: When I became – when I went to Finance, and there was – we were getting briefed. You know, the whole Cabinet was getting briefed and caucus was getting briefed, and Mr. Martin was coming over and doing those briefings.

And, again, I recall distinctly this first briefing on the project. And – but I can't remember the involvement I might have had before that. I can't exactly remember when that was; my guess, it was sometime in early 2010 or in 2009.

MR. BUDDEN: Sure.

MR. T. MARSHALL: I just can't recall it. And then – but I do recall a number of meetings, like in the premier's office or at caucus, where Mr. Martin and his officials would come over and give us updates. And that continued over a number of years.

MR. BUDDEN: Sure. Okay.

You made a comment, something to the effect that Nalcor was part of the government family and in many ways was like a department of government.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Who –

MR. T. MARSHALL: With a real difference, though. They were –

MR. BUDDEN: Okay.

MR. T. MARSHALL: They were part of the government – I'm sorry, you go ahead.

MR. BUDDEN: No, well, you can finish your answer.

MR. T. MARSHALL: Well, they were a department just like any other department, except that whereas the other departments – they would need legal advice, they'd have to come – sorry – they'd have to come to Justice. If they need money, they had to come to Finance. If they needed capital works, they'd have to go to the Works department and then they would have to hire – usually, if it wasn't the routine things done in the department, they would bring in – they would hire consultants, consulting engineers, consulting architects.

MR. BUDDEN: Sure. So –

MR. T. MARSHALL: And so that was the difference. They had that capacity that the other departments didn't have.

MR. BUDDEN: Okay, so if they were a department, who was the minister for the department of Nalcor?

MR. T. MARSHALL: Would've been – they would report to Natural Resources.

MR. BUDDEN: Okay.

I'd like to read you just a little bit of your transcript, and this is early in your transcript on page 5. I don't think you –

THE COMMISSIONER: So this is a transcript of ...?

MR. BUDDEN: Of your interview with Mr. Learmonth back in September.

MR. T. MARSHALL: Right.

MR. BUDDEN: And on a similar point, you said in response to a question of Mr. Learmonth

– so I'll read you the answer. I think it's pretty self-explanatory.

You said: I remember, I said to John – that would be John Cummings –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – who was your DM at Justice, I believe – I'm surprised we have no role with the Churchill River. And he said no, he said that's not us, he said that's – it's either Natural Resources – it's Nalcor; it's Natural Resources. And he said usually the premier leads on that file; they keep the file in their office. And he mentioned Premier Williams and he mentioned Premier Grimes and he mentioned Premier Tobin.

MR. T. MARSHALL: Yes, and the premier – well, I guess, and the premiers really lead every file, but my understanding from that conversation with John is that there's certain files – like, the premier allocates where the files go, which departments lead on the file. And you can tell in a way which department is doing – you can tell, like, whose boardroom most of the meetings are taking place in. And, you know, the Churchill River files are so important to the province and, you know, the premier should show leadership on that.

MR. BUDDEN: Okay, so while we're agreed the premier is, after all, the premier –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – it is unusual, you would agree, to have a particular file within the premier's office? Like, that's not true of, say, necessarily building a hospital somewhere or building a school somewhere. This was a somewhat unusual situation.

MR. T. MARSHALL: Yes, there would – on big projects, you know, there would be meetings in the premier's office.

MR. BUDDEN: Okay, but this was a bit more than that, wasn't it?

MR. T. MARSHALL: Yes, it was a lot of meetings, in this case –

MR. BUDDEN: Yeah.

MR. T. MARSHALL: – with Nalcor.

MR. BUDDEN: There's a reference a few moments ago to the hit squad and – just before lunch and the briefing notes and so on prepared by Nalcor. Firstly, I would suggest that it is improper, isn't it, for a Crown corporation to be preparing briefing notes to brief a political party going into the House to lead a hit squad on Members of another party.

MR. T. MARSHALL: Yeah, I've never seen that before.

MR. BUDDEN: Okay.

MR. T. MARSHALL: I mean, I've never seen the idea before, of a department –

MR. BUDDEN: But there it is on Nalcor letterhead.

MR. T. MARSHALL: And who was that directed to? It wasn't – it certainly wasn't directed to me. Who was it directed to?

MR. BUDDEN: Well, I guess I'm getting to that. So I guess I'm looking at – and my questions here are really about responsibility –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – about ministerial responsibility.

MR. T. MARSHALL: Right.

MR. BUDDEN: So if somehow that gets in the hands of the Opposition –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – then one of the Members stands up and – with this, these hit notes on Nalcor letterhead, and says, you know, what is this all about? To whom should that be directed? The minister of Natural Resources?

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay.

MR. T. MARSHALL: The department reports to the minister of Natural Resources.

MR. BUDDEN: Yes, but how is that fair in this instance if the premier's office is keeping that file in the office?

MR. T. MARSHALL: Well, the premier would answer the question if the – you know, if it was a file that the premier was leading on, the premier would answer the question. The premier can answer any question.

MR. BUDDEN: And the premier was leading on the Nalcor file, always, throughout this period of time.

MR. T. MARSHALL: Yes, leading, but the minister would be closely backing up the premier, backing up Premier Williams, backing up Premier Dunderdale.

MR. BUDDEN: Even if the minister is somewhat isolated from the workings of the file itself, as was the case here?

MR. T. MARSHALL: I don't know if that's correct, your last statement. I mean, you know, the – if the premier was having meetings with Nalcor, the way Premier Williams and Premier Dunderdale operated, the minister would be at the meeting also.

MR. BUDDEN: Okay. We've heard evidence –

MR. T. MARSHALL: The minister of Natural Resources would be.

MR. BUDDEN: If I understand the evidence correctly, we've heard evidence that certainly during the Williams era, which wasn't long before this, Mr. Martin would often meet directly with Mr. Williams without the minister being present.

MR. T. MARSHALL: That – I mean, you know, you've heard evidence. I don't know that evidence, but I can tell you – I mean, I was there for, what, 11 years and Premier Williams would always want the minister there.

MR. BUDDEN: Okay.

MR. T. MARSHALL: You know, it's possible he met alone with them. I'm sure that could've happened, but, generally, Premier Williams wanted the minister – whatever the department was, he wanted the minister of that department there.

MR. BUDDEN: And that was true specifically of his dealings with Mr. Martin with regard to the Lower Churchill Project, or are you guessing?

MR. T. MARSHALL: I'm – well, I was at – you know, there were a number of meetings that I was at, and, of course, as Finance minister, when we do the budget, you know, that takes a long process and that's always going on in the premier's office. And I saw how Premier Williams operated, and if the minister wasn't there, he wanted the minister there.

MR. BUDDEN: Okay. The – have you had the opportunity to take in the evidence for your former deputy minister, Mr. Paddon, yesterday?

MR. T. MARSHALL: No, I saw a bit of it, but I was – I couldn't watch it. I couldn't watch the whole thing.

MR. BUDDEN: I was questioning on Mr. Paddon yesterday and, as I understood his evidence, he said that – in his testimony that the Department of Finance exercised really not much greater scrutiny over the financial cost of the Muskrat Falls Project than they would've over any capital project, be it a long-term care facility or a school, what have you.

Does that square with your experience?

MR. T. MARSHALL: Well, if you're talking about the preparation of the estimates, that would be correct, but when it comes in – when they came in looking for the money in the budget process, then they are grilled by the department and by other ministers during the budget process, or by the – you know, the minister of Finance and officials.

MR. BUDDEN: So Finance grilled Nalcor about the Muskrat Falls Project?

MR. T. MARSHALL: Well, during the budget process, anybody looking for money from

government has to come in, and Nalcor would be one of those, but only with respect to what they wanted in terms of government equity. Nalcor were doing their own borrowings also.

MR. BUDDEN: Yeah –

MR. T. MARSHALL: That's the difference between the way Nalcor operated and the other departments operated.

MR. BUDDEN: I appreciate that. Nalcor is a Crown corporation.

MR. T. MARSHALL: Yeah, so they would come in looking for money for – the oil – their equity contributions to the oil fields, money for other projects other than, you know, electricity projects, other than Muskrat Falls, and then money for Muskrat Falls, but in the beginning it wasn't a lot, and then it would build up, right?

MR. BUDDEN: Yeah, but we're now talking this era. So with the sanction cost estimates, for instance.

MR. T. MARSHALL: Yes.

MR. BUDDEN: If I understood the evidence of Mr. Paddon, they would not have been subjected to – by the department, to a much greater degree of scrutiny than would be the capital cost estimates for building a new high school somewhere, or perhaps a courthouse.

MR. T. MARSHALL: No, no. No, that wasn't Finance's role. That was the role of the department to do that.

MR. BUDDEN: Okay.

And even given the impact of Muskrat Falls, which even by the best-case scenario was a multi-billion dollar commitment by the province, both directly and through its Crown corporation –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – that still would be the case. It would not receive, by the department, a greater scrutiny than would building a high school in the west end of St. John's.

MR. T. MARSHALL: Well, the department in this case – you know, Nalcor was created to come up with the expertise to do the things that the department wouldn't have the capacity to do. And there was an awful lot of money put into Nalcor so they could acquire that expertise, and I talked about the lawyers, I talked about the accountants and the engineers and the internal auditors and the external auditors. They were funded to find those experts, hire those experts so that the extra work could be done.

MR. BUDDEN: Okay. I might be –

MR. T. MARSHALL: Then, of course – sorry – then, of course, they were hiring external experts as well, like SNC-Lavalin, like Westney, like MHI.

MR. BUDDEN: We'll get to that in just a moment.

MR. T. MARSHALL: Yeah, and there was a lot of that.

MR. BUDDEN: Yeah, but I'm thinking of Finance here, and I may be – I may have a misunderstanding of the particular role of Finance, but I'll just go – I went to the website earlier this morning, and when you click in Department of Finance Newfoundland it brings you to the homepage, and this is what it says, right on the homepage of the Department of Finance, right next to the picture of your former colleague, Mr. Osborne.

Quote: "The Department of Finance is responsible for supporting Government in the development of fiscal, financial, statistical and economic policy. These responsibilities are primarily achieved by providing timely analysis and advice to government departments and agencies; Cabinet; and the Committees of Cabinet, particularly Treasury Board for which the Minister of Finance serves as President."

MR. T. MARSHALL: That's right.

MR. BUDDEN: So far, so good?

MR. T. MARSHALL: Yep.

MR. BUDDEN: Okay, so here's the part that I'm particularly interested in: "The Department

is also responsible for providing government-wide comptrollership oversight to ensure the appropriate use of public funds.”

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay, that’s the way it is now. Was that true in your era as well?

MR. T. MARSHALL: Yes, the Comptroller General – you know, the budget process, there’s Estimates, and that’s done by the budgeting people; but when the actual numbers are in, it’s the Comptroller General that prepares the statements based on the actual results.

