



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 14

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

10 October 2018

CLERK (Mulrooney): This Commission of Inquiry is now open.

The Honourable Justice Richard Le Blanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right. Good morning.

MS. O'BRIEN: Good morning, Commissioner.

Our first witnesses today are actually a panel of two witnesses, Ron Penney and Dave Vardy.

Before the witnesses are sworn and affirmed I would like to enter the exhibits for this morning. I'm seeking to enter Exhibits P-00329 to P-00351, and P-00415 to P-00424.

THE COMMISSIONER: Okay.

Those then will be marked as numbered.

And, Mr. Penney and Mr. Vardy, are they to be sworn or affirmed or –

MS. O'BRIEN: Mr. Vardy is to be sworn and Mr. Penney is to be affirmed.

THE COMMISSIONER: Okay.

So, I'll ask Mr. Penney to stand first and affirm.

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

MR. PENNEY: I do.

CLERK: State your full name for the record, please.

MR. PENNEY: Ronald Giles Penney

CLERK: Thank you.

THE COMMISSIONER: Would you stand, Mr. Vardy, please, to be sworn.

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the

whole truth and nothing but the truth so help you God?

MR. VARDY: I do.

CLERK: State your full name for the record, please.

MR. PENNEY: David Allan Vardy.

CLERK: Thank you.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Now, Mr. Penney and Mr. Vardy, I understand that you are respectively chair, for Mr. Penney and secretary, for Mr. Vardy, of the Muskrat Falls Concerned Citizens Coalition Inc., which is a corporation without share capital, or a not-for-profit corporation that was incorporated on May 15 of this year. Is that right?

MR. PENNEY: That's correct.

MS. O'BRIEN: Thank you.

And the Muskrat Falls Inquiry, we – Mr. Learmonth and I have asked you to prepare a submission regarding your involvement with the Muskrat Falls Project prior to sanction, and in particular we asked you to address the issues that you both raised, and the responses that you received from government and Nalcor leading up to the sanctioning decision.

Is that right, Mr. Penney?

MR. PENNEY: That is correct.

MS. O'BRIEN: Thank you.

And that paper that's been provided has been entered as Exhibit P-00329, and for you it's in the binder in front of you. It is at tab 1, and so if you need to refer to that any at time during your presentation, feel free to.

Mr. Penney, I'll begin with you. The paper there that's before you, did you participate in the preparation of that paper?

MR. PENNEY: Yes, I did.

MS. O'BRIEN: Okay.

And, do you adopt that or accept that as your submission to the Commission?

MR. PENNEY: Yes, we do.

MS. O'BRIEN: Thank you.

And, Mr. Vardy, I'll do the same with you.

Did you assist in the preparation of the paper?

MR. VARDY: I did.

MS. O'BRIEN: Okay.

And do you adopt it as your submission to the Muskrat Falls Inquiry?

MR. VARDY: I do.

MS. O'BRIEN: Thank you.

Mr. Penney, I'll go back to you and ask to you – for you to give us an overview of your education, your work history, your background that is relevant to the testimony you'll be giving today.

MR. PENNEY: I'm a graduate – my undergraduate degree is from Memorial University, a degree in arts, majoring in political science and economics. And my law degree is from the Faculty of Law, University of Toronto.

I returned to the province and practiced law privately for a couple of years then joined the Department of Justice as a lawyer. I then became the first head of the legislative drafting office, the Office of the Legislative Counsel, in '78 and I was appointed deputy minister of Justice in 1979.

I served in three – I served in Justice until about '84, and then I was appointed as Channing Chair at Memorial University, which is kind of a – sort of a sabbatical for deputy ministers, which I spent in the Political Science department and taught a course in Newfoundland public policy.

And after that actually, I was appointed as an adjunct professor in the department of Political

Science and I remain so today. And I've taught a large number of courses on Newfoundland public policy, municipal government and so on through the years.

After my return I became deputy minister of Public Works for about a year and then deputy minister of Health. When the government changed under Clyde Wells in '89, I along with a number of others were retired from public service.

I then became executive director of the Law Society of Newfoundland for three years and then went to the City of St. John's as City Solicitor. And then I subsequently became what was called Chief Commissioner, which was the administrative head of the city. The title of that was changed to City Manager before I retired. And I retired as City Manager in 2011.

And since then I've been involved in a lot of volunteer boards, chair of the Grand Concourse Authority, chair of the Railway Coastal Museum, chair of the Advisory Counsel for the Royal Newfoundland Regiment, co-chair of Honour 100 – which is the committee they had to run the commemorative programs for the First World War – and chair of the Enrolment Committee for the Qalipu Mi'kmaq First Nations Band.

MS. O'BRIEN: Thank you very much.

Mr. Vardy, if you could please do the same.

MR. VARDY: Thank you.

I studied at Memorial University and graduated with an honours degree in economics and a degree in commerce – graduated in 1962. Worked for two years with the federal Department of Fisheries then went back and did graduate work at the University of Toronto – did a master's degree at the University of Toronto and graduated in 1965. Then I went to – back to Memorial, taught for a year and then I went to Princeton University to study of my doctorate and I finished my master's degree and did the comprehensive exam for the Ph.D. in 1968 and never did finish the dissertation, but I published a lot of the work that I did.

I have, subsequent to that, I taught at Queen's University in Kingston, Ontario, and came back to Newfoundland in 1972 in a position of director of economic planning in what was then the department of Community and Social Development.

Within a year, I was moved into a newly formed planning and priorities secretariat, and I was assistant secretary to Cabinet for resources policy. And then about two years after that in 1974, I was appointed deputy minister of the planning and priorities secretariat, which was an advisory unit to the Cabinet and it was a newly-created organization to provide policy advice to the Newfoundland and Labrador Cabinet.

I was in that position until 1978, when I was appointed to – in the place of the retiring James G. Channing who was secretary to Cabinet from 1956 'til 1968, and I became secretary to Cabinet, clerk of the Executive Council. And I served in that position from '78 until 1985 under two premiers, Premier Moores and Premier Peckford.

In 1985, I applied for the position of president and CEO of the Institute of Fisheries and Marine Technology of Newfoundland and Labrador. I held that position until – I was appointed in 1985 and I held that position until 1989, which is when I was called by Mr. – by Premier Wells and asked to come back into government as the deputy minister of Fisheries. So I held the position of deputy minister of Fisheries until 1994, from 1989 until 1994.

And in 1994, in August of 1994, Premier Wells asked me to become chairman of the Public Utilities Board. So I served as chairman of the Public Utilities Board from 1994 until 2001. At which time I also was appointed as James G. Channing Fellow at Memorial University and I became attached to what was then known as the Public Policy Research Centre.

And after about two years, after I finished my term, I was asked to take on the role of acting director the Public Policy Research Centre and I did that on a part-time basis without any intention of staying on. And I assisted in the recruitment of a successor and when the successor came on the scene, he – we called the – we changed the name of the organization, the

university changed the name of the organization, from the Public Policy Research Centre to the Harris Centre, the Leslie Harris Centre for public policy, for policy development and research.

So, I was there for a year as an associate director, reporting to the new Director Robert Greenwood, and then after that, after that year, I became a professional associate of the Harris Centre. And then I became more engaged in the consulting activity, I became a private consultant, but I continued on as an associate, a professional associate, of the Harris Centre and I am today, still, an associate of the Harris Centre.

So, like Ron, I've also been involved in many community events, community organizations such as the Canadian Mental Health Association, the Autism Society of Newfoundland and Labrador and also the Rotary Club of St. John's.

I guess just to finalize, about six years ago I became involved as a private citizen with an interest in the Muskrat Falls issue and I'm sure that you have some questions for me to follow up on that.

MS. O'BRIEN: I do.

Before we get to why you became first interested and involved in the Muskrat Falls Project, I'd like to ask you just a few introductory questions about the Muskrat Falls Concerned Citizens Coalition.

I understand – and Mr. Penney I'll put these question to you – I understand that both you and Mr. Vardy are directors of that organization. Is that right?

MR. PENNEY: That's correct.

MS. O'BRIEN: Okay.

And the third director is Des Sullivan?

MR. PENNEY: Yes.

MS. O'BRIEN: Okay.

And, Mr. Sullivan, blogs under the name of Uncle Gnarley, is that right?

MR. PENNEY: That's correct.

MS. O'BRIEN: Okay.

And does the Muskrat Falls Concerned Citizens Coalition have other members? Does it – you know, besides its directorship, does it have members?

MR. PENNEY: Yes, we have 243 Members.

MS. O'BRIEN: Two hundred and –?

MR. PENNEY: Forty-three.

MS. O'BRIEN: Okay.

And just if you could generally explain what is the mandate of the Muskrat Falls Concerned Citizens Coalition. You know, how does the organization work? We know it's a recently formed group.

MR. PENNEY: Well, when Dave and Des and I applied for standing, we applied with the intention of forming this company, and prior to that, we actually had gathered together members and so on. So, the purpose basically is to assist the Commission in its work.

MS. O'BRIEN: And in terms of, you know, do you hold – I understand there was a recent annual general meeting. Do you hold regular meetings or, you know, in terms of the membership, how are they involved in the activities?

MR. PENNEY: Well, we've committed to have meetings prior to each stage. So we had a meeting about a month or so ago, prior to this stage of the Inquiry. And we've established a website for – well, basically, anybody can use that with basic information, link to the Inquiry. And we periodically will update our members on the progress of the Inquiry.

MS. O'BRIEN: Okay, thank you.

So, generally, my questions for you both this morning are going to take you through the paper that you've prepared and filed with us. And that paper came with a number of attachments. Each of those attachments have also been filed as exhibits before the Commission. I'm not going

to take you to every attachment that came in, though we will reference some as we go through. And, as I said, it's there in the binder for you if at any time it's convenient for you to review it.

Mr. Penney, keeping with you, I'm gonna ask you, generally, if you could tell us why you first got involved in speaking out about the Muskrat Falls Project?

MR. PENNEY: Well, in the fall of 2010, I was still a city manager with the City of St. John's. But Dave and I – I'm getting some feedback here – Dave and I have been colleagues for many, many years and great friends. And even though I wasn't in the public service of the province after 1989, we kept in touch on public policy issues.

And when the former Premier Williams announced the term sheet for the project, both Dave and I were alarmed; we were concerned about the project.

I'll always recall a comment made by the late Cyril Abery, a great friend of ours and a giant of the public service of Newfoundland, who was also a CEO of Hydro. And he always used to say to us that it wasn't feasible to bring power from Labrador to the Island, so we kind of had that at the back of our mind.

So when I retired in early January of 2011, Dave and I continued to discuss the project and see what we might be able to do to inform public opinion and to have – essentially, our major point is we wanted the project to be reviewed by the Public Utilities Board.

MS. O'BRIEN: All right.

MR. PENNEY: And really more than a review, an approval process where – because now the Public Utilities Board has authority to approve capital projects for Newfoundland and Labrador Hydro and for Newfoundland Power.

MS. O'BRIEN: So, we'll get into in a few minutes a little more detail on your positions with respect to the role of the PUB. Before doing that though, I'm going to ask Mr. Vardy the same question. If you could just give us a little background as to why you first decided to

speak out and get involved in the Muskrat Falls Project.

MR. VARDY: Well, not surprisingly, I guess, I began to pay more attention to this project about the same time. And I remember vividly the meeting that took place in the Sheraton hotel, which I happened to attend and sat through, and I came out somewhat concerned about mainly one thing, and that was that the risk was being assumed by the province.

I was – I had always believed that the Lower Churchill Project was a development potential for the Province of Newfoundland and Labrador, but I had never contemplated that the credit of the province would be placed behind the building of the project.

So that was the beginning point. And I started to ask questions. And quite frankly, up to that point in time, I hadn't been asking a lot of questions about this project. So it began in – at that meeting, and the principal concern I had was, number one, the risk and, number two, the question of proportionality, which is the scale of this project relative to the size of the province, and our ability to be able to bear the risk. And we'll – and I'm sure we'll get into, later, the nature of that risk and how it's been dealt with.

But the – then the next step, I guess, I recall is attending a meeting of the Institute of Public Administration of Canada in January, which – where Gilbert Bennett gave a talk. I –

MS. O'BRIEN: So just – I'm just gonna interrupt you there –

MR. VARDY: Yes.

MS. O'BRIEN: – just to put it into some time context.

So the public announcement at the Sheraton would have been in November –

MR. VARDY: November the –

MS. O'BRIEN: – 2010.

MR. VARDY: Sorry, November the 18th, 2010.

MS. O'BRIEN: Okay.

MR. VARDY: And prior to that I had been paying some attention, but not that much attention to the project, to what was happening. I was aware of the Energy Plan, and I had heard that there was a plan to move forward with the project with the province. And I also had heard that there was an attempt to assess private sector interest and to get private investment into the project, but this was the more definitive announcement of November the 18th, where there was a term sheet, and the Province of Nova Scotia was at the table.

So then, I guess, as I said, the next – subsequent to that, fast-forwarding to January, there was a meeting at which more information was provided by Gilbert Bennett.

And I had three questions, really, in my mind at – during that presentation. One question was, is the power going to be – how is the power going to be transported across the Cabot Strait? Because I had been concerned about the iceberg situation up there, and I asked whether it was gonna be brought by tunnel or by trenching or by laying the cables across the ocean bottom.

What Gilbert said at the time was that hadn't been decided. This was an issue that was still unresolved, and that was a concern by me in terms of a project being announced without sufficient engineering being done with regard to the Strait of Bell Isle. And it's interesting how the Strait of Bell Isle has gotten very little attention over the last – these last few years, even though, I guess, at the beginning it was considered to be one of the highest risk aspects of the project.

My second question to Mr. Bennett was: what was going to be the capacity of the Maritime Link? And he told me that the capacity of the Maritime Link was 500 megawatts, and that told me that this project was designed – this tunnel – this cable crossing – this submarine cable was really designed only for Muskrat Falls, and that – and not that I was critical of that, but I just wanted to inform myself, because the implications were considerable in relationship to any potential to export power from the Upper Churchill or from a larger project at Gull Island.

The third question I had for Mr. Bennett, and it was one he couldn't answer, but – which was is

this project going to go to the Public Utilities Board? So – and he couldn't answer that question. So I started to ask questions over the next few months. I had a dialogue with Nalcor – Nalcor Energy, and then, at one point, I was referred to Dawn Dalley. And Dawn asked me if I would like to meet – I told Dawn Dalley that I was associated with the Harris Centre, and she said would you like to meet with Mr. Martin – Ed Martin, and I said yes. And I said could I bring some associates? And she said yes.

So a meeting was arranged within a couple of days, and we met, Ron and I and Dr. Feehan and Michael Clair of the Harris Centre, and we had a – we spent a morning, and not only was Mr. Martin there but all of his senior people, and Gilbert Bennett was on the video from Goose Bay, and we had a number of consultants in the room, and I know who some of the people were in the room, but I – nobody took any notes of the meeting as far as I can tell, so this is all from memory. And my memory's not bad, but it's not great.

But anyway, one point that we discussed at great length was the question of reliability. Was there going to be a reliability problem associated with Muskrat Falls? Because as former chair of the Public Utilities Board, I was very concerned about a long distance transmission line, given the fact that the Avalon Peninsula can easily become isolated when high wind and icing occurs.

So we had a discussion about this, and so – and I was told – I raised the question about it. I was told by Mr. Martin that we would be able to rely on emergency power from Nova Scotia after the Holyrood thermal plant was shut down. And I said, well, in most – most likely if the Avalon Peninsula is suffering from an interruption of power, that's probably going to affect Nova Scotia at the same time, so it's not likely we're going to have access to Nova Scotia, and Nova Scotia is probably not going to carry a reserve to accommodate our needs.

So I came out of that discussion very disturbed about how we're going to deal with the reliability of power, particularly on the Avalon Peninsula where most of our population is, after the closure of the Holyrood plant.

So we discussed other issues. I know Ron brought up the question of cost overruns on the project. We had considerable discussion on cost overruns, and we had a considerable discussion on alternatives to the project, and we talked as well about the alternatives of – of other alternatives and about how much due diligence had been paid to assessing their – those alternatives. And I'm sure we discussed other issues as well.

But that was a very important meeting, and I was – it opened up a dialogue, and Nalcor did continue that dialogue. I remember having one other meeting with Nalcor, which was arranged by my colleague, Mike Clair, and we were – and another person was there as well – and we talked about the whole question of load growth. So the issue of load, whether we could generate sufficient load to justify building a project of this magnitude was always part of these discussions. So in any event, that was April.

MS. O'BRIEN: Okay.

MR. VARDY: I think it was April 14, 2011, and then I was doing research, and I was into questions – sending questions in – back and forth to Nalcor, and that continued, by the way. My – and I assume that the Commission has access to all my questions from Nalcor, who I'm sure have a much better filing system than I do and can retrieve all of the questions that I put to them and all the answers. And I put them in two forms – one in the form of ATIPPA request and the others in an informal request, and I found Nalcor to be quite accommodating.

But anyway, I was – going through that period, there was not a lot of public activity that I engaged in. The next thing on my calendar, really, was I was asked, as an associate of the Harris Centre, to write an essay for a group called Action Canada.

MS. O'BRIEN: Okay. I'll interrupt you there and we will get back to your Action Canada paper.

Just a few things I want to clarify, Mr. Vardy, from what you've just said. You said that in the January 2012 meeting where you raised – with Gil Bennett, where you raised a number of concerns, your concern was with this –

MR. VARDY: (Inaudible.)

MS. O'BRIEN: Sorry?

MR. VARDY: No, sorry. I didn't –

MS. O'BRIEN: In 2012?

MR. VARDY: I didn't say the date. I did not say the date, because I don't remember when that – this was an IPAC meeting, and it's not on the – in the material that we presented.

MS. O'BRIEN: Okay.

MR. VARDY: And that's from memory. It was a meeting of the institute for Public Administration of Canada, which was at the Sheraton Hotel and the speaker was Mr. Bennett.

MS. O'BRIEN: Yes, thank you.

And Mr. Budden is right, it would've been – I incorrectly wrote down 2012, but this was a short time after the term sheet had been announced –

MR. VARDY: That's right.

MS. O'BRIEN: – in November 2010 –

MR. VARDY: That's right.

MS. O'BRIEN: – so we know that. But I just wanted to clarify that your point there, you had raised with him concern about the Strait of Belle Isle crossing, so from Newfoundland –

MR. VARDY: I had.

MS. O'BRIEN: – to Labrador, that was –

MR. VARDY: I had. Yeah, that's right.

MS. O'BRIEN: Okay, just wanted to clarify that point.

And, also, you say that you were raising questions and you were referred to in communicating with Dawn Dalley. So just to be clear that she was – I'm not sure I'm going to have her title right, but a VP of communications, public relations –

MR. VARDY: That's how I –

MS. O'BRIEN: – at Nalcor.

MR. VARDY: That's how I understood –

MS. O'BRIEN: Okay.

MR. VARDY: – her position.

MS. O'BRIEN: And she's the one who arranged the meeting with Ed Martin in April of 2011.

MR. VARDY: Yes.

MS. O'BRIEN: Okay.

Mr. Penney, I understand that you were also at that meeting. So Mr. Vardy has said what his recall of that initial meeting was. Is there anything that you wanted to add to that? And I know you – Mr. Vardy did say you had raised concerns about cost overruns?

MR. PENNEY: Yeah, I'll speak to that. I think that Dave's recollection is quite accurate.

My experience at the city instructed me in how large projects could get out of control, particularly projects which were one-off projects, which were different than, you know, repairing the street or putting in a sewer line, that sort of thing.

So we did a number of major projects; one was Mile One. And Mile One was originally budgeted at \$36 million, which seems like a tiny amount of money now, but it ended up at 51 million. Now, there were safeguards there in the sense that the city was – it was cost shared with the province and the federal government, and there's a source of funding to support that. The room tax, the accommodation tax, which everybody pays if they stay at a hotel in St. John's, goes towards the capital. So it's – it didn't really affect us in any – in a bad way.

The other one was the harbour cleanup, the Riverhead sewage treatment plant, which was originally estimated at – my recollection is 93 million; again, a cost-shared project between the province, the federal government and the city. And that ended up around 160 million.

So – and now, again, in that case, there’s a source of revenue, but it is – it’s a bit like Muskrat Falls in that residents pay for the cost of that, including the cost overruns, from their water tax. The water tax is really a water and sewer utility tax, which seems to actually be well-accepted by the citizens. They complain about property taxes but not about the water tax.

So as a result of that, I was concerned that – I mean these projects were nothing compared to Muskrat Falls, but in the total scheme of things, in the province at the time, they were large public works projects and they were unique projects. And we followed all the processes of getting various-sized estimates as we came to the pre-tender estimate, but in both projects, the pre-tender estimate wasn’t correct.

MS. O’BRIEN: Okay.

So you’re saying you raised these concerns at the meeting with Ed Martin, Gil Bennett and other senior people from Nalcor. Do you recall what response, if any, they gave to your concerns?

MR. PENNEY: They basically said that they felt they had a robust process to handle all these issues.

MS. O’BRIEN: And, Mr. Vardy, I’ll go back to you. One of the issues you said you raised was this concern about reliability.

MR. VARDY: Mmm.

MS. O’BRIEN: What response, if any, do you recall Nalcor giving to your concerns?

MR. VARDY: Yes. Before I answer that question, I’m going to go back and correct something I said.

MS. O’BRIEN: Okay.

MR. VARDY: Because there were things that happened between that meeting in April and the Action Canada paper that I want to speak to. So I want to – I just – could I sort of park that?

MS. O’BRIEN: Yes.

MR. VARDY: Yeah.

The issues of reliability, I guess, that in particular, relate to the icing on the Great Northern Peninsula, particularly what’s known as the alpine regions because they’re high, mountainous areas up there that are subject to high wind and particularly, the Isthmus of Avalon. And we have notorious problems of ice buildup on the lines on the Great Northern Peninsula, although they’re not so much long-distance transmission lines, and we’re now moving from AC to DC technology.

But on the Isthmus of Avalon, we’ve had a number of problems. When I was chairman of Public Utilities Board, we had problems with all the lines going down and with major problems and so I was very sensitive to the reliability issues. And I think that people in Newfoundland and Labrador Hydro would also have been probably very sensitive to the reliability issues as well.

So and – so in terms of responses, the concern I had was that the Holyrood thermal plant, the bunker C plant at Holyrood, was going to be decommissioned within two to three years after the Muskrat Falls Project was completed, and my concern was that that would be a problem for us in terms of future reliability. But I was also concerned – when I was told that the backup system was going to be Nova Scotia (inaudible) from the Mainland – that we were going to be depending on them and the Mainland.

And because that would require a fair bit of reserve being held in the Nova Scotia system and it would require, as well, that all the interconnections between Nova Scotia, across the Cabot Strait and across the Island and across into the Isthmus of Avalon would remain intact. And so if they’re not intact, then, of course, the – that power is not available to us, even if there were reserve capacity available. So that was a big issue, I think, in at that meeting.

MS. O’BRIEN: Now, I think the next piece that might have happened in the timeline – this might be what you were alluding to, Mr. Vardy – I know that on May 3 of 2011, you actually wrote Minister Skinner.

And, Madam Clerk, could you please bring up Exhibit P-00330, please? And if it’s of

assistance to you gentlemen, it's in – at tab 2 of the book before you.

So, Mr. Vardy, if I can just ask you what – you know, what was the purpose of this letter and what prompted you to write it?

MR. VARDY: Right. Thanks for the question.

We were concerned that this was a big project that it was going to be – that had been exempted from the Public Utilities Board, from the jurisdiction of the Public Utilities Board. And as I mentioned earlier, that had come up at the meeting with Mr. Martin.

And I felt that, certainly – and Ron and I both felt that the – that this – a project of this scale really needed a public review. And it was within a mandate – normally it would be within the mandate of the Public Utilities Board to do this. Now, I'm aware there have been projects that have been exempted in the past from the scrutiny of the Public Utilities Board, but I thought that this was an egregious example of – to exempt this project.

And so we decided – once we discovered, we confirmed and when I – and I – through correspondence with the Public Utilities Board that it had indeed been exempted, we wrote to the minister of energy and we made that point fairly strongly. And we were quite pleased when we got the response, which was a little – about five, six weeks later. And the response was – and, of course, we were aware that government had made a reference to the Public Utilities Board, and we were quite pleased that the – with the response, even though – we were pleased and disappointed. It was a good-news, bad-news story.

MS. O'BRIEN: Yeah.

MR. VARDY: The good news was that the Public Utilities Board was going to have a role to play, but it wasn't going to be the normal statutory role, it was going to be a reference, asking for an opinion.

MS. O'BRIEN: Okay. I'll get to the response in just one moment. I did have a couple of questions to ask you on this particular exhibit.

So you are – as we see here, the exhibit's up on your screen – but I'm just reading from the second paragraph. This letter is signed by both you and Mr. Penney:

“We have followed with interest the public comments on the project and very much appreciated the extensive briefing given to us by senior officials of Nalcor. However we were” – a bit – “surprised by the indication given at the briefing that the project may not be subject to review by the PUB, in light of the answers to questions in the House of Assembly on March 22, 23 and 24 of this year by Premier Dunderdale, as to the role of the PUB.”

Do you recall: What were the comments in the House of Assembly that you were referring to in this letter?

MR. VARDY: I believe Mr. Penney has reviewed that.

MR. PENNEY: Yes.

The then leader of the Opposition, Yvonne Jones, asked – was asking a series of questions to then Premier Dunderdale about the role of the PUB. And there was a reference, a vague reference, to some sort of role for the Public Utilities Board. It wasn't really clear to me what it was, but there was a reference to some role for the board.

MS. O'BRIEN: Thank you.

And so you were both, then, obviously aware that the Muskrat Falls Project had been exempted from the PUB review by an order in the year 2000, I take it?

MR. PENNEY: Yes.

MR. VARDY: We were indeed.

MS. O'BRIEN: Okay.

And now in your response, Mr. Vardy, of a few minutes ago, you mentioned that you were aware that other similar projects had – or other projects had been exempted from PUB regulation and, in particular, I take it, would you be referring to other hydroelectric dam projects, such as Bay d'Espoir, Granite Canal?

MR. VARDY: That's right.

MS. O'BRIEN: Okay.

Why – you knew that those had been exempted from the PUB oversight. What did you understand the rationalization for that exemption and why did you believe that the Muskrat Falls Project should be different?

MR. VARDY: I wasn't particularly aware of all of the previous – I didn't do the research into the circumstances for each one, so I can't speak to the issue of why they were exempted. But it simply seemed to me that the – this project was of such a scale, and had implications for the whole electrical power system, that it needed to be exempt to be dealt with. And it needed to be scrutinized, and with all the powers of the Public Utilities Board and their process of review and public consultation and experts – bringing experts to the table – the normal kind of process, which is used should be – should certainly take place. And, in fact, a fairly intensive scrutiny should take place.

So I can't really speak to the issue of why previous ones – previous projects have been exempted, but I do know that the reason this particular project was exempted was – it goes back in history to when the Tobin government was wanting to develop the Lower Churchill for export purposes, and it was exempted at that time.

And so that was why the original order was passed. But, of course, having – as former clerk of the Executive Council I'm aware that how quickly an order-in-council can be changed – and if a government wishes to do so. So it's hard to feel that the order-in-council of the Tobin government would be binding on any subsequent government who could easily change it.

So there was – it was certainly within the capacity of the government to change that order-in-council and, I guess, we were asking the government to take that measure to make it – make the project fully – to apply the full authority of the Public Utilities Board under the Electrical Power Control Act and the *Public Utilities Act* and to ensure that proper scrutiny takes place.

So that's why we took the steps we did.

MS. O'BRIEN: Okay.

Given the fact that the PUB had not reviewed the most recent hydroelectric developments in the province, did you have any concern that they wouldn't have the requisite expertise to give a full review to the Muskrat Falls Project?

MR. VARDY: In my opinion, if the Public Utilities Board had been allowed to do a full review of this project, they would've had to acquire a lot more expertise. They would've had to bring consultants that had the expertise to deal with the project. So they would – and they would've done that. They would – in the normal course of events, the board would have geared up for such a project, as have other boards across Canada.

This is not unusual. I mean, public utilities boards in Manitoba and British Columbia, they deal with these kinds of issues and they respond to them. And when you're dealing with a megaproject, you have to deal – you have to bring forward different resources and different expertise than when you're dealing with a run-of-the-mill or run-of-the-river project. So I don't think that was an insuperable obstacle.

But if the government had chosen, in its wisdom, to say this is a bespoke project that requires some kind of more – a more intense process and greater expertise than the Public Utilities Board had, I think that that would – the public interest would've been well served if they had put a process in place.

And it goes back to the joint panel. The joint environmental panel had recommended in their recommendations 4.2 A and – sorry, 4.2 and 4.3 that there be an intense review; there be a complete financial independent review of the Muskrat Falls Project. And so if the government had acted on that by setting up some other authority or some other review mechanism, that probably would've made us more comfortable than what they decided to do.

But the benefit of doing it under the PUB was that the PUB had the statutory authority to do it, it had all the legal mechanisms in place and so that's why we thought that it should've been

done. But the reference, in our opinion, was really not what we were hoping for.

MS. O'BRIEN: Okay.

We'll bring up that response. P-00331 please, Madam Clerk. And for you gentlemen, it's in tab 3 of the binder before you.

And I'll go to Mr. Penney now. I just want to clarify, at this point though the Joint Review Panel has not yet issued its report when you're getting this response back from government. I believe the joint panel review's report wasn't released until August of this year. So you get your response back from Minister Skinner on June 22, 2011, so that Exhibit is now up on the screen, and we've already heard from Mr. Vardy that he was, you know, in some ways pleased with the response, but concerned about the narrowness.

Mr. Penney, I'll ask you: What was your response to Minister Skinner's letter?

MR. PENNEY: I might, if I may, just add a little bit to what Dave was saying about why it should've gone to the board is –

MS. O'BRIEN: Okay.

