



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 17

Commissioner: Honourable Justice Richard LeBlanc

Monday

15 October 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now opened.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

All right. Ms. O'Brien.

MS. O'BRIEN: Good morning, Commissioner.

Before we begin today, I'm going to ask to enter
the following exhibits: Exhibits P-00379, P-
00382 to P-00412, P-00428 to P-00433, P-00511
to P-00515, P-00521 and P-00524.

THE COMMISSIONER: Okay.

MS. O'BRIEN: Commissioner, today's
witnesses are appearing as a panel. They are all
former board members of the board of Nalcor
Energy. I'll introduce them going from my left
to right, and then I'll ask Madam Clerk to swear
or affirm them.

So, starting on my furthest left will be Tom
Clift, then Ken Marshall, Mr. Gerry Shortall –
sorry, Mr. Terry Styles, and then Mr. Gerry
Shortall.

And I'll now ask Madam Clerk to affirm or
swear the witnesses.

THE COMMISSIONER: Okay. All right. So
I'll ask Mr. Clift to stand first, please. And, Sir,
do you wish to be sworn or affirmed?

MR. CLIFT: Sworn.

THE COMMISSIONER: Sworn, okay.

CLERK: Place your right hand on the Bible,
please.

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. CLIFT: I do.

CLERK: Please state your name?

MR. CLIFT: Tom Clift.

CLERK: Thank you.

THE COMMISSIONER: All right. Then Mr.
Marshall, if you could stand, please. And what
do you wish to do: sworn or affirmed?

MR. K. MARSHALL: Sworn.

THE COMMISSIONER: Yep.

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. K. MARSHALL: I do.

CLERK: Please state your name for the record.

MR. K. MARSHALL: Ken Marshall.

CLERK: Thank you.

THE COMMISSIONER: All right, Mr. Styles.
And do you wish to be sworn or affirmed?

MR. STYLES: Affirmed.

THE COMMISSIONER: Affirmed.

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

MR. STYLES: I affirm.

THE COMMISSIONER: Okay.

CLERK: Could you state your name for the
record, please?

MR. STYLES: Terry Styles.

THE COMMISSIONER: And Mr. Shortall.
Do you wish to be sworn or affirmed?

MR. SHORTALL: Affirmed, please.

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

MR. SHORTALL: I solemnly affirm.

CLERK: State your name for the record.

MR. SHORTALL: Gerry Shortall.

CLERK: Thank you.

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

MS. O'BRIEN: Thank you.

I'm going to begin with asking each of the former board members to start with an introduction as to their backgrounds, so their education and history. And I'm gonna go in the order in which they were appointed to the, either the Newfoundland and Labrador Hydro board or the Nalcor board, so that will be beginning with Mr. Ken Marshall.

MR. K. MARSHALL: Thank you.

My background: I was born and raised here in St. John's. Went to school at Memorial University. Did a Bachelor of Commerce, honours. Then went to Dalhousie and did a masters in business administration and finance. Returned here and taught at the university for a couple of years before moving to Montreal with the Institute of Canadian Bankers, and then returned in 1990 to work in the cable television sector.

In terms of how I – I don't know how much broader you want as a background. I think you'll maybe get into that a little later, but in terms of how I came on the board of –

MS. O'BRIEN: I'll come to, in a few minutes, to how –

MR. K. MARSHALL: Okay.

MS. O'BRIEN: – you came on the board, but if you can just give a little bit – so you came, you were working in cable television, you just – can

you just tell us what your position was – what you were doing?

MR. K. MARSHALL: I had a number of positions.

First, I came back to oversee – the company had acquired a number of companies throughout the province and I came to basically run the business side – the operations side. Gradually moved through the organization, did a number of factors over the first decade before we had sold the company in 2000.

But I came to be, you know, director of operations, chief operating officer, director of business, VP of business development and oversaw the transaction with Rogers and Group Telecom for the two sides of the organization to being sold.

So, I had a formal degree in finance but more of a general management and overall strategy piece for the company through that decade.

MS. O'BRIEN: And then after the company was sold?

MR. K. MARSHALL: After the company was sold, I became the president for Atlantic Canada for Rogers, overseeing – Rogers had acquired – at the same time they acquired the Newfoundland assets, also got the New Brunswick assets, and I was approached by Rogers Communications to head up Atlantic Canada and integrate them into the company as a whole. So I was in the sector for another 17 years after that, with Rogers, in various positions, all the while overseeing the Atlantic Canadian operations for Rogers.

MS. O'BRIEN: Okay.

And are you still there, or have you moved to something else?

MR. K. MARSHALL: I had retired two years ago and I just recently went back about two months ago. I went back to work with Rogers as a senior vice-president in Toronto for national – for residential services, overseeing the traditional cable and Internet portfolios.

MS. O'BRIEN: Okay. Thank you.

Next, I'll move to you, Mr. Clift. Can you please give us an overview of your education and work history?

MR. CLIFT: Yes. So I, too, have a Bachelor of Commerce from Memorial University and a masters in business administration from Dalhousie University, and recently completed the Institute of Corporate Directors, directors education program and was subsequently certified and received the designation ICD.D, which is a professional membership of people who are qualified board members to sit on any board in the country, largely with a private-sector focus. There's a separate entity that deals with not-for-profits and other things like that.

So I've been employed at Memorial University for the last 35 years. Started as an assistant professor and moved on to associate professor and was associate dean for academic programs for a large portion of the 2000s. And subsequently now I'm still employed there.

MS. O'BRIEN: Okay. And that's with the Faculty of Business, is it?

MR. CLIFT: That's right.

MS. O'BRIEN: Okay. And –

MR. CLIFT: Now I've also taught in the Faculty of Engineering and the Faculty of Human Kinetics and Recreation.

MS. O'BRIEN: Okay.

MR. CLIFT: In Engineering it was in the area of new product development, and in HKR it was in the area of sports' marketing.

MS. O'BRIEN: Okay.

MR. CLIFT: So overall the majority of my background is in marketing and strategic marketing.

MS. O'BRIEN: Okay. Thank you very much.

Next I'll move to Gerry Shortall.

MR. SHORTALL: So I graduated from Gonzaga High School in 1965. I spent the next two years in the Commerce Program at

Memorial. In 1967 I joined a prominent local accounting firm and undertook a course of study to obtain my Chartered Accounting designation. In 1972 I wrote the uniform final examinations set by the Canadian Institute of Chartered Accountants and successfully passed those. In 1973 the local firm I was with merged with Clarkson Gordon, which at the time was the largest accounting firm in Canada, and I was subsequently appointed as an audit manager with Clarkson Gordon.

In 1977, as a senior manager, I transferred to our Toronto office. I worked in the financial services industry servicing some clients like Toronto Dominion Bank, American Express, the Fireman's Fund Insurance, A. E. Ames, the stockbroker – clients of that ilk. In 1979 I was admitted to the partnership of Clarkson Gordon and moved back to St. John's, where I practised as an audit partner until 1986 at which time I moved back to Toronto, but not to our Toronto practice office. I moved to our Toronto national office, which is the head office in the accounting firm, looking after all the offices in Canada.

And I joined the national auditing standards department where I was given some duties such as – I was the national director of audit quality control for the Canadian firm. I was the national director of audit automation for the Canadian firm. I taught – developed and taught courses to senior level people – partners and senior managers.

Then in 1991 I left the national office and moved in to our Toronto practice office, and from there 'til my retirement in 2004, I serviced a number of clients specializing mostly in technology and telecommunications companies. In 2005 I was appointed to the board of a public company with a mandate to chair the audit committee and improve their governance practices. And then –

MS. O'BRIEN: Is that Nalcor you're referring to there –

MR. SHORTALL: No, no –

MS. O'BRIEN: – or Newfoundland and Labrador Hydro? It's another –

MR. SHORTALL: – that was a Canadian public company in Toronto. And in 2005 I was asked to join the board of Nalcor.

MS. O'BRIEN: Thank you very much. Next I'll go to Mr. Styles. Could you please give the Commissioner a review of your education and work history?

MR. STYLES: Yeah. I was born and raised in Stephenville, completed high school there in '75. I attended Memorial University in the physical education program. In '91 I accepted a position with a national brewer. Worked eight years in western Newfoundland. Took – subsequently took some sales management positions in Nova Scotia and Edmonton.

Which brings me around to 1993, and – at which point I left the company I was with, returned to Stephenville, opened up my own company – which was basically an alcohol beverage distribution company. I've been working at that ever since.

In 2009 I set up Nakyska Holdings which is my – which is a real estate development company, which I am partners in as well.

And that kind of brings me to where I am today.

MS. O'BRIEN: Okay, thank you very much.

I'm now going to ask each of you a question, or a series of questions about how you came to come on the Nalcor Energy Board. And I know for three of you – so that would be everyone but Mr. Styles – you actually came on the Newfoundland and Labrador Hydro board first because your appointment to that board predated the creation of Nalcor.

When you answer this question, I'd ask you to address, you know, who asked you to come on the board and also if you're aware of any connection or relationship that may have led to that request. I do understand that none of you applied or put your name forward in any formal way, but if that information is not right, please correct it.

And, again, when you give your answer, if you could highlight your most relevant experience to the work that you'd be carrying out with Nalcor,

or the work of Nalcor Newfoundland and Labrador Hydro to the extent that you've not already mentioned it when you gave the Commissioner the overview of your education and work history.

Okay?

So Mr. Marshall, I will start with you. And I know you came to be appointed to the Newfoundland and Labrador Hydro Board in August 2004. Is that right?

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Okay.

So please tell us how did you come to be on the board?

MR. K. MARSHALL: Well as I recall, it wasn't – there was no monumental invitation or offer. I recall being – receiving a telephone call. And, again, it wasn't anything that was scheduled or set. It was, I believe, a call from Gary Norris. And I did not know Gary at the time.

MS. O'BRIEN: He was Clerk of the –

MR. K. MARSHALL: He was Clerk of the –

MS. O'BRIEN: – Executive Council at that time?

MR. K. MARSHALL: – Executive Council – asked me if I'd be interested. I suspect – I had had no prior conversations really – I suspect it came from my relationship, from a work perspective, with Mr. Williams – when I had worked with the – with Cable Atlantic in overseeing the transaction to sell the company to Rogers, and also to sell the telecom assets to Group Telecom.

Through that process and experience, and through that decade of – that I was working there – I think that it was recognized that I could handle kind of, moving files, and a lot of issues in the air concurrently, and try to find them into one strategic hole. And through the transactions that we did, which totalled, you know, about \$300 million, and then integrating the Fundy assets in New Brunswick, I had been approached

by lawyers on both sides of the transaction commending me on the work that I had done through difficult and tricky transaction over a long period of time.

So I suspect it came from that, in terms of the stewardship and the negotiation through tricky fields; that it was felt that I would be a – have the qualifications to be able to serve on the board of Newfoundland Hydro. But when I came on, as you say, it was at the entry point, was – it was just Newfoundland Hydro at that point in time.

MS. O'BRIEN: Okay. And just to be clear, you said Mr. Williams there, but that would be Danny Williams?

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Yes, okay.

Thank you.

All right then, next if – I'll move to Mr. Clift. So the information we have is that you joined the Newfoundland and Labrador Hydro board on January 1 of 2005. So can you please tell us how you came to be on that board?

MR. CLIFT: Yes, I was also asked by the premier's office if I was interested in being on that board. I don't recall if it was Mr. Norris, but I imagine it was. Prior to that I, too, had had a conversation with Mr. Williams, if he had asked me if I was interested in being on that board – it was a relatively short conversation, probably less than five minutes.

And then we – I, too, was contacted by Mr. Norris and he explained a little bit about what was going to be involved and I agreed to have my name put forward as well.

MS. O'BRIEN: And the – when – did you previously know Mr. Danny Williams? Is that – how did you come to have that conversation?

MR. CLIFT: Yes, I had been on the board of the American Hockey League team. And I don't know if my board appointment and his overlapped or not; I may have come after his time was over. I had also been on the board of St. John's Sports and Entertainment. And so I

had known him for – through that period of time and prior to that as well.

MS. O'BRIEN: All right.

And in terms of your most relevant previous experience, would your participation on those boards that you've just mentioned – and obviously you work at the business school – is that what that would be for you?

MR. CLIFT: Yes, I had a number of board appointments, mostly in not-for-profits. And had worked on board governance-related things, not – probably not prior to those appointments in any major way. And I had worked on new product development projects and strategy implementation and some of my university research was in the area of strategy implementation, so – in the sense that major projects are implementations of strategy as well. There was some relevance, no direct hydro-related experience –

MS. O'BRIEN: Okay. Thank –

MR. CLIFT: – experience from other industries, I would say.

MS. O'BRIEN: Okay. Thank you.

Next, I'll turn to you, Mr. Shortall.

You joined the Newfoundland and Labrador Hydro board in the summer of 2005. Is that right?

MR. SHORTALL: That's correct.

MS. O'BRIEN: Okay. So how did you come to be on the board?

MR. SHORTALL: I received a telephone call from Dean MacDonald, who at the time was chair of the Hydro board. He specifically asked me to join the board and to chair the Audit Committee.

MS. O'BRIEN: And you've already canvassed at some length your experience that would be relevant to doing audit work. Is there anything else that you would highlight as having – in your background as having been particularly relevant to work in Newfoundland –?

MR. SHORTALL: Well, I would bring a deep knowledge of financial reporting issues, accounting, auditing issues, all kinds of experience in corporate governance and best practices kind of stuff that –

MS. O'BRIEN: Thank you. And next we'll go to Mr. Styles.

Now, you joined the Nalcor board and – well, Nalcor was created at the time that you joined. So that was in June of 2012, is that right?

MR. STYLES: Yes, that is correct.

MS. O'BRIEN: All right, so how did you come to be on the board?

MR. STYLES: I was contacted by the Premier's office through my local MHA, Joan Shea, asking if I would be willing to serve on the board. You know, outside of that, in terms of my qualifications, general business acumen, I guess, and I had previously chaired the CNA board – College of the North Atlantic, so ...

MS. O'BRIEN: Okay. So you had that prior experience.

Okay. Thank you.

Now, I will – as we go through the questioning today I'll do my best to identify one of you to answer the question just to help us keep it organized and so we're not talking over each other.

So my first question I'm actually going to direct to you, Mr. Clift. And when you joined the Newfoundland and Labrador Hydro board, can you tell us what was the status of the Lower Churchill development at that time, and what was the status of the Energy Plan?

MR. CLIFT: Right, so when I joined – and for a period of time thereafter – we were mostly focused on Newfoundland and Labrador Hydro; our entire or the vast majority of the introductory training sessions and familiarization sessions that we had, largely dealt with that. And we were in the early days, I would say, of the Lower Churchill Project at that point. And as time went on relatively quickly,

over the next year or two, we continued to ramp up.

But when we were first there it was – a lot of our time was spent on Newfoundland Hydro-related issues.

MS. O'BRIEN: Okay.

As a board member, did you have any – we know the Energy Plan was ultimately published in 2007.

MR. CLIFT: Uh-huh.

MS. O'BRIEN: And we know that it was in the works for a fair bit of time –

MR. CLIFT: Right.

MS. O'BRIEN: – prior to that.

MR. CLIFT: Yup.

MS. O'BRIEN: There was a fair amount of consultation and such that went on.

As a board member of Newfoundland and Labrador Hydro, did you have any involvement in the drafting of that plan?

MR. CLIFT: We reviewed that plan on various occasions and provided our input. Each of us reviewed it individually, then we went through it as a board. We talked about it as being an important piece of the broader business development for the whole – the entire province, in fact.

MS. O'BRIEN: And do you recall who you would've given your feedback to at government?

MR. CLIFT: Well, it would've been done in the context of a board meeting, and so whatever feedback would've gone to the broader board, and then from the board on, but I don't recall directly who that was directed to.

MS. O'BRIEN: Okay, that's fine.

And now once the Energy Plan was published and formally announced, how did you, as a board member, given your work on

Newfoundland and Labrador Hydro and then later on Nalcor Energy – how did you consider or view the Energy Plan? In other words, was that document of particular – of any particular significance to you as you were carrying out your work for these companies?

MR. CLIFT: Absolutely. We saw it as being an important piece of the long-term economic development for the province, to make the optimal use of our natural resources. As a natural resources type of economy, this was an important piece of the various resources that we had available to us. And we continued to reference the Energy Plan as we went forward.

MS. O'BRIEN: Okay, so would it be fair to say you saw it as a mandate-type document?

MR. CLIFT: Certainly a guiding document, yes.

MS. O'BRIEN: Okay.

I'll go through in case anyone else wants to add to that evidence with respect to the Energy Plan in particular. Mr. Marshall?

MR. K. MARSHALL: Yeah, I have a similar recollection as Tom actually, in terms of there was a number of drafts that came before us. But it wasn't a document that the board was authoring; it was a document that was led by the department.

But one important thing is that the board – and I was – we were all fairly new in the board at the time, so it was – we were still in – very much in learning mode, but also in active learning mode in terms of the some of the issues. We had just come through – it was very obvious that we had just basically come into the board following a period of turbulence with respect to Lower Churchill activities. But it was – as Tom says, our first year was very focused on the work of Newfoundland and Labrador Hydro.

With respect, you asked about, you know, how our comments got back to the shareholder and I really echo Tom in that I really don't know. At the time, Dean Macdonald was chair and what relations he had with the premier with respect to communicating that – but the other important thing is at the time the deputy minister of

Natural Resources would sit on the Newfoundland and Labrador Hydro board. So there was a direct link to have any feedback and commentary from the board back into the work of the department.

MS. O'BRIEN: Okay. Thank you.

And now, Mr. Styles, I know you weren't on the board, obviously, when the Energy Plan was being drafted, but when you did come on in 2012, was that a document that you would have referenced as a guiding document, I believe was Mr. Clift's words, as your work was progressing on the board from 2012 on?

MR. CLIFT: Yes. As a matter of fact, it was part of the orientation package that I was handed at the time.

MS. O'BRIEN: Okay. Thank you.

And, Mr. Shortall, is there anything further you would like to add to that? And, again, we don't need you to repeat similar evidence, but if you have something that you feel wasn't said or you disagree with one of the other board members, please feel free to state.

MR. SHORTALL: No, I totally agree with what Tom and Ken have said. I would add that I viewed the Energy Plan as a blueprint for Nalcor going forward. This is – we were the company that was going to make this Energy Plan real, make it happen, so ...

MS. O'BRIEN: All right. Thank you very much.

If we could go to P-00383, please, Madam Clerk? And in the binders before you, this is at tab 2. It will also come up on your screen. And I have questions here coming for Mr. Marshall and also for Mr. Clift.

So what's being shown as an exhibit – this is a document that is dated February 22, 2006. It's a Newfoundland and Labrador Hydro document and it's entitled: A strengthened capital structure to enable expanded mandate. So this is one of the documents that was created around the time that Newfoundland and Labrador Hydro was undergoing the corporate restructuring that ultimately led to the creation of Nalcor.

Mr. Marshall, first, right there on that first page: to enable expanded mandate, what did you understand that expanded mandate to be?

MR. K. MARSHALL: The expanded mandate was to basically broaden – not just Newfoundland and Labrador Hydro continue as a regulated utility, but also to effect some of the – I guess, the mandate and some of the issues outlined in the Energy Plan to make sure that Nalcor was created. It wasn't created at this point in time, but we set up a mechanism and a vehicle whereby the energy warehouse, so to speak, contemplated in the Energy Plan would be affected through Newfoundland and Labrador Hydro and related entities therein.

And so, from a board perspective, this was – you know, again, it's 12 years ago so it's a bit of a distant memory, but it was very clear in our minds that that expanded mandate involved getting into other energy related activities, investigating Lower Churchill, oil and gas activity and therein and other associated –

MS. O'BRIEN: Okay.

MR. CLIFT: – activities.

MS. O'BRIEN: And I believe some of those goals are set out – if we can go to page 4, please, Madam Clerk. Great.

So on the screen before you there you'll see this is a slide that shows Hydro's Goals and Objectives. The ones I think are of particular note are the third one down: Financial and Governance. So there was a goal: "To strengthen our financial and governance structures to enable growth." The next one is Growth itself: "To grow a diversified and viable energy business." Skipping down, there is one for the Lower Churchill and one of the goals was: "To achieve sanction for the Lower Churchill Project." And there's a few more there that address the highly skilled employees and people and be a good corporate citizen.

So, Mr. Clift, is this an accurate statement of what your goals were for the board during this period, 2006?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay. And we'll be coming to you, Mr. Clift, throughout the day, primarily, on a number of governance issues.

MR. CLIFT: Yeah.

MS. O'BRIEN: And if we can just go to page 18 of this document, please, Madam Clerk.

There's a – this is under one of the pillars, Shareholder Relationship, and there – if you can just give that one a review. There's some Relationship Principles that are discussed on that slide and we will be speaking further about the relationship between the corporation and the shareholder, which is the Government of Newfoundland and Labrador, later this morning.

And for now, Mr. Clift, I'd just ask: Is this an accurate listing of the relationship principles that you were hoping to achieve as part of your mandate?

MR. CLIFT: Yes, it is.

MS. O'BRIEN: Okay.

Now, we know that Nalcor Energy was created on June 14, 2017, with the enactment of the *Energy Corporation Act*, and it was initially the – it wasn't given the name Nalcor Energy –

UNIDENTIFIED MALE SPEAKER: I'd ask you to clarify –

UNIDENTIFIED MALE SPEAKER: Can you clarify, I think you said 2017?

UNIDENTIFIED MALE SPEAKER: Yeah.

MS. O'BRIEN: Yes. That would not be correct at all. So that would be on June two thousand and –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. O'BRIEN: – 14, 2007, thank you. The *Energy Corporation Act*, and then that later became known as Nalcor Energy.

UNIDENTIFIED MALE SPEAKER: That's right.

MS. O'BRIEN: Now, am I right that when Nalcor was created all the – at that time – directors of Newfoundland and Labrador Hydro also became directors of Nalcor? Is that correct, Mr. Clift?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

So in that case we would've had you, Mr. Marshall and Mr. Shortall would've all become part of the first board of directors for Nalcor Energy. Is that right?

MR. CLIFT: Yes.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. O'BRIEN: Okay.

And I think your formal date of appointment was October 11, 2007, does that sound right?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

Now, I'm gonna jump ahead a bit – a little bit now – but, ultimately, a number of other subsidiaries were created to implement the work of Nalcor Energy. And Commissioner, I can say, the board of directors list for all of these subsidiaries have been filed as Exhibits and we – I would note that there was at this time – when the subsidiaries were created, the boards had to be populated. There were a number of new board members also appointed in addition to the ones we're hearing from today and the ones that were already on the Hydro board at that time.

But for right now, I just want to go over and highlight for each of the members of this panel the other boards that they sat on. And I'm gonna do this by running through a list and then, I believe, the panel will confirm that it's accurate information. So the first subsidiary – so we've already talked about, obviously, Nalcor. We've talked about Newfoundland and Labrador Hydro, which is the first subsidiary.

The next one I'd address is Nalcor Energy Marketing Corporation. So I understand Mr.

Clift, Mr. Marshall and Mr. Shortall would all have sat on that board. Is that right?

MR. CLIFT: Yes.

MS. O'BRIEN: Thank you.

And Labrador-Island Link General Partnership Corporation, again, the same three: Mr. Marshall, Mr. Shortall and – sorry, no – Mr. Marshall, Mr. Shortall and then Mr. Styles, actually, sat on that corporation. Is that right?

MR. CLIFT: Yes.

MS. O'BRIEN: And Labrador-Island Link Holding Corporation, Mr. Clift, I think you're the only one on this panel who sat on that board.

MR. CLIFT: Right.

MS. O'BRIEN: And Labrador-Island Link Operating Corporation, Mr. Shortall you're the only one on this panel who sat on that board. Is that right?

MR. SHORTALL: Right.

MS. O'BRIEN: Thank you.

Lower Churchill Management Corporation – that would be you, Mr. Clift, on that one.

MR. CLIFT: Yes.

MS. O'BRIEN: And also you, alone on the panel, sat on the Labrador Transmission Corporation.

MR. CLIFT: (Inaudible.)

MS. O'BRIEN: And Muskrat Falls Corporation – Mr. Marshall and Mr. Styles also sat on that board, right?

MR. SHORTALL: (Inaudible.)

MS. O'BRIEN: Thank you.

MR. K. MARSHALL: (Inaudible) Muskrat Falls.

MR. SHORTALL: Muskrat Falls – I also sat on that board.

MS. O'BRIEN: Yes, you and Mr. Marshall, I believe.

On CF(L)Co, which was the Churchill Falls (Labrador) Corporation, that would've been Mr. Marshall, Mr. Styles and Mr. Shortall. Correct?

MR. SHORTALL: That's Correct.

MS. O'BRIEN: Thank you.

Nalcor Energy Oil and Gas, so that would've been Mr. Marshall, Mr. Shortall and Mr. Styles. And Nalcor Energy Bull Arm Fabrication Inc., that would be Mr. Marshall, Mr. Shortall and Mr. Styles. So is that an accurate list?

So it's a long list. But Commissioner, just to give you the overall notes that: Tom Clift was on six entities – boards; Ken Marshall sat on eight distinct boards; Mr. Shortall sat on nine distinct boards; and Mr. Styles sat on six distinct boards.

And in turns I'd like to just get them to confirm who sat as chair.

Mr. Clift, I understand you were chair of just one board. Is that right?

MR. CLIFT: That's correct.

MS. O'BRIEN: And Mr. Shortall you were chair of two boards?

Mr. Marshall, you were chair – or acting chair of eight distinct entities. Is that right?

MR. K. MARSHALL: That's right, yes.

MS. O'BRIEN: And Mr. Styles, you sat as chair for six. Is that correct?

MR. STYLES: Mm-hmm.

MS. O'BRIEN: Okay.

So it's a considerable number of boards.

Mr. Marshall, would each of these entities have had distinct board meetings and AGMs – annual general meetings?

MR. K. MARSHALL: Yes, they would. I mean, of varying degrees of length and for each

of them – I mean, obviously the big ones would've been Nalcor and Newfoundland and Labrador Hydro. And in Nalcor's case there was an overarching public annual general meeting which we put in place.

But all of these boards would've had an annual general meeting of such, and a regular meeting schedule. Some of them would've been longer than others, by nature of the defined area of scope that they had with us as an organization and how it tied into the overall structure.

MS. O'BRIEN: Okay. And we know that often the real work of boards is sometimes done at the committee level.

MR. K. MARSHALL: (Inaudible.)

MS. O'BRIEN: So boards having committees is a very common thing. Would all of the boards have had working committees or just some of them?

MR. K. MARSHALL: No, just the two that had working committees, when we first started, were Newfoundland and Labrador Hydro, and I wasn't on the board of the CF(L)Co when I first came on, but the two that had the committees were Hydro and CF(L)Co. And ultimately we moved the committees from Hydro up to Nalcor Energy, because the same principles of compensation, safety and governance would've applied to all the subsidiary boards. So the committee work was done at the Nalcor Energy level and also at the CF(L)Co level because of it's unique ownership structure.

MS. O'BRIEN: Okay, thank you.

So, Mr. Marshall, I'll stay with you. And can you give the Commissioner, please, a sense of the breath of issues in lines of business that you would've been dealing with on – you know, when you look at this list of companies that you're a director for?

MR. K. MARSHALL: Well, it was fairly broad and substantial and it required a considerable amount of time as we brought along Nalcor into existence and the structure and the number of organizations that you have there. You know, some of them were created as a result of complex tax and maintaining our tax position as

a non-taxable government entity. And also entering into partnerships with other organizations, ultimately with Hydro-Québec, in the case of CF(L)Co, and with Emera, in the case of the Maritime Link and the Labrador-Island development.

So we would have to – and I don't know how you want me to proceed down through these, but there was a vast amount of – you know, Nalcor Energy Marketing as an example, was one that we would be selling power through to New England markets. And we oversaw a program to bring that excess power to markets but, initially, through Emera's marketing arm and ultimately by establishing the vision within the company.

MS. O'BRIEN: So I take it that would've involved – it required you to get familiarity with export energy markets, with things like FERC, with (inaudible).

MR. K. MARSHALL: Absolutely, yeah.

MS. O'BRIEN: These types of organizations and regulations.

MR. K. MARSHALL: It wasn't just the local regulators issues that we had to become familiar with, but it was also national and international regulation.

Bull Arm, as an example, to bring it in as a kind of a site that the province had used for constructing the Hibernia structure originally, and I recall having some very active debates with Mr. Shortall in terms of how that fit into the overall piece and structure, and ultimately, we did have some very active debates as to how that fit in and whether it fit in, and it fit in very well, ultimately.

MS. O'BRIEN: So this was the Bull Arm fabrication site. So it was being used to build for Hebron, and then you were looking forward to beyond Hebron, what to do with that site afterwards.

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Okay.

MR. K. MARSHALL: Correct.

And even CF(L)Co, I mean, the ongoing negotiations and the interplay between the Hydro-Québec ownership and ourselves was a very complicated and delicate situation to – going to board meetings, preparing for board meetings, and understanding the interplay and the history, quite frankly, between the parties but, again, making sure that that was effectively run and also getting in there to make sure that the assets were in good shape, because we wanted to prepare the organization for when it ultimately came back decades down the road in good shape, because there had been a period of time whereby the assets were, let's say, under-invested in and were in need of refurbishment, so the organization did –

MS. O'BRIEN: So –

MR. K. MARSHALL: – that.

MS. O'BRIEN: – you were keeping an eye on 2041, is that right?

MR. K. MARSHALL: Very much so.

MS. O'BRIEN: Okay, and so that would've required some knowledge, then, on how to operate and maintain one of the world's largest hydroelectric dams?

MR. K. MARSHALL: Correct. One of the largest reservoirs and the fourth largest in the world.

So there was – and overriding that, of course, was always a desire to maintain complete focus on the core business, which was in – we had very active discussion at the board level about making sure that we were aware of all the issues with respect to Newfoundland and Labrador Hydro, consumer implications, the generation implications, the quality of the plants that were across the province, union negotiations – and coincidentally I had had union experience with the same group, IBEW, when I was in the telecom sector. So there was – and with regulatory issues, I had issues – I had relations with the same regulator – Public Utilities Board at the time.

So we always made sure that Newfoundland and Labrador Hydro was front and centre in anything that we did and not a forgotten entity in our, I

guess, our mandate to construct Nalcor Energy and all that that entailed.

MS. O'BRIEN: And is it fair to say that the, you know, the regulated electricity industry is a very complex line of business.

MR. K. MARSHALL: Very much so.

MS. O'BRIEN: Okay.

MR. K. MARSHALL: And the other thing worth pointing out, and Mr. Shortall can allude to that, is when we got into Newfoundland and Labrador Hydro, in order to structure Nalcor, in order to accomplish some of these goals with respect to becoming an energy warehouse and becoming a – kind of investigating the Lower Churchill to the future, is one thing that was immediately apparent is that the financial shape of the organization was nowhere near ready to be able to take on something like that, so we had to make sure that we appealed to make sure that the organization was put back on sound financial footing to prepare us for that ultimate development that we wanted to undertake and, also, to be able to get into the oil and gas business, if that was the mandate of the organization as it was.

So the organization needed some financial boost, and I think that, you know, that's where we lean pretty heavily on people like myself and Mr. Shortall, for sure.

MR. SHORTALL: Mm-hmm.

MS. O'BRIEN: Thank you.

And so you just mentioned oil and gas. So that's, again, a whole other industry that you had to be up to speed on.

MR. K. MARSHALL: Correct.

MS. O'BRIEN: And so I guess you were – there was an equity investment going on with Hebron that you would have had to deal with?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: And I understand you were also running some exploration seismic programming as well.

MR. K. MARSHALL: Yeah, we started the exploration seismic program, and it's, I think, a program that continues to this day with great success, as I understand it. And it was certainly a success when we left the board, and I think it's still been heralded as a significant accomplishment.

MS. O'BRIEN: Okay.

