



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 1

Volume 9

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*Commissioner: Honourable Justice Richard LeBlanc*

Tuesday

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**CLERK (Mulrooney):** All rise.

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

Please be seated.

**THE COMMISSIONER:** All right. Good morning.

I understand, Mr. Learmonth, that you have a document to enter?

**MR. LEARMONTH:** Yes. Before we start, I'd like to ask Madam Clerk to enter the following –

**THE COMMISSIONER:** Put your mic on there, Barry.

**MR. LEARMONTH:** I'll say that again. I didn't have my mic on.

Before we start, I am gonna ask Madam Clerk to enter into the record the following exhibits: P-00301 and P-00266 to 00272, inclusive.

**THE COMMISSIONER:** Okay. And no objection to that, I'm assuming? So they'll be marked as entered – or as numbered, rather.

Mr. Budden?

Mr. Williams, you remain under oath at this time.

**MR. D. WILLIAMS:** Thank you, Mr. Commissioner.

**MR. BUDDEN:** Mr. Williams, I'll have a few more questions for you today.

**MR. D. WILLIAMS:** Sure.

**MR. BUDDEN:** As always, if you don't understand me, which – quite possible – just ask for clarification –

**MR. D. WILLIAMS:** Okay.

**MR. BUDDEN:** – and we'll –

**MR. D. WILLIAMS:** I guess we'll have to – if that's the only reason, right?

**MR. BUDDEN:** We'll continue.

**MR. D. WILLIAMS:** I got a cold this morning, so don't take any sniffing for emotion, 'cause it's not. It's just –

**MR. BUDDEN:** Okay. Well, you know, emotion's understandable.

I'm going to ask you some questions on strategic risk allowance, which is a topic that Mr. – Commission counsel Learmonth discussed with you yesterday, and we're particularly thinking about the strategic risk allowance of 10 per cent, which appears to have been removed from the – Nalcor's DG2 numbers as a result of Emera's concern regarding its ability to sell the strategic risk concept to the Nova Scotia UARB.

Remember that discussion yesterday with –

**MR. D. WILLIAMS:** Yes, I do. Yep.

**MR. BUDDEN:** – Mr. Learmonth?

And would you agree that the failure to disclose the recommendation of a strategic risk contingency represented a failure to disclose the full price of the Lower Churchill Project and a consequent public understatement of that cost? Would you agree –

**MR. D. WILLIAMS:** (Inaudible.)

**MR. BUDDEN:** – with me there?

**MR. D. WILLIAMS:** Now, you said it appears to be removed, and when Mr. Learmonth asked me yesterday that particular question, I did indicate to him that if we assume, as he put it to me, that those facts are correct, then I would have a response. But it's, you know, it's unfair, and it's very difficult on a – don't get me wrong, Mr. Commissioner, I'm not saying that there's any unfairness in the Commission. But it's very difficult to put to a witness a hypothetical that basically is not proven and is not answered by the people who could answer it. So –

**THE COMMISSIONER:** Just a second, Mr. Williams.

We've already had evidence, before the Commission, from one of – from one party in

Happy Valley-Goose Bay indicate that strategic risk was actually – had been removed from the estimate, so I think there is some evidence of that at this particular stage. Whether it was because of Emera's request or for some other reason, that's still a matter for me to determine.

**MR. D. WILLIAMS:** Absolutely.

**THE COMMISSIONER:** But I think the issue of the strategic risk is obviously an issue that's been raised before the Commission. And you know, depending on how the question is asked to you, I think in fairness, if you are able to answer the question, I'd ask you to do so.

**MR. D. WILLIAMS:** Yeah, Mr. Commissioner, the way the question was asked it was said it was – it appears. As well, the issue has been raised before the Commission by one side. So the people, I would think, who are in a position to be able to answer that have not been heard yet, so I don't want to get myself in a situation which, actually, I know nothing about, because I was not aware of it. So that's the ultimate answer from me.

But in the question that you posed, I just want to make sure that words aren't put in my mouth, Mr. Commissioner, with respect to the fact that I'm accepting this as a fact, because I don't know. I haven't –

**THE COMMISSIONER:** Okay.

**MR. D. WILLIAMS:** – seen it, and I want to be fair to all the parties here, and I think that's – you know, it's unreasonable to hypothecate a question in a certain wording that I'm going to be assuming and then quoted in the paper today as saying: oh yeah, Williams says there was an understatement that misrepresented to the public. Not true. I'm not aware of it.

**MR. BUDDEN:** I think you've fairly stated that you are relying on information that has been put to you or assertions that had been put to you. Perhaps we can –

**MR. D. WILLIAMS:** Right.

**MR. BUDDEN:** – turn to –

**MR. D. WILLIAMS:** Is that satisfactory, Mr. Commissioner, from your perspective. My –

**THE COMMISSIONER:** Well, let's just see where this is going –

**MR. D. WILLIAMS:** Okay.

**THE COMMISSIONER:** – so –

**MR. BUDDEN:** Perhaps we could turn to P-00036, which is one of the exhibits, I believe, that you had in front of you yesterday. And it's a page which is a news release from –

**MR. D. WILLIAMS:** Which tab is that?

**MR. BUDDEN:** That I'm not sure of. Just one second.

**THE COMMISSIONER:** I think that's one that I didn't have here. Maybe counsel could assist me with – Mr. Learmonth or Ms. O'Brien?

**MS. O'BRIEN:** P-00036?

**MR. BUDDEN:** It's a news release of 18 November, 2010.

**MS. O'BRIEN:** I believe tab 71.

**THE COMMISSIONER:** Tab 71?

**MR. D. WILLIAMS:** I'm running out of room here.

Okay.

**MR. BUDDEN:** Could you – firstly, we'll just establish this was, as was discussed yesterday, a news release from the Government of Newfoundland and Labrador, dated November 18, 2010.

**MR. D. WILLIAMS:** That's correct.

**MR. BUDDEN:** Which – the time – you were still premier as of that time. You resigned –

**MR. D. WILLIAMS:** Right. A couple of weeks after that –

**MR. BUDDEN:** – a month or so later.

**MR. D. WILLIAMS:** – I think, yeah.

**MR. BUDDEN:** Yeah.

Would you turn to page 9, please?

**MR. D. WILLIAMS:** Sure. Okay.

**MR. BUDDEN:** And perhaps you could just briefly read to us the section under the heading: “Project Costs.”

**MR. D. WILLIAMS:** “Estimated capital cost of the project is \$6.2 billion.

“Muskrat Falls Generating Facility and Labrador Transmission is estimated to cost \$2.9 billion.”

“The Labrador-Island Link and system upgrades are estimated to cost \$2.1 billion and the Maritime Link is estimated to cost \$1.2 billion.”

**MR. BUDDEN:** So this press release that was generated by your government, these figures – you believed at the time these to be true and correct?

**MR. D. WILLIAMS:** That’s correct.

**MR. BUDDEN:** Okay.

So if there’s any misleading that went on it wasn’t – you weren’t the party who was misleading the public?

**MR. D. WILLIAMS:** No, I’m not aware of any misleading that went on.

**MR. BUDDEN:** Okay, fair enough.

Could we then next turn to Exhibit 00206 please. That again was discussed yesterday. And the tab number, I’m not sure.

**UNIDENTIFIED MALE SPEAKER:** Two-oh-six.

**MS. O’BRIEN:** Tab 49.

**MR. BUDDEN:** So, Mr. Williams, just to start; this, on its face, appears to be a document generated by Nalcor, it’s headed: Lower Churchill Update and it’s dated April of 2010; again, while you were still premier.

**MR. D. WILLIAMS:** Right.

**MR. BUDDEN:** We know who generated it, but do you know who this document was intended for? Which readership?

**MR. D. WILLIAMS:** I – you know – I can’t say definitely but I can certainly assume that it was intended for government and parties involved.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** I would be inclined to think that this was given to us – I can’t say that for sure, but I would certainly think it was. I mean, that was – that’s in the spring of the year when the letter of intent was done; I was just back from heart surgery at the time so – but I was there.

**MR. BUDDEN:** Okay.

So it wasn’t a publicly released document it appears – and I would suggest from a review of it, it appears to be an internal document.

**MR. D. WILLIAMS:** Oh absolutely, yeah.

**MR. BUDDEN:** Yes.

**MR. D. WILLIAMS:** And we received – you know, there’s that – there was a process that went on throughout this. There were updates and briefings and –

**MR. BUDDEN:** Sure, so you would assume this would be one of them?

**MR. D. WILLIAMS:** Yes. Yeah.

**MR. BUDDEN:** Okay, could you turn to page 17 for us? And again, we looked at yesterday.

**MR. D. WILLIAMS:** Right. Okay, it’s there – yeah.

**MR. BUDDEN:** Yeah.

You were asked yesterday if this was your handwriting or Elizabeth Marshall’s, and each case you indicated that it was neither of your handwriting.

**MR. D. WILLIAMS:** Marshall's?

**MR. BUDDEN:** It wasn't your handwriting?

**MR. D. WILLIAMS:** Marshall's?

**MR. BUDDEN:** Not – sorry, Matthews.

**MR. D. WILLIAMS:** Oh no, I'm – no, neither one.

**MR. BUDDEN:** Okay. Do you know whose handwriting it is?

**MR. D. WILLIAMS:** No, I don't.

**MR. BUDDEN:** Okay.

Looking at the P75 cost estimates line which follows, of course, under a heading: "Scenario Economics - Key Assumptions, General Assumptions for all cases," could you just read what is handwritten to the right of that?

**MR. D. WILLIAMS:** The –

**MR. BUDDEN:** You see the lines that's –

**MR. D. WILLIAMS:** – this handwriting, that's not mine that you're talking –

**MR. BUDDEN:** Oh I –

**MR. D. WILLIAMS:** – about.

**MR. BUDDEN:** – realize it's not yours –

**MR. D. WILLIAMS:** Okay.

**MR. BUDDEN:** – but could you just read into the record so we can then discuss it.

**MR. D. WILLIAMS:** "More stress placed on the project cost – very conservative approach."

**MR. BUDDEN:** Okay. Firstly, do you – what was your understanding at the time as to what P75 meant?

**MR. D. WILLIAMS:** You know I have to be honest, it meant nothing to me. P75 capital cost estimates to me could be one of 75 that they did. I mean, I'm being –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – really honest with you. The P75 reference was not of any consequence to me.

**MR. BUDDEN:** Okay. Do you have any independent recollection here, eight years later, of having reviewed this document previously?

**MR. D. WILLIAMS:** Do I have any recollection –

**MR. BUDDEN:** Do you recall here today, do you have any recollection today of having reviewed this document at this time, eight years ago?

**MR. D. WILLIAMS:** At the time in 2010?

**MR. BUDDEN:** Yes.

**MR. D. WILLIAMS:** I'd just assume I had it. I – you know, it's eight years ago. But, now you know, I'm not ducking it either. I'm basically saying: yeah, I assume we saw this and had this.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** Yeah.

**MR. BUDDEN:** When something is there – is under a key assumption, on a project that you were obviously very interested in, very invested in at some level, I'm surprised that you would not, perhaps, have queried as to what P75 meant.

In retrospect, are you surprised that you didn't follow up on that?

**MR. D. WILLIAMS:** In – you know, hindsight's 20/20. I mean, in retrospect, no. You know, this would be – if this was done at a Cabinet meeting, for example, you know, we could have an agenda of five items or 50 items. We could have briefing notes that were presented to us, Cabinet secretariat analysis, Treasury Board analysis; I get briefed before I go into the Cabinet room as well, so, you know, there'd be lots of things on the list.

So for me to go down to it – I don't know how many pages this document was at the time, but let's say it's 30. To go down through 30 pages

and go through every single item – I gotta be honest, Mr. Budden, I didn't have the luxury of being able to do that.

So, no, I would not. I would just – I would take that at face value and just say, the P75 capital cost estimates, whatever –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – they happen to be.

**MR. BUDDEN:** And nobody, to the best of your recollection, saw fit to explain to you the significance of P75.

**MR. D. WILLIAMS:** Nobody being who? The staff or (inaudible)?

**MR. BUDDEN:** Staff, somebody from Nalcor.

**MR. D. WILLIAMS:** No, not – no. Not that I would expect every single entry in this to be explained to me because like I said, you know, we do all government business at Cabinet meetings, and I don't know what would've been on the table on April 23rd but I can assure you there was many more than one item, basically, in those days.

I mean, you know, you're running a seven- or eight-billion-dollar operation so there's a lot of things to deal with. Not that this is not important, though, 'cause this is very – it is important.

**MR. BUDDEN:** Yes. What do you take the words: more stress placed on the project cost – very conservative approach, to mean?

**MR. D. WILLIAMS:** I can't comment on what somebody else wrote. I mean, stress could be strain or emphasis – s could be – you can take it any way, but I'm not going to try and interpret what somebody else wrote.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** Conservative is a name I – is a word I recognize but that has a whole different meaning to me.

**MR. BUDDEN:** The words all mean things; you know, stress means there's something,

conservative means something, I'm with you there –

**MR. D. WILLIAMS:** Yeah, yes.

**MR. BUDDEN:** -- but –

**MR. D. WILLIAMS:** Yeah, right.

**MR. BUDDEN:** – did this phrase, I guess – not asking you so much I guess what somebody meant by it, but to turn it around what did you understand by it, or what do you understand by this phrase?

**MR. D. WILLIAMS:** Well I – first of all, that wouldn't have been written on what I received. So I have no comment on it, I really don't.

**MR. BUDDEN:** Okay. So you have no idea who –

**MR. D. WILLIAMS:** In all fairness I can't comment on someone else's writing or someone else's interpretation –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – or whatever, and I don't know whoever wrote that, what other information they had. I have no idea. I just have no idea. I'm in a vacuum here on this, so Mr. Commissioner I can't go any further than that on that.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** I can't comment on that.

**MR. BUDDEN:** Well one of the issues that came up in the forensic audit is that by the time these cost projections reached DC3 [sp DG3], Decision Gate 3, that P75 had become a P50 in the Nalcor cost estimates.

Are you aware of that?

**MR. D. WILLIAMS:** The forensic audit – the scope of the forensic audit, was from – excuse me – November 10 – you know, basically when this decision was made – until sanction. So this forensic audit was done on the basis of the sanctioning phase so, you know, I can't comment on the forensic audit from –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – what was in it or what the contents were or, you know, any opinions on what's in that forensic audit because it's, you know, it's a different time, after my time.

**MR. BUDDEN:** Yeah, well there's some overlap but fair enough.

**MR. D. WILLIAMS:** Well it's –

**MR. BUDDEN:** I'll move –

**MR. D. WILLIAMS:** – you know, November 10 I think is the scope, so the –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – overlap is –

**MR. BUDDEN:** Well, let's rephrase the question a bit. You are aware now of the significant difference between a P50 and a P75.

**MR. D. WILLIAMS:** I am because of what I read –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – since. Only because of the documents that have been submitted to the Commission. I haven't read all of them, but I've tried to grasp as much as I can.

**MR. BUDDEN:** Okay.

And so it follows for completeness that the difference between a P50 as opposed to a P75 was – the effect of it was to reduce the cost projections for Muskrat Falls by hundreds of millions of dollars.

**MR. D. WILLIAMS:** Again, you know, you're telling me that's your understanding. I – you know, I haven't had the information on it. Again, it's only what I read so I – you know, I can't sit here and cast an opinion on whether 50 or 75 goes one way or the other, you know.

**MR. BUDDEN:** Okay.

To your knowledge, which is all you can speak to, did anybody in your government, the

Government of Newfoundland and Labrador during your time as premier, put any pressure on Nalcor to reduce its P75 to a P50?

**MR. D. WILLIAMS:** I can only speak for myself –

**MR. BUDDEN:** Of course.

**MR. D. WILLIAMS:** – and –

**MR. BUDDEN:** Your knowledge.

**MR. D. WILLIAMS:** – and would think if my ministers did or knew, I would probably know? Because through Cabinet responsibility, they would obviously have a duty to indicate it to me. But, no, I'm not aware of any pressure whatsoever to reduce anything for any reason.

**MR. BUDDEN:** Okay. And if you had become aware that somebody from government was pressuring Nalcor to alter one of its key assumptions, to reduce a P75 to a P50, what would you have done? How would you have reacted?

**MR. D. WILLIAMS:** Well, you know, I would've objected to it. I – you know, putting pressure in an area to alter something, you know, it's not something that we were at.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** Yeah we weren't into strong-arming or any that kind of stuff, I can tell you.

**MR. BUDDEN:** So as with the previous on the Emera quote: if it happened, it happened without you being made aware?

**MR. D. WILLIAMS:** The – yeah, the – which Emera quote?

**MR. BUDDEN:** Our previous discussion about the costing of Emera and the possible reduction of the strategic risk.

**MR. D. WILLIAMS:** Yeah – no.

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** Like, I wasn't aware of it.

**MR. BUDDEN:** Okay.

I'd like to move on to discussion of the Maritime Link. You've given quotes – I won't review them now unless you wish to, but when the Maritime Link was first announced, you spoke about it in very favourable terms; its impact on Newfoundland, and so forth.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. BUDDEN:** So I guess one question I have is: how, in your mind, would you – or how do you suggest the Maritime Link improves Newfoundland's position with Quebec, with respect to the Upper Churchill and the post-1941 [sp 2041] world of Upper Churchill?

**MR. D. WILLIAMS:** Well, the Maritime Link gives us a complete loop. It gives us a connection to the mainland. It allows us to have an alternative. It puts in place, you know, a prototype for when 2041 – if Quebec doesn't allow us to go through Quebec, well then, at least we've established a corridor that would need more capacity – obviously, 'cause it's – wouldn't be able to handle the Upper Churchill. But, you know, it basically, you know, takes us away from the stranglehold that Quebec had on us.

**MR. BUDDEN:** Okay, so, even though the capacity of the connection down from Labrador to Newfoundland is only 900 –

**MR. D. WILLIAMS:** Yes, yep.

**MR. BUDDEN:** – yep.

**MR. D. WILLIAMS:** It's a limited capacity. You're not gonna overbuild for the extra 5400 megawatts that are gonna come down in 2041 – if we get all of that. No. But at the time, you know, obviously, I would think that the return from the Upper Churchill would justify adding onto that capacity. But, you know, the corridor has been done. Now whether they can work within the same easements and transmission lines, I can't tell you, but –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – the precedent is there and, you know, we've got a link to the mainland and we've got an alternative. And I remember people coming out publicly, at the time, and saying, like, you know, we finally broke the Anglo-Saxon route.

**MR. BUDDEN:** Okay. So –

**MR. D. WILLIAMS:** Whatever that means.

**MR. BUDDEN:** You see it as having symbolic importance, even if that specific engineering connection isn't really capable of carrying very much power from Upper Churchill – if any.

**MR. D. WILLIAMS:** Well, it has a lot more than symbolic importance because, you know, it is carrying what it is carrying and enables us to get actually, to – I don't know if I said 900 before, it's 500, but – to get out, basically, to New Brunswick and Nova Scotia and into the northeastern States.

You know, so we've opened up these markets that also connects us to the Emera transmission, which enables us to get onto their lines and use their open-access capacity, which we can't get through Quebec, as well. So, you know, so it's very – it gets us in – it gets us down in the market and it gets us around Quebec. And you know, and until we have that alternative we don't have any real leverage with Quebec.

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** You know, and I'm not gonna go back and harp on the Quebec thing, but I don't know if you watched the election last night, but part of Labrador was in the Quebec election map. Did you notice that?

**MR. BUDDEN:** It was commented on.

**MR. D. WILLIAMS:** (Inaudible.)

**MR. BUDDEN:** Yeah.

The – however, one consequence of the development of Muskrat Falls is, of course, a domestic market for power that's now been saturated with Muskrat – Muskrat Falls-costed power. You would agree with me there?



**MR. D. WILLIAMS:** Yeah, I don't know the exact numbers but if you're saying that that's true, then yes, I assume it's true.

**MR. BUDDEN:** So –

**MR. D. WILLIAMS:** Again, you know, I don't have any – the thing is like, I don't have any up to date information and haven't had it for, you know, quite some time. I don't have access to government and – or Nalcor's facts and figures.

So I have to kind of guess what I read and what I see in the papers and just get some general information. So, you know, once I was out the door in December of 2010, my sources of you know, detailed information actually ended. And –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – that's not been any reflection –

**MR. BUDDEN:** But you're here –

**MR. D. WILLIAMS:** – on anybody, I'm just telling you the way it is.

**MR. BUDDEN:** You're here not as a witness for your expertise in markets in 2018, but obviously because of – you were a major player in the pre-sanction decisions.

**MR. D. WILLIAMS:** Yeah.

**MR. BUDDEN:** So that, obviously, is the context in which I am asking questions.

So just continue with that question: if the domestic market is saturated – or totally met, to put it in a different way – with Muskrat Falls power, costed at Muskrat Falls costs, including the development of the generating and transmission capacity – it therefore follows that there's no remaining domestic market for Upper Churchill power when that becomes available in 23 years. You'd agree with me there?

**MR. D. WILLIAMS:** Sure. You know, unless with our population goes haywire. I'd like to think we're gonna expand and grow as a province – that was always my philosophy when I was in there. But yeah, sure, I mean we're not

going to need 10 times our capacity (inaudible) down the road.

**MR. BUDDEN:** Right, yeah.

We talked a bit about Stan Marshall yesterday, but he recently, in his evidence, gave a comment to the effect – and he said the same thing publicly – that given the degree to which transmission costs factor into the total cost of the Muskrat Falls Project, he describes it as a transmission project. Would you agree with that characterization of Muskrat Falls?

**MR. D. WILLIAMS:** Yeah, I would think that's probably why Fortis have some interest in acquiring the transmission assets at some point. But yeah, part of it is a transmission project. Yeah.

There's, you know, there's a significant part of the cost is the Maritime Link, which is transmission, and Labrador and the Labrador-Island Link. But you know, I – you know, I know that Fortis have – are interested in acquiring those transmission assets as well.

**MR. BUDDEN:** The – do you have any particular knowledge – or rather did you, in the key sanction period – have any particular knowledge as to whether the entire Anglo-Saxon project as it had been envisioned by Joseph Smallwood, the full power out of Churchill Falls after 2041 project – to your knowledge, had that ever been costed as being economically feasible during your time in government?

**MR. D. WILLIAMS:** I think something came up yesterday, during the course of the evidence. I may be – or maybe it was something I read – whereby Mr. Smallwood had looked at it at one point in time, and back in the '60s he had said no.

**MR. BUDDEN:** Yes.

**MR. D. WILLIAMS:** Yeah, yeah. I think there was a number that was put to it – a \$900 million number, whatever it happened to be – but the – you know, that's 50 years ago, but –

**MR. BUDDEN:** Yeah, you're right, page 6 of Dr. Churchill's report.

**MR. D. WILLIAMS:** Right, that's exactly –

**MR. BUDDEN:** You're right, the number was –

**MR. D. WILLIAMS:** – what it was, yeah.

**MR. BUDDEN:** – \$900-something million.

But to your knowledge – during your time in government, had – when you speak of the Maritime Link as a precedent, perhaps, for some ultimate expanded Maritime Link to encompass Upper Churchill, is that something that you just saw as, it would be a good thing to have, or was this something that you saw as – in a pragmatic sense – as something that was cost-effective or might well be cost-effective?