MR. PENNEY: – the Lower Churchill Project is basically two projects: Gull Island and Muskrat Falls. Gull Island was primarily, as David – as Mr. Vardy has pointed out, was an export project. There were – under the Grimes deal, there were rights to recall. But when – go to Muskrat Falls, Muskrat Falls is primarily a domestic project. It was originally envisaged to be totally paid for by the ratepayers of the province. So it became, you know, it's a very large project, but it's like any other capital project that Hydro would've done or light and power would've done. So for these reasons, because it's paid for by domestic consumers, we needed a lot more protection and we didn't get it unfortunately.

So I – I mean, we were – yes, we were pleased, and the process itself brought out a lot of really useful information, that which is now on the public record, which we otherwise would not have had. So we were pleased, but as Mr. Vardy has pointed out, it was a very narrow – it was

comparing the Isolated Island Option, keeping Holyrood and so on, as opposed to Muskrat Falls, when we felt there were a variety of options that could be used, such as wind power, conservation, time-of-day pricing, and so on, which could've gotten us through.

See the key element in all of this, in our view, the key date is 2041 when the Upper Churchill contract comes to an end. And our view is that we didn't have a long-term problem: we had a short-term problem. We have issues with respect to the – to Holyrood and how long that can be kept going.

Muskrat Falls is a long-term project; it has to be paid for over 50 or 60 years, perhaps even longer now. And we didn't need – we just didn't need that project. We needed to get through the next 20 – and it wouldn't be really – it wouldn't be 2041 because Quebec hydro is gonna have to come to us and we would've had to have reached an arrangement with them long before 2041.

And as part of that, the part of the politics of that – Dave and I are students of public policy and politics and so on – is Hydro-Québec needs that power. It's very cheap power, very reliable. They have very low electricity prices. And it's in their interests to play nice with us – it would have been in their interests, I think, to play nice with us.

By that I mean, I think that not going to them – and we know that from the Grant Thornton report – not going – approaching – even approaching Hydro-Québec to see whether or not they would give us access to Upper Churchill power was a real failure in the public policy process.

MS. O'BRIEN: And just to be clear, the response that you received from Minister Skinner there is – I'm just going to read from the second paragraph there – that he knows that: "On June 17, 2011 Government announced that it had asked the Board of Commissioners of Public Utilities (PUB) to provide a supplemental review of the process used to determine that Muskrat Falls represents the least-cost option for the supply of power to the Island Interconnected Customers compared to the Isolated Island development option."

Okay. I'm going to go now back to your paper to Action Canada, Mr. Vardy. If we could please bring up P-00332. And this is at tab 4 of the book in front of you.

So this is a paper, Mr. Vardy, that – scroll down, there we go – here is a paper that you wrote. It's dated August 31, 2011. It's entitled, *Making Best Use of the Lower Churchill: The Muskrat Falls Development*. And I understand this was a paper written by Action – or commissioned by Action Canada. So if we could start out, if you could please explain, you know, what is Action Canada and why did you write the paper for them?

MR. VARDY: Action Canada is a national organization that supports the development of young professionals who are – they're in early stage in their career, and it's essentially a program where people who are interested in becoming fellows for Action Canada apply and are accepted. And my understanding is there's about 20 people that are accepted each – in each induction. And they take those people around the country and they – it's a private public partnership concept. They take people around the country and they talk about issues that are relevant in each part of the country.

And so they approached the Harris Centre and they indicated that they were going to be going to Labrador. They wanted to focus on the issues that were of particular concern in Labrador, and they had identified three particular issues. One being, Aboriginal self-government, and the other being the state of the mining industry and the potential of the mining industry in Labrador, and the third was the Lower Churchill, the potential of the Lower Churchill.

And so Harris Centre, basically, arranged and coordinated a response and identified people to work on those projects, and they identified me to do the project with regard to the Lower Churchill. So I was contracted to do a five-to-seven page essay. And it was within a period, as I recall, of – I think I was commissioned at the beginning of August and I think the deliverable was the end of August, if my memory serves me correctly.

And so the essay actually describes, in the first part, what my terms of reference were, but – it's

six bullets: how much power is needed on the Island; what are the potential sources of power for the Island; is the best alternative to transmit power from Muskrat Falls to the Island; what are the other potential uses of Lower Churchill power; and, is the current proposal the best use of Lower Churchill potential.

So I was asked to do that, and I did a survey of the state of hydroelectric power and energy, electric energy in the Province of Newfoundland and Labrador. And, essentially, what I did was provide an overview of some of the options. My intention was not to come down with any kind of definitive recommendation because this was based on a limited amount of research; but, as you know, I did make certain tentative conclusions about where Muskrat Falls stands as a second or best selection, in my opinion at the time, having assessed some of the factors that were at play. This came about the same time – my report came just a few days after the release of the Lower Churchill Joint Panel.

MS. O'BRIEN: Yes, I think just a few days after that was released on August 25, according to my notes.

MR. VARDY: That's right.

MS. O'BRIEN: Okay.

And it is referenced in your paper, I know, that report. I just want to ask you if you – there is a bibliography on your report and it –

MR. VARDY: Right.

MS. O'BRIEN: – sets out where your sources of information are.

MR. VARDY: Yes.

MS. O'BRIEN: And some of those sources of information are from the Government of Newfoundland and Labrador, and some are from Nalcor Energy.

Did you speak to or interview anyone from Nalcor or from the government in preparing your paper, or were you just relying on these publicly available sources?

MR. VARDY: I was relying on publications, but I did make contact with Nalcor because I wanted to rely on their publications, and I did. And I got their agreement that that was okay. And so I did make references and I – but in terms of any interviews with Nalcor, no I did not.

MS. O'BRIEN: Now, I do know – if we could please just go to page 15, please, Madam Clerk.

I believe this is a statement you just alluded to a few minutes ago. Under section 9 in the report here on page 15, the heading is: “Is Muskrat Falls the best option to supply the Island?” And your – I’m going to refer to it as a conclusion, but your statement here is that: “The Muskrat Falls project is probably a second or third best solution.” And I’m going to ask you to explain why you came to that conclusion.

And I don’t know if it’ll be of assistance to you, but I’m going to ask Madam Clerk to please go to page 18, and here in your report you’ve done a bit of a summary of various options and there’s columns here showing five options and then pros and cons of each option. So I thought that might be of assistance to you in explaining why you considered Muskrat Falls to be the second or third best solution.

MR. VARDY: Thank you.

Perhaps before going to that, I could just say that – as Ron mentioned a few minutes ago, I guess the – our belief is that the key issue here is the availability of Churchill Falls’ power in 2041. That should be an overriding theme, and that if we were to invest a large amount of money in a project like Muskrat Falls we would find ourselves in a situation come 2041 when we were – we had access to 5428 megawatts of power where we would not be able to use it and we would not – and we’d be back dealing with Quebec at the end of the day, but we’d already satisfied our own needs at a very high cost. And so we thought that that would be a big penalty of going with Muskrat Falls because it would essentially prevent us from fully utilizing and benefitting from the Upper Churchill power come 2041.

And then, on top of that, we were concerned about the fact this was such a big project in scale

in relationship to the size of the province. It’s what economists call an indivisibility. It’s a big project; it’s a big project. It doesn’t compare easily with other projects.

And so the – we had concern about the – about such a large project in relationship to the province and in relationship, as well, to our demography. The demographic projections indicated that our population was declining and – so in light of those considerations, we – I reached the conclusion that Muskrat Falls was not a first choice, the first best choice.

Just to go through the – I guess if you could go to Option A, we could just sort of walk down through some comments there. The pros of the Muskrat Falls Project and the Link to the Island and Maritime, would be: Price stability, upon completion and that would be a benefit. We’ll come back to that issue in a different context later, because price stability at a high level might not be such a great thing, but the pro is that based upon the analysis that Nalcor had done and presented to the Lower Churchill Development Board – Lower Churchill – the Joint Panel, I should say, that was the lower overall cost that’d be based on their cumulative present worth analysis, that they had presented at that time.

There’s a benefit in the connection of the Island to the continental grid – no question about that – particularly in terms of access to power if there’s a need for power, and it should go both ways. It provides the ability for us to export power and possibly to import power at times, if we need it. Although we might not want it to be totally dependent on the import of power. Availability of additional power for industrial load growth in Labrador, sales of power surplus to (inaudible) the needs of the province would be certainly be possible.

Overcapacity was a big issue, and looking – turning now to cons, overcapacity for the Island along with the high initial cost – because even with the high load that was projected at the beginning, it was going to be 40 per cent. We’re only going to be using 40 per cent of the power. And then the potential for cost escalation was there. The increase in public debt, because it was going to be a large cost to the province.

And at this point it wasn't clear that the federal government was going to come to the table at this particular point in time. That became clearer about a year later. And reliance upon long-distance transmission lines with two subsea crossings were – that was a concern. No market for 40 per cent of the energy, and the loss of Avalon Peninsula system – or Avalon Peninsula-based emergency power with the removal of the Holyrood thermal plant.

So that was the assessment of pros and cons – qualitative assessment – 'cause I didn't do a quantitative assessment at this stage, because this is more a high level; it's a short essay and intended to provide some qualitative comments.

The option B had the advantage of increased flexibility by building new capacity only as needed, and it provides for the opportunity to use demand-side management, which – we really haven't been putting much emphasis on demand-side management, as Grant Thornton have shown.

MS. O'BRIEN: Okay, and option B here was the Isolated Island Option that was presented as the –

MR. VARDY: And that was the Isolated Island Option which was –

MS. O'BRIEN: As presented by Nalcor.

MR. VARDY: Exactly, that's right.

MS. O'BRIEN: Okay. I don't believe we need to go over option C, the Gull Island –

MR. VARDY: No.

MS. O'BRIEN: – project, but just to highlight here. Your option D was negotiate with Quebec to purchase power –

MR. VARDY: Yes.

MS. O'BRIEN: – with a link to the Island. And the option E was the 2041 alternative that I believe you were addressing earlier.

MR. VARDY: That's right. That would be – so if I go to option E, then the big advantage there was the reduced capital cost. You would of

course still need to have a transmission line to the Island, and it would've been – if you have the flexibility to build new capacity only as required in the period leading up to 2041, there would be certainly a high rate – there may well have been higher prices before 2041, but they would decline thereafter.

And then – that's a negative, speaking on the con side – that based upon the cumulative present value, rates would've been higher, there would've been a loss of economic development – economic opportunities from development of the Lower Churchill, so that would again be on the con side.

And – but I think on balance that had – that option had a lot of advantages that we – that were quite compelling in the context of the information we had back at that time, which was August 2011.

MS. O'BRIEN: And just for completion, your final option, option F, was the natural gas option, which – I see in your bibliography you had cited a paper by Dr. Bruneau, who we've already heard about (inaudible).

MR. VARDY: That's right.

MS. O'BRIEN: Okay. Thank you.

Now in that paper – and as you've just said you do reference the JRP report in your bibliography and it just came out really, less than a week before you submitted this paper to Action Canada. Your comments there are – in your report, have been submitted into evidence, but I'm gonna ask Mr. Penney first: did you participate at all in the Joint Review Panel proceedings?

MR. PENNEY: No, we didn't, and we were actually asked by the co-chair why we didn't, at a meeting that we attended, and the reason was that we didn't realize that it was more than just an environmental review. It was also a review of the need for the project, so as a result we missed that opportunity.

MS. O'BRIEN: Did you ultimately read the report?

MR. PENNEY: I read the report with respect to their analysis of Muskrat Falls, not the environmental portion –

MS. O'BRIEN: Okay.

MR. PENNEY: – of the report.

MS. O'BRIEN: Madam Clerk, could you please bring up P-00041 and go to page 315 please. I just – in your paper that you submitted for the Commission you have referred to a couple of the recommendations of the JRP, and I'm just gonna get you to highlight those for us, Mr. Penney. And I take it that – and please correct me if I'm wrong – but I take it that these would be the recommendations of the JRP which were of most interest to you and Mr. Vardy.

MR. PENNEY: That's correct.

MS. O'BRIEN: Page 315, please.

And actually I believe Mr. Vardy referred to them already earlier in his testimony. He mentioned this would be recommendation 4.1 and recommendation 4.2, is that correct?

MR. PENNEY: Yes.

MS. O'BRIEN: Okay. And also I don't know if it was mentioned or not but I know that Mr. Vardy did mention demand-side management which I understand is – can be also linked to integrated resource planning, which is 4.3.

Okay.

Thank you. I just wanted to confirm that those were the key ones for both of you.

I know that you did participate in the reference question to the PUB that we've already spoken about this morning, and if we could please, Madam Clerk, bring up Exhibit P-00339, and this is in tab 11 of your book, and Mr. Vardy, I'll put these questions to you.

Maybe if you can please take us through what your participation with Mr. Penney was in the PUB reference question.

MR. VARDY: Right. Could I just, before getting into that like, just add something to what

Ron said, and that was with regard to the mandate of the Lower Churchill Joint Panel report.

MS. O'BRIEN: Mm-hmm.

MR. VARDY: The Joint Panel had a mandate not only to assess the environmental consequences and impact and to look at the need for the project, but they also had a mandate to look at the alternatives to the project. So that was really important, and Ron is quite correct that we didn't really participate in that process, and I guess in retrospect if we'd known that, we would probably have wanted to have participated.

So with regard to the – our involvement in the Public Utilities Board, we did do a presentation. We did a presentation to the board and then we did a supplementary presentation, and of course what you have there now is the main presentation that we made to the board.

MS. O'BRIEN: Okay, and this is at tab 11, as I believe I just said, Exhibit P-00339. I know you each – this is your first submission to the PUB – I know you each wrote a section of that, but I'll ask you, Mr. Vardy, can you review for us the issues that you were raising before the PUB and the issues you were concerned about.

MR. VARDY: Sure. I wonder if we might, for convenience, go to the – we did a summary at the end, which would be at page 16.

MS. O'BRIEN: Thank you.

MR. VARDY: And I think that would certainly be a convenient way to handle some of the key issues here; and we recommended in particular, that government consider – number 1 issue, we recommend the government consider that they take short- to medium-term energy decisions which would allow us to complete our due diligence on Muskrat Falls, and that means that we should commission one or more small energy projects to allow government to assess other options, and that would enable the time for the Public Utilities Board to have time – the time they needed to do its work.

We wanted to put that recommendation on the record, and we wanted – the options in

particular, I guess, we were concerned about were the accessing the Churchill Falls power in 2041 or before, which might be achieved through success of the current action in the courts, but by 2041, we would certainly have access to the power, and then we wanted to ensure that there was assessment of the option of conversion to natural gas. We thought that was extremely important.

We had no particular – we weren't basically saying we were the experts on natural gas. What we were wanting to say is that these options should be assessed properly; they should be assessed in fully, and there should be time given to do this properly, that – similarly, with the purchase of power from suppliers outside the province, we felt that should be given consideration. It was certainly identified by the – well, later identified by the Joint Panel. But the conversion of the Holyrood plant to natural gas is something that should be considered in light of the fact we have such a large amount of natural gas on our – off our coast, and that we should be looking at the purchasing of power from outside the province.

There should be incentives to save energy, that there should be – we should have proactively be looking at other ways to heat space because essentially the issue we were facing was one where we had a peak. We had a peak in our system, a seasonal peak, where the problem wasn't so much an energy problem, it was a capacity problem for a certain period of time, and that capacity problem grew over time when we – when it was more attractive for people to install electricity, electric space heating, than to use furnaces or other means to heat their homes.

And so what was happening was that there was this shift, and then it became more expensive for us as a society to provide energy, to provide heat, because people were using electric power, and we weren't using the proper pricing, as Dr. Feehan pointed out yesterday. But – so we believe that proper pricing is important, but we also think incentives – there should've been incentives, more incentives. I know there were some incentives in place, but there should be more incentives for people to use efficiency and conservation and other alternative sources.

And the – and so we thought that the Muskrat Falls should be put on the back burner to be considered at a later time after all the due diligence that was necessary was done. We also thought that there was a way, there was a model in place, to reduce the risk to the province using a vehicle that was created in 1978, known as the Lower Churchill Development Corporation.

The advantage of the Lower Churchill Development Corporation would be that there would be equity from the federal government. The province would put in 51 per cent; the federal government would put in 49 per cent, so that would be one of the big advantages, and that mechanism was in place. There was a policy decision in support of it, so that was a very attractive – as opposed to putting so much on the back of the province.

And then just moving, I guess, a little bit through the recommendations. The board should take into account the Report of the Joint Panel. The Joint Panel had concluded that Nalcor's analysis was inadequate, that the board take into consideration the Action Canada paper, that the board should consider the, number 5, the integrated resource planning.

And the integrated resource planning is a methodology that's commonly used across Canada. It's not used in Newfoundland and Labrador, and I'm not sure whether a legislative change is required in order to do that, because I think they may have that power to do – to introduce integrated resource planning. The big difference with integrated resource planning is that all options are on the table, not just supply options, but also demand options.

And what we were looking at – we were looking at the supply options only. And demand options are – it's like the old saying, a dollar saved is a dollar earned. And that's applying that same principle here: that you got to look at saving energy as well as creating more energy. And across Canada, there's – across North America, there's been a lot of research on demand-side management, which shows that, in most jurisdictions, it's very economical. It's more economical to install – to use demand-side management than it is to build new supply.

MS. O'BRIEN: Okay.

I know there's 17 recommendations here –

MR. VARDY: Yeah.

MS. O'BRIEN: – listed in the paper. And the paper is filed. So I just want to get you – give you both an opportunity to highlight which ones you –

MR. VARDY: Could I just – one general point here, and that is the way – I think the problem is frame. The way the problem was framed in the terms of reference of the – the terms of reference given by government, it creates a binary choice. It creates a binary choice between a big – a megaproject and a whole series of other projects, and I think that's a wrong choice.

Because it's like the old question have you stopped beating your spouse, where you have – the answer is either no or yes. You've either – you've stopped beating your spouse. It's not quite the same, but you're limited to – neither A nor B may be the right answer. That's the problem we've got here. The best solution may not be Muskrat Falls; it may not be the Isolated Island Option. It may be something different, and that's why I think this is such a problem.

And I think the other thing – and this pervades all of the discussion that's here – is the fact that the risk associated with making a large commitment is so much larger than the risk of making a small commitment, because you have the – you can make small mistakes which don't have such a drastic impact, and the big problem with comparing Muskrat Falls with the Isolated Island Option is they're not really apples and oranges.

MS. O'BRIEN: Okay. Thank you.

Mr. Penney, is there anything you would like to add? And I'll ask you to speak to – I know there was the initial presentation, which we just had up on the screen. You made the supplemental presentation to the PUB, which is entered in evidence as P-00341, and it's in tab 13 of your book before you.

Obviously, those are in, and we understand that those were the concerns that you were raising before the PUB, but are there ones in particular that you would like to highlight for us?

MR. PENNEY: I guess, really, the – if we had our time back, I think we would've suggested to government that the reference question should be posed differently. The reference question should be how best could we meet the electricity needs for the province until 2041, so then they would've been involved in integrated resource management. That's the only thing that I have to add.

MR. VARDY: Could I add something to that? On the second submission, one of the things we raised as a question – and it's an important issue. I want to correct myself about – I talked about apples and oranges – I meant apples and apples.

What – the – it goes back to that same question of comparing the two options, because – and this – the question is: How is the measurement done? How was the – how do you measure the benefits? Can we cumulate the present benefits in these two different projects, because – I need to talk about how public utilities are regulated and how accounting is done.

We have something called cost of service. Now, cost of service basically means that people – customers are charged each year based upon the cost that they cause on the system. They're buying power, and the power they're buying and consuming is costed out, and by a proper accounting methodology, which includes depreciation, includes interest. It includes various costs – fuel and operating and maintenance costs and so forth.

One of the things that's a bit peculiar about the way public utilities are regulated is that the cost of equity is treated as a cost – it is built into the cost as a cost of capital. Whereas in a normal business – in a fish plant, in a logging operation – you – whether you make a profit or not is a residual. It's a residual. You don't put profit in as a cost. In public utility economics, it goes in as a cost so that it has to be calculated.

So cost of service – one of the big components of cost of service is the return on equity capital. And the numbers that are in my head now are the numbers that relate to the current situation, so they don't relate to pre-sanction, so I'm not going to use any numbers. I'm just going to tell you that in the pre-sanction environment you

had this situation where you had equity capital and you had debt.

And with regard to the Labrador interconnected Link [sp Labrador-Island Link], the LIL, that was all being costed based upon cost and service, whereas the generation component was being costed on what they call Power Purchase Agreement methodology, which is really a departure from traditional practice, although it is used in various Power Purchase Agreements.

What it essentially does is it takes – it ‘levellizes’ the cost over time. It calculates – you go through a process where you calculate, what is the cost per kilowatt hour? And then you bring it back to a present value and then you keep that real amount. So in the – in Dr. Locke’s presentation yesterday he had made reference to \$76 per megawatt hour, and that was the ‘levellized’ unit energy cost. And then what Nalcor would do would be to escalate that in real terms by adding 2 per cent a year, so it would go up.

What that essentially means is that in year ’50, the people who are buying Muskrat Falls power are paying the same as the people in year 2020, ‘cause it’s – and, you know, one can argue that it’s fair, you can argue that it’s not fair, but the thing about it is that you’re comparing apples to oranges. It is an apples with oranges situation.

And so what the PPA approach does is it defers some of the cost into the future. And it’s not uncommon in public utility regulation to defer costs into the future. It occurs quite frequently with various projects that are capitalized, certain expenditures that are capitalized. So they’re – if they’re incurred, and they have to be, instead of having to write them off at, you know, early on, they write them off over a long period of time.

But in this particular case, what’s happening is that the return on capital – some of the return on capital the provincial government is investing in Muskrat Falls is actually deferred for payment in the future, which it has the effect of understating the cost in the present, in the near term. But, so the point being – and that was going back then to our presentation to the PUB.

What we were saying was the PUB should look at the fact that there are two different

methodologies at play here: cost of services being applied to the Labrador interconnected link, it’s also being applied to the Isolated Option in its totality; whereas with – and the generation component of the Muskrat Falls Project is being dealt with by a different accounting methodology, and you need to put those on the same basis. And we – during the hearing that was one of the points that we made. And in the second – in the supplementary submission we made a big issue of this particular point.

MS. O’BRIEN: Okay. And just as I understand, you weren’t expressing any final opinion as how these – how the costing should be, but you wanted the PUB to look into it further to analyze the two different methods of costing and ensure that they were –

MR. VARDY: Because it might change the comparison between the two.

MS. O’BRIEN: Right. Okay.

Thank you.

And we will be hearing, Commissioner, some more evidence on the Power Purchase Agreement and the issues that were just raised by Mr. Vardy next week, I believe.

Okay. Some of the documents that – the exhibits that were filed with respect to your – with your paper relate to some back and forth that went on publicly in the media between you and Mr. Vardy and Minister Kennedy, and that was regarding the Corner Brook Pulp and Paper mill, and that’s the mill that’s owned by Kruger Inc. And I’m not going to go through every exhibit there, but if you could please explain to the Commissioner what the nature of that back and forth was.

And it may be of assistance to bring up one exhibit, though, that would be P-00337, it’s at tab 9 of your book. And this is a transcript that you received of Minister Kennedy’s remarks to the greater Corner Brook Board of Trade on February 10, 2012.

So, Mr. Vardy, can you please explain what the issue was there between you and Mr. Kennedy?

MR. VARDY: Right. Could I read the – what’s there? Could I read it aloud? Would you like me to –

MS. O’BRIEN: Yes, absolutely you can do that. It’s P-00337.

MR. VARDY: Right.

MS. O’BRIEN: It’s up on your screen.

MR. VARDY: So there had been a, I think, a talk that Mr. Kennedy had given, and he attacked me for suggesting to the Public Utilities Board that the Corner Brook mill might be closing and that that particular option should be addressed. There had been a discussion, and I think the MHI had been asked to look at the implications of what happened – what would happen if the Corner Brook plant was closed down. Because it was a big user of power.

So – and – so Mr. Kennedy suggested that it was I who had suggested that this option be reviewed. Now, I had really no mechanism to do that because we weren’t registered intervenors there. We had – we really didn’t have a process to do that. But I wouldn’t have done it; I didn’t do it.

And so, anyway, that led to – when that accusation was made that I had raised this issue, I got – asked for a copy of the transcript of what Mr. Kennedy had said. I got it from the media person. I questioned – and this is what was in the talk which was given to the greater Corner Brook Board of Trade on Friday, February 10, 2012.

And this is what Mr. Kennedy said. He said, “I questioned the chair of the Public Utilities Board and their lawyer at a meeting: how can you even consider Corner Brook Pulp and Paper closing down? There is no evidence of that.

“The first reference I can find to this” hypothetical, “theoretical, hypothetical situation of Corner Brook Pulp and Paper closing down is in an article written by David Vardy in August” of this year, “of last year, and Mr. Vardy is one of the most vocal critics of the Muskrat Falls project.”

And he goes on to say, “I told the Public Utilities Board chair and their lawyer, unequivocally, that there is no evidence. Yet, how does this find its way into the report?”

“It’s almost as if some of these critics want Corner Brook Pulp and Paper to close down so they can say, ‘I told you Muskrat Falls is not needed.’ Is that cynical on my part, because where else is this coming from?”

Now, there’s several points, I guess, in relationship to this. One is that I made – I had no – in my Action Canada paper, I simply reported that the consultants – that the assumption that was made was that Corner Brook would continue. All the load projections were based on that assumption. So I made no assertion or allegation, nor did I postulate a scenario in which Corner Brook was going to shut down.

And the other thing I said to Mr. Kennedy at the time was that I would be the last person to be suggesting that, because I happened to be the chief negotiator under Premier Peckford when that mill – when the Corner Brook mill was sold by Bowater to Kruger. And so, it’s the last mill standing in Newfoundland and Labrador. And so it would not be my wishful thinking to see that mill close down, but that’s not the point here.

The point is really that, what Mr. Kennedy appears to be saying is that he had the conversation with the chairman of the Public Utilities Board on this matter. So – now, we did contact the Public Utilities Board and asked if there was any – a discussion, and we were told that there were meetings on procedural matters. And we did have an exchange with the Public Utilities Board, and the Public Utilities Board could find no reference – no – I’m just trying to remember what the phrase is used in the –

UNIDENTIFIED MALE SPEAKER: No responsive record.

MR. VARDY: No responsive record. Those are the magic words. No responsive record. So it was no responsive record.

But the question remains, I guess, is: Is it appropriate for a Minister of the Crown to be talking to members of the Public Utilities Board while a hearing is in place? And moving that to

the next question: Are there other Ministers of the Crown who also talk to the chairman of the board? So this is something I think that the Commissioner may want to follow up in discussions with Chairman Wells, Andy Wells, when he appears.

But – so that is a concern about the process. Was the process somehow tainted or contaminated by virtue of the fact that the chairman of the board was talking with a minister, or a minister had approached the chairman of the board? And so – and the question is: Did this happen on only one occasion, and did it impact on the process, in any sense undermine the process? I think it's an important issue.

MS. O'BRIEN: Okay, thank you.

And, Commissioner, for your information, both the former chair of the PUB, Mr. Andy Wells, and former Minister Jerome Kennedy will be called to give evidence before you during this phase.

Another series of exhibits that were attached to the paper you prepared for us addressed the filing of the JRP report – final report – before the PUB, and I'm just going to summarize those and make sure I have a correct summary. And Mr. Penney, I ask you to confirm whether I have it right or not.

But, as I understand it, that you and Mr. Vardy sought before the PUB reference, you sought to file the final report of the JRP and that Nalcor objected to that exhibit being filed. Ultimately, the PUB commissioners ruled to accept the report as an exhibit before them and then Nalcor, through their legal counsel, wrote a letter to the PUB [sp PUB], putting forth their position on the weight that the panel – the Commissioner – should give to the JRP report. And you and Mr. Vardy also responded with a submission as to the weight you believe that the PUB commissioner should give to the report.

Is that an accurate – more or less an accurate summary –

MR. PENNEY: Yes.

MS. O'BRIEN: – of the –

MR. PENNEY: Yes, that is correct.

MS. O'BRIEN: Okay, thank you.

And I don't think that it's – I don't believe it's any more relevant to the Commissioner's – what the Commissioner needs to do here, so we'll leave it at that.

But, now, Mr. Penney, we know that – I'm gonna stay with some questions for you on the PUB – and we know that the PUB asked for an extension of time for the filing of their report. And the time had been extended to March 30, 2012, and they were seeking a further extension to June 30, 2012. And, ultimately, that request was turned down by the minister responsible at the time. And you and Mr. Vardy, I understand, both spoke out publicly about this and also with respect to the role of the Consumer Advocate before the PUB.

So I'd like – ask you, Mr. Penney, to go over for the Commissioner what your concerns were there. And it may be of assistance to bring up Exhibit P-00334, please, Madam Clerk.

This is a letter to the editors. It's at tab 6 of the book before you. It's a letter to the editor that you each wrote – you wrote together – on January 12, 2012, and it's one of the documents I'd be referencing when I say that you raised these concerns publicly.

So please, Mr. Penney, I'll turn it over to you.

MR. PENNEY: Yes, I believe this is actually the first letter that we wrote jointly. It was at that – up to that point, with the exception of Dave's paper and our submission to the PUB, we really hadn't engaged too much in the media on this. So this was our first effort and I guess we were really – the main is we're really concerned that the board wasn't being given the opportunity to review the DG3 numbers and that, in our view, their review was being cut short, unnecessarily.

MS. O'BRIEN: Also, I know there was an addressing – and I'm just going a little further down. You also addressed the role of the Consumer Advocate here. So if I can just go down in this area here, you're – you have – you had some concern about the minister's criticism

of the approach of the Consumer Advocate and the stated intent to restrict his role.

Can you please explain for us what the issue was you were raising here?