So one of the other items that I know you've spoken about before is Indigenous relations and negotiations. You want to address that?

MR. K. MARSHALL: Yeah, I mean, the board, ourselves, were not, but we would be briefed on certain matters and an approach in terms of how the organization would proceed and how it best proceed and making sure it was done in a fair, consistent, reliable and forthright manner. And so it was another one of those complications.

I think, you know, the issue is, as you said earlier, there was a long list of matters which the board – a fairly small board – and I should note it wasn't just ourselves; it was others. And when we expanded the number of organizations we had to go out and seek and ultimately staff all of those boards, look for people who were able to assist in various degrees and shapes and forms.

MS. O'BRIEN: Okay. Still a large number of areas that you were working in and had to have a, you know, a comfortable level of comfort to make the decisions that you had to make.

MR. K. MARSHALL: Very much so.

MS. O'BRIEN: And at this time you were also working on the planning and the development of the Lower Churchill Project?

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Okay.

Mr. Clift, I'll go to you now, because you joined this board with some experience in governance and some, you know, marketing and strategy business experience –

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: – but no particular experience in any of the industries that Mr. Marshall has just laid out for us. How, you know, how long did it take you to get up to speed on the intricacies of all these lines of business?

MR. CLIFT: Well, you build as you go, and we had fairly extensive introductory sessions that were run by internal people and those who could give us background. But I would say 12 to 18 months before you really felt comfortable. And you were building at every turn, given the things that were happening. But you did have to learn about hydrology and power rates and long-term purchase agreements, all kinds of different things and different aspects of each of those various entities.

MS. O'BRIEN: A steep learning curve?

MR. CLIFT: Yes.

MS. O'BRIEN: In terms of – you said you had presentations and what not. What other types of training were offered to you when you joined and as the new businesses came on for Nalcor?

MR. CLIFT: Over time, we were given various presentation on different aspects of the new things as they were coming along. I recall participating in an ICD session on – for public corporations and strategy decisions around public corporations, and subsequently, as I has referenced earlier, I had taken the ICD program that has a heavy governance orientation in it.

MS. O'BRIEN: Okay, so that's the Institute of Corporate Directors?

MR. CLIFT: Right.

MS. O'BRIEN: Okay, yes

MR. CLIFT: Yes.

MS. O'BRIEN: And so the presentations that you were receiving, would this had been from senior staff at Nalcor, senior staff at Newfoundland and Labrador Hydro –

MR. CLIFT: Yes.

MS. O'BRIEN: – internal resources?

MR. CLIFT: Primarily, yes.

MS. O'BRIEN: Okay, and –

MR. CLIFT: Depending on their expertise of course, right?

MS. O'BRIEN: Okay.

And when you first came on – I know you came on at Newfoundland and Labrador Hydro, but was there a board orientation manual or a series of documents that you were given at that time to help with your education?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

MR. CLIFT: And a number of sessions. I recall perhaps an all-day session, some half-day sessions, where one or two people would be there with us the whole day, and then individuals would come in and out, depending on their expertise, to give us background on various functional areas, whether it was safety or transmission or whatever their expertise happened to be.

MS. O'BRIEN: Okay, so these would be, again, people from within the companies come and –

MR. CLIFT: Primarily, yes.

MS. O'BRIEN: – getting you up to speed on their different areas of business. Okay.

MR. CLIFT: Yes.

MS. O'BRIEN: I'll just ask, does anyone – Mr. Marshall, do you have anything to add to that answer? Okay.

Mr. Shortall?

MR. SHORTALL: No, that's a good summary.

MS. O'BRIEN: Okay, thank you.

And now, Mr. Styles, you're a little different because you came on in 2012. Was it a similar process then when you joined?

MR. STYLES: Yeah, it wouldn't have been, obviously, any transition like my friends here have gone through, but when I did arrive there were a series of binders that were handed to me and a number of orientation sessions on the various lines of business.

MS. O'BRIEN: Okay.

I'm going to talk now about some of the committees. If we could bring up, please, Madam Clerk, P-00392. It's at tab 12 of the book in front of you gentlemen.

This is a board of directors mandate document dated April 2010, and we'll talk a little bit more about this in a few moments in terms of its value of a governance document. But could we please go to, first to page 4, Madam Clerk.

Thank you.

I'm just going to go to the bottom of that page because this lists the standing committees of the board of directors for Nalcor. So that would be: The Audit Committee, the Corporate Governance Committee, the Compensation Committee and the Safety, Health and Environment Committee. Is that an accurate listing, Mr. Clift, of the standing committees that you had?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

Now, I know that you were each involved with various of these committees. I'm going to ask each one of you to just identify which committees you were involved with. And if you chaired one of those committees, if you could just tell me that, and I'll go from left to right.

So, Mr. Clift, for you?

MR. CLIFT: Yeah, so I was chair of the Governance Committee, I was a member of the Compensation Committee. I was started as a member of the Safety, Health and Environment Committee and eventually became part of the Audit Committee, but it was relatively late, I want to say around 2014 or 2015. Mr. Shortall –

MR. SHORTALL: Yes.

MR. CLIFT: – can confirm.

MS. O'BRIEN: Thank you.

So the one you chaired, though, was Governance.

MR. CLIFT: And Safety, Health and Environment eventually.

MS. O'BRIEN: Oh, you also chaired that one as well.

MR. CLIFT: Yeah.

MS. O'BRIEN: Okay. Thank you.

Mr. Marshall?

MR. K. MARSHALL: I – very early on in my tenure with the board I was a member of and chaired the Compensation Committee through to leaving, was a member of the Audit Committee for quite some period of time. And when I became chair of Nalcor, became a member of the other committees: The Safety, Health and Environment and the Audit and the Corporate Governance.

MS. O'BRIEN: Okay.

And is it fair – the Compensation Committee later became known as the compensation and human resources committee.

MR. K. MARSHALL: Correct.

MS. O'BRIEN: So those were the issues it was addressing. Okay.

And then, Mr. Styles.

MR. STYLES: I was on the Audit and Compensation Committee.

MS. O'BRIEN: Did you chair any of the committees?

MR. STYLES: I haven't chaired either of those.

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

And, finally, Mr. Shortall.

MR. SHORTALL: I chaired the Audit Committee for Nalcor and, as well, the audit committee for CF(L)Co.

MS. O'BRIEN: Okay.

MR. SHORTALL: In addition, I was a member of the Governance Committee all through the whole period. And in the last couple of years – I think it was the last two years – I was on the Compensation Committee.

MS. O'BRIEN: Okay.

So, now, I'm going to stay with you, Mr. Shortall, and I'm going to ask you to address, just, you know, your workload in doing all this work. So we've described you're on a number of boards, you're chair of a couple of them. You're chairing the Audit Committee, which is, I know, a very important committee for both, you said, CF(L)Co and for Nalcor.

I understand there would be board meetings that you had to go to, annual general meetings. There would be preparation for those meetings. Can you please give the Commissioner some sense of how much time were you spending on these activities? How – what did it take?

MR. SHORTALL: Yes.

So nine boards and three committees: hundreds of meetings over the years. I was thinking about it yesterday. I think I came up with probably a hundred hours a month in preparation and attendance time. And then, of course, I'd have travel time because I'd be coming down from Toronto for meetings.

MS. O'BRIEN: So were you flying down typically for meetings?

MR. SHORTALL: Yes, so quite a bit of time. And, you know, for a four-hour meeting, you'd probably spend at least four hours in preparation time. And we'd get big binders like these for pretty much every board meeting and committee meeting.

MS. O'BRIEN: Okay.

MR. SHORTALL: And then, of course, there were – you know, as chair of Audit, I had to

meet with the external auditors, the internal auditor. They have meetings that are not part of board meetings or committee meetings that took up extra time as well.

MS. O'BRIEN: Okay.

MR. SHORTALL: So ...

MS. O'BRIEN: Mr. Marshall, I'll go to you next because on top of the work of a regular board member, you were chair or acting chair of the majority of the boards. And that would be in the 2014-on period, which we'll get to.

MR. K. MARSHALL: Correct.

MS. O'BRIEN: So trying to get a sense of when you had those additional roles, what would've been your workload?

MR. K. MARSHALL: Well, I can certainly echo. I never did want to tally it up because, you know, the numbers – the hours were astronomical, quite frankly. And trying to – with a family as well as full-time work besides, it became – it was rather onerous but we did it, we all did it. And I don't think the word "fiduciary" has been mentioned yet, but we did it with a complete respect to the fiduciary duty of the organization and a love of the province and a desire to see this organization, and the projects therein, succeed for the long-term benefit of the people of the province.

So we put in, as Gerry indicated, perhaps, a hundred hours per month last going off and last going off would've been more, quite frankly, as the – as over the 12 years of my period of being on the board, going from being just on the board of Newfoundland and Labrador Hydro, ultimately to eight organizations as well besides, the level of activity ramped up considerably as the issues got more complex and more public and more, I guess, contentious.

So it was a considerable amount of time, considerable amount of activity and your – you know, you were working every night and weekend, your spare hour with respect to Nalcor and associated entities' activities.

MS. O'BRIEN: So you're talking about, you know, a hundred hours or more every month. I

mean, that's – you know, most people work a, you know, 40-hour workweek.

MR. K. MARSHALL: Yup.

MS. O'BRIEN: So that is, you know, more than a part-time job. You – I know Mr. Shortall was retired at the time. You were working full-time.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: A very significant position –

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: – that you had for your paid work. How did you balance that? How did you get your paid work done?

MR. K. MARSHALL: I just tried to make sure during the day that I did my paid work, and whatever time I had to devote to Nalcor, we had to devote. I mean, as an example, we would – when we first started, I think Newfoundland and Labrador Hydro had two meetings per year, was the schedule at the time and then, as a board, we wanted to make sure that we acted in order to do these activities.

We had a strong desire – and not a mandate, or not a direction, but it was a desire to make sure that the organization became more public, more transparent, more accountable. And we put in quarterly meetings, and we also implemented the annual general meeting process, which was a – pretty much a full-day affair that we would host and present to the public the results of the activities of Nalcor and the associated entities in the last year.

So I can't say I effectively balanced. I will say I attempted to effectively balance the requirements of a full-time workload and the workload of the organization but, at times, it became admittedly difficult to balance.

MS. O'BRIEN: Okay.

Mr. Clift, I'll go to you. Was your workload similar or do you – did you have a different experience?

MR. CLIFT: I would say my workload was similar. It would not have been quite of the

magnitude of Mr. Shortall because those who are experienced with boards would know that the Audit Committee, in particular, requires significant attention to detail, and Mr. Shortall had mentioned his review of financial statements and oversight of the accounting processes within the various entities.

He – I recall him being intently involved in discussions with the internal auditor and reviewing the program of work on a strategic basis, both annually and over an extended period of time, to make sure all those internal audit functions worked. So his was more, perhaps – at least it was my impression that his might have been somewhat more involved than mine. But if Mr. Shortall said a hundred hours, I would probably say 80 hours –

MS. O'BRIEN: A month.

MR. CLIFT: – in the same period of time, yes.

MS. O'BRIEN: Okay.

And how about you, Mr. Styles?

MR. CLIFT: And we did that, I would note, with the unqualified support of our families.

MR. STYLES: Yeah.

MR. CLIFT: Because when we were working – you know, if we were here for an all-day meeting on Friday, I personally was at my desk on Sunday to make sure I was ready to do the things I was supposed to do at the university on Monday, which meant time away from family. And they, like us, believed in the intent of the project and supported us.

MS. O'BRIEN: When you say the project, are you specifically talking about the Muskrat Falls Project?

MR. CLIFT: All of the things we were doing.

MS. O'BRIEN: All the business that you were involved in.

MR. CLIFT: Yeah.

MS. O'BRIEN: Okay.

MR. CLIFT: They were – they just believed it was the right thing to do.

MS. O'BRIEN: Okay. Thank you.

Mr. Styles, similar?

MR. STYLES: Yeah. I – 20 weeks – 20 hours a week was probably where I would have ballparked it. Unlike Mr. Shortall, who, you know, spent a lot of time in the actual details of the accounting, I have to factor in my travel time which was substantial as well, travelling from Stephenville, to and from. So that seems about right. I was able to balance it, I guess, largely because I'm self-employed and have the flexibility of setting my schedule, and my family is grown up, so I never had that pressure.

MS. O'BRIEN: Was it challenging to run your business and do this work for Nalcor at the same time?

MR. STYLES: Yes, it was. It eventually got to a point where, you know, something had to give. And that, ultimately, led to my decision to leave when I did.

MS. O'BRIEN: Resign, okay.

MR. STYLES: Yeah.

MS. O'BRIEN: And we will get to that later in your testimony today. Thank you.

I'm going to talk a little bit about governance now, and so, Mr. Clift, these questions will be directed to you. We know that you were chair of Nalcor's Governance Committee.

First of all, can you give us a description of what Corporate Governance is?

MR. CLIFT: So Corporate Governance is the part of the activities that we undertake to make sure that – as Mr. Marshall referenced earlier – we were exercising our fiduciary responsibilities or our duty of care. Included in that would have been things like to make sure that we had the requisite composition on our boards, that the boards were staffed with people who had the right backgrounds. So we would engage in things like developing board competency matrix which looked at what we had versus – and who

we had and what their backgrounds were and what we thought was in the best interest of the organization and things we would like to (inaudible).

MS. O'BRIEN: We're going to get to that –

MR. CLIFT: Yes.

MS. O'BRIEN: – in a bit more detail in a few minutes.

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: Okay. So, generally, when you are appointed to the board, you have a duty – as you said, a fiduciary duty, so that's a – you have a duty to manage the companies that you're on in good faith, to the best of your abilities –

MR. CLIFT: Yeah.

MS. O'BRIEN: – to do your due diligence –

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: – and to manage them for the benefit of the – ultimately for the benefit of the shareholder.

MR. CLIFT: Right. And so we would also, as part of governance you would look at the mandates of the various committees and ask questions – fundamental questions like: Do we have the right committees? And are they properly staffed and what are the qualifications of the people that are on them? And what is the mandate and/or the charter? It was referred to as two different terms over time, and those would be two-to-three-page descriptions of the activities of the individual committees.

So the Governance Committee would review those each year, individually, at our committee and co-operatively with – so if we were reviewing audit, we would review it with the Audit Committee and we would talk about things like changes in audit standards and practices and ensure that we had the right language in place to make sure that we were current in our oversight.

MS. O'BRIEN: When you first joined the board of Newfoundland and Labrador Hydro, was there a Governance Committee in place?

MR. CLIFT: We were just moving to governance at that point and that would have been fairly typical of other entities in Canada. I think it's fair to say that over the last 10 or 15 years there's been an evolution in board governance. That's not to say that governance wasn't practiced prior to that, but, certainly, in the last 10 or 15 years.

MS. O'BRIEN: Bigger focus at –

MR. CLIFT: Bigger focus on –

MS. O'BRIEN: – the board level and companies, generally?

MR. CLIFT: – and an expanded focus on governance, as well.

MS. O'BRIEN: Okay, so I just want to make sure – I'm going to go over what I believe might be a list of the most important governance documents that would have guided your work on the board, and I'll get you to confirm if I have an accurate list.

So I – the priority document, I understand, would be the *Energy Corporation Act* itself, and it had some sections of its act directly relevant to the board.

MR. CLIFT: Yes.

MS. O'BRIEN: Then it would be the bylaws of the board and those – they're fairly sparse bylaws but they've been filed as Exhibit P-00430. And then I understand that in April of 2010, you developed a board of directors mandate that we – that's one of the documents actually that we've just looked at and so it's the one that set out the committee of the boards.

MR. CLIFT: Yes.

MS. O'BRIEN: Has some guidance on board meetings and human resources management and risk management and other activities that the board was involved with.

I know that eventually in November of 2012, you developed a director's charter which is a shorter document, it's also been filed in evidence, I believe.

MR. CLIFT: Mmm.

MS. O'BRIEN: And I – you just alluded to it, but for each of these committees, these standing committees, there was a mandate document done –

MR. CLIFT: That's right.

MS. O'BRIEN: – for each of those committees that essentially described the work that that committee was – had to do.

MR. CLIFT: Right.

MS. O'BRIEN: Okay. And I know there's other policies that would be in place. I know there's, for example, a code of ethics and we'll take a look at that a little later on this morning.

MR. CLIFT: Okay.

MS. O'BRIEN: Okay. Is that a – I know you were very involved in the drafting of many of these –

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: – documents, obviously not the legislation, but many of the other documents there. Is that more or less an accurate list of the most fundamental governance documents?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay, thank you.

Commissioner, the next section I'm going to get into is a longer section and – oh, it's only 10:30, we've got a ways to go before the break, sorry, I'll continue on.

Okay, I next want to talk about the relationship with the shareholder, and if we can bring up – I'm actually going to bring up the *Energy Corporation Act* which is P-00431. It's at tab 40 of the book before you if you want to look at it. And if we could go to page 11, and, Mr. Clift, I'll probably start with you with these questions.

So, this is – one of the most important sections for the board of directors is going to be section 6, here. So it says that the board of directors has to have not less than five and not more than 14. The directors shall be appointed by the Lieutenant-Governor in Council and shall hold office during pleasure only and are eligible for reappointment.

So, essentially, Mr. Clift, directors were appointed by Cabinet of the government of the day, is that right?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

And I'll just highlight here the other sections that would be relevant. The chair is – the chair and the CEO are covered by section 7. So the chair was also appointed by Cabinet, is that right?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay, and as is the CEO and we'll get to that a little bit later.

And there's another – a couple of other sections here that I'll just highlight there. Section 8 required that your board keep regular minutes. This is – section 9 allowed you to enter a service contract with the chairperson or the CEO on behalf of the corporation. And section 10 was the section that authorized you to create the bylaws, and I've already alluded to that bylaw too.

Can we bring up Exhibit P-00387?

Mr. Clift, when Newfoundland and Labrador Hydro was going through its restructuring, which resulted in the creation of Nalcor as we've already discussed, I understand it retained Deloitte to do a jurisdictional review of what other similar entities might be doing –

MR. CLIFT: Yes.

MS. O'BRIEN: – in the industry. That included a review of governance. Were you – are you familiar generally with this document?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay, can we go to page 4, please?

So, we see here it says that Newfoundland and Labrador Hydro is in the process of developing a restructuring plan to meet the expanded mandate, which includes the development of the Lower Churchill and oil and gas and also wind power.

And one of the key objectives was to create an organization with strong governance and access to capital. So it's the governance piece I'm going to focus on. And if we can go to page 55 now, please?

THE COMMISSIONER: And this is tab 6.

MS. O'BRIEN: Oh, yes, sorry. Thank you, Commissioner.

There's three questions here that this jurisdictional review was looking at, specifically, with respect to governance. And they are listed here as 11, 12 and 13. So looking at the perceived level of independence from the shareholder, perceived level of board independence from management and is there a governance agreement between management board and shareholder. So those were the questions that Deloitte was asked to review.

And if we go to page 58 there's a summary of their findings there. And that's where I'll pick up my questions.

So what they've done here is they have a list of – on the various companies that they looked at. So they're all listed there. I think we've got several pages of them. And what they do is they talk about who the ownership is – sorry, it's here – I want to go – it's on the governance questions.

Sorry, they talk about how they rank them, as whether they're independent from the shareholder. They also rank them in terms of their independence from management of the corporation. But it's the last area here that I want to talk about in particular, this governance agreement.

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: So we have a list here that some of these corporations have letters of expectation that would have been given by their shareholders to the board. Some of them had shareholders agreement that would have set out, you know, expectations from the shareholder to the board. I think sometimes these documents may be referred to as a mandate letter.

Was there anything similar, Mr. Clift, that you had from the Government of Newfoundland and Labrador governing the work you had to do as the board of directors for – in the management of Nalcor?

MR. CLIFT: We had the *Energy Corporation Act* and all of the details and by-laws and so on, and we subsequently developed mandates. I don't recall a specific mandate letter.

MS. O'BRIEN: Okay.

So yes – so you would have had the legislation, which obviously would have been drafted by government. Now, the by-laws though, I understand, those would have been drafted by the board itself?

MR. CLIFT: Right.

MS. O'BRIEN: The same as the – all the mandate documents.

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: So in terms of official instructions or expectations from government itself, you would have had what was just in the legislation?

MR. CLIFT: I think so.

MS. O'BRIEN: Okay.

And then also, we referred to the Energy Plan earlier. Would you have considered that another –?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

I just want to ask – if we could bring up P-00402. It's at tab 25 in the book in front of you.

This is another piece of work that was done at the very end of December 2012, and it's a shareholder relation strategy that was being worked on with Nalcor. Can we go to page 4 please?

So here it looks – here's the goals that are set up for you. I'm not going to read all of them, but it looks like there was some work here to try to put in a shareholder relation strategy between Nalcor and government. And I note on the next slide, one of the next steps is to align a final strategy with the board and the CEO.

MR. CLIFT: Right.

MS. O'BRIEN: Do you recall whether any shareholder relation strategy was ever put in place?

MR. CLIFT: I do not.

UNIDENTIFIED MALE SPEAKER: What's the date on this?

MR. CLIFT: 2012.

MS. O'BRIEN: This was December 2012 when this document was created. If you don't, that's fine. Does anyone – any of the other board members have any recall of a communications strategy – a formal document setting out how to communicate, and what – the ways and things to communicate on between you and the shareholder?

Okay. So, no? Okay.

All right. Now, I know that – and, Mr. Marshall, you actually alluded to this earlier, so I'm going to put this question to you, because I know that initially that the – I don't know if it was the assistant deputy minister, but – of the Department of Natural Resources – I believe it was Chris Kieley who was there for a while, and he had a position on the Newfoundland and Labrador Hydro board. And then, ultimately, at the beginning he had a position on the Nalcor board. But he came off both boards shortly thereafter.

MR. K. MARSHALL: Right.

MS. O'BRIEN: Do you recall why that happened?

MR. K. MARSHALL: No, I remember when I joined the Newfoundland and Labrador Hydro board, Bruce – I can't remember his last name – was on the board. I just –

UNIDENTIFIED MALE SPEAKER: Hollett.

MR. K. MARSHALL: – met him. Bruce Hollett – yes, there you go.

And he was with the department at the time. And then I believe Chris came on the board after Bruce had retired. And I recall – I think you – basically you should check with – I remember we discussed this, too, what's this change, and it was felt that the deputy minister or ADM on file would not be on the board because of the structure to make sure that there was independence from shareholder.

As a Crown corporation, you're kind of – you're always dancing – not being – wanting to be accused of being under the control of the shareholder, but also not being too controlled – or too far from the shareholder.

And I can't recall exactly but it was felt at a governance level that the representative from the department would not be on the board on an ongoing basis so that the board could have independent deliberations and considerations of the issues before them. And then it would be the normal process for the CEO and/or the chair to have that discussion with shareholder in terms of the actions of the board.

MS. O'BRIEN: Okay. Thank you.

I'm gonna ask now, each of you then, about what communications, if any, you had with members of government, and I'm gonna start with the regular board members. So maybe I'll start with you, Mr. Clift.

Did you communicate with Government of Newfoundland and Labrador either formally or informally about Nalcor business while you were on the board?

MR. CLIFT: Not typically. We had an established protocol whereby things that were

discussed at the board level went to the chair. The chair and/or the CEO talked to government. There were a few occasions where I wrote to the clerk of the Executive Council. I'm sure you're gonna come back to that later.

MS. O'BRIEN: I will. These are emails –

MR. CLIFT: Generally –

MS. O'BRIEN: – you wrote to Robert Thompson.

MR. CLIFT: – no.

MS. O'BRIEN: Okay.

And what about you, Mr. Shortall?

MR. SHORTALL: None at all.

MS. O'BRIEN: So now I'll go to our two former Chairs. So, Mr. Styles, you were chair of the board from June 2012 until February 2014. So that's during the period of sanction. What types of communications would you have had with the government?

MR. STYLES: Virtually none. I did have one meeting with Minister Kennedy when I started but it was more of an introduction than anything. No formal business discussion, and I never met with the premier or any of the other subsequent ministers with respect to file.

MS. O'BRIEN: Okay.

All right. Thank you.

And, Mr. Marshall, how about you? And you were acting Chair, or Chair, and this is after sanction period. The dates I have are from February 14 until your resignation in April of 2016.

MR. K. MARSHALL: Correct. So as a board member, very little. I mean, the only interaction I would have had with anybody in government then would have been as Chair of the Compensation Committee, because the organization's compensation structure needed to be brought in and modernized. Within the realities and the bounds of being a Crown corporation there had to be some new programs.

We were trying to attract talent from private sector organizations and from other places across the country to get talent within the organization. So our compensation structure had to be brought in, somewhat in line but it could never get fully in line, of course, but we did require some level of discussion. Primarily, at that point in time, as Chair of the Compensation Committee, it was never with the premier. It was ultimately with somebody within the department.

Very, very rarely – it was kind of a speciality scheduled issue. When – through our time as a board – you know, there was a couple of times when a premier may have attended a meeting for, as kind of a visitor to the meeting, just to indicate the importance of the organization to the province but there was never any direct shareholder communications going from board members direct, that I was aware of; certainly, that I participated in.

When I became Chair, a couple of – I guess a couple of things, it became a very much more active file. Minister Dalley came in as the Minister of Natural Resources and was – I would accompany the CEO in terms of getting him up to speed with respect to some of the issues that were before us so that he could be well versed and active in the matters.

But there was never, you know, any direct relations with the premier's office with respect to lobbying until – actually, the premier I had the most interaction with was Premier Ball last going off. I had a number of meetings with him just trying to bring him up to speed with respect to the intricacies, the difficulties, the issues and the public relations matters as he was coming into the role, and I wanted to be sure that he was fully familiar with the challenges and the opportunities that the organization faced.

MS. O'BRIEN: Okay.

And you said that you recall the premier sitting in at board meetings. Which premier are you recalling?

MR. K. MARSHALL: I remember two. I remember Premier Dunderdale sitting in for a bit, and I believe Premier Marshall was – actually, while he was interim premier came and

sat at a board meeting. I can't recall the others, if there were. Maybe the other members have a –

MR. STYLES: Yeah, Marshall came in with the minister.

MR. K. MARSHALL: Yeah.

MR. STYLES: I attended that one by phone.

MS. O'BRIEN: Are you saying that was just to sort of show the importance –

MR. K. MARSHALL: Yes.

MS. O'BRIEN: – of the organization to the board? Okay.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: So not to discuss any substantive business.

MR. K. MARSHALL: No.

MS. O'BRIEN: Okay.

Now after – I know after the government representative left the board, so Mr. Kieley at the time, after he left the board – I'll put this to you first, Mr. Clift, do you know if anyone in government received or reviewed the board minutes?

MR. CLIFT: I am not aware of that process.

MS. O'BRIEN: Is anybody else? So that's a no from everybody there.

UNIDENTIFIED MALE SPEAKER: Yeah.

MS. O'BRIEN: Okay, thank you.

I'm going to review next some areas of governance that were ongoing areas of concern or topics of discussion for the board, and we're going to go back and look at the roots of some of these concerns, which go prior to Nalcor's creation.

If I could please have Exhibit P-00388, it's in tab 7 of the book before you. And this series of questions will be for Mr. Clift.

So the document that we're about to review, which is called, Outstanding Issues - Excerpts, this is, here it's a document that's being shared by Derrick Sturge to you, Mr. Clift.

First of all, I understand Mr. Sturge was vice-president, finance, and CFO of Newfoundland and Labrador Hydro at the time. Mr. Clift, I understand you worked fairly closely with Mr. Sturge on governance issues for the board. Is that correct?

MR. CLIFT: Yes, prior to his appointment, Mr. Sturge had fairly extensive governance experience in his previous work.

MS. O'BRIEN: Okay.

So he brought that with him –

MR. CLIFT: Yes.

MS. O'BRIEN: – to the organization. Okay.

If we could go to page 3. So here is a list of the issues that we – some of them we're going to be talking about in more detail. So this starts off and it says: "At its November 16," 26 [sp 2006] "meeting, the Corporate Governance Committee identified three issues that required additional discussion at the November 17th Board of Directors Meeting." And these are: Director Selection Process, Director Independence, and Director Compensation.

So, Mr. Clift, we're going to be coming back and forth to this document a few times over the next short period, but we have some excerpts relate – for some more detailed documents that were excerpted and put into this memo. But I understand and just want to make clear that all these documents were just draft documents at the time. Is that right?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

So the first area, if we can go – same document – to page 4 and I'm going to talk a bit about director independence, just a section here.

And, Mr. Marshall, I'll put the questions to you. What is – there is an excerpt here from an

independence policy and here it is. I'll give you a chance to review it. I won't read it into the record; it's filed as an exhibit.

Mr. Marshall, do you know, if – did this Independence Policy ever get finalized?

MR. K. MARSHALL: I wouldn't be able to say, but it looks like we certainly – we did act according to this.

MS. O'BRIEN: Okay. So we haven't found a record of a finalized policy. But even if it wasn't finalized, can you confirm that the items excerpted here were followed?

MR. K. MARSHALL: Very much so. Yes.

MS. O'BRIEN: Okay.

MR. CLIFT: Some of these are reflected in the mandate of the Governance Committee as well.

MS. O'BRIEN: Okay. Thank you. And it –

MR. CLIFT: And that was finalized.

MS. O'BRIEN: Okay. Thank you.

The "majority of the Board of Directors, including the Board Chair and all Committee Chairs shall be independent in accordance with the criteria established by the corporation." And on the next page here it does talk about independence criteria, and it's there, but it really has to do with not being an employee, not having a family member who's an employee as such.

Mr. Marshall, the board members who served with you – other than Mr. Martin, who was clearly not independent in that he was clearly an employee –

MR. K. MARSHALL: Right.

MS. O'BRIEN: – of the organization – were the rest of the board members independent?

MR. K. MARSHALL: To the best of my knowledge, absolutely. And we would seek that independence and we would ask for conflicts and –

MR. CLIFT: We checked them every year.

MR. K. MARSHALL: Every year.

MR. CLIFT: We filled out forms –

MR. K. MARSHALL: Yeah.

MR. CLIFT: – every year.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: Okay.

So that's – you're referring there, I believe, to point three, that there was "Annually, the Directors will be required to provide a formal declaration indicating they satisfy the Corporation's Independence Criteria." So that was done?

MR. CLIFT: And that would –

MR. K. MARSHALL: Yes. That came on during our tenure because we put that in place. It was not pre-existing; we brought that in as part of the governance proceedings.

MS. O'BRIEN: Okay.

And I know when the Muskrat Falls financing was put in place that there was a further requirement – so this is back in 2006 now so – but so going far forward, up to 2013 I believe, there was a further requirement that there be super independent members –

MR. K. MARSHALL: Right.

MS. O'BRIEN: – for the boards. Can you tell us what that was and –

MR. K. MARSHALL: Well, again, it was brought in prior to my time as chair, but it was brought in so that they would only be sitting on one board and not acting across the boards. And as I'm sure you'll get to eventually, the challenges and difficulties that were faced with respect to staffing all of the boards in sufficient quantity and expertise, but then we had to find super independent individuals on the board who were qualified therein, and you couldn't draw on their experience to serve on other boards as well.

So there were a number – as a result of the structuring of the transactions and the organization, there was by – through the involvement of the federal government and the – in the process of the guarantee, there was requests and mandates to be – have some super independence on certain members of – certain numbers of the board. I can't say offhand which ones they were, but there was requirements for super independence, but I'm sure Nalcor's legal office would be able to clarify those.

MS. O'BRIEN: Okay so this – just to be clear, the super independent directors would be ones who sat, just say, on Muskrat Falls Corporation and then none other of the Nalcor boards.

MR. K. MARSHALL: Right.

MS. O'BRIEN: Okay.

And I understand that that requirement was later changed, but that would have been after your time on the Nalcor board. Okay.

If we could please go to P-00400, this is at tab 22 of the book before you. This is a Code of Business Conduct and Ethics. We can go to page 2, Madam Clerk.