**MR. D. WILLIAMS:** Well, a couple of – I mean, it's like, opportunity. I mean it just opens it up for us. You know I'd – you know, I was aware of cables across the Gulf because the – when I was in government, the fibre-optic cable was – an extra fibre optic cable – was laid.

I think, you know, Bell had already laid one, and possibly others had. But we actually did that and put that across the Gulf. So I was aware of the opportunities that open up once you put wire pipes – for want of a better term – connecting us to the mainland.

And, I mean, you know, I pointed out yesterday on the map is – you know, we're isolated in that sense. We're up there; we're out there; we're an island. A lot of strengths, a lot of wonderful things come from that, but it also creates an isolation. So any time you can get linked up, it's not just a kind of a nice thing to have, it's a huge opportunity. And we as a government actually invested in that fibre optic cable at the time.

**MR. BUDDEN:** Sure. And we've had cables of one sort or another since the Great Eastern. But dealing with this –

**MR. D. WILLIAMS:** Yeah, good point.

**MR. BUDDEN:** – this particular cable. You had no particular knowledge or reason to believe that on a grand scale a scale to encompass what would flow out of Upper Churchill after 2041, that the Maritime Link was economically feasible on that scale?

**MR. D. WILLIAMS:** No, no, no, absolutely not. I mean, I understood that very clearly. However, you know, what you're doing then is you're opening up the opportunity; you're making the link, you're establishing that it can be done, that subsea cable works. You're also then into the marketplace, you're established, so I don't have to go to a meeting and have Quebec stand up and show a map that shows Labrador and Churchill power and everything, all the assets up there as being theirs. We're now down in the, you know, northeastern United States and the Maritime provinces as a real energy entity.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** So, you know, we've come of age, and that's really important. And that's a bit of the business side of me that comes out of that, it's just like, you know, this is important.

**MR. BUDDEN:** Sure.

Though the actual costing of the way the Maritime Link was actually built – the connection between Newfoundland and Nova Scotia – as I understand it the arrangement was, Emera would build it, but would receive 500 megawatts of power for 35 years with no particular return to Newfoundland.

**MR. D. WILLIAMS:** A hundred and seventy megawatts of power for two-thirds of a day, not 500 for –

**MR. BUDDEN:** Okay, yeah, and then the option of buying at market rates.

**MR. D. WILLIAMS:** Yup.

**MR. BUDDEN:** So, what – I guess I'm wondering, between now and 2041 if we're comparing the two, the Maritime Link on the one-hand and the power flowing out of Quebec down through Quebec Hydro [sp Hydro-Québec] on the other hand –

**MR. D. WILLIAMS:** Which power?

**MR. BUDDEN:** The power flowing from Upper Churchill down through Quebec.

**MR. D. WILLIAMS:** Right.

**MR. BUDDEN:** On the one hand, and the Maritime Link the power flowing through to Nova Scotia on the other hand, which will actually produce the most cash benefits for Newfoundland over the period say from the start-up of the Maritime Link through 2041?

**MR. D. WILLIAMS:** Well, I haven't done the analysis comparing the two – I mean that's a number I can't pluck off the top of my head but I could do it for you probably, if I had time. But having said that, the Maritime Link – \$1.2 billion has been paid for that and I understand there's at least another four to five hundred million that's been added on to it.

So that benefit of a hundred – \$1.7 billion is money that Newfoundland and Labrador and/or Nalcor didn't have to put up in order to build this project. So that has real value.

**MR. BUDDEN:** Yes.

**MR. D. WILLIAMS:** So that's a couple of billion bucks.

**MR. BUDDEN:** Though we won't receive the benefit of it for 35 years.

**MR. D. WILLIAMS:** Oh, we've already received the benefit – and we've received the benefit, I mean, not paying off \$2 billion over the next 35 years.

**MR. BUDDEN:** But in return –

**MR. D. WILLIAMS:** That's the benefit.

**MR. BUDDEN:** – in return for that, we've given up the profit on the power that flows through it.

**MR. D. WILLIAMS:** We've given up – we basically, in lieu of getting \$2 billion or \$1.7 billion, we've given them 170 megawatts of power for 16 hours a day. We then have the benefit of using the rest of that link for 330 megawatts for the entire time which is – becomes our capacity, big deal. We also get the other eight hours of the day, on the 170 megawatts as well.

So like, there's enormous value. I can't sit here and have you present to me – with all due

respect – that – the fact that there's no benefit coming from this.

I mean, this project is viable, if the water spilled after the 60 per cent. So, you know, that water could have spilled and this project would be viable. The fact that we were able to take 20 per cent of that and get nearly \$2 billion bucks for it, and have the use of the – about two-thirds of that pipe and part of the other third for a third of the day, that's a big deal, that's big benefit.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** So I can't accept your (inaudible).

**MR. BUDDEN:** Okay.

So, that's your evidence; we can move on. So, but that is –

**MR. D WILLIAMS:** Yeah.

That's my answer.

**MR. BUDDEN:** – that's your answer to that question.

**MR. D. WILLIAMS:** Absolutely.

**MR. BUDDEN:** Okay.

With regard to Mr. Martin and his employment before coming to Newfoundland Hydro, my understanding is that he was employed with Hibernia Management Development Corporation as a team leader on the operational side; not the construction side, the operational side.

Is that your understanding as well?

**MR. D WILLIAMS:** I haven't, you know, I haven't revisited Mr. Martin's CV so I can't tell you the details right now of everything that he was involved in. I know he did come to the table with an impeccable reputation. He was considered to be a great hook for us, to be able to get him as CEO.

And, at the time after, I think it was Robinson Surretter [sp Robertson Surretter] I'm not sure, I don't want to put them out there as being – let's

use the term head hunters, people who find good people. You know, when they came and they shortlisted, you know – Ed Martin was obviously the star candidate; so there was no doubt about that.

So, I can only speak of when he came to us and what I've seen afterwards, and –

**MR. BUDDEN:** Sure, and we'll get to that, but your understanding –

**MR. D WILLIAMS:** Yeah, and –

**MR. BUDDEN:** – of what he brought to the table in terms of his qualifications –

**MR. D WILLIAMS:** He was experienced on megaprojects – major projects.

**MR. BUDDEN:** And what did you understand his specific experience in megaprojects to be?

**MR. D WILLIAMS:** I can't drill down, because I don't know where Ed went to school. I mean I can't drill down on what his experience is and I –

**MR. BUDDEN:** I'm not asking where he went to school. I'm asking what he did –

**MR. D WILLIAMS:** No, and I'm not going beyond when he was hired by us, to be quite honest with you.

**MR. BUDDEN:** – (inaudible) came to work with Newfoundland Hydro.

**MR. D WILLIAMS:** Yeah, no, I'm not going beyond when he was hired by us because I don't have the detail. If I had – if I'd thought of it I probably would have put it together last night to prepare for this, but I hadn't anticipated the question so –

**MR. BUDDEN:** Okay.

**MR. D WILLIAMS:** – you know, you can ask Mr. Martin.

**MR. BUDDEN:** So, you – just to wrap it up, you understood he had megaproject experience but you cannot recall now what that experience was.

**MR. D WILLIAMS:** Oh, I knew he was highly recommended, you know, by the people who were looking for a top-notch CEO for us and I knew that once he was presented to us as a leading candidate I was very glad to get him.

**MR. BUDDEN:** Okay, fair enough.

But to answer my question, you cannot recall now what his specific megaproject experience was at the time he was hired.

**MR. D WILLIAMS:** I knew he was involved in the major projects offshore.

**MR. BUDDEN:** Okay.

But, you can't recall what specifically he did.

**MR. D WILLIAMS:** No.

**MR. BUDDEN:** Okay.

That's fair enough.

**MR. D WILLIAMS:** Like I said, that's 13 years ago.

**MR. BUDDEN:** You knew Mr. Gilbert Bennett, obviously, before he came to work –

**MR. D WILLIAMS:** Yup.

**MR. BUDDEN:** – with Hydro. Just briefly, can you tell us your knowledge of him – your work experience with Mr. Bennett?

**MR. D WILLIAMS:** Yeah. Dean MacDonald was the CEO of – sorry, the COO – of Cable Atlantic at the time. And we were in the process – we'd just finished our fibre optic build and we were in the process, then, of basically building a small telephone company in order to get some of the data work that was available.

So, we had an opportunity – and I don't know if we were approached by these two gentlemen – but I know there was a connection to these two gentlemen – being Paul Hatcher and Gilbert Bennett. They were considered to be among the leading engineers down at Newfoundland Telephone – Bell at the time. And I can't say whether they approached us or we approached them – but anyway there was a link made up and

anyway, bottom line, they ended up coming to work for us. They were very competent engineers.

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** I mean, I think they were considered to be, you know, top-notch down at Newfoundland Telephone.

**MR. BUDDEN:** Okay. Well without –

**MR. D. WILLIAMS:** Recruiting good people was important to me.

**MR. BUDDEN:** Pardon?

**MR. D. WILLIAMS:** Recruiting good people.

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** You know, like Ed Martin and Gilbert Bennett. It was important to me.

**MR. BUDDEN:** Okay. And obviously, there's two elements to that. There's one, making sure you have people who have integrity, who have skills and so forth, but would you also acknowledge there is – there has to be a specific fit of the person to the job?

**MR. D. WILLIAMS:** Sure. And there's different skills that go into different jobs. You know, team leadership is a skill that not everybody has. You know, you've got to be able to put together a team. Work with that team and maximize the effectiveness of that team.

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** So. And not everybody has that – in all fairness.

**MR. BUDDEN:** Yeah. Fair enough. And with regard to Mr. Bennett – I'll ask a similar question. To your knowledge what, if any, project construction experience did he have?

**MR. D. WILLIAMS:** The only thing I would know from Gilbert, because I knew Gilbert better than I knew Ed, would be any builds or projects that he had done for NewTel at the time. And perhaps – I'm only guessing – perhaps that

would've included some of their subsea cable but I don't know. That's back –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – in the early 2000s. So, again. I'm only guessing. There's no –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** Don't take that to the bank.

**MR. BUDDEN:** And I guess just for completeness, you knew him previously because he had worked for a company you owned previously.

**MR. D. WILLIAMS:** That's right. Yeah.

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** Yeah. And I found him to be – I gotta say, I found his work, while he was with me – while I was there – was exceptional.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** He was really a thinker. He was a really creative, innovative thinker. There wasn't anything in our business at that time that, you know, he couldn't tackle and come up with solutions on.

**MR. BUDDEN:** Okay. You're aware that after Mr. Martin came to Hydro, a number of senior people left. And I'm thinking in particular of the vice-presidents of legal and human resources, the vice-president of planning, the vice-president of finance.

**MR. D. WILLIAMS:** Who were these people? I just – the titles mean nothing (inaudible) –

**MR. BUDDEN:** One would've been Maureen Greene, that is –

**MR. D. WILLIAMS:** She's Public Utilities Board now.

**MR. BUDDEN:** She ultimately went there, but when Mr. Martin went to Hydro I believe she

was vice-president of legal, not – legal and human resources.

**MR. D. WILLIAMS:** She used to work with Vic Young years ago; I remember Maureen was there back in, I think in the '80s –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** –if I remember correctly, yes, yup.

**MR. BUDDEN:** Yes. And without getting down into – specifically into the names, do you recall – or if you don't that's fair enough too – but do you recall after Mr. Martin came to Hydro, not too long after that, a number of these senior vice-presidents would have left Newfoundland Hydro?

**MR. D. WILLIAMS:** I remember some, I can't say a number. I can't say how many but I – you know, I know there was turnover there because, you know, I guess, there had to be new faces and new ideas. You know, not that people had been there a long time deserved to be bumped out or anything, but by the same token I mean, you know, it's a new time. I remember the Royal Commission say no to the status quo, so, you know, that's part of it.

**MR. BUDDEN:** Yeah.

So, and would you have taken a view that a new CEO was coming in, he's a new person, perhaps he wants to bring in his own team. Would that have been something that you would be aware of at the time?

**MR. D. WILLIAMS:** Some of his own team, I – you know, I don't – Stan Marshall didn't do that, for example. Stan went in and basically left the whole team that was there before. So, you know, that's not necessarily the case but I guess sometimes people like to supplement the crew that are there or otherwise substitute.

**MR. BUDDEN:** Okay.

And were you also aware that the next level down – the division directors, a number of people – people who had many, many years experience with Hydro would have also moved on, not long after Mr. Martin came in?

**MR. D. WILLIAMS:** You know, I know some people did actually retire or resign (inaudible). I think the chairman at the time was Bill Wells; I think he retired on his own, whatever. So there would have been some attrition –

**MR. BUDDEN:** Sure.

You're thinking, I believe, of the board of directors. I was referring to the –

**MR. D. WILLIAMS:** I'm sorry?

**MR. BUDDEN:** I believe you were thinking of the board of directors –

**MR. D. WILLIAMS:** Okay, yeah.

**MR. BUDDEN:** – I was thinking more in terms of that next level of the bureaucracy within Hydro.

**MR. D. WILLIAMS:** Yeah. I don't know. I don't know how far down that went and I don't know who were voluntary and who decided to go, that they had been around for 30 or 40 years and decided to move on.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** So I can't answer that. I don't know.

**MR. BUDDEN:** Did you have any awareness, at the time – I'm not suggesting this is true or untrue – but did you have an understanding at the time that Mr. Martin was moving out individuals who were not supportive of the Lower Churchill Projects which he was envisioning?

**MR. D. WILLIAMS:** Oh, absolutely not. That's hogwash. I don't think for one minute that's true.

**MR. BUDDEN:** Okay.

So, well, sufficient to say that you weren't aware of that.

**MR. D. WILLIAMS:** No, no, absolutely. I wouldn't condone it nor would he do it.

**MR. BUDDEN:** Pardon?

**MR. D. WILLIAMS:** I wouldn't condone it nor would he do it.

**MR. BUDDEN:** Okay, well the first part – well I guess we'll get to those things but –

**MR. D. WILLIAMS:** Sure we can.

**MR. BUDDEN:** – the key thing is now if it happened you weren't aware of it.

**MR. D. WILLIAMS:** That's right.

**MR. BUDDEN:** And if you were aware of it you wouldn't have condoned it.

**MR. D. WILLIAMS:** No. No.

**MR. BUDDEN:** Okay.

You have on many occasions said, and – as recently as yesterday, I believe – that the Martin management team at Nalcor was world-class.

**MR. D. WILLIAMS:** Yup.

**MR. BUDDEN:** What do you mean by world-class? What do you base that assertion on?

**MR. D. WILLIAMS:** You know, I'm a believer in that the best in Newfoundland and Labrador can hold their own with anybody in the world. I've always believed that. And I believe in myself; if I'm at a table with anybody nationally or internationally, you know, I think we can hold our own – and I firmly believe that.

And I also believe that the people that worked in this organization could hold their own with anybody in the world. I mean you know, like I said yesterday Newfoundland Hydro – that – Upper Churchill project – is the fourth largest in Canada; it's the eighth largest in the world. That's not running by itself.

**MR. BUDDEN:** Just to revisit that; you know, obviously, I would take two things from that. One is that you're saying that any Newfoundlander can be world-class – there's nothing that's stopping us.

**MR. D. WILLIAMS:** Absolutely.

**MR. BUDDEN:** But it doesn't logically follow from that that any given Newfoundlander is world-class?

**MR. D. WILLIAMS:** No, no, no.

**MR. BUDDEN:** Yeah. So I guess to –

**MR. D. WILLIAMS:** But we are a pretty classy group of people, I can tell you right now. In our – we bring strengths to the table that, you know, doesn't always require brains, you know. It requires our personalities and our culture and our spirit and everything else. So you know, we're world-class at lots of levels, is what I'm saying to you.

**MR. BUDDEN:** Okay. But building a –

**MR. D. WILLIAMS:** (Inaudible.)

**MR. BUDDEN:** – hydroelectric facility is a pretty specific skill set.

**MR. D. WILLIAMS:** Yeah.

**MR. BUDDEN:** And what was it about the Martin team that would lead you to assert that they were world-class at building major hydroelectric facility?

**MR. D. WILLIAMS:** Well, you know, based on – like I just said to you and I've said it before, and I said it yesterday, Mr. Commissioner – based on the fact that, you know, we're operating these world-class projects. I mean the – if, you know, you're eighth largest in the world, you're kinda – you're world-class.

There's also Granite Canal, there's Hinds Lake, there's Bay d'Espoir, there's another, you know, 600 megawatts or whatever of power that it is, are running as well. These transmissions – I'm sorry – these transmission lines that are, you know, going – a lot of transmission lines that have to be maintained. We've got the diesel side, you know; there's the thermal side in Holyrood. That's not an easy operation to run and it was being run and being run well, so.

**MR. BUDDEN:** Okay, but you would acknowledge there's a difference between operating a facility and building one.

**MR. D. WILLIAMS:** Oh, absolutely – sure there is. But you know, the expertise that you're bringing from operation – there's no better way to know the guts of a project, than to know the guts of a project that already exists. So –

**MR. BUDDEN:** Okay, are you suggesting that anybody in the senior management – the Martin management team at Newfoundland Hydro – had had personal experience in building a major hydroelectric project – a megaproject.

**MR. D. WILLIAMS:** I don't – well, they've certainly been involved in building – there's people up there. And I don't have the full list of everybody who works up there. But there is people over there that have been involved in building projects.

Now, if there's anybody around – and I don't want to insult anybody – but if there's anybody around who was there in 1969, or from '65 to '69 – probably not. But you know, as you're operating to the project, you know it, you learn it and everything else. I'm certainly not going to sit here and downgrade the capability and experience and the expertise of the people of Newfoundland and Labrador Hydro.

**MR. BUDDEN:** Okay. But –

**MR. D. WILLIAMS:** Because they – 'cause they're great people, they do great work and they've – you've seen it. They've built a great project up there, they've been involved in building it. And, you know – don't forget, it's not just the people who were in the – when I was the president of Cable Atlantic, you know, what I knew about cable was limited. You know, the electrical engineering capacity of a piece of cable, I got to tell you, I can just barely plug in the pay TV outlet, so.

And I ran that company and I think we'd – ran it fairly well and we ended up selling it and you know, we got a good return on it. So obviously someone valued what we put together so –

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** – there's other skills that go into it. But having said that as well, you know, not only do you have the experience of the people that are there, you have the team

that's the project team and the management team. But then I also suggest that, you know, you hire an SNC who are, you know, world-class; you hire AMEC, you hire Hatch. You hire all these engineering groups who are well-paid, but deep in expertise. And that's what you do. Nobody in an organization has all the answers, all the expertise, all the experience.

**MR. BUDDEN:** Okay.

So, just to wrap it up and move on; I take it from you, that you believe the Ed Martin team could be a world-class team even if nobody in a senior position there had actually been involved in the construction of a hydroelectric megaproject.

**MR. D. WILLIAMS:** Yes, because what they – you know, what a good team does, it also supplements with good advice, and hires good independent advice, and that's exactly what they did.

**MR. BUDDEN:** Okay.

I'd like to move on to a discussion of – which I've sort of entitled here in my notes: dividends and profits. Just as a preamble, would you agree that the Government of Newfoundland and Labrador's invested approximately \$4 billion in the Muskrat Falls construction project?

**MR. D. WILLIAMS:** I don't know what the number is. I –

**MR. BUDDEN:** Okay but it's in the billions, certainly?

**MR. D. WILLIAMS:** Oh it's in the billions, yeah. I actually, like I said, the – you know, current numbers I don't have, so I can't pass judgment on them because I don't have access to the information.

**MR. BUDDEN:** Okay.

And would you also agree that in each of the years – these last number of years in which Muskrat Falls has been being built and the Newfoundland government has been investing in it, Newfoundland has also been running a deficit in those years.



**MR. D. WILLIAMS:** That's correct. For other – for lots of reasons though. And it's not a reflection on the government, the reasons are the price of oil as you know so –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – so there are other things that were hauling that into deficit (inaudible).

**MR. BUDDEN:** Of course, and – which will always be a risk in a resource-based economy.

**MR. D. WILLIAMS:** Sure it is.

**MR. BUDDEN:** (Inaudible.)

**MR. D. WILLIAMS:** Sure it is.

I mean like, you know, like, forecasting the price of oil for example. I mean, when we would try and forecast our budget – our annual budget – we would go to PIRA and we would look at the Government of Alberta and we would look at the Government of Saskatchewan and we'd try and get the very best information that was available in order to do our best guesstimate-estimate of what oil was going to be, and we could be out by a half-billion dollars at the end of the year.

**MR. BUDDEN:** Sure and –

**MR. D. WILLIAMS:** (Inaudible) of time that's, you know, that's the vagaries of what you're trying to predict there.

**MR. BUDDEN:** Yes, and it's an interesting digression. I don't disagree with you.

But the bottom line is that Newfoundland was building Muskrat Falls – or rather, the Government of Newfoundland was financing the construction of Muskrat Falls – in the very years it was also running a deficit.

**MR. D. WILLIAMS:** That's correct. But I –

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** – you know, at that point in time we –

**MR. BUDDEN:** I'm not saying in a – even in a judgmental sense really –

**MR. D. WILLIAMS:** Yeah, no (inaudible) yeah.

**MR. BUDDEN:** –just as a matter of fact. And so this money that's being borrowed to build Muskrat Falls – it was always contemplated that that would be repaid using the dividends as built into the Power Purchase Agreement. I'm right so far?

**MR. D. WILLIAMS:** Yeah. There was a return, there was a return on equity as well, yeah. There was a return – 8.4 per cent return on equity. Yeah.

**MR. BUDDEN:** Okay. So I guess this is a question I'd like you to think about, because you spoke a bit of time yesterday around this topic, but – would you agree that if dividends are reduced or eliminated – perhaps to mitigate power rates as a scenario discussed yesterday – then the debt servicing has to come from the general revenues of the province?

**MR. D. WILLIAMS:** Yeah. It depends on: do you take them all, do you reduce them, do you reduce them for a period of time, do you take half of them? Because those dividends, to my recollection, add up to at least \$22 billion over the 50 years. That's the kind of number we're talking about.

So, you know, when we talk, Mr. Commissioner, we talk about overruns here and we talk in terms of \$6 billion to \$10 billion, I think we lose sight of the big picture, too. And, you know, you can't be trite when you're trying to deal with that because really, what effects Newfoundlanders and Labradorians the most is their power bill every single month. And that's what they're concerned about, and rightfully so they are concerned about it. And I'm suggesting to you that there's a guarantee that there's answers to that.

**MR. BUDDEN:** (Inaudible.)

**MR. D. WILLIAMS:** But from the other perspective, though, is that, you know, the \$4 billion in comparison to what Nalcor could take in revenues in a good-case scenario could be

as much as \$7 billion a year. Now that's the very good –

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** – estimate. The short – let me finish, if you don't mind.

**MR. BUDDEN:** Go ahead.

**MR. D. WILLIAMS:** The short-term estimates and conservative estimates are that it could be as high as \$2 billion a year. We know that in the near future it's going to be a half-billion dollars a year. So these are all numbers that are all to be considered when you're looking at the whole big picture on what that \$4 billion difference is.