MR. BUDDEN: Yeah, I guess, I would suggest, Mr. Marshall, it’s a bit wider than that. This is a fundamental responsibility of the Department of Finance to provide this oversight over the entire apparatus of government. Would you agree or disagree with that?

MR. T. MARSHALL: The job of the Finance Department is to come up with the money to finance the programs and the capital projects and the business investments of the government. That’s its main job.

MR. BUDDEN: I would suggest that is a job, but it’s not the entirety of the job, surely.

MR. T. MARSHALL: Well, you know, when financing, there’s a budget process that goes on.

MR. BUDDEN: Yes.

MR. T. MARSHALL: That’s another process. Then you mentioned – I’m sorry – Treasury Board, the Treasury Board process.

MR. BUDDEN: Yes.

MR. T. MARSHALL: And that would be, for example, if somebody is doing a project and then they say, oh, we don’t have enough money and they want to come back. They come back to government and say we need more money, and government would then look at it and say, well, no, why don’t you reduce your scope, or why don’t you make changes where you won’t need as much money? So there’s that role as well.

MR. BUDDEN: Well, this final role: The Department is also responsible for providing government-wide comptrollership oversight to ensure the appropriate use of public funds.”

MR. T. MARSHALL: That’s correct.

MR. BUDDEN: Yes. And I would suggest to you that’s a broad omnipresent function of Department of Finance, to provide this oversight where necessary. You would agree with me?

MR. T. MARSHALL: Financial oversight, yes.

MR. BUDDEN: Yes. Okay.

I guess I’ll ask you, how good a job do you believe your department did in this era, this time period during which you’re responsible as minister, to provide the government-wide comptrollership oversight to ensure the appropriate use of public funds where the Muskrat Falls sanction details are concerned?

MR. T. MARSHALL: Again, the estimate numbers are prepared in another department.

MR. BUDDEN: Yes.

MR. T. MARSHALL: The Department of Finance does not do that.

MR. BUDDEN: Agree with you so far.

MR. T. MARSHALL: But the Department of Finance gets the estimates and questions the proponents, because they will come to the department looking for money, and Nalcor would come looking for the government’s equity contribution. So there would be oversight in the sense of questioning how much they needed and why they needed it and what was happening.

So they would do that, but the estimates themselves, the base estimate and the escalation and the risk analysis would be done by experts that the departments would hire.

MR. BUDDEN: Okay. And what role does Finance play in perhaps checking the veracity or the process of those assessments?

MR. T. MARSHALL: Finance would, as part of the budget process, and at other times, meet

with the, you know, officials would meet and they would have discussions. There's constant discussions at the official level as to the money they need and why they need it, and a head's up, we're going to be asking for this so that, so that the department can prepare the necessary fiscal forecast –

MR. BUDDEN: Okay.

MR. T. MARSHALL: – to accommodate that funding, or say, no, we can't do it.

MR. BUDDEN: Okay.

So here we have Nalcor, which we, as we've discussed, there's some ambiguity as to whom they flow out of, whether the premier's office or Natural Resources, but in any event, there they are, and they're saying these are numbers that we propose to government for the making of this extremely important decision; we're all agreed on that, in the life of our province.

What did your department do to exercise oversight in the confirmation of those estimates, cost and schedule?

MR. T. MARSHALL: There – well, nothing but to ask for the information and satisfy itself that this is reasonable, and that the decision of whether the project is going to go would be dealt with by Cabinet, by all departments, and Finance would be involved in the financial end of it.

MR. BUDDEN: Okay.

Perhaps we'll detour just for a moment, but you'll see why. In his testimony yesterday, Mr. Paddon said: look, as Department of Finance, we had no capacity to review detailed cost estimations –

MR. T. MARSHALL: That's correct.

MR. BUDDEN: – for a hydroelectric project –

MR. T. MARSHALL: Right.

MR. BUDDEN: – in Labrador.

MR. T. MARSHALL: Right.

MR. BUDDEN: Which is hardly surprising, since it's not something you do every day.

MR. T. MARSHALL: Exactly.

MR. BUDDEN: His answer to the problem was – or one answer to the problem is, one could retain outside experts.

MR. T. MARSHALL: Which is what happens.

MR. BUDDEN: Yes, now obviously that's expensive.

MR. T. MARSHALL: Yes.

MR. BUDDEN: But however, given the scale of the expense here, billions of dollars, not an unnecessary expense, you would concede.

MR. T. MARSHALL: No.

MR. BUDDEN: Yeah. I guess my question is: what in effect happened, I presume – or do you regard the MHI report as that kind of outside scrutiny so as to satisfy the Department of Finance's supervisory oversight mandate?

MR. T. MARSHALL: Well, you know, we'd want cold eyes review by independent people – have another look at it, a second look, are we really going in the right way here? We did that for hospitals, for example.

MR. BUDDEN: Yeah.

MR. T. MARSHALL: And say, this is the plan, who knows how to build a hospital? None of us, so maybe let's get somebody to give us a second opinion.

MR. BUDDEN: Okay, now the 'we' here is significant. You would agree that it wasn't the Department of Finance that retained Manitoba Hydro International, was it?

MR. T. MARSHALL: No.

MR. BUDDEN: It was the Department of Natural Resources.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay.

MR. T. MARSHALL: It was the government.

MR. BUDDEN: Well, specifically it was the Department of Natural Resources.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay, I'm not talking about who cut the cheque.

MR. T. MARSHALL: Right.

MR. BUDDEN: I'm talking about the retention, the liaison, the supervision, the acceptance of the report –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – in its many drafts was through the office of Mr. Bown of the Department of Natural Resources.

MR. T. MARSHALL: Yes, they were the lead department.

MR. BUDDEN: Okay.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: So in effect I would suggest to you, Finance contracted out to Natural Resources its supervisory and oversight function. Would you agree with me?

MR. T. MARSHALL: Well, you know, it's the government; it's the government. Finance is the government, Natural Resources is the government. The important thing is the work is getting done.

MR. BUDDEN: Well, in this case, perhaps the work didn't get done, did it?

MR. T. MARSHALL: Well, according to Mr. Learmonth –

MR. BUDDEN: Yes.

MR. T. MARSHALL: – Mr. Learmonth, there's evidence to that effect. But again, we haven't heard the other side, have we?

MR. BUDDEN: Not entirely –

MR. T. MARSHALL: No.

MR. BUDDEN: – and ultimately it's Mr. Commissioner –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – who will decide.

MR. T. MARSHALL: Right.

MR. BUDDEN: But my point, I suppose, is that your department did not itself either retain or engage with or otherwise really assume responsibility for this external cold eyes review?

MR. T. MARSHALL: No. Natural Resources did.

MR. BUDDEN: Right. You've read Dr. Flyvbjerg and other experts. From your interview, this appears to be an ongoing interest of yours. So if you've read Dr. Flyvbjerg, you're familiar with the concept of optimism bias.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Do you recall that?

MR. T. MARSHALL: Yes.

MR. BUDDEN: What is your understanding of what optimism bias means?

MR. T. MARSHALL: Well he talked about that people who are promoting a project – maybe I don't understand him properly –

MR. BUDDEN: Well I think –

MR. T. MARSHALL: but promoting a –

MR. BUDDEN: – so far you're right.

MR. T. MARSHALL: – project and who need to do the project or want to do the project, overestimate – or underestimate the cost. They have a tendency to underestimate the cost, and overestimate the benefits.

MR. BUDDEN: Okay. Nalcor obviously would be – I'm not saying that they did or did not have optimism bias, but clearly that is something one

must be watchful for with the proponents of a project such as Nalcor.

MR. T. MARSHALL: Yes.

MR. BUDDEN: The best people in the world are going to be subject to optimism bias, something they care deeply about. You would be, I would be.

MR. T. MARSHALL: Okay.

MR. BUDDEN: Okay. Do you not – did you not or do you not see the problem with having Natural Resources, which is the department that has some relationship to Nalcor, supervising that cold eyes review?

MR. T. MARSHALL: Yeah. The government in the – came up with an energy policy, which said what we wanted to do, that was endorsed in an election campaign. Then, under Premier Dunderdale, it was part of the election campaign of 2011.

MR. BUDDEN: Yes.

MR. T. MARSHALL: And she received a mandate – her government received a mandate to do this project. So there was no doubt that the people of the province knew that as long as the numbers came through, this was a project we were gonna do. This was the preference. Subject to review.

MR. BUDDEN: Yes.

MR. T. MARSHALL: Right? To make sure.

MR. BUDDEN: As long as the numbers – it wasn't a blank cheque, go build a dam at whatever the cost. It was we trust you as a party, as a government, to do a proper vetting of these proposals and, if necessary, build a dam.

MR. T. MARSHALL: That's right.

MR. BUDDEN: That's what it was, right?

MR. T. MARSHALL: That's right.

MR. BUDDEN: So I'm going to put another quote to you. This is from page 6 and 7 of your transcript. And I'm going to skip around a tiny

bit, but I think I'll certainly capture the heart of it. And your lawyer, Mr. Williams, and others will stand up, I'm sure, if I'm misquoting you.

But you're talking here about the financial position in Newfoundland and – so I'll step back a bit. You're saying: After briefly saying how wonderful our financial position was, he then – I think you're talking about one of the bonding agencies – started talking about Muskrat Falls and Gull Island. And I thought he was just mentioning it in passing, but that's when – what the conversation was about –

MR. T. MARSHALL: No, that wasn't a – bonding agencies. That was in a bank in Toronto.

MR. BUDDEN: Yes, you're right. But, in any event, it was a conversation with somebody in the financial world. And then you said: And I realized at that time that I needed to know more about Muskrat Falls. And then you go on, you say: I mean, I knew what the basic deal was as a member of the Cabinet, because the Cabinet had been briefed about the deal. But I felt I needed to know more as Finance minister. I needed to know more about the nuance of the deal and, at a minimum, I felt I needed to know how much money do we have to come up with to meet the province's equity contributions.

MR. T. MARSHALL: Right.

MR. BUDDEN: And then you conclude – I'll just read a little more.

But, over time – then I skip a little bit – you were talking about Derrick Sturge and so forth, and you say: But over time, the number is changing and I needed to know – I said I need to know that number and I need to know and satisfy myself, and the department has to satisfy me, that Newfoundland can come up with their equity, and that Nalcor can come up with their 5 billion, because if they can't, we're going to have to come up with it. So that's when I said I need to know more information. So they brought Ed over to brief me.

And then there's a little more back and forth and you say: but that's when I got a good – not talking about Ed here, you're talking about your own department briefing – but that's when I got

a good briefing and that's what we got. Like I had said to Terry Paddon, and I later said to Laurie Skinner when she took over as deputy, that was a minimum I had to have. I had to be satisfied that the province could come up with its money and that Nalcor could come up with their money.