This is the first revision of this document. Its date is September 30, 2011. So this was a – one of the documents I alluded to earlier, I believe, Mr. Clift, when you – I reviewed some of the governance documents with you. Can – I know you've had a chance to look at this before; can you just tell the Commissioner generally what this document would have covered?

MR. CLIFT: So this document would outline, as it says there, a series of guiding principles around how one should perform. Standard things would relate it to all aspects of the organization and that we'd behave ethically and respectfully and those types of things. That we – there was something in there on privacy, confidentiality. There was things around –

MR. K. MARSHALL: Conflicts.

MR. CLIFT: – conflicts of interest and not accepting gifts and there were probably eight to 10 different –

MS. O'BRIEN: Yes, thank you. That's –

MR. CLIFT: – items outlined in sufficient detail to be clear to those who read them to fully understand the implications for them.

MS. O'BRIEN: All right.

I'm going to now talk about board size. P-00090, please, which is at tab 9, if we can go to page 2, Madam Clerk. Oh, P-00390?

MR. K. MARSHALL: That's not it.

MS. O'BRIEN: I might've misspoke. Thank you, page 2.

So this is a draft memorandum. It was being done to go to government. It was drafted as being from John Ottenheimer, who was chair of the Nalcor board at this time, which was April 2008. And he was also chair up through to the DG2 decision.

And I'm going to bring us, please, to page 2 of the document. Oh, I'm there on page 2. Sorry, I want to go down.

Okay, sorry, on page 3 there's some recommendations here with respect to the size of Nalcor's board. So the – it says here that: "The Energy Corporation Board of Directors may consist of up to 14 directors, pursuant to the legislation" which we've already looked at. Here it was Mr. Ottenheimer's recommendation that the board have 10 members. So this was before some of the subsidiaries were created.

I want to get a sense – you know, once all those subsidiaries came in place and you had all these boards that did have to be populated and the committee work that was required. I'd like to get a sense from each of you on what you would've considered the – you know, the recommended number of people to have on the – say, the Nalcor board, given the other duties that would have to be fulfilled.

And I'll start with you, please, Mr. Clift.

MR. CLIFT: Yes, I would say in the range of eight to 10 people.

MS. O'BRIEN: Okay.

Mr. Marshall, do you have any –

MR. CLIFT: Are you just looking for commentary on the number?

MS. O'BRIEN: Yes, right now just for the number.

MR. CLIFT: Okay.

MS. O'BRIEN: And we're going to get to the qualifications shortly.

With respect to the number, Mr. Marshall, do you concur?

MR. K. MARSHALL: I would say, yeah, eight to 10 max. I wouldn't go to 14. I've been on big boards before that generally get rendered pretty ineffective, but eight to 10 would be a recommended number.

MS. O'BRIEN: Okay. Mr. Styles?

MR. STYLES: Yeah, I would feel the same thing. I had the experience with the College of the North Atlantic and there were 17 on that board and it was –

MR. SHORTALL: Unwieldy.

MR. STYLES: It was tough to keep it functional.

MS. O'BRIEN: Okay and, Mr. Shortall, similar for you?

MR. SHORTALL: I would agree that eight to 10 is probably ideal.

MS. O'BRIEN: Okay. I am going to take some time to just review what size the board was, Commissioner, over the various periods. I'm going to particularly highlight, of course, the periods that have to do with Decision Gate 2 and Decision Gate 3.

So from July 2008 to April 2011 – so during this period, obviously, DG2 would've occurred in November of 2010, the term sheet of Emera would've been signed the same month, so some very important milestones, certainly, for the Muskrat Falls Project. During this period there were six members of Nalcor's board and that

would've been: Ed Martin, John Ottenheimer, Cathy Bennett, Tom Clift, Ken Marshall and Gerry Shortall, so five independent members, plus Mr. Martin.

Mr. Marshall, does that accord with your memory?

MR. K. MARSHALL: That's during the years 2008 to '11?

MS. O'BRIEN: Yes.

MR. STYLES: Yes.

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Okay.

And then 2000-and – in April 2011 through the period through to May 2012 – so approximately a year's period – you actually went down a member so that you'd had only five members of the board and four of them being independent members. And that was because Mr. Ottenheimer resigned from the board and at that time Ms. Bennett became chair. Does that coincide with your recollection, Mr. Marshall?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Okay, and now in May of 2012, Cathy Bennett resigned. So then you were down to four members –

MR. CLIFT: It's a pattern.

MS. O'BRIEN: Yeah – four members: that would've been three of you and then plus Mr. Martin. But now shortly after that there were some new appointees. This is coming close to the period where the project was sanctioned.

But in June of 2012 through to the period of February 2014 you had eight total members of the board, because at that time you had four additions, which would include Mr. Styles and, also, Mr. Leo Abbass, Mr. Allan Hawkins and Ms. Erin Breen. Does that accord with your memory, Mr. Marshall?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Okay.

And we'll talk a little bit more about some of the background that those members brought to the board in a few minutes.

Mr. Commissioner, this would be actually a good time to take the morning break, if that –

THE COMMISSIONER: All right.

MS. O'BRIEN: – if possible.

THE COMMISSIONER: All right, well let's take a break, then, for 10 minutes and we'll come back in 10 minutes time.

MS. O'BRIEN: Thank you.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Exhibit P-00388. We've already looked at this document. It's at tab 7 of the book before you.

I'm going to ask Madam Clerk, though, now to go to page 7 of the document. And this was – we looked – this document is dated November 17, 2006. We looked at it earlier, and this were where you were raising some issues that had been raised by the Corporate Governance committee. And this time I'd like to look at it with respect to the board selection process.

So here, in the memo, you are developing – looking at skills and experience gap, development of criteria for board members, and identifying individual qualifications that would be helpful for selection criteria for board members, and there's a listing here.

And it comes down and there is the development of a "Board Skills and Experience Matrix."

So Mr. Clift, we've already said that the excerpts in this document are just from draft documents, not final products.

MR. CLIFT: Right.

MS. O'BRIEN: But can you explain please for the Commissioner what is a board skills and experience matrix? What were you working on here with Mr. Sturge?

MR. CLIFT: Yes. Subsequently, this became known as a board competency matrix, but essentially, we were working through the lines of business, looking at what we felt would be required in the way of expertise, and then cross-referencing that with the functional area expertise that individual board members had in an attempt to identify areas where we were strong and areas where there were gaps.

MS. O'BRIEN: Okay.

And so this is gonna be –

MR. CLIFT: Perceived gaps.

MS. O'BRIEN: Okay.

So we're gonna talk about this some more because it was an ongoing issue for the board.

Can we go to P-00401, please, which is in tab 23 of the book before you.

And I'm – there's – I'm not gonna look at the covering email just yet. I wanna go to page 3.

MR. CLIFT: Page 3?

MS. O'BRIEN: Because here on page 3, we have a letter dated September 2, 2008. And Mr. Clift, this is a letter that you wrote to Mr. John Ottenheimer, who was then chair of the Board of Newfoundland and Labrador Hydro and also of Nalcor.

And you're expressing some concerns here, and I'm going to ask you, actually, to read into the record here, starting on the concerns that you were reading – you were raising and to read in the four concerns that you enumerated.

MR. CLIFT: So will I start with the first concern or would you like me to read in the first paragraph as well?

MS. O'BRIEN: I'd like you to start reading with these concerns relate and go from there.

MR. CLIFT: Okay.

These concerns relate – this, by the way, was written on behalf of the governance committee after some deliberation.

MS. O'BRIEN: Okay.

MR. CLIFT: So: “These concerns relate primarily to the current process that is being employed to recruit and select prospective members to these boards and the amount of time that it has taken to replenish these Boards. In particular, Board members appear to be most concerned about the following issues:

“1) The amount of time (9-12 months) that it is taking to find and appoint people to each of these boards;

“2) The potential negative impact that could arise from the loss of continuity on these Boards (and on Board committees) as individual appointments expire and replacement appointments are slow to be processed; associated with this is the need for remaining Board members to sit on additional sub-committees as the total number of members is diminished;”

The subsequent – number “3) The subsequent pressure that is being experienced by remaining board members to accommodate additional sub-committee responsibilities – not all of which they feel qualified for. In recent months, remaining members” – have often – “often have had to make costly changes to their own busy travel schedules (or participate via teleconference from as far as 4 time zones away, while on vacation, in order to allow these boards and sub-committees to achieve quorum status and conduct their business in a timely and efficient manner;”

Number “4) The absence of Board level expertise in a number of specialized areas deemed to be ‘of significance’ to NL Hydro and the Energy Corporation of Newfoundland. Notable areas where board level expertise would be beneficial include: large-scale or mega-project ... management experience; specialized hydro generation engineering, large-scale environmental project management; and legal affairs (including Labour Relations), all of

which will increase in importance as the number of the large-scale” – developments ...

“(presently under development or in the final negotiation stages) at Newfoundland and Labrador Hydro and the Energy Corporation of Newfoundland come to fruition.”

MS. O'BRIEN: Okay.

Before I ask you to move on, I just want to clarify that you raised an issue of not having quorum for the boards – not everyone might understand, but for boards and committees to have a duly called and constituted meeting, there is usually a minimum number of the members of the committee or board –

MR. CLIFT: Right.

MS. O'BRIEN: – that have to be present, and that's known as quorum. Is that right?

MR. CLIFT: Yes. To my knowledge a meeting was never put in compromise. We compromised ourselves –

UNIDENTIFIED MALE VOICE: Correct.

MR. CLIFT: – to ensure that there was a quorum.

MS. O'BRIEN: Okay.

MR. CLIFT: And I believe there is a note somewhere to that effect.

MS. O'BRIEN: Okay.

And I'd like to go back to the document now. I'm not going to get you to read in the full section on the background to our concerns, but can you please tell the Commissioner what was the – in your own words here today – what was the background for the concerns that you were bringing up on behalf of your fellow board members.

MR. CLIFT: Well, we had – Mr. Sturge and I and the committee – had worked through our board competency matrix, and we looked at the lines of business that we're in and the kinds of expertise, and we saw some deficiencies. We also looked at other boards for similar entities to try to get a sense for how they were populated

and what kind of expertise was available on those boards to give us a sense of perspective on what might be reasonable to suggest to the shareholder.

MS. O'BRIEN: Okay.

And at page 5 of this letter, please, Madam Clerk, I would like you – you have a section here that's entitled: Implications, and if you could please read in the first two paragraphs here in that section.

MR. CLIFT: “Implications: From a more broadly based governance perspective, what is perhaps most unfortunate in all of this is that during the same ... period (when Board governance activities were minimized and appointments to these boards were slow in coming)” – Newfoundland Hydro – “was itself actively engaged in negotiations with a number of large-scale international petroleum companies and also engaged in the ongoing development of the Lower Churchill project and in each case the Board of Directors would have benefited greatly from additional expertise in the areas noted previously in this document.”

MS. O'BRIEN: And the next paragraph as well, please.

MR. CLIFT: “Mr. Chairman, one could reasonably argue that when projects of this magnitude are actively being negotiated, we owe it to our constituent publics to exercise the highest possible level of diligence and governance. At the present time we are in a sub-optimal position in this regard.”

MS. O'BRIEN: So this is in September of 2008 that you're writing this.

MR. CLIFT: That's correct.

MS. O'BRIEN: Can we go to P-00095, which is at –

MR. CLIFT: Could I – could we go down a little bit further –

MS. O'BRIEN: Oh, yes –

MR. CLIFT: – on this document?

MS. O'BRIEN: Yes.

MR. CLIFT: Back a little bit.

Yes, so the – I'd like to draw your attention to the last paragraph: "Once again, I wish to reiterate, it is not our wish to be alarmist here, rather it is our desire to point out that the members of the Boards of both" – Newfoundland Hydro – "and the Energy Corporation of Newfoundland appear to be legitimately concerned about the time that it has taken to resolve these issues"

MS. O'BRIEN: Thank you.

MR. CLIFT: So we were exercising due diligence and we were being honest and forthright and making sure we were bringing this to their attention in a meaningful way.

MS. O'BRIEN: So then I'd like to go, then, to P-00095.

I should ask, do you – are you aware whether Mr. Ottenheimer, as chair of the board – and that's who you addressed to – are you aware whether he brought that forward to government?

MR. CLIFT: He did report back to us later that he had talked to government about this.

MS. O'BRIEN: Okay.

And do you recall what response that he had received?

MR. CLIFT: Working on it.

MS. O'BRIEN: Okay.

MR. CLIFT: They were working on it, which was a response we received a couple of times.

MS. O'BRIEN: Okay.

We'll go to P-00095, which is at tab 17 of the book before you. P – sorry, I – P-00395. I apologize, Madam Clerk.

So this is an email chain here now that we're going to be looking at. You alluded to it earlier, Mr. Clift, it's between you and Robert Thompson, who was clerk of the Executive

Council. And I'm going to get to the email in some detail but, first, what prompted you to write this email to Mr. Thompson?

MR. CLIFT: A couple of things. I had seen him in a – some kind of dinner or public event, a luncheon I refer to; I think it was like a Board of Trade luncheon or something like that. And that reminded me that I had agreed, based on feedback from my fellow board members, that we should try to move this once again. Just sort of remind them, make sure that they were aware of it, that it hadn't fallen off anyone's agenda.

MS. O'BRIEN: This is some 4½ years later from your –

MR. CLIFT: Yes, we had talked about this on a regular basis in the interim.

MS. O'BRIEN: Okay.

So – all right, so I'm going to take – go down just to the bottom of the email chain here. This is your first – this is where you're writing to him, so this is January of 2012. And I think I just misspoke, your last letter was in September of 2008 –

MR. CLIFT: That's right.

MS. O'BRIEN: – so 3½ years. So you are bringing to him, I'm just going to get you – actually, could you read this email, please, Mr. Clift, in.

You can skip the first two introductory paragraphs, but if you can just read the two – the issues here that you're raising in points 1 and 2.

MR. CLIFT: "In spite of ... numerous requests that we have made of the previous and current administration, we are still really short of Board members. If you include Ed Martin, we have 5 members, without him we are relying on 4 individuals (each of whom are quite busy in their professional lives), to fill the various Board committees and at the same time provide governance on what is arguably the most important file/project which this government has embarked upon for quite some time. Our Board would benefit greatly from the addition of individuals with large-scale engineering project" expertise, international project expertise, "labour

relations experience and additional finance or accounting experience. In addition, we would benefit greatly from the addition of an individual with connections to Labrador. At the present time (in all cases) our committees are minimally stocked – as is our Board. I recall a situation recently where I had to get up at 4:30 a.m., while travelling (in California) and attend a 5 hour meeting (via phone), so that the meeting could proceed.” Other members can relay similar experiences.

In October – this is point number 2: “In October 2008, the current members of this Board were informed by” the “government and the President of NALCOR ... that Board compensation would be addressed by Government and we were asked to provide a frame of reference. This we did ... late 2008. Since then the Board of NALCOR has met almost 50 times, while the various ... sub-committees have met frequently as well. At that time, NALCOR C.F.O. Derrick Sturge began accruing funds to allow for the retroactive payment of this board compensation. We are now in ... our fourth year of our mandate and no solution has been forthcoming – yet the volume and intensity of the work has increased dramatically. It is our understanding that government is in the process of making new appointments to this Board. Might I suggest that this would be the right time to resolve the compensation question as well. It would be my expectation that incoming Board members would quite naturally ask that question of government and the Board Chairperson. It would be nice to have an answer.”

MS. O'BRIEN: Okay. Thank you.

We are going to address the issue of compensation that you're raising in the second point in more detail in a few moments. For right now, I'm looking at the background of the experience that you were looking for with board members. And here when you're talking about the most important file or project, which this government has embarked upon for quite some time, that would be the Muskrat Falls Project –

MR. CLIFT: Yes.

MS. O'BRIEN: – you were referring to. Okay.

THE COMMISSIONER: I think it's referred to on the next page anyway in that email.

MS. O'BRIEN: Thank you. Yes.

Yes, it may be helpful actually. Mr. Clift, can you just read that last paragraph into the record?

MR. CLIFT: “Robert, the Muskrat Falls project, in particular, is an important one for our province, as are many of the other projects currently under consideration at NALCOR. These projects require the best possible governance we can afford them. As a board, we have been committed to this objective since the outset. We only ask that you afford us due consideration in the above matters.”

MS. O'BRIEN: Okay.

So now we know in the summer of 2012, Mr. Clift, that there were four new appointments to the board; we talked about them earlier. One would be Leo Abbass who was, at that time, mayor of Happy Valley-Goose Bay. Is that right?

MR. CLIFT: Yes.

MS. O'BRIEN: So, Mr. Abbass – is it fair to say one of the requests you'd made was for a board member with ties to Labrador. Would Mr. Abbass have fulfilled that role?

MR. CLIFT: Yes, we affectionately refer to him as the voice of Labrador.

MS. O'BRIEN: Okay. Allan Hawkins –

MR. CLIFT: Of these matters.

MS. O'BRIEN: Right. Thank you.

Allan Hawkins – he was also a mayor. He was the mayor of Grand Falls-Windsor.

MR. CLIFT: Right.

MS. O'BRIEN: And we had Erin Breen who was appointed. Ms. Breen was a lawyer, right?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

MR. CLIFT: A criminal lawyer, I understand, primarily.

MS. O'BRIEN: Primarily a criminal lawyer, yes. And then, Mr. Styles, who came on the board and we've already had some details on his background.

Mr. Clift, is it fair to say that these appointments – and no doubt, I'm not casting any – they might have been just fine people and certainly coming with their own backgrounds and experience – and I don't want to denigrate that in any way, but is it fair to say that they didn't – you weren't getting new members that had large-scale engineering project experience?

MR. CLIFT: Amongst that group, that would be true.

MS. O'BRIEN: Okay.

None with any hydro generation, hydro project experience?

MR. CLIFT: Not that we were aware – not that I was aware of.

MS. O'BRIEN: Okay.

I'm taking these things that you – these are items that you had been looking for –

MR. CLIFT: Yes.

MS. O'BRIEN: – background in in your – in the two letters that we just reviewed.

International project experience, no one had that, did they?

MR. CLIFT: No.

MS. O'BRIEN: Labour relations, in the new members that you had appointed?

MR. CLIFT: No. Presumably, the mayors would have been involved in labour-relations issues with the various unions, outside workers and those, you know, clerical workers with the various towns, so I would expect that both Mr. Hawkins and Mr. Abbass would have had some labour relations experience.

MS. O'BRIEN: Okay.

MR. CLIFT: Perhaps not formal training but expertise.

MS. O'BRIEN: Okay.

And what about additional finance or accounting experience, that was another area you had raised?

MR. CLIFT: Not that I was aware of.

MS. O'BRIEN: Okay.

MR. CLIFT: It's worthy of note that we would make suggestions to government as to who and what types of qualifications, but they were suggestions. Up to government to populate and decide.

MS. O'BRIEN: Okay.

I want to jump ahead now in time to March 2015, because it's at – P-00379 is the exhibit I'd like to see. It's at tab 48 of the book before you.

At this time there was some work that was done by Knightsbridge Robertson Surette, and this work, when we – when you get through it, you see that this company was engaged to do some work to start to develop a board competency matrix, and here, they say it – they have – it's completed, and here's the next steps. They wanted some self-assessment by the existing board members looking for gaps and so on as set forth here.

So this competency matrix, this is the same idea that you were working on back in 2006 as we saw earlier?

MR. CLIFT: As a matter of course, my experience in board governance is that, at least once a year, boards review their board complement, and they examine their competencies and, these days, issues around – challenges in diversity and other – it has expanded over time. And so that would be an annual process where – that we would do that.

MS. O'BRIEN: Okay.

But despite – I mean, we looked earlier where you did a first draft of a competency matrix –

MR. CLIFT: Yes.

MS. O'BRIEN: – back in 2006. So now we're up in March of 2015, during that period had one – had a competency matrix been finalized?

MR. CLIFT: We continued to review and update, and it was an internal document that we were using as a self-check.

MS. O'BRIEN: Okay.

But you weren't – so it hadn't gone to the – you hadn't – it hadn't been adopted, or you weren't making any formal recommendations to government with respect to it?

MR. CLIFT: Well, the documents you had – have – we just recently reviewed would've constituted formal requests of them.

MS. O'BRIEN: Right. The letters that you wrote?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

MR. CLIFT: And we subsequently continued to evolve this process, and in January of 2016, I wrote a report on – that was a board self evaluation report that also included a competency matrix and also was at – that was appended – I believe, would have been the documentation from Knightsbridge. And it's my understanding that the CEO and the chair brought that forward to government –?

MR. K. MARSHALL: I believe we had a public transparency and accountability report.

MR. CLIFT: Yes.

MS. O'BRIEN: Ultimately – and so I'll come back to this in just one moment. I'm actually going to go back to P-00395 for just a moment, and that was the email that you'd written to Robert Thompson, because I neglected to go over his response. So you wrote him; he acknowledged receipt.

MR. CLIFT: Yes.

MS. O'BRIEN: And you wrote him again then on – your initial write to him was in January 2012. You wrote to him again a few days later, and here's where you forwarded him, I believe, the letter of September 2, 2008 –

MR. CLIFT: Yes.

MS. O'BRIEN: – that we looked at earlier. Did you ever get a substantive response from Mr. Thompson or anyone at government?

MR. CLIFT: Not that I recall.

MS. O'BRIEN: Okay. And so we know that Knightsbridge Robertson Surrence was continuing on that work in 2015. And then you talked then again about further work that you were done – you were doing in 2016. But did this ever come to a resolution?

Did you ever get to the point while you were on the board of directors where you were getting appointments that fit the criteria that you were looking for?

MR. CLIFT: No.

MS. O'BRIEN: Okay.

Do you know why not? Did you get any response back from government or from –?

MR. CLIFT: No.

MS. O'BRIEN: Okay.

MR. CLIFT: We were told at various junctures that they were dealing with this or taking this under consideration. And I recall the CEO, Mr. Martin, saying we're gonna take one more run at this and gather everything we had and go in and do a more formal presentation on this. So what we presented – subsequently, what was presented on behalf of the board was a fuller, richer, more detailed accounting of what the board felt as individuals and collectively and what Knightsbridge Robertson Surrence came up with as well in conjunction with us.

MS. O'BRIEN: So approximately when would that have been?

MR. CLIFT: I think January of 2016.

MS. O'BRIEN: Okay

And so, from this period – I mean, we're looking at now from your first – the first memo was 2006 so, you know, almost, approximately a decade here.

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: During that time, was Ed Martin aware of these issues throughout this period of time?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

And do you know whether he was – are you aware of whether or not he was making any – trying to make any advancements with government to get the issues addressed.

MR. CLIFT: Yes.

He had talked to them on various occasions. I cannot recall the dates –

MS. O'BRIEN: Sure.

MR. CLIFT: – as to when those conversations may have taken place.

MS. O'BRIEN: Okay.

With respect to this particular issue of board selection criteria, does anyone else have anything else to add? I'll start with you, Mr. Marshall.

MR. K. MARSHALL: Yes. I mean, as a board member through part of this process – which – you've gone through these exhibits from 2008 and 2012 and one that Tom alluded to from 2016 – a couple of things were happening. Number one is I think it shows that the board did not shirk its responsibilities in trying to add to the board as was felt to be necessary to make the board more effective.

I think that we were diligent, we were forceful and we were acting in a fiduciary manner at all

periods of times to try to make sure that this issue was brought to the fore.

I think that you'll get soon to the issue of compensation. We'll come back, and we'll address that. But over that period of time, I think that there's an important backdrop here that is evident. One is that we wouldn't drop the bone. We wanted to continue to bring this home, and we were probably – with incredible dogged determination – to try to make sure that this saw the light of day.

We did not have the authority, as you indicated, to appoint board members. We could only recommend and recommend the process, and it's up to Cabinet, as you indicated earlier, to be the ones to recommend, much like in a public company where the shareholders of a public company elect and appoint the board of directors at their pleasure and at their vote.

The other thing that was happening at the time, and again I wasn't the chair for the piece, so I can't speak directly, but the other realities is that – we were dealing with – is that in the time you indicated that Nalcor members had gone from six down to five, and then the chairman resigned, so were down to four, and then we picked up the four new board members, because in that period of four years, we had five premiers. So there was a shift in the administration and bringing the administration up from – with respect to knowledge.

So there wasn't just an issue of board members changing, there was an issue of changing in the administration and the requisite timelines that it would take to get various people up to speed. And I can only speak to what little interaction that I had with those individuals as they tried to come up to speed. You'd have to speak to Mr. Martin with respect to his issues trying to get there.

But it is an important point to indicate that Tom, as head of Governance Committee, and the members of the board, we always felt that this was responsible and we would never drop this issue. We felt it was very critical.

MS. O'BRIEN: The issue – bringing forward this issue to government of getting the right people?

MR. K. MARSHALL: Correct.

MS. O'BRIEN: And during this period, as Mr. Clift alluded to in his – or addressed directly, not just alluded to, addressed it straight up. In his email you were being asked to make some very important decisions on behalf of, ultimately, the province – of the decision of whether or not to sanction or go ahead with the Muskrat Falls Project, and a myriad of other decisions that would've had to been decided with respect to that project along the way.

Is it fair to say that you would – because you didn't have the – all the people with the key backgrounds that you were looking for and felt you needed, that you would have been, to that extent, limited in your ability to really delve in and do the due diligence in coming to your conclusions and making those decisions?

MR. K. MARSHALL: I think it would've been beneficial to have additional people around the table, certainly. I don't think it – I don't think that anybody that was around the table would feel that their input was diminished, as a result of that. And we also had outside experts be able to come in and the reports that were prepared were prepared, granted, for the benefit of the organization. And as a board we did not go out and get outside independent experts. We did in certain things in – from some legal issues that we had to deal with and for some compensation related matters for personnel consultants.

But the members of the board acted – as we indicated, as you – we discussed an hour ago – extremely, strengthfully and wilfully and with extreme diligence and attention; sometimes delving into matters with which they weren't fully professionalized in but became, pretty much, experts through their analysis of the data.

We would loved to have had additional members at the table – you know, that goes without saying.

MS. O'BRIEN: Right, okay.

And so you say you – when you were relying on – you didn't have this expertise in many of these areas around the board table but I hear you saying you were looking at the consultants' work that was done, but these would've been

consultants that were hired by Nalcor. That's what –

MR. K. MARSHALL: Correct.

MS. O'BRIEN: – you're referring to?

MR. K. MARSHALL: Or by, you know (inaudible) –

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. K. MARSHALL: – by the federal government, by the TD Bank to provide financing, by the independent engineer, by – you know, there was any number of consultants. I mean, this project, and I know –

MR. SHORTALL: Right.

MR. K. MARSHALL: – that Gerry is pretty adamant about this – that this project has been – had a lot of attention, transparency, studies, analysis done and we would rely on those experts.

MS. O'BRIEN: Okay.

And I think your point there you were making that – but you didn't – the board itself – although you did have ability to hire consultants independently as the board, that was –

MR. K. MARSHALL: Correct.

MS. O'BRIEN: – something that you had the ability to do. When it comes to issues regarding the Muskrat Falls Project you did not do that.

MR. K. MARSHALL: Did not; we relied on the experts that were already hired by us and others to analyze it.

MS. O'BRIEN: By "us" you mean Nalcor.

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Yes, okay. Thank you.

To that answer, Mr. Styles, would you like to add anything?

MR. STYLES: Nothing really to add, outside the fact that, you know, most of this predates my tenure. I was well aware of Tom's concerns; we did discuss it and it was – those concerns were forwarded to Mr. Martin. He would've been aware of it as well – as always been alluded to.

MS. O'BRIEN: Okay.

And Mr. Shortall?

MR. SHORTALL: I would just reiterate about what Mr. Marshall just said: That we did rely on a lot of external reporting by external experts who took a cold eyes look at the project, all the assumptions that were going into our projections and all the data that's underlying the numbers that were being put together. And so we took quite some comfort from that because we didn't have that kind of expertise on our board. We brought the expertise in and whoever hired the consultant, we got the reports and read them all, so ...

MS. O'BRIEN: Okay, did you ever engage directly with the consultants or would you just have gotten the reports and read their reports?

MR. SHORTALL: Just from the reports.

MS. O'BRIEN: Next, Mr. Styles, when you were appointed chair in 2007 – and it's June 2007, so this was just six months prior to the sanction decision being made for the Muskrat Falls –

UNIDENTIFIED MALE SPEAKER: I'm sorry –

UNIDENTIFIED MALE SPEAKER: 2012.

UNIDENTIFIED MALE SPEAKER: 2012.

MS. O'BRIEN: 2012, thank you.

So this is June 7, 2012, when you were appointed and, of course, the sanction decision came in December of 2012. And I believe during the summer of 2012 it was actually anticipated that sanction would happen earlier in October. It was considered to be happening at that time, is that right?

MR. STYLES: Not that I can recall.

MS. O'BRIEN: Okay.

Now, you were coming in, you did not have any background in electricity generation, no – you know, in megaprojects. You've said earlier – I take it, it would've been a very steep learning curve for you.

MR. STYLES: Yes.

MS. O'BRIEN: How did you – I mean, you were coming in – very short period of time. I think, Mr. Clift said earlier today, you know, 12 to 18 months would be how long it would take – have taken him to get up to speed. How did you manage during that period?

MR. STYLES: Largely, you just delve into the material that was there and did your level best to, you know, understand it.

MS. O'BRIEN: Would you have had to rely heavily on other members of the board and what – and other people at Nalcor?

MR. STYLES: Yes, absolutely. Especially the three gentlemen here at the table with me –

MS. O'BRIEN: Okay.

MR. STYLES: – and their experience.

MS. O'BRIEN: And by the time the sanction decision was being made, did you – were you – did you personally feel you had enough material before you to really challenge anyone else's opinions or decisions that were being –?

MR. STYLES: I was comfortable with the information that I had at the time of the sanction.

MS. O'BRIEN: Okay.

And the other one – after your appointment, there was some media reporting at the time where – I think, Dwight Ball, who was leader of the Official Opposition at that time, had issued a news releases about your appointment – not about you personally – you know, your personal attributes, but in terms of your experience and background. That to come into the chair of Nalcor at such a critical time, you didn't – your background was not what would've been necessary.

I'd like to give you an opportunity to answer that: Do you believe that was a fair criticism?

MR. STYLES: Not entirely. I mean, I did bring some general business experience and some board experience to the position.

MS. O'BRIEN: And you felt comfortable in the position you were in?

MR. STYLES: I felt comfortable.

MS. O'BRIEN: Okay.

All right, thank you.

We're now gonna go to compensation issue, which we've been talking around. I'd like to go back to that Robertson Surrette report, to begin, and it's at P-00379, and this is the one in March of 2015. And I just want to highlight something here; if we could go to page 3.

THE COMMISSIONER: Tab?

MS. O'BRIEN: Tab 48.

And I just want to – at this point I don't have any particular questions, but here one of the things that – and this is, again, March 2015 – this Robertson Surrette was asked, I think, to do a bit of a review as to what other board, what – in terms of compensation – looking at not only the size, but more importantly here the compensation level for similar boards. The boards are not, for the companies, are not – the companies are not specifically named, they're just described generally here in this version.

UNIDENTIFIED MALE SPEAKER: Yes.

MS. O'BRIEN: There was a version that named the companies, but for our purposes today we just needed the general descriptors.

So I'd just like to highlight here, we're looking at, you know, board retainers of 25,000, 57,000, which was a Provincial Power Utility. Another Provincial Power Utility where it's \$10,000. There's – obviously, publicly traded tend, for the most part, to be a little bit higher. Another Provincial Power Utility, 25,000, this would be on top of committee retainers and meeting retainers. Again, we're looking at a number in

that range – and down through, there's a few pages of this.

It is fair to say, Mr. Clift, that the compensation that you were getting as a member for Nalcor – board member for Nalcor was nowhere near the range of what's put in this table?

MR. CLIFT: Yes, that's fair.

MS. O'BRIEN: Okay.