So it takes me back to the fact that this 8.4 per cent is actually \$22 billion over a period of time. So if we take half of it then there's still \$11 billion left. So that's a lot to go around towards paying the debt, 'cause the cost of the project is 10.1 (inaudible).

**MR. BUDDEN:** That's interesting, and, you know, other topics –

**MR. D. WILLIAMS:** It's more than interesting.

**MR. BUDDEN:** – other questions may arise out of it but –

**MR. D. WILLIAMS:** It's more than interesting (inaudible).

**MR. BUDDEN:** Just getting back to my question. Here and now, in 2019, 2020 and these years we presently live in, if the money – the dividend money as you call it – is being used to mitigate power rates, then it obviously isn't flowing into general revenues. It can't be going two places at once.

**MR. D. WILLIAMS:** Yeah, if – yeah, absolutely. If it's all used. But, you know, again what you're doing here is – and is what some of the critics who happen to be your clients are doing – is that but you're looking at it on October 1 of 2018. This is a multi-generational project. This – when we did the Energy Plan, well we went out beyond 2041.

You've got to look out, you know, at least 50 years on this, and look at the whole big picture of how this whole project and the Energy Plan was envisioned. So to turn around and say, yes, yeah, if you take the 8.4 per cent in 2018 and you put that towards rates, yeah, it's not available. And it's not available to pay down that debt.

But that's not going to be the case forever, and there are other revenues available, and there is a detailed list of the various remedies that can be there, whether it's profits, whether it's dividends, whether it's oil revenues. Whatever it happens to be, there are lots of opportunities there to mitigate rates.

**MR. BUDDEN:** Let's see if I can pull this together. If I understand your answer, you're not denying that if the rate mitigation plan that you suggested yesterday, and other people have suggested well, i.e. diverting dividends to pay – to set off rates to the tune of something like \$70 million per –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. BUDDEN:** – cent. A dollar used for that purpose is a dollar that's not available for general revenues, and therefore in a deficit circumstance like Newfoundland is currently in, a dollar that's not available for paying down the debt, a dollar that's not available for servicing the debt, a dollar that's not available for education, for health care and so on.

You then go on to say that may be, but in the long run the revenues generated by Nalcor's various projects, including Muskrat Falls, will make that short-term pain worth it, because in the long run we'll all be better off. Is that a fair –

**MR. D. WILLIAMS:** Part of it is. The last part certainly is. You know, there is short-term pain, and that was anticipated, that rates would go up, but it was also anticipated that there would be mechanisms for reducing rates. But at the end of the day, you know, if we're taking in \$2 billion or \$7 billion in dividends a year from Nalcor, you can build a lot of hospitals and a lot of schools, and get a lot of dentures for that, that kind of number, so. And again I (inaudible) –

**MR. BUDDEN:** But we're not, we're not right now.

**MR. D. WILLIAMS:** No, no, but the forecasts are anticipated that that's where it's going to go, and if you look at the oil and if you look at the fact that 7 per cent of the entire offshore has a potential out there of 49 billion barrels? That puts us up there with Kuwait and Saudi Arabia and Texas, Louisiana – any of the big boys and girls that are around the world, so.

You know, we can't panic now. You can't turn around in 2018 and just panic. And that's why I'm concerned that the fearmongering that's going on, you know, is kind of getting people spooked. And, you know, you understand how I – young couples with children can be spooked and say, I can't afford this power bill now, how can I afford it when it doubles, so. But there's answers, and you know, and it's all right for me to say, be patient, but on the other hand, you know, the government has to come up with solutions and they will, because they're there and we've anticipated them and premiers after me have anticipated them.

So, you know, there are answers there and there – and the money is there.

**MR. BUDDEN:** But in the short term, to mitigate rates, we either have to reduce spending or borrow more money –

**MR. D. WILLIAMS:** Well yeah, you know –

**MR. BUDDEN:** – in the short term.

**MR. D. WILLIAMS:** – we have to reduce – I suppose. I mean, you know, but the – the thing with the non-renewable revenues that are coming in – you know, some of those are new revenues. We're now seeing the uptick from the negotiations that people like Ed Martin and Jim Keating did in order for us to get a greater return from the offshore.

So there are new monies that are coming in, but again I come back, Mr. Commissioner, to the problem that you have as a government in – any government – your clients. You clients were involved in the, you know, the difficult days of the Peckford days, the Sprung greenhouse, all that stuff and they – you know, they know what

it's like to try to scramble for money, so – but when you're at a Cabinet table and you're sitting around, and you've gotta make a decision on, you know, debentures – or, I'm sorry, debentures – dentures for old people, compared to putting a bit of road down in, you know, Catalina somewhere, that's not easy stuff.

I agonized over that stuff and, you know, sometimes you try not to rule with your heart but you kinda, you got to, that sentimentality kicks in –

**MR. BUDDEN:** Hmm.

**MR. D. WILLIAMS:** – right?

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** So it's not easy.

**MR. BUDDEN:** You were asked yesterday, basically at what point does Muskrat Falls not make sense. You believed it made sense at five million – \$5 billion, you believed it made sense at 6.2, you believed it made sense at 7.5, you continue to believe it makes sense at 10.1 – and we're obviously talking capital costs not interest costs – surely there's some point at which the whole thing would – and leaving aside, you know, this is hindsight, this is Monday morning quarterbacking, all that stuff – but at certain point you would agree that the cost overruns might hit a point that the whole thing did not make sense.

**MR. D. WILLIAMS:** If –

**MR. BUDDEN:** If it cost \$15 billion –

**MR. D. WILLIAMS:** At some point there might be –

**MR. BUDDEN:** – presumably –

**MR. D. WILLIAMS:** – a number whereby it might not have made sense, sure, absolutely.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** I was never gonna say that a \$100-billion project makes sense, so yeah, that premise I can accept.

**MR. BUDDEN:** How about \$15 billion?

**MR. D. WILLIAMS:** I – I’m not gonna start jumping at numbers because again, I’m not privy to the new calculations; what else has gone into it, you know, what has driven up cost – that’s obviously for the Commissioner to decide and I’m not gonna try and, for one minute, sit here and pre-judge what his conclusions are.

But I did make a statement that it says at six, seven or eight billion, and that point it was at 7.7., now it’s at 10.1 and I’m still saying that that project is viable, and I – I’m also saying that because – I mean, I think the facts will prove that, you know, the – even water being spilled at 10.1, that project is viable.

But you got – you got to have a look at this project in the big picture, and you’ve got to have a look at it in our energy picture, and you’ve got to tie it in to the Upper Churchill on the road and how this all comes together at some point. And that’s really what we tried to do in our plan, and that’s –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – really why this project fits, and that’s why this project – although it is expensive for the people of Newfoundland and Labrador; there’s no doubt about that. I mean, I’d love if this project now was \$5 billion. That would be great, but there is an overrun there, and that’s a fact of life. And –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – Professor Flyvbjerg – Flyvbjerg – I think it was Flive or Fliv – Flyvbjerg. Anyway, basically backed up the fact that, you know, these – 96 per cent of these projects overrun. So, you know, that is a fact of life of when you look at what the incremental growth in this project is, and what the overrun is compared to what the big picture is, and – you know, I wish I was gonna be here in 20 years; 20 years – likely not. But what would be the value? If someone put a value on Muskrat Falls in 20 years time, I would suggest to you, it’ll be a lot more than \$10.1 billion.

**MR. BUDDEN:** Yeah.

The good professor – that number isn’t quite right, but he certainly did make the point that their – hydroelectric projects somewhat uniquely – leaving aside –

**MR. D. WILLIAMS:** Yeah.

**MR. BUDDEN:** – nuclear stuff – somewhat uniquely have significant cost overruns, and he attributes it, essentially, to – not so much to overruns as such, but as underestimations. What do you have to say about that?

**MR. D. WILLIAMS:** I can’t speak to – if that’s his opinion, that’s his opinion. You know, the difficulty I had with that is if that there’s an overrun, there’s gotta be an underestimation, ’cause if you overrun it by the very definition of overrunning it, you underestimated it. So I guess they tie together.

**MR. BUDDEN:** Well, not necessarily. I mean, if you adopt a P50 when P75 is the norm, would that be an overrun or would that be an underestimation?

**MR. D. WILLIAMS:** I don’t, I –

**MR. BUDDEN:** Do you –

**MR. D. WILLIAMS:** First of all –

**MR. BUDDEN:** – follow –

**MR. D. WILLIAMS:** – no, I don’t – I don’t get the connection. And secondly, I’m not gonna comment on a P50 or a P70 ’cause I don’t know if they’re fit to eat. I mean, that’s the bottom-line.

**MR. BUDDEN:** Okay. So we’re still hearing from you years after you’ve left government, so when we hear a number, you have no problem at this point saying it’s still a viable project. Can you envision a situation where a number comes out and you say, no, it wasn’t viable?

**MR. D. WILLIAMS:** Sure. If that number’s a \$100 billion, absolutely. You know –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – just phone me up and I’ll confirm it for you.

**MR. BUDDEN:** Okay.

You talk about risk a fair bit at different points, and, you know, I've got the quotes here from your talks here and there. So let's actually – let's – perhaps we can turn to Exhibit P-00280. That was one of the ones entered yesterday, and the tab number, again, Mr. Williams, I'm sorry, I can't –

**MR. D. WILLIAMS:** No, no, no.

**MR. BUDDEN:** – help you there.

**MR. D. WILLIAMS:** (Inaudible.)

**UNIDENTIFIED MALE SPEAKER:** 00280.

**MR. LEARMONTH:** Tab 96.

**UNIDENTIFIED MALE SPEAKER:** Tab 96?

**MR. LEARMONTH:** Tab 96.

**MR. BUDDEN:** When it's convenient – okay, well first before we – I'll let you find it, then I'll have a question or two.

**MR. D. WILLIAMS:** Ninety-six – I think I've got it. Robert Thompson –

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** – Charles Bown?

**MR. BUDDEN:** What this appears to be is a draft of a speech, and from the context it would appear to be a very late draft of a speech that you gave to the Calgary Chamber of Commerce almost exactly a year before you resigned in December –

**MR. D. WILLIAMS:** Yeah –

**MR. BUDDEN:** – of 2009.

**MR. D. WILLIAMS:** – yeah, I remember.

**MR. BUDDEN:** Could you, perhaps, turn to page 10 of that?

And near the bottom of that page, there's a paragraph that begins: and sometimes folks. Could you just read that – and just to

contextualize it a bit – and, again, if you're – you wanna review it, do so, but you talk about a number of things in this speech, but one thing you certainly talk about is development of the Lower Churchill.

So could you perhaps just read that –?

**MR. D. WILLIAMS:** “And sometimes folks,” – is that –?

**MR. BUDDEN:** – yeah, that paragraph – can you read it for us?

**MR. D. WILLIAMS:** “And sometimes folks, to achieve your goals you have to take stands. You have to take risks. You have to differentiate yourself and stand up for what you believe, come what may. And sometimes, you just have to tell it like it is.”

**MR. BUDDEN:** Okay. What were the risks of the Muskrat Falls Project?

**MR. D. WILLIAMS:** I've gotta tell you – I'd have to sit back and try to go through a list, but I know that there were many risks that were put to government. You know, whether that happened to be construction, happened to be finance, happened to be the Aboriginal piece, the water rights piece, environmental – you know, and they were always put forward to us, either through our own department or through Nalcor as to – you know, there were risks.

There's risks to any project. There's risks to anything you do. So, you know, yeah; risk is a factor – absolutely. What you'd have to do is – and a decision that we made back at the EOI process was: can we do it, can we identify the risks, can we mitigate the risks. So you then try to mitigate those risks.

**MR. BUDDEN:** Sure.

And in your – you've also said, and it's actually from the transcript of your discovery, but I don't think there's any dispute what you said. You said something to the effect, in relation to Muskrat Falls, as you increase your risk, you increase your reward. And I guess – again, in the

context of Muskrat Falls – what – that particular quote – how, I guess, would you frame that in the context of Muskrat Falls?

**MR. D. WILLIAMS:** You know, if you don't do anything in your life, you don't have any risk.

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** You know, if you're active and you're gonna try and lead the province, if you're gonna try and change the status quo, if you're gonna try and move us onwards and upwards as I feel we should be and we're entitled to and everything else, then you have to assume some risk. And, you know, nothing in life is without risk unless you just want to just lock yourself in a room and just do nothing with the rest of your life.

**MR. BUDDEN:** Mm.

**MR. D. WILLIAMS:** That's the simplest way I can put it.

**MR. BUDDEN:** You're confident, I mean, you're –

**MR. D. WILLIAMS:** Now I'm out speaking to a crowd in Alberta, now too so –

**MR. BUDDEN:** What's that?

**MR. D. WILLIAMS:** I'm out speaking, delivering this to a crowd in Alberta too which is – you know, their entrepreneurial perspective of the province itself is –

**MR. BUDDEN:** It's a richer culture, it's a different culture.

**MR. D. WILLIAMS:** Different culture, yeah.

**MR. BUDDEN:** So certainly a richer province than Newfoundland.

**MR. D. WILLIAMS:** Absolutely.

They're feeling the price of oil as well, now of course, obviously.

**MR. BUDDEN:** You're –

**MR. D. WILLIAMS:** (Inaudible.)

**MR. BUDDEN:** You're on the stand at a public inquiry which is looking, with hindsight, at decisions you made about risk, about Muskrat Falls in the years of your government. Are you satisfied, in retrospect, that the decisions you made about risk at the time were appropriately balanced given Newfoundland's circumstances: our resource-based economy, our social circumstances, our economy and so forth. Were they risks appropriate to the scale of the province you were living in?

**MR. D. WILLIAMS:** You know, I think, you know, if this is – this Calgary speech, the speech I gave in New York, speeches I've given to the Board of Trade – you know, we had momentum going in this province and, you know, we were building on that momentum and, you know, I wish I could have stayed around another 10 years but you know, there's a time where you just – you gotta move on and I've said that before.

But, you know, we were doing well and we had a lot going for us and, you know, this was an opportunity too, that you know, we shouldn't let pass. You know, it was there, this – for want of a better term the stars were aligned, you know, we'd – Aboriginal pieces in place, the interest rates were the lowest probably ever – historic lows. You know, the water rights piece was done, from our perspective. The financing people would be – the banks were saying to us yeah, you can finance this.

So, you know, we couldn't afford not to do this. I mean, you know, premiers like, I don't even know if (inaudible) was gone then but, you know, premiers like Peckford and Grimes and Wells, you know, with – in a different way through the whole privatization piece, had tried to do the different things and, you know, I felt: okay, now where it's 2010, we worked on this for six years – from sanction, after eight years – and, you know, we picked up the \$2 billion from the federal government.

You know, things were really moving along so if there was ever going to be a time that we need to have a hard look at this, we had our hard look at it and, you know, and I think, you know, if that speech, the Calgary speech was read cover to

cover, and that New York speech was read cover to cover and the Board of Trade speech was read – I mean, I think Newfoundlanders and Labradorians would swell with pride and say: God b’y, it’s good stuff.

I remember the board of trade came to me after the speech down at the Convention Centre and they gave me a survey of – and I think this might have been – this wasn’t the 2010 speech, this was probably ’14 or ’16 when I did one of those.

And the reaction around the room – and there were quotes from people – was that: Like, I’m feeling good about ourselves, why are we so long in the tooth? Now, this is after five or six – this is sometime after I’m gone but, you know, it’s nice to hear the, you know, the positivity. And, you know, and I’m a firm believer that, you know, positivity moves mountains, you know. People feel good about themselves and they feel good about their province –

**MR. BUDDEN:** Hmm.

**MR. D. WILLIAMS:** – and it does. So to put it in context, this timing of this particular speech, you know, we were doing well.

**MR. BUDDEN:** But, I mean, you didn’t get to where you are now, you know, an accomplished businessperson, accomplished lawyer by – on positivity alone. I mean, obviously, positivity is good but it can only take you so far. Do you believe your positivity may have impacted your risk assessment when it came to Muskrat Falls?

**MR. D. WILLIAMS:** No, because, you know, I would’ve absolutely checked it. I mean, you know, at the end of day the term has been used that this will be a legacy piece. Like, you know, nobody wants a legacy piece that’s going to be a failure so, you know, we went in as thoroughly as we could, have investigated all the alternatives here, all the risks and tried to mitigate them, tried to assess them.

And then, at the end of the day, if the decision made sense – because, I mean, I’ve said several times yesterday in – across from Mr. Learmonth, you know, we did, we’ve explored every avenue. We have parallel processes going all the time, so our options were open. And so –

**MR. BUDDEN:** And just to stop you on that point, the parallel process, as it ultimately ended up at DG3, was: Shall we do the Isolated Island Option, which was incremental, small improvements, status quo until 2041 perhaps, or alternatively build Muskrat Falls.

**MR. D. WILLIAMS:** Yeah, no, the small – no, the Isolated Island small improvements are not small improvements. I mean, you know, when you value the two options, the small improvements includes basically completely revamping the Holyrood station and/or the –

**MR. BUDDEN:** Sure, we’re aware of that.

**MR. D. WILLIAMS:** (Inaudible.)

**MR. BUDDEN:** When I say small, they’re obviously billions of dollars on each side.

**MR. D. WILLIAMS:** If I can just finish – and the, you know, cleaning up what is there, you know, before you – if you actually replace it. Then there’s doing three small hydro projects, Portland Creek and Round Pond or Round River, whatever the other ones are; there’s three of them.

Then you got to put in 15 or so new turbines at 70 million each, and then there’s another six turbines that are 270 million each, you know. So there’s a lot to the alternative and it has to be done over a period of 20 years. And then you’ve got the vagaries of wondering what’s going to happen during that 20 years. Is there going to be financial crisis? Is there is going to be a world war crisis?

So I mean – don’t – I hope the press don’t quote me on Williams is saying there’s going to be a third world war or something but, you know, there’s a lot of things can happen in a 20-year period. So when you take that Isolated piece, that’s a big deal and there’s the logistics of pulling all this together at the same time.

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** So I don’t want to minimize the alternatives.

**MR. BUDDEN:** So DG3 was an evaluation of, on the one hand, security of a delivery of power, and the other hand, cost the two options.

**MR. D. WILLIAMS:** As I understand it. I wasn't there for that, but that's (inaudible).

**MR. BUDDEN:** No, but it was the logical outgrowth of stuff you were there for. Do you believe when it came to evaluating those two options which is, in many ways, at the heart of this Inquiry, the pros and cons of each, that you or your government did anything to perhaps inappropriately weigh the balance in favour of Muskrat Falls as opposed to the Isolated Island Option by understating cost perhaps?

**MR. D. WILLIAMS:** You know the answer to that. I mean (inaudible) me to sit here and say we inappropriately understated cost because –

**MR. BUDDEN:** Sure.

**MR. D. WILLIAMS:** – we, certainly, absolutely, categorically did not.

**MR. BUDDEN:** Okay, that's fine. That's my answer.

You also at a – and I can't recall if it's something you said yesterday or something you said in discovery, but in my notes they say at one point you compared the cost overrun of Muskrat Falls with the cost overrun of Hebron. You said, like, why on the one hand are people being so critical of Muskrat Falls when cost overruns are normal. Look at Hebron, they've got cost overruns. Is that a fair –?

**MR. D. WILLIAMS:** Yeah, I mean, I – and, of course, I think that ties back in to what Professor Flyvbjerg said that there are overruns in projects. And, you know, I did make the observation that there was an overrun on Hebron and at Vale as well.

**MR. BUDDEN:** Of course, the big difference is Hebron is being developed. I know Nalcor has a piece of it, but 90-plus per cent of Hebron is being developed by Chevron and other companies with capitalization of hundreds of billions of dollars.

**MR. D. WILLIAMS:** Yeah, absolutely.

**MR. BUDDEN:** So in that case, the risk is not being borne by the taxpayers of Newfoundland, it's being borne by these big multinational oil companies.

**MR. D. WILLIAMS:** No, nor do the taxpayers of Newfoundland, at the end of the day, own that project or outright as they –

**MR. BUDDEN:** Fair enough.

**MR. D. WILLIAMS:** – as they –

**MR. BUDDEN:** Yeah.

**MR. D. WILLIAMS:** – will Muskrat Falls.

**MR. BUDDEN:** Okay. Don't have a whole lot more.

We all have had the benefit now of the – Professor Flyvbjerg and his evidence. Going back into your years in government, particularly the last few years, did you personally have an awareness, either through your own reading or being told by your team, look, megaprojects are prone to cost overruns, it's something we got to be alert to. Did you have an awareness around that?

**MR. D. WILLIAMS:** Yeah, I was aware, I think, probably as anyone in the room is that, you know, megaprojects can have overruns. Whether they all do or whether this one would, you know, I didn't have an opinion on that but, yes –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – megaprojects do overrun.

**MR. BUDDEN:** And so therefore –

**MR. D. WILLIAMS:** And that's why you have contingencies and escalation factors built in.

**MR. BUDDEN:** And part of the process, I would suggest, for dealing with overruns is to identify them and perhaps put a plan in place to mitigate them, you agree with me so far?

**MR. D. WILLIAMS:** Absolutely.



**MR. BUDDEN:** Okay.

What was your awareness of the fact that, for instance, protestors might delay the construction project, the risk of that as such as actually unfolded in 2016?

**MR. D. WILLIAMS:** I would have never seen protestors, the cost – the kind of increased costs that happened on this project. As a matter of fact, I would think that we wouldn't have got to that protest stage because one thing that we did, made sure we did, was that we nurtured a relationship, you know, certainly with the Aboriginal people.

You know, we – you know, Ed Martin and Sean Dutton and – who am I forgetting here – you know, and the minister at the time, you know, Patty Pottle was the minister and others – really worked – and Aubrey Gover is another person, I want to make sure I don't leave anybody out here – really worked on relationships to try and, you know, make sure that we minimized protests. If people got legitimate beefs and then gripes, you know, we wanted to make sure that we tried to take care of them.

**MR. BUDDEN:** You –

**MR. D. WILLIAMS:** So I would like think that in – you know, that that wouldn't happen, even though protests can happen and protests are free in a democratic society, you know, why shouldn't they happen? But to allow them to delay a year at a cost of – I don't know what the number is, Mr. Commissioner but, you know, there's a big cost of that protest that ultimately went to the bottom line of the project. So –

**MR. BUDDEN:** That hadn't been anticipated by you?

**MR. D. WILLIAMS:** No, it had not. And we would actually be proactive on that; we would actually try and get out in front of it and try and work with these groups and try and, you know, deal with their legitimate concerns.

**MR. BUDDEN:** Okay.

With respect to the – another issue from 2016, connected to the protests, some of the environmental consequences of the flooding, the

methylmercury in particular, were any costs or delays associated with that in your mind, or in the minds of your government as a possible cost or delay problem for Churchill Falls?

**MR. D. WILLIAMS:** No. You know, assessments were done of the, you know, the clearing, whether it be full clearing or partial clearing of the reservoir up there and, you know, that was done by Nalcor.

But, you know, rightly or wrongly, you know, I would have assumed, as premier of the province, that, you know, we're going through the environmental processes, we've gone through consultations, the Energy Plan we consulted with, you know, whatever stakeholder groups we can identify as being important and relevant, who had a point of view and people in Labrador. So we did all that and then you go through the federal and the provincial environmental processes. I would think for sure that they would address any methylmercury concerns.