MR. PENNEY: Early on in the process, the then Consumer Advocate, Tom Johnson, approached Mr. Vardy and both of us went down to have a meeting with him. And he was looking to have a very, kind of robust public sense – public information sessions throughout the province to engage the population in assisting him and making his representations to the PUB, but nothing came of that. And we don't know if that was – we really don't know the reason for that, whether it was budgetary reasons, but one of the reasons was, obviously, the very compressed time to do the reference.

MS. O'BRIEN: And what was your concern about the Consumer Advocate not having the opportunity to do that canvassing of the people as he had intended?

MR. PENNEY: Well, it would have allowed the Consumer Advocate to get representation. The Consumer Advocate represents consumers. So it's important that the Consumer Advocate seek representations from the customers, the ratepayers throughout the province as to what their concerns were about the project.

MS. O'BRIEN: Thank you.

Another issue that you have raised here, and I'm just using this particular exhibit as an example, another one – you know, as an example of your speaking out in various letters to the editors that you both wrote, which had been filed in to evidence. But you also raised a concern here about the minister broadening his circle of advisors.

Can you explain, please, what was the concern that you were raising here and what were you hoping to have happen?

MR. PENNEY: Well, just prior to that, I guess, the – one of the concerns that we had it was that we were long-time public servants, we have a wide network of former colleagues in the public service and former colleagues in Hydro, and we

were talking to these people and almost to a person, they were concerned about this project.

So one of my cries in the – one of the sentence that I put in was to urge these people to come out and speak publicly on the project as to their concerns.

MS. O'BRIEN: I think that's just here in the paragraph –

MR. PENNEY: That's before, yeah.

MS. O'BRIEN: – at the bottom of page 2, yes. Okay.

MR. PENNEY: So leading into that, if people weren't prepared to come out publicly then we thought what the minister should do is to reach out to, for example, former CEOs and chairs of Newfoundland Hydro; former deputy ministers of Natural Resources, former deputy ministers of Finance and seek their views on the project.

I do recall that when there was an effort to do the Lower Churchill Project under Premier Tobin, that that's exactly what he did. He appointed an advisory board which included the late Cyril Abery, who I mentioned before, and Vic Young, and I can't – there was one other, to form an advisory committee to him on his set of negotiations.

MS. O'BRIEN: Thank you.

Commissioner, I – we're nearing the break time. I don't expect to be that much longer after the break, but this is probably a convenient time to stop.

THE COMMISSIONER: All right.

So we'll take our 10 minute break here now, so we're adjourned for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

THE COMMISSIONER: All right.

Ms. O'Brien.

MS. O'BRIEN: Thank you.

Another issue that was raised by the two of you publicly – which was raised, I think, both before the PUB filed their report on the reference question at the end of March of 2012 as well as after. And that was concerns that you raised about the review of the Public Utilities Board in this province as compared to the review that was going on in Nova Scotia with the Nova Scotia UARB or their regulator.

And could you please – I don't know which one of you would be best to answer that – Mr. Vardy, is that – okay, that's fine. Could you please address for the Commissioner what those concerns are? There are a number of exhibits filed to this – you know, clippings from the media and such – but I think it's – I believe it's something you can just cover in explaining what the concern was.

MR. VARDY: Thank you very much.

Yeah, the concern there is related to the fact that in the term sheet, the term sheet gives – places the Nova Scotia Utility and Review Board in a very powerful position where, if they can determine that – whether this is the least-cost option – i.e. Muskrat Falls is a least-cost option for Nova Scotia, then the UARB has the power to actually sanction the project.

So the final decision with regard to the term sheet was left to the UARB in Nova Scotia, and putting them in a pivotal – absolutely pivotal position. And whereas the term sheet excluded the Newfoundland and Labrador board of public utilities. And that was a huge concern because it put us in a very difficult bargaining position. It weakened the – our province's bargaining position because everybody knew that they had the final say. And they actually used that.

Because when the deal was presented – the deal, as encapsulated in the term sheet, was 20 per cent of the power for 20 per cent of the cost. And so that deal was presented to the UARB, and the UARB ruled in – I think it was in July of 2013 because we're into 2013 and this was subsequently what happened, is they ruled that wasn't good enough and they had to go back. And that's – this'll be a post-sanction question. It will come back, I'm sure, to the

Commissioner. But the point is that the way the deal was structured, it put the UARB in a very strong position; whereas our board had no comparable position at all and was essentially removed from the whole situation. And that was a difficult situation.

And I thought that the – well, I guess both of us believe that the UARB model is a very good model. The way the UARB – it goes back to the question you raised earlier with regard to how you would constitute a board to deal with a megaproject. Now, the megaproject in Nova Scotia, the Maritime Link, was not the same magnitude as the Muskrat Falls is for the Province of Newfoundland and Labrador.

What they did was they passed regulations that gave the UARB specific authority and powers, with regard to the Maritime Link, and those regulations enabled the UARB to make that determination to actually sanction it. So it didn't go to the Cabinet of Nova Scotia; it went to the UARB in Nova Scotia. It gave them that power, but it also gave them authority to oversee the implementation of the projects so that after the project was agreed on and the Maritime Link was built, not only did the UARB have a role – an important role – to play in the approval process but they also had a role to play in the oversight process.

So, our Public Utilities Board has been cut out of both – out of the approval process, apart from the reference, and the oversight process. So I think that's a big concern – the asymmetry there. And there's other things about the – we find that we look at the UARB as a very good model and the legislation and the regulations they put in place, a very good model which could have been adopted here but weren't.

MS. O'BRIEN: Okay.

And I understand – Mr. Penney, I'll put this question to you because I understand that your advocacy here included a reach out to the federal government and I'll just ask Madam Clerk to bring up P-00346, please. And that's at tab 18 of the book in front of you – 000346. Oh, I may have my number right 'cause that does – oh yes, it's on page 4, sorry.

MR. PENNEY: Okay.

MS. O'BRIEN: Yes.

So this is a letter that was written on November 9, 2012 to then the federal minister of Finance – Jim Flaherty – and I'm just going to go to the signatory lines here. It was signed by Richard Cashin, Dr. John Collins, Roger Grimes, Cabot Martin, Des Sullivan and then it was signed by the both of you.

So, Mr. Penney, can you just explain for us what was your request here to Minister Flaherty and what was the response that you received?

MR. PENNEY: Well, the genesis of this letter came from a group called the 2041 Group, of which Dave and I weren't formerly members of, and we were asked to sign it. And the main point in the letter is that we wanted the federal government to insist that there be a full regulatory review before our Public Utilities Board.

MS. O'BRIEN: And did you receive a response or a substantive response?

MR. PENNEY: We received an acknowledgement, but no substantive response.

MS. O'BRIEN: Okay. Thank you.

Madam Clerk, can you please bring up Exhibit P-00378? I know it won't be in your tray, but it is – has been previously filed. And this is not in the book before you, but this is a – Mr. Vardy, yesterday we had testimony from Dr. Wade Locke here at the Inquiry.

Did you have an opportunity to hear or review his testimony?

MR. VARDY: I did indeed.

MS. O'BRIEN: Okay, so then you might know that this is an email that he –

MR. VARDY: Could this be – could you list the tab number?

MS. O'BRIEN: Yes, absolutely.

This is an email that he referred to. And just to put it in some context here, this relates to – following your Action Canada paper he gave

some testimony that there was discussions about you and he doing a public debate through the Harris Centre.

MR. VARDY: Mm-hmm.

MS. O'BRIEN: And ultimately that there was – he – his testimony, just to summarize it, was that there was a meeting where you and he and other people got together to discuss –

MR. VARDY: Mm-hmm.

MS. O'BRIEN: – how that debate may pull out. And then following that meeting he received this email from you on December 1, 2011, where you – the – essentially withdrew from the debate. So can you please explain to us your – why you wrote this email and –

MR. VARDY: Glad to do so.

MS. O'BRIEN: Okay.

MR. VARDY: Glad to do so, yes. I need to give you a little bit of background on all this.

I was involved at the – with the Harris Centre. And we were looking – the Harris Centre was interested in getting people to participate in a discussion about the Muskrat Falls Project as a major public policy issue. And we wanted to have a discussion by people, presentations by people on all sides of the issues. And the Harris Centre was successful in getting, I think, three presentations in particular: one by Dr. Bruneau and one by Dr. Locke and the other by Dr. Andy Fisher who was dealing with small hydroelectric projects.

So – and I was involved with discussions with Dr. Locke with regard to asking whether he would be interested in doing a presentation at – for the Harris Centre at one of their Memorial Presents. And he suggested that I would participate with him in a debate and we had – we talked about that, and we talked about the format of the debate and we had a discussion about my paper, the Action Canada paper.

And one of the things that became very clear to me is that a big issue in this whole matter was the issue of oil prices – fossil fuels, fossil fuel prices, oil prices – because you will recall that

oil prices were a very contentious issue and they were being forecast to rise continuously.

At that date – at that point in time, oil prices were not at a historically high level, but they were relatively high compared to the history of oil prices. And we – so we discussed oil prices, we discussed the price of natural gas, we talked a good bit about LNG, we talked about compressed natural gas. And one of the things that became very clear to me was that Dr. Locke was extremely knowledgeable about the oil markets and natural gas fossil fuel. And I felt that I did not have a kind of expertise that he had, and I felt that if I were to participate in this debate, I would not do justice to the other side of the cause; the con, as it were, as opposed to the pro.

Dr. Locke was – did his presentation and I decided that I should step aside, go on the bench and bench myself from this process because I don't think I could have contributed as much as I would have liked to on that issue and that. So when I go to the email that I sent, that captures essentially what I'm saying to you now, that I felt that Dr. Locke was in a position where he was extremely knowledgeable and I think he demonstrated that knowledge in his – in the presentation. I didn't feel that I was a person with the qualifications who could debate him on those kinds of very important issues, because those were the issues that were at the forefront at that time.

So – and I – you'll see that I acknowledge that this might cause me some heartache, headache in terms of loss of some dignity, but I felt that I wasn't the right person to do that debate with Dr. Locke at that time for the reasons I've given. Because what I wanted was to ensure that there was a balanced debate taking place. It doesn't make sense to put people forward who are not with the proper qualifications. And I recognized that I didn't have the necessary knowledge of an important aspect of this to be able to inform the public about what oil prices and gas prices would be in the future.

And I gathered an appreciation in my discussions with Wade that he was extremely knowledgeable about those matters, probably more knowledgeable than anybody else in the province. And he had – to contribute to his

experience, he had done a lot of work with oil companies with regard to oil and gas projects off the coast of Newfoundland. And so he had a particular expertise, and I felt that if I were to participate in that I would not be able to provide a kind of balanced argument on those important issues. So I decided that I was going to step aside.

Now, having done that I – that's the only game I refused to participate in because I participated vigorously in a variety of discussions, letter writing, open lines. I attended Nalcor AGMs. I got up and I challenged the CEO on a number of issues, so I was quite vigorous in making my points, but I never tried to argue that I was an expert on the – on international economics – international energy economics.

My main expertise lies in governance; my career is in the field of governance and public utility regulation. And I could've contributed something on that respect, but I felt that the oil and gas was such a big part of this discussion at that point in time, that – and, Wade, of course, had his chart show that he actually identified how much a \$30 change in the price of oil would make on the cumulative present value, the benefit. And I felt that I was not going to be able to contribute to that. I felt that that was a pivotal point, so I said, this is going to be an embarrassment to me, but the bigger cause is for the public to get a full understanding of the issues.

Now, I think the presentation Dr. Locke made would have been better received if he had fully identified all of his connections with government – his contractual relationships with government. As – but having said that, I do feel that he contributed to the quality of the debate, that his debate was – informed the people of Newfoundland and Labrador. It was well attended and I think that it accomplished what I would've expected to happen, which is I wanted to have a strong vigorous debate on the presentation on the other side of the argument that was done by somebody other than Nalcor.

So, at the end of the day, I had to wear some egg on my face, but that – and that wasn't the first time and won't be the last time.

MS. O'BRIEN: Thank you.

Those are the end – that’s coming to the end of my formal questioning, but I wanted to give you both an opportunity, in case there was anything that you wanted to raise before the Commissioner that you haven’t had an opportunity to raise. And you’ve been asked to come here today to, in particular, talk about the concerns that you raised publicly to Nalcor, to government prior to sanction of the Muskrat Falls Project and, also, what response you received from the Government of Newfoundland and Labrador and Nalcor to those concerns.

So, Mr. Penney, I’ll start with you. Is there anything on that topic that you feel you have not had a full chance to express to the Commissioner yet?

MR. PENNEY: I guess the only thing that I’d like to say is Dave and I are long experienced public servants interested in public policy in the province and interested in the province. And through my life, I’ve always been engaged in public policy issues from the time that I was at university when I was the first president of the PC club. So I’ve been interested in that. And I guess the point I would like to make is yes, we participated in this debate. And we wrote a lot and engaged with the media a lot and engaged with the public that wanted to engage with us. But, unfortunately, we failed abysmally in terms of what we wanted to accomplish, which the main thing that we wanted to accomplish was to have a full review by the Public Utilities Board. And that didn’t happen.

So we felt we did our best, but our best wasn’t good enough.

MS. O’BRIEN: Thank you.

Mr. Vardy, I’ll put the same question to you.

MR. VARDY: Thank you very much, I appreciate the opportunity.

I want to say that I – when I began looking at this, when I became – started speaking out, I did so as not so much as critic as a skeptic; I was a skeptic. And when I wrote the Atlantic – the Action Canada Paper, I did it as a skeptic because my mind was still open to the possibility that this might – this project might be good for Newfoundland and Labrador.

The problem is, as we got more into – the more information we got on this, the more concerning it became. And like, you know, at the – Muskrat Falls began in 2010 based on DG2 numbers. And those numbers were essentially \$5 billion plus 1.2 billion for financing costs. So we’re looking at \$6.2 billion which has now gone to \$12.7 billion. And – but I was – we were judging this in the context of the cost at the time and the benefits as they were alleged at the time. And the more – the problem I found was that as the more I got into this – the more I understood about the project, the more concerned I became. So I did become a critic. I turned over from being a skeptic to a critic.

And I can’t tell you exactly when that happened, but it – I think that was – and when I became a critic, then I realized that I was becoming – I was speaking out on public policy issues on a matter that was important to the province. And my main concern was to ensure that there was a proper consideration by the people of the province. So my main objection – my main objective was to ensure that people – that there was a dialogue on this question.

I mean, I even suggested – I think Ron and I – and maybe in a moment of weakness Ron agreed to sign a letter that – I suggested a referendum. I actually put the idea of a referendum on the table. But not too many people warmed to that idea. But I think that the whole idea – this is a public policy issue of paramount importance. Hard to see any issue since Confederation that is of greater importance to us. We did have a reference – a referendum on the issue of education.

So it’s a big public policy issue. And I agree with Ron that we failed abysmally. We failed abysmally to get that discussion going. We were not successful. The people we hoped would come to the party and that we would be able to generate this momentum, certainly in pre-sanction, didn’t happen and so the project was sanctioned, in my opinion, without the fully informed public participation that we should have had.

So we didn’t – we tried very hard. Our objective was – it was really to ensure that the people understood what was going down the road. And I guess the particular thing that has concerned

me is – well, certainly the costs are a big question. The costs are a big issue, the escalation of costs, the doubling of costs, but the – even bigger than the cost issue for me today is the issue of benefits. That there would be the – to what extent are we going to be able to recover the cost? To what extent are people going to be able to contribute to the level of revenues that are needed in order to pay for the costs?

And I think that the – that comes down to the fundamental problem of we're a small province and with a declining demography. And I was deputy minister of Fisheries at the time of the moratorium in 1992, I was deputy minister of Fisheries and, you know, that was probably one of the biggest traumas that hit us as a province since the Great Depression. And we – 80,000 people – we had a population close to 600,000 people and then we, over a period of 10, 15 years, we lost 80,000 people. We're now down to about 520,000 people and shrinking.

The Department of Finance is forecasting a reduction in our population. So the notion of putting forward – having a project like this when the demand is not there and the ability to repay the cost even at 6.2 billion let alone 12.7, I think, is a big, a big concern of ours today. And I think that's all I want to say right now.

Thank you very much.

MS. O'BRIEN: Okay. Those are my questions. Other counsel will likely have questions for you.

THE COMMISSIONER: Thank you.

All right, the Province of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Okay.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Good morning, gentlemen, I am Dan Simmons, here as counsel for Nalcor Energy. I've got a few questions for you but not very many.

First of all, you had described this morning about how the coalition was formed, initiated by both of you and Mr. Sullivan, I believe, and I believe you described the purpose of it as being to assist the Commission in the Inquiry that it's undertaken here.

So my question – first question is: Was that at the initiative of yourselves and Mr. Sullivan that you saw that as being your role, or was there some kind of invitation extended to you on behalf of the Commission to provide assistance to it?

MR. PENNEY: Okay, this is – this was our initiative. It wasn't any – there wasn't an invitation from the Commission.

MR. SIMMONS: Okay.

And aside from presenting your – the brief that you've presented appearing here as witnesses and having counsel present to participate, has the coalition been actively assisting the Commission in any way, other than through those means?

MR. PENNEY: That's what we got.

MR. SIMMONS: Okay. Thank you.

In your evidence this morning you've recounted how fairly early on in the process after you both became interested and involved in this question, you were able to participate in a meeting at Nalcor with Ed Martin, Gilbert Bennett and a number of other people. You were able to bring other people there with you. Was that a difficult thing to arrange? Was that challenging? Was there resistance on behalf of anyone?

MR. VARDY: No, absolutely not. No, it happened very quickly. We had a full, open meeting and we had all the time we needed –

MR. SIMMONS: Mm-hmm.

MR. VARDY: – and that was a subsequent meeting at a different level and – which I had to leave early so – but I always felt that access was not a problem. I'd go even further to say that there has been a lot of information exchange over the last few years.

MR. SIMMONS: Mm-hmm.

MR. VARDY: I have probably imposed more cost on Nalcor than anybody else in terms of responding to information request. I put in more ATIPPA requests –

MR. SIMMONS: I think Nalcor would share that view.

MR. VARDY: That's right. And I hope the Commission has access to all those documents. And I hope that Nalcor has a better filing system than I do.

MR. SIMMONS: Okay, good. Thank you.

One of the concerns, Mr. Vardy, that you raised early on, I gather, was that the Muskrat Falls plan, which included building transmission from Labrador, and eventually replacing Holyrood, Holyrood shutting down on the Avalon, that you were concerned that there would be reliability issues for the supply of electricity to the Avalon without a source of supply located there on the Avalon Peninsula.

And I think you said that concerns would include the – that the transmission line would cross the high ground on the Great Northern Peninsula and also the isthmus of the Avalon. So, on first question regarding the transmission line that's been built down the Great Northern Peninsula, do you know to what extent the design or if the design of that transmission line has been developed to accommodate those concerns that you expressed early on in 2011?

MR. VARDY: Yeah, that became a big issue I think in the hearing in terms – and it was brought up by MHI.

MR. SIMMONS: Mm-hmm.

MR. VARDY: It was an issue that was brought up by MHI. And I think the issue was whether it should be brought up to one in 50 years or one into 500 years standard, that all required more investment, more engineering.

MR. SIMMONS: Mm-hmm.

MR. VARDY: And cost, I think, was the go to a hundred – one in 150 years, that is to say, a

reliability factor of – which was higher than the one in 50 years, cost about \$150 million. My understanding is that there has been, in fact –

MR. SIMMONS: Right.

MR. VARDY: – action taken to make those lines stronger. Not sure they're at the one in 500, I understand the one in 150, but I'm not sure about that.

MR. SIMMONS: Okay.

But in any event, it was a concern you raised early on –

MR. VARDY: Mm-hmm.

MR. SIMMONS: – and it's something you flagged and the process that took place after that, including the PUB process that brought in MHI and looked at that issue, did result in some action to address that concern that you'd raised.

MR. VARDY: Yep.

MR. SIMMONS: And regarding the transmission to the Avalon across the isthmus – and I can remember being a boy when we lost power for days because those power lines went down, quite some time ago now. The PUB – does the PUB retain jurisdiction over the reliability of the transmission system on the Island?

MR. VARDY: That is a legal question that I can't answer because I know there was – the orders-in-counsel are very technical and I read the orders-in-counsel, I can't say that I understand them. And so whether they're exempted from the issues relating to reliability, I can't really make a definitive – give you a definitive answer.

MR. SIMMONS: Have you followed any of the PUB hearings and proceedings that followed on, what we called, DarkNL? Which was really about reliability.

MR. VARDY: Mmm, indeed I have.

MR. SIMMONS: Yes, okay.

And that seems to be an incidence where the PUB has been exercising a jurisdiction over questions of the reliability of power supply, including transmission on the Island system.

MR. VARDY: Mm-hmm.

MR. SIMMONS: Would you consider that correct?

MR. VARDY: That's right.

MR. SIMMONS: Okay.

Now, the other question I have about – related to that, is that one of the options that you had both flagged here for consideration early on was waiting until 2041 and sourcing power from the Upper Churchill; however, that would do – whatever the commercial way to do that would be. I gather the suggestion is that in 2041 there's a new source of power available and to utilize that source, it would require the construction of a transmission line to connect Churchill Falls to the Avalon? Correct?

MR. VARDY: Absolutely.

MR. SIMMONS: Right.

Would that have raised some of the same concerns about reliability for a transmission line as you flagged in 2011 with the Muskrat Falls Project?

MR. VARDY: Indubitably it would. That'd still be – it'd still need to have a backup on the Avalon. I don't think there's any – you'd need to have a large amount of backup on the Avalon.

MR. SIMMONS: (Inaudible.)

So that concern would have applied in either scenario, whether we were looking at a build Muskrat Falls now –

MR. VARDY: Right.

MR. SIMMONS: – or wait – or find our way to 2041 and then –

MR. VARDY: Mm-hmm.

MR. SIMMONS: – bring power in from Churchill Falls? Yeah, okay.

Now, regarding what might happen in 2041, is it as simple as saying: 2041 comes and there's simply power available? Or is it a more complicated question than that to determine what sort of arrangement would have to be put in place in order to access that power? I'm just interested in your comments – either of you – on that one.

MR. PENNEY: Well, it's for certain that the contract ends.

MR. SIMMONS: Mm-hmm.

MR. PENNEY: As to what – I mean, obviously, our negotiating – we don't own CF(L)Co outright.

MR. SIMMONS: Right.

MR. PENNEY: So it's one-third – I have the figures there – but one-third roughly. Hydro-Québec, they have a lot of extraordinary powers over and above their one-third interest. So that will remain, at the time – I probably won't be around – but at the time or prior to that there's a number of choices that we have. I believe that we could expropriate their interest. I realize that gets back to the – one of the cases, with the (inaudible) case, but I believe we would have the power because it wouldn't affect the power contract, or we could leave them in. The price of power would obviously have to be – if they're in as part of it, it would have to be on a commercial basis.

MR. SIMMONS: Mm-hmm.

MR. PENNEY: So as to – we don't know what's going to happen –

MR. SIMMONS: (Inaudible.)

MR. PENNEY: – in terms of the price of power and so on, but we know that the cost of production is very, very, very low.

MR. SIMMONS: So a couple of questions coming out of that. The idea that Hydro-Québec's interest could be expropriated, when

interests are expropriated they still have to be paid for.

MR. PENNEY: Uh-huh.

MR. SIMMONS: So whatever the value of that interest would be in the long run would end up being a cost that would have to be borne, one way or another by the province, if the province is expropriating it?

MR. PENNEY: Well, the province through the ratepayers, yes.

MR. SIMMONS: Through the ratepayers. So it's a cost that finds its way back to the ratepayers eventually?

MR. PENNEY: Yes.

MR. SIMMONS: Yes. Okay.

And so one potential outcome of 2041 is that a block of power becomes available that has to be transmitted. If Hydro-Québec's interests were not expropriated, as you suggested – which I expect would undoubtedly develop into another long legal fight with Quebec. If it was a purchase of power from CF(L)Co by Newfoundland and Labrador Hydro, do you think that the pricing for that would be based on the cost of production of the power or the alternative price that could be obtained by selling the power into the North American market? Either of you – I'm not directing it to one or the other.

MR. VARDY: I would expect that it will be based on the opportunity cost. It will be based on the opportunity –

MR. SIMMONS: Right.

MR. VARDY: – cost of the power.

MR. SIMMONS: So in order to evaluate that option, we have to make some kind of estimate or projection of what that opportunity cost might be in 2041.

MR. VARDY: We would indeed.

MR. SIMMONS: In order to value how much it will cost to get that power in 2041.

MR. VARDY: It would.

MR. SIMMONS: Yeah, okay.

Now, another way to approach what happens in 2041, I'd suggest, is that CF(L)Co could agree – could make a new deal with Hydro-Québec to sell the power at more current market rates and continue to flow it into the North American market without building a transmission line. Is that a possible outcome of what would happen in 2041 that you've considered when you're suggesting that we should wait until 2041 before we engage in any large-scale power generation construction?

MR. VARDY: That would certainly be an option – certainly would be an option to do that, you know, if you could – the big issue would be left – you'd be left with this access to their transmission lines –

MR. SIMMONS: Yes.

MR. VARDY: – you'd still be facing a monopsonist.

MR. SIMMONS: Mm-hmm.

MR. VARDY: And so that would be the issue. And the problem with going ahead and with Muskrat Falls is that you, then, can't use the power if you have it because you've satisfied your demand.

MR. SIMMONS: So looking ahead, though, to what might happen in 2041, if – you're aware now that there is some recall power being flowed through the Quebec transmission system?

MR. VARDY: Yes.

MR. SIMMONS: Yes. And do you know how that came to be? How the access through the Quebec transmission system was obtained to flow that recall power through?

MR. VARDY: Can't say I do.

MR. SIMMONS: Well, I'm going to suggest it's the open access tariff system that's in place in North America – and Mr. Penney is nodding

his head – requires Hydro-Québec to allow access if they have the capacity –

MR. VARDY: Mm-hmm.

MR. SIMMONS: – to do it. And for the recall power, because it had already been flowing through the Quebec system, they were unable to stop it from being wheeled through by Newfoundland and Labrador Hydro because the capacity was obviously there. Now, Mr. Penney, you're nodding your head, is that –

MR. PENNEY: Yes, that's –

MR. SIMMONS: – your understanding of the way it works?

MR. PENNEY: Yes, that's the FERC –

MR. SIMMONS: Yes.

MR. PENNEY: – (inaudible).

MR. SIMMONS: Yeah.

Would it be reasonable for us to expect that in 2041 the same sort of considerations would apply if CF(L)Co or Newfoundland and Labrador Hydro wanted to wheel more Churchill Falls power through Quebec?

MR. PENNEY: Yes, that's the case, I just – I'd also like to make the point that –

MR. SIMMONS: Yes.

MR. PENNEY: – that if we didn't have Muskrat Falls, we would certainly have the right to – when we did the contract to have enough power for our own purposes – recall power –

MR. SIMMONS: Yes.

MR. PENNEY: – for our own purposes.

MR. SIMMONS: Yes, okay.

So by 2041, you're saying there would be an opportunity provided that the economic case, I'm going to suggest, worked to access the power and flow it down. So at the time that this was being considered in 2011, 2041 is 30 years out, so I think you've referred to this as being

kind of a short-term issue of what you do, but I'm going to ask: Is 30 – is supplying power for the next 30 years a short-term consideration or is that a long-term planning consideration getting us to 2041?

MR. PENNEY: Well, we're less than 25 years now.

MR. SIMMONS: Mm-hmm.

MR. PENNEY: And Muskrat Falls is still not supplying power.

MR. SIMMONS: Right. No, what I'm asking you in 2011 –

MR. PENNEY: It's – no, well –

MR. SIMMONS: – when you raised these concerns.

MR. PENNEY: Well, yeah, the – it is – I mean, somebody who was a friend of mine who was an expert in electricity, says electricity generation is our legacy, they're old projects. And properly maintained – I think this will probably be the case with Holyrood as well. We know from the Public Utilities Board that Holyrood wasn't properly maintained. So, yeah, you know, when that comes into effect in 2041 we would have had availability of power.

MR. SIMMONS: So in making your suggestions – and I know what you were doing back in 2011, 2012 wasn't putting forward a scenario where you said this is the right one, we've worked it all out. You were raising questions that had to be asked, correct? And so I appreciate that.

But in the bit of evaluation that you did, did you really give much consideration to what type of capital investment would have had to have been put in place in order to bridge those 30 years to get to 2041 before there'd be an option potentially available for Upper Churchill power?

MR. VARDY: Well, I guess that comes back to the question of load –

MR. SIMMONS: Mmm.

MR. VARDY: – as to what the load growth is. And if you assume that the load growth is very minimal, then the investment could be much less than you might otherwise expect.

MR. SIMMONS: Mmm.

MR. VARDY: So and I guess it was in the context of where – whether those load-growth projections were realistic and in the light of our population, in the light of our industrial demand. And, you know, if you look at the last – prior to the 10 years, I think, prior to 2011, you had two pulp and paper mills shutting down and essentially you had a level demand for power.

So you've got to go back quite a ways in history to find a time when there was a robust demand for power in Newfoundland and Labrador. So I think that, again, it comes back to the need for us to look more carefully at the demand side.

MR. SIMMONS: Mm-hmm.

MR. VARDY: And I think really the answer to that question has to be – you got to ask the question: How much is it going to cost us to get from then, 2011 to 2041. When you got to put these other options in, they may be much lower capital cost, particularly in the context of lower load wealth, if you got a lower load wealth. And but there's a real danger that you're going to overbill the system. You're going to overbill the system to ...

So the 2041 option, basically what you need to do is to look at – do your analysis on a 30-year basis, don't take 50 years, okay? Those – that's the problem with the 50 years, you're going out 50 years, then you're speculating too much on what's going to happen beyond 30 years.