So, you remember saying that you –

MR. T. MARSHALL: Yes, I do.

MR. BUDDEN: – you adopt that wording here today.

MR. T. MARSHALL: I do.

Now, there were other things as well, but that – yes that was very important to me.

MR. BUDDEN: Yes.

So, I guess – so even then you recognized that as Finance minister you had a bit of an elevated duty when it comes to the finance of the province and ensuring, in particular, that the financing of the Lower Churchill Project was sound.

MR. T. MARSHALL: Yes. The financing, yes.

MR. BUDDEN: Okay.

MR. T. MARSHALL: Mmm.

MR. BUDDEN: And I'd suggest to you that inevitably leads to a further responsibility to look beyond the potential optimism bias of Nalcor, and that you, yourself and your own department had an active duty to verify the numbers being put forward at sanction to yourselves do a bit of a cold eyes review, and if you lacked the capacity to do it in house, to bring in your own cold eyes.

Would you agree with me or disagree with me?

MR. T. MARSHALL: Well, the government has to do that, and it not – may not necessarily – the Department of Finance it's usually left to the department to do that. And the department and Mr. Skinner and I made a recommendation, but the government decided to go another direction, to go to the PUB.

MR. BUDDEN: Okay –

MR. T. MARSHALL: And you know what happened there.

MR. BUDDEN: I do.

MR. T. MARSHALL: Mmm.

MR. BUDDEN: And we'll get to that in just a second, though I know that's not primarily your issue. I guess government is a Morpheus thing. I'm talking, I guess, about let's see if we can focus a little more on where responsibility lies. So if not – if ultimate responsibility for verifying those numbers does not lie with Finance, with whom or where does it lie.

MR. T. MARSHALL: It lies – well, with the – it lies with government, the department that is assigned that task.

MR. BUDDEN: Which is ...?

MR. T. MARSHALL: Which, in this case, would have been Natural Resources.

MR. BUDDEN: So it was Natural Resources –

MR. T. MARSHALL: And Finance.

MR. BUDDEN: – and Finance.

MR. T. MARSHALL: I mean we're all – you know, all of us in the Cabinet are responsible for the decision, ultimately.

MR. BUDDEN: Yes.

MR. T. MARSHALL: Except different people play different roles.

MR. BUDDEN: Yes, but if there's a scandal within Justice, a wrongful conviction, it's not the minister of Finance is on the stand, is it?

MR. T. MARSHALL: No.

MR. BUDDEN: It's the minister of Justice.

MR. T. MARSHALL: Exactly, yes.

MR. BUDDEN: The Cameron commission was concerned about the minister of Health.

MR. T. MARSHALL: Yes.

MR. BUDDEN: I suggest to you that we are – you are on the stand here, you are Finance.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: Well, you were of the day.

MR. T. MARSHALL: I was.

MR. BUDDEN: It's not the buck stop with you.

MR. T. MARSHALL: Not in terms of the estimates. The buck stopped with me with the financing.

MR. BUDDEN: Okay.

MR. T. MARSHALL: And if I couldn't get the financing, the deal wouldn't have gone ahead.

MR. BUDDEN: With whom does the buck stop to ensure that the estimates are honest and sound?

MR. T. MARSHALL: The department of the – the relevant department would do that.

MR. BUDDEN: So that would be –?

MR. T. MARSHALL: And they would hire expertise to have it done. They would get others to come in and do cold eyed reviews. They would discuss it with the Department of Finance and the Department of Finance would look to raising the money.

MR. BUDDEN: So the responsibility lay with your colleague, Mr. Skinner, not with yourself.

MR. T. MARSHALL: Whoever was the minister at the time.

MR. BUDDEN: It was Shawn Skinner. Is that what you're saying?

MR. T. MARSHALL: It would remain with the department.

MR. BUDDEN: Mr. Skinner as minister.

MR. T. MARSHALL: As responsible minister, yes.

MR. BUDDEN: Yeah, and not with you as minister of Finance.

MR. T. MARSHALL: Well, I'm equally responsible.

MR. BUDDEN: Pardon?

MR. T. MARSHALL: I think I'm equally – we're all responsible. All Cabinet ministers take collective responsibility for what happened.

MR. BUDDEN: Yes, but there's – beyond collective responsibility, there's particular responsibility, isn't it? I mean if there's a scandal in Finance, the minister of Transportation doesn't resign, the minister of Finance resigns.

MR. T. MARSHALL: That's correct.

MR. BUDDEN: And that's because you're responsible.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And are you not responsible, I would suggest – or I'd suggest you are responsible for any failures to provide government-wide controllership oversight to ensure the appropriate use of public funds with respect to the Muskrat Falls Project. Does it not stop with you?

MR. T. MARSHALL: The – as I said, the numbers and the review of the numbers of what's required to build a project is the responsibility of the department.

MR. BUDDEN: Yes, of which you are the minister.

MR. T. MARSHALL: No, no.

MR. BUDDEN: Okay.

MR. T. MARSHALL: It's the responsibility of the department that was promoting the project.

MR. BUDDEN: And the oversight function of the Department of Finance, who is responsible for making sure that's –

MR. T. MARSHALL: I am.

MR. BUDDEN: You are.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: Okay. Are you satisfied that that oversight function was exercised appropriately?

MR. T. MARSHALL: The – yes. The officials of the – you know, the officials in the Department of Finance are first rate.

MR. BUDDEN: Are very ...?

MR. T. MARSHALL: First rate.

MR. BUDDEN: First rate.

MR. T. MARSHALL: The people that were there, that I saw. And they would have known that the department was overseeing Nalcor, and they would have known that experts were hired to oversee that work, to review that work.

Validation Estimating reviewed the base estimate. Westney were hired to come in and do the risk analysis, review the (inaudible) – or to do the risk analysis. And then Validation Estimating came in and did a review of that. Then there were other reports. There were numerous reports.

MR. BUDDEN: Well, let's stop –

MR. T. MARSHALL: And the question is how far do you go? How far, how many reports, how many different people do you have look at it before, you know, we – in '14 we put in a government Oversight Committee, another oversight committee.

MR. BUDDEN: Yes.

MR. T. MARSHALL: And I can take you through the oversight that existed in terms of – you had the Nalcor –

MR. BUDDEN: I don't care about 2014. I don't care –

MR. T. MARSHALL: No, no, I'm going back now. I'm going to go back to the oversight that was in existence that you're not referring to. I'm going to say we have Nalcor and we had –

Nalcor have a project management team. And then they've hired SNC-Lavalin, one of the largest engineering companies in the world, to help them do their job. They had lawyers, they have engineers, they have accountants, internal auditors, external auditors. Then they have the executive of Nalcor supervising that.

MR. BUDDEN: Oh yeah, and a board supervising that.

MR. T. MARSHALL: Okay. Then you have a board supervising them with a governance committee and an Audit Committee meeting with the internal auditors and meeting with Nalcor's external auditor, which was – I think it was Deloitte.

MR. BUDDEN: Deloitte, I believe, wasn't it?

MR. T. MARSHALL: Right.

MR. BUDDEN: Maybe.

MR. T. MARSHALL: Then you got to remember the federal government had a role here because they were asked to provide a guarantee. And they were only prepared to provide the guarantee until they were assured that this project could stand on its own without the guarantee. So they had their analysts come in and look at it. They had the – and they insisted that the independent engineer also look at it. The Auditor General had the right to go in there, if he or she chose to do so.

MR. BUDDEN: Let me stop you there for a second.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: And I acknowledge all of that has some significance; however, when the PUB came back with its decision, or I guess it's declining to make a decision, the Government of Newfoundland, I believe, that following day issued a press release – a government of which you were a part – that indicated an intention to have an external and independent review done and they named Manitoba Hydro International.

MR. T. MARSHALL: Yes.

MR. BUDDEN: So that was – unlike all those other things, this was a government sanctioned –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – external and independent review.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And what I'm suggesting to you is that as minister of Finance and having already acknowledged from the – some of the quotes I just put to you, the particular role and responsibilities of the minister of Finance that it was incumbent on you and your department to have played more of a supervisory role of that external review, then in fact took place.

MR. T. MARSHALL: Well, the –

MR. BUDDEN: Would you agree or disagree with me?

MR. T. MARSHALL: Well, what I'll tell you is that the department and – both departments, Department of Finance and Department of Natural Resources, made a recommendation as to who should do a review, an independent review. And the government decided to go in a different direction; they went to the PUB first and then when that was not satisfactory, the government, Natural Resources – if you want to narrow it down –

MR. BUDDEN: I do want to narrow it down.

MR. T. MARSHALL: – made a decision to hire Manitoba Hydro to do that analysis.

MR. BUDDEN: Yes, we (inaudible) –

MR. T. MARSHALL: So the government had made its decision.

MR. BUDDEN: Yes. And I'm suggesting to you – and I won't beat this to death anymore – but as minister of Finance, given the oversight responsibility that's right there – you know, the absolute public face of the department when one logs on to their website is this oversight of public spending; that the minister of Finance has a distinct and unique, and perhaps, paramount

responsibility to ensure that that review is done and done properly. And would you agree –?

MR. T. MARSHALL: The Department of Finance – the Department of Finance made its recommendation as to what should be done. But the government decided to go in a different direction. The Department of Finance suggested a way it should be done, but another way was decided upon.

So the Department of Finance performed its role, it recommended a particular review, but the government decided, after considering, I guess, considering different situations and policies, decided to go with the PUB and then when that didn't work they, the government, decided to go with MHI.

MR. BUDDEN: Did you –

MR. T. MARSHALL: So the Department of Finance did its job.

MR. BUDDEN: Did you at that time express any dissatisfaction that the MHI report was ultimately not reporting to Finance, but rather to Natural Resources?

MR. T. MARSHALL: They were reporting to the government. The –

MR. BUDDEN: They were reporting to Natural Resources.

MR. T. MARSHALL: Yes –

MR. BUDDEN: (Inaudible) –

MR. T. MARSHALL: – which is part of the government.

MR. BUDDEN: It's a division of government, as is Finance –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – as is Women's Policy.

MR. T. MARSHALL: Right.

MR. BUDDEN: But they were reporting to Natural Resources. Did you, at any time, express dissatisfaction with that?

MR. T. MARSHALL: I expressed my views on what I thought – what Finance thought should happen. But the discussion – the decision was to go another way.

MR. BUDDEN: So you did not express dissatisfaction that the MHI was not reporting to your department?

MR. T. MARSHALL: I expressed my opinions, and – as any Cabinet minister would do; the government made its decision.

MR. BUDDEN: Okay.

Okay, I'll move on.

THE COMMISSIONER: Oh, I might take a break here now. I think –

MR. BUDDEN: Sure.

THE COMMISSIONER: – it's been almost two hours now.