And so I know this was an issue, and I'm going to ask Mr. Shortall about this next document, P-00396, it's at tab 18. So here we are, this is March 1, 2012.

Mr. Shortall, this is an email that you're actually writing to Mr. Clift, others are copied on it, including Mr. Martin, Ms. Bennett, and Mr. Marshall. And we – you have – you were working on another board at the time; we've redacted the name of that board, but we've left the numbers there.

Can you explain the frustration that you were raising here?

MR. SHORTALL: Well, it's clear from my email that – I spent on the – I had just finished doing the year-end work for my public company board, and I compared the compensation and we were just about to come up to do the year-end work for Nalcor and all if its subsidiaries.

So I compared the amount of time I spent on the public company board doing the equivalent work that I was about to do on the Nalcor board. I compared that time with the amount of time I would spend on the Nalcor board and calculated the compensation that I would've gotten on Nalcor if I was getting compensated at the same rate that I was at the public company board. And I came up with a figure of \$18,750 is what I would've gotten at that rate, and compared it what I actually got, which was – it's here somewhere – \$850 instead of \$18,750. So it's a little bit shy. So, I mean, the issue of board composition and board compensation were long-standing issues with us.

MS. O'BRIEN: And here you say: "I realize that we shouldn't expect Public company

compensation here, but this compensation is, frankly, insultingly low.”

MR. SHORTALL: It’s insultingly low, yeah. I could probably sue because I’m not getting minimum wage.

MS. O’BRIEN: And the – to be clear, the \$850 that you were receiving, I understand that you were not receiving that because of your work on the Nalcor board.

MR. SHORTALL: No, Nalcor had paid nothing at all.

MS. O’BRIEN: Okay. So where would you have –?

MR. SHORTALL: Okay, well, there were three – three of the boards had some compensation attached that were – Newfoundland and Labrador Hydro and CF(L)Co had identical compensation, which is a \$2,500 annual retainer and a \$250 meeting fee. So a whole year of board meetings for Nalcor – sorry, not – Hydro or CF(L)Co could add up to about \$5,000.

THE COMMISSIONER: So was that \$2,500 total or 2,000 for each?

MR. SHORTALL: Each one is –

THE COMMISSIONER: Each one.

MR. SHORTALL: – 2,000.

MR. K. MARSHALL: Just those two.

MR. SHORTALL: Yeah, but just those two.

MS. O’BRIEN: So total compensation around \$5,000?

MR. SHORTALL: Yeah, and most of the Nalcor board members did not sit on the CF(L)Co board.

MS. O’BRIEN: Okay, so some of them would’ve only received the 2,500.

MR. SHORTALL: Yeah.

MS. O’BRIEN: Okay.

MR. SHORTALL: And then the other board that paid some compensation was Bull Arm Fabrication because it was an existing board for a long time before it was reassigned to Nalcor. And its compensation was \$100 a meeting.

MS. O’BRIEN: We’ve –

MR. SHORTALL: And I was receiving that for about two years and didn’t even know I was getting it. The number was so small it just disappeared into the cheque.

MS. O’BRIEN: Right. We’ve talked already about the types of – you know, people with the types of backgrounds that you were looking for to take on the work of this board. And it was important work and it is complicated; I mean the business of Nalcor and the very sounds of it, it’s a complicated industry. Are these related? I mean, is there a connection between what –

MR. SHORTALL: Did –

MS. O’BRIEN: – you can pay and who you can attract? And could you please address that with the Commissioner?

MR. SHORTALL: Yes, in my view they’re directly related. I have a feeling when we were talking about when we were doing our – on the Governance Committee doing that major skill matrix, that the people we were looking for we probably were not going to find them here in Newfoundland, we’d have to go outside the province.

And if you’re going to go outside the province for expert-level expertise, you’re going to pay for it. And, you know, paying \$850 instead of 18,000 is not going to cut it. You won’t get those people for that kind of compensation. So there is a direct relationship, in my view. And so Nalcor was lucky to find – sorry, to find some people like us guys who would give a hometown discount to basically do it for free. But you’re not going to get high-level expertise from outside the province for free.

MS. O’BRIEN: I’m going to ask you to step into the shoes of, say, the politicians now for a moment because this is a Crown corporation. And if– and the way that the board members

were appointed, they were appointed by the sitting government of the day.

And so if the government gets in and it starts appointing members to the board of directors, it's, you know, very often going to be people that they know, they've worked with before, et cetera. We've all heard how you came – became to come on the board and there's likely some concern on behalf of government members that, look, if we're starting to pay these people \$18,000 or \$25,000 a year, up to \$50,000 a year or whatever, we're going to get a huge – there's going to be a big criticism from the people – look, you're just – you're putting your buddies up there to get, you know, big fat salaries, and this is government money, public money, you shouldn't be doing it. How – you know, do you recognize that –

MR. SHORTALL: Absolutely, I recognize that. And for one thing I would say, as I said in my email, I wouldn't expect compensation at the level of a public company for a Crown corporation. Secondly, I think some of the concerns that you raised could be addressed by taking politics out of the appointment process and an independent board select people.

If it's obvious we're bringing in outside expertise, it's also obvious it's not some kind of a political appointment, so that issue goes away. So I think – I mean these things can be dealt with, I think.

MS. O'BRIEN: Okay.

So am I – if I'm hearing you correctly, your belief is, look, the most important thing is to get the right people on the board and you're going to have to pay for that.

MR. SHORTALL: Yeah. Well, yeah –

MS. O'BRIEN: Is that –?

MR. SHORTALL: – let's get the best board we can, and –

MS. O'BRIEN: Okay.

MR. SHORTALL: – pay them a reasonable amount.

MS. O'BRIEN: Okay.

I'll give you each an opportunity to see if you want to add anything. I'll start with you, Mr. Styles.

MR. STYLES: I mean I really don't have a whole lot to add to what's been already covered, but I mean it became apparent and obvious to me the frustration of other board members with the compensation, given the expectations and the demands on their time and skill.

So, yeah, I would concur that, you know, compensation would become, you know, a very real issue in terms of the future makeup of this board in particular.

MS. O'BRIEN: Okay.

Mr. Marshall?

MR. K. MARSHALL: A couple of matters; number one is, as I said earlier, this was an issue that was a rather persistent matter. And it's been around since prior to us being on the board, and probably to this day, I don't know.

But when it was raised amongst the board, it was always raised from the point of view of if we feel we need these individuals in order to serve on this board, then this is something that we have to address. There was always the recognition that this – we're in a Crown corporation and so you can't get to certain levels of compensation, which would be in private sector boards. But, you know, interesting, when you compared that chart earlier and you asked if Nalcor was – would have been there, you know, as you alluded later, Nalcor was zero. So it certainly didn't stack up from a Nalcor-proper perspective.

But the fact that, you know, this group stuck around for a dozen years primarily, and at these levels, indicated that we weren't in it for the money. We were in it for the good of the province; we were in it for the good of the organization. We were making recommendations as to what had to be done in order to get the kind of expertise that was desired at the table, because some of the expectations may have been out of line with the

ability or the willingness to pay for political and for a whole host of other reasons.

But from – the point of view, from my perspective, is it never became personal about the money, it was always about how can this board effectively run. And you wouldn't have gotten any of the individuals on this panel to work any harder if they were paid more, that I can assure you. They worked exceptionally hard, at every single turn, at every single meeting from my observation.

And I think from my personal commitment, the thing that struck me as being difficult is that where you had Newfoundland Hydro being paid and Churchill Falls Corp being paid, and that was always a kind of a separate board with respect to representation at Hydro-Québec. And it wasn't 'til our later years on the board that any of us had access to being on that board and seeing those issues, which I think are very important and critical to the organization.

But other boards had zero compensation. So you'd be sitting at a meeting with people, some of whom you had asked to come in completely as a volunteer, and others would be sitting there having – and getting compensation for Newfoundland and Labrador Hydro or CF(L)Co. So it became a matter of fairness of some people getting something and some people getting nothing, depending on what board they were asked to come on.

As Gerry indicated, as paltry as it was, if you were asked to serve on the Bull Arm board, you got some compensation. If you were on oil and gas, you didn't.

So, it was a matter of fairness across those boards. It was a matter of making sure that there was – if there is a desire to get this level of expertise and we had to right this, but I don't think you would've gotten any one of these members to work at all harder because they did everything to the best of their ability for, you know, call us silly, call us stupid, but we kept on going for a dozen years.

MS. O'BRIEN: Mr. Clift, finally, I'd like to give you an opportunity if there's anything additional you'd like to say.

MR. CLIFT: No, I don't have much to add relative to what Mr. Marshall, in particular, and Mr. Shortall had to say, other than at the very beginning, as I noted earlier in my commentary, we had been told that they were going to resolve this.

MS. O'BRIEN: There was going to be – you were told at one point there was going to be compensation.

MR. CLIFT: Yes. In general terms, just government is going to look after this.

MS. O'BRIEN: And do you know why it never happened?

MR. CLIFT: I can't speak to that, no.

MS. O'BRIEN: Okay.

The next area I'd like to talk about is the Audit Committee. So, this is going to go to you, Mr. Shortall, at P-00407, at tab 31 of the book before you.

This is the mandate for the Audit Committee of the board of directors. It's dated – this document is dated November 2015. So these are one of the mandates for the standing committee we referred to earlier.

I'm not going to get you – it's a nine-page document. It does speak for itself and we don't need you to go through it page by page, but if you could just, please, explain for us: What does the Audit Committee do? What was your role?

MR. SHORTALL: Okay.

Well, basically, the Audit Committee – the board delegates authority to the Audit Committee to take charge of the financial reporting process, the monitoring of compliance with internal control systems, to take control of the external audit and deal with the external auditors, take control of the internal audit, deal with the internal auditors, take control of the financial risk management process.

So, the whole pile of, sort of, you know, the integrity of the financial statements comes under the Audit Committee. The competence and independence of the external auditor comes

under the Audit Committee such as their compensation and – so we bring an independent, objective view to the integrity of the company's financial statements and the management discussion and analysis and all of the public reporting, quarterly reporting, annual reporting.

MS. O'BRIEN: Okay, so the external auditor, who was the external auditor for –?

MR. SHORTALL: Deloitte.

MS. O'BRIEN: Deloitte, okay. So Deloitte would be engaged every year to review the financials and give its statement on that.

Can you explain what is the difference between a role played by the external auditors – so Deloitte – and the internal audit functions of Nalcor?

MR. SHORTALL: Yeah, sure.

So, the external auditor is charged with examining the financial statements of the company and all of its subsidiaries and expressing an audit opinion on fair presentation of the financial statements.

The internal auditor is more in – that focuses not on the financial statements, it's more on the internal control systems: policies, procedures, expense reports, ticking and bopping and making sure that people are complying with all of the relevant internal control systems. So, it's a more focused, down lower work that the internal auditor does as opposed to the external auditor.

MS. O'BRIEN: And from the – your perspective on the board Audit Committee, you would be liaising with the external auditor and ensuring that work was carried out. And, as well, you would be monitoring the internal audit functions at – we'll talk about Nalcor – but at Nalcor to ensure that they had the right policies, procedures, right checklists to go through?

MR. SHORTALL: Yeah, exactly. I mean, the external auditor would report directly to the Audit Committee and they'd bring in – before they even start the audit, they bring in their audit plan, scope of the work, which locations their gonna visit, all that kind of stuff for our approval before they even start the audit. And then as the

audit is going on there'd be communication back and forth.

The internal audit, what we do there is we have a work plan that spreads out over five years and takes all of the items that they're going to be examining over those five years, rates them on a risk basis – high to low risk. And we do the high risk stuff earlier and often and the low risk stuff later and not as often. And they lay out a five-year plan so that we can make sure we're best using the resources to carry out that function.

MS. O'BRIEN: Okay, and would – as your role on the Audit Committee, would you be looking at work that was being done specifically with respect to the Lower Churchill Project as well?

MR. SHORTALL: Yes.

MS. O'BRIEN: Okay.

MR. SHORTALL: Yeah, I might add, I actually – when we started the project, after sanction, so this may be a phase 2 comment, but I had met with the manager of internal audit and gave him instructions to go into the project and start auditing upfront. Instead I said, I don't want you coming to me a year from now saying that there's a problem in the tendering process at Muskrat Falls. I want you to become involved right at the beginning and do it live, right, as the stuff is done, so we'd know right away if there's a tendering problem at Muskrat Falls.

So, that's the kind of interface, and then I took some resource that was – he had that he needed the time for and took a project and moved it off to future years so he could do this particular project this year.

MS. O'BRIEN: Okay, and we will be addressing the audit functions on the project after sanction in phase 2.

Before we get there, though, before we ever got to sanctioning the project, we had to pass through Decision Gate 2 first, so that's where I'm gonna go next.

At this time, at the time of Decision Gate 2, which was November 2010, three of you are on the board. It's only Mr. Styles who is not.

Can we bring up P-00093, please? It's at tab 16 in the book before you.

MR. CLIFT: Sixteen?

MS. O'BRIEN: So this is a document, here's the title right here up on the screen, it's the: Gate 2 Decision Support Package, Summary Recommendation to Nalcor's Board of Directors. This is a lengthy document; it's 2,000 – sorry, 207 pages.

Mr. Clift, can you confirm that this is – this document would've been provided to the board to assist you in making your decision on whether or not to approve the project through Decision Gate 2?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay, and who prepared this for you?

MR. CLIFT: This would've been internally prepared documentation, primarily.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Sorry, could you just speak up just a bit, Sir?

MR. CLIFT: Oh, sorry, that would've been internally prepared documentation, primarily.

MS. O'BRIEN: Okay, so been put together by people at Nalcor, and we will look – in a few of the appendices there's external work –

MR. CLIFT: Yes.

MS. O'BRIEN: – included, okay.

Did you believe it to be accurate?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

And did you rely on this in making your decision to ultimately vote to pass the project through Decision Gate 2?

MR. CLIFT: Yes, we would've asked the various questions along the way through the DG

process, which is fairly standard as you go from gate to gate to gate, tend to go back, test your assumptions, review as you go.

MS. O'BRIEN: In terms of the review and the reliance placed on the document, does anyone else on the board have a different answer than what was provided by Mr. Clift?

So nobody's indicating that they are, so that's fine.

I'm gonna go to page 9. One of the sections in the package is entitled: Energy Plan Directives. And I'm gonna go to two last paragraphs here.

It says: "The Energy Plan also stated that constructing a Labrador-Island transmission link, and delivering Lower Churchill" – Project – "to the Island, is a more cost effective alternative to an isolated Island grid increasingly dependent upon oil-fired thermal power resources. It is also consistent with the goal of energy security in the province, as the cost of electricity from the Lower Churchill Project through the link would not be subject to external factors such as world oil market pressures.

"Acknowledging that this statement was made in 2007, an assessment of generation supply options to confirm the Energy Plan statement was undertaken." And it goes on, "Nalcor has evaluated all practical supply options for generation sources to meet the Island's long term electricity needs and it has determined that Muskrat Falls with a transmission link to the Island provides the least cost and most environmentally ... solution to meet this need."

So Mr. Clift, I'm going to put this question to you. We have had some evidence already before the Inquiry about confirmation bias. Are you generally aware of what that term refers to?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

And so the idea is that when you start off with a premise that you're trying to confirm that you may view – put overemphasis on evidence that supports that conclusion and not put as much emphasis on evidence that doesn't support that conclusion.

So here we have right in the decision package that's going to the board, look – it says, look, this was decided back in the Energy Plan essentially that the Muskrat Falls Option was – the Interconnected Option was gonna be the least cost, and since that time in 2007, Nalcor has been working to confirm that statement, you know, and we have.

Did you have any concern at the time that there could be some confirmation bias at play?

MR. CLIFT: For us as a board, we were reviewing the information that was presented to us at each stage. And as you would normally do at each stage, you would test your assumptions and retest your assumptions, particularly in light of changing market dynamics and so on, to see if there was anything in play that might have changed the relative importance or the specific decision or the conclusion that was arrived at.

And so we continued to ask questions throughout the process to ensure that things that we identified as potential concerns or areas where we look for more information, we continued to do that throughout the process.

MS. O'BRIEN: Okay.

I'll just give anyone else an opportunity.

Mr. Shortall, do you want to address the issue of confirmation bias; the potential that that was present?

MR. SHORTALL: Sure.

I mean, I admit that I much prefer the Interconnected Island Option to the Isolated Island Option, because it's – it makes a lot more sense from the way it's structured and the way it gets off a reliance on oil for fuelling power. But having admitted that, I still would look hard at the Isolated Island Option to see whether, you know, we're making the right decision which one is more cost-effective.

So yes, I suppose that there's some bias there, but I'd still want to see the proof that the CPWs – I want to see that they're reasonably done and that there's still an advantage with the Interconnected over the Isolated. So I mean, the bottom line is the bottom line, right?

MS. O'BRIEN: Okay.

Mr. Styles, anything you'd like to add?

MR. STYLES: No, because most of this predates my tenure, really.

MS. O'BRIEN: Oh yes, certainly. You weren't there at DG2, sorry.

Mr. Marshall?

MR. K. MARSHALL: Yes, if I could. To echo the comments and to maybe bring a different viewpoint, I don't think – in this I will speak personally – the underlying issue, as we were well aware, that the Energy Plan stated the goals of Lower Churchill. We were well aware of the fact that a previous agreement had been nullified back in 1999 or 2000 or whenever it was to develop the Lower Churchill. So this was certainly not a new concept; it wasn't one that hadn't been studied. There had been previous reports indicating that it was viable and it was economical to do if done the right way.

From my own personal perspective, I can absolutely assure that there was no confirmation bias, and I like to evaluate all alternatives as they are presented. There was one definite, and that was that the Island needed power because the Holyrood plant was old and it was ageing and it was burning fuel and it was – there was a whole series of issues with respect to things that had to happen with Holyrood.

And in all of our analysis, it did not look like – and we did a – there was a study that was done indicating that waiting for 2041 wasn't necessarily a viable or a practical solution from the point of view of risk management.

So there was never a preconceived, yes, we're going to approve this at any price. There was a desire to make sure what is the best alternative to satisfy the province and to get to the long-term goals. As Mr. Shortall indicated, it ticked a number of other boxes dramatically so, and we'll get to them later with respect to federal loan guarantees and getting access off the Island for the first time in history and getting reverse grid power and getting off the reliance on oil at Holyrood and being able to have a plan for the eventual replacement of Holyrood.

But it – there was never any confirmation – whether there was – I did not observe confirmation bias by anybody at the board, and I certainly didn't have any in my own head. I wanted to make sure that this was truly the lowest cost alternative and it also met all of the strategic needs and the reliability of power needs that was required for the Island.

MS. O'BRIEN: Can we go to page 22 of this document?

So this is the section on the financing strategy, and it has the – it covers the costs that are going to be needed – the money that's going to be needed to do Muskrat Falls, the Island Link and the Maritime Link. And then it talks about where that money's gonna come from in terms of the financing. So we get both totals coming to 6.9 – there may be some – the numbers here don't necessarily add exactly to 6.9 – probably just some rounding there. They actually add to 7.0.

And I just want to make clear that these numbers – at the time of DG2, the number that we usually hear being discussed was that – certainly for the Muskrat Falls, for the generation and the Island Link, 5 billion is the number that was out, and it was out publicly at that time. There would have been an additional amount – I think 1.2 billion – for the Maritime Link. But the 5 billion does not accord with the numbers that are here in the table before you, because, as you can see up here, it includes interest during construction. So that's the difference.

Here is the note on the bottom. And Mr. Shortall, I'll put this question to you because – after it says look, here's what we need; here's how we're gonna get it – there's a note at the bottom of the table. It says: "A contingent equity commitment of \$300-600M from the Province is also considered prudent and necessary. This would be in addition to the \$2.5 billion in base equity from Newfoundland and Labrador as noted in Table 1."

So can you please explain to the Commissioner – what was your understanding of this at – as you were leading up to Decision Gate 2?

MR. SHORTALL: Who are you asking?

MS. O'BRIEN: You, Mr. –

MR. SHORTALL: Me?

MS. O'BRIEN: Yes.

MR. SHORTALL: Okay, thanks. Great.

All I can say is we – it's here in the document, so we would have discussed it at the board meeting. But I can't remember the specifics of that discussion.

MS. O'BRIEN: Okay.

MR. SHORTALL: I suspect this has something to do with the strategic risk that's been identified in the Grant Thornton report, 'cause the numbers are similar, and the basis of funding seems to be similar, since it's coming in from the shareholder's equity at the end. So that's all I can say about it, other, you know, other than that I'd have to speculate. I just can't remember the details of the –

MS. O'BRIEN: Do you –

MR. SHORTALL: – conversation.

MS. O'BRIEN: Do you recall whether you did anything at the time to confirm whether or not the government had committed the additional 300 to 600 million that was, by this document, considered necessary?

MR. SHORTALL: I don't recall.

MS. O'BRIEN: Okay.

I'll ask if anyone else on the panel has any memory of that. I'll start with you, Mr. Clift – that's fine.

MR. CLIFT: No, I don't have other – anything to add there.

MS. O'BRIEN: Okay.

Mr. Marshall, do you remember any specific discussion or verification of this statement?

MR. K. MARSHALL: No, general discussion you'd have to check with the chair of the day or the VP of Finance.

MS. O'BRIEN: Okay.

I'm going to just go over the document a little bit more just to give the Commissioner some sense of the information that was before you – had been supplied to you to make this decision. So there is obviously the introductory Decision Gate package that we've been looking at here, but then there were a number of appendices, page 29.

So this is – this was a document that just described the Gateway process that was being used. Page 32; here we have – there was a generation planning report from July 2010. That was there setting out what was required in terms of generation planning for the Island.

Page 71; this was a PowerPoint presentation that was presented as an appendices. This was entitled: Option Evaluation and Recommendation. And so this document, more than the – probably the initial package itself, it goes through the various options that had been considered by Nalcor in arriving at the Isolated Island and the Interconnected to be the ones to investigate further.

If we could jump to page 102, please, Madam Clerk. That's the summary and conclusion slide for this PowerPoint presentation. So here we go. This was – these were the conclusions that were before you, that it was – that the recommendation was to proceed with the Lower Churchill Muskrat Falls Project as the preferred option. And the reasons for that are listed here including: lowest long-term cost to ratepayers; a bump can be managed.

And I think when we look through it, that's a little electricity price bump. Is that consistent with your recall, Mr. Marshall?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Yes. Thank you.

And also that it's lower supply and price risk and also it advances the provincial Energy Plan as well as the other points, obviously, that are raised there.

The next document that was attached was the Emera term sheet and that was at page 103. So that was signed just shortly before. It was signed on November 18, 2010, so just shortly before

you were being asked to make the decision on Decision Gate 2.

The next appendices is at page 141. And so this was an Independent Project Analysis, which is a company, IPA. And it was referred to as a pacesetter review and a review that they did of the Muskrat Falls Project. And, Mr. Marshall, maybe I'll ask you, do you recall this document?

MR. K. MARSHALL: As part of the 207 pages? Yeah, we would've been going through that extensively. Do I recall it specifically? No, it's eight years ago and – but I do recall the document, yes.

MS. O'BRIEN: Okay, that's fine.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: Do you recall that IPA was one of the external consultants that Nalcor had retained to do some benchmarking of the Muskrat Falls Project to give them some feedback on how the project compared to others and looking at some of the numbers involved.

MR. K. MARSHALL: Yes, among others. Yeah.

MS. O'BRIEN: Okay. I'm going to – when you say among others, what others would you be thinking of?

MR. K. MARSHALL: Navigant, Ziff, there was other consultants that had prepared reports. Liberty had prepared – like, there was a number of others that had prepared reports with respect to the project.

MS. O'BRIEN: At this time at Decision Gate 2, though, I don't – we can get the dates –

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: – for those, which ones would have been there.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: I'm not sure all of those would have been –

MR. K. MARSHALL: (Inaudible.)

MS. O'BRIEN: – prepared at that time, but perhaps I'll check that over the lunch break.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: Okay, but this one certainly was there –

MR. K. MARSHALL: Right.

MS. O'BRIEN: – and it was included in the package before you.

Can we please go to page 146? And I'm going to take you to a few areas where IPA, I'm – you know, raised some concerns or issues. Obviously, I don't – in doing this it may make it look like that there wasn't a positive thing said in this report. The whole report is there and I just want to note, Commissioner, that there was a lot of positive feedback from IPA there and I'm not trying to diminish that. But what I'm mostly interested in is did these – the points that they raise, did these flag any – you know, cause any discussion or further questions being asked by the board.

So here, page 146, the two last bullet points there, the second last one says: "Team is highly experienced and highly involved but is misaligned on several key project elements which presents risks and challenges going forward.

"As owner ramps-up the team and contractors mobilize in" – the – "next few months, lingering team issues will magnify risks and potentially erode benefits of Best Practices applied thus far."

Do – Mr. Marshall, I'll start with you, do you recall these concerns being raised by this consultant?

MR. K. MARSHALL: I remember concerns being raised in the context of, as you indicate, the overall, kind of, general direction of the progress. I don't recall the specifics of what misalignment that they were referring to at this point in time in – what's the date, 2010 –

MS. O'BRIEN: Yes.

MR. K. MARSHALL: – I believe it was? Yeah, so I don't recall the specifics of what risks but I, you know, recall the general discussion that: Okay, let's make sure that there's a plan in place to mitigate for those risks and misalignments.

MS. O'BRIEN: Okay.

Does anyone else – Mr. Shortall, do you have anything to add to that on those points?

MR. SHORTALL: I only add that, yeah, we were dealing in 2010 here, so we're –

MS. O'BRIEN: Yes.

MR. SHORTALL: – quite a ways away from sanction yet. We're identifying project risks. We've spent a lot of time on risks and risk mitigation strategies. So this would've been identifying misalignment on the team in plenty of time to bring in mitigation of that risk before we got to Gate 3.

So it'd be like a red flag here now, and let's make sure it gets dealt with before we get to sanction 'cause Gate 2, it's not the end, it's just let's keep going because you've met the requirements of passing through that gate. All it means is we're gonna keep spending more money in the process coming up to Gate 3, confirming the engineering, getting started on the environmental review, all that kind of activity to get us up to where we need to be for sanction of the project.

So this is great. You know, this is the kind of stuff we want from the independent experts. And then we have to make sure that we follow up on it and mitigate that risk.

MS. O'BRIEN: Okay, thank –

MR. SHORTALL: So, I can't say what we did on that, but I'm – by the time the team was in place in 2012, that risk would've gone away.

MS. O'BRIEN: Mr. Clift, anything you would like to add to those answers?

MR. CLIFT: No, other than there was significant documentation and presentations subject to the time past this where we talked

about what things had to happen with the various teams and getting ready for integration and projection and all of those things. So it was much more detail around communication in subsequent months and years.

MS. O'BRIEN: And we'll move towards that as we go through – pass forward through time.

At page 148, there's another issue raised here that I wanted to specifically ask you about.

MR. SHORTALL: What page?

MS. O'BRIEN: Page 148.

MR. SHORTALL: One hundred and forty-eight, thanks.

MS. O'BRIEN: And this is one here, this is their recommendations: "Adequately plan for labour shortages, which are likely to occur, and follow through on resource loading project schedule."

Any – does any – and I'll start with you, Mr. Shortall. Do you recall any discussion around the board table about labour – the concern about labour shortages, which IPA, at least, are saying, at this time, were likely to occur?

MR. SHORTALL: Yeah. We had lots of discussions around labour shortage – possible labour shortages, and also possible labour productivity. I mean, real concerns there because a lot of Newfoundland labour has low productivity attached to it and we needed good productivity.

So, yeah we talked about this stuff a lot. I – and, again, this is a red flag raised in 2010, which will need to be dealt with two years later when we sanctioned the project. So, I can't remember the outcome of our discussions but I know we talked a lot about labour shortage – possible labour shortages – and labour productivity in those years leading up to sanction.

MS. O'BRIEN: Okay. Thank you.

Are you aware of what a resource-loading project schedule is or is –? That's fine –

MR. SHORTALL: Yeah.

MS. O'BRIEN: – if you aren't. Okay.

MR. K. MARSHALL: I'm looking for it on the screen.

MS. O'BRIEN: Oh, it's right here in this bullet and "follow through on resource loading project schedule."

MR. SHORTALL: Yeah.

MR. K. MARSHALL: Yeah

MS. O'BRIEN: Mr. Marshall, is there anything you want to add to that point?

MR. K. MARSHALL: No, I think that this is – from a labour shortages perspective, as Gerry indicated, we dealt with that point at the board with respect there was not much we could do at the time. There was a lot of pressure from Newfoundland labour where we couldn't get it; was heading to Fort McMurray quite a bit. That was the pretty heady days in the oil industry and the offshore and as well there was various organizations forming to develop importation of labour from various markets for this. But, again, we still weren't at DG3 so there wasn't a lot that we could do definitively as a board, just make sure that as we went through to the next process that is was identified that labour issues were going to be addressed in their plans.

MS. O'BRIEN: Okay. So it's on your radar.

Anything you'd like to add to that, Mr. Clift, or have they –?

MR. CLIFT: No, once again, as Mr. Shortall had indicated, these became flags or triggers for us and that they were subsequently manifest in the types of labour relations agreements that we put in place to ensure continuity on the projects so that those types of issues would be mitigated to the best of our abilities –

MS. O'BRIEN: Okay. And we will talk –

MR. CLIFT: – as an organization.

MS. O'BRIEN: – a little later about the mitigation of those issues.

The next – still staying with the Decision Gate 2 package that was presented to the board, the final appendices at page 150. This is a Gate 2 Independent Project Review, and I'll just scroll down here, you'll see who the members are of the project review team.

Mr. Marshall, do you recall this work of the Independent Project Review? Do you recall what this group was doing?

MR. K. MARSHALL: Yeah. They were kind of within the organization but cold eyes not on the project team, so they were reviewing all of the work of the Muskrat Falls Project team. They weren't directly on it. They were professionals within the organization, or in Derek Owen's case, hired by the organization as an outside consultant – contractor – and with major megaproject experience before to do this cold eyes assessment of the work and the assessment that was done.

MS. O'BRIEN: Okay. And we're going to hear some further evidence from some of the members of this Independent Project Review team, but, yes, they were doing this cold eyes review, I think is the word that you use.

If we could go to page 156. Here they note that they had – they talked about there was – they had identified nine priority focus areas for the project at DG2 that the project team should develop specific plans to address. And they then further categorized those nine areas that needed some work. They just summarize them here in this recommendation table and they took the nine and they divided them up as: two, you know, lower priority; three, medium and four of them were what they deemed to be highest priority.

So in the high priority they were looking for a detailed plan for Phase 3 engineering. They were looking for a finalized estimate probability/accuracy value, mobilization plan for Phase 3 and a governance model and project Policies to be updated.

Do you know – they just summarize their work in this document that you received. Do you recall, Mr. Marshall, whether you got any more detail on what the IPR team had included – had concluded, excuse me – or is what you would

have received from them what was in this slide presentation?

MR. K. MARSHALL: I don't recall any presentations from them, per se. We had numerous presentations, but we reviewed this document and I can't recall specifically through this whether there was additional documentation that was prepared as a result of this, but this would be fairly standard at this point in time to make sure that, as an example: Phase 3 engineering phase required. Yeah, I mean, we're at Phase 2 right now and we're not yet at Phase 3, and that was certainly in the works to be able to bring that before you get through Gate 3.

MS. O'BRIEN: Okay, thank you.

So now we're going to go to P-00094 – P-00394, I'm dropping my threes today.

UNIDENTIFIED MALE SPEAKER: Tab –?

MS. O'BRIEN: P-00394.

So –

THE COMMISSIONER: Tab –?

MS. O'BRIEN: This – oh, sorry, Commissioner, tab 15.

This is Minutes of the Thirty-Third Meeting of the Board of Directors of Nalcor Energy on November 16, 2010. And so this is the minutes of the meeting where you – the board voted unanimously to approve the passing of the project through Decision Gate 2.