MR. SIMMONS: When you looked at the Isolated Island Option as, and I think as it existed in – at DG2, and when it was examined by the PUB may not have been exactly the same as at DG3, but it was similar. And I think both included stretching the life of the Holyrood plant out to about 2030 and then phasing it out around that time frame. Does that sound familiar?

MR. VARDY: Yeah.

MR. SIMMONS: Yeah.

So – and that's still 10, 11 years before 2041, so it would seem reasonable that there would have had to have been some significant capital investment made at the time or before Holyrood is phased out in order to continue to supply 490 megawatts of power that was put into the system by Holyrood.

MR. VARDY: But in so doing, you're right, you'd have to replace Holyrood.

MR. SIMMONS: Yes.

MR. VARDY: And you'd have to – but you – when you look at those combined turbine – combined combustion systems, those are relatively inexpensive compared to a large hydroelectric project.

MR. SIMMONS: Mmm.

MR. VARDY: A hydroelectric project requires a long time in order to repay it, that's the thing about it. But if you're looking at a 30-year time horizon, then you don't have – you know, you can afford to buy – you can buy these plants off – almost off the shelf and you put 'em in place and they're relatively cheap.

MR. SIMMONS: Yes.

But my point simply, I think, is that because it's a 30-year time period that you have to spend to get to 2041, there are costs involved with getting there and there are planning considerations involved with getting there as well. And those are things that would have to be – would you agree those were things that would have to be taken into consideration and analyzed in order to determine if that would actually be a viable alternative.

MR. VARDY: Absolutely.

MR. SIMMONS: Yeah. Okay.

Good. Thank you very much. I don't have any other questions.

THE COMMISSIONER: Thank you.

The Concerned Citizens Coalition.

MR. BUDDEN: (Inaudible.)

THE COMMISSIONER: Oh I'm sorry. Correct, you're last. I'm sorry.

Edmund Martin.

MR. SMITH: Gentlemen, Harold Smith and I represent Ed Martin.

I don't have a lot of questions. I just have come to an understanding, perhaps, of the criticism and/or skepticism that you have demonstrated during your testimony this morning. It appears to me that you have not said, at least directly, that the Muskrat Falls Project is a lower cost option as between the two options that were being studied. Is that correct?

MR. VARDY: No. I think that – I wouldn't accept that, that it is, without more review, independent review – a proper independent review process.

MR. SMITH: I'm addressing you as a skeptic and critic. Have you and/or Mr. Penney – have you determined that the Muskrat Falls Project isn't – is or was not the least-cost option at the time of sanction?

MR. VARDY: No.

MR. SMITH: You haven't?

MR. VARDY: No, we haven't done that analysis.

MR. SMITH: You haven't done that analysis.

Now, what I've heard though, is that from a public policy perspective you've criticized perhaps even the selection of the two options: Isolated versus Muskrat Falls. You've criticized the selection.

MR. VARDY: Absolutely.

MR. SMITH: And that's a public policy issue, is that correct?

MR. VARDY: It's a process issue. It's a matter of best practice how you go about analyzing, how you do – how do you make decisions in a public policy context?

MR. SMITH: Right.

So, again, it's a public policy question.

MR. VARDY: Yeah.

MR. SMITH: Okay.

So have you studied the project, not from least-cost option perspective which you haven't, but rather from some of the public policy issues of going with a Muskrat Falls Project versus an Isolated Island project, the public policy questions that surround that decision?

MR. VARDY: What kind of public policy issues are you referring to?

MR. SMITH: Well, for example, elimination of the Isolated electrical system of the province in favour of a more integrated system with the North American grid.

MR. VARDY: I think there are benefits. No question there are benefits associated, but at the end of the day what you – the big concern is cost. So but –

MR. SMITH: I understand, but I'm concerned that we're looking at public policy to judge the cost of the project and not public policy as regards to the public policy questions that arise from the choices that were put on the table for review in DG3.

MR. VARDY: Well, if you look at it in terms of the Public Utilities Board process, the Public Utilities Board process is really focused on these costs. Governments have to be concerned about other issues. Government has to be concerned about – the Public Utilities Board doesn't have a mandate to deal with environmental issues, so the government has to look at the environmental issues, it's got to look at health and safety issues, it's got to look at economic benefits of what are the economic benefits and spinoffs. And so it may well be that at the end of the day government might make a policy decision in something that isn't the least cost, but the important thing is that it be measured properly and that the public be informed as to why we're making these decisions.

I mean, if we're making a decision because of the catalytic effect, the game-changer effect, to use that term, then that's one thing, but if we're

into a game where it's based on least cost, then that's the litmus test that has to be applied. So – but I recognize that government has to take account of a lot of factors and has got to do the measurement. And the real question is so what's the transparency of that process. Is it a proper process for a large project?

MR. SMITH: Yes, but as I understand it, government essentially sets public policy.

MR. VARDY: Absolutely.

MR. SMITH: Correct.

And that sometimes shows up in legislation, such as the 1994 legislation to potentially eliminate the PUB from decisions of large hydroelectric projects.

MR. PENNEY: That was actually an order-in-council, that wasn't –

MR. SMITH: Well, I noted in –

MR. PENNEY: It flowed from the legislation but some (inaudible).

MR. SMITH: Yes, it flows from the 1994 piece of legislation passed by, I believe, the Tobin government. So it may be an order-in-council but it's still founded or grounded in legislation. Now – but that's a public policy issue that government determined at that day in 1994.

MR. VARDY: Okay.

MR. SMITH: And what I'm hearing from your testimony mostly is that that should be revisited, that public policy statement of either allowing an order-in-council under the legislation, or the legislation to exempt a hydro project should be revisited.

MR. VARDY: The context is totally different because you're dealing – back in those days you were dealing with the Gull Island project for export and now you're dealing with a project for domestic consumption.

MR. SMITH: Right. As I understand that from your direct evidences today, what I'm looking at though is that whether we like it or not the public policy, as expressed in the legislation,

allows the government, through order-in-council, to exempt any project – hydro project, that is. Correct?

MR. VARDY: That's (inaudible) question.

MR. SMITH: So where a hydro project might have public policy reasons to be supported by government, okay, then – or to select a hydro project and the Isolated Island projects for comparison, you know, so that's a public policy issue, okay? What I'm hearing is that you – and I believe our witness yesterday indicated that those public policy considerations ought to be changed.

MR. VARDY: It becomes a matter of what due process should be adopted in consideration of any public policy decision. And the order-in-council – it seems to me that the order-in-council we're talking about here is one that dealt with a project in a different context because of the exports now when looking at one for domestic consumption and so the rationale may be different. And – but it seems to me that that needs to be articulated. If government's decided this – we're going to do this as an economic development project, we're not really doing it because it's least cost, that's something the public should know about.

MR. SMITH: But, again, you haven't determined whether it's least cost or not least cost; you're hoping to have a public policy change to allow the PUB to do a complete review.

MR. PENNEY: Yeah, I can – what I think is if we have a domestic electricity project, no matter how large or how small, and if the ratepayers of the province pay for it, then the legislation ought to – this is the question I think you're looking for. In our view, the legislation ought to be changed to – so as to not allow governments to exempt projects – domestic projects from oversight of the Public Utilities Board.

MR. SMITH: Thank you, Mr. Penney.

Looking at the two projects that were selected for a particular reason, are you aware of what the reason was that these two projects became the comparators?

MR. VARDY: I guess the reason for putting them together in that way was to simplify the choice. In my opinion, in so doing, what you've really done is precluded a lot of other choices that would be alternatives. And so that whole notion of taking it out, that goes back to my comment earlier about the binary choice, like, that life is not into binary choices, we have a whole set – array of choices. We have to look at it.

And limiting choices to two seems to me to be not very good decision-making. Looking at it as an economist, I don't think that's a good way to approach policy, that you limit the decisions of your choices to two. You've got to – you got to go through a process to make sure you've considered all the other options. And in this particular case, it seems to us that all the options weren't looked at.

MR. SMITH: Are you – you're familiar with the Grant Thornton report –

MR. VARDY: Yeah.

MR. SMITH: – and their conclusion that those areas like wind and CT or CCT creation were not excluded from the Island – Isolated Island or from the Integrated System. You're aware of that?

MR. PENNEY: I think what was excluded was looking at a combination of all these alternatives. We've never maintained that conservation by itself couldn't handle our issue or wind or natural gas or anything else. What we needed to look at was a mix of these possibilities and –

MR. SMITH: But that also comes back to a public policy decision as to whether or not there would be or should be a general mix of alternatives.

MR. PENNEY: Yes, but in order to have – I mean this – David Vardy and I have been involved here – you know, have 25, 30 year, 40 years in these kinds of issues. And when you're looking at advising governments on public – big public policy decisions, you have to give them every option available. And it seems to us that basically, as Dave says, it was a binary option; one compared to the other.

MR. SMITH: But inside – you would agree that inside the Isolated Island Option there were a number of variable alternative ways of generating electricity inside that particular option.

MR. PENNEY: Yes, but they were either-or in my view.

MR. SMITH: In what respect?

MR. PENNEY: Well, I don't think anybody looked at a combination of initiatives. I never saw that.

And I should say I mean we recognize, because of our roles, that ultimately, yes, this is a public policy decision, no question about that. And government has the right to make that decision to either go ahead with this project or not.

What I would have preferred was that the capital expenditure be sent to the Public Utilities Board and the Public Utilities Board would have the right to approve or disapprove of the project. But, obviously, it's up to the government as to whether or not they – for example, if the Public Utilities Board said that this was a good project and we approve the project, the government could, in its wisdom, said no we're not going to do it at all; we're going to do something else.

MR. SMITH: Do you have, Madam Clerk, 00161, P-00161?

You have 00161 there on your screen?

MR. PENNEY: We do.

MR. SMITH: This is the timeline for changes over some 50 years, or roughly 50 years, for the Isolated Island project, and pardon me if I'm a little skeptical of your response that they didn't look at combination, because in this particular diagram in the Isolated Option, they're considering CT, small hydroelectric, three of those. They're adding in wind, refurbishing Holyrood in order to give it extra life and there's a CCT in 2050, another CCT in 2032-'33. These are all options, and they're done in combination for the Isolated Island project.

So I'm a little, well, perplexed as to why you say that the options weren't considered – a cumulative group of options were not looked at.

MR. VARDY: But how can you predict what is the best technology in 50 years' time? I mean, what – that's the problem when you do this kind of analysis. You go into 50 years; you're making judgments as to what kind of technology is going to apply at that time.

In all likelihood, many of those things, 30 years down the road, are going to be superseded. There's going to be something better. There's going to be a new technology, and so what we're doing basically is we're precluding options. By doing the comparison we're precluding options, because again, you got Muskrat Falls is an all or nothing is an – what I'd call an indivisibility, and then you got this other thing, and you turn that into an indivisibility, too. You turn that into a block of concrete, and you take all those things, and you put them in a block of concrete. You cost them out, and you compare them one against the other.

So what I'm saying is that's not the way – that's apples and oranges; it should apples and apples.

MR. SMITH: But my understanding why the 50 years is because the Muskrat Falls Project, you know, would have a lifespan, you know, useable lifespan, perhaps, of 100 years, but they've only worked it with 50 – 50 years I mean. If we look at Churchill Falls, it's certainly approaching 50 years or more.

So when you're trying to compare two processes – one, Muskrat Falls, that would have a lifespan of 50 years – wouldn't you have to include 50 years in your other option?

MR. VARDY: I think if you were comparing two megaprojects, you probably would take 50 years, but when you're comparing one megaproject with a series of other projects, I think you'd probably use a different comparator. Mainly because of the risk. You're measuring the risk. And in the risk that's associated with a large project like that is so much higher than these series of projects, 'cause you know you can make choices.

MR. SMITH: Yeah, but – excuse me, Sir, but aren't you really applying public policy questions to a project which was sanctioned on the basis of lowest cost option?

MR. PENNEY: I'm not sure I understand what your question is.

MR. SMITH: Well, my question is, is that you're using public policy concerns, okay, to criticize the Muskrat Falls project, which, according to some evidence, was the lowest cost option as between the two.

MR. VARDY: I think our main concern goes back to what Ron said earlier. Our main concern here is with the governance process. How do we test this? How do we – we're not – again – we're not judging to be experts in engineering or energy economics. What we're saying is let's have a robust review of these alternatives where everything is on the table.

MR. SMITH: But you're aware that there is one conclusive way of changing public policy, are you not?

MR. VARDY: I think I know where you're going on that, yeah.

MR. SMITH: Yeah.

MR. VARDY: Yeah. We –

MR. SMITH: What's that?

MR. VARDY: Well, I guess it's the electoral process.

MR. SMITH: Electoral process.

MR. VARDY: Yeah.

MR. SMITH: You put your place forward and your ideas forward for government, correct?

MR. VARDY: Right.

MR. SMITH: Right. So that's how you change public policy, is it not?

MR. VARDY: Well, I think there's lots of ways of changing public policy. I think if people speak up then that's one way of getting the

attention of government. The other is to become active in politics and maybe, you know, starting a new political party. That's not the – what we're – our game plan at all. Our game plan here is to make sure that the public understand this better given the magnitude, given the implications for future generations.

Because the reason we're at this, is we're not at this – we're not young people. We're older people. I'm 78 years old; I'm not going to disclose Ron's age, but the – I'm at this because I'm concerned about our kids – what are our kids going to deal with here in Newfoundland and Labrador? Are my kids going to stay in this province? Are they going to have a good life in this province?

And I think that can only happen if we have good government – open, transparent government where you have ideas – a flow of ideas as opposed to a repression of ideas. And repression – closing down the PUB, in my mind, is the repression of ideas.

MR. SMITH: Well, I'm not going to go any further. You have a long history with the PUB, I believe, as chair for several years.

MR. VARDY: Yeah.

MR. SMITH: And therefore, from that perspective – one of the lawyers yesterday talked about confirmation bias. I submit to you that confirmation bias, i.e., the PUB is the only or best approach from your perspective, may be part of your confirmation bias –

MR. VARDY: Well, what I –

MR. SMITH: – to that particular organization.

MR. VARDY: Yeah. Well, I would not wear that one, because I think the main thing here is there should be a public process. Like, you had an environmental assessment process, and the environmental assessment process was fairly robust, but it didn't have very much teeth, because to a large extent, none of the recommendations was binding. And I think you'll find that the implementation of the recommendations hasn't been as rigorous, perhaps, as one would like.

But if you have – you know, if you had good public policy, and if you had good structures, you'd combine these processes; you'd have an environmental process, and you'd have some kind of economic review process. And it might be different from the PUB. It might be a bespoke – this is a bespoke project – and it probably calls for a bespoke public policy mechanism where you have a review process that deals with the environmental issues and that deals with the economic issues.

And maybe – so – there's no magic in the PUB – that's – for me, you know, I don't accept this bias, because if there's a process that's there that gives transparency and a time to review the alternatives, whether it's the PUB, I don't think that's the important issue.

MR. SMITH: Well, that presupposes that both government and Nalcor didn't do their job. If you have to have it reviewed by other than experts in the area. Uh-huh?

MR. PENNEY: Yeah, I think – I don't think this has anything to do with confirmation bias. What we have is an already established public body whose job it is, is to regulate public utilities in the province. Because we suggest that we should use an already existing institution, that's not confirmation bias.

MR. SMITH: But the existing institution has been eliminated by statute and order-in-council by the government who sets public policy, correct?

MR. PENNEY: Fine, but I don't see how that relates to your previous question.

MR. SMITH: The question –

MR. PENNEY: Or your assertion.

MR. SMITH: I'm not going to explain my question, I can assure you of that.

But I would finally ask you, with respect to the assertions of public policy, or change in public policy, you would agree that public policy has to be altered in order to change the process by which the Muskrat Falls Project was approved or the Isolated Island was rejected, correct?

MR. VARDY: Sure. Absolutely.

MR. SMITH: Thank you.

THE COMMISSIONER: Thank you.

Kathy Dunderdale?

MS. E. BEST: Good afternoon. We have met. I'm Erin Best, I'm counsel for Kathy Dunderdale. My questions this afternoon are for Dr. Vardy.

Dr. Vardy, where is the natural gas in Newfoundland and Labrador?

MR. VARDY: It's compressed, it's offshore, it's (inaudible).

MS. E. BEST: What area of the offshore?

MR. VARDY: It's in the – well I, you know, well one of the (inaudible) things I said in response to counsel is I'm not an expert in natural gas, and so –

MS. E. BEST: Yeah, we're aware of that.

MR. VARDY: – but I know that the – it's in the offshore arena, I know it's being – a lot of it is being reinjected, and a lot of it is being used for powering offshore structures.

MS. E. BEST: Okay, how much of it's being used for that?

MR. VARDY: Oh, I don't know. I don't know that.

MS. E. BEST: Okay, so you don't know which area of the province it's in at all, do you?

MR. VARDY: I know it's in the – it's offshore on the Grand Banks of Newfoundland.

MS. E. BEST: Okay. And how much natural gas do we have?

MR. VARDY: Don't know that.

MS. E. BEST: Okay. And what method should we use to extract it?

MR. VARDY: Really don't know that either.

MS. E. BEST: Okay. And how much would it cost?

MR. VARDY: Don't know that.

MS. E. BEST: Okay, so – but in your article that we looked at, at, I think – we don't need to go to it, but it's Exhibit P-00333, you're saying we should harvest our natural gas instead of moving forward with Muskrat Falls.

I'm just wondering why you're saying this when you really don't know anything about natural gas.

MR. VARDY: The Energy Plan basically committed to doing this, going about gas to wire, so it's a public policy decision that government's adopted that we're gonna use gas for electrical power.

MS. E. BEST: Okay, so you're taking – you're – you based your idea of using natural gas on the 2007 *Focusing Our Energy* plan?

MR. VARDY: Well, what I'm –

MR. BUDDEN: (Inaudible), Mr. Commission, I've looked at P-00333, it speaks very much in terms of –

THE COMMISSIONER: Excuse me, I – you're just going to have your mic on, and maybe you could turn yours off. We'll try to get this technology right. Go ahead.

MR. BUDDEN: Yes. My point is out of the scenarios being put to the witness, that it should be accurately put. And if one looks at P-00333 it speaks very much in terms of may, as one option that's being presented. Mr. Vardy did not assert that Newfoundland should develop natural gas as the question was put to him.

THE COMMISSIONER: Okay, did you want to respond to the question, Ms. Breen.

MS. E. BEST: I think what I'm – the point I'm making is that he's suggesting that we use natural gas. I think that's fairly put.

MR. VARDY: It's an option that should be examined carefully, yes. We've had – we had – I'm told we have abundant natural gas and I'm

told that there's a public policy framework in which we should be using it. So it would stand to reason that we would examine that option. I'm aware there was a study done, yes, I am.

MS. E. BEST: Okay, thank you.

And are you also aware that the Dunderdale government was trying to encourage oil and gas companies to develop our natural gas but no one would go near it, they didn't think it was feasible. Were you aware of that?

MR. VARDY: No.

MS. E. BEST: Okay. Now, you mentioned earlier that you read the Grant Thornton report, right? Yes. And, in fact, your group prepared a statement regarding that report, is that right, a public statement?

MR. VARDY: Mm-hmm.

MS. E. BEST: Sorry, can you say –

MR. VARDY: Yes.

MS. E. BEST: – yes or no –

MR. VARDY: Yes.

MS. E. BEST: – for the –

MR. VARDY: Yes.

MS. E. BEST: – record. Thank you.

So, I just want to put to you a few lines from your statement that you issued publicly and I think it's on your Twitter feed, is that right?

MR. VARDY: Yes.

MS. E. BEST: Yes, okay.

So what you say – and this is a quote: “Grant Thornton clearly tells us that had the” PUB “been given the facts as uncovered by the auditors, it would have likely taken the position that the project wasn't the cheapest alternative.”

So you stand by that, that's what you read in the Grant Thornton report, did you?

MR. VARDY: We don't have the exhibit here –

MS. E. BEST: You'd like me to pull up the Grant Thornton report?

MR. VARDY: The –

THE COMMISSIONER: Did you want the Grant Thornton report or your Twitter feed?

MR. VARDY: No, well, I guess the – yeah, the – I was thinking about the Grant Thornton report.

THE COMMISSIONER: Okay, let's bring that up, that's –

MS. O'BRIEN: P-00014.

THE COMMISSIONER: – P-00014.

MS. E. BEST: And while they're pulling that up, so just to recap. So I'd like – when we pull up P-00014, I'd like for you to show me where Grant Thornton clearly tells us that had the PUB been given the facts, as uncovered by the auditors, it would have likely taken the position that the project wasn't the cheapest alternative, 'cause I read the report, I didn't see that in there.

MR. VARDY: Okay. I can't respond to that question.

MS. E. BEST: Okay. Do you still – would you still like to see the exhibit?

MR. VARDY: I would like to see the exhibit, yeah.

THE COMMISSIONER: Okay, so it's on there. Do you know what page it might be, Ms. Best?

MS. E. BEST: I do not think it's on the page.

THE COMMISSIONER: Let's go to the part of the report that talks about natural gas. Or, I guess, well, no, let's go to the part where it talks about the PUB. I don't have my copy with me right at the moment.

MR. BUDDEN: There's also the executive summary on pages 8 and 9.

THE COMMISSIONER: Okay. Just go to pages 8 and 9, thank you.

MR. BUDDEN: It's from memory, but that's, I believe, is the case.

THE COMMISSIONER: Okay. Just –

MS. O'BRIEN: They're going to be a (inaudible).

MR. BUDDEN: Just page 9, I believe, might be the page.

MS. O'BRIEN: (Inaudible.)

MS. E. BEST: And I guess while you're at it, you also state in your statement: "We now know for certain that the project should never have been sanctioned." So are you saying that the Grant Thornton report also says that?

MR. PENNEY: No, I mean what we're saying there is that that is our interpretation of –

MS. E. BEST: I'd like to hear an answer from Dr. Vardy.

MR. VARDY: Well, that was our interpretation of the Grant Thornton report.

MS. E. BEST: That is your interpretation of the report? Okay. I think I'm fine with that answer. Thank you.

THE COMMISSIONER: Did you want to get an answer to your other question related to the quote in the Twitter feed?

MS. E. BEST: I would. I expect it's a similar answer, is it?

MR. VARDY: Yes.

MS. E. BEST: Yes?

MR. VARDY: Yes.

MS. E. BEST: Thank you.

Dr. Vardy, you said earlier today that your main concern is the risk associated with the Muskrat Falls Project. Can you please describe the risks

associated with continuing to rely on Holyrood and fossil fuels?

MR. VARDY: No question that there is a risk. There's a risk of escalation of oil prices. There's the risk of environmental damage. The thing about –

MS. E. BEST: Can you describe those in a bit more detail? What is the risk associated with escalation of oil prices?

MR. VARDY: The risk associated with oil prices that we –

MR. BUDDEN: (Inaudible), Mr. Justice.

THE COMMISSIONER: Excuse me.

MR. BUDDEN: If I may be –

THE COMMISSIONER: Excuse me, just –

MR. BUDDEN: The appropriate thing would be to let the gentleman finish his answer, and then ask for elaboration or clarification.

THE COMMISSIONER: Right.

MR. BUDDEN: It's not fair to interrupt him.

THE COMMISSIONER: No, okay. I think the best way to deal with this is, you know, like, I realize there's a bit of cat and mouse here. So, let's just ask the question, give the witness an opportunity to answer, and then we'll move onto the next question.

I prefer not to be continually disrupted by objections or whatever, unless it's a real serious one, you speak up. If I feel there's something really egregious going on, you can guarantee – I can guarantee, I'll speak up. All right?

Go ahead, Ms. Best.

MS. E. BEST: Thank you.

Can you describe the risks associated with continuing to rely on Holyrood and fossil fuels? And if you could describe them in detail, please?

MR. VARDY: Okay.

The risk of continuing with Holyrood relate to the potential for costs of oil to escalate in the future, to go back to where they were, to resume their rise. And it is a risk that is – it can – the thing about the risk with Holyrood is that you can – if you're not committing to a large investment, then you're in a situation where you can make changes over time. You can curtail your capital expenditures and you can build according to demand. You can build your capacity in accordance with demand, which is something you can't do with Muskrat Falls.

But you're right, that there is a risk of escalating oil prices. There is the risk of environmental factors, of environmental pollution, contaminants, particulates. The risks are there; but, at the same time, you can look at Muskrat Falls. There is a large risk associated with cost escalation, which we've already seen.

MS. E. BEST: I'd like to just stick to the risks associated with fossil fuel.

THE COMMISSIONER: Let's let the witness – you asked a question, he wants to create an answer. Let him answer the question.

MS. E. BEST: Okay.

MR. VARDY: Okay.

With regard to Muskrat Falls, you got the large capital costs; you got the interest costs there. And so if you look at it in the context of where costs are today, they're paying a lot. You're substituting fuel cost for interest cost. So it's not always clear that by avoiding fuel costs you're actually going to save money, because there are risks on the other side as well. So there are - yeah.

MS. E. BEST: Okay. Are you comfortable that you've listed a comprehensive list of the risks associated with –?

MR. VARDY: I guess as much as I can, off the top of my head, yeah.

MS. E. BEST: Okay. What about the volatility of using oil? What about that one?

MR. VARDY: Volatility is an issue. No question, volatility is an issue.

MS. E. BEST: But what about carbon pricing? And that's been in the news just this week. You're aware of that?

MR. VARDY: Yes, I am. I am.

MS. E. BEST: Do you think that's a risk?

MR. VARDY: That's a risk. Sure it is a risk.

MS. E. BEST: Okay. And what about the cost of the refurbishment of the plant itself, would you agree that's a risk?

MR. VARDY: Sure it is.

MS. E. BEST: Okay.

If we continued with the refurbishment of Holyrood instead of doing Muskrat Falls, how much would electricity rates in Newfoundland have gone up?

MR. VARDY: (Inaudible) all that. I can't tell you the answer to that question.

MS. E. BEST: All right.

So you didn't do that legwork before you – before your position, before you – in all this time, you didn't calculate that? Because you would have a good insight into that answer, right, because of your experience.

MR. VARDY: We relied on Nalcor's information.

MS. E. BEST: Okay.

Okay, but you didn't calculate that number then. Okay.

Dr. Vardy, you're a proponent for the conversation of energy, right?

MR. VARDY: Yes.

MS. E. BEST: Yes. Okay.

So earlier this year you discussed conservation in an interview with *The Independent* newspaper. Do you recall that?

MR. VARDY: Yeah.

MS. E. BEST: Thanks.

And when asked about conservation specifically, I think you talked about how you had downsized from a large house to a smaller apartment and this had reduced your energy demand, your demand for energy, right?

MR. VARDY: Mm-hmm.

MS. E. BEST: And this is something that other people could do to reduce their energy consumption?

MR. VARDY: Yes, I think people can make adjustments, and that's what consumer choice is all about. It's about predicting the future and trying to adjust for the future based on your expectations of what's going to happen.

MS. E. BEST: Okay.

I'm gonna put to you that I see this as a little bit elitist. I wonder how many outport Newfoundlanders are able to downsize from a large house to a smaller apartment.

MR. VARDY: Well, I've spent a fair bit of time in outport Newfoundland and they got a really good way to deal with this issue and it's called wood. They've cut more wood this year than they've cut in previous years because they're trying to reduce their electricity consumption.

So I think in rural Newfoundland people are coping with this thing. And everybody has to cope with the problem of escalating prices and they'll do it in different ways. They may turn down the – if electric power prices go up, they'll turn down the thermostat, they'll move to smaller places, they'll install some insulation. And do you know something? If that happens, governments can put things in place to mitigate.

MS. E. BEST: Okay.

So this is a lovely imagine of using – burning wood to reduce our energy consumption. Have you looked behind that? Have you – do you have any expert evidence to show that that's a good alternative for the province?

MR. VARDY: No, I'm not saying it's a good alternative. I'm just saying that's how people are

coping. That's how people in rural Newfoundland are coping.

MS. E. BEST: Okay.

And to go back to your idea of selling your house to downsize, doesn't someone have to buy your house if you're selling it? Does that really reduce any demand?

MR. VARDY: Yeah. Well, the thing about it is that people – you know, people have to make choices, it may well be that there'll be – the people to buy my house will spend more money on insulating it, they may do things with it, they may install heat pumps. They can do things.

I chose to – one particular way to adapt. Other people might choose a different way to adapt, and they might decide they're going to install a heat pump in my old house.

MS. E. BEST: Okay.

Your group – I think you said it has 243 members?

MR. VARDY: Mm-hmm.

MS. E. BEST: And I had a look at your website, there's no list of the members. Is that publicly available?

MS. O'BRIEN: Sorry, if you could – I'll respond to that. It is – that information is on our website on the application that was filed by this group for standing. And it's all there and it has been since they made their application.

MS. E. BEST: Perfect. I wasn't aware of that.

Thank you.

So do you have to pay to become a member of your group?

MR. VARDY: No.

MS. E. BEST: Okay. And does it concern you that you only have 243 members?

MR. VARDY: Absolutely.

MS. E. BEST: Okay, 'cause it seems like there's not a lot of support for your group. Would you agree?

MR. VARDY: I wouldn't agree with that, no, but I agree that we'd like to see more people.

MS. E. BEST: Okay, 'cause back in November of 2012 – and that's the period we're concerned with –

MR. VARDY: Mmm.

MS. E. BEST: – mostly in this phase 1 part of the Inquiry, a poll showed that there was 81 per cent approval for the Muskrat Falls Project. So that's a lot more approval than, for example, 243 people. Would you agree?

MR. VARDY: I can't dispute that.

MS. E. BEST: Okay.

I'd like to switch to the issue of the PUB oversight. So, Dr. Vardy, earlier today you said, normally with – I think – I wrote it down. So I think I'm quoting you correctly. You said: normally within the mandate – you said, sorry, something like this is – and then I wrote down: normally within the mandate of the PUB to do this – meaning to have oversight over the project. That's what you said earlier, right?

MR. VARDY: To a certain extent, that's correct. Can I – I'll clarify that, okay?