So we will take a break for 10 minutes and come back.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Mr. Budden, when you're ready.

MR. BUDDEN: Yes, I am.

Perhaps, Madam Clerk, you can call up Exhibit 00041, page 68.

This is the report of the Joint Review Panel, Mr. Marshall. I'm not going to go into it in any great detail but – perhaps, Madam Clerk, scroll down 'til we get to the grey box that – there we go.

Perhaps you – just briefly read this into the record, Mr. Marshall, if you could?

MR. T. MARSHALL: The Panel concludes that Nalcor's analysis that showed Muskrat Falls –

THE COMMISSIONER: Can you just press your button on your microphone?

Thank you.

MR. T. MARSHALL: "The Panel concludes that Nalcor's analysis that showed Muskrat Falls to be the best and least cost way to meet domestic demand requirements is inadequate and an independent analysis of economic, energy and broad-based environmental considerations of alternatives is required."

MR. BUDDEN: Okay.

Realizing that this is a little broader than the cost analysis that government faced at sanction, you would agree that this is perhaps – could be viewed as a red flag as to the quality and accuracy of Nalcor's numbers?

MR. T. MARSHALL: Yes, they've expressed their opinion. They had – they did consider it to be the least cost.

MR. BUDDEN: Sure. And I won't bother to call it up so we can move along. But the Public Utilities Board similarly concluded that the information provided by Nalcor was not adequate to inform the choice that they were given in the reference question.

MR. T. MARSHALL: Yes, they did not declare it to be the – they did not make a decision –

MR. BUDDEN: Sure.

MR. T. MARSHALL: – as I understand it.

MR. BUDDEN: And you obviously, as minister, were aware of both of these reports and of their conclusions that I've just put to you.

MR. T. MARSHALL: I was aware of the panel's report and the PUB's report.

MR. BUDDEN: Sure. And I gather from your transcript you were also aware of and, sort of,

following the commentaries of Mr. Vardy and – Dr. Vardy, Dr. Feehan and some of the other –

MR. T. MARSHALL: And other people who were – be discussing the project.

MR. BUDDEN: Yes. Some pro; some more concerned.

MR. T. MARSHALL: Yes.

MR. BUDDEN: So you – you were open minded, you were reading all of them.

MR. T. MARSHALL: Sure.

MR. BUDDEN: Okay. And we've already discussed – so I won't go a great length but the – then there was the information note of January 2012.

MR. T. MARSHALL: Mm-hmm.

MR. BUDDEN: And so if I understand this correctly, it was brought to you by one of your officials and said: Look this is the work of –

MR. T. MARSHALL: No, no. It – I think it just appeared. I had it and I looked at it and I said – you know, I read it and it was a summary of what others had said and it gave an opinion.

MR. BUDDEN: Okay.

MR. T. MARSHALL: And I said: Well, what do I do with this? Do they want to see me? Do they want to come in and talk to me? And no. And they were just letting me have their views.

MR. BUDDEN: Okay.

Did you discuss that with your deputy minister, Tony [sp Terry] Paddon?

MR. T. MARSHALL: (Inaudible.)

MR. BUDDEN: I'll let you know there – he says that he'd never seen it before.

MR. T. MARSHALL: No, I – I think it was Bob Constantine that had the – and it was a brief discussion. It was that they just want you to look at it.

MR. BUDDEN: Okay.

MR. T. MARSHALL: So I did.

MR. BUDDEN: They obviously would've wanted you to look at it for a purpose.

MR. T. MARSHALL: Sure.

MR. BUDDEN: And the purpose, I would suggest it follows by obvious inference, was that they had concerns about the sanctioning of the project at that time.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And they wanted to bring those concerns to you as Finance minister.

MR. T. MARSHALL: Right. Just remind me of the date again? It was ...?

MR. BUDDEN: January of 2012, so it was roughly – so just to give you a bit of the timeline –

MR. T. MARSHALL: So before the PUB at this point?

MR. BUDDEN: It was just before the PUB, so if we lay down a timeline, the Joint Review Panel would've been August of 2011. This information note would've been January 2012.

MR. T. MARSHALL: Right.

MR. BUDDEN: And the PUB was, I believe, March 30 or 31, 2012.

MR. T. MARSHALL: Report or they got the question?

MR. BUDDEN: No, they got the question in June of 2011, and –

MR. T. MARSHALL: Okay, so they were finished at this point.

MR. BUDDEN: They – no, not by January '12, they weren't. But they finished not long after that.

So, I guess, what I'm suggesting to you is you've got this report that has come to your

attention by significant officials within your department. I believe these were all individuals that – at a relatively senior level, from my understanding.

MR. T. MARSHALL: You're – what are you referring to?

MR. BUDDEN: The information note Mr. Tymchak, Mr. –

MR. T. MARSHALL: (Inaudible) –

MR. BUDDEN: – (inaudible).

MR. T. MARSHALL: Okay. They're people in the, I think, in the economics and statistics –

MR. BUDDEN: Yeah.

MR. T. MARSHALL: – branch of the department. Yeah.

MR. BUDDEN: So – and, I guess, I'm curious as to – did you not feel it would be important to, perhaps, push a little further to meet with them, even if they weren't keen on it, to say: Look guys, let's flesh this out a bit, you know, why are you so concerned? What am I missing here? I'm minister of Finance, what am I missing?

MR. T. MARSHALL: I read their paper – I did – as I testified earlier I did not agree with all they were saying. They were – I don't – do you want me to go through it again?

MR. BUDDEN: No, no. I don't. Just –

MR. T. MARSHALL: Yeah.

MR. BUDDEN: – just my question was did you not feel –?

MR. T. MARSHALL: Well, I asked. I said: Would they like to meet with me? And the answer was no.

MR. BUDDEN: Okay.

MR. T. MARSHALL: They were just letting you know how – their feelings.

MR. BUDDEN: Okay. But you are, after all, the minister. If you wanted to meet with them – I

mean, I'm not suggesting they be dragged in, but presumably they wanted to bring this to your attention. I'm just curious that you didn't feel the need to pursue it (inaudible) –

MR. T. MARSHALL: You'll have to ask them. You'll have to ask them that. You know, I said: Do they want to meet with me? And the answer was no.

MR. BUDDEN: I could ask them why they didn't want to meet with you.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: But I'm asking you why you didn't insist on meeting with them.

MR. T. MARSHALL: Well I, you know, I get a lot of letters, and I can't meet with everyone.

MR. BUDDEN: No, but (inaudible) –

MR. T. MARSHALL: And I get my – I – you know, we deal with – I deal with my officials. And – but if they wanted to meet with me, I would've been happy to meet with them.

MR. BUDDEN: Okay.

I suggest that's another red flag. We've got the joint review red flag. We've got the PUB red flag.

MR. T. MARSHALL: No, I see you're only bringing up the people that were against the project. There were other red flags coming from – well, not red flags – but flags, we'll say, coming from others as well.

MR. BUDDEN: As you've discussed.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: But I can bring up, with respect, what I wish to bring up.

MR. T. MARSHALL: Sure, of course.

MR. BUDDEN: And I'm suggesting to you that these are significant red flags all falling within a reasonable period of time prior to sanction.

And, I guess, I'm putting it to you: How did these red flags inform your decision that – or your oversight function with regard to being Finance minister? Do you understand me?

MR. T. MARSHALL: Yeah, I –

MR. BUDDEN: It wasn't the most articulate of a question. I can rephrase, if you want.

MR. T. MARSHALL: You know, I made sure that I was open to what others were saying. I wanted to hear what the criticisms were.

MR. BUDDEN: Mm-hmm.

MR. T. MARSHALL: And – but at some point you make a decision. These gentlemen had sent me a paper. I read it. And I didn't agree.

MR. BUDDEN: Okay.

MR. T. MARSHALL: And – but I did put forward, with Minister Skinner, a recommendation. And government decided to go in different direction.

MR. BUDDEN: Okay.

MR. T. MARSHALL: And I did not, you know I stayed there so I obviously supported what the government did.

MR. BUDDEN: Did you ever feel constraints on your ability as Finance minister to appropriately exercise any supervisory function that the department had over Nalcor's spending?

MR. T. MARSHALL: (Inaudible) –

MR. BUDDEN: Perhaps I'll – later on – and it's post-sanction, but not long after you became minister, I understand from your evidence that you initiated or attempted to initiate a process to get individuals with more expertise appointed to the board of Nalcor, and that initiative was shut down by the premier of the day.

MR. T. MARSHALL: Well –

MR. BUDDEN: So –

MR. T. MARSHALL: Again, you know, I had – at that point, in January '13, when I became

the minister of Natural Resources, I was informed that this is now a construction project.

MR. BUDDEN: Yeah.

MR. T. MARSHALL: And I wanted to make sure, all right, what are the oversight mechanisms that are required for a construction project of this magnitude to make sure that we have the right systems in place.

MR. BUDDEN: Yeah.

MR. T. MARSHALL: And so Mr. Martin came in and took me through some of the things I've said to you about the project team, and all the oversight, and the whatever. And we talked about the board and the role of the board and the oversight provided by the board because under the legislation, as you know, it's the board – if you read the *Corporations Act*, it's the board of directors that has the responsibility for management supervision of a corporation.

MR. BUDDEN: That's pretty –

MR. T. MARSHALL: But we –

MR. BUDDEN: – fundamental, yeah.

MR. T. MARSHALL: But we all know that they delegate authority to the CEO, and then the CEO hires –

MR. BUDDEN: Yes.

MR. T. MARSHALL: – other people, and they hire other people.

And I just happened to make the comment; I looked at the members of the board and they – you know, they had legal advice, they had business professors – professor, who, as I said, did – I think did – I'm told did great work with the oversight piece. They had other business people, like Ken Marshall was on the board and they had an accountant, Mr. Shortall, who – I watched some of his testimony before this Inquiry. They had two mayors, the mayor from – Mayor Leo Abbass from Happy Valley-Goose Bay, and that's good because he would – they would – the board would be in touch with what's happening on the ground in Labrador. And also

– Mayor Abbass and Mayor Al Hawkins was there.

MR. BUDDEN: But there's one thing you thought they didn't have.

MR. T. MARSHALL: That's – it just jumped out at me, I said, wouldn't it be a great idea to have somebody who had lots of experience in building hydro projects on the board. And it was just my opinion –

MR. BUDDEN: Yeah.

MR. T. MARSHALL: – and Ed Martin said, yes, he agreed. And he had – he told me he had a system in place. And I think he had a checklist of best governance practices, and they were all checked except for the board; a matrix to determine the qualifications for who should go on the board. And I said, well, let's do it. And he said, are you sure because it's gonna cost you. And I said, yes, I think it's important that we do it. And he agreed. And so I said, let's do it, and then the decision overturned.