I'm going to go to it in a bit of detail in just a moment, but first I was going to ask – maybe, Mr. Clift, you're the best one to answer this on the governance issue – who recorded your board meeting minutes?

MR. CLIFT: So that would be Nalcor staff members within the legal counsel group, of course.

MR. SHORTALL: It would be either Peter Hickman or Wayne Chamberlain.

MS. O'BRIEN: Okay, so –

MR. STYLES: Right, or –

MR. SHORTALL: This particular meeting was Peter Hickman.

MS. O'BRIEN: Okay –

MR. CLIFT: Or potentially a delegate for some of the committee meetings, but –

MR. SHORTALL: Yeah, but generally –

MR. K. MARSHALL: (Inaudible.)

MR. SHORTALL: – at the board meetings.

MR. CLIFT: At board meetings it would have been legal counsel.

MR. SHORTALL: Yeah.

MS. O'BRIEN: Okay, so legal –

MR. CLIFT: Internal legal counsel from Nalcor.

MS. O'BRIEN: Okay.

Internal legal counsel from Nalcor would have acted as corporate secretary to the board and done the recording of the minutes.

MR. CLIFT: Yes.

MR. SHORTALL: Yes.

MS. O'BRIEN: Is that accurate?

MR. K. MARSHALL: I believe that Wayne would have been the secretary to the board, but this day he wasn't there and Peter was the acting –

MR. SHORTALL: Yeah –

MR. K. MARSHALL: – secretary.

MR. SHORTALL: – could have been Peter's secretary acting at this meeting.

MS. O'BRIEN: Okay, so both Wayne Chamberlain and Peter Hickman, both lawyers and both worked internally at Nalcor.

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: Okay.

And in terms of the level of detail that's captured in the minutes – I'm just trying to get a sense of that. Mr. Clift, I know, we – some boards keep very, you know, detailed minutes, other boards tend to keep more concise minutes and some boards only ultimately record final decisions made.

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: Was there a discussion on the Nalcor board as to the level of minutes that would be taken – recorded for the board meeting?

MR. CLIFT: What, this particular one?

MS. O'BRIEN: No, I'm talking –

MR. CLIFT: Or for meetings in general?

MS. O'BRIEN: – in general. I'm sorry, in general.

MR. CLIFT: Occasionally, we – well, we, of course, always were reviewing the minutes for accuracy and detail, and occasionally, as a matter of process in governance, we would think about those kinds of processes.

And we moved to refine the minutes and the presentations associated with them over time to enhance their readability and clarity and make sure we had the level of detail that was required.

MS. O'BRIEN: Okay. So –

THE COMMISSIONER: Just if I can, just on that point.

MS. O'BRIEN: Yes.

THE COMMISSIONER: So one of things that I've done is I've reviewed all of your board minutes. And one of the things that I noted was that the board meetings were fairly terse with regards to what transpired; for instance, there wasn't really any reference to discussion about specific topics or specific issues.

And I know you've – you were each probably taking notes yourselves, I assume, at these board meetings? You would normally take your own notes? Do you have those notes now?

MR. K. MARSHALL: I do not because the board meetings switched from a process of getting a four-inch binder and you'd mark on it, and your house would start to get stacked up with board minutes, so we would leave the minutes knowing that the master copy were back in – at Nalcor.

And, eventually, we requested that we move towards an electronic distribution and you'd make notes in those – you'd make notes on your iPad and they would have gone back.

MR. CLIFT: Mm-hmm.

Yeah.

MR. K. MARSHALL: But, you know, the minutes were – I don't see – I've been on many boards and this was pretty much in line with what board minutes would typically look like. But I'm not sure with respect to specifics –

THE COMMISSIONER: Well I – no, I've seen board minutes, certainly, that are a lot more detailed than these board minutes.

MR. SHORTALL: Yeah.

THE COMMISSIONER: But each board has a different approach to –

MR. SHORTALL: Yeah.

THE COMMISSIONER: You know, I understand that but, no, I was just asking the question. So after your board – so what you're saying, Mr. Marshall, is that after you would have completed the board meeting, you would have – so that you wouldn't have to take all this stuff home and store it or whatever – and I can well appreciate the size of those things – and then on your iPad, you would leave that with Nalcor. So, assumedly, they would still have that?

MR. K. MARSHALL: Yeah. I mean whatever was on the iPad they'd have, I would think, or wiped. I really don't know.

MR. SHORTALL: I think –

MR. K. MARSHALL: But you'd have to ask Nalcor for that.

MR. SHORTALL: I think they got destroyed.

MR. K. MARSHALL: Yeah. I don't know if there is –

MR. SHORTALL: Yeah. I know I – after every board meeting I'd leave my binder with whoever was the secretary of the meeting and I think it was destroyed. But we've got someone in the room who would know.

THE COMMISSIONER: Right.

MR. K. MARSHALL: But the –

THE COMMISSIONER: We'll find out certainly.

MR. SHORTALL: Yeah.

THE COMMISSIONER: But just on that aspect of things, even if they were destroyed, like, with a complex project – I'm just making this statement just to give you an opportunity to speak to it. But with a complex project like this, I mean, this is over a long period of time. So understanding the ability to go back and consider things that were discussed at previous meetings and things of that nature, if you didn't have your own memory or, alternatively, your own notes, you weren't going to get it from these board meetings because – these board minutes because there wasn't enough in it to provide detail on issues.

I'm just wondering if you could speak to how you would recall and how you would go back and deal with items that perhaps are very scantily referred to in the board minutes.

Mr. Clift?

MR. CLIFT: Yes, so at Nalcor they keep a hard copy of everything. So they would have – so, for example, if I was dealing with something related to governance in 2012 and I needed to go back and reference something that had happened a year or two earlier, I would put a call in and say I'm coming in and I want to review the

following documents. And someone would pull them for me and they'd find an office for me, and I'd review them and refresh my memory, if that was required, on an ongoing basis.

Those were the kinds of activities that I engaged in. But like these other gentlemen, for security of information and other reasons, fairly early in the game we decided that all of these materials should stay in-house. And we didn't want the burden of having them in our offices or homes or, God forbid, cars that were broken into. You know, we were very cognizant of making sure all the information was as secure as possible.

MR. K. MARSHALL: I think, also, generally the board minutes were there to record the activities and the minutes and not the minutia of discussions. I think that would be a fair assessment. And that was nothing conscious about that, just a practically, in terms of operating within the board.

And the individuals who were presenting or had direction therein, would understand and know that they would have to come back with certain things. There was always an action item from meetings previously. We always have an action item stemming from previous meetings that had to be held over. But I can't speak to the, you know, the perception that they were not as brief as they should've been or not as expansive as they should've been.

THE COMMISSIONER: Yeah, I'm not making a perception, I'm just –

MR. K. MARSHALL: Yeah.

THE COMMISSIONER: – I'm just saying that –

MR. K. MARSHALL: As an observation.

THE COMMISSIONER: – I mean I read them all.

MR. K. MARSHALL: Yeah.

THE COMMISSIONER: And I'm just observing that they're – you know, there's not a lot there on the discussion that was taking place.

MR. K. MARSHALL: Yeah.

THE COMMISSIONER: But you answered my question. Thank you very much.

Sorry, Ms. O'Brien.

MR. CLIFT: I think our expectation was also based on the minutes that we were shown when we first went on the board. And what we saw subsequent to that was fairly consistent with what was available prior to that.

And, obviously, as the projects became more complicated, there was – the meetings were longer and somewhat more involved, but we were following a process that was fairly consistent with what we had observed at the outset as each of us came on to the board.

THE COMMISSIONER: Yeah, all right.

I notice it's 12:30, so I –

MS. O'BRIEN: It's a good time to break.

THE COMMISSIONER: Likely a good time to break, so we'll adjourn now until 2 this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Before I pick up where I left off, I'm actually going to make one correction.

Madam Clerk, could you please bring up Exhibit P-00401? This is at tab 23 of the binders. Mr. Clift, I just need to clarify something with you. When I was questioning you before the lunch break, I think I identified the incorrect email to which you had attached your September 2008 letter when you wrote to Robert Thompson. I believe it's this email you wrote on September 26, 2012 that you actually formally attached that

letter to. I was just correcting, I think, a question that I'd asked earlier.

So now, can we go, please, to P-00394, tab 15, and this is the minute of the meeting that we had up just before lunch where the DG2 decision was made.

So I'm just going to – I'm not gonna read, go through the whole minute, but I will highlight some parts of it. So obviously the meeting was open, there was a proper quorum, there was a safety moment. Then, Mr. Martin gave some information to the board about discussions with Emera in the term sheet and that that had been successfully concluded earlier that day. Then, Mr. Harrington, Paul Harrington joined the meeting.

Mr. Martin reported that Nalcor had reached Decision Gate 2 in the decision process relating to the Lower Churchill Project. It's noted that the "... gate does not involve the sanctioning of the project but rather consists of approval by the Board of concept selection and for the Corporation to proceed towards sanction, which is Gate 3. He stated the board would again be involved in the decision gate process of Gate 3.

"Mr. Martin asked Mr. Harrington to provide the Board with information and background in relation to Gate 2 of the decision gate process.

"Mr. Harrington explained the process relating to Decision Gate 2. He highlighted the documentation that had been produced, as well as the process involved in the production of information including the documentation. He then outlined" – sorry, I just lost where I was.

"He then outlined the independent project review team process which had been carried out." And I'll just interrupt there. So I think what Mr. Harrington was talking about here – and perhaps I'll just ask you, Mr. Marshall, to confirm – that he would be referring to the Decision Gate 2 package that we reviewed shortly before lunch?

MR. K. MARSHALL: I believe so, yes.

MS. O'BRIEN: Okay and this is – the Independent Project Review was one of the appendices to that package, correct?

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Okay.

He outlined that process. "This involved four people who were at the time independent of the Lower Churchill Project. Combined these four individuals have over 160 years of project experience, which he outlined in more detail to the Board. These individuals reviewed all of the information relating to the Project that had been produced and confirmed that the Lower Churchill Project is ready to proceed through Gate 2. They were high in their praise as to the readiness of the Project to take that next step and were impressed with where the Project is in relation to Gate 2."

So I take it that would've been Mr. Harrington reporting to you the results of the Independent Project Review – is that right, Mr. Marshall?

MR. K. MARSHALL: As I recall, yes. I don't –

MS. O'BRIEN: Okay.

MR. K. MARSHALL: Other members would have to comment if it was different, but –

MS. O'BRIEN: Does anyone have a different memory of that? And no one's saying – everyone's shaking their heads no.

"Mr. Harrington also reported to the Board that an external company was retained to review the Project and its readiness to proceed through Gate 2. That company has a large database of other projects to which it could compare the Lower Churchill Project. That company was also very positive in its assessment and is of the opinion that the Project is ready to proceed through Gate 2. Mr. Harrington also noted that appropriate sign-off has been obtained from all internal personnel."

So that second consultant that's being referred to there – the external company – would you understand that – I'll ask you, Mr. Shortall, would you understand that to be the independent project group that we looked at earlier?

MR. SHORTALL: Yes.

MS. O'BRIEN: Independent project analysis – IPA. Okay, thank you.

He noted – “It was noted that the decision to proceed through Gate 2 relates to Muskrat Falls and the Island Link only at this point in time. Additional work and analysis is required with respect to the Maritime Link and when that project is fully positioned to proceed through Gate 2, the Board will be asked to approve that step.”

Then Mr. Harrington left the meeting, Mr. Bennett reviewed the technical aspects of the project involving Nalcor Energy and Emera. And he gave a little more detail on that. Mr. Bennett also stated there are three components to the Maritime Link, and he gave some more information on that. He described how the Maritime and Island links will integrate into the Island grid. Mr. Sturge outlined who was involved in the negotiation on behalf of Nalcor and the roles that they played.

He also noted that the representatives of government involved in the negotiations, and that Nalcor also had a cold eyes due diligence team review the term sheet at appropriate steps along the way. And I take it at this point, Mr. Shortall, I'll ask you – Mr. Sturge would've been speaking about the Emera term sheet at this time?

Sorry, you have to say yes.

MR. SHORTALL: Yes.

MS. O'BRIEN: Thank you.

He then reviewed it from a financial point of view – I'm gonna go through this a little more quickly – he reviewed appendix D of the term sheet entitled additional investment. Then Mr. Martin noted it had been agreed by all parties that the term sheet could be a public document.

Here we have the only question that's recorded as being asked by the board: “The Board inquired as to the implications for the Holyrood Generating Station arising out of this Project. Mr. Martin stated that Holyrood would remain available for a short period of time to ensure the new system is fully commissioned, at which time the thermal portions of the plant would be

retired, leaving only the synchronous condensers operational. He stated that employees in Holyrood are aware that it is a distinct possibility that the Plant will be closed as a result of this Project.”

Then Mr. Martin distributed information for the board outlining the dividends for the three options as discussed earlier and the net book value of the three options and the equity IRR of these options. He also included information on Newfoundland and Labrador Hydro regulated revenue requirements in the Isolated Island scenario versus the Muskrat Falls with the Labrador Interconnected scenario.”

I'll come back to that in just a moment. Then there was a motion made by you, Mr. Shortall, it was seconded by you Mr. Marshall, and it was unanimously carried, and that is the motion here: “THAT be and it is hereby approved that Nalcor Energy move through Gate 2 of the Lower Churchill Project and proceed towards sanctioning of the Project, that being the construction of Muskrat Falls Generating Station and an Island Link.”

So, the first question I wanna ask is, there's only one question here recorded that the board posed prior to voting to go through Decision Gate 2.

I'll ask you, Mr. Clift, would – is – would that be because that was the only question asked, or was there a habit of not recording all questions posed in the minutes?

MR. SHORTALL: It was the latter. I know you addressed Tom.

MS. O'BRIEN: Oh, to Mr. Clift.

MR. SHORTALL: Yeah, I –

MS. O'BRIEN: Oh, but you, Mr. Shortall, you –

MR. SHORTALL: Yeah, I'll volunteer to answer here. I think we're dealing with the issue that the Commissioner raised before lunch that the minutes are quite brief. And when we went through this package, we would've gone through this background package page by page and there would've been lots of questions along the way.

MS. O'BRIEN: Do you –

MR. SHORTALL: So –

MS. O'BRIEN: – know how it was selected then, that – you know, this one particular question gets recorded in the minutes –

MR. SHORTALL: No, I have –

MS. O'BRIEN: – and others don't?

MR. SHORTALL: I have no idea.

MS. O'BRIEN: Okay.

Do you recall any other specific areas of questioning for the board prior to voting?

MR. SHORTALL: I can't specifically recall the exact questions we would – we asked, but we would've asked lots. I know I would have and I'm sure the others would have as well.

MS. O'BRIEN: Mr. Clift, do you have any further recollections than that?

MR. CLIFT: I do not.

MS. O'BRIEN: Okay.

How –

MR. CLIFT: I would agree that there would have been a – almost a page by page, slide by slide. Oftentimes as the presentations were evolving, questions would be asked, associated with whichever particular slide in the deck was being discussed at that time.

But, I can't recall specific questions at this point.

MS. O'BRIEN: Okay.

And you, Mr. Marshall?

MR. K. MARSHALL: Well, you know, I do remember this meeting 'cause it was my birthday. We were making a fairly involved analysis of where we were at this point in time. And the meetings were always certainly boisterous and vocal with respect to the questions coming from the board; why this would be the only question or issue that's raised

as a result of that, I don't know. What all of the issues that were raised earlier with respect to the internal rate of return, the project assessment, the differentials – they all would have been seriously questioned throughout; so, you'd have to ask other board members who were in attendance.

MS. O'BRIEN: Okay.

Fine.

This – because it's a financial question – this might be best asked to Mr. Shortall. The information distributed outlining the dividends for the three options as discussed earlier – do you recall what that was?

MR. SHORTALL: Not offhand.

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

Does anyone else?

Okay.

That's fine.

So, I just brought you down to the first. There was also a second motion; that was Cathy Bennett, seconded by you, Mr. Clift, unanimously carried. And this has to do with the Emera term sheet and the configuration of the project. And finally the board authorized the chairman to notify the shareholder to inform them of the decision.

I will go through – the board then requests Mr. Martin to express thanks or gratitude to members of Nalcor's negotiating team, and a few more paragraphs there that I won't review.

So, this was a unanimous decision of the board.

MR. CLIFT: Yes.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: And at P-00093, please, which is tab 16, and if you could go to page 167 of that.

P-00093, tab 16, page 167.

Just for completeness there, at the end of the resolution there you were giving – there was a request to have the chair write to inform government of the decision and here is a letter on that same date, November 16 to Premier Danny Williams and the Minister Kathy Dunderdale, and again, advising them of – that the motion had been passed and it is signed off by Mr. Ottenheimer, who was chair.

So just, for completeness, bringing that up,

Mr. Marshall, at this time – so really there had been a narrowing down to – the decision had been made to focus on the selection of the Lower Churchill Project/Muskrat Falls configuration. We know that coming up we're going to be looking at – as it went through to the PUB and there was this comparison of these two options – the Isolated Island Option and the Interconnected Island. We also looked – earlier on one of the documents attached to the Decision Gate 2 package, was the PowerPoint presentation that addressed the other alternatives that had been evaluated by Nalcor.

MR. K. MARSHALL: Yes.

MS. O'BRIEN: So the question I want to put to you is: do you recall whether there was any significant discussion at the board level where anyone was concerned, or there was any debate about the elimination of any of the other options?

MR. K. MARSHALL: They were concerned that something was being eliminated?

MS. O'BRIEN: So we know that the other options had been eliminated by –

MR. K. MARSHALL: Okay.

MS. O'BRIEN: – Nalcor.

MR. K. MARSHALL: Right.

MS. O'BRIEN: And we've discussed some of those in the hearing room so far – you know, the natural gas, import from Quebec, you know, waiting until 2041 and bumping up the Isolated –

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: – Island system 'til then. So those other options. So what I'm trying to get at is was this – was the elimination of those other options – is this something that was debated with any, you know, with any level of intensity or the –

MR. K. MARSHALL: No.

MS. O'BRIEN: – much time spent at the board level?

MR. K. MARSHALL: Absolutely. And I don't – I can't recall whether it was at this specific meeting or not, but throughout the process – and I think, you know, there was earlier reference and glossing reference to the issue of wind and there's been – you know, at our AGM there would always be – wind proponents would stand up and claim that this was the answer to what we needed.

And, but – so whether or not it was at this meeting itself, or whether through the body of meetings that we had leading up to Decision Gate 2, there was never anything that fell to the floor instantly without a significant level of discussion. Be that wind, be that Holyrood, be that Isolated Island, be that small – be that Hydro-Québec discussion, be that post-2041. There was lots of discussion and debate.

And, you know, I know amongst ourselves, you know, when Mr. Shortall was in town for meetings and sometimes we'd get together on a social level, and we would continue those –

MR. SHORTALL: Mm-hmm.

MR. K. MARSHALL: – discussions and debates. There was never a marriage-at-any-cost to Muskrat Falls. It was: let's make sure that all of the viable alternatives are explored.

At this particular meeting, I can't recall exactly what the level of discussion and debate was, but this had been a long process coming to the definition of what was rising to the top with respect to the recommended alternative.

MS. O'BRIEN: Okay. Does anyone else have to – add with respect to the other options that have been eliminated?

MR. CLIFT: I can recall, for example, we would have had a presentation on wind, sort of an overarching presentation on the wind patterns, the nature of it, the sustainability of it, the incremental cost to add it to the grid relative to other options. And so, as other alternatives were brought to us, there was invariably some kind of presentation package that would have been sufficiently detailed to allow us to understand the dynamics of whichever option might have been – the wind one, I recall, because there was a map –

MR. K. MARSHALL: It was vivid.

MR. CLIFT: – that – very vivid! – that showed wind conditions across North America, starting with the very light colour of pink and as you proceeded north and east across North America it got darker and darker and darker and it was dark purple by the time it got to Newfoundland. The problem was that the winds were not always sustained – sometimes they were too high, sometimes they were too low and wind power storage – there was other issues. And so we would have had a rather fulsome discussion at presentation around individual options and challenges for each one.

MS. O'BRIEN: Okay. And for wind. Would that have been a presentation by people within Nalcor or someone external to –?

MR. K. MARSHALL: That would've been internal at Nalcor, as I recall, and as well the board followed with great interest and encouraged the development of a number of wind projects in Fermeuse and in St. Lawrence, even though they were costing a lot more than Holyrood at the time. But the board felt strongly that it was an environmental solution that could form a part of the overall power generation capacity.

And when we went to external consultants and they said yes but if you're talking about firm base load power you require – not – you need something more than wind to do it. Wind should not form more than 10 per cent of your power. So –

MS. O'BRIEN: (Inaudible.)

MR. K. MARSHALL: – we were – we were very active and again – I don't know if it was specifically at the time of DG2 but wind was actively discovered. But it was – by the internal group and not external groups presenting to the board, but it involved external studies.

MS. O'BRIEN: I understand that the elimination of options had happened essentially before going through DG2. Does that –

MR. K. MARSHALL: Yes.

MS. O'BRIEN: – confirm with your understanding?

So, at that point – take on the example of wind – do you recall what external reports you would have been looking at or considering in 2010?

MR. K. MARSHALL: In 20 – again, there's a Hatch Report, whether the timing of it was pre- or post-2010 – I can't recall exactly.

MS. O'BRIEN: I think that was 2012.

MR. K. MARSHALL: Yeah. So, I mean, but there was – when we did the assessment of Fermeuse and St. Lawrence and those projects were – they were fairly early in the game and then there was other – as Tom indicated, there was assessments that were done, highlighting – and I remember somewhere up on Roaches Line there was another site that was heavily identified as being favourable, but I can't recall who did that study or presentation.

MS. O'BRIEN: Okay.

What about other options, such as waiting until 2041? So that's one that we've had a fair bit of discussion about here at the Inquiry. Maybe I'll go to you, Mr. Shortall. What's your recollection of why that was eliminated, and were you comfortable with that decision?

MR. SHORTALL: Well, I was comfortable with the decision. Waiting 'til 2041 was basically Isolated Island Option scaled back in a few years, because to get to 2041, we have to cover a 30-year period, during which Holyrood would die and would need to be replaced or refurbished.

So when we worked all the numbers around that, it became – it was much more expensive than the Lower Churchill Project. So it wasn't lightly dismissed, but it wasn't – it didn't meet the test of cost.

MS. O'BRIEN: What about exploring power purchases, say, from Hydro-Québec or someone else? Do you recall any discussion about that?

MR. SHORTALL: I don't recall the exact – I mean, I can recall we studied it, but I don't recall the exact – how we got to the conclusion right now.

MR. K. MARSHALL: Well, I can – I – having served on the board at the time of CF(L)Co – and again, not sure of the exact timing; it would've been after this. But you know, the negotiations with Hydro-Québec were one that were historically done at the government level. Not necessarily, you know, a chair of the board talking to their chair of the board, but in discussions with their board members – with Hydro-Québec's board members on CF(L)Co, you know, it was tangentially referred to.

And then when I would see media reports indicating that Hydro-Québec had power available at five cents, it was nothing that was presented to the board. And if anything, it was presented to the board that that might've been available in the summer, but it certainly wasn't available in the winter, because they needed the power when we needed the power.

So we had similar – we have similar weather patterns, and so somebody was inventing this deal with Hydro-Québec that could've been there, and there was two important issues. Number one is they didn't have the power to bring in to us, and number two: there still wasn't a link to get it down to the Island. There still would've required to be a Labrador-Island Link.

So it was a bit of myth and creation in our mind, and also there was the notion as to whether or not it was practical or feasible, given that we had to get to 2041 in order to get that power back. They just didn't have the power to supply to us in winter months.

MS. O'BRIEN: Okay.

Are you – I understand – we've had some evidence, and may have some more, but that Quebec was entering power purchase agreements with other jurisdictions, sort of, during this period. So when you say they didn't have the power to give, can you just explain to me what your basis for that is?

MR. K. MARSHALL: In winter months, they were at capacity constraints, as were we, and there also wasn't a path to get to the Island portion of the province. It still would've required the Labrador-Island Link and Transmission Assets down through the province in order to get the power down to where we were.

MS. O'BRIEN: Okay.

And are you saying this is information that was provided to you by board members of Hydro-Québec? I just wanna be clear of your source for the information.

MR. K. MARSHALL: No.

MS. O'BRIEN: So where did you get that information from?

MR. K. MARSHALL: General conversation through, you know, (inaudible) –

MR. SHORTALL: (Inaudible) sitting on the board.

MR. K. MARSHALL: Yeah.

MR. SHORTALL: Plus the GWAC contract. I mean, the reason GWAC is there is because Hydro-Québec's need for power in the winter months is so high that we had to – we provided them with extra power during the winter months under the Guaranteed Winter Availability Contract –

MS. O'BRIEN: Yes.

MR. SHORTALL: – at a higher cost. And – because they had to feed their base load at the same time we were feeding our base load, and so they would not have had the power to transfer any energy to us, because they were using it all themselves.

MS. O'BRIEN: Okay.

What about the one – another topic that has come up is the risks of relying on long-term fuel forecasts. When the CPW calculation was done for the Isolated Island Option compared to the Integrated Island Option, it obviously had a fairly – you had to rely on a fairly long-term fuel forecast going out to 2057, I believe, or – can we – or 2067.

So was there any discussion at the board table about the risks of relying on such a long forecast, and maybe I'll ask, Mr. Marshall, if you can respond to that?

MR. K. MARSHALL: Yeah, I would actually say that Gerry might be the best one to respond to it –

MS. O'BRIEN: Okay.

MR. K. MARSHALL: – because, you know, we had a lot of discussion around two elements. Number one is getting the province off of fossil fuel burning and using our generation of fossil fuels to be able to provide – be a part of that energy warehouse as opposed to depleting that resource and having nothing at the end in terms of an asset for it.

Two was the environmental implications. The Holyrood plant was known in its early days as a fairly large polluter and one of the worst in the country, and this board took great steps to try to make sure that it burned cleaner fuel, but it still was less than perfect. It was within minimal environmental standards, but we had some resistance to our desires to change the fuel-burning process.

Number three was you were getting nothing for it. You'd be burning fuel for the next 30 years and having no asset. You'd be left with a further crumbling plant and nothing really to be able to show as an asset for that.

But where Mr. Shortall can come in is that, you know, before we came on the board, I would venture to guess that none of us ever heard of PIRA, which was the, you know, the group that forecast world oil prices, and we relied on them, as do all of the majors rely on those forecasts in terms of, well, where does this show us it's

going to be in two years, five years, 10 years, 20 years, and we had to take that into account.

And we were in the midst of a very volatile price of oil pricing. Not that anybody expected that to stay forever, but you know, it has been a cyclical repeat, and it's a very – can easily happen within the next 20 or 30 years. Something could happen with respect to world events, and you've lost control of your sustainable low oil pricing that we see today.

MS. O'BRIEN: Okay.

Mr. Shortall, do you want to add to that, and in particular, I was talking about the going – because you really – the forecast had to be extended beyond that which was provided by PIRA. I think PIRA does a 20-year forecast, and it had to be extended out significantly beyond that. We had evidence on that.

MR. SHORTALL: Yeah, you're talking about the projection of fuel oil prices –

MS. O'BRIEN: Yes.

MR. SHORTALL: – out to 50 years, as opposed to PIRA only providing, what was it, 30?

MR. K. MARSHALL: Twenty.

MS. O'BRIEN: Twenty, I think.

MR. K. MARSHALL: Mm-hmm.

MR. SHORTALL: Twenty?

We need the 50-year period projection to use. All we can do is find the best assumptions we can find; PIRA was the best assumption we could find. We could bring it out as far as we could using PIRA, and then we just had to make an assumption that looked reasonable over a long period of time, which is basically just a built-in cost-of-living increase of 2 per cent, I think it was –

MS. O'BRIEN: Inflationary, yes.

MR. SHORTALL: – and run that out, because we had to get it out to 50 years if we could bring it back to the current value to compare it to the

other costs. And so to the extent that we used that projection on the Isolated Island, we would use the same projection on the Interconnected Island, although the fuel was far more important in the Isolated Island than it was in the Interconnected.

But that's all we could do. I mean, you just make the best assumptions you can and use them.

MS. O'BRIEN: Another issue that has come up is we talked earlier when we looked at the – some of the supporting documents of this 300 to 600 million that I believe you addressed, Mr. Shortall, that you said you understood as being the strategic reserve or this contingent equity that was needed by – the commitment that was needed by the province.

MR. SHORTALL: I'm making that assumption because the number is similar and it's going to be funded by an equity contribution, which is the finding that Grant Thornton had.

MS. O'BRIEN: Okay, had you –

MR. SHORTALL: It's not from any specific memory that –

MS. O'BRIEN: Had you ever heard of the term strategic reserve?

MR. SHORTALL: Yes.

MS. O'BRIEN: At the time, back in DG2?

MR. SHORTALL: I'm pretty sure I did, because when I read it in the Grant Thornton report, I kind of nodded, yeah. And then when I read the equity contribution, I kind of, you know, yeah, that kind of rings a bell. But I can't remember the specific conversation we had around it, but it was familiar to me.

MS. O'BRIEN: Okay.

And we have some evidence filed – there's a note in one of the Nalcor's documents that this – the – any amount for strategic risk had been removed from the DG2 estimate in order to – in the course of the negotiations with Emera, because there was some concern with Emera that if we kept strategic risk in the estimate number,

that that would not be agreeable to the Nova Scotia regulator. Does that ring any bells for you? You know, was that discussed –

MR. SHORTALL: None whatsoever. It's totally news to me.

MS. O'BRIEN: Okay.

MR. SHORTALL: Frankly, I don't believe it.

MS. O'BRIEN: Okay.

So do you recall – you don't recall any discussion of strategic risk at DG2, other than the note that I brought you to earlier?

MR. SHORTALL: Exactly.

MS. O'BRIEN: Okay.

Anyone else have any different recollection?

MR. K. MARSHALL: The same. I would not recall – I do not recall anything being removed from that for the purpose of –

MR. SHORTALL: No. I think if something had been removed and we knew about it, I'd remember it.

MR. K. MARSHALL: Oh yeah.

MR. SHORTALL: Right?

MS. O'BRIEN: Okay, so if that had been discussed with you that there had – that that number was not – maybe if I put it in another way. Any recollection of the number not – of a number to account for strategic risk not being included in the \$5-billion number that was going forward in this province because there was a desire to get alignment with Emera in the negotiations?

MR. K. MARSHALL: No, not to my recollection.

MR. SHORTALL: No.

MS. O'BRIEN: Okay.

MR. SHORTALL: And I can't see how it would make any difference anyway. I mean our

numbers weren't going to the UARB; Emera's numbers were going there. So what we did to our numbers shouldn't make any difference to the UARB discussions, right? So the logic of it fails me.

MS. O'BRIEN: Okay.

And, Mr. Clift, do you have anything to add to that?

MR. CLIFT: No.

MS. O'BRIEN: All right, so before we get to DG3 I'm aware that – we've had evidence that there was two other reviews done and the first one I'd like to address is the Joint Review Panel. So this would be the environmental assessment review that was done jointly between the federal and provincial governments.

I'll start with you, Mr. Clift. Did you – when that review was ongoing, was that something that you were following or paying attention to at the time?

MR. CLIFT: I think, yes, we were following it in as much as we could around the other things we were doing.

MS. O'BRIEN: Okay.

And one of the conclusions of that panel was that Nalcor's analysis that showed Muskrat Falls to be the best and least-cost way to meet domestic Island demand requirements was inadequate, and that an independent analysis of economic, energy and broad-based environmental considerations of alternatives is required. So that was one of the findings of the Joint Review Panel.

Was – I'll start with you, Mr. Clift. Was that finding discussed at the Nalcor board?

MR. CLIFT: I don't recall if it was or not, to be honest.

MS. O'BRIEN: Mr. –

MR. CLIFT: I rely on my colleagues to backfill.