MS. E. BEST: Good, 'cause yeah, that's what I was seeking.

MR. VARDY: Yeah, okay.

Because in terms of whether the Public Utilities Board would go out and monitor every project that's going on, that doesn't happen. It doesn't happen now. What happens is that there's an audit process that the Public Utilities Board does – conducts to make sure that the orders that it issues are being adopted and followed.

And so that doesn't really provide the kind of oversight, I think, which is going on in Nova Scotia. We have a level of oversight; that's a sort of enhanced oversight. It's probably not a normal oversight role for a public utilities board

in Canada, but they – it's attractive. I find the notion attractive of an enhanced oversight role for the Public Utilities Board, but I was using – putting that forward as a model for a project like this. I think there should be some – there should be oversight.

In Nova Scotia, they've chosen to have their UARB conduct that oversight; in Newfoundland and Labrador we have other oversight mechanisms. So – but generally speaking, the Public Utilities Board on a normal project wouldn't be seeking weekly, monthly, quarterly reports on capital projects.

MS. E. BEST: Okay, thank you.

So it's not normal in Canada to have this kind of oversight, but you thought it was appropriate?

MR. VARDY: I think there'd be a – in the case of a megaproject, like the Maritime Link or the Muskrat Falls Project, it would make a lot of sense.

MS. E. BEST: Okay. And you know that Brian Tobin's Liberal government exempt the Lower Churchill – any Lower Churchill Project from PUB oversight, right?

MR. VARDY: That's right.

MS. E. BEST: Were you aware of that?

MR. VARDY: That's right.

MS. E. BEST: Okay.

And you agreed – or I think you stated earlier that the – or you would agree, that the PUB lacks the expertise to analyze a megaproject like this. And that they would have to retain expertise in order to do the analysis; is that right?

MR. VARDY: If every application that comes before the Public Utilities Board – they need to bring different kinds of expertise. If it's a rate of return hearing, they'll have people that look at the rates of return and they look at risk premiums on long-term bonds. If it's a rate design question, they'll have rate experts. Soon as they are a megaproject, they would have –

they would bring in the right expertise to deal with the megaproject.

MS. E. BEST: Okay, so for this – for the Muskrat Falls Project –

MR. VARDY: Yeah.

MS. E. BEST: – they would've had to retain experts –

MR. VARDY: Yeah.

MS. E. BEST: – right? To do the analysis. And in fact – and that costs money and takes time, right?

MR. VARDY: Mm-hmm.

MS. E. BEST: Yes?

MR. VARDY: Yes.

MS. E. BEST: And in the meantime, Nalcor was retaining experts and the – experts, excuse me – and government was retaining experts, as well. You're aware of that, right?

MR. VARDY: Yes.

MS. E. BEST: Yes, okay. But you think it would've been prudent for the province to fund a third set of experts.

MR. VARDY: Probably not. I would think it would be – if you had a robust oversight process that was external to the proponent that would – there would be no need to duplicate it. The oversight process that's in – that has – that was in place was one with public servants – internal public servants, who really had no experience in megaprojects.

So – and subsequently that was, I think, expanded to include outside people with some – such experience. So what I – I guess what I'm suggesting, is that you could design an oversight process that would more – would be more robust without imposing anything further on the Public Utilities Board.

MS. E. BEST: Okay. Well hold on, actually, because didn't the government, as part of its oversight process, retain the expert MHI? And

wasn't MHI the expert that was selected by the PUB?

MR. VARDY: It was, and I was thinking – when we were talking about oversight, I was thinking more of post-sanction oversight, okay? So I was more thinking in – along the lines of a capital project –

MS. E. BEST: Okay, no –

MR. VARDY: – after sanction.

MS. E. BEST: – we're in the pre-sanction.

MR. VARDY: So –

MS. E. BEST: Trying to stick to the pre-sanction –

MR. VARDY: Okay.

MS. E. BEST: – yeah.

MR. VARDY: I understand –

MS. E. BEST: Yeah.

MR. VARDY: – what you – where you're going now. Okay.

In terms of – I understand what your question is now. I did not understand your question before, and that's my fault; not your fault, okay?

MS. E. BEST: Okay.

MR. VARDY: But I – so, the question is: were these reviews that were done after the Public Utilities Board completed its work – were they equivalent to the Public Utilities Board? And I would suggest to you they were not as independent. There was more independence – if that work had been done through the Public Utilities Board, I would submit to you that it would've been more robust and it would've been more transparent. You would have the terms of reference. You'd have parties involved – external parties involved in the oversight process.

What you had here with MHI – as you say, MHI was retained by the Public Utilities Board, and what they did – the Public Utilities Board did

not accept their advice at the end of the day, but the Public Utilities Board – if the Public Utilities Board had been given the time to do the full analysis, then the government wouldn't have been doing what they were doing. I guess what I'm saying is I don't really accept that the level of oversight is as independent as it would be with the PUB.

MS. E. BEST: Okay. Exactly what evidence of that do you have?

MR. VARDY: I have no evidence of it.

MS. E. BEST: Okay. The report that was prepared by MHI for government, did you read that report?

MR. VARDY: Yes, I did.

MS. E. BEST: Do you remember the gist of it? The conclusion?

MR. VARDY: I do, yes.

MS. E. BEST: Do you wanna tell us what it was?

MR. VARDY: Well I would remember – what I remember from the second MHI report is that they confirmed the conclusion about the cumulative present value, and the least-cost analysis that was done. And they – so, they basically confirmed the conclusion – the same conclusion as – with some modifications – as they did with DG2. So they did a DG2 – 3 review and they did a DG2 review. So they did essentially the same kind of process as they did in DG2.

MS. E. BEST: Okay.

MR. VARDY: They reach fundamentally the same conclusions.

MS. E. BEST: Thank you.

Do you mind if we, Madam Clerk, if we could please pull up P-00058.

THE COMMISSIONER: Just before we do that. I see we are around 12:30 –

MS. E. BEST: This is my last question.

THE COMMISSIONER: This is your last question –?

MS. E. BEST: Yeah.

THE COMMISSIONER: Okay, well let's deal with this.

What was the exhibit number again?

MS. E. BEST: P-00058.

THE COMMISSIONER: P-00058.

MS. E. BEST: This is the 2012 MHI report.

If we could go to page 11 please, Madam Clerk; I think that's the red page 11 at the top and if you could scroll down to the bottom please.

To the Conclusions section there. The first line; it says: "MHI has found Nalcor's work to be skilled, well-founded and in accordance with industry practices." Do you recall reading that, this conclusion?

MR. VARDY: Yes, yes I do.

MS. E. BEST: Thank you, those are my questions.

THE COMMISSIONER: All right. I think we'll take our break right now and so the next one up will be former government officials after lunch. So – you're fine with that Mr. Williams?

MR. T. WILLIAMS: Yes, I am.

Thank you.

THE COMMISSIONER: Okay, so we'll take our break now until 2 o'clock.

CLERK: All rise.

Recess

CLERK: This Commission of Inquiry is now in session.

THE COMMISSIONER: Okay. Former Provincial Government Officials '03 to '15.

MR. T. WILLIAMS: Thank you Mr. Commissioner.

Gentleman, my name is Tom Williams and I represent the group known as the former elected officials 2003 to 2015, with the exception of former Premier Dunderdale.

So, I have a number of questions for you this afternoon, and I don't plan on going back through everything that we've covered and – but there's a couple of small issues that I do want to address from early in your testimony, and sometimes it'll probably be appropriate for me to address both of you or sometimes individually, so we'll try to do it in the most efficient manner possible.

Mr. Penney, just starting with your academic training, I know you outlined it for us this morning, but I trust the thrust of your academic training is in the area of law, where you would – did your university training.

MR. PENNEY: Well, my undergraduate degree was a Bachelor of Arts and I did – and I concentrated in political science and economics.

MR. T. WILLIAMS: Okay, and then you went on to do a law degree.

MR. PENNEY: Correct.

MR. T. WILLIAMS: And you graduated from law school, when would that have been?

MR. PENNEY: '71.

MR. T. WILLIAMS: 1971.

And, Mr. Vardy, again, to do an encapsulate summary, you did outline your training from your bachelors, your master's and Ph.D., and that was all in the areas of economics, is that correct, or fundamentally in the area of economics?

MR. VARDY: I did economics (inaudible) –

MR. T. WILLIAMS: Okay.

MR. VARDY: – and commerce. I did commerce at the undergraduate level. I did commerce at Memorial.

MR. T. WILLIAMS: Okay.

MR. VARDY: Yup.

MR. T. WILLIAMS: Okay. With the exception of that, maybe with the respect to both gentlemen, have either one of you gentleman have any academic or educational training in the area of finance?

MR. PENNEY: No.

MR. T. WILLIAMS: No, okay.

Any academic or educational training in the –

MR. VARDY: Sorry, I didn't hear your question (inaudible).

MR. T. WILLIAMS: I'm sorry.

MR. VARDY: I heard the word finance – the word before finance.

MR. T. WILLIAMS: No, just formal academic –

MR. VARDY: Academic, okay.

MR. T. WILLIAMS: – or educational training in the area of finance.

MR. VARDY: Probably not, no.

MR. T. WILLIAMS: No, okay.

Any formal education or academic training in the area of engineering –

MR. VARDY: No.

MR. T. WILLIAMS: – and related disciplines?

MR. VARDY: No.

MR. PENNEY: No

MR. T. WILLIAMS: Okay. Any in the area of hydroelectric development?

MR. PENNEY: Nope.

MR. T. WILLIAMS: Okay, that's for both gentlemen to trust. And any training in the area of megaproject development?

MR. VARDY: Not me.

MR. T. WILLIAMS: Okay. Mr. Penney?

MR. PENNEY: I – well as I indicated in my – I have had experience with large civil projects but nothing –

MR. T. WILLIAMS: Not in megaprojects, in knowing what – I think we've had an expert define what constitutes – Dr. Flyvbjerg –

MR. PENNEY: Yes.

MR. T. WILLIAMS: – defined for the Commission what constitutes a megaproject. Okay.

So if I understand your evidence this morning, you're not here to give any expert evidence except for your experience – and I don't mean to belittle that and your acknowledgement – in the area of public policy, is that correct?

MR. VARDY: That's correct.

MR. T. WILLIAMS: Okay.

MR. PENNEY: Yes.

MR. T. WILLIAMS: So, Mr. Penney, with respect to your employment history, you've been employed for most of your career, and I know there's some exceptions, you were with the Law Society for a brief period of time, but most of your career has been with the provincial and municipal governments. Would that be correct?

MR. PENNEY: That's correct.

MR. T. WILLIAMS: Mr. Penney, with respect to your employment career that would also have been with respect to – I'm sorry, Mr. Vardy, with respect to your employment career, most of that would be with government as well?

MR. VARDY: Government and university. I worked with the federal government Department of Fisheries and with federal Finance in Ottawa,

and with Memorial University a long time ago and Queen's University –

MR. T. WILLIAMS: Okay.

MR. VARDY: – in Kingston, Ontario.

MR. T. WILLIAMS: Okay.

Mr. Penney, with respect to your time with the provincial government, you indicated that you had been – and correct me if the terminology is wrong – were you a departmental solicitor for a period of time and then went on to be deputy minister?

MR. PENNEY: That's correct.

MR. T. WILLIAMS: Okay. And was that in 1990 – 1986 that you went into the role as a deputy minister?

MR. PENNEY: No, 1979.

MR. T. WILLIAMS: 1979. Okay. And that was for how long? From '79 till when?

MR. PENNEY: It was until '84. And then I was – I had a year off as the Channing Chair at the University.

MR. T. WILLIAMS: Okay. And then you went back to government?

MR. PENNEY: Back to government. First as deputy minister of Public Works and then as deputy minister of Health.

MR. T. WILLIAMS: Okay. And would that have been under the Peckford administration at that particular time?

MR. PENNEY: That's correct.

MR. T. WILLIAMS: Okay. And during that period of time, was the Peckford administration giving consideration or analyzing in any way potential development of Churchill River developments at that point in time?

MR. PENNEY: I wasn't involved in that, so I don't know.

MR. T. WILLIAMS: So you didn't have any involvement or exposure with respect to any considerations by – I know when Mr. Churchill – Dr. Churchill gave his detailed chronology of the history of Churchill River development, there was reference to the Peckford administration. I query as to whether you might have had any involvement in that.

MR. PENNEY: My involvement – when I was deputy of Justice there were two major court cases involving the Upper Churchill that were ongoing. And I was involved, as part of the negotiating team, Newfoundland negotiating team dealing with the province of – well, with Hydro-Québec possible development, but that was very short lived.

MR. T. WILLIAMS: So during that period of time – what I'll call the Peckford administration – they were trying to pursue options for the benefit of the province in relation to the Churchill River project?

MR. PENNEY: Yes.

MR. T. WILLIAMS: A fair statement?

MR. PENNEY: Yes.

MR. T. WILLIAMS: Okay.

Now, Mr. Penney, moving on to your employment with the City of St. John's. I understand you commenced your employment as a city solicitor and later as city manager – what I'll say slash city commissioner – in 1994, correct?

MR. PENNEY: Yeah, '93 – yeah, '94. And I was a year as city solicitor and then they – I guess the city had had a bad experience with city managers, so they set up a system which designated the chief administrative officer as chief commissioner and then there were two associate commissioners. And I was the first chief commissioner.

MR. T. WILLIAMS: So how would a city manager differ from a chief commissioner? And I don't want to go into too much detail on that, but just –

MR. PENNEY: There's no difference.

MR. T. WILLIAMS: No difference. It's – well, title.

MR. PENNEY: No. It's a question of title.

MR. T. WILLIAMS: Okay.

And when you were – when you had this change in positions from city solicitor to city manager/city commissioner – chief administrative officer, I should say – who would have been mayor at the time?

MR. PENNEY: Sorry, who would have been –?

MR. T. WILLIAMS: Who would have been mayor of the city when you took on this new role?

MR. PENNEY: First one would have been John Murphy.

MR. T. WILLIAMS: When you went to city commissioner?

MR. PENNEY: I think so. That's my recollection.

MR. T. WILLIAMS: Okay.

Then who would have followed from that? I would – I thought the city commissioner position came later, subsequent to Mr. Murphy's tenure?

MR. PENNEY: No, my recollection is that he was mayor then.

MR. T. WILLIAMS: Okay.

MR. PENNEY: And then Mr. Wells.

MR. T. WILLIAMS: Okay.

And during your time with the City of St. John's, former Public Utilities Board chair, Andy Wells, he would have been either a councillor, a deputy mayor or a mayor at the relevant time. Is that correct?

MR. PENNEY: Yeah, he was deputy mayor and mayor, I think, during my period.

MR. T. WILLIAMS: I think he was a councillor – and correct me if I’m wrong. The dates are he was a councillor I think for a 20 year period from 1977 to ’97, mayor from 1997 to 2008, and he was chair of the Public Utilities Board from 2008 to 2017, and then I believe he was suspended, and then he resigned when he ran for mayor.

MR. PENNEY: Mm-hmm.

MR. T. WILLIAMS: Would that be correct recollection?

MR. PENNEY: Yes.

MR. T. WILLIAMS: Okay.

Now, again, as I indicated, I don’t want to go through all your responsibilities and your positions with the city, but I would like you to acknowledge that you would have had a very close working relationship with Mr. Wells over your 13 years working as chief administrative officer and/or city solicitor.

MR. PENNEY: Yes.

MR. T. WILLIAMS: Would that be fair to say?

MR. PENNEY: Yes.

MR. T. WILLIAMS: And was that purely a working relationship, did you have a social relationship, were you ever at his house or ever go to dinner, that kind of thing?

MR. PENNEY: Well – perhaps I can answer it this way. A relationship with Mr. Wells can sometimes be complicated.

MR. T. WILLIAMS: Oh, I know.

MR. PENNEY: So there was a period of time when I was with – when I was the chief commissioner where we weren’t on good terms.

MR. T. WILLIAMS: Could I just ask you to speak up a little bit?

MR. PENNEY: Oh sorry.

MR. T. WILLIAMS: ’Cause I think we’re having – the – where the mic is –

MR. PENNEY: There was a period of time, earlier on in my tenure there, that we weren’t on very good terms. But after that, yes, we were on good terms.

MR. T. WILLIAMS: Okay.

And I don’t want to get into the personal employment side as much, but what I’m trying to get at – was it a working relationship as well as a relationship outside? For example, as I said, did you –

MR. PENNEY: Oh, we –

MR. T. WILLIAMS: – ever socialize, go to dinner, go to his home?

MR. PENNEY: Oh yes. Yes.

MR. T. WILLIAMS: You did?

MR. PENNEY: Yeah.

MR. T. WILLIAMS: And would you categorize him as a friend?

MR. PENNEY: Yes, I would.

MR. T. WILLIAMS: Okay.

And that was both during your employment there and after your employment?

MR. PENNEY: Yes.

MR. T. WILLIAMS: Okay.

And on how frequent an occasion would you and Mr. Wells socialize?

MR. PENNEY: Only a couple of times a year.

MR. T. WILLIAMS: Okay.

And probably don’t need to pursue that as further. I’ll move on.

Over the period of time, from 2008, the time that he was appointed as a chair of the Public Utilities Board, up to government referring the Muskrat Falls question to the Public Utilities Board in June of 2011, did you ever have occasion to speak to Mr. Wells with respect to

any – and make – any matters of any nature or kind in respect to the ongoing Muskrat Falls issue?

MR. PENNEY: Prior to the reference, yes, we would have discussed the matter, but –

MR. T. WILLIAMS: And how –

MR. PENNEY: – only briefly, because we didn't –

MR. T. WILLIAMS: Okay.

And give us – can you elaborate? How often would these discussions occur?

MR. PENNEY: Oh, perhaps, say, only a couple of times a year, maybe. I didn't see him that often.

MR. T. WILLIAMS: Okay.

Would you speak to him on the phone?

MR. PENNEY: I could have, yeah.

MR. T. WILLIAMS: Okay.

Would you call him at his office?

MR. PENNEY: Not that I recall.

MR. T. WILLIAMS: Pardon me?

MR. PENNEY: Not that I recall.

MR. T. WILLIAMS: Okay.

Is it possible that you called him at his office?

MR. PENNEY: It's possible.

MR. T. WILLIAMS: Okay.

And would you – the rest of the calls would be home?

MR. PENNEY: Yes.

MR. T. WILLIAMS: Would he be someone you'd regularly have in your cellphone? Would he be listed in your cellphone for a contact?

MR. PENNEY: I don't think he – I don't think – I don't have his cellphone number; I don't think he has mine.

MR. T. WILLIAMS: Okay. All right.

Now, in terms of meetings, would you ever meet with Mr. Wells?

MR. PENNEY: No, the only time really that we would socialize is – there was a former group from the city, so the former deputy mayor, Marie Ryan, she is now, Art Cheeseman, who was the director of engineering, and lately, since Mr. Robert Bishop left, he would be part of our group. So we would have dinner two or three times a year. We have one coming up, now, in the next couple of weeks.

MR. T. WILLIAMS: Did you ever have any meetings or in-person contact with him in relation to matters to Muskrat Falls and discussions regarding that project?

MR. PENNEY: Prior to sanction, we would have brief, brief discussions.

MR. T. WILLIAMS: You would? Okay.

How many meetings would you've had with Mr. Wells prior to sanction?

MR. PENNEY: Maybe three or four.

MR. T. WILLIAMS: And where would they have been located?

MR. PENNEY: They would be just – well, the only times we would have had conversations would've been during these dinners. And occasionally, I would see him – he walks his dog; I'd walk my daughter's dog up at Three Pond Barrens. So we would see ourselves – see – we'd talk, you know, briefly when we were walking.

MR. T. WILLIAMS: Now, at this point in time you were an active member of Group 2041?

MR. PENNEY: I was never a member of 2041.

MR. T. WILLIAMS: I thought – I'm sorry, and correct me if I'm wrong, but I thought this

morning you both acknowledged that you were members of 2041 – not correct? Okay, then –

MR. PENNEY: No, no, it was the opposite.

MR. T. WILLIAMS: I stand to be corrected on that, okay.

But you were in support of the objectives, I trust, of Group –

MR. PENNEY: Yes.

MR. T. WILLIAMS: – 2041?

MR. PENNEY: Yes.

MR. T. WILLIAMS: Okay.

So while you were having these, the issue with respect to referral of issues pertaining to the Muskrat Falls Project were being touted publicly as being something that should be done. And I think you both expanded on that extensively this morning, that you were big proponents on having this matter put before the Public Utilities Board.

MR. PENNEY: That's correct.

MR. T. WILLIAMS: While he was chair.

MR. PENNEY: Yes.

MR. T. WILLIAMS: Correct?

Did you ever exchange any email correspondence with Mr. Wells during that particular period of time?

MR. PENNEY: Not that I recall.

MR. T. WILLIAMS: Would you know if you did or not?

MR. PENNEY: Well, I just – I don't recall ever – in fact, it's very rarely that I would ever exchange emails except to set up a dinner date.

MR. T. WILLIAMS: Okay.

And the reason I mention it – in fairness to you – both you gentleman have standing before the Commission. And as you are aware, all parties

with standing before this Commission are subject to the Rules of Procedure of the Commission, and in particular I refer to rule 19, rule 21 and rule 22 that state that all parties before the Commission are responsible, are obligated to disclose any and all documents.

And maybe if I can – I need not quote it but I can if you'd like. Yes, and rule 19 – and I'm stating in part – it says: "Regardless of whether a party has been served with a summons to produce, all relevant information shall be disclosed and all relevant documents or other things within" – their – "possession, control or power of that party shall be produced by Commission within fourteen ... days."

Rule 21 goes on to describe what is, in fact, relevant. It says: "The term 'relevant' is intended to have a broad meaning and includes anything that touches or concerns the subject matter of the Inquiry or that may directly or indirectly ..."

And it states a document – rule 22 says "a broad meaning," again, "... written, electronic, text, cellular or social media messaging ..."

So pertaining – in ensuring that you were compliant with the rules of this proceeding, did you check your computers to see whether or not you had any text messages that would be relevant to this proceeding, in particular, I wonder, with respect to Mr. Wells?

MR. PENNEY: Well, there's certainly no text messages.

MR. T. WILLIAMS: Okay.

MR. PENNEY: And the only thing that I can recall that I emailed him on was setting up our dinner dates. That's the only thing. I don't recall any communication with –

MR. T. WILLIAMS: You sent him – what was that?

MR. PENNEY: Our dinner dates.

MR. T. WILLIAMS: Your dinner dates.

MR. PENNEY: Yes.

MR. T. WILLIAMS: Okay.

MR. PENNEY: That's the only communication we had by email.

MR. T. WILLIAMS: And – but there was no discussions, no issues, nothing of any nature by way of email with Mr. Wells?

MR. PENNEY: Not that I recall.

MR. T. WILLIAMS: Okay.

Now, as a lawyer, knowing that Mr. Wells was in a quasi-judicial position, do you think it was appropriate in the social setting to be having discussions with a gentleman for which you are hoping to have matters pertaining to the Muskrat Falls matter put before?

MR. PENNEY: Well, once – at the time, the board was not seized with any jurisdiction.

MR. T. WILLIAMS: But you were lobbying for it at the time?

MR. PENNEY: No, we weren't lobbying for it.

MR. T. WILLIAMS: You–

MR. PENNEY: I expect – can I – may I explain –

MR. T. WILLIAMS: Sure.

MR. PENNEY: – exactly what we did?

MR. T. WILLIAMS: Sure.

MR. PENNEY: We wrote formally to the Public Utilities Board because we didn't know if the project was exempted or not, because orders-in-council at that time weren't a matter of public record.

So we wrote, formally wrote, to – I didn't speak to him; I didn't ask him about that. I formally wrote to him and – or we formally wrote to him and asked them if the project had been exempted. He confirmed that it had. And flowing from that, we wrote Minister Skinner asking that the exemption be removed.

MR. T. WILLIAMS: But I'm – what I'm suggesting, do you think it was appropriate for you to have any discussions with the chairman of the Public Utilities Board when you were a proponent of having the Muskrat Falls question referred to that very board?

MR. PENNEY: Yeah, I don't see anything wrong with that.

MR. T. WILLIAMS: You don't see any problem with that?

MR. PENNEY: No.

MR. T. WILLIAMS: Okay. And you don't see any problem with Mr. Wells having discussions as the chair of the board?

MR. PENNEY: No, because they had no jurisdiction over the project.

MR. T. WILLIAMS: Okay.

Mr. Vardy, if I could ask you the same line of questions. We don't – I don't – you know the line of questions that I'm asking for.

During the period of 2008 to 2011, prior to the reference period, did you have any discussions, any communications, any phone calls, any emails, any texts with Mr. Andy Wells in relation to the issue of Muskrat Falls? You had none?

MR. VARDY: None.

MR. T. WILLIAMS: Okay.

And I trust – again, without going through all the rules – you're aware of your obligations and you've done sufficient searches to ensure that?

MR. VARDY: Yeah.

MR. T. WILLIAMS: Okay.

MR. VARDY: Yes.

MR. T. WILLIAMS: There is a third founding member of your group, Mr. Des Sullivan. Are either of you gentlemen aware – and I know you can only give your personal knowledge – whether or not Mr. Sullivan may have had any

meetings, any consultations, any discussions or any emails or any phone calls with Mr. Wells?

MR. VARDY: I'm not aware of any.

MR. PENNEY: I don't know.

MR. T. WILLIAMS: Yeah.

Now, again, I won't belabour this. I just have to cover off the last period in time. We went up to the point where the matter was referred to the Public Utilities Board. Now that it's in – within the jurisdiction of the Public Utilities Board, that being from June 2011 up to the date of their decision which, I believe, was in June of 2012. The same line of questions. I don't need to repeat it at length.

Did you have any communications of any nature or kind with Mr. Andy Wells who was chair at the time in relation to the Muskrat Falls Project?

MR. PENNEY: No.

MR. T. WILLIAMS: None?

MR. PENNEY: None.

MR. T. WILLIAMS: Okay. Any meetings of a social nature?

MR. PENNEY: Now, I can't recall. We might have had dinner but we wouldn't have discussed that particular –

MR. T. WILLIAMS: But you didn't discuss Muskrat Falls.

Are you aware – and, again, it's only your personal knowledge – whether or not any individuals of the – I call it former group, in fairness to you, it's a distinct Group 2041, but they're very aligned in terms of their beliefs.

Are you aware whether any of these individuals, Mr. Cabot Martin, Mr. Browne and Mr. – or any other members of that group would've met with Mr. Wells?

MR. PENNEY: Well, I didn't participate, so I can't comment on that.

MR. T. WILLIAMS: Okay.

Again, only to the best of your knowledge, but do you know – do you have any personal knowledge that they did?

MR. PENNEY: I wasn't part of that group. I never attended a meeting, so I don't know.

MR. T. WILLIAMS: Okay. But nobody told you they met. And what I'm getting at, did anybody ever tell you that they met with Mr. Wells in relation to this project, being any of the individuals I suggested?

MR. PENNEY: No.

MR. T. WILLIAMS: Okay.

Again, to the best of your knowledge, knowing that – and I apologize, I thought you were members. Do you know who were members of the 2000 – was this a widespread group or was this a limited number of individuals who were members of Group 2041?

MR. PENNEY: David attended some meetings, so.

MR. VARDY: I attended some of their meetings but I can't tell you who was – quite frankly, I can't tell you who was a member and who wasn't.

MR. T. WILLIAMS: Okay.

MR. VARDY: I would go – I'd be invited to meetings and then there would be people there, some of whom would be members, others were not members, and I didn't really know who –

MR. T. WILLIAMS: And who would be in attendance at those meetings that you remember?

MR. VARDY: Dennis Browne.

MR. T. WILLIAMS: Okay.

MR. VARDY: Sometimes Richard Cashin, sometimes Cabot Martin.

MR. T. WILLIAMS: Now Mr. Martin, he was the – he put in a paper to the Public Utilities Board, I believe, that is an exhibit here at the Inquiry. Is that correct?

MR. VARDY: He put in a – yes, he did.

MR. T. WILLIAMS: And he's also a director of Deer Lake Gas and Oil Limited. Is that correct?

MR. VARDY: I have no idea.

MR. T. WILLIAMS: Okay.

All right. I'm sorry, continue.

MR. VARDY: Yeah.

So the other people that I remember who were – would be Maurice Adams –

MR. T. WILLIAMS: Yeah.

MR. VARDY: – and Bud O'Brien.

MR. T. WILLIAMS: Okay.

MR. VARDY: Not Bud O'Brien, Con O'Brien – sorry.

MR. T. WILLIAMS: Con O'Brien, okay.

Thank you.

In respect to the history of the coalition – we'll move on because I trust you gentlemen have founding fathers. Okay. I think you're stated on your webpage that Mr. Vardy, Mr. Penney and Mr. Des Sullivan are founding members. Is that correct?

MR. VARDY: Correct.

MR. T. WILLIAMS: Okay.

And the purpose of establishing the coalition – because my understanding of a general nature is that the aims and objectives of 2041 and the Concerned Citizens are fairly well aligned, are they not?

MR. PENNEY: I don't know, I wasn't part of that group.

MR. T. WILLIAMS: But you're certainly aware of their objectives, I mean – and maybe Mr. Vardy can answer, you attended meetings.

What was the purpose of your attendance at these meetings?

MR. VARDY: Well, I attended because I was interested in having discussions with like-minded people.

MR. T. WILLIAMS: Okay.

MR. VARDY: But in terms of, if there was a mission statement or an organization plan or anything, I was never involved with any of that. So I can't really tell you – from a very high level, I would say that the aims and objectives were very similar.

MR. T. WILLIAMS: Very similar. And I think you said it there in your own evidence that they were like-minded people.

MR. VARDY: That's right.

MR. T. WILLIAMS: And with similar views on –

MR. VARDY: Yes.

MR. T. WILLIAMS: – the Muskrat Falls Project.

MR. VARDY: Yeah.

MR. T. WILLIAMS: Okay.