**MR. BUDDEN:** Is it –

**MR. D. WILLIAMS:** I was also aware that, you know, methylmercury has been an issue in other dams and projects around the world that have gone ahead but, you know, I assume that there's been consideration and/or mitigations and/or discussions.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** So, you know, we did everything we could so, you know, I wouldn't anticipate that there was going to be any other major new cost arising out of that.

**MR. BUDDEN:** Sure.

Did your government contemplate referring the Lower Churchill Project to the PUB for evaluation and input? Was that something you contemplated –

**MR. D. WILLIAMS:** On what?

**MR. BUDDEN:** – or your government did?

**MR. D. WILLIAMS:** Not environmental (inaudible).

**MR. BUDDEN:** No, that's a more general question.

**MR. D. WILLIAMS:** No. I mean, you know, the – at the time we did refer the water rights to the PUB.

**MR. BUDDEN:** Yes.

**MR. D. WILLIAMS:** And, at the time, the existing legislation, which was put in by a previous government, didn't contemplate that. There were other projects to my knowledge – and I'm only going on what I've heard – that the other projects were not brought before – and I say the other, whether it's granite or whether it was Bay d'Espoir and not being considered by the PUB. So it really wasn't put to me to make a decision on whether this should go to the PUB or not.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** It ultimately did. That wasn't my decision.

**MR. BUDDEN:** Sure.

I'm just about done but I do have few questions that have really come out of your evidence yesterday and other things you've said about my clients, about Mr. Vardy, say. You have, in the past, spoken quite critically of David Vardy and his commentary on Churchill Falls. That's correct, isn't it?

**MR. D. WILLIAMS:** But could he – I, basically – as I said to the Commissioner yesterday when he indicated that, you know, it's a democratic and free society and people have a right to be critical. And I accept that, absolutely accept that, but I also have a right, as someone being criticized, to push back and to try and answer those critics.

You know, I'm here today because I'm accountable as a premier of the province. You know, people who go out and, you know, do articles in the paper freely every day, there's no answer to those. They put them out there, the bloggers, Uncle Nobby down there or Nutty or whatever the blog is, that's – you know, that's out there. And so he expresses his opinion every day. So, you know, I have a right to answer, you

know, those criticisms to the best of my ability when I can. I can't go out every day. Like, premiers, former premiers, don't go out every day and try and deal with every criticism. You know, I mean, like –

**MR. BUDDEN:** But you agree that –

**MR. D. WILLIAMS:** – a statement was made that, you know, if you won't – what are you doing interfering here? Well, I got to try and defend what I've done and I can – I'm delighted to have this opportunity and delighted to have your cross-examination to penetrate, to try and deal with the issues that come up. And, you know –

**MR. BUDDEN:** Okay, well –

**MR. D. WILLIAMS:** So, you know, there are criticisms, but I've also got people out there who were implying that, you know, that I'm harming families. And it's not only Mr. Penney who went there and basically said, no, I didn't mean that, well, Mr. Vardy did that as well back in 2012. There's also a threatening and harming families out there quote that's out there. I can't leave those just standing out there and disparage my reputation, so I'll answer these critics when I can.

**MR. BUDDEN:** Okay, it's fair enough to defend yourself, but you would distinguish that there's a difference, obviously, between debating somebody on the level of their ideas and just engaging at a general ad hominem attack.

**MR. D. WILLIAMS:** And, you know, the other thing is, too – let me tell you something that I think is important. I think constructive criticism is a really good thing. I'll really be honest with you, I mean, you know, like, we tried to do that when we were in Opposition, you know. If we could help, you know, make a project better or try and do something to make it better or, you know, identify something that we weren't aware of.

So if Mr. – your clients, if Mr. Vardy or Mr. Penney or Mr. Sullivan, you know, come up with something that we haven't even considered and it's valid, well then, you know, we don't lose sight of that either. That's important.

So, you know, constructive criticism is good, but when you get into the naming stuff and the personality stuff, that's a whole different ballgame. Then you try – then you heighten the level to something that's more acrimonious and, you know, stick to the facts and deal with them, and if they're valid, they'll be assessed. And I – you know, I think that's good for government.

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** That's good for anyone.

**MR. BUDDEN:** Now, let me ask – you know, I've let you go on a bit, so let's –

**MR. D. WILLIAMS:** Right. Thank you.

**MR. BUDDEN:** – focus a little bit on my questions.

Constructive criticism; that obviously requires, you would agree, that the person speak in good faith about something they know something about. Are you with me so far?

**MR. D. WILLIAMS:** No, I –

**MR. BUDDEN:** Okay. Well, what do you mean by –?

**MR. D. WILLIAMS:** There's people out there –

**MR. BUDDEN:** What do you mean –

**MR. D. WILLIAMS:** There's people out there –

**MR. BUDDEN:** – by constructive criticism?

**MR. D. WILLIAMS:** – on Twitter and people out there in blogs, I mean Con O'Brien and people that are out there just rolling out stuff on a daily basis that is just nothing but, you know, political partisanship because don't – you know, just let me finish because –

**MR. BUDDEN:** Well, no, you're –

**MR. D. WILLIAMS:** – the person –

**MR. BUDDEN:** – going on and on and I asked a simple question.

**MR. D. WILLIAMS:** No, no, well, it's up to the Commissioner.

**MR. BUDDEN:** What do you mean by constructive criticism?

**MR. D. WILLIAMS:** (Inaudible.)

**MR. BUDDEN:** Yeah, just answer that.

**MR. D. WILLIAMS:** I just – I'd like to finish.

**THE COMMISSIONER:** Let's answer – well, let's answer the question that was just put to you because I think you've made your point well about defending yourself and whatever. I think I'm trying to get – I'm mindful of my schedule here.

**MR. D. WILLIAMS:** Okay, yes.

**THE COMMISSIONER:** And I'm trying to get you finished. So the thing is, is that – the question is, is – just repeat the question about constructive criticism, Mr. Budden.

**MR. D. WILLIAMS:** Okay.

**MR. BUDDEN:** What do you mean by constructive criticism?

**MR. D. WILLIAMS:** I mean criticism that's helpful. I mean criticism that's valid, it's validly based, it's legitimate and it has substance. And it should be seriously considered by someone who's criticized. And that's fair.

And, you know – and I, you know – again, I've done that myself in Opposition because the role of an Opposition leader is to try and point out flaws. And, actually, to be quite honest with you, that can be very helpful to the person who's either doing the project or trying to make the project happen because they can then go to the people they're negotiating with and say, look, there's valid criticism out here that I got to deal with, so you better give me something to work with here. So –

**MR. BUDDEN:** Okay.

**MR. D. WILLIAMS:** – and I'm talking about other projects.

**MR. BUDDEN:** All right, let's talk about Mr. Vardy. You've thrown out a bunch of names. We're not going to deal with all of them; we only have so much time, but let's look at Mr. Vardy. You know Mr. Vardy?

**MR. D. WILLIAMS:** Yeah, I know him.

**MR. BUDDEN:** Okay. You're aware that he is a trained economist?

**MR. D. WILLIAMS:** He's what?

**MR. BUDDEN:** He is a trained economist. Are you aware, for instance, that he has done graduate training as an economist at the University of Toronto and at Princeton?

**MR. D. WILLIAMS:** If you say he is. I mean he's your client. I'm sure he is.

**MR. BUDDEN:** Okay. Well, you are – you describe him as a bureaucrat. You are aware he was a clerk of the Privy Council for seven years?

**MR. D. WILLIAMS:** I'm aware he was clerk of the Privy Council where he headed up the bureaucracy, yes.

**MR. BUDDEN:** Yes. And just for the information of anybody watching, what is the clerk of the Privy Council? It's a quaint old term, but what does it – what actually is the clerk of the Privy Council?

**MR. D. WILLIAMS:** Well, he's basically the quarterback, you know. He's the central role in coordinating the activities of the bureaucracy of the civil service.

**MR. BUDDEN:** So for seven years you would acknowledge Mr. Vardy was the quarterback, played a central role in the –

**MR. D. WILLIAMS:** What seven years were those? What – can you tell me?

**MR. BUDDEN:** Pardon?

**MR. D. WILLIAMS:** When was that?

**MR. BUDDEN:** '78 to '85, I believe.

Okay. And you here as well, you said yesterday may have been a chair for the Public Utilities Board. In fact, you know that he was the chair of the Public Utilities Board.

**MR. D. WILLIAMS:** Yeah, I think it's something – to be quite honest with you, I wasn't being cute with that, I was just trying to recollect everything that I've been pumping into this head for the last two weeks. But, yeah, I wanted to make sure I was certain, but I did acknowledge after that he was, in fact, chair of the Public Utilities Board.

**MR. BUDDEN:** For seven years.

**MR. D. WILLIAMS:** Right.

**MR. BUDDEN:** So he's a gentleman who's a trained economist and who –

**MR. T. WILLIAMS:** Mr. Commissioner, if I might, I – and I certainly don't mean to interrupt my learned friend, but I understand both these gentleman are being called as witnesses. And would it not be more appropriate to run through their résumés when they're on the stand, either by counsel for the Commission or by Mr. Budden himself? It seems like we're going down a little bit of a different path here.

**MR. BUDDEN:** I'm almost done now, Mr. Commissioner. I don't believe it is at all; I'm simply exploring with this witness what criticism he regards as legitimate and which he regards as illegitimate.

**THE COMMISSIONER:** Pardon?

**MR. BUDDEN:** It's a major theme in this evidence.

**THE COMMISSIONER:** Well, I will say this: I'm not certain that what Mr. Williams feels is legitimate criticism or illegitimate criticism is something that I'm going to spend a lot of time thinking about myself. So, you know, I think – you know, I think the point of your questions is – and I think I'm going to allow you to ask the question, but we're not going on ad litem on this because, as I said, it's not – I'm mindful of my schedule and I'm also mindful of the terms of reference and what I'm going to be dealing with.

But I think, you know, given how this testimony has gone, I'm going to give you the ability to ask a few more questions in this area and hopefully get answers and then we're going to move to the next (inaudible).

**MR. BUDDEN:** Yes, this is really my last major area. But given the comments that have been made in this public Inquiry –

**THE COMMISSIONER:** Well, don't spend time now talking to me about it; use your time now to ask the questions you want to ask.

**MR. BUDDEN:** Noted.

Again, with Mr. Vardy, so we have a gentleman here who has experience as a clerk of the Privy Council, as head of the Public Utilities Board and who, in his retirement years, has taken an interest in a major public issue of the day. So surely you don't see anything problematic in that.

**MR. D. WILLIAMS:** As the Commissioner said yesterday, it's a democratic and a free society and people have a right to have an opinion on whatever they want. But, you know, when I criticized Mr. Vardy on a couple of occasions, one of them was back in 2012, and it was in January of 2012 and there was a CBC article. And I based – I can provide this, Mr. Chair – or Mr. Commissioner – to everybody. And one of the reasons I was annoyed with him –

**MR. BUDDEN:** It's Exhibit 00285, by the way, if –

**MR. D. WILLIAMS:** Okay.

**MR. BUDDEN:** Just for your information.

**MR. D. WILLIAMS:** “In a subsequent interview with CBC” – Mr. – “Vardy said he knew of many people who strongly objected to the Muskrat development plan, but were afraid of speaking out because their comments might put relatives employed by government at risk. ‘I think that's very unfortunate’ ....”

Now, that's not constructive criticism. That's basically saying there's lots of objectors out there, but they're all afraid. They're all afraid to

speak up; they're all going to be at risk. Now, that's similar to the release that was done last week by your other client, Mr. Penney.

So I think that that weakens the credibility of those two of your clients dramatically by implying that people are afraid to speak in our democratic and free society, and nothing is further from the truth.

**MR. BUDDEN:** Well, I guess that could be explored by your lawyer when they call, but – they're called. But you would agree on other times you've been – your criticism of them hasn't been limited to that particular line of comments. You've been more generally critical.

I mean, in P-00235 you talk about – quote: “There is a group out there that every day just keeps pounding away ... they've all got the same background, they all come from the same origination, for want of a better term, even though it's 30 or 40 years ago. And they're out there just pounding away at us just for the sake of pounding.”

Do you think that's a fair description of Mr. Vardy's contribution to this debate?

**MR. D. WILLIAMS:** No, look, it's quite obvious that there's a group of critics that have pooled together; they actually call themselves a coalition.

**MR. BUDDEN:** Perhaps you could answer my question. Do you think that's a fair criticism of Mr. Vardy?

**MR. D. WILLIAMS:** No, I'm answering the question, because these people –

**MR. BUDDEN:** Yes or no, do you think that's fair criticism?

**MR. D. WILLIAMS:** Mr. Commissioner, I got to try and – I can't be –

**THE COMMISSIONER:** I think I'm going to end this right here. I get your point, Mr. Budden and, again, the importance of this relative to where we're going with this Inquiry is something I'm very mindful of. So I think I've allowed you to go as far as I'm going to let you

go with that, and if you have any other questions, ask them.

**MR. BUDDEN:** That's it.

Thank you very much.

**MR. D. WILLIAMS:** Thank you, Mr. Budden.

**THE COMMISSIONER:** All right, let me just see the roll here.

Mr. Smith with Edmund Martin, any cross-examination planned?

**MR. SMITH:** I only have one question.

**THE COMMISSIONER:** Come on up and do it now.

**MR. D. WILLIAMS:** Good morning.

**MR. SMITH:** Good morning, Mr. Williams. I represent Mr. Martin.

I got the clear impression that at the premier level, where you were, you relied fairly significantly on the information produced either in writing or in conversations you may have had with officials of Nalcor in the context of where you were at DG2.

**MR. D. WILLIAMS:** Yeah.

**MR. SMITH:** Essentially –

**MR. D. WILLIAMS:** Right.

**MR. SMITH:** – at DG2.

And I also got the impression from your testimony that the concepts of strategic risk and tactical risk and these types of things were really not explained at your level.

**MR. D. WILLIAMS:** No, and I don't think they were deliberately not explained –

**MR. SMITH:** Yeah.

**MR. D. WILLIAMS:** – but there's just a certain degree that I can delve down to at my level because of everything else that's on your plate. And there's some things that I think were

handled – (inaudible) they're handled internally, and then some of the results of those conclusions come to me.

**MR. SMITH:** Now, are we to take it that either Mr. Martin or his team did not discuss with you risks of doing the Muskrat Falls Project?

**MR. D. WILLIAMS:** Absolutely not. There's never a question of them not discussing risks. I – you know, I think I made reference and I can't get these documents at my fingertips, but there's one point there was, I think, 34 identified risks that were considered in one of the papers that came before me. And that would have been generated out of Nalcor.

So there was never any attempt to hide risk; in fact, it was if there's a risk here, we want you to know about it. But, you know, a project is a weighing of risk, and it's making sure that you mitigate and you accept some of the risk that's out there because nobody has a crystal ball.

**MR. SMITH:** And those risks, would they be associated, you know, with the capital cost? Whether risks associated with what – whether the capital cost numbers were correct or not correct?

**MR. D. WILLIAMS:** Well, risk – you know, risk is going to affect capital cost.

**MR. SMITH:** Yeah.

**MR. D. WILLIAMS:** I mean, if it happens to be environmental risk or delay or whatever it happens to be. So they all – not they all, but a lot of them go to the bottom line, so they do certainly affect capital cost.

**MR. SMITH:** And were the mitigation or amelioration of some of these risks also discussed?

**MR. D. WILLIAMS:** Lots of them. And I remember there was a box that was put together. It's got a – that kind of a box that is – I keep visuals in my mind, whatever reason, and there's little dots which identify the degree of risk. It's kind of a matrix, basically, but it's – I remember that vividly, whereby all these risks were identified and then they were all slotted to kind of determine what their level of importance was.

Now, I'm oversimplifying this because that's the limit of my ability. But by the same token, you know, very definitely there was – you know, those risks were categorized and assessed.

**MR. SMITH:** Thank you, Sir.

**THE COMMISSIONER:** All right, Kathy Dunderdale?

**MS. E. BEST:** Good morning, Mr. Williams.

**MR. D. WILLIAMS:** Good morning, Erin.

**MS. E. BEST:** Thanks. I'm counsel for Kathy Dunderdale.

While you were premier, did any of your senior government officials ever come to you to voice a complaint or a concern about Nalcor's competence or how they were handling the project?

**MR. D. WILLIAMS:** Never, never, absolutely not.

**MS. E. BEST:** Thank you.

That's my only question.

**MR. D. WILLIAMS:** Thank you.

**THE COMMISSIONER:** Julia Mullaley and Charles Bown?

**MR. FITZGERALD:** Morning, Mr. Williams.

**MR. D. WILLIAMS:** Morning, Mr. Fitzgerald.

**MR. FITZGERALD:** I represent Julia Mullaley and Charles Bown, as you know. And you're familiar with those individuals?

**MR. D. WILLIAMS:** Absolutely.

**MR. FITZGERALD:** I'm not going to ask you to predict the future or look into past 2012; I'm more concerned about the energy policy. And you're familiar with that document?

**MR. D. WILLIAMS:** Right.

**MR. FITZGERALD:** I just want clarification. My understanding, when I review your

discovery evidence and as well as your testimony, that the energy policy arose out of a – it was a collaborative approach between multiple government departments.

**MR. D. WILLIAMS:** Absolutely, and I remember on – I referenced the chair. There was a chart that basically showed all the – in a circle the various groups that were involved, stakeholder groups and inputs that we had from experts and ordinary Newfoundlanders and Labradorians and everybody.

**MR. FITZGERALD:** So would it be fair to say that the energy policy, I guess in its final form, was the result of collaboration of any number of senior government officials in any number of departments?

**MR. D. WILLIAMS:** No question, they were an integral part of it of course. And, like I said, there was about 80 groups that were actually talked to and government coordinated a lot of that in conjunction with Nalcor.

**MR. FITZGERALD:** Thank you.

Those are all my questions.

**MR. D. WILLIAMS:** Thank you, Mr. Fitzgerald.

**THE COMMISSIONER:** Robert Thompson?

**MR. COFFEY:** No questions. Thank you.

**THE COMMISSIONER:** Okay.

All right, before we go to the next one, I think we'll take our break here and – for 10 minutes. So we'll come back in 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

**THE COMMISSIONER:** All right, next the Consumer Advocate.

**MR. HOGAN:** Good morning, Mr. Williams.

**MR. D. WILLIAMS:** Good morning.

**MR. HOGAN:** My name is John Hogan, counsel –

**MR. D. WILLIAMS:** Good morning, John.

**MR. HOGAN:** – for the Consumer Advocate.

The problem with going near the end is your questions are all taken. I don't know –

**MR. D. WILLIAMS:** I know, I've been there.

**MR. HOGAN:** – maybe that's the (inaudible).

**MR. D. WILLIAMS:** I know the feeling.

**MR. HOGAN:** But we'll deal with it so –

**MR. D. WILLIAMS:** I'm sure you'll have a few though, you'll have a few.

**MR. HOGAN:** Yeah, I've got a few little gaps to fill in here if you don't mind. So I am going to cover some topics that have been – you've been asked about over the last day and a half.

The first one, I just want to get back to the Water Management Agreement. And I know this has been asked, but I think (inaudible) and you've talked about it in some detail.

Your answer yesterday about this was that Quebec courts have made a decision about this. And you said something along the lines of: Of course they were going to make that decision. And we all know your feelings of Quebec and what they were doing to block everything that you were trying to do while you were the premier.

I just want to ask: Was it ever considered – or why didn't you, when you were premier, make a reference to our Court of Appeal the same way Brian Peckford did with the Upper Churchill Water Rights Reversion Act?

**MR. D. WILLIAMS:** No, it wasn't considered.

**MR. HOGAN:** It wasn't considered?

**MR. D. WILLIAMS:** Not by me. Whether Justice did internally, you know, I don't know.

**MR. HOGAN:** You never thought about it, never discussed it; it was never an option.

**MR. D. WILLIAMS:** No, no.

**MR. HOGAN:** Okay.

I just want to turn to, if we can, to P-00279, please.

**MS. O'BRIEN:** That's tab 95.

**MR. HOGAN:** Page 9, please. This is a copy of a speech you gave in New York City. I'm sure you remember the speech.

**MR. D. WILLIAMS:** Yeah, we got it.

I remember the New York audience being quite receptive. We got the 9/11, Mr. Commissioner; we got warm feelings down there.

**MR. HOGAN:** If we can just scroll down a little bit where it starts Hydro-Québec. So we're still talking about water management. It says, Hydro-Québec – you said: "Hydro Quebec has also frustrated our attempt at achieving a water sharing agreement on the Churchill River." Then you say, the next paragraph: "Another roadblock" – one of many that you've talked about, obviously – "but one that will be resolved by a fair and independent public utility regulatory commission."

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** What did you mean by that?

**MR. D. WILLIAMS:** Exactly what it says: Fair and they're independent.

**MR. HOGAN:** So our Public Utilities Board?

**MR. D. WILLIAMS:** Yes. And, basically, on that time and that issue, yeah, absolutely.

**MR. HOGAN:** So it's my understanding the Public Utilities Board has made an order about the water management issue.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** So you're satisfied that that's been done now to the satisfaction of the project.



That that reference to the decision by the Public Utilities Board is what you were talking about here in this New York speech?

**MR. D. WILLIAMS:** That's correct. We referred it to the board and as I've said before – and, again, I'm going to be really careful, I keep looking at Mr. Ralph only as –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – the existing Department of Justice. I want to make sure that I don't go any further on that but, yes, subject, as well, to the legal opinions that we had.

**MR. HOGAN:** Though this is – I mean, this is a hurdle that was raised by you, the water management issue.

**MR. D. WILLIAMS:** Well, in a sense it was raised that this was a procedure that we had to go through.

**MR. HOGAN:** Right.

**MR. D. WILLIAMS:** As I said yesterday, the – you know, we had to get – we had to go through the whole Lower Churchill process, get the water rights back, then get the legislation and then –

**MR. HOGAN:** Mm-hmm.

**MR. D. WILLIAMS:** – get into the agreement under the – I don't know if it was under *Water Resource act*, I'm guessing. And then we had to try and attempt to get an agreement at CF(L)Co and then, ultimately, it was referred to the Public Utilities Board.

**MR. HOGAN:** Right. So your speech is saying that that – that that'll be satisfactory to the life of the project once it's decided by the regulatory commission.

**MR. D. WILLIAMS:** Well, yeah. You know, what I'm saying is that's the final step, from our perspective. Like, as I said –

**MR. HOGAN:** Yeah, that's what I'm asking. Yeah.

**MR. D. WILLIAMS:** Yeah, because as I said yesterday, I can't guess that somebody is going to appeal or take a legal action for anything that we do on this project. I mean I can't.

**MR. HOGAN:** No, you could –

**MR. D. WILLIAMS:** You know, so –

**MR. HOGAN:** You can't control –

**MR. D. WILLIAMS:** And I can't anticipate what's going to happen. So, yeah, so from our perspective we had done what we had to do. If somebody then decides to challenge it, that's their own business.