MR. K. MARSHALL: What I recall from the discussion on the Joint Review Panel was there was a number of recommendations and that there was a number of items that we were compliant and had good support with respect to the project and a number that we weren't. However, we took note of those that – where there were recommendations made.

Quite frankly, we wouldn't have gotten the federal loan guarantee and gotten contingent funding if we didn't look after those recommendations to the satisfaction of the Joint Review Panel.

MS. O'BRIEN: Okay.

And, specifically, I was looking at the one – and we have had – just to let you know, that the full report has been filed, as well as the response from both the provincial government and the federal government to each of the recommendations.

But from the board's perspective, the question was they're finding that there should be an independent review, that they weren't satisfied that – and this is in 2011 that they're reporting – they weren't satisfied that an adequate review had been done at that point.

Was that something that the board, you know, turned their mind to in –

MR. K. MARSHALL: I can't recall specifically.

UNIDENTIFIED MALE SPEAKER: I can't either.

MS. O'BRIEN: Okay.

UNIDENTIFIED MALE SPEAKER: Is that the reason we've got an MHI report?

MS. O'BRIEN: Well, I think the MHI made a comment a little later. And then that would be the other review that I was going to talk about, which was the PUB reference. Before I do that, was there anything else that any of you wanted to add with respect to the JRP process?

UNIDENTIFIED MALE SPEAKER: Not me.

MS. O'BRIEN: So, yes, the other review that was done was, of course, the reference question to the PUB. I'll ask – maybe I'll start at this end of the table with you, Mr. Shortall. Did you follow the PUB reference question?

MR. SHORTALL: Yes.

MS. O'BRIEN: Okay.

And now, ultimately, we've had evidence that the report is filed. And to summarize it they – their final report said they couldn't make a decision as to whether this Muskrat Falls was indeed the least-cost solution because, to shorten it up, they didn't feel they had enough, you know, current information before them to make that decision.

Was their final report discussed at the Nalcor board table?

MR. SHORTALL: Yes, it was.

MS. O'BRIEN: Can you tell us what the discussions were?

MR. SHORTALL: Well, we weren't very happy with it, obviously. They basically ducked the issue and just left it on the table and resolved nothing from our viewpoint.

MS. O'BRIEN: Did you –

MR. SHORTALL: I think it even went against their own consultant's advice, right?

MS. O'BRIEN: And you're – there you're referring to MHI who had been retained by the PUB to do a review at that time.

What about – did you consider there to be any legitimacy to their point that, look, we only have the DG2 numbers, we know a lot, you know, further work has been done at Nalcor because they're getting close to DG3 and we want to have more accurate and more current information. Did you consider any legitimacy for that position?

MR. SHORTALL: Uh-huh.

I don't have any comment on it. I was not in favour to have the reference to the PUB to begin with.

MS. O'BRIEN: And why was that?

MR. SHORTALL: I didn't think they were competent to deal with the issue so ...

MS. O'BRIEN: Okay, I'm going to ask you to fill that in a bit because that's – of course, the PUB – the role of the PUB is a question before –

MR. SHORTALL: Yeah.

MS. O'BRIEN: – the Commissioner's terms of reference.

MR. SHORTALL: Uh-huh.

MS. O'BRIEN: So why did you feel that the PUB was not competent?

MR. SHORTALL: Well, I knew they didn't have the resources in-house to do this work, so they'd have to hire a consultant, which they did, and then ignored the consultant's advice. So I think these questions are better directed to the PUB than to me.

MS. O'BRIEN: Okay.

With respect to the PUB review I'll ask Mr. Marshall because I'll go down – I'm skipping you, Mr. Styles, because you weren't there at DG2 or during this period, I believe, when the PUB reported in March of 2012.

Mr. Marshall, do you – what was your reaction to the PUB report or what do you recall?

MR. K. MARSHALL: I was – I thought much the same, from a reaction perspective, because there was a report that was done to them, had indicated, as other reports had indicated, that it was felt to be the lowest cost option with all the information that was there.

I was somewhat, I guess, incredulous at the fact that they were the only group looking for DG3 numbers when nobody else had DG3 numbers. And Nalcor may have had a partial compilation, but certainly not all and not anything that was released in a full package.

But it seemed to be, you know, to kick the can down the road and to not come to a decision was not what was asked, when everybody else who was asked to have a position and used consultants in order to come to that conclusion could – you know, could reach a decision.

It wasn't – Mr. Shortall may have had his personal opinion – it wasn't a board position that the PUB shouldn't have been brought in. It was actually taken out of the hands of the board because I think that all previous major developments were taken out of the hands of the PUB. So this wasn't anything unique from a Muskrat Falls perspective, what was unique was actually asking them to come back in and have a look at this.

MS. O'BRIEN: Okay.

Mr. Clift, would you like to add anything?

MR. CLIFT: Nothing in particular to add relative to my colleagues, other than to say I recall at one point going back and reading the documentation around the mandate of the PUB and trying to understand their focus and wondering to myself whether or not the mandate, as defined at the time, needed some form of review.

So that, for example, there was a lot of talk about the lowest cost and the least cost, and there wasn't as much reference to reliability and system integrity and many of the other things that we were attempting to deal with as we were working our way through decisions around transmission and the cost of transmission and the reliability of the transmission, and recognizing that there were increased demands on the system, changing weather patterns, more challenges to keep the system up. And wondering about whether or not the original mandate of the PUB, as defined in the documents I looked at, at that time, didn't need to be somehow re-examined in the light of the changing nature of the way business was taking place at that time.

MS. O'BRIEN: Okay.

And are you – there are you referring to the mandate in terms of when they did – when they do regulatory reviews for rate applications. Is

that what you're referring to there or are you talking about the mandate given to them in the –

MR. CLIFT: The sense I got was that –

MS. O'BRIEN: – defined reference question?

MR. CLIFT: – the whole concept of the lowest cost has to be considered in the context of what you get at the lowest cost. And so, at some point, you want to make sure you are, to the best of your ability, consistently delivering reliable power.

And so you make decisions around what type of towers to use. Is it one with a 50-year life, 100-year life? Where are those towers going to be installed? What is the nature of the weather at that time? And, occasionally, the least-cost alternative in the short term doesn't necessarily become the most reliable or the best cost – best use of the dollars invested over time.

I'm thinking about transmitting power down through the Long Range Mountains and along the Great Northern Peninsula, for example, which would require – which would have much more onerous ice loads, wind conditions, winter weather, all of which would require a higher-than-average investment in transmission capability.

MS. O'BRIEN: Okay. The last question I'll put to you –

MR. CLIFT: So we did, as a board, have those kinds of broadly based discussions as well –

MS. O'BRIEN: Okay.

MR. CLIFT: – at that time.

MS. O'BRIEN: So whether least cost should really be the prime focus. Am I understanding you correctly? Is that –

MR. CLIFT: Well, you can read least cost and it's subject to interpretation, of course, right? And it needs to be qualified. So if I was sitting there on the PUB side, I would certainly want to make sure I understood – or on our side – what the implications of the mandate of that organization were to us.

MS. O'BRIEN: Okay.

We know that in Nova Scotia – so the Nova Scotia regulator – when the Maritime Link went before their regulator, it was a much broader question or evaluation, unlike the more limited – much more limited – reference that went before our PUB, which was really: Look at these two options, is Muskrat Falls the least cost between the two? Before the UARB in Nova Scotia, they were able to look at the Maritime Link in much – more broadly.

Was there any discussion at the board, at the Nalcor board, you know, comparing those two options? Saying – looking at what we were doing here in this province versus what was happening in Nova Scotia for what was essentially different parts of the same project?

I'll put that to you, Mr. Shortall.

MR. SHORTALL: You mean the difference in the regulatory environment?

MS. O'BRIEN: And the reviews that the – both – the difference in the – the different levels of review that the regulatory body in Nova Scotia was doing as compared to the PUB here in Newfoundland –

MR. SHORTALL: Well, I have to admit –

MS. O'BRIEN: – and Labrador?

MR. SHORTALL: – I didn't follow the UARB process very closely. I just – and so I don't recall ever having any discussions at the board level about the differences in those processes.

MS. O'BRIEN: Okay.

MR. CLIFT: Other than, occasionally, we might have been updated as to what the progress of that –

MR. SHORTALL: You know where they were and that, you know.

MR. CLIFT: – those meetings were and what the nature of the discussion was in general terms.

MR. SHORTALL: Yeah.

MS. O'BRIEN: Mr. Marshall, did you want to add anything to that?

MR. K. MARSHALL: No, I think, you know, you've got two different jurisdictions with two different approaches, and, as I said earlier, the issue of the PUB overseeing and kind of analyzing megaprojects was – or major hydro developments – was taken out of the hands of the PUB long before this project, and it wasn't one for this board really to have a position on as we – as you indicated, the board was asked to review this limited scope and didn't come to a decision.

As Tom indicated, you know, the lowest-cost option sometimes got in the way of what might've been the proper decision, as an example was Holyrood. You know, we found as a board and we wanted to do something about it very aggressively, that this was one of the worst polluters in the country. So we took the application to stop burning low-grade fuel that was causing, you know, untold issues in the community and in the press, and not just local press but national press, and the answer was: Sorry, you're meeting the minimum environmental standards, therefore keep on burning the low grade bunker C and we can't help you. And we, as a board, felt compelled, we had to go higher than this. We have to make sure that this gets stopped.

So that was – that's, I think, what Tom's referring to with the lower-cost option, but there was no formal board directive to say: No, we don't want the PUB to do this. That was taken out of our hands long before that.

MS. O'BRIEN: Understood, thank you.

Okay, next we will move on to DG3, and if we could bring up Exhibit P-00403, it's at tab 26 of your binders.

I'm gonna start with the meeting minute this time. So this is: Minutes of the 62nd meeting of the board of directors of Nalcor Energy on December 5, 2012. And you'll see that here all members of the panel are – sorry, Madam Clerk, could you move my mouse to the screen there so I can get it? Yup. Thank you.

So we see all members of the panel here were either present in person. Mr. Styles, you're here now; Mr. Clift, you're here, and present by telephone is Mr. Marshall and Mr. Shortall.

"Mr. Martin" advises "that on December 4, 2012 Management provided the Board with a memorandum outlining the purpose, background and draft resolutions for seeking the approval of the Board to sanction the following Lower Churchill projects ..." and they're listed there. "A Federal Loan Guarantee Briefing presentation was also provided to the Board by email on the same date.

"Mr. Martin provided the Board with a high level overview of the sequence of events and key factors leading Management to seek the Board's approval to sanction the aforesaid projects, noting among other things, the requirement for additional generation, that the interconnected Island option is the least-cost option, receipt of an investment grade rating from the credit rating agencies and the additional net benefits to the Province. He then provided an overview of the capital cost risks and in particular the challenges with respect to labour costs and productivity and advised that such risks are being mitigated and managed to the extent possible.

He provided an "overview of the background and matters relating to the sanction of the Maritime Link and the risks related to the approval by the Nova Scotia ... (UARB). He then provided an update with respect to the negotiation of key terms and conditions in a separate sanction agreement with Emera to respond to risks related to capital costs of the ML and FLG conditions precedent. He noted that in order for Nalcor to have control over transmission and construction of the ML in order to ensure long term reliability and quality, it was appropriate to share in the capital cost risks."

He "responded to the comments and questions from the Board with respect to the capital cost risks related to the UARB approval of the Maritime Link.

"Mr. Bennett joined

"Mr. Martin" then "confirmed that the Shareholder has been informed of the benefits

and risks related to the Maritime Link and the other Lower Churchill projects."

Mr. Bennett then talked about input into the Emera package. There was a – I think Mr. Bennett is reporting "that Nalcor has assembled a strong team with utility and mega project experience and that a delay in sanction of the Lower Churchill projects could result in some of these people being lost to other projects and opportunities.

"Mr. Martin canvassed Board members individually with respect to whether they had any additional questions or concerns. Board members confirmed they were satisfied with the level of engagement and information."

And then there was a motion made by Mr. Shortall, seconded by Ms. Breen, unanimously carried to sanction of the Maritime Link. And then there was a second motion made by Mr. Shortall, seconded by Mr. Clift, and this is relating to the sanction of Muskrat Falls plant and the Labrador Transmission Assets and the Labrador-Island Link. And so – and then there's another motion related to the Emera term sheet.

I think that's – I don't need to go through it anymore than that, I think, for the purposes of this.

Now, the beginning of that minute, they – Mr. Martin referred to information that you'd received on December 4. I do believe, though – if we could bring up P-00121. Sorry, P-00121. Oh, it's just – it's a large document, so it probably just needs some time to load. There we go.

THE COMMISSIONER: Tab –?

MS. O'BRIEN: It won't be in your book, Commissioner, and it won't be in your book either. This is the support package for the DG3, and so it's a rather thick document.

I note there was a reference in the minutes to material provided to you on December 4. We have found a very similar package. This package here is dated November 12, 2012. It was located among the board papers, so we understand you would have received them as a board. There was another package very similar; in fact, we didn't

notice any differences, also dated December – but one difference being it was dated December 4.

I believe to the best of my information, and I'm sure Nalcor will correct me if I'm wrong, that this is the material that you would have had to make the decision with respect to Decision Gate 3. And I'm – there we go – and this is, again, this is a very significant package. This is 525 pages.

So does this generally look familiar to you, and I'll ask you that question, Mr. Marshall?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Okay.

And if we just go to page 100. I just want to give some sense to the Commissioner and – what would have been attached to this. So there would have been the main body of a report similar to what we saw at DG2. Attached would have been the MHI report, and this is here, and it is the report that MHI did with respect to the Decision Gate 3 numbers that was commissioned, I believe, by the Government of Newfoundland and Labrador.

There is a Traffic Light document, which I'll bring you to in a short while, but this is basically listing the DG3 deliverables and the idea being whether it's green for go, red for stop, you know, whether the boxes have been ticked. There was a Planning Load Forecast Report similar to what we saw in DG2. Sorry, there was a Planning Load Forecast Report and a Generation Planning Issues Report, and that would be similar to what we saw at DG2.

There was also a Meteorological Analysis; an LCP Capital Cost Technical Overview. There was these reports, I think, that you referred to earlier, Mr. Marshall, the Hatch Wind Integration Study, and there was also a Newfoundland and Labrador Hydro Wind Integration Study, and then there was Retail Rates Analysis.

So Mr. Marshall, I'll stay with you and just ask similar questions as I did to – as I did with respect to the DG2 package. Who would have prepared this package for you?

MR. K. MARSHALL: That would have been the interior – internal Nalcor team. I wasn't at that meeting in person. I believe I was there by telephone, and this one would have been delivered, I think, electronically via our iPads. And our iPads started to get quite thick when this one was delivered. But it would have been – I don't know who would have actually prepared it, but it would have been Gilbert, Ed, Derrick. The entire team would have been involved in the preparation of this, I would think.

MS. O'BRIEN: Okay.

And I – we – you would have assumed it to be an accurate compilation of information?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Okay.

And is this a document and these – with attachments that you would have relied on in coming to your decision –

MR. K. MARSHALL: Yes.

MS. O'BRIEN: – to sanction the project, yes.

And anyone on the – rest of the members who would feel differently than that?

UNIDENTIFIED MALE SPEAKER: No.

MS. O'BRIEN: No, no one is saying no.

Okay, great.

Now, one of the questions that I wanna bring here – if we go to page 188, and this is this Traffic Light. This is one of the issues that's come up, and I just wanted to – one – this is the idea of the, you know, these were the agreements and where they were. Or sorry, these were the deliverables. Some were for deliverables for the House of Assembly.

Then the last page, here, there was Gatekeeper requirements, which were additional.

And one of the topics that have come up so far is we know at Decision Gate 2 there was a number of sensitivities run on the DG2 CPW analysis. So you know, what would happen if we

increased the fuel forecast by so much? What would happen to the CPW analysis if we used the PIRA low forecast? What would happen if the capital costs went up, you know, by X percentage?

We did not see as many – in the evidence so far, we have not seen as many sensitivities that were run on the DG3 numbers. We have had some sensitivities presented and understand that these were largely done by Investment Evaluation, and those sensitivities that were run did relate to fuel pricing and also capital cost variations. But we've seen nothing with respect to variations in the load forecast at DG3.

And this was, actually, one of the requirements for DG3 according to this documents – that there had to be additional sensitivities – loss of Island industrial, Maritime Link and additional Labrador load. And this – the information that we have to date was that these load sensitivities were not produced, and we don't yet have the information as to why that's the case.

Do you recall any discussion at the board with respect to these sensitivities? I wanna see if there's anyone on this panel who can shed any further light on that topic.

I'll start with you, Mr. Shortall.

MR. SHORTALL: I can say, yes, we discussed the sensitivities that were presented. I don't think we discussed the reason why were – there were fewer presented in DG3 than there were in DG2.

I don't recall having seen anything on that, and I probably wouldn't have noticed. You know, I'm looking at the sensitivities of DG3 two years after I looked at DG2, and I wouldn't – oh, I said, oh there's not as many – I wouldn't have noticed that I don't think.

MS. O'BRIEN: Okay.

And do you recall – and it may be the same answer – noticing that there were no sensitivities done with respect to varying the load?

MR. SHORTALL: No –

MS. O'BRIEN: Okay.

MR. SHORTALL: – I don't recall.

MS. O'BRIEN: Mr. Styles, do you have any further insight into that topic?

MR. STYLES: No, that's not – I never noticed it, as well.

MS. O'BRIEN: Okay.

I'll go down the line. Mr. Marshall?

MR. K. MARSHALL: Yeah, the only thing that I would note is that Paul Humphries, as we got closer to DG3, was a more frequent appearer at the board meetings to – but I don't recall any specific issue around have you dropped your load sensitivities? Have we changed the load sensitivities? There was – again, this would have been in green-light status, but I, again, can't point you to the documents that we reviewed, but he was a rather frequent guest at the board meetings to be able to go through his issues, because prior to that he hadn't been, in years prior.

MS. O'BRIEN: Okay.

And we are going to hear from Mr. Humphries –

MR. K. MARSHALL: Okay.

MS. O'BRIEN: – just so you know.

Mr. Clift – anything you'd like to add?

MR. CLIFT: No, I don't think so at this time.

MS. O'BRIEN: Okay.

And we'll come back now, because as I pointed out, when I went through the minutes at the start of this line of questioning, there was a note there that Mr. Martin had reviewed with you the capital cost risks and challenges particularly with respect to labour and productivity. This was, as we heard earlier today, this was something that had been raised in one of the review documents at DG2.

And Mr. Shortall, I believe you addressed it at that time. You know, we knew it was there. It was a significant concern for us, and this morning, we were talking about DG2, of course,

and you were saying but recall this is DG2. We were – we're a ways away from sanction.

So now, here on this day that we're talking about now, we are at the decision to sanction the project. Where were – Mr. Martin was raising it, productivity labour risks. What's your recall of what the discussion was in the board room on that day?

MR. SHORTALL: I can't recall specific discussions. I know we discussed, again, the availability of labour and the productivity. I think we were getting much more comfortable with availability. As we looked into the market, we – and we never did run into problems having available staff or personnel when we needed them as the project progressed. So I think that issue kinda went away.

MS. O'BRIEN: So you're saying there was never any problems with availability –

MR. SHORTALL: Now that I'm aware of.

MS. O'BRIEN: – of labour on the project?

MR. SHORTALL: Are you?

MR. CLIFT: We were monitoring when other large-scale construction projects in Canada were scheduled to wind down and whether or not there was a strong Newfoundland labour contingent in each one and thinking about those in relation to the impact that they might have on our availability, and as other projects looked like they were in their closing windows, we generally felt that that was a good omen for us in terms of being able to access experienced labour.

MS. O'BRIEN: So at DG3, Mr. Clift, are you saying – similar that you felt that the availability of labour was no longer a significant risk? I don't mean to be putting words in your mouth, but I sort of understood that's what you were saying, Mr. Shortall.

MR. SHORTALL: Yeah. I'm – yeah, I think that was my impression, that that became much less important as a risk.

MS. O'BRIEN: Okay.

MR. SHORTALL: Productivity was still a risk –

MS. O'BRIEN: Okay.

MR. SHORTALL: – and I'm not sure what steps – I mean, we had mitigation plans for all of these things and I'm thinking that the productivity risk, we were probably trying to cover as much of that off in contracts with contractors to tie their payments to productivity, so it'd be piece – kind of piece work.

But I'm not a hundred per cent sure on that, because we never did get involved down at our level of (inaudible) –

MS. O'BRIEN: Okay, but that's your general –

MR. SHORTALL: – contract.

MS. O'BRIEN: – memory of how that was handled?

MR. SHORTALL: But I believe that might've been in the mitigation plans, is trying to get – cover productivity by getting fixed price on as much as we could.

MS. O'BRIEN: Okay.

MR. CLIFT: Yeah.

MR. SHORTALL: So if the productivity was low, that's the contractor's problem not ours, as –

MS. O'BRIEN: Okay.

MR. SHORTALL: – the owner.

MS. O'BRIEN: Mr. Clift, I'll go back to you.

MR. CLIFT: The same, and back to the labour contracts that we tried to put in place to make sure that we had labour peace throughout the duration of the project. That was the other side of the labour coin, if you will. One was productivity and one was consistency in terms of availability with trying to avoid disruptions around work interruption for strikes and things like that.

MS. O'BRIEN: Okay.

Mr. Marshall, anything to add particularly with respect to labour availability –

MR. K. MARSHALL: No –

MS. O'BRIEN: – and productivity?

MR. K. MARSHALL: No, I mean, it was always seen as a risk with respect to a project that we were looking for, you know, thousands of workers to be there on a fairly short-term basis; and we were concerned that the Bull Arm site was actually full at the time and we were looking in terms of analyzing the flows, as Mr. Clift indicated, as to when those workers would become available.

But a lot of the labour issues were, kind of, over to the contractor, as it were, 'cause that – they were the ones who had to staff a lot of that, and we were trying to make sure that we had the proper control systems in place to be able to monitor it, and we had been into – we hadn't gotten into full construction at this stage yet, but of course we wanted to make sure that we had proper control systems, monitoring systems and relations with the – with on-site management and interties to the contractors, to make sure as problems came up that we would be aware of them very early and be able to take mitigating plans.

MS. O'BRIEN: Okay. I'll then go to you, Mr. Styles, to give you – and I'll ask you to just turn the microphone towards you when you speak, yes.

So with respect to the concerns – with respect to labour availability and productivity, what's your recall of the position at Decision Gate 3?

MR. STYLES: It was – yeah, I was comfortable with where it was going but I know in – again, being relatively new to the board at that point – that it was always a question, it was always a thing that probably concerned Mr. Martin the most. But, you know, again, being new to the situation and the information we were given, I was comfortable with what I was hearing.

MS. O'BRIEN: Yes. Um –

MR. CLIFT: And once there were workers on site and we had identified any challenges around

the camp that might've affected productivity, I believe we upgraded some of the things in the camp to make sure that the – those workers that were there were satisfied with the accommodations, the quality of the food, those kinds of things. You know, when you're working those long days in the cold winters, all those creature comforts become important and if not taken care of, could affect productivity.

MS. O'BRIEN: The other one that was – the other (inaudible) that was raised in particular by Mr. Martin according to the minutes, was of course the capital cost risks. Now, the board package that you received – this P-00121, a rather large document – it does not address tactical contingency or strategic reserve directly. It does have attached to it the MHI report, which has been filed as an Exhibit separately.

But again, that document does not specifically – it doesn't specify the amount of contingency that's being included for tactical strategic risk. We have heard evidence since that there was a tactical risk contingency included in the cost estimate for 7 per cent – and that was for tactical risk. And – but that there was nothing in the estimate for strategic risk.

To be clear, at this point at DG3, the number that we're talking about here without any AFUDC or IDC is 6.2 billion. So that's the number that people have been working with.

Did you have any concept – you know, I'd like to know, and maybe I'll ask this to you, Mr. Marshall – when you were on this day in 2012 making the decision to vote to sanction the project – did you have an understanding that this 6.2 billion did, you know, only included 7 per cent for tactical contingency and it didn't include anything for strategic risk? Was that something you knew about at that time?

MR. K. MARSHALL: Well I – the question is, you know, was it quote unquote strategic risk? No. Did we know that this 6.2 billion was done at a P-50 level and that there was opportunities for improvement, there was opportunities for it to get worse?

You can never – I mean, if we had to have a, you know – a crystal ball and been able to see this thing all the way through, it would've been

nice to have, but that – we knew that there was gonna be additional risk. There wasn't a classical definition of strategic risk, but there was, as you say, a 7 per cent risk component that was carried through. We had general discussions on risk and we had, again, the reference to the DG2 indication for the contingent equity.

And there was always that kind of discussion, that: what happens if. But the reality was, is that we – and I think it was the belief not just of the board, but it was the belief of the CEO and the project team – and that in order to make sure that you drive productivity, is that you don't carry a flagged: here's a risk, because you're just waving a red flag to contractors to say here's our real number that we've approved. You might have signed on for this amount but we've got this other envelope that we've actually got approved in case things go wrong.

It just – it can't drive productivity, it can't drive the task, to try to get to your number. And in – for all of the transparency and accountability that we have, we have to make sure that there's a certain level of – I guess – prudence with respect to what is out publicly and what – but there was no discussion that we're eliminating a \$500 million strategic risk from this component and this is a risk that we should acknowledge.

MS. O'BRIEN: Okay. One of the topics that you're talking about there is, I think – I don't know if you heard the testimony of Bent Flyvbjerg before the Commission, but he referred to it as the red meat syndrome, which I believe –

MR. K. MARSHALL: Didn't hear it.

MS. O'BRIEN: – is what you're talking about there.

Sorry, are you familiar with that?

MR. K. MARSHALL: Yeah, but I did not hear his testimony.

MS. O'BRIEN: Okay. The idea being, you know, if you put out your true estimate with all the contingencies included, people will think that, you know, it's like waving red meat before a lion, type thing.

MR. K. MARSHALL: Absolutely.

MS. O'BRIEN: But one of the points that he raised that – I believe – and it's certainly been raised by others as well – that it – that when you're talking about the overall number, having an accurate overall number, that that doesn't necessarily mean that each of the individual contractors is aware of what the contingency is for their particular package and that it can be managed in that way. I put that to you.

What's your response to that position?

MR. K. MARSHALL: They'd all know what the overall number is, and they'd be able to try to go after a piece of it and they'd build it into their business cases. And the other – I mean, we weren't factoring in here some of the good news with respect to the potential for excess energy sales, with respect to the benefits of the federal loan guarantees' improvement in rate that came as a result of this business case.

So we weren't being overly conservative with respect to eliminating risk. We were also being conservative with respect to eliminating some of the benefits that we were gonna see as a result of, you know, Kyoto credits eventually down the road or federal loan guarantee interest rate benefits, or excess energy sales.

MS. O'BRIEN: Okay.

We know that Westney Consulting was a consultant on the project, particularly in the area of risk, and Westney did some work – quantitative risk analysis work – at DG3, both for tactical risk and for strategic risk. Did you – we haven't found the – Westney's documents in the board packages that you received, but do any of you recall seeing Westney's product?

And Mr. Styles, you're shaking your head?

MR. STYLES: Yeah. No, I'm not familiar with that report at all.

MS. O'BRIEN: Not familiar with it at all? Mr. Styles, when you're speaking, I'm just going to remind you to –

MR. STYLES: I'm sorry.

MS. O'BRIEN: – bring the mic –

MR. STYLES: No, I'm – I wasn't familiar – that's not familiar to me at all, that report.

MS. O'BRIEN: Okay, how about you, Mr. Shortall?

MR. SHORTALL: I can't recall.

MS. O'BRIEN: Okay. Mr. Marshall?

MR. K. MARSHALL: Just reference that Westney was doing work. I don't recall seeing the report. Could be

MS. O'BRIEN: Okay. And Mr. Clift?

MR. CLIFT: No, I don't recall it either.

MS. O'BRIEN: Okay.

And coming back to the red meat scenario, the other point that has been made is who gets to know the number. So one is whether a number goes out publicly, but the other is whether that number would have been reported, say, to the shareholder, in this case, the Government of Newfoundland and Labrador.

I'll start with you, Mr. Marshall. Do you have any knowledge as to what information might have been communicated to the government with respect to how risk was being assessed in the \$6.2-billion estimate?

MR. K. MARSHALL: No, I wasn't the chair at the time and I wouldn't have been communicating with government directly. That would – you'd have to pose to – well, I guess to Terry, but also to Mr. Martin.

MS. O'BRIEN: Yes, certainly, but as Mr. Styles is the one here now, I'll ask him. Do you know –?

MR. STYLES: No. To my knowledge I have no idea what number would've been presented to the government in terms of that.

MS. O'BRIEN: Okay.

MR. STYLES: I had no contact with the government.

MS. O'BRIEN: Okay.

And I believe, Mr. Shortall, you've already said you never had any contact with the government while you were on the board.

MR. SHORTALL: No, I haven't, but in the DG2 report – remember that little sentence down below that said the government was going to provide, was it, 300 to 500 million of equity to cover some kind of risk, which I'm assuming is the strategic risk.

MS. O'BRIEN: Okay.

MR. SHORTALL: So they would've seen it there at DG2.

MS. O'BRIEN: Anything further to add, Mr. Clift?

MR. CLIFT: No.

MS. O'BRIEN: The next question I want to ask is whether any of you have any knowledge whether any of the consultants that had been retained, either by Nalcor or government or even the PUB to review the numbers, had raised any concerns about the level of contingency being low?

Mr. Shortall, were you aware of any consultants having raised that concern?

MR. SHORTALL: About the P-factors? Is that what you ...?

MS. O'BRIEN: Well, it's another way of saying it, but level of contingency being low.

MR. SHORTALL: Yeah, no –

MS. O'BRIEN: I think if you have more contingency, you have a higher P-factor so –

MR. SHORTALL: No, I don't recall any of the reports, the independent reports, criticizing the numbers; in fact, they endorsed the numbers.

MR. K. MARSHALL: Exactly.

MS. O'BRIEN: Okay.

So, Mr. Marshall, you're saying the same thing?

MR. K. MARSHALL: Yeah, essentially.

I mean we had a \$5-billion loan commitment from the TD bank, which went through a competitive process. We had the federal loan guarantee, and the federal government would've gone through their analysis. We had the provincial government; we had Manitoba Hydro, Navigant.

All these others reviewed the business case and I cannot recall anybody coming back and saying you should increase your contingencies by \$500 million in order to make this realistic. Until, you know, the Grant Thornton report came out reviewing the project in hindsight.

MS. O'BRIEN: What about any of them saying that the contingency levels were low?

MR. K. MARSHALL: I can't recall specifically.

MS. O'BRIEN: Okay.

Mr. Clift?

MR. CLIFT: No.

MS. O'BRIEN: And no for anyone else?

MR. STYLES: No, no.

MS. O'BRIEN: I'm going to talk about schedule. So at DG3 the first schedule date for first power was going to be mid-2017 or thereabouts. We've had evidence since that this had been assessed, certainly, by Westney that this was a P1 schedule; in other words, a 1 per cent chance of meeting that date, so a very aggressive schedule.

Mr. Shortall, you've said you've read the Grant Thornton report so I take it you'd be aware of that. Were you aware of it at the time of DG3?

MR. SHORTALL: Of the schedule?

MS. O'BRIEN: Yes, it being –

MR. SHORTALL: Well, I don't think I was aware right at DG3, but we were aware of a possible slippage in the schedule shortly after DG3 because we were informed that Astaldi did

a very poor job of mobilization at the very beginning of the process. And our people were all over them because of that, but it was obvious that there was going to be some slippage in schedule because of that. We discussed that at several board meetings.

MS. O'BRIEN: That would be after sanction?

MR. SHORTALL: After sanction.

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Prior to sanction, were you aware that the schedule that Nalcor was working with was, you know, as aggressive as a P1?

MR. SHORTALL: No, I was not.

MS. O'BRIEN: How about you, Mr. Styles?

MR. STYLES: No.