We went in a –

MR. BUDDEN: (Inaudible) –

MR. T. MARSHALL: – different direction, Premier Dunderdale and – but Premier Dunderdale had been on this file. Like, I was new to the file, at that point, new to the Natural Resources file.

MR. BUDDEN: But just without the justification, my understanding is that Premier Dunderdale, essentially, or an official of hers, contacted an official of yours and said, no, I will look after appointing the board. So we won't go ahead with what –

MR. T. MARSHALL: No, they –

MR. BUDDEN: – Minister Marshall has proposed.

MR. T. MARSHALL: – spoke to me.

MR. BUDDEN: Okay.

MR. T. MARSHALL: They spoke to me. And Premier Dunderdale had been on that file for,

what, six years, seven years? She had served nationally on the – I learned later – on the Council of the Federation, the Premier's Council, and it headed up their policy on a national energy policy. So she was a lot more experienced on these matters than I was, I was new.

MR. BUDDEN: And at the end of the day –

MR. T. MARSHALL: And I deferred to her –

MR. BUDDEN: Sorry.

MR. T. MARSHALL: – I certainly deferred to her judgment.

MR. BUDDEN: Okay. Well, it wasn't so much her judgment, she countermanded your decision.

MR. T. MARSHALL: Yes, but she had her own views on what she wanted to do with the board.

MR. BUDDEN: And my point, I guess, of that digression was did anything similar happen to you with respect to the Muskrat Falls Project while you were minister of Finance? A direction with respect to the project, a direction of yours or in an issue that yours was countermanded by the premier of the day.

MR. T. MARSHALL: I don't recall that, no.

MR. BUDDEN: Okay.

I'm going to put a quote to you from the evidence – rather the transcript, I believe, of Mr. Todd Stanley. You mentioned him a few moments ago. He was, of course, the deputy minister of Justice and he said: "So you could have circumstances where Nalcor do – come into government and make a presentation on the eighth floor, go get the instructions and approvals, go back and then they'd call the government departments and tell them what they were doing. And the government departments would find out through Nalcor what had been approved on the eighth floor, and may not necessarily think the eighth floor had all the information in from of then that they should have when they made that decision and not agree with the decision."

And my question for you is: Did you hear any similar feedback from your officials at Finance?

MR. T. MARSHALL: No, I don't recall that.

MR. BUDDEN: Okay, so that's total news to you?

MR. T. MARSHALL: Well, Premier Williams and Premier Dunderdale, they would make sure the ministers – the relevant ministers were present at these meetings. And the ministers would then go to their – and if the ministers were there, normally their officials, the deputies would be there as well.

MR. BUDDEN: Okay.

MR. T. MARSHALL: So, you know, I mean, Nalcor had a big job to do and there was oversight coming at them every which way. And I believe Stan Marshall who, when he took over CEO, made the comment about all the oversight. He called it the most, I think, more sanction or more supervision on that project than any project ever. There was more oversight on any – more governance than any project –

MR. BUDDEN: Okay.

MR. T. MARSHALL: – and –

MR. BUDDEN: I'll stop you there.

MR. T. MARSHALL: – so –

MR. BUDDEN: Can you explain with all that oversight, how was it that the numbers put forward at sanction, and assuming what evidence we're heard so far is correct and the Commissioner decides it is correct, how could those numbers have been so significantly inaccurate, with all that oversight?

MR. T. MARSHALL: Well, if that information is correct, then we're going to find out when this – from this Commission, aren't we?

MR. BUDDEN: Yeah. But does that not indict the oversight?

MR. T. MARSHALL: Again. I'm waiting to hear – you know – I mean we learned from the Lamer Inquiry, we can't rush to judgment. We

bring in our evidence as presented and, at the end of the day, the judge will look at the evidence and render his decision.

MR. BUDDEN: Yes, but it's also –

MR. T. MARSHALL: So let's get it all in.

MR. BUDDEN: In any hearing one's entitled to put evidence before a witness, and I'm suggesting to you that if that information proves to be correct, and if not then, as to quote Mr. Learmonth, the question has not value. But if that information is correct, does that not suggest that the oversight process leading up to sanction (inaudible) –

MR. T. WILLIAMS: Mr. Commissioner, I don't know if that's a fair question. You know, the witness has answered that question and he's asking him to pass judgment a third the way through an inquiry and I really don't think that's a fair question to put to the witness.

THE COMMISSIONER: Mr. Budden?

MR. BUDDEN: I believe it is because I'm not just putting some random, hypothetical. I'm putting what the evidence so far, I would suggest, suggests, and if that evidence is correct – if Grant Thornton is correct, if other evidence is correct then the information that was approved at sanction was incorrect. I'm asking him – assuming that to be correct – and again it's an assumption – does that not suggest that the – does that not indict the oversight process does not suggest that it was flawed.

THE COMMISSIONER: Well, I think you could ask him if it suggests that it's flawed, I don't think you can ask it the way – I understand Mr. Williams' position – you're – the way you just put it is a little different than what I understood your question to be. So if you want to rephrase your question go ahead.

I – you know – the issue of oversight, obviously, is significant because I have to look at – part of the Terms of Reference of this Commission of Inquiry are to look at, you know, what information the Government of Newfoundland and Labrador received at the time and, basically, you know, what – whether they acted reasonably

with regards to the information that was received.

So it obviously goes to some extent to the issue of oversight. So I well recognize that that's the biggest part of the government's responsibility here and so I will look at that very carefully. But go ahead. Just you might want to just ask your question again just so that I fully understand your question.

MR. BUDDEN: Okay.

THE COMMISSIONER: Because I think I understood it differently the second time than I did the first.

MR. BUDDEN: Okay. I may word it a – yet again the third time –

THE COMMISSIONER: Okay.

MR. BUDDEN: – a different way but eventually, perhaps, we'll get it right.

So this Inquiry has heard evidence that would suggest that the numbers put forward at Nalcor with respect to the Interconnected Island Option were incorrect, that things were left out, that the schedule was unrealistic and so forth.

If those things slid through the sanction process without being picked up, does that not suggest the sanction – the oversight process at sanction was inadequate?

MR. T. MARSHALL: The oversight process, if it missed that – I don't know if the oversight process would have picked that up. If all these people didn't know that this document was not in or this information was not in, you'd have – I mean, basically, what you'd be saying is that you would get Nalcor to do their work, they'll hire their experts – or to hire their professional people to do the work, and then you'd hire experts to come in to review the work and then you'd have other people look at it again. And then you'd say but, no, we're going to do it, we're going to go back to step one and do it all over again.

MR. BUDDEN: Not necessarily, I would suggest. If you've got – if you tout to the public, said, look, we're going to have an external

independent report – so then you task that agency, MHI, and you say, look, go in and, you know, assess the situation, look at what you want to look at.

MR. T. MARSHALL: Well, isn't that what happened? MHI were hired by the government to go in and do that review.

MR. BUDDEN: We've also heard evidence that not everything was disclosed to them and even more significantly, perhaps, that their conclusion was rewritten and rewritten and rewritten yet again before it made its final draft.

MR. T. MARSHALL: Well, I'm not aware of that.

MR. BUDDEN: Okay.

Anyway, I'll move on. The – did your department – you indicate at various points in your transcript that your department – or that you in particular were aware that this was a big project with implications of billions of dollars for Newfoundland. And you also expressed an awareness that megaprojects sometimes run over budget, and I think that's something we all know to some degree.

MR. T. MARSHALL: Yes.

MR. BUDDEN: What, I guess, did your department do in the way of sensitivity analysis or any other forms of analysis to figure out what would be the impact on Newfoundland, on our financing, if this thing is 2 billion over budget?

MR. T. MARSHALL: Oh –

MR. BUDDEN: Because ultimately –

MR. T. MARSHALL: Remember –

MR. BUDDEN: – this is backstopped by Newfoundland, right?

MR. T. MARSHALL: Yeah.

Flyvbjerg – Professor Flyvbjerg, as I understand it, said that to avoid these biases that people have, is that you should look at – as I understood it, to look at projects in your own area and build up a data of projects happening in your area, and

look at them to see what their costs were and compare them with your estimates.

MR. BUDDEN: That is one of the things he said, yes.

MR. T. MARSHALL: All right, so from my perspective, hydroelectric – my view on hydroelectric plants is different from Professor Flyvbjerg because I look at what's happened here and I look at what's happened with, let's say, Bay d'Espoir; 600 megawatts, a bit smaller than Muskrat Falls, came in on time and on budget.

I look at, obviously, the Upper Churchill, the Churchill Falls Project, which is, you know, everyone's criticized it for the fact that they couldn't get to market. But they built a project five times the size of Muskrat Falls on time and on budget.

Menihek was built, I think, in the '50s. There was no road going in there. I don't know if that was on time and budget but I do know it's still operating. Twin Falls was built before Muskrat – or before the Upper Churchill and that was built on time and on budget.

MR. BUDDEN: I may stop you there because –

MR. T. MARSHALL: So –

MR. BUDDEN: Yeah, I think you're wandering a bit from my original question (inaudible).

MR. T. MARSHALL: Well, I guess, the point I'm making is that hydroelectricity here and the benefits of it, in terms of low rates for the people in Labrador that are on the Labrador interconnected network and people in other provinces that have hydro, have the lowest rates. So I was coming at it from that point of view.

MR. BUDDEN: Sure.

And I guess my question was what, if any, analysis did your department do that you're aware of, to explore the impact on Newfoundland's budget if the thing ran, say, 2 billion over budget or some other number? Was that within your contemplation as a possible outcome? And, if so –

MR. T. MARSHALL: Yes, you –

MR. BUDDEN: – what was done to anticipate a plan?

MR. T. MARSHALL: You thought of that and you've got Laurie Skinner's notes and you have the idea that we, as expressed by credit-rating agencies that we had gone through this period of time when we were very fortunate to have five surpluses – or five surpluses that we – the net debt of the province can be reduced by \$4.1 billion.

So if years ago the province could handle an additional \$4.1 billion of debt when it wasn't – when there was no cash flow to help service it, if we had an overrun of that magnitude again, where there's cash coming in to service it, then I felt if we could handle it then, when the economy had doubled in size, we could handle it now.

MR. BUDDEN: Okay.

MR. T. MARSHALL: But I never in my wildest thought there would be an overrun of that much, but we – you know, you considered it. And I think there was – I think once I asked Terry to compare it to what was happening in Greece – I don't know if you saw that – to calculate the debt-to-equity ratio.

MR. BUDDEN: Mmm.

MR. T. MARSHALL: And we weren't as bad as Greece and we weren't as bad as the United States, so we can handle it.

MR. BUDDEN: Okay.

My last question – and this is almost more of a housekeeping one – as a lawyer, as a former minister of Justice, as somebody who was in Cabinet for 13 to 14 years –

MR. T. MARSHALL: Eleven.