**MR. HOGAN:** Yeah. And you mentioned in, I think it was just sort of in passing when this was discussed yesterday, something about the Supreme Court of Canada would have potentially the ultimate say in this.

**MR. D. WILLIAMS:** Well, ultimately they will be above the Quebec courts.

**MR. HOGAN:** What, I guess – you know, just for clarification, your position in New York at the time and your position now is that the project's success – that hurdle would be overcome and satisfied once this matter was decided by our Public Utilities Board.

**MR. D. WILLIAMS:** Yeah. To that point, like I say, you know –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – you can never anticipate who's going to sue you or who's not going to sue you. So, you know, I got to put it in perspective, right?

**MR. HOGAN:** We all know that.

**MR. D. WILLIAMS:** That's why everybody's here on it, what you people do.

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** That's what I used to do.

**MR. HOGAN:** Okay.

If we can turn again to the royal commission which is P-00243; this is Vic Young's report.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** Page 30.

**UNIDENTIFIED MALE SPEAKER:** Forty-three.

**MS. O'BRIEN:** Tab 87.

**MR. D. WILLIAMS:** Eighty-seven?

**MS. O'BRIEN:** Eighty-seven.

**MR. HOGAN:** So we talked about this yesterday, or you talked about this yesterday as well. And I believe you said that three of these conclusions: one talks about section 92(a), one talks about the Atlantic Accord and the third talks about the Lower Churchill.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** You actually said that your government had satisfied these three conclusions.

**MR. D. WILLIAMS:** Actually, we had a crack at every one of them. We couldn't satisfy 92(a) because there wasn't a satisfactory answer. My Justice minister, Mr. Kennedy, at the time, as I said, you know, picked up – went and got the best advice he could get and went to former Supreme Court of Canada judge, Mr. Justice La Forest, and as well, worked in conjunction with Mr. Justice Burrage and Madam Justice Paquette, who were in Justice at the time and have now since moved to the Supreme Court. So that was explored to the best of the ability and the best legal opinions came back and said, no, that's not an option.

**MR. HOGAN:** Okay, well, let's just talk about 92(a) then. Was that ever discussed by your government to maybe refer that, an interpretation of that section, to our Court of Appeal?

**MR. D. WILLIAMS:** The – no, once we got the legal opinions, you know, judge – my – and, of course, Mr. Kennedy would be able to answer this, he's got detailed notes and I think, you

know, there's opinions within Justice as well. Now, whether they're confidential I don't know, but there are opinions within the Justice Department that were sought on this. So he would be able to tell you because he championed that particular exercise as he did some of the other legal matters that we brought, in good faith, (inaudible) on that whole argument.

**MR. HOGAN:** Okay. So, no, it wasn't discussed obviously, or it wasn't an option to send it to the Court of Appeal.

**MR. D. WILLIAMS:** No, we hadn't considered.

**MR. HOGAN:** (Inaudible.)

**MR. D. WILLIAMS:** He probably did.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** I mean you'd have to ask him.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** He was the Cabinet legal beagle on that one, for want of a better term.

**MR. HOGAN:** The third conclusion here or recommendation talks about a new approach to the Churchill River and basically not trying to do a deal with redress which you were against, right?

**MR. D. WILLIAMS:** I'm sorry –

**MR. HOGAN:** We –

**MR. D. WILLIAMS:** I hope to think or I'd like to think 90 per cent of Newfoundlanders were – and Labradorians – were also against it because, you know, redress is something that was very integral, very, very important to them. And that was part of the problem that I had with the Roger Grimes deal in 2002 because there was no redress under his agreement.

**MR. HOGAN:** But you actually said yesterday that you felt that you had satisfied this because you had done Muskrat without redress. Is that –?

**MR. D. WILLIAMS:** Well, that happened to be the outcome. The one that we ended up with after eliminating everything along the way and finally came down, you know, during the summer of 2010 into considering Muskrat as being the best option.

**MR. HOGAN:** Right.

**MR. D. WILLIAMS:** That ended up being, you know, a non-Quebec solution.

**MR. HOGAN:** But this, just to be fair to Mr. Young, it says the development of the Lower Churchill at the Gull Island site.

**MR. D. WILLIAMS:** Yeah, I wasn't trying to be unfair to Mr. Young.

**MR. HOGAN:** No, I know you weren't.

**MR. D. WILLIAMS:** No.

**MR. HOGAN:** I'm just trying to get – make sure –

**MR. D. WILLIAMS:** Yeah, I'm sorry, just what are you saying there? Just –

**MR. HOGAN:** Well, this talks about – you had said yesterday your evidence was that you had satisfied that conclusion because you had done –

**MR. D. WILLIAMS:** Well –

**MR. HOGAN:** – a deal on the Lower Churchill without redress. But in fairness, you didn't do a Lower Churchill as recommended by Mr. Young because he talked about the Gull Island site.

**MR. D. WILLIAMS:** (Inaudible.)

Yeah, okay, he talked about – he just talked about Gull Island. Yeah, so, absolutely, there's no question.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** Because Gull – because of the amount of capacity that's in Gull, you know, because it's much larger, it's 2,200 megs, I think, compared to 800 and a bit, that power had to flow through Quebec because we couldn't handle it all on the Island at this stage.

**MR. HOGAN:** Right.

**MR. D. WILLIAMS:** So it had to flow through Quebec so, therefore, redress was part of that issue.

**MR. HOGAN:** So let's just – I just want to ask a couple of questions about redress. And you're on the record as saying – and you just said it – that you would hope 90 per cent of Newfoundlanders would never do a deal, a Lower Churchill deal –

**MR. D. WILLIAMS:** It's not that I hoped, I think –

**MR. HOGAN:** Think, okay.

**MR. D. WILLIAMS:** – they actually feel in their heart and soul.

**MR. HOGAN:** So, let's go back. Was it ever possible – did you ever talk to anyone in Quebec about doing a Lower Churchill deal without redress? Or were you absolutely 100 per cent never going to do such a deal?

**MR. D. WILLIAMS:** You know, the redress issue was always raised and, you know, I think I even alluded to it yesterday. I mean if you had a real sweetheart deal that was so good that it really was a form of redress – so if you don't call it redress, but you get, you know, good profits out of the Gull deal – then, you know, that might cost you.

**MR. HOGAN:** Well, that's why I'm asking because that's not redress, that's just a good deal, right? But I want –

**MR. D. WILLIAMS:** Yeah, but it is compensated. Redress –

**MR. HOGAN:** I just want to ask the question: You know, did such an agreement, if you had approached Quebec, have to specifically acknowledge redress? You're saying now, well no, I mean, if it was a good deal then I would have done it.

**MR. D. WILLIAMS:** No, no, no, that's not what I'm saying. What I'm saying is redress in another form is dollars. Now, at the end of the day, if we get the, you know, \$20 billion extra

through a Gull Island deal and that really is a form – an amount of redress that we would be happy with, then, yeah, I don't need to call it redress, but I would certainly, after the thing is done, say we got our redress.

**MR. HOGAN:** A good deal is a good deal.

**MR. D. WILLIAMS:** Yeah, a good deal is – yeah, a good deal is a good deal, but it has to address certain fundamental principles. And these are one of the things that were important – rightly or wrongly, really important to Newfoundlanders and Labradorians.

**MR. HOGAN:** Did you talk – like how – did those conversations get anywhere then with Quebec? Or was it just –?

**MR. D. WILLIAMS:** Conversations in –?

**MR. HOGAN:** Well, about a deal when you were premier with – to do a Lower Churchill deal with –

**MR. D. WILLIAMS:** Did they ever really get anywhere? No.

**MR. HOGAN:** With redress and as you say it, maybe not with redress directly, but a sweet deal.

**MR. D. WILLIAMS:** No. You know, we'd just gone through the whole process whereby the last deal that Quebec was prepared to put on the table was the Grimes deal and that was so heavily weighted the other way. I mean, you know, for example, recall on that deal, we would actually have to buy the power back at more than we sold it to them for. So Monday we sell it to them for X and – with exaggeration – next month we buy it back for X plus Y. You know, so that was so heavily over weighted the other way that that was also an indication of where a deal with Quebec was.

**MR. HOGAN:** Okay, so let's just stick on this topic for another minute that – I'm curious as to what you would have expected Quebec to give up in terms of redress. You said that they, you know – a few times yesterday you used: They had their pound of flesh. Like, why did they need to keep asking for more or get more and –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – cutting us off and all that kind of stuff and I get that.

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** But you also said yesterday that the people of Quebec, or the politicians and their senior officials, are very good at defending the interests of the Quebec people.

**MR. D. WILLIAMS:** Yup.

**MR. HOGAN:** Why would political figures in Quebec give redress that would take away money from Quebecers and give it to Newfoundlanders and Labradorians?

**MR. D. WILLIAMS:** On the basis that it was unconscionable, oppressive, unfair and was a deal that couldn't possibly have been contemplated at the time. And it was also a deal that was railroaded politically by the Quebec government at the time, in conjunction with Prime Minister Pearson, who was not prepared to yield to Quebec and basically told Mr. Smallwood, who had no choice, that we just can't do this. There are going to be uprisings in Quebec and rebellions and everything else, rebellion might be the term but –

**MR. HOGAN:** All sort of things.

**MR. D. WILLIAMS:** But, anyway, so that was – that was a big – so that's a big part of it.

**MR. HOGAN:** But good faith.

**MR. D. WILLIAMS:** Which –

**MR. HOGAN:** They would have done it and you would expect it.

**MR. D. WILLIAMS:** Yeah, they – because we also, I mean, were trying to leverage them all the time. So that's why we started the (inaudible) argument which was an argument for good faith. Like, you know, and we did try to get that overturned in the courts and the courts didn't accept it.

But there is another piece of evidence that I mentioned yesterday – and I don't have the

exact reference on it, but I think it's in the documentation – is that there was a Quebec minister, or a Quebec – senior Quebec official that did indicate to Vic Young, as chairman of Hydro at the time and also chair of the Lower Churchill Development Corporation, that they were prepared to have a look at this, that they didn't feel that this was a reasonable deal and they were prepared to have another look at it.

Now, I don't know what was found out at the end of the day, but it probably was, yeah, you give us Gull, you give us Muskrat and, you know, we'll do a good deal and all that. Because my – part of my concern now is that we want to make sure we don't get in a panic and all of a sudden go to Quebec on bended knee because we're perceived to be in a vulnerable position because the project has overruns. And now do a package deal with Quebec which brings in Muskrat, brings in Gull and we end up giving those up for nothing. And we renegotiate the Upper Churchill so now we've got a 51-49 per cent package for Quebec on the entire Churchill River and we get a cheque that we think is a big cheque, and really in the big scheme of things, over the life of the Churchill River, which is forever, is not going to be a big cheque. So that's a concern that I've had and I've stated that publicly.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** I want to make sure, like, we're not brought to our knees and then going in and grovelling, you know, as Newfoundlanders and saying, you know –

**MR. HOGAN:** Just ask one last question on that, though. You would understand politically why it would be hard for a Quebec premier to give redress on the Upper Churchill, right?

**MR. D. WILLIAMS:** Absolutely. Sure, I do.

**MR. HOGAN:** Why did you continue to ask for it –

**MR. D. WILLIAMS:** I know that.

**MR. HOGAN:** – as a politician knowing that –

**MR. D. WILLIAMS:** But, you know –

**MR. HOGAN:** Hold on, just hold on –

**MR. D. WILLIAMS:** – there's also –

**MR. HOGAN:** – hold on. Why would you continue to ask for it as a politician knowing that the politician on the other side is not – never going to happen?

**MR. D. WILLIAMS:** Well, you know, I'll give you an example of where we gave redress. I mean, the Innu were looking for redress on the Upper Churchill. We haven't got redress up on the Upper Churchill, but I felt the Innu deserved redress on the Upper Churchill. So we actually agreed to pay them redress even though we had no more money coming in from the Upper Churchill. And, you know, that was millions of dollars given to them. So, you know, yeah, I hear what you're saying. Quebec aren't going to do it, but we did it.

**MR. HOGAN:** Right. Okay.

If I can just turn to P-00008, which is the historical paper from Mr. Churchill, at pages – page 19.

**MR. D. WILLIAMS:** Which is ...?

**MR. HOGAN:** Barry, I don't –

**MR. LEARMONTH:** (Inaudible) in your documents.

**MR. D. WILLIAMS:** Oh –

**THE COMMISSIONER:** It's not in there.

**MR. D. WILLIAMS:** Oh, okay. All right, okay, I'll try and follow it here, yeah.

**THE COMMISSIONER:** We can bring it up on the screen.

**MR. HOGAN:** But, you'll know. You'll know.

**THE COMMISSIONER:** It's on the screen there now.

**MR. D. WILLIAMS:** Yes, right, exactly.

**MR. HOGAN:** If we could just turn about halfway down where it says: Stabilizing CF(L)Co.

So, Mr. Williams, this – well, you can read it: “... the Tobin government agreed to not discuss changing the terms of the 1969 Contract. However, two side agreements were signed which improved the province’s position regarding the Upper Churchill.” So these are two agreements that Brian Tobin’s government signed –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. HOGAN:** – with Quebec. Are you aware of these two agreements? You have knowledge of them?

**MR. D. WILLIAMS:** Yes. Yeah, I don’t have all the detail at top of mind, but I – you know, I do know those agreements.

**MR. HOGAN:** So my question is sort of twofold is: You know, what’s your position or what do you think of these agreements; and how does that interplay with the fact that a lot of the evidence that you’ve given was that it was next to impossible, if not impossible, to do a deal with Quebec – any deal with Quebec – but Mr. Tobin’s government managed to get two deals with Quebec. Now, they’re – the scope might be different, obviously, but I’d like you to comment on that.

**MR. D. WILLIAMS:** Well, I was actually up at the announcement of this because Mr. Tobin was nice enough to invite me along, which I thought was a nice gesture. And I went up and I witnessed this but, actually, the – these tenets of the deal were finalized, but I – you know, as I recollect it, as I understand, there was going to be a much bigger deal done on this with Premier Bourassa at the time, if I remember correctly.

And, anyway, I think at the end of the day they agreed to disagree that they weren’t going to do the bigger deals. So that deal wasn’t done and that’s not – that’s no reflection on Mr. Tobin. So then they went back, Premier Tobin – and then they went back and they said: Okay, what bits and pieces can we take out of this. And they did terms that revamped some things, which were good but, you know, obviously it was a win-win;

I would think that, you know, Quebec saw some benefit and we saw some benefit.

**MR. HOGAN:** So it is possible to do a deal with Quebec on – you know.

**MR. D. WILLIAMS:** Yeah, oh it’s a possible – it’s possible to do a deal on anything with Quebec as long as they feel that they’re getting a good deal. And it’s like Lévesque said back in ’65, or whenever he said it. It’s like, you know, we can live without it but we can certainly live a lot better with the Newfoundland power, Labrador power.

**MR. HOGAN:** Right.

I just want to turn again to something that we’ve talked about, this application to the Régie for the – for transmission –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. HOGAN:** – which you obviously weren’t happy with. You’ve said that a few times.

**MR. D. WILLIAMS:** Have you read it?

**MR. HOGAN:** Weren’t happy with the result.

**MR. D. WILLIAMS:** Have you read it?

**MR. HOGAN:** Yeah, I’ve read it.

My question is, though, is that what did you ask the Régie to give Newfoundland and Labrador, or to give Hydro at the time? What was the request?

**MR. D. WILLIAMS:** Well, we made the application back in 2006 for open access. What the application said I can’t tell you, but it was basically to get into Quebec and get access to their facilities and their transmission and to use up capacity. And that should have been a six-to-nine-month process and it went on for four years.

So after we were denied – if I’m correct on this – by TransÉnergie, then we ended up at the Régie, which was the regulatory body and then they just – they shut us down. They just went out of their way to –

**MR. HOGAN:** You know, there's people who may be watching on the Internet who don't understand all this stuff. So can you be more specific in what was requested, how much transmission was requested to access through Quebec?

**MR. D. WILLIAMS:** No, I can't because I can't – I don't remember that, actually.

**MR. HOGAN:** So you wouldn't know how many megawatts was –

**MR. D. WILLIAMS:** No.

**MR. HOGAN:** – that they were requesting? Okay.

Do you recall what was in the decision? And you commented yesterday just they mentioned things like – which we were disappointed in, that Hydro-Québec owns all these assets in Newfoundland and that sort of really set you off. That's an understatement, is it?

**MR. D. WILLIAMS:** That's a nice way of putting it.

**MR. HOGAN:** Do you recall if the decision said anything about the fact that they don't have the capacity? Like, you can ask for it but we don't have it to give you so ...

**MR. D. WILLIAMS:** You know, I know what the – and I don't have the list with me. I had a list of about 10 items there whereby they just had a blatant disregard of everything we put before them. It was just like – for them, it was a no-brainer, we're going to stop them in their tracks, we're going to try and basically bring them back and force them to start over again.

And what happens then is you're in the queue, you keep moving up the queue, but as they slip you back, then you gotta go right back and start again. So every time we'd try to make progress, that's what they would do, they'd block us.

The interesting piece in 2009 was that we managed to get that open access through them because that power had been running since 1970. So, you know, there was a whole pile of different things. And, like, they actually ignored evidence, you know, cold hard facts that we put

to them. But, you know, they went out of their way to stop it and so we –

**MR. HOGAN:** You can't recall they said, like, we just don't have capacity, or your position is it didn't matter what – if they had it or not, they were going to say no.

**MR. D. WILLIAMS:** Well, there's no doubt about that, what you just said that no matter what they found, a dozen ways there to try and make sure that this happened.

**MR. HOGAN:** Right.

**MR. D. WILLIAMS:** And as to say whether they had capacity, they would always say to us like, you know, we're blocked up, you know, and we've got the Romaine coming on here and there's going to be a whole pile of megawatts coming down the pipe, and we're in ahead of you.

So they would do everything they can. If they couldn't stop you at the border, they would probably say that they didn't have the capacity, or if you want to use our transmission lines and there's capacity there, we're not going to charge you a fair price, we're actually going to charge you a super-duper premium price, which is where that \$3-billion dollar number came from.

**MR. HOGAN:** Three billion?

**MR. D. WILLIAMS:** At one point it was \$3 billion was actually mentioned by –

**MR. HOGAN:** So –

**MR. D. WILLIAMS:** – somebody as being a – you know, an amount of money for something. So the other thing is too is that, you know, we had offered previously – and I don't know if even in this process or not – to actually – if we could have the right to build capacity or to pay for them building more capacity. Well, that was even part of trying to get Gull done. So, anyway, there's a –

**MR. HOGAN:** All right, I'm going to get to that but I have one more question though. Are you aware – and I know you didn't do the application – of any engineering studies or any evidence at all that was submitted to the Régie?

**MR. D. WILLIAMS:** No. No, I'm sure there was lots. And, you know, I know officials from Nalcor, basically, I think, attended, you know, it to testify at various stages of this and gave very, very detailed evidence. But as to what the evidence was, I don't know.

**MR. HOGAN:** The question was going to be evidence regarding capacity. So I guess if –

**MR. D. WILLIAMS:** I –

**MR. HOGAN:** That's more specific.

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** So you don't want to answer either.

**MR. D. WILLIAMS:** No, I don't. I don't.

**MR. HOGAN:** Okay.

So let's get back to that \$3 billion because you did mention it yesterday, and it was sort in passing and wasn't followed up on. You brought it up here again this morning.

**MR. D. WILLIAMS:** I read it somewhere. That's why I mentioned it, right?

**MR. HOGAN:** What's that?

**MR. D. WILLIAMS:** I read it somewhere; I've seen it in the materials.

**MR. HOGAN:** So what was the – what is this \$3 billion? What was that – what is it?

**MR. D. WILLIAMS:** I remember and I can't give you the context. I don't know but I remember reading somewhere there was a number of \$3 billion was basically thrown out as being the cost of access. Whether that was building it or whether that was transmitting it or whether that was the cumulative cost, I can't tell you, I can't put it in context. It doesn't help you, I know, but –

**MR. HOGAN:** No.

**MR. D. WILLIAMS:** – that's unfortunately –

**MR. HOGAN:** So you don't know if it was the cost to transmit through the lines that are already there. You don't know if it was the cost suggested to Newfoundland and Labrador. You can use Quebec land if you build your own transmission line at a cost of \$3 billion?

**MR. D. WILLIAMS:** No, I don't think. My recollection of it was it was a transmission cost, but I can't remember it being a capital cost. But, again, like, I'm struggling to try; I'm trying to think of where that came from.

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** Because I saw the number and it stood – jumped out at me because it was such a big number. But to put it in context, in –

**MR. HOGAN:** Does it –

**MR. D. WILLIAMS:** – all fairness to the Commission –

**MR. HOGAN:** No.

**MR. D. WILLIAMS:** – I couldn't say.

**MR. HOGAN:** I'm not going to keep going if you can't remember, but –

**MR. D. WILLIAMS:** Yeah, somebody –

**MR. HOGAN:** (Inaudible.)

**MR. D. WILLIAMS:** – will have an answer, though. I mean, if you –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** During the course of this, I mean if you put it to Nalcor or something, they would probably have an idea because they'd be more familiar with the evidence as to if a \$3-billion number was ever put out by Quebec.

**MR. HOGAN:** It's my understanding with this FERC stuff, which you relied on –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – earlier on here was that, you know, they'd give access if there's access, but



they don't have to facilitate building new transmission lines. So if the \$3 billion was an offer to build new lines through, it's much less than what this current project is.

**MR. D. WILLIAMS:** Yeah, no –

**MR. HOGAN:** So is that a possibility?

**MR. D. WILLIAMS:** I can't make that –

**MR. HOGAN:** Yeah, okay.

**MR. D. WILLIAMS:** – transition.

**MR. HOGAN:** We can turn to P-00301, page 2. I might want to just turn to page 1 first, please.

**MR. LEARMONTH:** Tab –

**MR. D. WILLIAMS:** Sorry?

**MR. LEARMONTH:** Tab 113.

**MR. D. WILLIAMS:** Okay, thank you.

Okay, I think now we got it. Okay.

**MR. HOGAN:** Do you recognize this document?

**MR. D. WILLIAMS:** I do now. This – I guess this would have been a document that would have been prepared – can we scroll it a little bit so I can – oh, I'm sorry, I've got it.

**MR. HOGAN:** You might want to look at the heading on the top of the page 1: Review of statements made in 2002 –

**MR. D. WILLIAMS:** Okay.

**MR. HOGAN:** – when you were Opposition leader and the draft Gull Island –

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** – development project.

**MR. D. WILLIAMS:** Okay.

**MR. HOGAN:** Do you recognize this document?

**MR. D. WILLIAMS:** Yes.

**MR. HOGAN:** What is it? Is it a briefing note or –?

**MR. D. WILLIAMS:** It would be an internally produced document by staff in order to – their suggestions as to how to prepare me for probably questions in the House of Assembly.

**MR. HOGAN:** Yeah, okay.

So if we can just scroll to page 2, the box on the right, it talks about cost overruns, loss of control. So your suggested response.

**MR. D. WILLIAMS:** So this is in – wait now, there's several entries here, 2002, 2006, 2004, 2002?

**MR. HOGAN:** Yeah, well, those are all your comments made historically, if you want to read through them.

**MR. D. WILLIAMS:** Okay, okay.

**MR. HOGAN:** It doesn't – not really germane to my question, to be honest. My question has to do with the last block on the right. It says: "The owner of the project will be responsible for cost overruns without risk of losing control."