Now, my query as to the fact that the coalition was founded by three individuals but, yet, Mr. Sullivan, who's better known in the populous world as Uncle Gnarley – while he's a founding member of the Concerned Citizens Coalition, the papers that you submitted to the Public Utilities Board and the papers that you've submitted to the coalition don't refer to him as an author. Can you explain to me why this is?

MR. PENNEY: Can you repeat the question? I don't –

MR. T. WILLIAMS: He's never cited on your documentations, your paper to the Public Utilities Board. Your paper to –

MR. PENNEY: Yes.

MR. T. WILLIAMS: – the coalition –

MR. PENNEY: Yeah.

MR. T. WILLIAMS: – only refer to you but there's three founding members.

MR. PENNEY: Yeah. Dave and I worked together. We were partners in terms of our objections to the project.

MR. T. WILLIAMS: Do you suggest Mr. Sullivan has different objectives?

MR. PENNEY: No. All I'm saying is, just laying the facts that he wasn't part of our – we had a small group of two. He had –

MR. T. WILLIAMS: But now, you know, let's paint a proper picture here. I mean, as the Inquiry's been on, the group of three – Uncle Gnarley has a blog that quite commonly refers to you gentlemen. You were guest posters on his blog.

MR. PENNEY: Right.

MR. T. WILLIAMS: So you're not suggesting that there's any distinguishing factors between yourself, Mr. Vardy and Mr. Sullivan, are you?

MR. PENNEY: Of course there are. We all have different approaches to this.

MR. T. WILLIAMS: Okay.

MR. PENNEY: Yeah.

MR. T. WILLIAMS: But in terms of the objectives of the coalition.

MR. PENNEY: That's true.

MR. T. WILLIAMS: That's fact. So why would not put Mr. Sullivan on as an author of your papers? Why would you not include him in that?

MR. PENNEY: 'Cause we did these things jointly together.

MR. T. WILLIAMS: Why would you not include him, though? If he's a co-founder, he's pursuing the same goals and objectives.

MR. PENNEY: No, I'm just repeating the fact that we worked together, Dave Vardy and I.

MR. VARDY: But these were done prior to the coalition. Like, a lot of the articles – we're talking about pre-sanction. It was before the coalition was formed. So the articles we wrote, some Ron and I wrote together, others Ron did, others I did on my own. So we were not working as a coalition until we were formed – when this Commission was established.

MR. T. WILLIAMS: But, right now, as the date the Commission was established, the date you were incorporated, your roles in the coalition – being yourself, Mr. Penney and Mr. Sullivan, Uncle Gnarley – are all the same in terms of supporting the same objectives. Would that be correct?

MR. VARDY: That's correct.

MR. T. WILLIAMS: So why, today, are we standing here with two members of the coalition, when the third member – yes, is down here in the back of the room, and he's not up front for us and other counsel to put questions to? And the reason I pose this now, gentlemen – I'll be fair to you – is that Uncle Gnarley has posted over 600 posts in relation to matters of concern, the majority of which are anti-Muskrat Falls sentiments – that have some very scathing language and criticisms. But yet he's not put up front for counsel to ask questions.

THE COMMISSIONER: I'll let you go first before I go.

Go ahead, Ms. O'Brien.

MS. O'BRIEN: Thank you – I do need a mic (inaudible).

MR. T. WILLIAMS: Oh, I'm sorry.

MS. O'BRIEN: Thank you.

Just to clarify – and I don't interrupt Mr. Williams's cross-examination lightly – but just to be clear that the – at this – for this phase of the Inquiry, we – the Commission counsel made a request to have a paper prepared regarding concerns that were raised in the pre-sanction

period and the response that was received by government and Nalcor to those.

And so the purpose of calling these witnesses – so the paper was filed. It has a number of exhibits attached to it. These exhibits were letters and whatnot that were written by Mr. Vardy, and then a lot of them by Mr. Vardy and Mr. Penney. And so that's the purpose of calling them. That's why we called these two men to present that paper.

Just to be clear on that – we weren't looking at the more recent work of the Uncle Gnarlley blog et cetera because I – we were really looking at that pre-sanction period. Thank you.

THE COMMISSIONER: So does that answer your query?

MR. T. WILLIAMS: I won't pursue it, Mr. Commissioner.

THE COMMISSIONER: I – tell you what. Before we go, I just don't – yesterday you made a comment here that has sort of been in the back of my mind all night. And I wanna stress – and your client – one of your clients actually indicated and – on the stand that – when he testified – that he thought – he congratulated us for the manner in which we were conducting this in a professional and a fair way.

So I wanna reiterate here that fairness to everyone is extremely important to me. I have a job to do. And I'm not too concerned about all the personalities involved, you know, I don't know what the love-hate relationships are – anything like that – and to be quite honest with you, I don't really care about that.

What I'm trying to do is to respond to the terms of reference that I have.

Now, Commission counsel had decided that we're gonna call two witnesses from the coalition. They were asked – they presented the paper – and that's the only reason. There's no ulterior motive to not have another person here.

And I would suggest to you, and to the rest of counsel, that if anybody has a concern about somebody not being called that should be called, you should make that suggestion to Commission

counsel. They will bring it to me. If I feel it's appropriate, then we'll have them called. And if not, we won't.

MR. T. WILLIAMS: And I –

THE COMMISSIONER: So I –

MR. T. WILLIAMS: – appreciate that.

THE COMMISSIONER: – so again, you know, I have to say that I'm hoping that you appreciate – as well as your clients and every other party that's here – is that I'm trying to manage a pretty major Commission of Inquiry that can go off the rails in many ways, and I'm trying as hard as I can to keep us focused on going in one direction. And, therefore – and at the same time recognizing that the six principles that I set out with regards to how we're going to manage this Commission are being followed. You have any concerns, anybody else has concerns, speak to Commission counsel.

MR. T. WILLIAMS: And I appreciate your comments and maybe if I can put it in context, in all due respect, in reply, would – the comments you refer to – my client – he was the first witness called. So some of my comments yesterday were as result of –

THE COMMISSIONER: Well I don't think –

MR. T. WILLIAMS: – subsequent witness.

THE COMMISSIONER: – I don't think your witness was the first witness called. He was the first witness called –

MR. T. WILLIAMS: The first witness called in St. John's.

THE COMMISSIONER: – here in St. John's, yes.

MR. T. WILLIAMS: And –

THE COMMISSIONER: But I trust, you know, and again I'm not getting into discourse with Mr. Williams but, you know, I appreciated the comments that he made and I want to reiterate to him and everybody else we are very professional, we are very fair and we are very independent.

MR. T. WILLIAMS: And I'm not suggesting that –

THE COMMISSIONER: And that's the way that this Inquiry is going to be conducted. But you are suggesting it in your own way.

MR. T. WILLIAMS: No, I'm not. No, in fairness, Mr. Commissioner, I mean – it was your comments, I think, to my client when he was on the stand. When he was making some comments regarding this coalition that you stopped him mid-comment –

THE COMMISSIONER: I'm trying to –

MR. T. WILLIAMS: – and said – now I –

THE COMMISSIONER: I'm trying to keep people steered –

MR. T. WILLIAMS: Right?

THE COMMISSIONER: – away from the personalities and get to the issues. That's all –

MR. T. WILLIAMS: But in fairness –

THE COMMISSIONER: – I'm trying to do.

MR. T. WILLIAMS: – but I have two gentlemen here, who have been in the forefront and –

THE COMMISSIONER: You can ask your –

MR. T. WILLIAMS: – this is publicized for –

THE COMMISSIONER: – you can ask these two gentlemen your questions. All I'm just responding to was the point that you were just making about Mr. Sullivan, and I'm going back to the point that you made yesterday.

And I want to reiterate to everyone that's here, and particularly the individuals who have standing, and who have concerns related to this issue, that we are operating in the most professional, fair manner that we can do. We may make some mistakes, as we all do, but we're trying our best. If you have concerns or anybody has concerns about something that we're missing, bring it to our attention and we will deal with it in the most appropriate way.

MR. T. WILLIAMS: And I appreciate that and I have spoken with counsel and they, in fact, have spoken to me –

THE COMMISSIONER: Okay.

MR. T. WILLIAMS: – regarding that matter –

THE COMMISSIONER: Perfect.

MR. T. WILLIAMS: – so I will – and to be honest I stand here at the podium, and myself and you have had discussions over this, but my sentiments are not solely of my clients. They are of other counsel here as well, so I will – I'll pursue those aspects with your Commission counsel.

THE COMMISSIONER: Yeah.

MR. T. WILLIAMS: So we'll move on from that, but I – and in all honesty I raise that issue only because I thought it was the witness's choice of this and that's the reason for my raising it. Not to make implications to the Commission.

THE COMMISSIONER: Oh, excuse me just for a second.

MR. T. WILLIAMS: Now with respect to some of the issues –

THE COMMISSIONER: Mr. Williams, just a second –

MR. T. WILLIAMS: Oh.

THE COMMISSIONER: – I got Mr. Hogan standing up for (inaudible).

MR. T. WILLIAMS: Oh I'm sorry.

THE COMMISSIONER: So if you could turn off mic, we'll hear from him. Mr. –

MR. HOGAN: I'm sorry, I don't want to delay the questioning, but that's the second time Mr. Williams has now said that he's had discussion with counsel. The other time he said it was in relation to Dr. Bruneau's evidence. And that's fine. I'm sure he has. We're all talking amongst ourselves as we go forward.

But if he's going to suggest that certain counsel share his opinion, I think those counsel should be named because it certainly isn't – he's never had conversations with me about any of the issues he's suggested to you that counsel have discussed. So I just think it's important to put on the record what counsel share his opinion 'cause it's not me in this case.

THE COMMISSIONER: Well, okay.

So let's get back to business here now, guys, because, you know, we're getting sidetracked here this afternoon for a point that I really don't see right at the moment. But if there is a point to be made – as I said – discussion with Commission counsel and we'll deal with it the best way we can.

MR. T. WILLIAMS: That's fine (inaudible).

THE COMMISSIONER: Go ahead, Mr. Williams.

MR. T. WILLIAMS: And I appreciate the comments, Mr. Hogan. We will identify the individuals.

Now, with respect to some of the issues of concern which you've raised in relation to this project – and I'm referring not only to your papers before the board but some of your public comments and some of the promotional materials – I shouldn't say promotional materials, but the comments that you've made in blogs.

You've indicated concerns with issues such as the lowest-cost option; stability of the North Spur has been topic of discussion; concerns regarding management of the project; concerns regarding costs and rate implications. Would that be – I'm not suggesting that's all of them, but would that be fair to say that these have been concerns as raised by –?

MR. VARDY: The – your comment about management of the project would not be appropriate in this phase. I mean – my understanding is we're not talking about that. But generally, I think you're – to answer your question, yes. I mean the – you talk about the management of the project – are you talking about the management of the construction?

MR. T. WILLIAMS: No, I mean the project from the outset.

MR. VARDY: Okay, all right.

MR. T. WILLIAMS: And in this regard, has the coalition ever retained or requested any reports of any qualified experts in any of these fields that I've mentioned? Or any other fields related to the project?

MR. PENNEY: Well we're volunteer – we're offering our services as volunteers for the last seven years. We don't have any funding. We have a small amount – we've raised a few thousand dollars over the last couple of weeks to retain somebody on a part-time basis, but that's it.

MR. T. WILLIAMS: And I appreciate that, but what I'm – I guess what I'm alluding to is that you have no expert opinions or advice in which you base your opinions on, other than your own personal opinions that you're expressing?

MR. PENNEY: I'll say this, I'm very much the junior partner in this group of two. Dave Vardy has incredible experience in the regulation of public utilities. He's an economist. He knows a lot more than I do about this project. So he brings a lot of expertise to it.

MR. T. WILLIAMS: But less than Mr. Locke, by his own admission?

MR. VARDY: That's true.

MR. T. WILLIAMS: Okay.

MR. VARDY: Well, in that particular context.

MR. T. WILLIAMS: Okay.

MR. VARDY: You know, but I – just to respond to your question – to go back about – on the North Spur, we did seek the advice of Swedish engineers and –

MR. T. WILLIAMS: Okay, can you give me the details on that?

MR. VARDY: Yes.

MR. T. WILLIAMS: Now, I'd like to have the specifics of that.

MR. VARDY: We sought the advice of Dr. Stig Bernander and his colleague, Lennart Elfgren. And they have written a paper which has been – which we can make available to you which we have not – which I'm not sure whether we put it in evidence up to this point –

MR. T. WILLIAMS: I believe that's in evidence before the Public Utilities Board.

MR. VARDY: Yeah.

MS. O'BRIEN: I can help clarify if you just hang on.

MR. T. WILLIAMS: Sure.

MS. O'BRIEN: Thank you.

There will be – there's a number of papers being filed with respect to the North Spur. The paper that Mr. Vardy is referring to is among them. There will be a series of papers going in.

Thank you.

MR. PENNEY: If I may just step back a bit, one of the things that we did – and this was led by our colleague, Des Sullivan – is that we reached out to Dr. Bernander and he, in fact, came over. And this was done at our expense; we raised funds to do this.

And he visited Happy Valley-Goose Bay and then he came down to give a public lecture at the LSPU Hall and he also spoke at the engineering school. And since then, we have been dealing back and forth with him and, most recently, we asked Dr. Elfgren and Dr. Bernander to respond to a peer review of their work. And all these documents have been tabled with the Commission and the responses – actually, the responses are on the – on our website, the response.

MR. T. WILLIAMS: Okay. Thank you.

MR. LEARMONTH: Just – Ms. O'Brien said that those exhibits will be filed; actually they'll be filed before the next witness testifies. They're all ready, so all the reports from Mr. Bernander

and all the other reports on the North Spur will be in evidence, presumably, later on this afternoon.

MR. T. WILLIAMS: If I could turn to your presentation to the Public Utilities Board, Exhibit 00339, please.

And I think this was a presentation that you made to the Public Utilities Board in February 20, 2012. And I note that on page 3 of –

THE COMMISSIONER: Tab 11.

MR. T. WILLIAMS: I note on page 3, the third paragraph you acknowledge: "We have been accused of having an agenda. We do" – not – "have an 'agenda.' Our 'agenda' is to ensure the issue is subject to full public debate. We are not opposed in principle to the project."

Do you stand by those comments currently?

MR. PENNEY: Yes, I (inaudible) to that.

MR. VARDY: Yes.

MR. T. WILLIAMS: So you're not opposed to the Muskrat Falls Project per se.

MR. PENNEY: We weren't then.

MR. T. WILLIAMS: Oh, so are you now?

MR. PENNEY: Oh yes.

MR. T. WILLIAMS: Okay. And that would be for the reasons that you stated, I trust, in your direct testimony this morning.

MR. PENNEY: I'm sorry –

MR. T. WILLIAMS: But in 2012, when this matter was before the board, you were not against the Muskrat Falls Project.

MR. PENNEY: That's correct.

MR. T. WILLIAMS: And that's on the record. Okay.

In the fifth paragraph down starting – if we could move down, just the next paragraph – right: We note that this exemption – you're

referring to the exemption of having the matter referred to the Public Utilities Board. You state: “We note that this exemption was granted by a previous administration so there is lots of blame to be shared about this particular decision.”

So you readily acknowledge – because I think many of the public are of the view, rightly or wrongly because I know it’s a very fine area – but this project wasn’t exempted from review by any of the administrations, being the Williams administration or the Dunderdale administration and any other groups. They didn’t actually exempt this from public review; it was already exempted. Correct?

MR. VARDY: That’s right.

MR. PENNEY: That’s correct.

MR. T. WILLIAMS: Okay.

And not only was this project exempted, there have been a number of other projects exempted, hydroelectric developments by previous governments in the past. Correct?

MR. VARDY: That’s true.

MR. T. WILLIAMS: And I refer to Bay d’Espoir, the Granite Canal as a couple of examples, and these go back to the ’60s. Correct?

MR. VARDY: I couldn’t say. As I said this morning I didn’t go back to check the – which ones were exempted and why there were exempted, but we know –

MR. T. WILLIAMS: Okay.

MR. VARDY: – we simply know they were.

MR. T. WILLIAMS: I would suggest to you – and I do stand to be corrected – but I think Bay d’Espoir, we’re back into the mid-’60s, and that one I know was exempted. So I would suggest to you that there’s a 50-year precedent in Newfoundland for exempting hydroelectric developments from regulation by the Public Utilities Board. Would you agree with that statement?

MR. VARDY: I can’t really disagree with it.

MR. T. WILLIAMS: Okay, so this is nothing new. I know it’s a topic and I know it’s something that you have interest in, but what we’re making this issue is the term of reference before the Commissioner as to whether or not that – you know, the decision I think – in fact, I think the term of reference says: To exempt the project. Now, I stand to be corrected, but it says: To exempt the project from review at the Public Utilities Board.

But government didn’t exempt it, government maintained the exemption. Wouldn’t that be correct?

MR. PENNEY: That’s correct.

MR. T. WILLIAMS: Okay, if I could turn to Exhibit 00333, P-003 – and if we could go to page 2.

THE COMMISSIONER: That is tab – 00333 at tab 5.

MR. T. WILLIAMS: And we can bring up – I’m going to put a number of these articles to you and I’m happy to bring them up on the screen, I have the references. But in terms of time I’ll – maybe I’ll just refer.

Mr. Vardy, this is an article by you in *The Telegram* dated November 8, 2011. And you stated – and this came up, I think, in Ms. Best’s examination this morning – that the Muskrat Falls Project is probably second- or third-best option. Better options included natural gas – incorporating natural gas at Holyrood or waiting to 2041.

Now, given the fact that that article was in November 2011 and we’ve had the benefit of reports from Pan Maritime Kenny, Navigant Consulting, Ziff Energy, Wood Mackenzie, Nalcor, would you still suggest that natural gas is a reasonable option?

MR. VARDY: I wonder if the exhibit could be scrolled down a little bit.

MR. T. WILLIAMS: Sure.

MR. VARDY: No, that’s going the wrong direction. No, I guess up, I meant.

MR. BUDDEN: I would note, not to keep jumping up all the time but, yet again, counsel – this counsel has put the assertion forward while leaving out the important word, “may” which was there in the original.

MR. VARDY: That’s the point I was going to make. It’s a may – it’s a may.

MR. T. WILLIAMS: So I guess I put the question still to you, it doesn’t change, may or not.

MR. VARDY: Could you just rephrase the question?

MR. T. WILLIAMS: Okay.

MR. VARDY: Just repeat the question?

MR. T. WILLIAMS: Given – and I listed off the consultant reports.

MR. VARDY: Mmm.

MR. T. WILLIAMS: Do you still think that natural gas may be the best option?

MR. VARDY: Yes.

MR. T. WILLIAMS: You still do?

MR. VARDY: Yes.

MR. T. WILLIAMS: Okay, despite the expert reports to the contrary?

MR. VARDY: Oh yes.

MR. T. WILLIAMS: Okay.

Mr. Vardy, in a CBC News article on January 4, 2012, you state: That you knew many people who strongly objected to the Muskrat Falls development plan, but they were afraid to speak out because their comments might put relatives employed in government at risk. I think this is very unfortunate.

Is that a fair comment when you’re under no obligation to disclose who these individuals are and such individuals have not come forward? Do you think that’s a fair comment to put out there that you can just leave that kind of hanging out

there, that people are at fear to speak up when those allegations are unsubstantiated?

MR. VARDY: Well, I think it is a fair statement. Many people have spoken to us about this. We approached people who’ve said to us – former colleagues who’ve said to us – you know, I agree with what you’re saying, but I’m really not prepared to sign anything. I’m not prepared to – in some cases people have said: I’m not prepared to be seen having coffee with you, okay?

MR. T. WILLIAMS: So would you agree that that fear – I mean that was the same kind of fear that Mr. Locke expressed the other day, that if you do speak up they fear they’re going to be ripped apart by Uncle Gnarley in his blog. Would you acknowledge that fear exists?

MR. VARDY: That fear exists.

MR. T. WILLIAMS: Right?

So, it would be fair to say – and I don’t want to go any further on this because I don’t think it’s necessary – but would you not agree that parties to either side of this debate have a right to speak out in respect to what their respective positions are, particularly, if they’re being criticized?

MR. VARDY: Absolutely.

MR. T. WILLIAMS: Okay.

Mr. Penney, in an article that was put – was in *The Telegram*, January 9, 2015, you’re cited as stating: The shaky business case for Muskrat Falls is further weakened by the recent collapse of petroleum prices. And I know that petroleum prices, obviously, had seen a dip and had for some time, but they’re now on the rise again, over 80 cents a barrel and I think the dollar is 76 cents.

So the fact that we’re utilizing two to 300 million barrels of oil a day – a year, sorry – at Holyrood. Would you not agree with me that increasing oil prices substantiate the legitimacy of the Muskrat Falls Project?

MR. PENNEY: No, because you don’t – I mean, trying to predict the price of oil in 50 years is crazy. You can’t do it. It’s impossible to

do it. And one of the options for Holyrood is – was to have gone to natural gas rather than – so, no, I don't agree with you.

MR. T. WILLIAMS: So do you believe in the natural gas option, as well, as a viable option?

MR. PENNEY: Of course, I mean, we have a professor at Memorial University – a tenure professor who told us that just the other day.

MR. T. WILLIAMS: Mr. Bruneau?

MR. PENNEY: Yes. Dr. Bruneau.

MR. T. WILLIAMS: Yeah. And he's a member of your coalition, is that correct?

MR. PENNEY: I don't think he is.

MR. VARDY: I'm not aware of it either.

MR. T. WILLIAMS: I think he's signed up. His address – now unless there's two Steve Bruneau's, but –

MR. VARDY: Well, I may stand to be corrected, but I, you know, I don't – I can't tell you offhand because there's 243 people and sometimes people are asking me is so and so a member, and I can't tell off the top of my head.

MR. T. WILLIAMS: Well, I can assure you Steve Bruneau is a member 'cause I've looked at the list.

MR. VARDY: I'll accept that.

MR. T. WILLIAMS: And, for example, on the list, Mr. Peckford – former Premier Peckford. He's a card-carrying member of the coalition too, is he not?

MR. PENNEY: We have no cards.

MR. T. WILLIAMS: No cards, but he is a member of the coalition.

MR. PENNEY: He's a member of the coalition.

MR. T. WILLIAMS: Now, he lives in British Columbia doesn't he, on the other side of the world – on the other side of the country?

MR. PENNEY: He does.

MR. T. WILLIAMS: How many people in the coalition live outside the province?

MR. VARDY: I can't tell you how many, but there are some. He's not the only one.

MR. T. WILLIAMS: He's not the only one. So, the 243 people – there's some of your family members, I also noticed, they're also members of the coalition, correct?

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. T. WILLIAMS: Mr. Vardy, I think in your case, you have family members who are – and rightly so, I'm not criticizing this. I'm just acknowledging that.

MR. VARDY: Mm-hmm. Yes.

MR. T. WILLIAMS: Okay. And there are members who reside outside the province.

UNIDENTIFIED MALE SPEAKER: Yes.

MR. T. WILLIAMS: Do you have members from Labrador, do you know?

MR. PENNEY: Yes.

MR. VARDY: Yes.

MR. T. WILLIAMS: Okay. From the north – from all regions of the province?

MR. VARDY: I couldn't tell you that.

MR. T. WILLIAMS: Okay.

MR. PENNEY: (Inaudible.)

MR. VARDY: I haven't really checked it that way.

MR. T. WILLIAMS: At your public – recent public meeting, how many people – how many members of the coalition were in attendance?

MR. PENNEY: I'd say, maybe, 35.

MR. T. WILLIAMS: Thirty-five.

MR. PENNEY: And we did Facebook live. I don't know how many were on Facebook live.

MR. T. WILLIAMS: Yeah. But there was 35 people in person? Was that a disappointing attendance?

MR. VARDY: Yes.

MR. PENNEY: Yes.

MR. T. WILLIAMS: Okay.

Mr. Vardy, in a recent article in *The Independent* on February 23, 2018, you were interviewed in a question and an answer format with the interview – with *The Independent*. And I'm not asking to have the exhibit brought up, but you criticized the structure and the terms of reference for this very Inquiry. Do you stand by your comments in that article?

MR. VARDY: I'd like to see what I said in particular, but I mean, I did make comments before the Commission was set up as to how I thought it should be done and I also thought – made suggestions that there should be a consultation process before the terms of reference were finalized. So there are – they are very – there are important matters that I think lie outside the terms of reference of this Inquiry. So would –

MR. T. WILLIAMS: But now your comments are after the Inquiry's been set up. This is February 23 of this year.

MR. VARDY: Okay.

MR. T. WILLIAMS: Okay?

MR. VARDY: Yeah.

MR. T. WILLIAMS: The exhibit number – again, I don't – I'm not looking to bring it up – is Exhibit P-00417, for the record. But that was subsequent when the terms of reference had already been set and you've criticized the structure and the terms of reference. And I only ask you do you stand by that?

MR. VARDY: I stand by that, yes, because they – there are issues – important issues that are

outside the terms of reference of the Commission.

MR. T. WILLIAMS: Okay. And you stand by those comments?

MR. VARDY: And I'd be glad to amplify that if you wanted me to.

MR. T. WILLIAMS: No, well, you've answered the question, you stand by it; I appreciate your honesty.

Mr. Penney, in the *CBC News* story on September 13, 2018, which is four days prior to the commencement of this Inquiry, you're quoted as saying: "We'll know the truth. A lot of people's reputations will be harmed, and rightfully so." Is that an objective of the coalition to see that people's reputations are harmed?

MR. PENNEY: No.

MR. T. WILLIAMS: What would you mean by a comment like: people's reputations are going to be harmed, and rightfully so?

MR. PENNEY: Well, that's what I – I believe that the Muskrat Falls Project was a terrible blunder. And it was very poorly managed and I think that's – it's my view that that's what's going to come out of this Inquiry but, of course, I don't know that. That's what I suspect.

MR. T. WILLIAMS: So would you be pleased to see reputations damaged as a result?

MR. PENNEY: It wouldn't be – I don't want to do anybody any harm, no.

MR. T. WILLIAMS: Why your comment: rightfully so? Why your comment rightfully so, if that's the case?

MR. PENNEY: Because people have to be held responsible for what they did or didn't do.

MR. T. WILLIAMS: Mr. Penney, in an interview with Chris O'Neill-Yates on September 17, 2018, you're quoted as saying: "We put in a group of people to manage this project" – so we have – "who have no experience

in managing mega-projects. So, I don't think they knew what they were doing."

Would you acknowledge that Mr. Martin, who was in charge of the project originally, does have experience in megaprojects, albeit not hydro-electric?

MR. PENNEY: I wouldn't acknowledge that, no.

MR. T. WILLIAMS: Pardon me.

MR. PENNEY: I don't know that.

MR. T. WILLIAMS: You don't know that from hearing the evidence, that he has megaproject experience?

MR. PENNEY: I didn't hear that in the evidence. I'm not aware of (inaudible).

MR. T. WILLIAMS: So, after all your study and analysis over all these years and all your criticisms, you don't know whether Ed Martin has ever managed a megaproject?

MR. PENNEY: I've been told that he hasn't but I don't know for a fact.

MR. T. WILLIAMS: Okay. You've been told he hasn't. Okay.

If I told you he has, would that change your viewpoint?

MR. PENNEY: It would depend on what his role was and that would have to be independently confirmed, so I don't know.

MR. T. WILLIAMS: Your group was very supportive of Nalcor's appointment of Mr. Stan Marshall, is that correct?

MR. PENNEY: That's correct.

MR. T. WILLIAMS: When he took over in 2019. In fact, I think, Mr. –

MR. VARDY: It wouldn't be fair to say our group because our group didn't exist at that time.

MR. PENNEY: That's right.

MR. T. WILLIAMS: Okay. Well, one of your co-founders blogs, Mr. Sullivan, stated on the appointment April 25, 2016, he said: Ball hits a homerun. And, he goes on to applaud the appointment of Mr. Marshall as a home run.

Now, Mr. Marshall has been recently stated as saying that Newfoundlanders and Labradorians will eventually have among the lowest electricity rates in the country. There are indeed many benefits to the project. He stated at a speech at the university that Muskrat Falls did not suffer from a lack of oversight and indeed was actually over governed due to the high amount of project reviews, consultants in general oversight, and that any megaproject in the world would be happy to be where we are.

Now, that's the gentleman that you just endorsed. Do you stand by his comments in respect to this project?

MR. PENNEY: He has to speak for his own comments.

MR. T. WILLIAMS: I'm not asking you to justify them, I'm asking you –

MR. PENNEY: (Inaudible.)

MR. T. WILLIAMS: – both, do you stand by his – do you agree or disagree with these comments?

MR. PENNEY: I don't agree that Muskrat Falls is ultimately going to be a good project for the province, no.

MR. T. WILLIAMS: But yet you, like, you support Mr. Marshall's role, in his current role as CEO?

MR. PENNEY: Well, I was very pleased that the government saw fit to appoint a person who had long experience in the public utility business, managed, well, really the largest public traded company that has its headquarters in St. John's. We were very lucky to get someone with that level of experience to come there to work on this project, which was – the project was in terrible trouble, no question about that.

MR. T. WILLIAMS: Mr. Penney, in the same article you're stated as saying: There was a lot of

concern. There was a lot of concern that if people spoke out they would somehow be harmed or their families would be harmed. That was a matter of some public debate. I don't want to get into that and I know you've since stood back from those comments. But –

MR. PENNEY: No, I didn't. I never stood back from those comments.

MR. T. WILLIAMS: You don't – you're not standing back from those –?

MR. PENNEY: No, what I said – I'm not sure if it's appropriate to get into it –

MR. T. WILLIAMS: And I'm not looking to get –

MR. PENNEY: – my contretemps with Mr. Williams or not.

THE COMMISSIONER: Let's just put it this way, this is too close to potential – because I understand there's been potential legal ramifications suggested here or whatever. Let's skip this for the day.