MR. BUDDEN: Eleven was it?

MR. T. MARSHALL: Right.

MR. BUDDEN: Okay, 11 years – we've heard that there is an order-in-council essentially

limiting the scope of the PUB's ability to review various projects. The mechanism for changing an order of council, if the government of the day had so chosen to task the PUB with an unlimited ability to review much as US – the Nova Scotia board had, that wouldn't have been a significant problem, would it? I mean simply an order of council can be done almost in a –

MR. T. MARSHALL: (Inaudible.)

MR. BUDDEN: – matter of a few days.

MR. T. MARSHALL: There would be discussion and –

MR. BUDDEN: But it's not an obstacle of any significance.

MR. T. MARSHALL: No.

MR. BUDDEN: Okay.

MR. T. MARSHALL: No.

MR. BUDDEN: Thank you, Mr. Marshall.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: Harold – sorry, Edmund Martin.

MS. E. BEST: Mr. Commissioner, if you don't mind, I've discussed with Mr. Smith and he wouldn't – doesn't mind if I go before him.

THE COMMISSIONER: I want to keep the order I always keep. So I'll have Mr. Smith go first.

MS. E. BEST: Okay. I won't – I'm not sure if we're going to finish today but I can't be here tomorrow.

THE COMMISSIONER: We're going to go to 5 today and we're going to start tomorrow at 9. Because I've spoken to Ms. O'Brien over the break – so it's a good time to mention this – we're going to need two full days, close to two full days, with Mr. Kean tomorrow and Thursday.

So I'm hoping we'll – and hopefully you're still available tomorrow, Mr. Marshall, but I'll try to

get you in early tomorrow morning and try to get you finished tomorrow morning. And then go with Mr. Kean and do our best to get Mr. Kean finished by Thursday night, because as I had mentioned earlier, we're not going to be sitting Friday or Monday, obviously.

So, Mr. Smith.

MR. SMITH: Mr. Marshall, Harold –

MR. T. MARSHALL: Mr. Smith.

MR. SMITH: – Smith for Ed Martin.

Mr. Marshall, I'm curious. You mentioned a number of times that Mr. Martin had attended and presented either slides or provided information to various government officials, particularly the senior government officials of ministers, the premier and senior officials of the departments involved.

MR. T. MARSHALL: Correct.

MR. SMITH: I'm wondering did Mr. Martin, at any time, discuss issues of risk and risk management.

MR. T. MARSHALL: Discuss it with me?

MR. SMITH: Yes.

MR. T. MARSHALL: Yeah.

MR. SMITH: He did.

MR. T. MARSHALL: We – when there were – as I said previously, when there were events, you know, criticisms in the media and whatnot, Mr. Martin would come in – like, you know, the Rocky Knoll or SNC-Lavalin, what's happening in other parts of the world with them, labour productivity problems. He would come in and many times we discussed risks that were out there and his concern about them and how he's handling them.

MR. SMITH: Would he have mentioned labour availability as opposed –

MR. T. MARSHALL: Yeah.

MR. SMITH: – to productivity?

MR. T. MARSHALL: Yes. Try – he said it was, you know, your competition with western Canada and competition with Hebron to get workers.

MR. SMITH: And what kind of risk management did he suggest was being employed to lessen that – those risks?

MR. T. MARSHALL: Things like making sure the camp was attractive; making sure there were good turnaround times, that people, you know, they wouldn't have to fly out to western Canada; they could just fly out to Labrador.

Connections with Aboriginal communities and with women's groups to have more Aboriginals and women trained and hired for the project – think, basically that.

MR. SMITH: And did he discuss with you any issues with respect to weather – weather windows and problems that might arise because of poor weather conditions?

MR. T. MARSHALL: Yes.

MR. SMITH: Yeah.

And what kind of management was he looking at when he discussed those with you?

MR. T. MARSHALL: With weather?

MR. SMITH: Yeah.

MR. T. MARSHALL: I don't recall.

MR. SMITH: Okay.

Do you recall whether or not any work was done prior to – or pre-sanction on the project?

MR. T. MARSHALL: Yes.

MR. SMITH: Okay.

And the – my understanding from the evidence we've had from the board of directors – that funds – or those funds were approved by the board pre-sanction.

MR. T. MARSHALL: The board of –

MR. SMITH: The board of Nalcor.

MR. T. MARSHALL: Yes.

MR. SMITH: Okay.

Were you – you were aware of that?

MR. T. MARSHALL: No, I was aware that work –

MR. SMITH: Work was –

MR. T. MARSHALL: – (inaudible).

MR. SMITH: – being done.

MR. T. MARSHALL: Yes.

MR. SMITH: Okay.

MR. T. MARSHALL: Excavation work, roads, clearing, that type –

MR. SMITH: And the purpose of that work?

MR. T. MARSHALL: Purpose of the work?

MR. SMITH: Yeah.

MR. T. MARSHALL: It was the start of the project.

MR. SMITH: Start of the project.

MR. T. MARSHALL: To get ready for the project.

MR. SMITH: Right. Okay.

MR. T. MARSHALL: Mmm.

MR. SMITH: Now, I have one more area I'd like to address. Could we have P-00924 please, Madam Clerk?

THE COMMISSIONER: 00924, tab 23.

MR. SMITH: Now, Mr. Marshall, I'm wondering, did you ever receive a call from Mr. Young regarding his concerns that he expressed at the – in the bottom of this email?

MR. T. MARSHALL: I don't recall it; I really don't.

MR. SMITH: I ask you –

MR. T. MARSHALL: I think I would have remembered if Vic Young phoned me.

MR. SMITH: Okay.

Could you scroll up again? I'm sorry – go up.

Looking at number 5. The reason I asked that is because number 5 says: "Regarding the financial implications to the Province, obviously suggest you give Tom Marshall a call."

Mr. Martin is inviting Mr. Vic Young to call –

MR. T. MARSHALL: Yes.

MR. SMITH: – you with respect to the implications to the province. I –

MR. T. MARSHALL: Yes.

MR. SMITH: – any particular reason why he might suggest that Mr. Young call you regarding that issue?

MR. T. MARSHALL: Because the province had to come up with the – the province would have to come up with the base equity.

MR. SMITH: Right.

MR. T. MARSHALL: And any contingent equity.

MR. SMITH: Right. Because it wouldn't be Mr. Martin's responsibility to find the financing. It's a –

MR. T. MARSHALL: That was the –

MR. SMITH: – Department of Finance issue, isn't it?

MR. T. MARSHALL: Exactly.

MR. SMITH: Okay. And to your recollection, you didn't receive any calls from Mr. Young?

MR. T. MARSHALL: I don't think I did.

MR. SMITH: Okay.

MR. T. MARSHALL: But I'm not getting any younger. So –

MR. SMITH: Thank you, Mr. Marshall.

THE COMMISSIONER: All right. Kathy Dunderdale.

MS. E. BEST: Good afternoon, Mr. Marshall.

MR. T. MARSHALL: Good afternoon.

MS. E. BEST: We've met. I'm Erin Best, counsel for Kathy Dunderdale.

MR. T. MARSHALL: Mm-hmm.

MS. E. BEST: I know it's late in the day so I'll try not to keep you too long.

You mentioned this morning – just very quickly – the possibility of underruns. Now that's not something we've heard much about in this Inquiry, but I understand there was some possibility of underruns, wasn't there? In fact, I read in your transcript you spoke of one underrun – Mr. Martin's negotiation of the financing, I believe –

MR. T. MARSHALL: Yes.

MS. E. BEST: – resulted in an underrun. Can you elaborate on that and then speak about other – the possibility of other underruns?

MR. T. MARSHALL: Well, you know, there were a number of major contracts. And, you know, we'd know more about the cost once those contracts were finalized or once the, you know, the contracts were put together and you had the final bids and all that.

And I, in Finance, was obviously concerned about the finance. And the financing was one area in particular, and I wanted to satisfy myself that they could come up with the 5 billion they had to come up with. And I requested that I be kept apprised of what they were doing. And I was.

And I was very impressed with the process they put in place. The thoroughness and the

robustness of the process they put in place. It was different from what we did in government. It was more thorough than what we did in government. You put out – we put out a tender in government – you put out a call for tenders. They come in and you take the best one. Mr. Martin went through a process where they had a first call, eliminated a couple of the banks then did a second call, picked the best one and then negotiated further.

Now, in government you're not allowed to do that. But he did that and the – so the financing went exceptionally well. So if the others went like that everything was going to be fine.

He told me they had a – they had a process in place where, in terms of contracts, in term of tenders, he had a system in place where it would be dealt with at this level and then if that was approved at that level it would keep going up the line with different people approval – different people approving and then it would finally get to him. So it seemed to me very thorough in what they were doing.

And I also mention the guarantee, you know, Mr. Martin and Premier Dunderdale were obviously involved with that. They got the Harper government to agree to that, and it was a thorough process in the way they went through it. But unfortunately some of the other contracts – you went the other way.

MS. E. BEST: Thank you.

You said earlier – and I'm just sort of summarizing I think some of your evidence, that you – you said that you believed that a capital cost estimate should include known risks, right?

MR. T. MARSHALL: Well, they should – well, yes. There are certain risks you can – you know they're gonna to happen, but there's others – there's others you just know generally they're gonna to happen. You know, bad weather situations in the North, labour productivity issues, and so you have to put a number on those as well.

MS. E. BEST: Okay.

So what I'm getting at is, a review of the Muskrat Falls CPW, which included the capital cost estimates –

MR. T. MARSHALL: Right.

MS. E. BEST: – a review of those inputs for reasonableness, that should include a review of known risks, correct?

MR. T. MARSHALL: Yes.

MS. E. BEST: Madam Clerk, I'm wondering if we can pull up, please, Exhibit 00770. P-00770

If we could go to page 8, please.

Now this is – this exhibit is the scope of work between – for MHI for the second review, the DG3 review.

MR. T. MARSHALL: So, this is MHI to the Department?

MS. E. BEST: This is the scope of work that was agreed to; this is actually part of the signed contract.

MR. T. MARSHALL: Oh, I see.

MS. E. BEST: Between MHI and Department of Natural Resources.

So, page 8, if you could – let me see, where am I looking at there – if you could scroll down please. No, sorry, actually it is back up at the top I want to take you to.

Okay, so – yeah – so, the objective that's listed there in the scope of work, you can see, "MHI ... shall review work completed by" Nalcor, "since Decision Gate 2 ... in preparation for Decision Gate 3 The review shall include an assessment of the" CPW "Analysis of the various components for each of the two Options, including a reasonableness assessment of all inputs into that analysis."

And so my question for you is does that preclude an analysis of the known risks? That wording?

MR. T. MARSHALL: No.

MS. E. BEST: If the inputs include the capital cost estimates –

MR. T. MARSHALL: Right.