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** Right. You buy it, you build it.

**MR. D. WILLIAMS:** Well, when I say – you got to give me an idea of what you're – where you're going.

**MR. HOGAN:** Well, I just –

**MR. D. WILLIAMS:** "The owner of the project will be responsible for cost overruns without risk of losing control." These are the suggested responses that –

**MR. HOGAN:** Yes.

**MR. D. WILLIAMS:** – were put there. Okay, so which project? We're talking about this project?

**MR. HOGAN:** We're talking about Muskrat Falls Project.

**MR. D. WILLIAMS:** Okay, the owner of the project will be responsible for cost – yeah, okay.

**MR. HOGAN:** I mean that's just an overall theme.

**MR. D. WILLIAMS:** Yeah, okay, no, I just want to put it in context, sure.

**MR. HOGAN:** I'll put it in context for you now. You know, when Professor Flyvbjerg spoke a couple of weeks ago he did say that, you know, a private sector project is not necessarily more efficient than a public sector project.

And Mr. Budden asked you – you sort of talked about this this morning as well. Like, you know, when a private sector takes on the risk, like some of the offshore ones, there's no risk to the taxpayer or the ratepayer in this case.

**MR. D. WILLIAMS:** No.

**MR. HOGAN:** Taxpayers don't get stuck with the bill –

**MR. D. WILLIAMS:** That's right.

**MR. HOGAN:** – when there's cost overruns on a public project, so I just wanna ask you about that. I mean, Mr. Budden asked you about risk –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – and all the risk is on the ratepayers here, right? Anything goes wrong – and things, obviously have – well, arguably have gone wrong with the cost overruns.

What's your position on that? I mean, was control of the project more important than the risk of the cost overruns?

**MR. D. WILLIAMS:** No.

I mean, you know, the – like I said, there's a risk-and-reward scenario and there's a balance. And, you know, there's no project that you can undertake that doesn't have some risk. And then you have to mitigate that risk, and then you have to weigh the risk and the reward and what the

ultimate benefits are for – you know, and I went through a list yesterday of 20-odd items that there were benefits to the people of Newfoundland and Labrador as a result of those projects.

Now, some of those would be considered intangibles but they have value. So, therefore, you know, if there is a risk of overruns, yes, the ratepayer has to bear it. But on the other hand, at the end of the day the ratepayer owns the house and has control of the project. So you pay the mortgage off; you own the house.

**MR. HOGAN:** So control was important but it wasn't the be-all, end-all?

**MR. D. WILLIAMS:** Oh, no, control was important. But no – and another thing too, it was about Newfoundlanders and Labradorians owning their assets. That's why we looked for an equity stake in the offshore. You know, we wanted to get a piece of that action. These are our resources and we wanted to have ownership in them.

And even though we own the Upper Churchill, it's meaningless until 2041 because we gotta pay the bills, but we don't get the benefit of the house. Basically, that's what it is, right?

**MR. HOGAN:** I mean, I would characterize that – and you can agree with me or not – that those are just public policy decisions, then. I mean, you're saying that we have pride because we own it and there's benefits because we own it –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – which has value, right? But at what point does that value supersede the risk to the taxpayer?

**MR. D. WILLIAMS:** Oh, but it turns into real returns here. Yeah, I mean, you'd have to go through – and you'd have to ask the people who know to crank out the numbers; what the output of this is. But if you take the output of Churchill Falls over 50 years and you look at the – what the return will be, and assuming that there could be excess power sales for that extra 40 per cent of this project, then that really does have some

significant value. And as I've said, that's really where the gravy is.

**MR. HOGAN:** Okay.

I'm gonna jump ahead here to November 2010 with the Emera deal – the term sheet. Nothing to look at.

You know, all the talks leading up to then, things that you've said, and the Blue Book talked about an energy warehouse and you talked the last day and a half about how we're not isolated anymore and we're connected – we can sell power.

I just – what contracts, if any, were in place with external purchasers in November 2010 to sell this power externally?

**MR. D. WILLIAMS:** Well, external – I don't know what contracts we had with Emera. I think the relationship that started back in 2008, in anticipation of 2009 when we were pushing that 300-megawatt block through, I don't know what Nalcor might've had contractually on any of that, to be quite honest with you.

**MR. HOGAN:** Wouldn't that –

**MR. D. WILLIAMS:** But if you're talking about big blocks, like Rhode Island or any of those –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – yeah, no, no.

**MR. HOGAN:** Nothing?

**MR. D. WILLIAMS:** No, and I – not from my perspective. And I'd explored, you know, a memorandum of understanding with the governor or Rhode Island, it was Don Carcieri at the time, and he loved Newfoundland and Labrador, he was receptive, he was looking for an alternative to Quebec. And we signed a non-binding letter of intent, and that basically fell by the wayside after 'cause we weren't ready, we didn't have power to sell him. So then he went (inaudible) he obviously went somewhere else.

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** But from my perspective, no – you know, I didn't – there's nothing that was signed because we didn't know what we had to sell at that stage. Until we had a route and a link, we'd had no pipe to get out – to get our power out. We had to go through Quebec and we know what was – we knew what was happening there.

**MR. HOGAN:** Was that another risk that you were prepared to accept, that you wouldn't be certain how much, if any, power could be sold to external markets until you had it built?

**MR. D. WILLIAMS:** We wouldn't know how much – no, yeah, but the project –

**MR. HOGAN:** The risk you're accepting is that you – until it's built you can't sell it and you may not –

**MR. D. WILLIAMS:** There may not be a customer; there may be a hundred customers. But on the other hand, when we looked at the viability of the project – and I remember that if that extra 40 per cent was spilled, if the water was just spilled and it wasn't sold to anybody, the project was still viable. That was the information that I had.

**MR. HOGAN:** Right, okay. So that was gravy. If we sell it, great; if we can't then we're still doing it anyways.

Just in terms of the timeline again, not to talk about the Régie, that decision was filed in May 2010; Emera term sheet was signed in November 2010.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** So this – yesterday what you said, I think – and you correct me if I'm wrong – was that the Régie decision was the last straw. You were doing two –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – parallel routes, going through Quebec and the Maritime route. And that was it, May 2010 you're done with Quebec; six months later you have a deal with Emera.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** That's pretty quick. You're doing this for seven years – at this point in time you're premier. Was it rushed at all, those six months –

**MR. D. WILLIAMS:** No, it –

**MR. HOGAN:** – to get that deal done with Emera?

**MR. D. WILLIAMS:** You know, I'd said that there was a parallel process. We were moving all our options along –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – until we ran out of road on one of them, and the Régie was the end of that road, from that particular perspective. But, you know, we didn't think linear, we didn't think: Okay, we got to try this one and then if we don't do that then we move to the next one. We're saying: Okay, fine, we're gonna move forward on several fronts and if this one stops, at least we've got things moving forward. So that we're in a position to get a deal because the, kind of, the deadline that we were facing was this capacity in '15 and the deficit in '19. So we were under a time frame; we're under the gun from that perspective, but, you know –

**MR. HOGAN:** Was there an extra push put on to get a deal done with Emera because of the Régie decision?

**MR. D. WILLIAMS:** No, no, no. Not yet – no, no. And not a push, but it became blatantly obvious that –

**MR. HOGAN:** This was the only option.

**MR. D. WILLIAMS:** – that's done. Yeah, absolutely. Yeah. No question.

**MR. HOGAN:** Just back to the ratepayers and you're aware obviously that the ratepayers are, through an order-in-council, responsible to fund the cost of this project and that is what it is. Yesterday you were asked about mitigation, and you spoke about Nalcor and the purpose of it is larger –

**MR. D. WILLIAMS:** Yup.

**MR. HOGAN:** – offset cost mitigation. And you were – I think it was Mr. Learmonth said, you know, this wasn't talked about publicly, you said it was always part of the plan, it was always the goal for Nalcor do to this. And today you mentioned that, you know, it's unfortunate that there's fear mongering out there about the prices of electricity rates.

**MR. D. WILLIAMS:** And I do understand the sensitivity –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – of people.

**MR. HOGAN:** My question, I guess, is that: Could the fear mongering have been reduced if something differently had been done to give ratepayers the comfort that your plan – that Nalcor would find ways to mitigate the risk – could've been, maybe, even built into that order-in-council or communicated better back in 2010, or even afterwards, so that this fear mongering wouldn't be possible? Because the plan to mitigate, which you said existed –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – and still no one knows about it – up until really yesterday when you talked about it. So why wasn't that done and why wasn't that built into the order-in-council?

**MR. D. WILLIAMS:** First of all, it would be premature because my understanding is those rates haven't even gone up yet. I don't know if they're at 11 or 12 cents, but they haven't even moved. Those rates have not even started to climb. So the fear mongering is, generally, rates are going to double – run for the hills because you're not going to be able to afford to pay your electrical bills and that's –

**MR. HOGAN:** Just to be fair, there's an application before the PUB now to increase the rates between 18 and 23 cents. So is it time to run for the hills.

**MR. D. WILLIAMS:** Yeah, no. It's not what I – maybe talked about. But I know there was one just pulled back and I don't even know the details of it. I can't go there because I don't know it.

But there's no – rates have not gone up yet. So there is the time to mitigate rates and government is looking at it, and I'm sure they're looking at the options that we put in place and the safeguards that we put in place and the revenues that are available. And I think it's important that they do that and they study that and they do it right, but at the end of the day, those rates will be mitigated.

But back in 2010, for us to put in an order-in-council that here's how rates are going to be mitigated, that would be premature because in 2018 they're still not up. So, you know – so now government is also under a time frame to, you know, make sure that people understand that these rates are going to be softened.

And, you know, as I said as well, you know, there's a certain increase in rates that were gonna happen without Muskrat Falls and I'm not so sure that people really understand that. Not that it makes it any easier. But, you know, rates were going to go up based on the capital expenditures that Hydro, Nalcor was actually doing and that was –

**MR. HOGAN:** But now, you're sort of saying two different things –

**MR. D. WILLIAMS:** No, I'm not.

**MR. HOGAN:** – you're saying there's no need to do it at the time because rates weren't going up. And then two seconds later you said we knew rates were going to go up.

So if you knew rates were going to go up, why didn't you build in mitigation at that time to avoid the fear mongering that's happening in 2018?

**MR. D. WILLIAMS:** We did. We actually built it in, so it was there. But, for example, we could not predict Dark Newfoundland and you didn't know, I mean, you know, basically, the power went out and there was upgrades needed.

So these are expenditures that happened along the way, but the point that I was making is that a certain amount of these rates were going to go up anyway because they had to go up, because in order to justify the non-Muskrat Falls capital cost that was being paid by Hydro. And the best

information I got is that's probably four or five cents right there. So that would take it up from 11 or 12 to 16 or 17, that's the simple math.

So, you know, so I'm saying, yeah, it was built in but there was no need to, you know, put that out to the public or communicate that to the public at the time because rates aren't going to go up till '18, '19 or '20, whenever they're gonna go up. But the safeguards were in place; they were there.

**MR. HOGAN:** Okay, so that's fine. So the safeguards were there, you're comfortable with that, but didn't see a need to communicate it eight years before it happened.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** Okay, thank you.

Mr. Budden asked you about the Maritime Link and the capacity on the Link, 500 megawatts. Just to clear anyone out there who's watching the inquiry, so the Maritime Link serves no use in 2041 to us for the Upper Churchill, right?

**MR. D. WILLIAMS:** I'm sorry?

**MR. HOGAN:** The Maritime Link won't serve any use to us in terms of the Upper Churchill in 2041, right?

**MR. D. WILLIAMS:** But it will serve 500 megawatts if – yeah.

**MR. HOGAN:** Okay. And the same with Gull?

**MR. D. WILLIAMS:** But it's not capable of carrying that Upper Churchill power.

**MR. HOGAN:** Right, or any capacity from Gull Island?

**MR. D. WILLIAMS:** No.

**MR. HOGAN:** So if and when we do build Gull Island, new lines will have to be built to carry that capacity.

**MR. D. WILLIAMS:** That's right. That's right.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** Unless, you know, unless Quebec opens its (inaudible) attitude and transportation goes through there.

**MR. HOGAN:** Sure.

**MR. D. WILLIAMS:** I mean the proper place for that Gull power is Ontario. You know, Ontario has deficits there, they've got nukes, I don't know if they've still go coal but, you know, they need that Gull power and that's, you know, a ready market for that.

**MR. HOGAN:** Okay.

I just want to turn to P-00283. This is a speech you gave at the Board of Trade in September 2010, page 15.

**MR. LEARMONTH:** Tab 99.

**MR. D. WILLIAMS:** Ninety-nine?

**MR. HOGAN:** Page – yeah, 15.

**MR. D. WILLIAMS:** I can't find it but I – let's – let me take a chance on the screen, we'll go –

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** – we'll go with the screen.

**MR. HOGAN:** It's two sentences, you can – three sentences. Scroll down a little bit, please. This one here.

So you say: "And of course in this time of need of clean, green energy the most talked about prospect in our province is the more than 18,000 megawatts of developed and ready-to-be-developed renewable power."

Just scroll to the top of the next page, please. "For Canada, getting this power to market would be an enormous benefit. For our government, getting this power to market is a major priority." This is September 2010, two months before –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. HOGAN:** – the Emera term sheet is signed, which is only 500 megawatts. Not even

close to, obviously, the 18,000 you talked about, and not what you had talked about in the seven years leading up to, I would suggest, not what you talked about in the seven years leading up to the November 2010 term sheet, which you always talked about the energy warehouse. And that was the goal, to make it a – lots of options: wind, all kinds of renewable resources.

So just so people understand that when the Muskrat deal was signed, we're not close to getting anywhere near what you hoped for when you spoke about this for the seven years, correct?

**MR. D. WILLIAMS:** Can we just scroll back to that 18,000 comment again?

"... of course in this time of need of clear ... the most talked about prospect ... is the more than 18,000 megawatts ...."

Okay. So, you know, I'm basically setting out, stating, if you – when we get the Upper Churchill back, which is 20-odd years from then.

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** And if we do Gull and if we got Muskrat, now you've got 8 to 9 – nearly 9,000 megawatts right there. There is generally considered to be 10,000 megawatts, that's probably just a ballpark that's been put out there but – of wind that's available in Labrador, which is probably the best wind regime in North America.

So, I mean, that's kind of where the context is. That's the big picture marketing Newfoundland and Labrador as having this enormous potential over the next 20 to 50 years

**MR. HOGAN:** You talked about it the whole time you were premier, right?

**MR. D. WILLIAMS:** Yes, absolutely. And, you know, and it's important. Because I wanted us to – I was conscious of the whole giveaway concept that was in the back of my mind, what we'd done in the past.

And I'm trying to, you know – this is to the Board of Trade, I'm speaking to business people and Newfoundlanders and Labradorians and

saying: Look, we can feel good about ourselves. Like we just – Mark Carney said we had – at that point, the Governor of Canada said we had the best economy in the country. Board of Trade – 93 per cent or 92 per cent of businesses were saying: We feel really good about business. So, this is the Board of Trade so I'm, you know, I'm pumping it up here because I want them to believe in themselves 'cause I believe that that's important.

So if we can just go down again to the quote that you're actually referring to below that. So then you said about getting this power to market is a priority.

So take me back again to what the point is. This is not –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – the 18,000 megawatts?

**MR. HOGAN:** Not necessarily a criticism.

**MR. D. WILLIAMS:** No, I'm just trying to get –

**MR. HOGAN:** What's that?

**MR. D. WILLIAMS:** No, I'm just trying to get to your point.

**MR. HOGAN:** Yeah. So my point is that I just want everyone to be clear then, and the public to be clear, that, you know, Muskrat Falls was touted as – by you and lots of people that, you know, we had done it. We were successful. We had built this that we could never do before. We did it on our own.

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** We're going to export. We're linked up. We're not isolated anymore.

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** But it's not to the extent that you talked about during those seven years. It was only – it's just 500 megawatts. Is that –?

**MR. D. WILLIAMS:** Well, you gotta start somewhere.

**MR. HOGAN:** Yes, that's –

**MR. D. WILLIAMS:** I mean, I'm being criticized –

**MR. HOGAN:** Absolutely, yeah.

**MR. D. WILLIAMS:** I'm being criticized for doing, you know, 800 megawatts. Am I being criticized for not doing 18,000? I –

**MR. HOGAN:** No.

**MR. D. WILLIAMS:** Come on, come on.

**MR. HOGAN:** No. I mean the words you used this morning, you said: It's a prototype. I just thought that was an odd choice of words to use. Like –

**MR. D. WILLIAMS:** I haven't looked up the definition, maybe I don't know what it means.

**MR. HOGAN:** Well, no –

**MR. D. WILLIAMS:** I think I know what it means.

**MR. HOGAN:** And is it – you sort of talked about it as a symbolic way to show that we can continue and do these projects on our own.

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** And maybe that's true.

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** But now my question is: Well, are we too scared to continue to get the rest of the 18,000 megawatts because we did one and now we're here in a public inquiry?

**MR. D. WILLIAMS:** Yeah, but you gotta analyze it and you got to look at, you know, and the Commissioner is gonna draw his conclusions and I look forward to those conclusions, you know.

And, like I said this morning, when you take this project, the \$4 billion difference, and I don't want to underestimate it in the eyes of the public because that's a huge number, but in comparison to our potential and the, you know, 18,000

megawatts, well, you know, that's nearly 20 times; 18 times basically what this one is worth. So, you know, if over time this is viable, which it will be, then –

**MR. HOGAN:** Sure.

**MR. D. WILLIAMS:** – multiply that by 20 and the numbers are enormous. That's not counting the oil and gas that we got out there, you know.

So, you know, we've got enormous potential here. We're only a half million people. You know, it doesn't take much when you spread that around to make us, you know, live well. And we deserve it here because we've paid our dues.

**MR. HOGAN:** (Inaudible.)

**MR. D WILLIAMS:** Yeah.

**MR. HOGAN:** If we can turn to P-00198, please.

**MR. D WILLIAMS:** Which is?

**MR. LEARMONTH:** Tab 41.

**MR. D. WILLIAMS:** Okay.

Sorry.

**MR. HOGAN:** Okay.

So you talked about this yesterday, this was – you used the words coup for the first time we could wheel power through Quebec, right?

**MR. D. WILLIAMS:** Yeah, I felt good about it. We finally broke through that blockade that they had there.

**MR. HOGAN:** I just wanna ask, paragraph 4 is says: “NL Hydro has had a power purchase agreement ... with Hydro Quebec for a block of recall power from the Upper Churchill since 1998.”

Is this one of the agreements that Tobin had negotiated?

**MR. D WILLIAMS:** I understand that to be the timeline, yeah, 1998 would be about the right timeline.

**MR. HOGAN:** So, this press release comes out in 2009, so 11 years. So what happened to that 300 megawatts during those 11 years?

**MR. D WILLIAMS:** It was recall power and I think when we got that we sold it. And, I think, at that time, I think, we actually sold it to Quebec at a price that they had determined.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** So, the reason to take it out of that was to see if we could get – basically, get more on the marketplace.

**MR. HOGAN:** But between those 11 years, it was being sold to Quebec?

**MR. D WILLIAMS:** Yeah, it was because –

**MR. HOGAN:** And then after this date it was being –

**MR. D. WILLIAMS:** Yeah, because that was part of the deal that Premier Tobin negotiated, that they would – we would have this power but they would get it and they would have the ability to market it.

**MR. HOGAN:** Okay.

**MR. D WILLIAMS:** No different than the other 5,100 megawatts, which they sell on our behalf for a profit.

**MR. HOGAN:** Okay.

If we could just turn to page 2.

**MR. D WILLIAMS:** Yeah.

**MR. HOGAN:** The very last paragraph: “Premier Williams added this is the first step on the road to the province selling power directly into North American markets.”

So you actually talked about that yesterday, as well. So what happened? Was it the Régie, or ...?

**MR. D. WILLIAMS:** What do you mean what happened?



**MR. HOGAN:** It was the first step on the road to selling power directly –

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** – into North American markets through Quebec.

**MR. D. WILLIAMS:** Right.

**MR. HOGAN:** It was the last step through Quebec as well, right, or is that what you (inaudible)?

**MR. D. WILLIAMS:** Yeah, I didn't say through Quebec –

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** – I said – Premier Williams added this is the first step on the road to the province selling power directly into North American markets.

So that was the first step. That was through Quebec.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** The other step would be through the Maritime Link –

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** – that's why the Maritime Link is so important to get into those markets.

**MR. HOGAN:** Okay.

And then you say, at the present time we are working with Emera Energy to have our power get to these markets. Is that what you mean there?

**MR. D. WILLIAMS:** Yup.

**MR. HOGAN:** Okay.

The Maritime Link deal with (inaudible) –

**MR. D. WILLIAMS:** Yeah, the (inaudible) –

**MR. HOGAN:** – take the time to read it.

**MR. D. WILLIAMS:** At the present time we are – no.

In this particular context –

**MR. HOGAN:** Yeah.

**MR. D. WILLIAMS:** – the – we – I think we had signed, or were involved in, an MOU with Emera in around 2008. And that was to explore markets for that power – so that was –

**MR. HOGAN:** That 300 megawatts.

**MR. D. WILLIAMS:** Right. Yeah.

**MR. HOGAN:** Did you pay Emera – did – was Emera paid for that?

**MR. D. WILLIAMS:** Yeah. Presume they were. I would think so.

**MR. HOGAN:** I don't know if you're able to comment on this or not, but we talked – you talked yesterday about the expressions of interest. And you said there was four ones that were legitimate, I guess, for lack of a better word.

**MR. D. WILLIAMS:** Yeah. In descending order.

**MR. HOGAN:** Sure. Yeah. I understand you went with the local one as the best option.

Can you comment on what the terms were suggested or recommended or proposed, I guess, by the Quebec, Ontario, SNC-Lavalin bit?

**MR. D. WILLIAMS:** I haven't reviewed them. What I understand, and what I can remember is the – there was a three-way partnership. The – Quebec and Ontario would basically have the power. I guess Lavalin would either be involved in some partial ownership, but mainly I would think their role would have been more the construction role.

Now, in those days, Lavalin – through public-private partnerships – were picking up interests in highways and other things. You know, other PP – other triple Ps.

So the exact details of that arrangement, right now, I can't remember 'cause I haven't reviewed it.

**MR. HOGAN:** In a long time –

**MR. D. WILLIAMS:** But, in fact, it would have been, you know, we would have gotten a royalty of sorts as payment for our power, and then it would have gone off to these other markets.

**MR. HOGAN:** Okay.

**MR. D. WILLIAMS:** (Inaudible.)

**MR. HOGAN:** So you don't know how much our stake or cost would have been in that – you can't say (inaudible) –

**MR. D. WILLIAMS:** I can't tell you – I – you know. If I'd anticipated it I would have reviewed it –

**MR. HOGAN:** No.

**MR. D. WILLIAMS:** – but, like, I honestly can't tell you.

**MR. HOGAN:** That's fine.

Just – we sort of talked about this already. And you said that, you know, the Muskrat Falls Project was going to proceed regardless of Emera. That was – it was gonna be spilled anyway, so we'll do it 'cause it was the least-cost option.