MR. T. WILLIAMS: Okay, I'll skip the comment –

THE COMMISSIONER: Thank you.

MR. T. WILLIAMS: – Mr. Commissioner.

Mr. Penney, in a recent blog of October 18, which is only six days ago, you were a guest poster on Uncle Gnarley's Blog, and the title of your article was Missed Opportunity: Scuttling of the 2002 Gull Island Framework – which was the Grimes deal, as we commonly referred to it.

MR. PENNEY: Mm-hmm.

MR. T. WILLIAMS: And you go on to basically describe the (inaudible) missed opportunity – something we should've pursued.

Do you still stand by that comment in light of the evidence that has been before the Commission – the history given by Jason Churchill, as well as the comments that had been referred to Commissioner Vic Young's Royal

Commission that stated that pursuit of that agreement would be a big mistake?

MR. PENNEY: Yes.

MR. T. WILLIAMS: You do. So you disagree with those gentleman?

MR. PENNEY: Yeah.

MR. T. WILLIAMS: Okay.

(Inaudible) moving through what – I've yet to read an article whereby you boast of any of the benefits. There's been more than 5000 jobs created during construction, hundreds of Innu companies, as we've heard from some of the Innu representatives, working in Labrador – billions of dollars in salaries, not to mention the spinoffs.

Are you gentleman prepared to acknowledge that there are benefits to the Muskrat Falls Project since it's commencement in the mid-2000s?

MR. VARDY: Mr. Williams, you have to recognize that for every benefit there's a cost and this is exactly the problem we have here is that there's a large stimulus for the Newfoundland economy and it's – but it comes at a cost. It comes at a very dear cost because we're a very small economy, very little of the money that we spend actually stays here. And that's all bought out and confirmed by the input-output analysis.

And so the cost per job is very high. I would submit to you the cost per job is very high for the Muskrat Falls Project. So if you try to measure Muskrat Falls based upon the jobs created, incomes earned – that's going to be very expensive to the public Treasury.

MR. T. WILLIAMS: And I'm –

MR. VARDY: There's lots of ways to stimulate the economy. I would have to see how effective Muskrat Falls is in stimulating the economy, compared with other options.

And if we're dealing with conservation, for example, if we're dealing with helping people, put better insulation in their homes and installing

heat pumps, I would suggest to you a lot of the money from those expenditures would stick in the province and as opposed to being left – leaving the province because we’re buying turbines from China.

MR. T. WILLIAMS: I make note of your comment: I’d have to wait and see.

Wouldn’t you suggest – before we’re gonna be able to see all the benefits and potential benefits of this project, it’s gonna take some time? That we’re seeing a lot of the expenditures, no doubt, but even while we’re seeing those expenditures, there’s substantial – hundreds of hundreds of millions, if not, billions of dollars being spent at this point in time, and yet, there could be more potential benefits as this project evolves over the next 50 years.

MR. VARDY: I think the biggest concern that I have is not so much the cost, it is our ability to recover the cost we’ve incurred. And that goes directly to the testimony that was given yesterday about elasticity, because the ability to recover depends on whether there are enough people to buy the power, and whether they need the power and whether they’re prepared to pay the increase cost that it’s going to take. So I think the benefits are a big question mark in the future – big question mark.

MR. T. WILLIAMS: Okay.

I’m wondering if we could bring up Exhibit 00378, please. Page 3 of that Exhibit, Madam Clerk. And if you could scroll down.

THE COMMISSIONER: 00378, we don’t have that one.

MR. T. WILLIAMS: Okay, just scroll up a little – the body of the text.

CLERK: (Inaudible.)

MR. T. WILLIAMS: There we go. Thank you.

And this is the only part of the Exhibit – I’m wondering if – could you read that out for me, Mr. Vardy, that text?

MR. VARDY: You mean the email?

MR. T. WILLIAMS: The email, I’m sorry.

MR. VARDY: “Wade

“Upon reflection I have come to the conclusion that it would be foolhardy of me to enter into a ‘debate’ with you on Muskrat Falls. I know what my limitations are and I have to operate within them. I am no energy economist. You are an energy economist at the ‘top of his game.’ My ‘best before’ date as an economist is long past.

“At the risk of losing some dignity, I must acknowledge that I am not the right person to debate this issue with you and that I must withdraw. I regret that this inescapable conclusion was not blindingly obvious to me when we first met to discuss it. Sorry for any inconvenience.

“I am pleased that you have agreed to do a Memorial Presents on Muskrat Falls. I think that this will promote the kind of public discussion we all want to take place.

“I am copying this note to Mike and Doug.

“Cheers

“Dave”

MR. T. WILLIAMS: Okay.

And in your direct testimony this morning – and I bring you back to it – you acknowledged in direct examination – and I admire you for doing so – you said that Mr. Wade Locke was extremely knowledgeable, correct?

MR. VARDY: I did.

MR. T. WILLIAMS: And you also stated that at one point he was probably more knowledgeable than anybody else in the province.

MR. VARDY: On energy economics.

MR. T. WILLIAMS: On energy. And you’ve also said that you’re no expert in energy economics.

MR. VARDY: I did.

MR. T. WILLIAMS: And that your date – due date is long done. Correct?

MR. VARDY: I'm not a young man.

MR. T. WILLIAMS: And no I'm not – and I'm certainly not criticizing your age. Don't (inaudible). But I'm taking – what I want to do is show your honesty, that back –

MR. VARDY: But I don't want to (inaudible) –

MR. T. WILLIAMS: – you know, your honesty today and –

MR. VARDY: I don't want to take advantage of your callow youth either.

MR. T. WILLIAMS: No, that's – I can stand to be corrected by yourself and others.

But you've acknowledged that you do have limitations, that you're not an energy economist. And therefore what I put to you is that doesn't the Commissioner have to put a lot of your comments – which are not said in jest, that are serious notes, a serious email from one gentleman – one professional to another – doesn't the Commissioner need to take into consideration your very comments when he weighs your evidence with respect to your opinions in relation to this matter? As it comes from an economics perspective?

MR. VARDY: He does, but I have to also – I would also expect that the Commissioner will weigh my past public service experience as well, which involves dealing with a lot of complex issues in provincial and federal government. And while I may not have a very current understanding of international oil prices and gas prices, I have a knowledge of how government operates, how economies operate and how bureaucracies operate.

MR. T. WILLIAMS: So would you acknowledge, based upon your own admissions in this exhibit, that you are in no position to criticize the evidence that was given on Mr. Wade Locke yesterday?

MR. VARDY: I would take – there are certain aspects of that evidence that I feel I could criticize.

MR. T. WILLIAMS: Okay. But you're –

MR. VARDY: (Inaudible.)

MR. T. WILLIAMS: – comments today and your direct evidence –

MR. VARDY: I chose not to criticize it. I don't think I'm on record as criticizing what Locke has said.

MR. T. WILLIAMS: Well, I –

MR. VARDY: Because I chose – once I chose not to participate in the debate, I forfeited the opportunity to criticize his paper.

MR. T. WILLIAMS: Well, I will take issue that you're not on record because on July 4, 2016 in Uncle Gnarley's Blog, you said that Mr. Locke should be publicly flogged. That's a quotation.

MR. VARDY: I said that?

MR. T. WILLIAMS: You said that, yeah. Publicly flogged.

MR. VARDY: Okay, I need to see that.

MR. T. WILLIAMS: Okay. Well, we can certainly get it and I'll have it submitted but I can tell you – I wasn't going to raise it –

MR. VARDY: I think –

MR. T. WILLIAMS: – you said you're not on the record and if the Commission wants –

MR. VARDY: Do you have –?

MR. T. WILLIAMS: I have the date. I have the date and time. I don't have it entered as an exhibit, but I can –

MR. VARDY: Could you – would you be able to assist us by –

MR. T. WILLIAMS: Definitely.

MR. VARDY: – providing us with –

MR. T. WILLIAMS: I will.

MR. VARDY: – when that was and we can check our records to see for ourselves –

MR. T. WILLIAMS: I'll have – I will review it and submit it to the Commission.

MR. VARDY: Thank you.

MR. T. WILLIAMS: Gentleman, basically, your evidence this morning was that you've expressed a number of concerns and most of this evidence came out through your examination – cross-examination by Mr. Smith and given your involvement – I'm not – sorry, Mr. Smith – yeah, Harold Smith – with respect to public policy issues. Would that be correct?

MR. VARDY: I'm sorry. Could you repeat the question?

MR. T. WILLIAMS: Most of the concerns that you are expressing are with respect to public policy issues connected with the Muskrat Falls Project and that that is where your experience comes from.

MR. PENNEY: Yes, that's true.

MR. T. WILLIAMS: And that you gentlemen have done none financial – nor are you in a position to – given your experience – to do any financial assessment with respect to what would be the lowest cost option in respect to the options that'd be before government at the time they chose Muskrat Falls – correct?

MR. PENNEY: I think the thing about our experience is that we've had so much of it in varying roles – is at a certain point – I'll just give you an anecdote of somebody – one of my directors down to City Hall came to me about a problem and she said: Ron, I came to you because you know where the potholes are. That's probably an apt description of City Hall. But what she meant is that I had so much experience that I recognized when there were problems in a public policy issue.

MR. T. WILLIAMS: Surely, Mr. Penney, you're not suggesting to me that the building of a hockey rink and a waste sewer plant and – were you in government for the Sprung Greenhouse Project? Were you in government during that period of time?

MR. PENNEY: I was there –

MR. T. WILLIAMS: Public Works?

MR. PENNEY: No.

MR. T. WILLIAMS: Okay.

MR. PENNEY: No. No.

MR. T. WILLIAMS: But surely you're not suggesting to me that you can correlate your experiences on Mile One and the Southside sewer water treatment plant to Muskrat Falls.

MR. PENNEY: Well like, I mean they're not megaprojects but they are large, complex projects, and at the time we weren't building very much in Newfoundland, so they were big projects in the Newfoundland scheme of things and –

MR. T. WILLIAMS: And they both had overruns. Right?

MR. PENNEY: Yes, they did.

MR. T. WILLIAMS: Okay.

And, in fact, Mile One is being subsidized by taxpayers to the current date.

MR. PENNEY: I wasn't speaking about the construction. It's a – that's a totally different issue. It's an operational subsidy. Memorial Stadium always had a subsidy.

MR. T. WILLIAMS: That's all the questions I have.

Thank you, gentlemen.

THE COMMISSIONER: Thank you.

Julia Mullaley and Charles Bown.

MR. FITZGERALD: Good day, gentlemen. My name is Andy Fitzgerald and I represent Julia Mullaley and Charles Bown. I'm very interested in your experience. In particular, I believe you both (inaudible) work with previous provincial governments.

I would like (inaudible) –

THE COMMISSIONER: Can you just turn your mic on there?

MR. FITZGERALD: I would like you individually to take me through your experience with previous provincial governments.

If we could start with Mr. Penney.

MR. PENNEY: Well, I was a deputy minister for the entire length of time of the Peckford administration, so that was 10 years.

MR. FITZGERALD: Any other experience in provincial governments besides ...?

MR. PENNEY: Well, I was a lawyer in the Department of Justice –

MR. FITZGERALD: Okay.

MR. PENNEY: – prior to that.

MR. FITZGERALD: But you did rise to the deputy minister level.

MR. PENNEY: I did.

MR. FITZGERALD: And Mr. Vardy?

MR. VARDY: Are you referring to provincial public service 'cause –

MR. FITZGERALD: Yes.

MR. VARDY: – I worked with the federal government as well.

MR. FITZGERALD: Okay. Well, I'm gonna start with provincial.

MR. VARDY: Start with the provincial, okay.

I joined the provincial public service in 1972 in the exalted title of director of economic planning, and that lasted about nine months and then I became assistant secretary to Cabinet in the new planning and priorities secretariat, and that lasted – I was there supporting a Cabinet committee on economic development, or economic policy, until I became – I was appointed as deputy minister of the planning and priorities secretariat, and that took place in 1974.

So I served as deputy minister to the planning and priorities secretariat and reporting to Premier Frank Moores at that time, so I reported to Premier Moores and I was in charge of the planning and priorities secretariat which was a policy advisory group which had been created by the Moores administration in 1972 – in 1973.

So then the premier asked me to take on the role of secretary to Cabinet, which I did, and I served as secretary to Cabinet under Frank Moores from 1978 until 1985, and during that period there was a change in government from the Moores administration to the Peckford administration. The Peckford administration came in in 1979, if my memory serves me correctly, and so I continued to serve as secretary to Cabinet until 1985 at which time I was appointed as president of the Institute of Fisheries and Marine Technology, which was formed on the basis of the College of Fisheries, the old College of Fisheries.

So then I was there from '85 until 1989, at which time I was called by Premier Clyde Wells, and Premier Wells asked me if I would take on the position of deputy minister of Fisheries. That was 1989, so I served as deputy minister of Fisheries through the moratorium of 1992, and then up until 1994 when Premier Wells took mercy on me and – 'cause being deputy minister of Fisheries during the moratorium was not fun – and being probably the most traumatic event in the history of our province since formation of government.

And, so then I served as chairman of the Public Utilities Board until 1994 until 2001 when I retired from government and I went to the university as a Channing Fellow, and then, there two years, working with the Public Policy Research Centre, I then became the director of the Public Policy Research Centre. And then I assisted in recruiting a new director, and in the process of doing that we renamed the centre, the Harris Centre, the Leslie Harris Centre of Regional Policy and Development. And we recruited a man by the name of Rob Greenwood as the new director.

So, I was there, and I helped – I stayed with Rob for a year before moving back into retirement. And, during that year, I was associate director. And, since that time, since my retirement, I've

continued on in a voluntary role with the Harris Centre with the title of professional associate.

So, I think that's pretty well up to date. And, right now, I'm fully retired, except I'm totally committed to this Muskrat Falls Project, so I tell everybody that I'm still working.

MR. FITZGERALD: Okay.

Well, I'm primarily interested with your experience as senior civil servants. I would suggest to you, Mr. Penney, that you have a significant amount of service and experience as a senior civil servant.

MR. PENNEY: Yes, I was 10 years – the year before that I was head of the – they established a new office to handle the drafting of government legislation, the Office of the Legislative Counsel, which, as far as I know, still exists. So, I was the first head of that. That was in '78, and then I became deputy minister in '79, yes.

MR. FITZGERALD: And, with respect to your roles as senior civil servants, you carried out your job to the best of your ability?

MR. PENNEY: That's for others to judge.

MR. FITZGERALD: Well, do you think you did?

MR. PENNEY: I think I did.

MR. FITZGERALD: Mr. Vardy?

MR. PENNEY: I think I did.

MR. FITZGERALD: Yeah.

MR. PENNEY: I was promoted to the highest post in the provincial public service, namely the clerk of the Executive Council, so I guess that says something.

MR. FITZGERALD: You know, I'm not saying you didn't. I'm just asking for your opinion.

And you acted in good faith in reporting to your minister and reporting to premiers?

MR. PENNEY: Of course.

MR. VARDY: Yes.

MR. FITZGERALD: And you reported all the information that you had available to you to the premier or your minister?

MR. VARDY: Yes.

MR. FITZGERALD: Mr. Penney?

MR. PENNEY: Yes.

MR. FITZGERALD: Would it be fair to characterize your role as senior civil servants as providing advice and recommendations to ministers and premiers and Cabinet?

MR. PENNEY: Yes.

MR. VARDY: Yes.

MR. FITZGERALD: Would it also be fair to say that your advice and recommendations may or may not be accepted?

MR. VARDY: Absolutely.

MR. PENNEY: Yes.

MR. FITZGERALD: Would it be also fair to say that when you provide an opinion to your superiors, you would do so on the best information you had available?

MR. PENNEY: Yes.

MR. VARDY: Yes.

MR. FITZGERALD: Would you also agree with me that if you disagreed with a premier or a Cabinet minister you did not have the power to stop the will of government?

MR. PENNEY: That's correct.

MR. VARDY: That's true.

MR. FITZGERALD: Because you were civil servants; you were doing your job.

MR. VARDY: That's right.

MR. PENNEY: That's correct.

MR. FITZGERALD: Page – Exhibit P-00334, please.

THE COMMISSONER: Tab 6.

MR. FITZGERALD: Tab 6, page 3.

I'm just at top of the page, the first paragraph. It says "The minister also needs to seek out those informed citizens. He needs to broaden his circle of advisers and not rely solely on Nalcor. This is not to say that those officials are not acting in good faith, but there is a natural human tendency to reject alternate views after much effort and money has been expended."

You guys are familiar with that statement?

MR. PENNEY: Yes.

MR. FITZGERALD: I believe in your answer, Mr. Penney, when asked about who these other individuals the minister should have sought out, you indicated possibly former deputy ministers of Natural Resources, former political –

MR. PENNEY: Former –

MR. FITZGERALD: – policy operatives in the government. I'm not putting words in your mouth, but what did you have in mind there?

MR. PENNEY: Well, I think the first ones that I would have suggested reaching out to would have been former CEOs of either Hydro or Nalcor. I guess it would all be Hydro, because it was Hydro then in the days, and then go to people – well, I would have gone to Mr. Vardy as a former chair of the Public Utilities Board and public servant. Then I would have gone to other senior public servants, former clerks of the House of Assembly and then, yes, deputy ministers of Resources and Finance.

MR. FITZGERALD: You know, when I read that comment what I get from that is that you're not saying there was individuals currently in government that were acting in bad faith.

MR. PENNEY: No.

MR. FITZGERALD: There's no evidence of that.

MR. PENNEY: No.

MR. FITZGERALD: You just thought they should seek out other individuals with other experience?

MR. PENNEY: Yeah. This – I mean, the – it's a small province.

MR. FITZGERALD: It is.

MR. PENNEY: The public service is small. The number of people with expertise, it's just a very small group, and what we need to do is, because of all these factors, we need to bring everybody into the tent.

MR. FITZGERALD: Okay.

Now, when you say here "there is a natural human tendency to reject alternate views," I don't like – the word bias has such a negative connotation, and I'm not going to use it, but isn't there just a natural human comfort level of seeking information for people that you may have dealt with in the past?

MR. PENNEY: Of course, yes. Yes.

MR. FITZGERALD: Though while there might be also, you know, a natural human tendency to reject alternate views, there may be a natural human tendency to say, well, I don't want to talk to Erin Best because I dealt with Andy Fitzgerald 20 years ago.

MR. PENNEY: Yes.

MR. FITZGERALD: It's just who you're comfortable with.

MR. PENNEY: Yes, and there's the – my wife is a psychologist, so a confirmation bias means something to me. Again, one of the things I'd like to say is that applies equally to us as critics of the project. That you have to watch that as well, that everything that you hear confirms with your view of the project.

MR. FITZGERALD: I guess that's the point I was trying to make here –

MR. PENNEY: Oh.

MR. FITZGERALD: – with this line of questioning. And finally, I guess – so there was no issue here with respect to – would you accept, I guess, that there was current professionals within the civil service that are skilled and educated and can provide advice to government?

MR. PENNEY: Of course.

MR. FITZGERALD: And those individuals would be briefed and up to date on what's going on with respect to the project?

MR. PENNEY: That is a question we don't know yet.

MR. FITZGERALD: You don't have any evidence that they weren't though, do you?

MR. PENNEY: Well, we do know that from the questioning of Mr. Williams – well, from counsel and from the Commissioner – that there's no evidence that the views of the public service were looked for prior to the signing of the term sheet.

MR. FITZGERALD: Okay, I'm not concerned about what Mr. Williams said. I'm concerned what you know when you wrote this article. You didn't have any evidence that the public service was somehow out of the loop here at the time of this article being provided.

MR. PENNEY: No, I mean – well, we had assumed – I had assumed that in fact they were in the loop and that what needed to have happened was for government to draw, not just on their expertise, but on the expertise of others who had been involved with Hydro or with government.

MR. FITZGERALD: Well, would it also be fair to say – and I'm – and – Mr. William's counsel for the former administration indicated that this project's been studied by a lot of different entities and individuals – there would've been significant cost as well of bringing in new people from the outside and bringing them up to speed.

MR. PENNEY: No. I think – well, for example, there is an Oversight Committee, now.

MR. FITZGERALD: Mm-hmm.

MR. PENNEY: They have brought in a lot of people without pay. I mean – now, I wouldn't suggest the government come to me particularly, but if they had – and I know that – but I'm confident that they'd come to Dave – that we would've said we will go with – we'd do that on a volunteer basis. We wouldn't accept any compensation to provide advice.

MR. FITZGERALD: Okay, so –

MR. PENNEY: And we wouldn't look for any compensation.

MR. FITZGERALD: As long as you agree with who they picked?

MR. PENNEY: No, no, it didn't matter to me.

MR. FITZGERALD: Okay, because it seems like you have someone in mind when you're talking about who should be picked.

MR. PENNEY: No, what I'm looking at are classes of people, not individuals – well, they would be individuals ultimately – but the class of people who would have some expertise to bring to this. So I suggest Dave, because Dave was a former chair of the Public Utilities Board; he'd bring something to it.

MR. FITZGERALD: Well, I'm not saying he wouldn't, but it's someone you are comfortable with.

MR. PENNEY: No, not – well, in fact some of the people I'm not particularly comfortable with were in these positions.

MR. FITZGERALD: You don't think there's a natural bias for you to want the people that you're comfortable with and you were working with years ago to review this?

MR. PENNEY: No, I mean – well, as I said to people, the 10 best years of my life were serving as a deputy minister under the Peckford administration. And we worked in teams, and we had teams with people of all kinds of different personalities and viewpoints. And we welcomed that, and the premier welcomed that. So I'm used to – that's the way that I prefer to work.

MR. FITZGERALD: In a team?

MR. PENNEY: In a team and a team with all kinds of different resources.

MR. FITZGERALD: When you were working in government, would you often have to interact with Crown agencies and other government departments in carrying out your duties?

MR. PENNEY: Yes. I was on a number of – well, I was involved in the patriation of the Constitution and part of the government team on that’s involved all different departments. I was a member of the negotiating team for the Atlantic Accord, and my colleague was a member of that, and on Hibernia. Yeah, wide variety of people.

MR. FITZGERALD: So when you were working on the Atlantic Accord – and – fair to say it was before my time; however, would you often speak to oil companies, stakeholders in the group? Would you speak to energy producers? Would it be uncharacteristic for you in your role to have those meetings and meet with those individuals?

MR. PENNEY: Not so much in the Atlantic Accord, but in the Hibernia – I helped negotiate the Hibernia statement of principles.

MR. FITZGERALD: Mm-hmm.

MR. PENNEY: And that was dealing with oil companies and the federal government. It was tripartite.

MR. FITZGERALD: So you’d be dealing with those directly?

MR. PENNEY: Yes.

MR. FITZGERALD: Would it be fair to say, in that role you would be a conduit between the oil company or the stakeholder and Cabinet and the premier?

MR. PENNEY: Yes, that’s right.

MR. FITZGERALD: You would bring information back and forth?

MR. PENNEY: Yes. The negotiating team was composed of public servants.

MR. FITZGERALD: Okay.

So that’s generally how it would work?

MR. PENNEY: Yes.

MR. FITZGERALD: And is that your experience too, Mr. Vardy?

MR. VARDY: That’s right.

MR. FITZGERALD: Those are all my questions, gentlemen. Thank you very much.

THE COMMISSIONER: Thank you.

Robert Thompson?

MR. T. WILLIAMS: Mr. Commissioner, if I could, I’d just like to correct the record, and I want to do it at my earliest opportunity.

The comments I referred to in the close of my thing – my submissions or cross-examination. The date of the blog was correct, July 4, 2016. The title of the blog was “IN PRAISE OF PUBLIC FLOGGINGS,” and the comments that I attributed to Mr. Vardy should be attributed to coalition member Mr. Sullivan. So I want to correct the record. And I will get a copy of that blog and give it to counsel for circulation.

UNIDENTIFIED FEMALE SPEAKER: Okay.

THE COMMISSIONER: Okay.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Okay.

All right, so – okay, so it wasn't Mr. – I guess what you’re telling me is it wasn't Mr. Vardy who was the one that made that quote.

MR. T. WILLIAMS: Mr. Sullivan.

THE COMMISSIONER: It was Mr. Sullivan.

Okay, all right, good, thank you for clarifying that.

Robert Thompson.

MR. COFFEY: Good afternoon, gentlemen. My name is Bernard Coffey.

THE COMMISSIONER: You might have to turn on your mic there.

MR. COFFEY: Oh, yes. Good point.

THE COMMISSIONER: Technology is getting to us here today.

MR. COFFEY: Yeah.

Good afternoon, gentlemen. My name is Bernard Coffey. I represent Robert Thompson. Of course, both of you know – you’ve known me for some time.

Just questions concerning the PUB and the dealings with the PUB, okay? You’ve been asked earlier today, or it’s been suggested to you that, you know, the exemptions from PUB review of hydroelectric projects go – you know, go back a long period of time. Is that correct, Mr. Vardy?

MR. VARDY: Right.

MR. COFFEY: Yeah.

And you told Mr. Fitzgerald that, I believe, you were appointed chair of the PUB in 1994?

MR. VARDY: That’s right.

MR. COFFEY: And you were there until 2001?

MR. VARDY: Right.

MR. COFFEY: Which means you would’ve been chair when the Electrical Power Control Act in 1994 came into force.

MR. VARDY: That’s right.

MR. COFFEY: Yes, yeah.

And just, you know, to review this for the Commissioner, the – I’m going to suggest to you, of course, being chair of the PUB at that time, you would’ve paid particular attention to what was going with the Electrical Power Control Act. That –

MR. VARDY: Yes, yes.

MR. COFFEY: Fair enough.

And the actual – because there had been an Electrical Power Control Act that pre-dated the 1994 one, wasn’t there? There was an earlier act and then there was a change.

MR. VARDY: That’s right.

MR. COFFEY: And, in fact, the change – the 1994 act was passed by the Legislature, I believe, on June 9, 1994, but didn’t come into force until January 1, 1996.

MR. VARDY: Mm-hmm.

MR. COFFEY: Is that ...?

MR. VARDY: I don’t remember the specifics of that.

MR. COFFEY: You don’t remember the specifics.

MR. VARDY: (Inaudible.)

MR. COFFEY: And I – you know, I wouldn’t expect you to. Can you tell the Commissioner whether there was any substantial change at the PUB in the way it operated at that time because of the new act? Do you recall?

MR. VARDY: I don’t think there was. I don’t think that we – it made a huge difference at that time.

MR. COFFEY: One of the changes – and, again, I appreciate, Mr. Vardy – or Dr. Vardy – that you’re not a lawyer. But one of the changes was that – related to – between the former act and the 1994 act and it came into force during your tenure there – was that the PUB was given the authority and responsibility to ensure adequate planning occurs for the future production, transmission and distribution of power in the province. And that was not in the former act.

MR. VARDY: That’s right.

MR. COFFEY: So that was a new –

MR. VARDY: Yes, yes.

MR. COFFEY: So that would have been, I suppose, well, more than a year into your tenure – and – the act, that new provision came into force.

MR. VARDY: Uh-huh.

MR. COFFEY: And it was in force for the next five years while you were there, more or less. Correct?

MR. VARDY: Yes.

MR. COFFEY: And was there any change, you know – because that was a specific responsibility given to the PUB at the time in legislation. Was there any change in the way the PUB operated?

MR. VARDY: I can't remember that there was.

MR. COFFEY: Because – and, again, I'm going to suggest, and I always stand to be corrected by counsel who will find something to the contrary – but that, in fact, is section 6 of the current act. And, in fact, that is the only provision that hasn't changed dealing with the authority and responsibility of the PUB in relation to planning for power for the province. That's still the case. So to your knowledge during your time there was no real change?

MR. VARDY: I can't recall any, no.

MR. COFFEY: And after you finished your time as the chair of the PUB you, I believe, went to the Channing fellowship?

MR. VARDY: Yeah.

MR. COFFEY: And you described for Mr. Fitzgerald what you've done since then, but you have continued to be engaged in public – matters of public interest.

MR. VARDY: That's true.

MR. COFFEY: Now, to go back to the exemptions, there are – the provision that is right now that provides for the Cabinet or government – and in this case, Cabinet – to exempt projects, hydroelectric projects from review by the PUB

is contained in what is now section 5.2 of the EPCA, 1994, okay? I'm going to tell you that that's the case, okay?

MR. VARDY: Yes.

MR. COFFEY: Now, that particular provision came into force December 14, 1999. That's when it was assented to, okay, the amendment to the act. Now, you were, at that time, the chair of the PUB.

MR. VARDY: That's right.

MR. COFFEY: So that provision, providing for that, came into force during your tenure as chair.

MR. VARDY: Mmm.

MR. COFFEY: Did you make any – did you raise any concerns about that?

MR. VARDY: I don't recall doing so.

MR. COFFEY: While you were chair – and, again, this is – and I apologize to the Commission. I – you know, I've not identified this as an exhibit, but this is available online. It's just a listing of the – from the consolidated statutes and regulations of all the regulations currently in force under the *Electrical Power Control Act, 1994*.

And, Mr. Vardy – or Dr. Vardy – I'm going to suggest to you that while you were chair that on October 31, 2000, regulation 9500 – or 95/00 – which is the Corner Brook Pulp and Paper exemption order, and 96/00, the *Newfoundland and Labrador Hydro-Corner Brook Pulp and Paper Limited Exemption Order*, were filed on October 31, 2000. Do you remember that when you were chair?

MR. VARDY: I remember we had a hearing with dealing with the Corner Brook Pulp and Paper mill. Yes, I do.

MR. COFFEY: Okay, but there's a – there was an exemption order filed that exempted –

MR. VARDY: Mm-hmm.

MR. COFFEY: – that particular –

MR. VARDY: Mmm.

MR. COFFEY: – project from review by the PUB.

MR. VARDY: Mm-hmm.

MR. COFFEY: So did you voice any concern at that time about the exemption?

MR. VARDY: I don't think I did.