MS. E. BEST: – and you’ve said the capital cost estimates include known risks.

MR. T. MARSHALL: Right.

MS. E. BEST: Well, then I put to you that this analysis does include known risks.

MR. T. MARSHALL: If they put – if they put the numbers in, yes.

MS. E. BEST: Yes –

MR. T. MARSHALL: Yeah.

MS. E. BEST: Well, exactly.

MR. T. MARSHALL: Yes.

MS. E. BEST: Thank you.

MR. T. MARSHALL: Yeah.

MS. E. BEST: And certainly it doesn’t preclude an analysis of risk; there’s nothing –

MR. T. MARSHALL: All inputs into the analysis – including a reasonable assessment of all inputs. That would include everything. Yeah.

MS. E. BEST: Thank you.

And if we could, please – and actually I’ll ask you, too, about MHI’s review of the project. I’ll ask you as well, in the normal course, there’s no requirement that government retain a consultant to do an independent review, is there?

MR. T. MARSHALL: No. I mean, we have officials in government that were hired to do work for us.

MS. E. BEST: Right.

MR. T. MARSHALL: Right? We don’t – if you’re a lawyer working for government, we don’t get people to come in and keep reviewing your work. We rely on you to do the work for the government.

MS. E. BEST: Right.

MR. T. MARSHALL: But there are, obviously, you know, times when, you know, large projects – like, you know, a major hospital, for example, you’re gonna say, all right, let’s get another set of eyes to look at this.

MS. E. BEST: Yes. For – but it’s unique, but for special big projects –

MR. T. MARSHALL: Yes.

MS. E. BEST: – right?

MR. T. MARSHALL: Yes.

MS. E. BEST: That’s what I was asking. Okay.

And certainly the government of the day could have proceeded to sanction without this MHI review but it chose to do the review, right?

MR. T. MARSHALL: Exactly. Exactly. This –

MS. E. BEST: Thank you.

MR. T. MARSHALL: This is – you know, there’s nothing in the Constitution that says that the Public Utilities Board has to review the policy of the government. The government chooses to set up the Public Utilities Board for the purposes of implementing its policy. It could choose a different model.

MS. E. BEST: Okay.

MR. T. MARSHALL: Yeah.

MS. E. BEST: Thank you.

And I’d like to actually go to the report that this scope of work belongs to, if we could please, Madam Clerk, P-00058. If we could turn to page 7, please.

I’d just like for you to read the first paragraph there, the Executive Summary: “The Government of Newfoundland and Labrador, retained ... (MHI) to provide an independent assessment of two generation supply options, as prepared by Nalcor ... in preparation for Decision Gate 3, for the future supply of electricity to the Island of Newfoundland. MHI

was asked to review the work completed by Nalcor Energy since Decision Gate 2 in preparation for Decision Gate 3 and to determine which option is the least cost” – option – “based on the updated cost and technical data provided by Nalcor.”

MR. T. MARSHALL: Mm-hmm.

MS. E. BEST: “MHI was also asked to complete a reasonableness assessment on all inputs into the analysis. The least cost metric for each option was computed by application of the ... (CPW) method.”

And if we could please turn to page 8, as well, what I’m going to ask you, after we’ve look at a few sections of this report, is if this report addressed your request for an independent review that yourself and, I believe it was, Minister Skinner requested. And so far what we’ve read in the Executive Summary, does it go towards addressing your request for an independent review?

MR. T. MARSHALL: Yes.

MS. E. BEST: So page 8 on here, if you could, please, scroll down, Madam Clerk. Oh, actually it’s back – back up, I must have – okay – oh, just to the top, please. Yes.

So I wanted to talk about the second sentence on this page: “To perform this review, MHI assembled a team of specialists with expertise in load forecasting, risk analysis, hydroelectric generation, HVdc engineering, system planning, and financial analysis.”

So that description of the team that prepared this report, again, does that address the concerns, or does that help to address some of the concerns that you raised in your request, or recommendation for an independent analysis?

MR. T. MARSHALL: Well, they’re – yes, they’re putting together the team or a team of specialists to deal with the load and the risk analysis and other things that would be considered including financial analysis.

MS. E. BEST: Okay, and was that the type of team that you envisioned would do the

independent analysis that you had recommended?

MR. T. MARSHALL: Probably do it in the office. The accountants would hire the engineers to come in and help them do the work, yes.

MS. E. BEST: Okay, but the same expertise was gathered?

MR. T. MARSHALL: Well, I don’t know in detail. Well, financial analysis, yes.

MS. E. BEST: And then if we could turn to page 9, please, Madam Clerk. If you could go down a little bit further. Just in the section there with Muskrat Falls Generating Station.

I mean we have looked at this section before and it’s the same thing I raise that here – this is the finding of MHI, and they find that, “The cost estimates, construction schedules, and design work undertaken by Nalcor and its consultants were reviewed as part of the” – DG3 – “process.” And that: “The proposed schedule is appropriate and consistent with best ... practices.” And it goes on there and it says, “... MHI considers the” – DG3 – “cost estimate to be an AACE Class 3 and thus would be considered reasonable for Decision Gate 3 project sanction.”

Is this finding of MHI – is this – did this – was this part of what allowed you in your November 12 speech to find that you thought that the Muskrat Falls Project was a good project?

MR. T. MARSHALL: Yes.

MS. E. BEST: Thank you.

And before we leave this document, I’d just like to go back to the issue of risk and how it’s addressed in this report. If we could go to page 39, please, Madam Clerk?

I think we can see there on the top – now this is in regards to the HVDC cost estimates. But we see there at the very top of this report: “Sufficient contingency has been allocated to this portion of the project to offset any unforeseen project risks.”

So it looks like here that MHI, at least, turned its mind to some of the project risks. Would you agree?

MR. T. MARSHALL: I would. They considered it.

MS. E. BEST: Thank you.

And if we could please go to page 43, Madam Clerk? If you could scroll down please to the section entitled: Risk Assessment. Again, the title of that section alone indicates that they did turn their mind to at least some areas of risk. Would you agree?

MR. T. MARSHALL: Mm-hmm.

MS. E. BEST: And then if you actually go to the next paragraph on the next page – thank you. And the last paragraph in that section says: “At this stage, the major risks to be addressed for the transmission line complex remain as contractor cost, labour availability and productivity. Nalcor has identified this as a major risk and had identified mitigation strategies to attract skilled labour back” to “the province through a master labour agreement, training, and other self-development programs.”

So it appears that MHI addressed that area of risk –

MR. T. MARSHALL: Mm-hmm.

MS. E. BEST: – in its report. Do you agree?

MR. T. MARSHALL: Yes.

MS. E. BEST: Thank you.

And, lastly, at page 57, please, Madam Clerk – if you could scroll down, please.

Right here, thank you.

We just see there – you see above the brown section, the last sentence in an un-bolded font. It says: “In discussion with the project team, however, it is apparent that they are” all “well aware of these issues and are taking measures to manage the risks associated with the components of the schedule.”

And I’ll put to you that the schedule itself and schedule risks are addressed in this report. Would you agree with that?

MR. T. MARSHALL: They are.

MS. E. BEST: Thank you.

I’ll change the topic now. I’d like for you to turn to page 53 of your interview transcript. Do you have a copy there in front of you?

MR. T. MARSHALL: I don’t believe I do.

THE COMMISSIONER: No.

MS. E. BEST: That’s okay. I can ask the question without reference to the transcript. If you have any difficulty, or feel like you need to review the transcript –

THE COMMISSIONER: We may have a copy here.

MS. O’BRIEN: There is a copy.

MS. E. BEST: There is? Thank you.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: Page again?

MS. E. BEST: Fifty-three.

I think you were being asked a question about oversight – government oversight. And you stated: There was a plethora of oversight.

MR. T. MARSHALL: Oh yes.

MS. E. BEST: Do you recall using that word?

MR. T. MARSHALL: I do.

MS. E. BEST: And do you still agree that there was a plethora of oversight?

MR. T. MARSHALL: Yes.

MS. E. BEST: And you go on, and this morning you did mention some of it, although I believe Mr. Budden stopped you before you finished your list. I noted that you talked about Nalcor’s lawyers, engineers, accountants, internal and

external auditors, Deloitte, executive of the Nalcor board – executive of Nalcor, the Nalcor board, federal government and then you were stopped. I wonder if you would like to finish that list.

MR. T. MARSHALL: There was – well, I was at the board, I think, when it ended – dealing with the board. I think I talked about the – oh, yes, the external auditor and the independent engineer, the government’s insurance officer, reports – there were numerous reports – the business and transparency act. Their financial information had to be released, they had public meetings that was streamed – you know, streamed throughout the province, questions asked at the House of Assembly. And, then, when it became a construction project, again, we met – or I met with Mr. Martin –

MS. E. BEST: I’m really only concerned up to the date of sanction.

MR. T. MARSHALL: Up to sanction.

MS. E. BEST: Yeah, thank you.

MR. T. MARSHALL: There was the meetings in the premier’s office.

MS. E. BEST: Right.

MR. T. MARSHALL: There were the meetings that Nalcor officials were having in – or having with officials in departments. There was a – I think a group, a senior officials group chaired by the clerk, that senior government officials were there. Nalcor was there as well. It wasn’t oversight, it was just to – I think you said this earlier; it was to ensure that everything was aligned between Nalcor and the other government departments.

MS. E. BEST: Can you think of any other government project that had this level of oversight?

MR. T. MARSHALL: Not while I was there. Not while I was there. The – you know, the – there seems to be a feeling by many people that Nalcor were like an enemy, where Nalcor were part of the government, right, with – given the specific resources to do all these things.

MS. E. BEST: Hmm.

MR. T. MARSHALL: And then they would do them and they would get independent people to review them.

MS. E. BEST: Mmm.

MR. T. MARSHALL: And then, say, well, we want more oversight – more oversight. And I added – you know, later we added another project to the government Oversight Committee. So there was lots of oversight.

MS. E. BEST: Thank you.

Mr. Budden asked you if it was unusual –

MR. T. MARSHALL: Oh I said I – I said the government later on added –

MS. E. BEST: Yes.

MR. T. MARSHALL: – another oversight committee.

MS. E. BEST: Yeah. Thank you.

Mr. Budden mentioned – he asked you if it was unusual to have this file in the premier’s office and I’m not sure what your –

MR. T. MARSHALL: I don’t think it –

MS. E. BEST: –answer was, but –

MR. T. MARSHALL: No, it’s not unusual. There’s –

MS. E. BEST: Well, I was going to ask you about Grimes and Tobin. I mean they had a Lower Churchill Project file as well, right?

MR. T. MARSHALL: Well, I don’t know, but that’s what I was told by the deputy at the time. When I made the comment that – you know, when I made the first comment about the Churchill River files and he explained to me that it was normally Natural Resources, but in many cases the file was so important that the file would be led out – you know, out of the premier’s office.