MS. O'BRIEN: Okay.

MR. STYLES: And, again, you've referenced the Westney report in which we didn't see.

MS. O'BRIEN: Okay.

Mr. Marshall?

MR. K. MARSHALL: Well, I won't say we didn't see it, all I'll say is I didn't recall it. And, no, I don't think we had any indication that the schedule – the schedule was there, it was acknowledged that the schedule was always subject to risk, but no specific that here is where it may slip. I don't recall anything like that.

MS. O'BRIEN: Okay and Mr. Clift?

MR. CLIFT: No, I don't recall anything like that either, other than recalling that, for example, we had talked about initiatives that could have been implemented to make it somewhat easier to construct in the cold winter months in Labrador. And there was talk of various –

MR. K. MARSHALL: The dome.

MR. CLIFT: – equipment and the dome and things like that, that could help mitigate against

some of those. But I don't recall a specific number.

MS. O'BRIEN: Okay.

And a similar question again, I just want to ask if any of you were aware whether any consultants had raised a concern about the schedule being a very aggressive schedule.

And I'll go right from you, Mr. Shortall.

MR. SHORTALL: No.

MS. O'BRIEN: No.

You, Mr. Styles?

MR. STYLES: No.

MS. O'BRIEN: You, Mr. Marshall?

MR. K. MARSHALL: I think we would have been the ones to raise whether or not it was aggressive at board – just general board discussion. But, no, nothing specific from ...

MS. O'BRIEN: Okay.

And you, Mr. Clift?

MR. CLIFT: No.

MS. O'BRIEN: Now, we saw in the DG2 package you had the report of the Independent Project Review. That's the cold eyes review report. You had that in the DG2 package we looked at this morning; it wasn't included in the DG3 package. I haven't seen any evidence that that would – it was provided in the board papers to the board, looking at the documents that we've been provided.

I'm going to ask if any of you recall seeing the IPR's – the Independent Project Review report on DG3 prior to making your sanction decision.

Mr. Shortall?

MR. SHORTALL: I don't recall.

MS. O'BRIEN: Okay.

MR. SHORTALL: I'm not saying I didn't see it, just that I do not recall.

MS. O'BRIEN: Okay.

And, again, I – you know, I can only say what we've found looking through the board packages that you've gotten.

MR. SHORTALL: Yeah. Right.

MS. O'BRIEN: And, obviously, the DG3 document that's been filed doesn't have it attached.

You, Mr. Styles?

MR. STYLES: No. And not having been a part of the DG2 process, I wouldn't have been familiar with her prior to that either.

MS. O'BRIEN: Okay.

And you, Mr. Marshall?

MR. K. MARSHALL: It's a very detailed request. And I mean, as you indicate, it's a 525-page document that we were going through for DG3. So for us to sit and say, no, what about that report that we saw from two years ago in DG2, is there an update to that, no, I don't recall there being any specific level of discussion on that point.

MS. O'BRIEN: Is it fair to say that you would have been depending on the people at Nalcor to provide you with –

MR. K. MARSHALL: Absolutely.

MS. O'BRIEN: – the relevant documents that you should be reviewing?

MR. K. MARSHALL: Absolutely.

MS. O'BRIEN: Okay.

Would you consider that a document that you should've been reviewing, the board should have been provided?

MR. K. MARSHALL: I can't say. I mean I felt that the board – we felt, generally – obviously, we approved it, that we had sufficient

information to satisfy concerns. And we pressed to see was there any information that, you know, we need and we were assured, no.

So did we feel that anything was being withheld from us? No. Did we feel that we had sufficient information? Yes. Did we feel that there was a fair analysis done and a detailed analysis, and that we had asked the questions and pushed and pressed and prodded to make sure that this thing was, you know, tested? Yes, absolutely. So we were still reliant on if there was anything that come to light, had we any reason to think that somebody withheld? No, we did not.

MS. O'BRIEN: Okay.

Anything you'd like to add, Mr. Clift?

MR. CLIFT: No, I think that I agree with comments made by Mr. Marshall and Mr. Shortall. And I would suggest that by then there had been a significant amount of external cold eyes review of this and reports from numerous organizations. And along the way, as we were moving towards this juncture, we, as a board, were getting feedback, albeit through the organization, as to the quality of work that was being done, the level of detail from the engineer from Canada or from the federal loan guarantee people or from Navigant or whomever it was.

MS. O'BRIEN: Okay.

MR. CLIFT: Now, we did not get that first-hand from them. We were – that was forwarded to us, if I recall.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: Okay. Thank you.

P-00403 please, tab 26. And if you could go to page 2, please, Madam Clerk.

So this is the board meeting minutes we're back to again. I just wanted to ask you specifically about one paragraph on this page. So here it says that: "Mr. Martin confirmed that the Shareholder had been informed of the benefits and risks related to the Maritime Link and the other Lower Churchill projects."

None of you may recall, but I'm going to put the question to you anyway: Do you recall anything in detail about this discussion or if – whether this was in response to a question posed by the board or this was just information that Mr. Martin provided you? And I do appreciate, obviously, we're talking 2012 and you only got the minutes to rely on and whatever might remain in your memory, but I'm asking it anyway.

Do you have any more information, Mr. Shortall?

MR. SHORTALL: No, I don't have anything to add to that.

MS. O'BRIEN: Okay.

MR. K. MARSHALL: No, nothing.

MS. O'BRIEN: Okay.

MR. STYLES: No.

MS. O'BRIEN: And no for you as well, Mr. Clift?

MR. CLIFT: No. That kind of conversation would typically have been between the CEO and the government.

MS. O'BRIEN: Okay.

Now, Mr. Shortall, I'll put the next question to you.

What did you understand to be the role of SNC-Lavalin at the time of sanction? So at the DG – at Gate 3.

MR. SHORTALL: They were originally engaged to be the EPCM. There were some issues with SNC-Lavalin identified at around this time; we made some changes to the arrangements with them. I don't have a whole pile of detail on that but I know it included putting some of our people in – onto their team and taking back more control for the owner from them. And I think that was all happening around DG3.

MS. O'BRIEN: Okay.

MR. K. MARSHALL: (Inaudible.)

MR. SHORTALL: I think Ken might know a little more.

MR. K. MARSHALL: No, I think it was between DG2 and DG3 that that occurred and then specifically – I can't recall the exact arrangement with SNC at that point in time, at sanction. Because at that point in time there was two things happening: number one is during 2012 is that we saw that there was issues that – with the EPCM contract and we felt – at the management level – brought back to the board that the project team were too distant from the direct management, and that we had to go in and have an integrated project team as opposed to leaving it to the third party to oversee the management of it.

And second –

MS. O'BRIEN: The third party being SNC-Lavalin?

MR. K. MARSHALL: Correct.

And second, either during that time or shortly thereafter SNC was embroiled in quite an international controversy and the board were extremely concerned that there was some risk that we may have been compromised and we continued to press to make sure that we weren't. And at an Audit Committee I remember we discussed it a number of times. So there were mitigation issues taken to make sure that we were well looked after from that perspective. We're still recognizing that SNC was an internationally recognized firm going through a bit of a crisis internationally and we didn't want to be a victim of that. But we didn't take all the work away, we just had to make sure that it was very controlled and tight.

MS. O'BRIEN: Okay.

So am I understanding correctly that you had understood – by the time you got to DG3 that you knew that a decision had made to move SNC-Lavalin out of a true EPCM role –

MR. K. MARSHALL: Yes.

MS. O'BRIEN: – and move toward, I believe, what Nalcor referred to as an integrated management team?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Is that consistent with your memory?

So when you took the sanctioning decision you knew that transition had –

MR. K. MARSHALL: Yes.

MS. O'BRIEN: – was taking place?

Similar for you, Mr. Shortall?

MR. SHORTALL: Yes. Yes.

MS. O'BRIEN: How about you, Mr. Styles?

MR. STYLES: Again, having joined the organization in mid-2012, I wasn't exactly sure, you know, when they actually phased out of the project. So to my recollection – and again, I'm aware of the comments that my colleagues had made here in terms of them being removed. I really can't comment on as to when that was because I've gone through my material and my notes and I don't see any reference to when and how that actually took place.

MS. O'BRIEN: Okay.

How about you, Mr. Clift?

MR. CLIFT: Yes, I agree with my colleagues.

MS. O'BRIEN: Okay.

I want to ask you each a fairly straightforward question and that is: Were you confident that you had all the information and the right information to make the decision at sanction? I believe, Mr. Marshall, you probably already answered that with an affirmative yes.

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Mr. Clift, what would your answer be?

MR. CLIFT: Yes, we had what we considered to be all the information that was available.

MS. O'BRIEN: And you were satisfied with the completeness of that at the time?

MR. CLIFT: Yes. There's always a search, you know, at some point you wonder is there anything else –

MR. K. MARSHALL: I –

MR. CLIFT: – and decisions get made – (inaudible) –

MR. K. MARSHALL: I don't think that the minutes reflect the level of concern, angst, responsibility and the weight of the issues that we were deliberating that day, even though we were over the phone. Nobody was in a celebratory mood. Everybody was in a very thorough – felt the weight of this decision and the significance of the responsibility.

So the decision, I don't think, would've gone forward, from my perspective, if I felt that I didn't have enough information and satisfactory information. I would've loved to have had a crystal ball to be able to see the confirmation of those assumptions on into the future. But the weight was felt and there was a lot of information that was there and significant information. You can say you'd always like more, but it just wasn't there and this – we had had an extensive – I think this project had been reviewed, and rightly so, more so than any project in the history of the province.

MS. O'BRIEN: Okay. Mr. Styles?

MR. STYLES: I'll just add that, yeah, I was satisfied with the detail of information that we were provided.

MS. O'BRIEN: Okay. And Mr. Shortall?

MR. SHORTALL: Yeah. Well, it was a very serious decision and, I mean, we took it really seriously – big dollars involved. And I was fully satisfied with the presentation and the numbers.

MS. O'BRIEN: Okay.

And perhaps with the next question I'll start with you, Mr. Styles, as you were chair. But since you left the board of Nalcor, further information has come up, there's been lots of information in the media; further information has come to light since the Inquiry process has started and the Grant Thornton report and other witnesses.

Has anything come to light, come to your attention, since you left Nalcor that you were – that took you by surprise, that you didn't know at DG3 and that you feel you should've known at DG3?

MR. STYLES: No. Obviously, concern with the, you know, the overages that have, you know, kind of crept in there, but there's been no smoking gun, that I can look at, that anybody's revealed that would, you know, suggest that we were misled.

MS. O'BRIEN: Okay.

And you, Mr. Shortall, anything that's come to light – you said you read the Grant Thornton report –

MR. SHORTALL: Well, I could mention the SNC-Lavalin report that materialized out of smoke, I haven't seen it, but I can't believe it has any risks that we didn't already consider. I'd be very surprised. But that's something we – I wasn't aware of.

MS. O'BRIEN: Okay.

MR. SHORTALL: The – other than that – I mean, on the day we resigned from the board, my understanding of the project – and this was not a public number at the time – but we were at \$8.2 billion. And we had only one significant outstanding issue to be resolved, and that was the Astaldi contract.

And Mr. Martin had been working hard on trying to negotiate that number with Astaldi. Although, he thought it – had some problem with the new government, kind of, not supporting him on the negotiations and so it kind of slowed down. But his estimate to us, as a board, was he thought he would – he could settle it in the \$300 million to \$500 million range, which would've brought us to 8.5 to 8.7,

somewhere around there. Now it's apparently at 10.1. So I have no visibility into the difference between the 8.2 and the 10.1. It's \$2 billion. I can't believe we gave Astaldi \$2 billion. So I ...

MS. O'BRIEN: Okay.

And just to be fair, the SNC report that you're referring to, that's dated April 2013, so if you don't – we haven't talked to the creators of that report yet – but that would not have been in existence if we take the date at face value, at the date of sanction.

What – Mr. Marshall, how about for you? Has anything come to light since that, you know, you're – information that might have been available at the time of sanction, that you didn't have, that you're surprised about?

MR. K. MARSHALL: At the time of sanction, no. I mean, that was in December of 2012. No. As Gerry indicated, it's more referring to things that have happened since we left the board and things that we were well aware of with respect to – even some of those items which contributed to getting it to 8.2, which we had to do and sought approval for in order to try to bolster the quality of the dam itself and the product.

But no, there's – again, we can take it to a certain point and that SNC report dated April 2013 – no, we had not seen that.

MS. O'BRIEN: Okay.

And finally you, Mr. Clift?

MR. CLIFT: No, nothing else. As Mr. Shortall indicated, we were at a number that we understood to be in the 8-point-something range and since then it's gone up significantly. And of course, we don't have a line of sight as to understand why that is.

MS. O'BRIEN: Yes, I'm – yes.

Okay, thank you.

Commissioner, that might be a good time for the afternoon break.

THE COMMISSIONER: All right, so we'll take ten minutes now then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MS. O'BRIEN: Thank you.

Just before we went to the break I put to you a series of questions about what was known by you at DG3 and then information that has since come to light. And I understood, generally, all your answers were that you felt you had appropriate information at that time and there's nothing that has come to light since that has surprised you or you believe you should've known.

I just want to make sure I have some clear answers from you on this, and particularly on three pieces of information that has come to light somewhat and I certainly expect will be canvassed more in the evidence as the Inquiry goes on.

So, the first one is the idea that work had been done by Westney Consulting, that the schedule that Nalcor was working with at DG3, and basing their sanction decision on and their costing on, was in effect a P1 schedule. So that's a schedule that had, you know, a 1 per cent chance of being met. So a 99 per cent chance of not being met. The idea being that, of course, typically, when you overrun on schedule there's usually a cost implications associated with that.

You're saying, Mr. Shortall, you didn't know that at the time; it's a fact that's come to light since. You're saying it doesn't surprise you and you don't believe you should've had that information when you made the sanction decision?

MR. SHORTALL: Well, no, I'm pretty sure we didn't have that information.

MS. O'BRIEN: Okay, does it surprise – it's come to light since. You don't – do you find it surprising?

MR. SHORTALL: Yes.

MS. O'BRIEN: Okay. And do you think that's information you should have had before you were asked to vote to sanction this project?

MR. SHORTALL: We should have discussed that, yes.

MS. O'BRIEN: Okay. I'll put the same thing to you, Mr. Styles. Is – are you – does that information surprise you?

MR. STYLES: Yes, it surprises me.

MS. O'BRIEN: And is it information that you believe you should have had at the time?

MR. STYLES: Yes.

MS. O'BRIEN: Okay. Mr. Marshall?

MR. K. MARSHALL: Yeah, it would surprise me if there was a 1 per cent risk of it being met. I don't know what the context of that report was and what level of mitigation went on, either prior to or that we got it, so I haven't – again, the document is not there in this 525 page set of circumstance, but yeah, if the 1 per cent figure was factual and documented and not disclosed, yeah, we should have had that.

MS. O'BRIEN: And it's going to be work that was done by Westney Consulting Inc., so it was definitely a report that was produced.

MR. K. MARSHALL: Right.

MS. O'BRIEN: Now, whether there might have been other mitigations put in place, but the fact that the risk consultant had done a report that –

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: – had assessed it at P1.

MR. K. MARSHALL: Right.

MS. O'BRIEN: Is that something you should have known?

MR. K. MARSHALL: I would think so.

MS. O'BRIEN: Okay.

And how about you, Mr. Clift?

MR. CLIFT: Yes, I don't recall specifics around a 1 per cent, and, yes, I would've expected that we would have had that information.

MS. O'BRIEN: Okay.

And now I take Mr. Marshall's point that he doesn't feel you should put your risk number out there, your full contingency amount, out there in the public, but information has come to light that the risk consultant did do a assessment of the management reserve and a dollar value that would be needed to give a true P50 estimate for the project. In other words, a P50 estimate that would include strategic risk. That was work he did, a number was produced by him. We don't have any evidence that that was presented to the board.

Mr. Shortall, I'll go back to you. Is that information that you believe you should have had at the time, that the amount of strategic risk at a P50 level has been assessed, here's the dollar amount? Should you have had that information?

MR. SHORTALL: Should we? Of course.

MS. O'BRIEN: Okay. And it's come to light since. Does it surprise you that you weren't provided with that information?

MR. SHORTALL: I'm not sure we weren't.

MS. O'BRIEN: Okay. At DG3 you believe you might have been provided with that?

MR. SHORTALL: Yes.

MS. O'BRIEN: Okay.

MR. SHORTALL: Possibly, I'm not sure, but –

MS. O'BRIEN: Okay.

MR. SHORTALL: – it rang a bell with me when I read about it in the Grant Thornton report.

MS. O'BRIEN: Okay.

MR. SHORTALL: So, I think we may have discussed it.

MS. O'BRIEN: Okay. Mr. Styles, I'll go to you. What's your recall of an assessment of a value for the management reserve for strategic risk?

MR. STYLES: Pardon? Could you repeat the question?

MS. O'BRIEN: There was work done by Westney Consulting –

MR. STYLES: Yes.

MS. O'BRIEN: – which was to put a dollar amount on what a P50 would be for the management reserve or strategic risk amount. We don't have any evidence that that document was provided to the board. Do you have any recall of that being discussed?

MR. STYLES: I have no recall.

MS. O'BRIEN: Okay. Is that information you believe you should've had?

MR. STYLES: My feeling is yes.

MS. O'BRIEN: Okay.

Mr. Marshall?

MR. K. MARSHALL: Yeah, I'd still like to see the context because, as I said, my view on the strategic risk and the – your words, red-meat principle is I don't like those numbers being out there publicly because I think that they're just too attention grabbing for the potential contractors. You're almost locking in the fact that you're gonna go over budget.

To share Gerry's – Mr. Shortall's comments that I can't say definitively that we didn't discuss it but – and that we didn't discuss the element of strategic reserve. I think there was discussion at the table as to likelihood and issues that we may have to consider, but I don't recall there'd be saying that Westney has identified that we should carry \$500 million. No, that was not a specific recollection, and we should've been identified in that.

Again, I also go back to the fact that all of the cold eyes reviews and guarantors and lenders through the project saw the business case and didn't say: Well, what's your risk? Is this gonna be an extra \$500 million? There's no strategic reserve here.

MS. O'BRIEN: Okay, but you're saying you should have been advised –

MR. K. MARSHALL: Certainly.

MS. O'BRIEN: – of the \$500 million?

MR. K. MARSHALL: And I can't say that we weren't verbally or in some other fashion that didn't make it into the package.

MS. O'BRIEN: Okay, but you don't recall being –

MR. K. MARSHALL: No.

MS. O'BRIEN: – told that at this time.

How about you, Mr. Clift?

MR. CLIFT: No, I recall discussions around strategic risk; I don't recall a specific dollar amount or a P1 discussion, specifically.

MS. O'BRIEN: And if work had been done to quantify the amount for strategic risk at DG3, do you think that work should've – that the work that Westney did should've been provided to the board?

MR. CLIFT: Yes.

MS. O'BRIEN: Okay.

And the third point that I wanna read actually goes back to a point you just raised Mr. Marshall, and that has to do with consultants. You're saying we, you know, we – as far as we know all these consultant – nobody raised it.

To your understanding, would all the consultant – would your expectation be that Nalcor would've provided full information to the consultants who were reviewing the estimates in – for example, MHI who was reviewing the DG3 estimates?

MR. K. MARSHALL: Well, I certainly would not expect that an MHI document or Navigant or anything else would be redacted for presentation to the board, no. I would think that if we're gonna be provided the document, we'll get – we'll be provided the full document, if requested, or a PowerPoint summary of the document, if that was all was felt to be necessary from the board's perspective to be satisfied.

A lot of these reports we got in full and in whole. We never actually met with those consultants directly, but we had lots of those reports in their entirety.

MS. O'BRIEN: Okay.

Did you see – ever see any of the earlier drafts of the reports? So consultant's report where they put forward earlier drafts where –

MR. K. MARSHALL: I can't say.

MS. O'BRIEN: Okay.

So the question to you is – though first, for MHI, who is doing the DG3 review – I'll leave it that specific right now – is it your expectation that MHI would have been provided with the documents that Westney did, for example?

MR. K. MARSHALL: I would think so.

MS. O'BRIEN: Okay.

And if it comes to light as the Inquiry unfolds – and I obviously don't raise this without some expectation that evidence will come to light, but of course, you know, evidence always has multiple sides, and there's always more sides to one story – but if it comes to light that consultants had raised a concern with Nalcor about contingency being low, about schedule being addressed, and those concerns were then, ultimately, were not reflected in the final report. If I put that to you, Mr. Shortall, is that concerning to you? If a consultant had raised that, would you expect to have been told that it had been raised by the consultant?

MR. SHORTALL: I would've expected that, yeah.

MS. O'BRIEN: Okay.

How about you, Mr. –?

MR. SHORTALL: And then, you know, a decision would be: is this still the best? At 500 million, is it still better than Isolated Island? Kind of a decision process, but –

MS. O'BRIEN: Right. Understood. Okay.

For you, Mr. Styles: If consultants had raised concerns about the level of contingency, about the schedule that was being used, do you believe that information should've flown up to the – flowed to the board?

MR. STYLES: Yes. It should've.

MS. O'BRIEN: Okay.

You, Mr. Marshall?

MR. K. MARSHALL: You know, yes, it should've been flown up. But you know, it's – again, the context is very specific, and what work was done to mitigate against that information before the eventual presentation to the board if – you know, I'd be very concerned if information was being withheld from the board that the board should've received, absolutely. I don't know if that's the allegation or if that's the – kinda the context, but yeah, the board should've seen that if that was the case.

MS. O'BRIEN: If a consultant was raising it as a concern, and then Nalcor is, you know, putting in ways that they had – you know, were mitigating –

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: – it or dressing it, would you want to know, as a board member, look, here's – the consultant raised it, but here's our response?

MR. K. MARSHALL: Absolutely.

MS. O'BRIEN: You would've –

MR. K. MARSHALL: That's –

MS. O'BRIEN: – wanted to know –

MR. K. MARSHALL: – contracts.

MS. O'BRIEN: – if the consultant –

MR. K. MARSHALL: Correct.

MS. O'BRIEN: – raised it in the first place?

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Okay.

How about for you, Mr. Clift?

MR. CLIFT: I would've expected that if a consultant had a significant challenge and/or reservation that that would've found its way into the final report. Consultants generally are prioritizing, and they would – I would expect that it would find its way in the final report and be in the final report when it was shown to us. I do not recall any redacted types of information. When we got reports, we got full reports to the best of our knowledge.

MR. K. MARSHALL: Yep.

UNIDENTIFIED MALE SPEAKER: Mm-hmm.

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

And just to be clear, there will be more evidence to come on this, and – but you're giving your presentations now, and it's my opportunity to put those questions to you, and there will be lots of evidence on this. And various people will have their opportunity to review the evidence, including executive members of Nalcor, Mr. Martin, Mr. Bennett, et cetera, so there will be a full airing on that.

Okay.

I'd like to talk generally about some questions about board interactions on a more general level.

Mr. Clift, in your time on the board, did the board ever fail to come to a unanimous decision on a resolution?

MR. CLIFT: Twelve years of decisions, you're asking me about?

MS. O'BRIEN: Well, do you recall that – I mean, when I look through the minutes, I see a

lot of unanimous decisions. I haven't noted one where there was a lack of unanimity. I'm not – so you don't need to say that it was absolutely never, but do you – you may have memories of it happening where there wasn't unanimity reached.

MR. CLIFT: I recall situations where perhaps there may have been abstention from a vote and perhaps someone voted against ...

I –

MS. O'BRIEN: Nothing specific?

MR. CLIFT: Nothing specific, no.

MS. O'BRIEN: Okay.

But you can't commit. I understand.

MR. CLIFT: Too many votes, too much time.

MS. O'BRIEN: Understood. Okay.

MR. CLIFT: I couldn't tell you how many thousand votes that might have been, but ...

MS. O'BRIEN: And I'm gonna focus the question now. I certainly appreciate your – the point you're raising, but if we focus this to the Muskrat Falls Project, I'll ask you, Mr. Shortall, do you ever recall a time when – with respect to the Muskrat Falls Project – that the board failed to come to unanimity in making a decision?

MR. SHORTALL: No.

We – I mean, we talked the stuff through. And if there were concerns, they were raised. And we'd eventually – you know, if I was really concerned about this, and they would finally convince me so we'd get unanimity, consensus, then we'd put it to the resolution.

So it's not surprising that you won't find people voting against a resolution, because it's – anyone who had a concern, we'd try and address it and –

MS. O'BRIEN: Okay.

MR. SHORTALL: – bring them inside.

MS. O'BRIEN: Okay. Does –

MR. SHORTALL: So that's the way it worked.

MS. O'BRIEN: Thank you.

Does anyone else want to add to that answer?

MR. K. MARSHALL: Yeah.

On the Muskrat Falls issue, no. I mean, we worked tirelessly through the details to ensure that there was a solid level of understanding and agreement that – not agreement, we didn't work to make sure agreement. We worked to make sure there was understanding, and then people came to their decisions.

But you know, with respect to other decisions, as Tom indicated, there were some abstentions, because people felt that they may have been conflicted, but they were very rare. The only dissensions would have been at CF(L)Co. Any time we tried to pay a dividend –

MS. O'BRIEN: (Inaudible.)

MR. K. MARSHALL: – the members would dissent and notably. But – no, and other than Mr. Shortall objecting to – he never did vote against it – but the adoption of Bull Arm Fabrication, but we eventually brought him to see the light of the benefits of doing that.

MS. O'BRIEN: So were there meetings – so we talked about the independent member, so you were all independent members of the board, meaning you weren't, generally speaking, you weren't employees of Nalcor. I'm over simplifying, but – Mr. Martin would have been the one member of the board who was not an independent member, in other words, he was a member of management, most senior member of management.

Did the board ever meet without – did other members of the board ever meet without Mr. Martin present, or how did you organize that? Maybe I'll put that to you, Mr. Clift, because it's a governance issue.

MR. CLIFT: Yes, so at the end of each meeting, we would go through two phases. We would have a session where Mr. Martin was

there. Everyone else would've been recused from the meeting, and then we would have a discussion with Mr. Martin there where we might have identified challenges or questions that we might have had around internal performance, occasionally commentary on how someone performed those kinds of things.

And then Mr. Martin would leave the room, and we would have our own in camera session. And those lasted as long as they needed to. Sometimes they would be relatively short, and sometimes they would be longer.

MS. O'BRIEN: And what types of topics would be discussed at the in camera sessions without Mr. Martin present?

MR. CLIFT: Typically, they would be focused on things that were discussed that day, and they would've been a function of that day's agenda. And occasionally, you might think about how either the CEO is performing or the senior management team was performing.

And we – at various junctures, we were worried about not just the workload on the staff because of all the things around sanctioning but also reporting to the PUB and the various filings that we were making. And these people were under tremendous pressure, working long hours for extended periods of time with relatively little relief, so occasionally, we would have that discussion. You know, did they seem to be engaged, did they seem to be in good health, did they seem to be capable of continuing on.

So it was always – we would have those kinds of discussions as well, not just about the content of the meeting but also about the performance of the various people who we'd seen that particular day.

MS. O'BRIEN: Okay.

Now, obviously Mr. Martin was a very knowledgeable man, and in most of the areas that you were dealing with as the Nalcor board, I mean, he was the one who was working it. He had no other job; that's what he was working in day in, day out. So his knowledge would've been deep and extensive.

Is it fair to say, Mr. Clift, that of all the members of the board in terms of the business that you were doing with the Lower Churchill Project, with the Muskrat Falls, that Mr. Martin would've been the most knowledgeable on the board?

MR. CLIFT: I would expect that he would be the most knowledgeable, and also he would have had the most communication with us, with the team, with the shareholder, done various presentations around it. So I always found, when we were getting presentations from Mr. Martin, that they were tight, they were well considered, they were well considered, they were well presented, they had the right level of depth pretty much consistently.

His ability to tell a complex story in a relatively short period of time in a manner that people could understand it could only be borne from his immense understanding of the complexity of all the issues. I guess I'm reflecting on my own life as an educator and what it takes to tell a succinct story. And you do that better the more frequently you do it and the more knowledge you have. I always found that from him – of him.

MS. O'BRIEN: Okay.

That leads to a sort of follow-up question I suppose, because, you know, when you're dealing with someone who does have – you know, if you're in the room and there's someone who has the most knowledge and they're the one who is reporting to you and they're the one who's making the decisions, certainly on the management side, do you feel you had enough experience on the board to really challenge the information that Mr. Martin was giving you, because sometimes you need to have almost deeper, or as much information yourself, to truly challenge someone who's an expert.

MR. CLIFT: I think the answer to that question may vary, depending on the topic.

MS. O'BRIEN: Okay.

MR. CLIFT: So, for example, when we were dealing with communications-related issues, some of us on the board had more experience than others. When we were dealing with technical issues, some had more experience than

others. When we were dealing with audit accounting and financial, for example, Mr. Marshall and Mr. Shortall would have had more experience. So, you know, I might qualify my answer a little bit to say it really would depend on the topic.

In terms of large-scale construction experience, for example, Mr. Martin probably had the most experience. Mr. Marshall has significant telecom experience.

MS. O'BRIEN: Okay.

So in that area so –

MR. CLIFT: It depends, in construction projects related to that, so ...

MS. O'BRIEN: So in terms of large megaproject construction, because that's really what we're here about –

MR. CLIFT: Mm-hmm.

MS. O'BRIEN: – do you believe you had enough depth on the board to truly challenge Mr. Martin? And when I say challenge, I – it's – you know, oftentimes it can be a positive thing, you know, to really challenge someone, ask the hard questions shall we say.

MR. CLIFT: Well, ask the hard questions and in some context ask the question that has not yet been thought about. There's one set of challenges associated with thinking about the body of information that's in front of you and then there's another set of challenges thinking about what has not yet been asked.

MS. O'BRIEN: Okay and did you –

MR. CLIFT: Those, in my experience, are the more challenging ones. They ask the question in the room that no one else thought about. That is the question on a given day.

MS. O'BRIEN: And did you have any concern that you didn't have enough expertise on the board to really ask – to know what questions weren't on the table?

MR. CLIFT: Well, as we saw this morning, that had been documented.

MS. O'BRIEN: That you had a concern.

MR. CLIFT: That we would have liked to have more. I always found the discussions rigorous, fulsome; everybody around the table was involved. And we were asking questions to the best of our abilities, individually, based on our experience.

MS. O'BRIEN: Okay.

I will get back to you, Mr. Marshall, but I'll put it to Mr. Shortall first, the same question.

Did you have, you know, a confidence level that you had enough experience around the board table to really – to challenge or really ask the tough questions to Mr. Martin in areas where no one on the board had any deeper experience?

MR. SHORTALL: Yeah, well, I'd have to reiterate Mr. Clift's comment that it would depend on the topic. So if it was part of a projection based on assumptions, number crunching and stuff, yes, I could easily challenge anybody.

Even on construction-related things. I was the partner in charge of one of the biggest construction companies in Canada for quite a few years in Toronto and so I had a lot of knowledge of not megaprojects, but big projects, \$300-, \$400-million infrastructure projects, hospitals, roads, that kind of thing and I had a pretty deep understanding of those.

But if it was, you know, something about transmission lines and what voltage you need and all that stuff – sorry – that's technical, engineering technical, no, I wouldn't have the depth, I don't think, to challenge Ed, Mr. Martin, or Gilbert Bennett on those.

MS. O'BRIEN: And you, Mr. Styles?

MR. STYLES: Well, I mean, Mr. Martin did, you know, have the deepest knowledge of the, you know, the complete aspect of the product – of the project as a whole. It doesn't mean that, you know, he couldn't be challenged on – in certain areas, like Mr. Shortall alluded to, on the financial side, so ...

MS. O'BRIEN: Thank you.

And finally you, Mr. Marshall?

MR. K. MARSHALL: Yeah, I guess I kind of interpret the question a different way and number one is despite the fact that we may not have had the expertise on the board that we had continued to petition for in various areas, I don't think any of us were shrinking violets and would shy away.