But you tout all the benefits – you read a big list yesterday of all the benefits and talked about whether that's public policy or not. You know, is that spinoff that you're happy with and pleased with and like to tout, or, you know, why are we talking about that stuff as opposed to just the least-cost option, or were those factors considered when looking at the least-cost option? I just want to make sure that –

**MR. D. WILLIAMS:** Yeah.

**MR. HOGAN:** – because you talk about value in it and there is value in it. But in the decision-making process, how much weight were the benefits given as opposed to cost?

**MR. D. WILLIAMS:** I wanted to list them. I wanted to sit back and just go through all the things that were top of mind. And, you know, that was just a – you could tell by the way it was presented, that was a random list; it was disjointed, but it was all there. And it's all there on the record 'cause I wanted to think of what I could think of that were benefits and what we could basically tell the people that are benefits, because right now they are focused on overrun and rates.

And there's a whole bigger picture here, and it's a long-term picture. You know, I mean there's the short-term pain and I fully understand that; I'm very sympathetic to it and sensitive to it. And I can say it was anticipated. So that's why we built in safeguards. But, on the other hand, there is a big picture here and that's the Energy Plan, and that's really where we're gonna be. And, you know, like I said, I won't be around to see all the benefits of that.

But I – you know, you take pride in taking, you know, a long view because I think the whole part of the Energy Plan was strategy – strategically, let's find out what all the assets are, let's find out the best way to maximize them and let's move forward to 2041.

**MR. HOGAN:** So those –

**MR. D. WILLIAMS:** They have value and –

**MR. HOGAN:** They have value, but they weren't factored into the decision to sanction.

**MR. D. WILLIAMS:** I think they were contemplated because we didn't quantify them. We didn't sit down and say that's worth X or Y, but they certainly had value. And there is a value in the whole loop too, you know. And that's the same in transportation. If you got a loop, you can get in and you can get out. And if we had a link and we had the ferry, then we could bring everybody all around, right? But that's why a transportation link, a fixed link in the Strait of Belle Isle is – would be a nice thing.

**MR. HOGAN:** All right.

That's all the questions I have, Mr. Williams.

**MR. D. WILLIAMS:** Thank you.

**MR. HOGAN:** Thank you.

**THE COMMISSIONER:** Thank you.

Okay, I believe the – there's no one here from the Innu Nation or Nunatsiavut Government.

The NunatuKavut Community Council.

**MR. COOKE:** Good Morning Mr. Williams.

**MR. D. WILLIAMS:** Good Morning.

**MR. COOKE:** My name is Jason Cooke.

**MR. D. WILLIAMS:** Nice to meet you.

**MR. COOKE:** And I'm representing the NunatuKavut Community Council.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** Formerly known as Labrador Metis Nation.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** So I may use the term NunatuKavut or NCC, or Labrador Metis Nation or LMN.

**MR. D. WILLIAMS:** Right, right. NCC is – if you could remind me is ...?

**MR. COOKE:** NunatuKavut Community Council.

**MR. D. WILLIAMS:** Oh, I'm sorry – okay, yup.

**MR. COOKE:** Southern Inuit of Labrador.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** I just wanted to start with some historical context based on your answers yesterday. From what I understood from your evidence that it was really the latter part of 2004, where the government started to move on the Energy Plan, is that correct?

**MR. D. WILLIAMS:** Yes, yeah. I'd have to check my calendar but I think so, yeah. The calendar is not a good term to use these days; I'll

check my note. Yeah, that's about the time, yeah.

**MR. COOKE:** And that flowed out of what I understood from your evidence, out of kind of the Blue Book commitments –

**MR. D. WILLIAMS:** That's right.

**MR. COOKE:** – made during the election?

I'm going to take you to document P-00025, please. And so this is the news release from January 10, 2005.

**THE COMMISSIONER:** So let's get the tab number for that.

**MR. D. WILLIAMS:** Well, we've gotta do a cross-reference there to see – just so I can make out – it's on my screen but –

**MR. LEARMONTH:** What is it, P ...?

**MR. COOKE:** P-00025 – the news release.

**MR. LEARMONTH:** It's not in the documents.

**THE COMMISSIONER:** No, it's not in these documents. Were – did you make –?

**MR. D. WILLIAMS:** This –

**THE COMMISSIONER:** Were you – did you make counsel aware that you were going to be referring to this document so we could've had it included in our binders?

**MR. COOKE:** I'm not sure, Commissioner.

**THE COMMISSIONER:** Okay, so just to remind you and others –

**MR. COOKE:** Mmm.

**THE COMMISSIONER:** – not to in any way condemning you or anything like that, but it is important for counsel to let us know what documents they're going to be referring to so that we can easily – luckily, we have this one on the system but – that we can easily bring them up and also that we'd like to have them in the binders, particularly for the witness to review – refer to in case they don't want to review the

screen. So if you could do that from here on out, but it is on the screen, Mr. Williams –

**MR. D. WILLIAMS:** I'm fine –

**THE COMMISSIONER:** – if you –

**MR. D. WILLIAMS:** – I'm okay, Commissioner.

**MR. COOKE:** Thank you.

And I believe this document was referred to yesterday by my learned friend –

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** – Commission counsel –

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** – and so, really, it's the press release regarding the request for proposals for the Lower Churchill. And from what I understood from your evidence yesterday, Mr. Williams, at that point, both Gull Island or Muskrat Falls or both were on the table at that time.

**MR. D. WILLIAMS:** Yeah, and they were right up to 2010.

**MR. COOKE:** Okay.

I just want to take you to page 2 of the document, Mr. Williams.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And it's the second paragraph on page 2 and I'll just read it for you. It says: "The provincial government and Newfoundland and Labrador Hydro have consulted ... the Innu Nation in developing the Request for Expressions of Interest and Proposals process consistent with the government's policy of consulting with aboriginal groups with accepted land claims on developments in their claim areas."

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** So my first question is: Do you recall the substance of the consultations with Innu Nation up to this announcement?

**MR. D. WILLIAMS:** Up to that point, I can't tell you exactly what the detail was. This is the actual announcement of the EOI, is it, again?

**MR. COOKE:** Yeah, that's right.

**MR. D. WILLIAMS:** I don't know. I don't know if we would have been actively engaging the Innu at that point. I'm not sure.

**MR. COOKE:** The paragraph I just read suggests that.

**MR. D. WILLIAMS:** Yeah, we definitely consulted them, but I can't tell you exactly how detailed that would be.

You know, I guess, probably from day one, just to put it in context, we always considered the Innu Nation to be probably the first ones we had to go to. Whether they were the priority or whether they were the, you know, the most important ones, not necessarily, but we always felt that the Innu were one – were a group that we had to deal with.

**MR. COOKE:** Okay, that leads to my next question. Do you recall whether other Indigenous groups were consulted prior to this announcement?

**MR. D. WILLIAMS:** I don't, and I can't say for sure either way.

**MR. COOKE:** So I just want to go to the second part of that sentence, because it says: "consistent with the government's policy of consulting with aboriginal groups with accepted land claims on developments in their claim areas." And that's what I understood the policy of the Government of Newfoundland and Labrador was at the time.

**MR. D. WILLIAMS:** Yeah, and I think – yeah, yes.

You know, I guess – so that wording says "with accepted land claims." Yeah, at that point in time, I'm not so sure who would have been accepted and who wouldn't have. I think the

Inuit deal was done by the previous government, so that would have been in place, but the Innu agreement wasn't at that particular point in time.

**MR. COOKE:** Okay.

And are you aware that the policy has changed since that time, in terms of consultation with Indigenous groups?

**MR. D. WILLIAMS:** Yeah, generally I think – I don't know if it was a court decision or what it was, but there was a higher level of consultation that was required.

**MR. COOKE:** And I'll just refer you. I think the decision you're probably talking about are two decisions of the Supreme Court of Canada. One is commonly called Haida Nation –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – and the other one is called Taku River.

**MR. D. WILLIAMS:** Okay, the second one I'm not as familiar with, but I am familiar with the first one.

**MR. COOKE:** And really what they do is define the duty to consult as –

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** – really where there's a potential to adversely affect –

**MR. D. WILLIAMS:** When were those? I'm sorry –

**MR. COOKE:** 2004.

**MR. D. WILLIAMS:** Okay.

Those decisions were in '04?

**MR. COOKE:** They were '04, and so this is January '05. Yeah.

So – yeah, just that they – if there's a potential to adversely affect asserted or established Aboriginal Section 35 rights, then a duty to consult is triggered by the government so –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** The next document I'd like to take you to is P-00288.

And just –

**MR. D. WILLIAMS:** Would that be in my exhibit, Sir? Is that –

**MR. COOKE:** Actually it should be in a binder, because we did –

**MS. O'BRIEN:** Tab 104.

**MR. D. WILLIAMS:** 104?

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

**MR. D. WILLIAMS:** Thank you.

Okay, this is my first time actually seeing this – I don't know when it was filed –

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** – but it is my first time seeing it.

**MR. COOKE:** Okay. Well, let's go through it together. Maybe we can just skip –

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** – ahead to page 4.

**MR. D. WILLIAMS:** Page 4? Yeah.

**MR. COOKE:** Yes, please, Mr. Williams.

**MR. D. WILLIAMS:** Okay. Mm-hmm.

**MR. COOKE:** Does this look more familiar to you now, Mr. Williams, now that we're on the actual letter document?

**MR. D. WILLIAMS:** I – it does, yeah. It does.

**MR. COOKE:** So it's a letter dated October 31, 2005, from Chris Montague, President of Labrador Metis Nation to you – and I just –

**MR. D. WILLIAMS:** I remember Chris. Chris was a fierce advocate for the Nation.

**MR. COOKE:** And the –

**MR. D. WILLIAMS:** In a good way. In a good way, now. I don't mean that in a negative way.

**MR. COOKE:** Of course.

The subject is "Lower Churchill hydroelectric development."

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And if you look at the letter, it starts out with – where I read it that Mr. Montague is indicating a preference –

**MR. D. WILLIAMS:** Okay. This is what it supports. Like I said, he was –

**MR. COOKE:** Yeah. Yeah.

**MR. D. WILLIAMS:** He was touchy.

**MR. COOKE:** Yeah. So I read it as that he's really seeking to deal with you on kind of a leader-to-leader –

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** – basis.

**MR. D. WILLIAMS:** No intention to slight him under any circumstances, but anyway.

**MR. COOKE:** And then he sets out what –

**MR. D. WILLIAMS:** His point there is that I didn't respond, one of my ministers did. But I normally, just to put it in context, you know, in matters of Labrador and Aboriginal Affairs, whether it was one department or the other, the minister would normally take the lead on it, 'cause they're closer to it, and they know the issues and the sensitive issues, so – especially on Aboriginal.

So we had an in-house expert, which was Aubrey Gover and Sean Dutton who were ministers, but – so we would – it wouldn't be unusual to defer to these people for a first contact to make sure we didn't ruffle any feathers or do anything wrong.

**MR. COOKE:** And the Minister of Natural Resources at the time, would that have been Mr. Rideout?

**MR. D. WILLIAMS:** Natural Resources – yes. Yeah, in 2005. Yeah, I think so. There was Ed Byrne, and then it was Kathy. Tom might've been in between, I guess.

**MR. COOKE:** Okay.

Just going on in the letter, you'll see that the – Mr. Montague sets out, on behalf of LMN, a nine-step consultation, I guess, protocol that they wish to use with industry and government. And I'd just like to go through it for a moment.

**MR. D. WILLIAMS:** Sure.

**MR. COOKE:** So number 1 is: "All information on the development is provided in a timely manner.

"2. That the company or government does not engage the Metis community without unequivocal written consent of the Labrador Metis Nation.

"3. Adequate financial and technical resources are provided.

"4. Adequate time is given Inuit-Metis for review and community consultations.

"5. A fair hearing is provided and responses are understood by mutual consent.

"6. Accommodation is given to Inuit-Metis concerns.

"7. A reply to comments is given in writing with reasons for acceptance and refusals.

"8. Inuit-Metis consent or refusal to consent."

And "9. Each step in the process is completed to the satisfaction of the LMN before moving to the next step."

Now, I can understand – particularly items 8 and 9 may be problematic –

**MR. D. WILLIAMS:** Yeah, I was –

**MR. COOKE:** – from a –

**MR. D. WILLIAMS:** – thinking of those –

**MR. COOKE:** – government perspective.

**MR. D. WILLIAMS:** – as you’re reading them, yeah.

**MR. COOKE:** Yeah.

**MR. D. WILLIAMS:** Okay. But I (inaudible) that they’re there, and – but –

**MR. COOKE:** Yeah.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** So – but what I want to do is go back, because when I read numbers 1 to 7, I don’t see those as especially problematic. I’d like to get your view on that.

**MR. D. WILLIAMS:** Like, I can’t say they’re problematic. The reason we separate 8 and 9 is because, you know, the Metis are saying: well, we have to consent, and we – they have to be satisfied in every step of the process. Well, I can’t guarantee the satisfaction of the Metis Nation. Other things – their request, their asks – but whether they’re asked and received are two different things.

**MR. COOKE:** Yeah, I was more wanting your views on the reasonableness or fairness of them. For example, that information is provided in a timely matter. That seems to a pretty reasonable request.

**MR. D. WILLIAMS:** Yeah, the only qualification I put is that – and I don’t know what the status of the Metis Nation was at the time, you know, what the recognition factor was, ’cause I think the greater recognition of the Metis, NunatuKavut was as a (inaudible) – provincial court decisions that came at a later date. So –

**MR. COOKE:** Right.

**MR. D. WILLIAMS:** – I think they were actually elevated in their status. So you know, whether all of these things would be an entitlement – for – not – want of a better word –

you know, a given for a nation that wasn’t really fully yet recognized, I can’t say that that would be necessarily a reasonable request. None of them – like, don’t get me wrong, they don’t look unreasonable. If –

**MR. COOKE:** Sure.

**MR. D. WILLIAMS:** – if they had the status or category, for want of a better term, of consideration.

**MR. COOKE:** And I understand that at least at the time that – and tell me if I’m wrong Mr. Williams, but the province’s position was, in some degrees, tied to the federal government’s position.

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** And that if the federal government recognized a claim or a claims process, that seemed to be – I don’t know if the word, a threshold, for the province to make a decision. Is that a fair?

**MR. D. WILLIAMS:** It was an important factor because we didn’t want to go afoul of the feds and the feds were an important part of the whole process.

**MR. COOKE:** Yup.

**MR. D. WILLIAMS:** That’s fair comment.

**MR. COOKE:** Yeah.

And at the time what was then Labrador Metis Nation, and what’s now NunatuKavut did not have any kind of claim recognition from federal government. That was your understanding.

**MR. D. WILLIAMS:** No. And there was a transition from Metis background to Inuit –

**MR. COOKE:** Yes.

**MR. D. WILLIAMS:** – if I remember correctly, yes.

**MR. COOKE:** Yeah.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** Just to take you further in the document to page 2 – well, page 5, I’m sorry.

The third paragraph, Mr. Williams –

**MR. D. WILLIAMS:** Mmm.

**MR. COOKE:** – where it says: “We are prepared to enter into a Memorandum of Understanding with the Province to detail how consultation and accommodation issues will be dealt with in the interim, pending a more formal resolution and reconciliation of our Rights, Titles and Interests. We think this would be” the “most appropriate way to proceed at this time. This process would also serve as a means for us to work together on a mutual approach to the many issues ... we face.”

So I read that from Mr. Montague as saying that there’s unresolved claims and issues, but –

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** – the way to move forward on Lower Churchill is through an MOU. Is that your read of it?

**MR. D. WILLIAMS:** That’s how I read that.

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** I’ll take you next, Mr. Williams, to Exhibit P-00289.

**MS. O’BRIEN:** That will be following tab 105.

**MR. COOKE:** I’d like to start at page 4. And just to give you some context, Mr. Williams, this is a – looks like a briefing note from the Department of Labrador and Aboriginal Affairs.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And the heading says – and this is on page 3 – Labrador Metis Nation and the Lower Churchill.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** And the issue as identified is the Labrador Metis Nation has demanded

consultation on the proposed Lower Churchill development.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** Okay.

So I’ll take you back to page 4 of this and under the section that says: Assessment.

**MR. D. WILLIAMS:** Yes, yeah.

**MR. COOKE:** And it says: “DLAA does not recommend entering an MOU with the LMN on consultation, as we do not consider there to be a basis in law for a special” consideration [sp consultation] “beyond existing public processes in which other, non-Aboriginal stakeholders could ... take part.” It goes on further: “What is more, such a decision could strengthen LMN’s resolve and argument for not just consultation, but also compensation and, ultimately an Impacts and Benefits Agreement.”

The next paragraph says: “The optimal solution would be to either have a federal decision on the LMN land claim (unlikely) or a ruling by a court of last resort (necessary but time-consuming) as to whether the LMN members have Aboriginal rights.”

So I get three takeaways from that assessment; one is recommending against going into an MOU.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** The second is that what should be responded is to invite them to go into the public processes that any stakeholder could go into. Correct?

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** Yeah.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** And that’s Indigenous, non-Indigenous.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** Okay.



And then I take on the second paragraph I referred to is really there's a question, at least from this author, whether LMN have Aboriginal rights.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** So I'm going to take you back in the same document because this is actually attached to a – or was included with a letter that you sent Mr. Montague at page 2. So I'll just take you there, Mr. Williams.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** And although you don't say it expressly at page 2, the letter does not kind of accept the invitation to go into an MOU process, which I think is consistent with the recommendation.

**MR. D. WILLIAMS:** Okay. I can – if I can just have a quick second here, please –

**MR. COOKE:** Oh yeah.

**MR. D. WILLIAMS:** – just to read.

**MR. COOKE:** Please take your time. Sorry.

**MR. D. WILLIAMS:** Okay. And if we can just scroll up, I think that's it.

(Inaudible.)

Okay, that's my signature, yeah.

**MR. COOKE:** So my question early on is that although it's not expressly in there, it seems to be consistent with the –

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** – recommendation not to move forward with a –

**MR. D. WILLIAMS:** That's right.

**MR. COOKE:** – with an MOU.

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** And on the second paragraph you say the status – given the status of LMN.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** And I take it that's based on your earlier answers, particularly regarding the fact there's been no federal claim recognition to back it up.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** Okay.

I just want to go back to page 4 on the assessment for a moment.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And, again, under the assessment section, the last paragraphs – in the second paragraph it says: "In relation to assessment of the best approach to the Trans-Labrador Highway case, advice will be" given – provided immediately on the best approach to resolving the LMN rights question in court as timely a manner as possible.

And are you familiar what they mean by the Trans-Labrador Highway case?

**MR. D. WILLIAMS:** No, but if you remind me –

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** – it'll probably come back to me.

**MR. COOKE:** Okay, so what it was, it was a challenge by Labrador Metis Nation on the failure to be consulted –

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** – in regards to certain aspects of the construction of the Trans-Labrador Highway.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** And there was a decision from Justice Fowler –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – which found in favour of Labrador Metis Nation that a duty to consult was owed. That was subsequently appealed by the province to the Newfoundland and Labrador Court of Appeal.

**MR. D. WILLIAMS:** Would that have been after this?

**MR. COOKE:** That would have been after – the –

**MR. D. WILLIAMS:** Because the decision wasn't out at this point.

**MR. COOKE:** The decision was not out yet.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** Or perhaps the decision of Justice Fowler, but not the ultimate –

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** – appeal decision.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** The appeal decision came out in December 2007 and that upheld the decision with somewhat differing reasons.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** But found that there was a duty to consult LMN –

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** – in regards to the Trans-Labrador Highway. And then I understand that leave to the Supreme Court of Canada was sought, but refused.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** The next document I'd like you to look at is 00170. And this – I'm not sure if I put it in a binder or not.

**MS. O'BRIEN:** 00170 is at tab 10.

**MR. COOKE:** Oh, great.

And I think, Mr. Williams, you referred to this document yesterday.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** It's a news story. And it's a – and I think it came up in Mr. Learmonth's questions on – and I think one phrase he brought –

**MR. D. WILLIAMS:** What tab is that, Mr. Commissioner?

**MR. COOKE:** At tab 10, I believe.

**MR. D. WILLIAMS:** Tab 10. Okay.

No, that's not the one I've got here. It says –

**THE COMMISSIONER:** Tab 10 in book number 1.

**MR. D. WILLIAMS:** Okay. Sorry.

Okay. Yes, yeah.

**MR. COOKE:** And you recall looking at this document yesterday giving your evidence?

**MR. D. WILLIAMS:** Yes, I do. Yeah.

**MR. COOKE:** And I believe the phrase that was focused on was becoming masters of our own destiny.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** And my learned friend asked you some questions about that.

And then there was a question. It was involving this document and P-00169, which I won't go to, where I think there was a suggestion that Newfoundland and Labrador had decided to go it alone. And my notes indicate your answer is that you wanted to add to that. You used the term, I believe, partnered with Aboriginal groups as – it wasn't just alone.

**MR. D. WILLIAMS:** Okay, yeah.

Mm-hmm.

**MR. COOKE:** And so –

**MR. D. WILLIAMS:** Which is ultimately what happened with – certainly, with the Innu.

**MR. COOKE:** Yeah, with the Innu. That's what – I was going to say because I think you used the plural, but –

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** – from my understanding is ultimately the – if we talk about the word “partner,” it was really Innu Nation.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** Yeah. Do you agree with that?

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** Yeah.

The next document I'd like to take you to, Mr. Williams, is P-00290.

**THE COMMISSIONER:** Tab 6 – or 106, rather.

**MR. D. WILLIAMS:** Tab 6 of ...?

**THE COMMISSIONER:** Tab 106 of book 3.

**MR. D. WILLIAMS:** Thank you.

Okay.

**MR. COOKE:** And I couldn't find a date for this document, Mr. Williams, but I think it's fair that it must be at least some time prior to September '08, because it doesn't refer to the New Dawn Agreement or the IBA with Innu Nation.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** So it must be sometime before that. It seems in context probably 2007, but I'm not certain. In any case –

**MR. D. WILLIAMS:** I don't know where this – I have no idea where this came from. I don't recognize it initially but, anyway, go ahead, go ahead.

**MR. COOKE:** Okay. Is it consistent with – I mean, it looks to me to be consistent at least in formatting with the types of briefing notes and other documents that –

**MR. D. WILLIAMS:** It does and it doesn't. It doesn't look identical and I'm not trying to be different here or cute here, but it's –

**MR. COOKE:** Not at all.

**MR. D. WILLIAMS:** It doesn't look identical so I don't know where this one came from. It's not the standard format, so I don't know, Commissioner.

**MR. COOKE:** I know the top – the document's titled or at least has a heading, Brian Harvey. Do you know who a Mr. Harvey would be?

**MR. D. WILLIAMS:** I don't want to insult him but I don't.

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** If I – so I apologize, I don't recognize this document. It doesn't mean I haven't seen it, but I don't – I honestly don't recognize. But if there's any question that –

**MR. COOKE:** Well, why don't I put my question to you and –

**MR. D. WILLIAMS:** Sure.

**MR. COOKE:** – just if what is in it is consistent with your understanding at the time –

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** – or not. And if it's not, we'll just move on. So I'll take you to page 7, Mr. Williams.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** And there's a section there under Labrador Metis Nation.