MS. E. BEST: For the purposes of oversight.

MR. T. MARSHALL: The purposes of the management and oversight of the file, yeah.

MS. E. BEST: Thank you.

MR. T. MARSHALL: Hmm.

MS. E. BEST: Those are my questions. Thank you.

THE COMMISSIONER: Thank you.

Julia Mullaley. Charles Bown.

MR. FITZGERALD: No questions, Commissioner.

THE COMMISSIONER: Okay.

Robert Thompson?

MR. COFFEY: Hi, Mr. Marshall, my name Bernard Coffey. I represent Robert Thompson.

I just have some questions relating to, if I could – just see here.

Could you bring up, please, Exhibit P-00914? You were referred to this earlier, Sir.

THE COMMISSIONER: 00914 is tab 12.

MR. COFFEY: Oh sorry. I apologize. Yeah, I got to get used to that.

This is a deck dated June 15, 2011, Lower Churchill Project.

MR. T. MARSHALL: Mm-hmm.

MR. COFFEY: And, Mr. Marshall, I'm going to – Madam Clerk, could you go to page 36, please? Actually, if I could, I'll go back. Go back, please, to page 33. Thank you.

Now, the heading of this is: Muskrat Falls Cash Flow and the subheading is: "MF provides lenders with sufficient cash flow to service the debt." And it's colour coded, Mr. Marshall, you can see on the bottom.

MR. T. MARSHALL: Mm-hmm.

MR. COFFEY: The operating costs are blue, the debt service payments are in red and the free cash flow/dividends are in a light green. And the quantities and years – quantities are on the vertical scale and the horizontal scale is the – in years.

So just having looked at that – if you go to page 34, please, now, this is the LIL Cash Flow and its subheading is: "LIL provides lenders with sufficient cash flow to service the debt." And, again, colour coded blue, red and green. It's a different shape –

MR. T. MARSHALL: Mm-hmm.

MR. COFFEY: – but it is there. And, again, the time frame and the dollar quantities are set out.

And then, finally, if we could go to page 35, which is the MF + LIL Cash Flow and this is: "Dividends from both MF and LIL are available to service any Provincial debt borrowings made to provide equity."

And I presume, looking at – I'm gonna suggest to you that this, page 35, is a compilation of pages 33 and 34 – that be correct?

MR. T. MARSHALL: Yes.

MR. COFFEY: And page 34 – I'm sorry, 33, that "Muskrat Falls Cash Flow" was presumably the generation plant, as opposed to the LIL, which was the transmission line to the Island. (Inaudible) – and you're nodding, yes.

MR. T. MARSHALL: Yes.

MR. COFFEY: Okay.

And finally, if we go to page 36, this is a MF + LIL Available Cash Flow to Province – subheading is "Dividends from both MF and LIL are more than sufficient to service the Provincial debt borrowings."

And this is the "Free cash flow / Dividends" in green –

MR. T. MARSHALL: Yeah.

MR. COFFEY: – and if you look at the shape of that on the graph and look back at the green

on page 35, one will see that – I’m gonna suggest – that the green on page 36 is the green on page 35.

And you’re nodding yes. Okay.

Now, the reason I bring this to your attention, I’d like you to describe, please, for the Commissioner, what this “Free cash flow / Dividends” was.

MR. T. MARSHALL: Well, the cost of –

MR. COFFEY: What – almost, if you could – what the point of these four slides was.

MR. T. MARSHALL: To show what cash would be available to the province after the operating costs were met and after the – they serviced – Nalcor serviced the debt they took out.

MR. COFFEY: Yeah.

MR. T. MARSHALL: And then dividends would be available to the province, which the province could use to pay down any debt it took out to make its equity investment in the company. Or use it for other purposes. It could put it – it could say: Don’t give us that money, reduce the debts further. Or government – the government of the day may decide to spend it on schools and hospitals and progressive social programs or what have you.

MR. COFFEY: Now, in relation to that – and I, again, I apologize to the Commission. I don’t have – I didn’t have it – what I’m gonna refer to made an exhibit, but it is publicly available. And I’m gonna just refer to the *Hansard* of December 20, 2012. And this relates, in fact, to something you just spoken about, Mr. Marshall. Okay?

And on that day, you were in the House – and if one goes online you will find that there is a 448-page transcript from that day. And at page 58 that day – you know Tom Osborne?

MR. T. MARSHALL: Yes.

MR. COFFEY: Okay.

Well, on that day – and, again, to put something you said that day, in response to what he said – I’m gonna read to you what he said. Okay?

He said, “Just for greater clarity – and I am not going to take up a great deal of time here – I say to the Minister of Finance: I am not suggesting that all of that revenue for that 40 per cent that is sold on the market go into rates. What I am suggesting is that the rates that were shown on the rate calculators – because that is part of how Nalcor sold the project, it is part of how government sold the project – the people out there have an expectation that the rates are going to be what the rate calculator proposed.

“What I am suggesting is that government, Nalcor, guarantee the rates that were shown on that rate calculator are what people are going to pay. That is what they were told they were going to pay. There is an expectation that is what they are going to pay. If there are cost overruns, or for whatever other reason Nalcor has a need for the ratepayers to pay more money over and above what the rate calculator shows, I am suggesting that the excess revenue from the excess power that is sold either to the mining companies or to the Maritimes or the United States, part of that goes to ensuring that the rates are as the rate calculator said they” – should – “be. The rest of it can go to government revenue, because obviously government is going to need to continue to provide schools, roads, hospitals, or drugs, or they are going to have to make cuts.”

Now, that was his comment in the House, Mr. Osborne, at the time, and it was to you as minister of Finance.

Page 272 of that transcript, the then minister of Natural Resources, Jerome Kennedy – he said a number of things, but one of the things he said was is as follows:

“Now, the issue of the rates. The Premier has declared from day one – and I talked about this last night. We know that in 2020 there will be \$134 million projected to be a dividend that could come to the Province. The government of the day will determine how to use that money. If the government of the day decides that we will subsidize rates, so be it.”

And finally then, to get to your comment on that day, we go to page 301 of that transcript. And – see if I could (inaudible). Excuse me. One second, please, Commissioner. I'll go back to it. (Inaudible.) 301.

On that day, at page 301, of the 448-page transcript, you said the following:

“It has been clearly shown by Nalcor and by Nalcor’s consultants that the Muskrat Falls Project, by \$2.4 billion, is the lower cost project, the cheaper project. The people will have to pay the cost of that. Everybody points that out here, but if they had to pay for another project they will be paying even more money.”

And then you concluded: “Muskrat Falls is the lower option. The people will pay the cost of that. Then the proponents will make money that will pay off the loan. They will provide a dividend to the government, which we estimate to be \$20 billion over fifty years. That will enable the government to pay off any loans it takes out, and government will then have a dividend which they can either put back to pay down hydro rates or it might do other things.”

So my question to you in that regard is this – Mr. Marshall, it’s apparent from that – those exchanges in the House that day, which is three days after sanction, after December 17, that the issue of cost overruns was raised and – by Mr. Osborne, and perhaps others. It was addressed by Mr. Kennedy and yourself.

So what was the government’s view at the time, as expressed, in terms of the possible ways of addressing rates due to overruns?

MR. T. MARSHALL: Well, obviously that, you know, if there was overruns, government would have to – if the ratepayers couldn’t pay for that Nalcor would possibly borrow more money.

MR. COFFEY: Yes.

MR. T. MARSHALL: And hopefully it would be guaranteed by the Government of Canada. So the interest rates would be low. Maybe they’d borrow more money without a guarantee from the Government of Canada. And then after that,

if it was worse than government – the taxpayers would have to invest more money.

MR. COFFEY: And that money could come from the dividends in fact or the dividends could be –

MR. T. MARSHALL: The dividends could be eliminated.

MR. COFFEY: – could be eliminated. And that’s something that I wanted to – and what you see – could you explain to the Commissioner how that would work; what your understanding at the time was.

MR. T. MARSHALL: Well this showed that there was going to be dividends coming to the province based on the rate of return.

MR. COFFEY: Yes.

MR. T. MARSHALL: It’s the same for, I think, most projects in the province – most cost-of-service projects. There are some that are different. The ones on the Labrador coast and the coast of the Island which, you know, use diesel and the costs are high, so they’re subsidized by the rates – by people on the – both the Labrador and the Island integrated link – or integrated grid. But the idea would be that the government would not take the dividends.

MR. COFFEY: Yes.

MR. T. MARSHALL: And we’ve done that in the past, that we have left the dividends – I think around 2007 we told Nalcor we didn’t want any more dividends – to keep that money and reinvest it in the plant because, remember, apart from Muskrat Falls, which is new generation, you had a lot of plant that’s built in the 60s and 70s that needs refurbishing. So we said – leave the dividends there. And that could – that could happen again.

And in addition, you know the policy is that we use the assets from the offshore – the revenues coming in from the offshore to – use them to invest in renewable energy projects. And assets can be disposed of. Offshore assets can be disposed of and the money invested in the renewable energy resources. That’s always an option.

MR. COFFEY: Okay.

Now, Mr. Marshall, in March of 2012 – March 30 of 2012 the PUB filed its report on the reference question and – do you know whether or not – or were you aware or are you, looking back now – do you recall the idea of excluding an amount for strategic risk?

MR. T. MARSHALL: (Inaudible.)

MR. COFFEY: From the capital cost – was – in fact came up in that decision, and was addressed in that decision. Were you aware of that?

MR. T. MARSHALL: No.

MR. COFFEY: Okay.

MR. T. MARSHALL: Was there a decision made by Cabinet to leave out the –

MR. COFFEY: No, not the Cabinet. No. The PUB, in its decision, actually spoke about strategic risk and how Nalcor, at that point, had handled it.

Were you – you weren't aware of that, I take it now. Yeah, at that point it hadn't (inaudible).

MR. T. MARSHALL: Yeah.

MR. COFFEY: Okay, well then, I won't pursue it with you. Thank you.

THE COMMISSIONER: All right, it's 5 o'clock. I think we'll break here.

So, next we have Todd Stanley, Terry Paddon, Consumer Advocate, Former Nalcor Board Members and then, lastly, the Former Provincial Government Officials '03-'15.

So, I'd like to start tomorrow morning at 9 o'clock, if we can. We'll try to finish up with you, Mr. Marshall, as soon as we can.

Tomorrow we may have to truncate our breaks a little bit to get through this, but – because we're gonna finish Mr. Kean before we finish on Thursday night – so let's just, sort of, prepare for that tomorrow and hope for the best. But I'd like to start at 9 o'clock tomorrow morning if we could.

All right, so we'll adjourn 'til tomorrow morning at nine.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

CLERK: All rise.

THE COMMISSIONER: Yes?

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)