UNIDENTIFIED MALE SPEAKER: Sorry, I – I just can't hear –

MR. COFFEY: Oh, what –

UNIDENTIFIED MALE SPEAKER: – the answer, I'm sorry.

MR. COFFEY: He said he did not know, no.

Going on, then, to – and that is October 31, 2000. And for those who are keeping – who keeps track of these sorts of things, the premier at that point, as best I can tell, was Beaton Tulk, who was – became premier October 16, 2000.

So, to address the point that although the provision to change the exemption or to provide for an exemption under section 5.2 was passed by the Tobin government, the first actual exemption that I can find occurred under Beaton Tulk.

Does that accord with your memory of it?

MR. VARDY: No. No recollection of it.

MR. COFFEY: No, you don't remember.

And, subsequently, in the same year, on December 14, 2000, Regulation 91/00, which is the *Granite Canal Hydroelectric Project Exemption Order*, that was filed, as I said, December 14, 2000. Do you remember the Granite Canal Hydroelectric Project being exempted from the PUB?

MR. VARDY: Don't remember it.

MR. COFFEY: And on the same day, December 14, 2000, Regulation 92/00, which is

the *Labrador Hydro Project Exemption Order*. Do you remember that?

MR. VARDY: I don't really.

MR. COFFEY: The fact that as chair of the PUB at the time you don't remember the –

MR. VARDY: I don't remember.

MR. COFFEY: Well, it would've been the Beaton Tulk government exempting that –

MR. VARDY: I don't remember that.

MR. COFFEY: Were you aware, as chair of the PUB at the time, that the *Labrador Hydro Project Exemption Order* – I wanna get this right – define the Labrador Hydro Project in a certain way, but it included “the design and construction of some or all of (a) generation and related facilities at Churchill Falls, Labrador; (b) generation and related facilities at Gull Island, Labrador; (c) generation and related facilities at Muskrat Falls, Labrador;” and dams, dikes and so on relating to the generation of power at the sites I just read and “(e) the transmission facilities necessary to deliver power generated at the sites referred to in paragraphs (a), (b) and (c) to the island portion of the province and the border of the Province of Quebec and Labrador.”

So, as chair of the PUB in late 2000, you know, would you have been aware that there had been an exemption order passed and brought into effect that not only dealt with Gull Island but actually dealt with the idea of Muskrat Falls and the idea of bringing power from either of those sites to the Island?

MR. VARDY: Quite honestly, I don't remember.

MR. COFFEY: And in relation to that, do you recall whether – well, if you don't recall it then you probably don't recall expressing any concern about it – about the fact that that was going on.

MR. VARDY: No recollection of it, no.

MR. COFFEY: Would you agree that bringing our power generator that either Gull Island or

Muskrat Falls or Churchill Falls, for that matter, to the Island portion of the province, that that would involve domestic consumption?

MR. VARDY: I don't remember.

MR. COFFEY: No, but would that involve domestic consumption? To bring a line from Labrador to –

MR. VARDY: Newfoundland. To the Island.

MR. COFFEY: – to Newfoundland.

MR. VARDY: To the Island.

MR. COFFEY: That would involve domestic –

MR. VARDY: (Inaudible), yes.

MR. COFFEY: They're the questions I have.

THE COMMISSIONER: Thank you.

It's 3:30, so we'll take our afternoon break for 10 minutes and then we'll call upon Consumer Advocate next.

CLERK: All rise.

Recess

CLERK: All rise.

THE COMMISSIONER: All right. Consumer Advocate?

We haven't got Mr. Learmonth, sorry.

MR. HOGAN: Good afternoon, my name is John Hogan; I'm counsel for the Consumer Advocate.

I'm just going to try and touch on a couple of topics that haven't been raised with you gentlemen yet, but first, Mr. Coffey brought up with you, Mr. Vardy, the Electrical Power Control Act. So you have familiarity with this?

MR. VARDY: Yes.

MR. HOGAN: I'm just going to read a section in to the record, section 3(b) (iii). It says: "All sources and facilities for the production,

transmission and distribution of power in the province should be managed and operated in a manner" – this is number three – "that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service"

I just wanna ask you about that phrase lowest possible cost. Are you familiar with that section?

MR. VARDY: Yep. Yes.

MR. HOGAN: 'Cause we've been speaking –

MR. VARDY: Mm-hmm.

MR. HOGAN: – all the time about least-cost option.

MR. VARDY: Mm-hmm.

MR. HOGAN: Is there a difference between least-cost option and lowest possible cost?

MR. VARDY: If there is, I'm not aware of it.

MR. HOGAN: Okay.

Theoretically, could something be the least-cost option but not necessarily the lowest possible cost?

MR. VARDY: That would be very – a very subtle distinction that I – that escapes me at the moment.

MR. HOGAN: Okay. No problem.

The water management issue, which I'm sure you two are aware of, hasn't been broached with you yet today. Are you familiar with this issue?

MR. VARDY: Yes.

MR. HOGAN: Can you just maybe give me in your opinion – in your words – what that issue is?

MR. VARDY: Why don't you do that one? Okay.

Water – as I see the water management issue, it comes down to the interpretation of the power contract and the availability of water to – at the

time when it's needed – at Muskrat Falls. And there was a Water Management Agreement. The Water Management Agreement does not involve Quebec, and Quebec has – certainly for the first 40 years – has virtually complete control over the flow of water on the Churchill River, with the exception of the 300 megawatts of recall power and the 225 megawatts of the Twin River – the Twin Falls power.

All the power, as I understand it, first 40 years, is reserved for the use of Hydro-Québec. Whether that applies after the first 40 years is a question that's now before the courts, and there was a decision of a Quebec superior court which basically said that the powers that Hydro-Québec – the rights that Hydro-Québec under – had under the 1969 power contract continue for the last 25 years as well.

And as my – as I understand it, if that's the case – if the Supreme Court of Canada upholds that ruling, then it will be extremely difficult for us to manage the Churchill River with the co-operation of Quebec unless they do it of their own free will, without the – there's no – my understanding is that the Water Management Agreement is not binding on Quebec.

MR. HOGAN: So when you – the Water Management Agreement, that's the order of the PUB.

MR. VARDY: Order of the PUB.

MR. HOGAN: So your understanding of that is it's not binding on Quebec?

MR. VARDY: Not binding on Quebec. That's right.

MR. HOGAN: Okay.

So what is the – just maybe explain how that order works, then, and what's the point of it if it's not binding on one of the parties.

MR. VARDY: Well, it's binding on CF(L)Co, but CF(L)Co doesn't have the final authority.

So I've always been mystified by the – what the purpose of that particular Water Management Agreement, 'cause it doesn't seem to me that it

includes the party that's most necessary to have at the table.

MR. HOGAN: I'll put to you – I mean, we've been talking about experts, who's an expert. Do you agree you're an expert, and you should pick this – the Commissioner should pick this expert over that expert with regards to costing, natural gas, wind, et cetera? There's no experts, as far as I know, that have been put forward with regards to the water management issue. So is this –

MR. VARDY: I think it's a legal question, right now –

MR. HOGAN: It's a legal question –

MR. VARDY: – it's a legal question though, so I don't think there's much – the only – the issue here really relates to the risk that was assumed when we undertook this project without having some measure – some way of resolving that risk.

MR. HOGAN: Is – in your opinion, is that legal question still unresolved?

MR. VARDY: I think so.

MR. HOGAN: Okay.

This is blindingly obvious, I think, but obviously that water management issue wouldn't have been an issue for the Isolated Island Option?

MR. VARDY: That's right.

MR. HOGAN: Okay.

We talked earlier, as well, and I've asked people about the reference that Premier Peckford made to the court for the – under the Upper Churchill water reversion act. Mr. Penney, did you have any participation in that during your time in his administration?

MR. PENNEY: I was deputy minister of Justice at the time, but I didn't lead the effort. The late Justice Keith Mercer led that effort. He chaired a task force.

MR. HOGAN: And do you have – so you're familiar with it?

MR. PENNEY: Yes.

MR. HOGAN: In your opinion, is it something that could have been done under one of these administrations with regards to the water management issue, a reference?

MR. PENNEY: I don't – well, the problem is the power contract is interpreted by the courts of Quebec. It's a contract made in Quebec. So I don't know if you could refer that kind of issue under the – the reversion act was referred to our Court of Appeal. But ultimately, as you know, it was described as colourable because it affected the power contract, which was made in Quebec.

So I just – I can't see that, since it's interpreted in Quebec law, that there would be any point of a reference to our own court. So again, the problem with that, of course, is by going by way of reference, you really shorten the court process. If you have to go and look for – I'm not sure what the equivalent would be in Quebec, but – declaratory judgment, then you're talking maybe a decade or more.

MR. HOGAN: Okay. Thank you.

We've also heard some evidence that – about elasticity and the lack of elasticity studies in relation to the Muskrat Falls Project. Do you have any comment on that, Mr. Vardy, and the fact that there's no evidence about whether ratepayers or how many ratepayers would leave the electrical system once prices start to rise?

MR. VARDY: I think that's a very central issue in terms of the load growth and the ability to recover power and to recover revenue. Because what you essentially got there is a power purchase agreement, a take-or-pay power purchase agreement, between Nalcor and its wholly owned subsidiary, Newfoundland and Labrador Hydro. And it's intended that the – that Newfoundland and Labrador Hydro should be able to recover the costs, the annual costs, of the assets – of servicing those assets, which would begin at – based on Nalcor's information which they've supplied to me in response to an ATTIPA request – \$808 million a year beginning in 2021. So we have – and that's in addition to the current – the amount that's being spent to maintain the current electrical power system. So it's an additional \$808 million.

The question as to whether we're going to be able to recover that money depends upon the – to a large extent about demand. Is there going to be sufficient demand as population is declining, and as demand is elastic – relatively elastic, because it doesn't have to be extremely elastic. Because when prices go up, as they inevitably will – and in fact even under DG2 assumptions, you're going to get an increase of 50 per cent – 50 to 60 per cent in rates – so there would have been a demand pushback. There would have been some collapsing of demand. So there would have been an elasticity factor.

So I think that's a very big issue when you're thinking about recovering that magnitude from a very small population. When at the beginning, even under the best assumption, only 40 per cent – only 40 per cent of the power from Muskrat Falls was actually going to be used. And now, under later projections, even less than that.

MR. HOGAN: You do think it's an issue that wasn't considered, then?

MR. VARDY: I think it's an issue that wasn't – I, you know – we heard some evidence on this, and my sense of the – what the three experts in – three Nalcor officials were saying in Goose Bay, was that they believed that the demand was fairly inelastic and that the level of revenue would not be adversely affected by higher rates. That's what I heard.

MR. HOGAN: Yeah. You – sorry – you've given evidence – I think you've talked to numerous people throughout your time involved in this project. Newfoundland Power is the largest distributor of electricity on the Island – I think about over a quarter of a million ratepayers. Did you have any occasion to speak to anyone from Newfoundland Power to get their views on the Muskrat Falls Project? Did you take – did you ever speak to anyone at Newfoundland Power about it?

MR. VARDY: I ran into people socially, and we had some discussions about it off the record, yes.

MR. HOGAN: Off the record?

MR. VARDY: Yeah.

MR. HOGAN: Okay, well maybe you can answer this – do you have any concern, or do you take any issues with the fact that Newfoundland Power didn't take a position with regards to the Muskrat Falls Project, even though it was their ratepayers that would ultimately be paying the cost of the project?

MR. VARDY: I think that's a big concern. I think it's very important that – I thought Newfoundland Power should have been at the table. And in terms of what Newfoundland Power's position would have been, the only thing I can refer to is – and it's not, as far as I know – entered into evidence in this proceeding, but it's a position paper that was presented to the government when the government was doing its consultation on the energy plan.

And I think it was 2006-2007, and they basically – the position that was enunciated from Newfoundland Power at that time – I don't know whether it's changed – was in favour of incremental approach: small, incremental capacity-building as opposed to a megaproject. So, that's the only statement that I'm aware – on the record – where Newfoundland Power has taken – staked a position, but it wasn't directly in reference to Muskrat Falls, to be fair to everybody.

MR. HOGAN: Okay.

And, should they in your opinion have participated more or –

MR. VARDY: I think they should have. We had encouraged them to.

MR. HOGAN: You personally, or do you mean your group?

MR. VARDY: When I say – I don't think we made any official –

MR. HOGAN: Okay.

MR. VARDY: – representations.

MR. HOGAN: Okay.

Just a couple more quick topics. One of the very first things Ms. O'Brien was asking you about this morning was the Labrador-Island Link.

MR. VARDY: Mm-hmm.

MR. HOGAN: You might need to do – if you can – a little bit of background description about the equity stake that Emera has in the Labrador-Island Link. Can you do that really quick before I ask a question?

MR. VARDY: Yeah. Yeah.

MR. HOGAN: Okay, go ahead.

MR. VARDY: Okay, the original deal, of course, was 20 per cent of the investment for 20 per cent of the power. And, the –

MR. HOGAN: That would be 20 per cent of the – would they have 20 per cent equity in the Labrador-Island Link?

MR. VARDY: No, that's 20 per cent – that's basically 20 per cent of – 20 per cent of the total investment as it was in the term sheet was a commitment, was a number, and that amount was going to be invested in the Maritime Link. It was gonna be their contribution. Their 20 per cent was going to be embedded in the Maritime Link and then the separate question, which you're getting at, is the LIL, which is their investment, the LIL.

MR. HOGAN: Yes.

MR. VARDY: But their investment in the LIL was going to be – as I recall it, it was going to be 29 per cent. It's now gone to 59 per cent. As I understand it they will get a rate of return of equity which is commensurate with what Newfoundland Power is getting from the Public Utilities Board.

MR. HOGAN: That's my understanding as well.

I'm just going to back up: how did they get from 29 to 59 per cent?

MR. VARDY: Well, I never really – I tried to get an understanding of that and its – some of it relates to the changes in equity, switches between equity and debt that occurred when additional federal government equity was injected to the tune of – what was it – it went from, it went to \$2.9 billion additional federal

equity. So that adjusted some of the numbers but –

MR. PENNEY: Debt.

MR. VARDY: – some of the debt, this is the debt – not the equity, the debt, and that resulted in some adjustments.

But I've tried to trace to see how it got from 29 per cent to 59, and I filed requests for information, and at the end of the day, either I don't understand it or it wasn't explained properly.

MR. HOGAN: Now you said, before I cut you off, that they get the same rate of return as Newfoundland Power now, and as well as Newfoundland Hydro, I understand? Is that right?

MR. VARDY: That's right. It's 9.5 per cent.

MR. HOGAN: Right. So what is the effect of Emera's equity in the Labrador-Island Link from the perspective of the ratepayer?

MR. VARDY: Well, of course, equity is more expensive than debt, as I mentioned earlier.

MR. HOGAN: You did, yeah.

MR. VARDY: You've got this paradigm where dividends and rate of return on equity is cost, in a public utility context, so it's – the issue there is you've got this money that's been invested, so it's going – as I understand, there's no loss of control with – Nalcor still has control of the Labrador Interconnected Link, but there's a large return to Emera. Emera's making a lot of money. It got a good return on their investment in this and, to a large extent, it involves privatization of our transmission line. So there's policy issues there associated with that, which was sort of embedded in the whole transaction.

So out of all this, as I understand it, Emera will end up with an 8.5 – a 9.5 rate of return on their equity, and that's after tax – that's an after-tax return. And I have a sense that they're entitled to that – that that's more like a preference share dividend than it is common share dividend, that – what I'm essentially saying is, I believe – but this is – my – I've tried to read the legal

agreements on this, and they're not clear to me – but my understanding is that they're not on the same footing as the province's equity; that we are sort of in the back of the bus, as it were, and that Emera's return is more assured than ours is.

MR. HOGAN: For any issue for the PUB about rates, will Emera participate the same way?

MR. VARDY: I have asked Nalcor whether Emera will be – whether the LIL will be regulated, and I'm told no. Emera will not be – the LIL assets will not be regulated and – even though it's a reference, so it's purely a reference in agreement. So that means that the LIL is not really under the oversight of the Public Utilities Board.

MR. HOGAN: Okay. So does the provincial government or Nalcor have to deal with Emera going forward in terms of setting rates for the ratepayers or anything of that nature?

MR. VARDY: Well, yes. The Public Utilities Board has to take those costs – the costs of transmission from the LIL – from the companies, and that has to be factored into the rates that consumers in Newfoundland will pay, so that, essentially, it means that the consumers of Newfoundland and Labrador are obliged to pay this rate of return.

MR. HOGAN: So you heard a lot – you guys have been here for a lot of the – maybe all of the Commission so far. You heard a lot of the talk and questions about trying to get around Quebec. It might not be for the same reasons now, but is it fair to say that we did get around Quebec, but now we have to deal with another jurisdiction, being Nova Scotia.

MR. VARDY: That's right, we do. And they didn't share in the risk of our investment, we shared in the risk of their investment because, initially, it was \$1.2 billion for the Maritime Link, I think it's gone to 1.6 or 1.7 right now. And to my knowledge, there are no cost overruns that have been recognized here, so – but if there were, we would've had to share because there was a complex cost-sharing formula. But, no, Emera did not have to share in our cost overruns.

MR. HOGAN: Okay. Sounds like you followed the UARB hearings fairly closely. Is that fair to say?

MR. VARDY: We did indeed.

MR. HOGAN: Okay. Well, your opinion is that Emera and Nova Scotians got a good deal on this?

MR. VARDY: I think Nova Scotians done very well.

MR. HOGAN: Very well, okay.

Do you have any other comments to add? You were asked about the UARB and you compared it a few times through different counsel about the difference between the UARB and the PUB. Do you have anything else to add, as about –

MR. VARDY: One –

MR. HOGAN: I mean, I can't remember the words you used, but you sounded like you were very – spoke glowingly of the UARB process.

MR. VARDY: I thought it was a very good model. I thought the UARB model – and, of course, you have to realize that the – that Emera is a privately owned utility. And so it's completely at arm's-length from government, which is not true of any Crown corporation, whether it's Nalcor or BC Hydro or Manitoba Hydro.

So I think that when the utility is at arm's-length from government and it's investor owned, it becomes easier for a public utilities board to regulate them because there's less likelihood of government involvement.

MR. HOGAN: This is the last question I have.

Are you aware that the Public Utilities Board – there's no certainty as to whether Holyrood will be closed – are you aware of that, if I put that to you?

MR. VARDY: Yes, I understand that.

MR. HOGAN: Mr. Penney, do you have something to say?

MR. PENNEY: Yeah, after Dark NL the Public Utilities Board has had hearings, and we argued that they should not be restricted just to what's happening now, but there was a second phase, and they agreed to have a second phase, which is basically post-Muskrat Falls reliability.

They've had a series of reports from their consultants, Liberty. The last one was about a month or so ago I guess, but, yes, we're both concerned that the Public Utilities Board hasn't dealt with that issue on a timely basis.

MR. HOGAN: What's your concern?

MR. PENNEY: Well, we need to know – we should know before Muskrat Falls comes into service the answer to that question as to whether or not we require a major investment in Holyrood. I guess one of our concerns in this whole project is we always felt that we needed to have backup power, and that that was gonna cost a lot of money, and perhaps we were better off waiting until 2041 and bridging that gap.

MR. HOGAN: So it's possible that, you know, we were building Muskrat because we needed to replace Holyrood, but now we may build Muskrat and keep Holyrood?

MR. PENNEY: That's what I think.

MR. HOGAN: That's a possibility.

MR. PENNEY: Yes.

MR. HOGAN: That's what you think is going to happen?

MR. PENNEY: Yeah, it may be in a different form. I mean, they could – they may convert 'cause –

MR. HOGAN: Sure.

MR. PENNEY: – it'll have to be – it'll be standby, so you wouldn't have gas. You'd probably have a – sorry, you would have probably natural gas power generators rather than bunker C or whatever they're using there now.

MR. HOGAN: That's all my questions.

Thank you.

MS. E. BEST: Can I put an objection on the record?

THE COMMISSIONER: Yes. Can you turn your mic off, Mr. Hogan, if you would, please?

Go ahead, Ms. Best.

MS. E. BEST: And I don't expect that this will change the way that evidence has been entered, but I just wanted to say for the record that we've had a lot of hearsay and I'm not sure – and of course, you know, the people who are testifying are under oath – I'm not sure of the usefulness of some of the evidence that we've heard today and yesterday with respect to people essentially saying what – people who are not qualified as experts – giving opinions.

He was just – Mr. Penney was just asked to give an opinion, and as well giving evidence that is simply something that they've heard someone else say, that they're not even sure about.

THE COMMISSIONER: Okay. Did you want to respond to that?

MR. HOGAN: I think that's a general question. It's not for me.

THE COMMISSIONER: Okay, thank you.

As I said before, it's, you know, it's a difficult row to hoe here on this one because if I was to only hear from experts, I'm not sure I'm gonna get the whole story told. And so it's gonna be up to me to decide what weight I'm going to be putting to the evidence that I hear. There'd be some that I give very little weight to because it is so much hearsay, but there'll be others that I might decide I'm gonna give weight to.

And, obviously, every counsel here will have the opportunity to, in summations, to talk about the evidence and to tell me what I – what they think I should be considering, what I shouldn't be considering, and I'll be listening very closely to that.

But I understand your point and, you know, as I said the other day, I don't know who it was in response to, but, you know, this is a situation

where it is a public inquiry and the – normally, while we try to follow the rules of evidence as we would use in court as much as we can, it's not as strictly applied in a public inquiry and I'm trying to walk the fine line here.

MS. E. BEST: Thank you. And I certainly do appreciate that, and I think one of the reasons why I mentioned it is because this is playing out in the media in real time and perhaps some of these things are being recorded as being factual, when in actuality they are hearsay statements.

THE COMMISSIONER: Right.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Another – one of the other things about a public inquiry is that it is public and I don't profess to have any control whatsoever over the press or anybody else for that matter. So I have to assume that reporting is being done appropriately and I really don't have any real comment to make about that right at this stage.

All right, any redirect?

Ms. O'Brien.

MS. O'BRIEN: Thank you.

I believe Mr. Budden would have an opportunity first.

THE COMMISSIONER: Oh, I'm sorry, Mr. Budden. I'm sorry. I keep forgetting that you are last. I got you marked in red, last, and for some reason I can't – I never got to you.

UNIDENTIFIED MALE SPEAKER:
(Inaudible) quiet.

THE COMMISSIONER: Yes. Well, that may be subject to comment by others but, anyway, go ahead, Mr. Budden.

MR. BUDDEN: Thank you.

I just have a few questions, Gentlemen. It's been a long day for you. Perhaps we'll take it one at a time.

Mr. Penney, is there anything in your evidence today that, on reflection, you'd like to clarify or expand on? Anything that didn't come out quite right, on reflection?

MR. PENNEY: No.

MR. BUDDEN: Okay. Just a couple of more questions. How old are you, Mr. Penney?

MR. PENNEY: Seventy-one.

MR. BUDDEN: What are your family circumstances – your family responsibilities?

MR. PENNEY: Well, I'm a proud grandfather.

MR. BUDDEN: Okay.

MR. PENNEY: If that's what you're getting at. Yes. And I'm missing one of my obligations, which is to walk my daughter's dog every morning and afternoon, so –

MR. BUDDEN: What time commitment has your Muskrat Falls advocacy demanded of you over the last several years, particularly the last several months since this Inquiry has been called?

MR. PENNEY: My time commitment has been less than Dave's, but, yes, we've – I've spent a tremendous amount of time and Dave has spent even more.

MR. BUDDEN: What remuneration have you received for your advocacy?

MR. PENNEY: No remuneration and, in fact, I've contributed to the cause financially.

MR. BUDDEN: Okay. How have you contributed to the cause financially?

MR. PENNEY: I contributed to the visit of Dr. Bernander, organized by Des Sullivan, and we've established a small fund for research purposes and I've contributed to that fund.

MR. BUDDEN: Why have you done this? What has been your motivation in this Muskrat Falls advocacy?

MR. PENNEY: Well, I'm generally interested in public policy and I have been for a long time, and I was very concerned that this project was going to be really bad for the province.

MR. BUDDEN: Okay.

Mr. Vardy – thank you – Mr. Vardy, I'll have very similar questions for you and I'll start as I started with Mr. Penney.

Has there been any part of your evidence today which, on reflection, you'd like to clarify or expand on?

MR. VARDY: There is one issue I would like to raise and that is just, I talked a little bit about the nature of dividends, the nature of return on equity in a public utilities context.

One thing I wanted to say is that when a board, a public utilities board, sets a rate of return on equity – let's say it's 8.4 per cent or 9.5 per cent or whatever – there's no guarantee that that will be achieved. I mean it really depends on the risk that the business is taking, and that's true for any public utility across Canada or in North America or anywhere else for that matter that ...

So when we talk about an 8.4 per cent rate of return on equity, it's an allowed rate of return. And the – and usually there's a band established, plus or minus 25 or 50 points, by most – in most jurisdictions. And then anything – if they earn too much outside that band, there's a requirement to lower rates.

But the point I want to make is that within the context of the Muskrat Falls Project, the 8.4 per cent for the generation component on the equity and – it's basically – that will be recovered only if there is enough demand. There has to be demand. You can't get blood out of a turnip and Newfoundland is a big turnip.

And it – so you can't – if you can't get the demand – if you don't have the demand, you're not going to be able to recover the cost. There's no magic that when somebody says, in a power purchase agreement, that it's going to be 8.4 per cent, that magically that's going to happen. Even when you change the law and turn the utility into an unregulated monopoly, if it's a monopoly you still can't necessarily guarantee that 8.4 per cent.

And I think a lot of discussion that takes place assumes that an 8.4 per cent is guaranteed. It's not guaranteed. There are no guarantees other than death and taxes.

MR. BUDDEN: You said earlier today you're 78 years old. I'll ask you –

MR. VARDY: A young 78.

MR. BUDDEN: Yes, a young 78.

MR. VARDY: And a feisty 78.

MR. BUDDEN: Yes, we've seen. What are your family circumstances, your family responsibilities?

MR. VARDY: I have two children. I have one adult that's still living with me with a disability. And I'm married, I have two grandchildren. And this – and the time that I spend here is time that I would like to be spending with my grandchildren, but I'll gladly do it if it's for their benefit.

I do this with the knowledge that I won't benefit from anything I do because I won't be around in all likelihood, unless I live a lot more – longer than most of my relatives. And so I'm doing this really for your children and grandchildren and my grandchildren and children.

MR. BUDDEN: Thank you. Those are my questions.

THE COMMISSIONER: All right. Thank you.

Redirect.

MS. O'BRIEN: Thank you, Commissioner.

I have no further questions for the witnesses on redirect. I do have two points of clarification though I'd like to raise; the first comes out of some questioning from Ms. Erin Best. And one of the things that co-counsel and I – Mr. Learmonth and I – are doing when we're listening to other counsel cross-examine is we're looking for the issues that are obviously of interest to their clients. And, as well, we're trying to figure out, have we discovered all the relevant documentation.

And in Ms. Best's questioning, she raised that – put a question to the witnesses whether they were aware that Premier Dunderdale had done a fair bit of work with some of the oil companies to investigate was there a natural gas industry. And I just want to bring to her attention, but also to other counsel here, that we've yet to find those documents. So if there's documents that are supportive of Premier Dunderdale's efforts, we haven't found them yet.

That does not mean we don't have them because, as we've all heard now, we have over 3 million documents now, and so the assistance of counsel raising issues like that is of great help. And so we may get – either from – further information from Ms. Best, but I'm raising it more because we have government lawyers here and such who may help us ferret out that information so we can get it before you.

The other point of clarification that I'd like to raise is with respect to how witnesses are called here at the Inquiry. Mr. Learmonth and I – it's our – part of – it is our role to decide what witnesses are going to be called in the public hearings. And we do that based on the terms of reference and based on your interpretation of the terms of reference that you've given us and has been published.

We also do consult regularly with the other counsel with standing. It is not uncommon for us to speak to, say – you know, me to speak to Dan Simmons with Nalcor, to talk to him about the information that I'm looking to present and to consult with him as to who might be the best person at Nalcor, for example, to present that.

So that kind of work goes on. We also take suggestions from counsel as to have you considered calling this witness, have you considered calling that witness, et cetera. We take all those suggestions very seriously. It has – on many occasion it has led to further interviews. In some cases, we – it has led to, you know, us putting additional witnesses on the list.

No matter what the case is, we always articulate with counsel what our reasoning is for why we are not calling them, and the rules anticipate this. This is what are set out in our rules of procedure and there's a further procedure there if they don't agree with our final determination.

So given that, as Ms. Best just pointed out, this is going out, of course, every day very publicly, I wanted to clarify those points for people at home, as well as people here in the hearing room.

Thank you.

THE COMMISSIONER: All right.

All right, thank you, Mr. Vardy and Mr. Penney, you can step down.

Mr. Learmonth, I understand you're calling the next witness. Or – it's now – I've got quarter after. Do you want to start now or – for fifteen minutes?

MR. LEARMONTH: If we're only going for 15 minutes, there's no point. If –

THE COMMISSIONER: Are we on schedule in the sense that tomorrow we have two witnesses, right?

MR. LEARMONTH: We have two witnesses for tomorrow.

THE COMMISSIONER: So ...

MR. LEARMONTH: I can start if you want to go a little later. That's fine, it's up to you.

THE COMMISSIONER: Is Ms. Benefiel here?

MR. LEARMONTH: Well, we have to – we have another meeting later on this afternoon, so on second thought, it might be better off to adjourn.

THE COMMISSIONER: So, I apologize to Ms. Benefiel if she expected to be called today which has just gone – we're doing it as best we can here. But I think we'll wait until tomorrow and start at 9:30 tomorrow.

MR. LEARMONTH: That's fine.

THE COMMISSIONER: And so Ms. Benefiel will be first tomorrow morning?

MR. LEARMONTH: That's right.

THE COMMISSIONER: Okay. So we'll come back tomorrow morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is now concluded for the day.