And oftentimes the best questions comes from somebody who is very new to the situation and cold eyes in many respects. We would love to have had those other experts to be able to go at that. That did not prevent any of us from challenging Ed. There was no – there was no fear of asking him because we were in awe of a level of expertise that was beyond ours.

He was the CEO, he was the most knowledgeable with respect to many aspects of the project – and certainly not all, and he'd be the first to admit that, I would think. But there was no level of concern amongst the board members that there was not a question that we should ask the CEO, nor, I think, was there a scenario that the CEO felt that he wasn't reporting to a board.

And as Mr. Clift indicated, you know, he would take these materials and try to get – ensure alignment because he would be the one responsible for then communicating to shareholder in many aspects and doing the negotiations with Emera or with Astaldi or with whomever. But he wanted to make sure that there was alignment, that the story was understood before he took it to the shareholder to ensure that the board had all their questions, concerns addressed. So –

MR. SHORTALL: And he loved to be challenged.

MR. K. MARSHALL: I think – yeah, he loved to be challenged and we were not shy in challenging him in that regard, in any regard.

MS. O'BRIEN: Okay. Thank you.

Yes, Mr. Clift.

MR. CLIFT: And also from a board-governance perspective, as I'm listening to Mr.

Marshall talk here I'm thinking about the role of the chair versus the role of the CEO. And it was fair to say that over time we made sure that, according good governance, things like agenda setting and the prioritization of items at individual meetings were done in conjunction with the chair.

There were occasions when we disagreed as to what should be brought forward, when it should be brought forward, what the agenda might look like, but in the end there was always a strong alignment and an understanding that the agenda for each individual meeting and the protocol for the discussion of that meeting was done with the distinct approval of the chair of the board, which is –

MS. O'BRIEN: Okay so that would have been at sanction, Mr. Styles? And –

MR. CLIFT: Whomever at the –

MS. O'BRIEN: Yeah and then Mr. –

MR. CLIFT: – the various juncture –

MS. O'BRIEN: And then, Mr. Marshall –

MR. CLIFT: That was all part of – as we became more knowledgeable in the governance area and we built up our backgrounds and our knowledge and understanding, and that would be part of a series of checklists that we would have had to ensure that everybody knew who was driving the bus at the board meeting.

MS. O'BRIEN: Okay. Thank you.

The next thing I'd like to go to, there was a couple of external reviews of the board governance. Now, these were done after sanction. It's while at least three of you were on the board. Some of them might not have been during Mr. Styles's time, but I'd like to review them now because they do cover some of the topics we've already been discussing today.

So the first is the Liberty Consulting Group report. P-00521, please, page 157 and that's tab 49. Thank you.

And if you could please go to page – oh, you brought me to 157. Thank you.

So this was a report that was done – it starts here: The board requested that Liberty review Hydro – so this was done with respect to Newfoundland and Labrador Hydro, but at this time the boards for Newfoundland and Labrador Hydro and Nalcor were identical boards – “review Hydro's ‘governance and decision making’ among the matters for examination for this report. Liberty examined the board governance structure and also looked at the executive level organization. In addition, Liberty examined the overall resource structure that Nalcor uses to provide asset management, project management, and technical services to Hydro, among its other business areas.”

So we note here: “Liberty examined Hydro's governance model, including the composition and structure of the board of directors and management. Liberty did not conclude” that there was any “direct link between the 2014 power supply outages and the governance model, but did identify a number of recommendations to enhance the effectiveness of the governance framework and to support a strong focus on Hydro's utility operations.”

So this report was commissioned following DarkNL. And they didn't link any of the governance issues to the outages at that time, but I want to look at some of their recommendations. And just give me one moment; I'll pull it up in my hard copy here.

Okay, so one of the recommendations that they made was that a focus to expand the breadth and depth of experience. And when we read over the recommendations that are here on this page, they talk about – one common way of doing this is to include – is to have a skills and experience matrices.

So, Mr. Clift, that would have been very much the same thing that you were referring to back in 2006. Is that right?

MR. CLIFT: And, again, later when we were – originally it was an experience matrix and it had morphed itself into a board competency matrix over time, yes.

MS. O'BRIEN: Okay.

And on page 159 of this report –

MR. CLIFT: Well, just take –

MS. O'BRIEN: Okay, so this is where they highlight –

THE COMMISSIONER: 159?

MS. O'BRIEN: Sorry, 159 –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. O'BRIEN: Areas – this is where they report on areas of divergence from best practices under the model and what exists at Hydro. And they include: A lack of “concentrated effort to appoint directors according to a structured view of optimum skills and experience needed for the nature of Hydro’s operations.”

So I believe this is getting to the idea of that competency matrix that you’re talking about. Is that right?

MR. CLIFT: Well, recognizing that we, as a board, could only suggest people. We were not charged with making the appointments. That was a responsibility of the shareholder.

MS. O'BRIEN: And I do understand one of the things that they were looking for, that maybe Hydro’s board and Nalcor’s board should not be identical boards because there was different skill sets. Do you recall that being one of the –?

MR. CLIFT: Yes, and I recall thinking if we had more people, we could have done that.

MR. SHORTALL: Yeah.

MS. O'BRIEN: Okay.

The next is: “Lack of promotion of a time and effort commitment that supports board engagement in a depth commensurate with a dynamic and complex operating environment and management of risks.” So I – reading the report there I think this might go to another issue that you raised earlier; in other words, the workload that you had, that this takes a huge amount of time to delve into these issues, particularly in a regulatory environment and the concern that there wasn’t, the set-up wasn’t allowing for that type of engagement.

MR. K. MARSHALL: (Inaudible.)

MR. CLIFT: Yes, go ahead.

MS. O'BRIEN: Please go ahead, Mr. Marshall.

MR. K. MARSHALL: I think that Gerry’s chomping at the bit to have a comment here.

MR. SHORTALL: Well, yeah, I would comment, too, yeah.

MS. O'BRIEN: Well –

MR. SHORTALL: Because when we did the matrix at the Governance Committee and we highlighted areas where we thought the board could be strengthened, most of those areas were in the megaproject field; in other words, large project experience, large financing experience, electrical engineering experience.

The Hydro board, while complex is much simpler than the Nalcor board because it’s basically just a – it’s a regulated utility so it generates electricity, transmits it, sells it to customers. It’s a relatively simple business and the amount of expertise a board member needs for Hydro is, in my view, far less demanding than the expertise needed at the Nalcor level.

MS. O'BRIEN: Okay. And –

MR. K. MARSHALL: If I can – sorry, if I can also comment that, you know, while, of course, we agree with these assessments because we wrote them through the – our 10, 12 years of board governance and trying to improve the director skill set, the – and acknowledgement of the time and requirement that was – Liberty never once came to talk to any members of the board, other than the CEO at the time, to review to get these recommendations.

So they didn’t have a sense of what we were working on, what the frustrations were, what our positions were. It was, they wrote a long report but they never once felt – I think there’s been more raised today and there’s a deeper understanding, as a result of today’s discussions, with respect to the efforts that the board put into to try to improve governance, to try to improve the director – I guess, the skill set and the

number of directors and the efforts that were put in place.

I just find it strange and I found it, you know, somewhat curious that all these recommendations came forward critical of our board governance, not necessarily of us as a board, but also of the shareholder for not implementing, when they didn't come and see what the board had been doing in an effort to try to enact these exact recommendations that they thought were eureka moments.

I also see – in a press release last week – that, you know, there's Nalcor members still going to Hydro. So it's not necessarily consistent in application for. So that's my commentary.

MS. O'BRIEN: Okay. And so what –

MR. CLIFT: We were not –

MS. O'BRIEN: – I'm understanding is you weren't –

MR. CLIFT: We were not aware of any conversations between Liberty and any individual board members.

MS. O'BRIEN: Okay.

So as I'm understanding correctly –

MR. STYLES: No.

MS. O'BRIEN: – you're not necessarily disagreeing with their conclusion –

MR. STYLES: No.

MS. O'BRIEN: – at least certain – you're on board –

MR. K. MARSHALL: Surprised.

MS. O'BRIEN: – with the conclusion, you're just – you were not pleased with the fact that they didn't come and speak to the board before making those recommendations. Is that a fair summary?

MR. STYLES: Yeah.

MR. CLIFT: Absolutely.

MS. O'BRIEN: Okay.

I do want to go back to your point, Mr. Shortall, on the Newfoundland and Labrador Hydro Board not being – dealing with these complex issues and I just want to make sure that the evidence on this is clear. Is it – would it be correct – and, please, I'm not trying to put words in your mouth, I'm just trying to make sure we – I've got your evidence clearly.

The fact that it is a regulated business for Newfoundland and Labrador Hydro, so that when Hydro is making decisions about, you know, how it's going to spend money that, ultimately, they have to go to the regulator and get maintenance and operating costs approved, does that feed into your position that it's not as complex a board –

MR. SHORTALL: Yes.

MS. O'BRIEN: – because there's that oversight piece by the regulator?

MR. SHORTALL: Well, it's part of it, but it's also – you know, it's a simpler model, a business than Nalcor. There's no megaproject in there. The transmission's all built, the generation's all built, now we have to do new stuff because Holyrood's about to die.

But once you're – I mean it takes a while to get an understanding of the business. Like Tom said, it took 12 to 18 months. I agree with that. Before I was really comfortable with it, it took me 12 months at least. But once you're there, it's not that hard a business –

MS. O'BRIEN: Okay.

MR. SHORTALL: – to understand.

MS. O'BRIEN: And finally, just to finish this off, the third bullet point they raise – and I believe we've heard you all on this – and this is the issue of compensation, that: "Not ensuring that board compensation supports expectations about the time and effort required to remain abreast of board challenges and requirements," understanding company performance, et cetera, so very much what we've already heard evidence from you all on.

When this report came out, was it – do you recall, was it discussed at the board?

I'll ask you, Mr. Shortall.

MR. SHORTALL: I'm sure it was.

MR. K. MARSHALL: Oh yeah.

MR. SHORTALL: Yeah.

MS. O'BRIEN: Okay.

MR. SHORTALL: Oh yeah.

MS. O'BRIEN: Okay.

And did anything change for you at the board as a result of this report from Liberty, and this was December 2014.

Mr. Marshall?

MR. K. MARSHALL: I don't think anything changed in that we had been on the record of addressing all of these issues going back to 2005, 2006 and again in 2008, 2012, I think again in 2014 around the time that this was released. So our persistence in the matter was well documented and well recorded.

MS. O'BRIEN: Okay.

MR. CLIFT: And that continued up until the end of our tenure.

MS. O'BRIEN: Right, in 2016 for three of you, and we will get to that shortly.

Okay, the second independent review that was done that I wanted to bring us to is at P-00110, it's at tab 30, and this is a report done by – jointly with Power Advisory and Hatch in October 26, 2015 is the date of it there, and it was actually prepared for the Department of Natural Resources and there's who reviewed it. And, again, this was commissioned by the government after DarkNL, I believe. But now another year or so has passed, 'cause the last one we looked at was December 2014; this is coming out towards the end, anyway, of 2015.

Can we go to page 156 please?

So they raise another – a few recommendations. So one here is – issues they raise is having: Clearly articulate government objectives for the Crown corporation. So, they talk about this being a best practice. They refer to a letter, a shareholder letter of expectations, an MOU, et cetera. So these would be the types of documents that we talked about earlier this morning when we looked at the jurisdictional review that was done by Deloitte back even prior to Nalcor being created.

And it does refer here to: "The formal articulation of Government's objectives for Nalcor and" Newfoundland and Labrador Hydro "can be found in the 'strategic directions' reflected in the *Energy Plan*." So that's the document that they identify there.

And if we go to the next page, 157, I think they raise a couple of points with that. They acknowledge that that's there but at that point that the Energy Plan was eight years old, I believe. So they were saying, you know: "Nonetheless, it is best practice for such strategic directions to be periodically reassessed, particularly after fundamental changes in industry conditions."

And they also refer to they – that the Energy Plan directions could be sharpened, I believe is their words. "While these 'strategic directions' appear to be reasonable and represent a reasonable articulation of government policy, it appears that they could be sharpened." In other words, the Energy Plan was a fairly, you know, sometimes a more general statement.

So, again we looked at this earlier this morning, coming back to 2006, now we're up in 2015. Was this report and, particularly, this idea of having something more directed from the shareholder, from government in terms of its expectations for the board's management of the company, was this discussed at the board level? And I'll ask you, Mr. Marshall.

MR. K. MARSHALL: Specifically, this report, I can't recall if this was discussed in detail, if we saw this full report because it was done, commissioned directly by the province not by the company, not by the board of governors.

It was done by the province for the province to be able to, I guess, reinforce some of the things that we had felt and we're saying to them with respect to some of these issues but also to answer questions in terms of what they wanted to do in the future.

So, I can't recall this one specifically, other than we were well aware that it was going on and we were well aware of the outcome. I can't remember the full presentation on the Power and Hatch because it was done for the shareholder and not for the board.

MS. O'BRIEN: Okay.

I know we got evidence here that it's sort of considered a good governance piece to have this type of letter of direction, an MOU, a letter of expectation or a shareholder's agreement, however, it forms. In terms of helping you do the work that you did as directors of the Nalcor board, Mr. Clift, you've got the mic there. Would it have been helpful to you in your work or would it have made a difference at all if you'd had a more formalized statement from the shareholder as to what its expectations for you were?

MR. CLIFT: Revised formalized statement as per the –?

MS. O'BRIEN: Something other than – something in addition to the Energy Plan or was the Energy Plan adequate for your purposes throughout your tenure on the board?

MR. CLIFT: My sense was that we had a good sense of what the original plan included and the direction that was given to us via that plan and we were working towards that until such time we were told that that Energy Plan was either going to be revised or no longer valid, and I don't recall that happening.

This Energy Plan is the domain of the Department of Natural Resources and the Government of Newfoundland, not ours. While we did provide the input and review and suggestions to the initial plan, I don't recall late in 2015 that we were engaged in that kind of exercise.

MS. O'BRIEN: Okay.

Anyone else want to add to that answer as to whether it would have been helpful to have a further document or direction from the government?

MR. SHORTALL: I don't think it would have hurt to have some extra direction, but I think we had a good sense of where we were supposed to be going; where we were and where we were going.

MS. O'BRIEN: From the Energy Plan?

MR. SHORTALL: From the Energy Plan. And we were using it, as I said earlier today, as a blueprint for the development of Nalcor in the future.

So, it wouldn't have hurt to have more direction from the shareholder but it might have been a little redundant.

MR. K. MARSHALL: I think the issue is also to make sure that – you say the Energy Plan was kind of more a goals aspirational document and not necessarily a strategic direction letter. I don't know if I'd agree that using Hydro One and OPG as examples of effective strategists. I mean, Gerry, you lived in the Ontario jurisdiction –

MR. SHORTALL: Yeah.

MR. K. MARSHALL: – for quite some period of time, and I don't know if they've quite got it right.

But, certainly clarifying the role of Nalcor and its subsidiaries, vis-à-vis, its status as a Crown corporation and how it bridges into the private sector, and how you can straddle those two worlds, because there's models out there left, right and centre. Fortis is private, Emera is private, you know, Nalcor is not, it's a Crown Corporation. So how do you compete for talent? How do you compete for markets? How do you make sure that you can go after those strategic elements? I think, yeah, a little bit, but, again, this was during the period of rapidly changing.

As I said earlier, we had five premiers in the last five years of being on the board so there was a lot of changeover with respect to the minister and at the premier level.

So, it was a time of transition to be able to set any strategic stone in place. It would have been great to have but, you know, I don't think it necessarily would have – we were in the thick of this project at that time and we knew that – what the task was at hand.

MS. O'BRIEN: Thank you.

Another point raised, I think we've talked about it sufficiently today, but also attracting directors with desired skills and experience, and I think we've talked about that. They do suggest an independent search firm and a competitive process, which I think goes back to one of the points that was raised by Mr. Shortall earlier in how to deal with the compensation and perhaps a bit of the tension there between appointments and competitions.

MR. K. MARSHALL: And what was the date on this; delivery of this?

MS. O'BRIEN: This was October 2015.

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: One of the other things that I'll just highlight here, they do talk about the term of appointments and it's somewhere there on page 158, I believe. And I don't have the site right before me, but they talk about having fixed five-year terms being a good practice. So, this is a point that came up a few times for the board. So, and just let me review what I believe to be the evidence and then, Mr. Clift, you can probably straighten me out if I have it wrong.

We've already looked at section 6 of the *Energy Corporation Act*, and that says, essentially, as board members you're appointed by Cabinet and you serve at pleasure. In other words, you can sit until they tell you you can't sit.

But I understand that originally the orders-in-council that appointed you to the board – I'm not sure about you Mr. Styles, but certainly the other three were – actually, the order that appointed you were for fixed terms.

MR. CLIFT: Yes, that's correct.

MS. O'BRIEN: And I understand there became a problem with those fixed-terms appointments. Can you describe for us what that was?

MR. CLIFT: Yes, there were – there was no renewal in it. There was no timely renewal, so if we were to schedule to come off the board on December 31 of 2006, then we were in limbo until such time as we were reappointed, or we were just hanging there. And in my case, and I believe Mr. Shortall's, it was about a nine-month period before we were effectively reappointed. And so we –

MS. O'BRIEN: So you weren't – you had no formal appointment to the board; your term had expired.

MR. CLIFT: Right.

MS. O'BRIEN: Were you still going to the board meetings to keep abreast?

MR. SHORTALL: I was.

MR. CLIFT: Yes, I believe so.

MS. O'BRIEN: Okay, so there was an expectation that you would be renewed, it was just slow to come. Is that the idea?

MR. SHORTALL: Yes, we were –

MR. CLIFT: (Inaudible.)

MR. SHORTALL: We were told we were going to be reappointed, but it takes the time to get through Lieutenant-Governor in Council and get a Cabinet appointment. It takes time. So –

MR. CLIFT: And originally –

MR. SHORTALL: – in my case, I'm not sure about Tom, but I still attended all the board meetings and I still chaired the Audit Committee.

MS. O'BRIEN: Okay.

MR. SHORTALL: While I wasn't even a director, so ...

MS. O'BRIEN: Okay, and then am I right, then, to get around this problem of the long delay and

actually getting the reappointments done that the orders-in-council then changed to be for an indefinite appointment, is that correct?

MR. SHORTALL: Well, it would change to say – the way – I suggested that change, and my suggestion was you'd be appointed for a fixed term; when your term is up, you continue to serve as a director until your replacement is named.

MS. O'BRIEN: Okay.

MR. SHORTALL: So that way we didn't go into limbo for nine months –

MR. CLIFT: We didn't have these continuity issues that were manifest in 2006.

MR. SHORTALL: Yeah.

MS. O'BRIEN: Okay.

MR. SHORTALL: So at least that practice put an end to this ...

MR. CLIFT: You asked a question about the length of the appointments, so we had that discussion at the Governance Committee, and we were also concerned about retention of organizational memory within the board and establishing a rotational process whereby a certain number of people would come off and a certain number would come on on a – so that not – we were trying to pre-empt the possibility that too many people came off and too many novices, in terms of understanding the subtleties of this particular business, came on at the same time to mitigate against loss of momentum on the board in terms of the level of understanding and ability to exercise due diligence and all of those issues.

And you know, two years – when you consider how long it takes to understand the business, you're really getting your legs underneath you when your first appointment is about to expire.

MS. O'BRIEN: But there's a balance –

MR. CLIFT: So ideally, it would've been a little bit longer.

MS. O'BRIEN: Okay.

MR. SHORTALL: Yeah.

MR. CLIFT: And so when you consult as to how long it should be, the –

MR. SHORTALL: (Inaudible.)

MR. CLIFT: – answer really is it depends on the nature of the specific situation, the type of board, the type of activities that are undertaken –

MR. SHORTALL: Yeah.

MR. CLIFT: – by that board, how complex –

MR. SHORTALL: Their five-year suggestion makes sense, I think.

MR. CLIFT: I would agree.

MS. O'BRIEN: You agree with five year makes sense?

MR. CLIFT: Yes.

MS. O'BRIEN: And what I think your point is, too, is that they should be staggered, so you don't have the –

MR. CLIFT: Absolutely.

MS. O'BRIEN: – whole board expire –

UNIDENTIFIED MALE SPEAKER: Correct.

MS. O'BRIEN: – at the –

MR. CLIFT: Yes.

MS. O'BRIEN: – same time, and have to start with –

MR. CLIFT: Yep.

MS. O'BRIEN: – a brand new board. Okay.

Next set of questions I have are for Mr. Marshall because you were chair of the Compensation and Human Rights Committee, and –

MR. K. MARSHALL: Human Resources.

UNIDENTIFIED MALE SPEAKER: Human Resources.

MS. O'BRIEN: Human – yes.

MR. K. MARSHALL: Sorry.

MS. O'BRIEN: Thank you. It's getting a bit long –

MR. K. MARSHALL: We believe in –

MS. O'BRIEN: End of a –

MR. K. MARSHALL: – human rights.

MS. O'BRIEN: – a long day.

So I'm gonna go back – before we go to the mandate itself, can you – I know that you were involved in the selection of Ed Martin as CEO of Nalcor. Can you explain for us what role you played, how that selection process was undertaken?

MR. K. MARSHALL: Well, I was, I guess, on the board probably a year to a year and a bit at that point in time, and Tom had just come on the board, and the chair at the time, Bill Wells, had just retired, and we had our Compensation – our early workings of it. There was always a Compensation Committee that was there. I was on it from early days coming on the board.

And when we went to replace Bill Wells because he retired, and one of the things that Tom indicated earlier was the in-camera minutes, and one topic I was gonna add that we did talk about in camera was succession planning at various points in time through our in camera sessions.

But this particular one, we looked and said: Okay, what is the mandate of the Compensation Committee? And we looked and said this is up to us to make the recommendation. So we engaged Robertson Surette to go through a search. It was suggested that – go ahead and approach people who you think might be good for the job, and my response was no.

You know, this is a Crown corporation. This is – we're looking for an individual who's going to be able to take this organization and transform it into – we didn't know it was gonna be called Nalcor at the time, but something, you know, in

terms of broadening its horizon beyond the Newfoundland and Labrador Hydro application.

So we hired Robertson Surette to conduct a search, coast-to-coast and beyond, necessarily. And Tom, myself and the chair, Dean MacDonald, at the time sat with a Robertson Surette representative, and they did the initial screening, and then came back with some candidates.

And lo and behold, Mr. Martin was one of the ones who applied, and he was one of the ones who we had discussed earlier would be the type of person, not necessarily the person, but the type of person who had kind of national, international expertise and who would have kind of the skill set with respect to exposure to markets, exposure to megaprojects, that we would be required to see in this role.

So again, no direct contact with him whatsoever – went through the interview process with a number of potential candidates and eventually came down, and Tom can keep me honest, but I mean, it's – it was very clear as we got through that two- and three-process period – there was four of us on the committee, and it was unanimous in terms of – and it wasn't even close.

The other individual was from another jurisdiction, and it was clear he didn't have the – you also needed that intangible passion for the province and understanding of this is what you're signing up for in a province and Crown corporation, and if you're here for the glories of private sector salaries and stock options, that's not going to be it. You're here because we want to make a difference.

And it was clear in terms of the candidate who rose to the fore. We then took our recommendation. The chair at the time took that to shareholder, and the shareholder then consented and agreed and appointed the individual as is the Cabinet – I guess, the Lieutenant-Governor in Council's responsibility to do so. They are in charge of executive appointment.

MS. O'BRIEN: Okay.

Can we bring up P-00393 please, and it's at tab 13 of your book. So you referred to the mandate of the Compensation and Human Resources Committee.

MR. K. MARSHALL: Correct.

MS. O'BRIEN: Here's the copy we had. Now, this would – this was done in April 2010. I don't –

MR. K. MARSHALL: (Inaudible.)

MS. O'BRIEN: – know that there was an earlier one that we've seen, but it covers off, I believe, what you're talking about. If we could go to page 3.

Thank you.

If I go – just go down here under Scope – so, I believe this is what you're talking about. This is the scope for the duties and responsibilities of the committee and that is: "Consider and recommend for approval by the Board of Directors the appointment of the President and CEO and all other Officers of the Corporation and its subsidiaries."

So that's what you're talking about there. That's what –

MR. K. MARSHALL: Correct.

MS. O'BRIEN: – you were just referring to?

MR. K. MARSHALL: Yes.

MS. O'BRIEN: And did you exercise this same – did you do the same type of process for other officers of the corporation?

MR. K. MARSHALL: Yes, we did for the CFO. Gerry, you weren't on the board at that point, but we did the same process in the CFO. And I –

MR. SHORTALL: (Inaudible.)

MR. K. MARSHALL: Pardon me.

MR. SHORTALL: (Inaudible) at once.

MR. K. MARSHALL: You were there then?

MR. SHORTALL: I was there for the interviews.

MR. K. MARSHALL: Yes. Okay. So Gerry was part of the interview committee for that. And also for Mr. Bennett.

MS. O'BRIEN: Okay.

So for – so as directors – as executives came on, officers came on, that's the same type –

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Would you each time use an external headhunter firm or something of that sort?

MR. K. MARSHALL: In those cases we did.

MS. O'BRIEN: Okay. Thank you.

Now, if we could just go to – I wanna just ask you how this – so this role of the Compensation Committee to consider – recommend for approval to the board the appointment of the CEO. I want to get your take on how that reconciles with the legislation itself. So if we could go to the legislation, P-00431, it's at tab 40 of your book and we can go right to page 11.

MR. K. MARSHALL: Jumping from book to book.

MS. O'BRIEN: So section 7 sub 3 of the legislation says: "There shall be a chief executive officer of the corporation, to be appointed by the Lieutenant-Governor in Council, who shall, subject to the terms of appointment that may be established by the Lieutenant-Governor in Council, or in an agreement made under section 9 and, subject to the directions of the board, be charged with the general direction, supervision and control of the business of the board and the corporation."

And so here though, you know, the act clearly is – it is Cabinet that makes the appointment, so in your committee mandate you recommend for approval to the board, the appointment –

MR. K. MARSHALL: Correct.

MS. O'BRIEN: – so how do these – you know, one – when you just read the committee mandate it suggests like the board would be the ones –

MR. K. MARSHALL: Does the hiring.

MS. O'BRIEN: Exactly.

MR. K. MARSHALL: We're always respectful of the act itself and so we select the candidate that we feel is best and then put him forward for it. So whether or not you want to take out – that out of the committee mandate, I don't think that's the right approach, I think the right approach is that the CEO for – certainly for the example of the CFO – the CEO has to be involved in that selection process along with board members.

You now, I think, as we've seen, you know, the appointment by the Lieutenant-Governor in Council, as we looked at the time frame with respect to absences at board level, you'd probably have quite a lengthy time frame with absences at executive level as well. I think it's, again, getting back to clear direction with respect to: what is the role of the Crown corporation? How do you make it effective from a governance perspective, involving them in this process and not: here's – we're offering you the job. It is – it has to be approved by the shareholder ultimately.

MS. O'BRIEN: Okay. And again, just to point out, the legislation doesn't have that for the other officers –

MR. K. MARSHALL: Right.

MS. O'BRIEN: – or executives of the corporation –

MR. K. MARSHALL: Just the CEO and board –

MS. O'BRIEN: – it's really only the – just the CEO –

MR. K. MARSHALL: Yeah.

MS. O'BRIEN: – who has that.

So I understand you're saying, you know, what the process that you went through – certainly for

Ed Martin – is you went through this process, you recommended someone and then that recommendation was forwarded over to government and –

MR. K. MARSHALL: Correct.

MS. O'BRIEN: – for the Cabinet to make the final decision. Would this, you know, this – your committee mandate that kind of – that sets out that this is role of your committee and this is – you make that approval to board, would that have been reviewed by government?

MR. K. MARSHALL: I would think so. I'd have to check with Tom on that, but I will also say that I was on the board of the Memorial – the Board of Regents at the same time and I was on the selection committee – similar process, that the board undertook the interviews and then took the candidate that they wished and then presented to shareholder, shareholder interviewed and said yes or rejected, this is who we will – we will agree or we will not agree. So it's not without comparison in boards that I've sat on in the province.

MS. O'BRIEN: And we don't need to go back to the mandate itself, but one of the other roles of the compensation and human resource committee was to do annual reviews of the CEO.

MR. K. MARSHALL: Yes.

MS. O'BRIEN: Did you do annual reviews and can you just, you know, briefly describe for the Commissioner what form those would take?

MR. K. MARSHALL: Very much so. So the performance management process very well documented and run by the vice president, human resources there, and from the CEO's perspective itself, that fell to the board of governors. Ultimately the CEO reports to the board.

And at the committee level, you know, our responsibility would be to do that assessment. So the goals of the organization would be established and they would be documented and tracked through the year, in terms of performance against those; what level of, you know, green, yellow, red, with respect to progress against objectives. The biggest one that

we introduced, of course, was safety, which was overriding all others; financial, environmental, departmental objectives; individual objectives.

So they would – there would be a common set of corporate, and then a divisional, and then personal goals. And as you go higher up the organization, your corporate goals would form a higher component of that individual's overall structure. So there was a link between all levels of the organization in terms of how that was done.

With respect to the CEO on an annual basis, there was a – there was – that assessment was done, so the tracking, the numerical tracking and the tracking against objectives we can see on a monthly, quarterly basis whenever we did our board meetings as to how the organization was tracking against its goals. And people could tell how they were doing, vis-à-vis that, barring any unforeseen major circumstances like DarkNL, as an example.

And then at the end of the year, we would sit down with the CEO and say: okay, you now have to do a self-assessment against your objectives, you have to do an assessment in written form of what you achieved, what you didn't achieve, what fell off the table, and what was done very well, and what as a team, and what as an individual.

We would take those, that assessment, which would be five, six, seven pages, and we would meet as a compensation committee and review the performance of the CEO for that particular year and meet with the CEO and go through things that we as a board felt were required, and we as a board felt we did fairly well on.

MS. O'BRIEN: And was there any linkage between the annual review and compensation?

MR. K. MARSHALL: Very much so. The – you know, there is a linkage there, there is an annual review that has to be done by and of itself, but they're not one and the same. But the compensation piece was also that – the variable form of compensation; which, when we started at Hydro it was a 3 per cent, 6 per cent, 9 per cent for the CEO level of variable incentive. And then we brought that up to – I think it was a 15, 20 and a 25 per cent in various increments

over the life of our 12-year involvement in the board.

And that certainly didn't come – there was always pressure by outside consultants that were hired and by – to bring this into private sector practice, but the board and the comp committee recognized that this is a Crown corporation. If you want to go to private sector then you'll have to go to private sector. We cannot go to that level. We can only have so much private sector-type salaries and reward systems in a Crown corporation.

MS. O'BRIEN: Thank you.

Commissioner, I see we're just past 4:30. I don't have many more questions –

THE COMMISSIONER: All right.

MS. O'BRIEN: – but as the witnesses are gonna have to come back tomorrow anyway, it may be a good place to break.

THE COMMISSIONER: All right. We'll break here then until tomorrow morning. I will say this: there's been previous panels and we've had to do it after the fact, but you are still sitting here, you know, under oath or affirmed or whatever, so discussion should be limited, and not with regard to the evidence and whatever. So I'd ask you to bear that in mind before tomorrow. And I think – hopefully tomorrow morning, Ms. O'Brien will finish and then there will be cross-examination by various people.

Pursuant to the direction that I've given previously, counsel for the directors will go last. Nalcor Energy will go second-last here because of the direction that I've given subsequent to our counsel meeting – it seems like months ago now.

The other thing I just want to make a comment on before we leave is that there will be new parties joining us. I have made a decision that was filed today related to two others who have applied for standing here. They are Todd Stanley and Terry Paddon. They are going to be represented by Gerlinde van Driel as I understand it. So they will likely be attending when issues relevant to them will be before the hearing. And that decision is filed on the board website.

So we'll adjourn till tomorrow morning at 09:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.