**MR. D. WILLIAMS:** So at this point would we be still referring to your group as the LMN or would it be –?

**MR. COOKE:** Yes.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** I believe it was relatively late in your time as premier that that –

**MR. D. WILLIAMS:** Okay, so 2008 would fit here.

**MR. COOKE:** Yeah.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** Yeah. 2007, 2008, yes.

**MR. D. WILLIAMS:** 2007, okay.

**MR. COOKE:** Yeah. And like I said, there's other references to Innu Nation which do not refer to New Dawn or the IBA, so –

**MR. D. WILLIAMS:** And it's after the decision too. It says here it's – and refer to a recent decision of the –

**MR. COOKE:** That would be after –

**MR. D. WILLIAMS:** So now we know it's after that.

**MR. COOKE:** Yeah, after Justice Fowler's decision.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** Yes.

**MR. RALPH:** Mr. Cooke, Brian Harvey's a director with Aboriginal Affairs.

**MR. COOKE:** Oh –

**MR. D. WILLIAMS:** I'm sorry. Okay.

**MR. RALPH:** Just to let you know.

**MR. COOKE:** Oh, thank you, Mr. Ralph.

So my learned friend has indicated that he – Mr. Harvey is a director with –

**MR. D. WILLIAMS:** Right. Thank you.

**MR. COOKE:** – Aboriginal Affairs. So just to go back, if you go through the paragraph on

Labrador Metis Nation at page 7, Mr. Williams –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** – about halfway through it says: "The Innu Nation of Labrador has indicated its objection to involvement by the Labrador Métis Nation as a party to an MOU, given that the proposed project is located on lands claimed" – with the – "by the Innu Nation."

Were you aware of any such objection at the time?

**MR. D. WILLIAMS:** Not a formal objection, but I certainly – I would think there's overlapped lands that are claimed by the Metis, because I always remembered the Metis is – I could be wrong on this, but had been in the area of Happy Valley-Goose Bay which is the same central area for the Innu. So I would think that there's probably some disputed land issues.

**MR. COOKE:** Okay.

And then it says – I'll just continue the next sentence: "As a result, involvement by the Labrador Métis Nation may jeopardize the cooperation of the Innu Nation, and should only be negotiated to the extent ... it is fully supportable by the analysis of the LMN's legal rights to participate."

**MR. D. WILLIAMS:** Yeah, that's a fair comment. I mean, you know we were trying to put the various groups in order of standing and/or priority, and it was quite clear that the Innu Nation had standing there. And as I can see it the Metis were fighting for their status –

**MR. COOKE:** Mmm.

**MR. D. WILLIAMS:** – and/or standing and were moving forward however.

**MR. COOKE:** Can I just take you now to the recommendation. The recommendation –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** The recommendation has two parts to it and I did have a question or two about it.

The first says: “Limit LMN participation directly in the EA process to a role solely as an interested party and intervener in the process.”

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And then the second says: “Commitments could be made however, in writing that the Crown will consult the LMN on significant decisions or steps in the EA process.”

I’m – when I read that, my reading on it, I had little bit of a tough time reconciling those two statements because the one says limit it to, really, the –

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** – non-Indigenous stakeholder, and then it talks about commitments being made. So I –

**MR. D. WILLIAMS:** I think it’s probably a courtesy is that, you know, we’re going to limit it based on their status. And I, you know, I’m trying to interpret Mr. Harvey’s memo and –

**MR. COOKE:** Sure.

**MR. D. WILLIAMS:** So we’re trying to – you know, we limit the participation; however, we are going to try and appease them or keep them happy, for want of a better term. And that’s probably not the best term but that’s really what was going on, is if – you know, if they should be consulted then we will consult.

So, you know, we’re trying to find a happy medium here. We’re not trying to annoy anybody or alienate anybody or diminish anybody’s rights; it’s just trying to find a way we can move forward.

**MR. COOKE:** The next –

**THE COMMISSIONER:** Okay, just before you –

**MR. COOKE:** Sorry, Commissioner, yeah, it’s –

**THE COMMISSIONER:** I think before you go to the next one –

**MR. COOKE:** Sure.

**THE COMMISSIONER:** – I think we’re going to take our break now for lunch. So we’ll come back at 2 o’clock this afternoon.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

**THE COMMISSIONER:** All right, Mr. Cooke.

**MR. COOKE:** Mr. Williams, just before lunch I was going to take you to Exhibit P-00291, please.

**CLERK:** 00291?

**MR. COOKE:** Yes.

**MR. LEARMONTH:** Tab 107.

**MR. COOKE:** And Mr. Williams, it appears to be a briefing note, and even though there’s not a date on it, I’m surmising that sometime in 2007 from –

**MR. D. WILLIAMS:** Right, yeah.

**MR. COOKE:** – the first page. And the title is: “Aboriginal consultation on the Provincial Environmental Assessment of the Lower Churchill Hydroelectric Generation Project.”

I’d like to take you to page 4 of that document, please.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And at page 4 of that document you’ll see that there is a section called “ALTERNATIVES” and it starts on –

**MR. D. WILLIAMS:** Yup.

**MR. COOKE:** – page 4 and goes on to page 5.

**MR. D. WILLIAMS:** Yes, yeah.

**MR. COOKE:** And we'll go into more detail in a moment, but there's three alternatives. The first is: "Develop an MOU between" Newfoundland and Labrador "and the Innu Nation regarding Innu Nation involvement in the provincial Environmental Assessment."

Number 2 is: "Develop MOUs with the Innu Nation and the Labrador Metis Nation regarding their involvement in the provincial Environmental Assessment."

And on page 5, number 3: "Consult all Aboriginal organizations to the same extent as the general public." And then it says: "This is not recommended."

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** So I'd like to spend a little time on alternative 1, because if you look at alternative 1, Mr. Williams, it says: "This is the recommended option."

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** So after that first sentence, which I've already read to you, it says: "Inform the Nunatsiavut Government and the Labrador Metis Nation about opportunities for stakeholder consultation in the EA process. The Province would respond positively for meeting requests to discuss the Project." And then you'll see it sets out some advantages: that it "Establishes a formal ... –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – relationship with the Innu." And that it: "Ensures that other Aboriginal organizations ... are informed about the Project."

And then it lists two disadvantages: that "LMN would not likely be satisfied with this," and that the negotiation for the MOU with the Innu Nation would take time, which could delay the process.

Do you know, is this the option that was chosen at that time in 2007?

**MR. D. WILLIAMS:** I don't know.

**MR. COOKE:** Okay.

Was it consistent with your memory of how things proceeded?

**MR. D. WILLIAMS:** Yeah, that seems right.

**MR. COOKE:** Okay.

Next, Mr. Williams, I'd like to take you to P-00293.

**MR. LEARMONTH:** Tab 109.

**MR. COOKE:** So if you look on page 2, it's a – title is: "Briefing Note – Issue: The Status of the Lower Churchill Hydro-electric Generation Project Environmental Assessment and Accommodation of Aboriginal Groups."

And the document is dated April 23, 2007.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** Now, before we go into the document itself, I want to take you back to page 1, which seems to be a covering email from a David Hughes, and it says in it: "Made minor changes to the Mandate to reflect the proposed denial of LMN involvement in the decision making. OK? Rob, Mandate does not deal with the Quebec Innu."

Now, I note that this email is not addressed to you, Mr. Williams. Have you seen this email before prior to today?

**MR. D. WILLIAMS:** No.

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** No.

**MR. COOKE:** Could I take you to page 7 of the document first?

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** And this is an appendix that says "Negotiating Mandate" at the top.

**MR. D. WILLIAMS:** Mm-hmm. Yup.

**MR. COOKE:** Okay. And just to go, I guess, to the lower third of the page under where it talks about Labrador Metis Nation. It has three bullets, and – maybe I’ll back up on that. If you go to the top of the page, Mr. Williams, you’ll see that it sets out a seven-stage process for the joint EA process, so that’d be the federal-provincial EA process.

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** Yup. And so it talks about, first one: “Design of Review Process/Development of Terms of Reference.

“2. Appointment of Panel.

“3. Review of Draft Environmental Impact Statement ... Guidelines.

“4. EIS Preparation,” says “(Proponent Consultations).

“5. Public Review of EIS.

“6. Public Hearings.

“7. Decision by Provincial” and “Federal Governments.”

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** Okay. So – ‘cause it’s going to refer to these various stages under the points, so I’ll just take you back now under the heading under Labrador Métis Nation. And it says: “The Departments of Environment and Conservation and Labrador and Aboriginal Affairs will negotiate an MOU with the federal government and the LMN which minimizes LMN involvement in some stages of the EA not open to the general public...” and then it identifies stages 1 and 2 “...and ensure” that “it is less than that accorded to the Innu Nation. The LMN will not be permitted to make a recommendation on the composition of the Panel.”

Do you see that?

**MR. D. WILLIAMS:** Yes, mm-hmm.

**MR. COOKE:** And then if you look at the – I’m not going to take you to the – read the sentence, but for the part under Innu Nation, one

of the points was that it would allow Innu Nation to make recommendation on membership of the panel.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** So then it says: “Negotiators will have latitude to negotiate LMN involvement ranging from a greater, separate level of involvement, such as private meetings with the Panel Members or the Proponent, at stages open to the public (3-6).”

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** Stages 3 to 6. So when I read that it seems to give some flexibility to those negotiating to try to determine the level of involvement. Would you agree with that?

**MR. D. WILLIAMS:** It does. I’m relating back what you’re reading to me –

**MR. COOKE:** Yup.

**MR. D. WILLIAMS:** – and that’s certainly what it says to me.

**MR. COOKE:** Yeah. And then it says under the third bullet: “Under no circumstances are officials authorized to agree to LMN participation or consent...” at the “decision-making stage (Stage 7) of the process.”

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** So that’s fairly strong language over (inaudible) –

**MR. D. WILLIAMS:** Yes, yeah. You know, and this is, you know, surrounded by the sensitivity to not overstepping our bounds with regards to the federal involvement and the ultimate conclusion of any issues with the Métis Nation.

**MR. COOKE:** So I’ll take you back to page 5, ‘cause page 5 actually has the recommendations.

And there’s five recommendations, but the fifth one has been redacted. So we’ll just stick with the four that are there. And the one I really wanted to focus on first was number 3, which says: “The Departments of Environment and

Conservation, Labrador and Aboriginal Affairs, and Justice, negotiate separate MOUs with the Innu Nation and the Labrador Metis Nation” with “the mandate outline in Appendix A.... The agreement with the LMN should give it a higher level of consultation than other stakeholders, but less than that accorded to the Innu Nation.”

So, I’m gonna suggest that this was a bit of a change, because when we looked at the earlier correspondence between you and Mr. Montague, and what was – you were advised on that, the advice you were given then, at least in the briefing note, the recommendation was not to enter into an MOU with –

**MR. D. WILLIAMS:** But was that a couple of years before though?

**MR. COOKE:** It was.

**MR. D. WILLIAMS:** Yup.

**MR. COOKE:** Yup. Yup.

**MR. D. WILLIAMS:** Yup.

**MR. COOKE:** Yup.

The other point I wanted to raise is on number 2, and I’m just gonna summarize and you can read it and tell me if you agree with my summary on recommendation number 2 is, when I read it in whole, it – it’s really, I think, trying to say that the Government of Newfoundland and Labrador should be in the driver seat vis-à-vis the federal government on the joint process.

Do you agree with that characterization?

**MR. D. WILLIAMS:** I, you know, it’s a recommendation. I – that’s what it says, yes.

**MR. COOKE:** Yup.

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** Yup. I guess that leads to my next question is –

**MR. D. WILLIAMS:** Yup.

**MR. COOKE:** – is: Do you recall whether these recommendations were accepted or not?

**MR. D. WILLIAMS:** No, I don’t. No.

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** And, you know, in fairness to you, I didn’t get it. Like, I suppose I had an opportunity but I didn’t go through these exhibits ’cause I think they came in late, and actually they weren’t part of my preparations so if –

**MR. COOKE:** Sure.

**MR. D. WILLIAMS:** – I was able to have gone through all of them, to kind of put it in context, I might’ve got, you know, a bigger picture of it so –

**MR. COOKE:** Yup.

**MR. D. WILLIAMS:** – bear with me on that (inaudible).

**MR. COOKE:** No, absolutely, and if you don’t recall, Mr. Williams, that’s fine, just –

**MR. D. WILLIAMS:** Yup.

**MR. COOKE:** – let me know, yup.

The next document is P-00294.

**MR. LEARMONTH:** Tab 110.

**MR. COOKE:** And it’s a document – it’s dated July 11, 2007.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And it’s a note on the current status of issues with Labrador Métis Nation, and it goes through – I’m not gonna go through it in any detail, but it provides some background, it talks about the Trans-Labrador Highway phase 3.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** And then on page 2 talks about the EA of the Lower Churchill Project.

My only question for you is: I didn’t see in the materials any – let me back up. We talked about the fact that in December 2007 in – the



Newfoundland and Labrador Court of Appeal came out with a decision on the Trans-Labrador Highway.

**MR. D. WILLIAMS:** Okay, yes.

**MR. COOKE:** Yup. And so my only question was this briefing comes prior to that, and –

**MR. D. WILLIAMS:** The Fowler decision was out. The first court – the court of first instance was out? Or was –

**MR. COOKE:** Yeah, it was, yes.

**MR. D. WILLIAMS:** Yes, yeah.

**MR. COOKE:** Yeah, yup.

And I was just curious whether – and I’m sure you don’t recall any briefing note ‘cause that would’ve been a change at least vis-à-vis the Trans-Labrador Highway issue once the Court of Appeal came down with its decision in December.

**MR. D. WILLIAMS:** In fairness to you, I would, you know, I would think that that would’ve gotten our attention. I mean, obviously, that was a milestone that was important –

**MR. COOKE:** Sure.

**MR. D. WILLIAMS:** – especially the Court of Appeal decision. That’d be, obviously, at a higher level.

**MR. COOKE:** We’re gonna go ahead now – jump ahead to 2008. So – and you talked yesterday how things were moving ahead and then ultimately in 2008 we – with Innu Nation, you arrived at the New Dawn Agreement –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – and the impact benefit –

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** – agreement with the Innu.

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** So, and likewise things are moving along in terms of the Lower Churchill plans.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** Yup. So I just want to refer you to P-00295, which is a briefing note in the Cabinet Secretariat.

**MR. LEARMONTH:** Tab 111.

**MR. COOKE:** And I’ll start on page 2, where it focuses on my client, under LMN.

**MR. D. WILLIAMS:** Page 2?

**MR. COOKE:** Yes.

**MR. D. WILLIAMS:** All right.

**MR. COOKE:** So it says: “The Province and the federal government have presented the LMN with the framework of the consultation process, in the form of a jointly-written letter. As noted, a consultation agreement with the LMN is not envisioned.”

So, we looked at a document at P-00293. I’m not gonna take you back to it, but it seemed to recommend that there should be a MOU with –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** – Labrador Métis Nation pursuant to that appendix on the involvement in the (inaudible).

**MR. D. WILLIAMS:** Again, bearing in mind these are recommendations.

**MR. COOKE:** Sure.

**MR. D. WILLIAMS:** So they have to go, obviously, through the process, through the minister, into the Cabinet and, ultimately, –

**MR. COOKE:** Sure.

**MR. D. WILLIAMS:** – for a decision.

**MR. COOKE:** So, in terms of – I’ll take you back to page 1 now, under the section that says: Background, and the second bullet.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** Second bullet says: This process envisions the Innu Nation as occupying the highest tier, and all other stakeholders – Aboriginal stakeholders occupying the second tier.

Is that how you would describe how you saw the consultation process at the time?

**MR. D. WILLIAMS:** Yeah, I would think so. I would think so. So right – you know, at this point, the change in the status is that we've got a lower court decision, we have a Court of Appeal decision, but there's nothing new on the federal side. Am I fair in saying that? That there hasn't been any acknowledgement by the federal side. So, there have been developments but the Innu are still the highest tier, yeah.

**MR. COOKE:** All right.

**MR. D. WILLIAMS:** I accept that.

**MR. COOKE:** I guess do you have any problem with the phraseology of tiers in talking –

**MR. D. WILLIAMS:** Yeah, and you know –

**MR. COOKE:** – about Aboriginal consultation?

**MR. D. WILLIAMS:** In fairness to whoever drafted this, you know, you – you know, you can't pick words out that are the wrong words. You know, you gotta do it from testimony. I mean sometimes you can use a poor choice of words.

**MR. COOKE:** Yeah, yeah, so –

**MR. D. WILLIAMS:** But tiers, yeah, tiers –

**MR. COOKE:** You might use another choice of words if you were the one drafting –

**MR. D. WILLIAMS:** Yeah.

**MR. COOKE:** – it.

**MR. D. WILLIAMS:** Possibly. But you know, again, it's in a briefing note. I mean it's not intended to really have the sensitive public

scrutiny that obviously it's getting today, but in all fairness it is a public document here.

**MR. COOKE:** P-00197, please, which is – I don't know what –

**MR. LEARMONTH:** Tab 39.

**MR. D. WILLIAMS:** Thank you.

Mm-hmm.

**MR. COOKE:** So this is a document, Mr. Williams, that says – with the title of Issuance of Water Rights for the Lower Churchill River –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – to the Energy Corporation of Newfoundland and Labrador. And you gave fairly extensive evidence on the water rights issues –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – I think mostly yesterday, and that's not really what I'm asking about, other than the fact that in the document at page 5 –

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** – it talks about Labrador or Aboriginal Considerations and what it says was: "Innu Nation has been extensively consulted on the Lower Churchill development by the Energy Corporation during IBA discussions and through the environmental assessment process."

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** Okay? So, I guess my question is are you aware if Labrador Metis Nation was consulted at all in regards to the issuance of water rights for the Lower Churchill?

**MR. D. WILLIAMS:** I don't know if they were consulted at all. I'm not sure –

**MR. COOKE:** Okay.

**MR. D. WILLIAMS:** – if there was any consultation there.

**MR. COOKE:** Okay.

I guess what I suggest is that –

**MR. D. WILLIAMS:** It wouldn't be extensive.

**MR. COOKE:** Yeah, and if they had been, it probably would have been – should –

**MR. D. WILLIAMS:** Absolutely. Yeah, that's fair.

**MR. COOKE:** – would have been included in that part of the briefing.

**MR. D. WILLIAMS:** Yes.

**MR. COOKE:** Okay.

So now I'll take you to September 2008 and that's when – that's when the province and Innu Nation reached and announce the New Dawn Agreement. I think it's P-00031 is a new release on that –

**MR. LEARMONTH:** Tab 38.

**MR. D. WILLIAMS:** Okay.

**MR. COOKE:** I don't really have any – I think the document really speaks for itself, but this was a point where the learned Commission counsel asked you some questions and I just wanted to clarify a couple points you made, and because I – what I took Commission counsel wanted to explore with you is that – and I think you agreed and I think we all agree that it was an achievement to get this kind of agreement with the Innu Nation and – but – what I think Commission counsel, what I will ask is, it seems that throughout all these documents there's consultation and ultimately, I would suggest, this is a form of accommodation of Innu Nation's rights and interest –

**MR. D. WILLIAMS:** Hmm.

**MR. COOKE:** – but that they seem to be lacking for the other Indigenous groups.

**MR. D. WILLIAMS:** Yeah – they, you know – in fairness, though, they were advanced; it was further along. We were – you know, it was closer to reaching this agreement than it obviously was because the Metis situation was evolving. You know, it might have been the

mere fact that Judge Fowler's decision and the Court of Appeal decision. So the Metis weren't at the same stage that the Innu were at, so the Innu were probably more – well, ahead in the cue for want of a better –

**MR. COOKE:** Yeah.

Now, I'll take you back, remember we talked about the Supreme Court of Canada decisions, Mr. Williams?

**MR. D. WILLIAMS:** Yes, yeah.

**MR. COOKE:** So that was a law of the land from 2004 on.

**MR. D. WILLIAMS:** But they hadn't been recognized by the federal government so that whole piece was the piece that was a difficult piece.

**MR. COOKE:** Yeah, but I'm going to suggest that what the 2004 decisions say is that when an Aboriginal group has assertive rights, not proven rights, then the duty to consult engages. So – and I just have one more thought.

**MR. D. WILLIAMS:** But so –

**MR. COOKE:** Can I just finish my thought?

**MR. D. WILLIAMS:** Yeah, sure.

**MR. COOKE:** Yeah.

And so – and that was consistent with the decision for my particular client of the Newfoundland and Labrador Court of Appeal in the Trans-Labrador Highway case –

**MR. D. WILLIAMS:** Right.

**MR. COOKE:** – where they found the province had a duty to consult and failed to do so. So just, I'm almost done.

**MR. D. WILLIAMS:** So –

**MR. COOKE:** No, no, can I just –?

**MR. D. WILLIAMS:** Okay, yup.

**MS. O'BRIEN:** Sorry, if I may interrupt here. My mic is off. Mr. Learmonth, could you just turn off your mic for me.

Thank you. Sorry, Commissioner, I just wanna make clear that we have advised the parties that the Commission is not dealing with section 35, duty to consult rights, consistent with what you've put in your interpretation decision. As the evidence may be getting a bit towards that, I just wanted to raise that point.

**MR. COOKE:** And I'm not trying to – I'm – Commissioner, I'm not trying to do that. I'm really just trying to get the – to underline the factual, you know, the basis of what decisions were made and why. I mean, that's really where I was coming from. So, let me just – maybe I'll just turn it this way, Mr. Williams: You talked about yesterday, and I think you used the phrase tiptoeing through the tulips on this, and I just wanted to give you the opportunity to maybe explain that 'cause I wasn't quite 100 per cent clear what you meant.

**MR. D. WILLIAMS:** Yeah, doing the dance, tiptoes through the tulips comes – I can't remember, Commissioner, it's the guy with the hair who was –

**MR. COOKE:** Tiny Tim?

**MR. D. WILLIAMS:** Tiny Tim, that's exactly who it was. So, the tiptoe through the tulips was just walk delicately and sensitively and really that was about, you know, try to make sure that we don't walk on anybody's toes –

**MR. COOKE:** Hmm.

**MR. D. WILLIAMS:** – in dealing with the very sensitive Aboriginal issues.

**MR. COOKE:** I have just a couple of more questions and one more document, Mr. Williams, and that's Exhibit P-00296.

**MR. LEARMONTH:** 112, tab.

**MR. D. WILLIAMS:** 112?

**MR. COOKE:** And my only questions about – it's a document dated either July 12, 2010 or

December 7, 2010, but I think it's July 12; 7-12-2010.

**MR. D. WILLIAMS:** Let's assume it is, I would've been gone by (inaudible).

**MR. COOKE:** Yeah yes, I know. Yeah, so – so let's assume it is, and it's an information note from DNR, and it's providing a summary of the Aboriginal consultation and associated issues.

And the only thing I want to highlight to you, Mr. Williams, is that when it refers to what consultation is going on, all the references are now to Nalcor, what Nalcor is doing.

**MR. D. WILLIAMS:** Mm-hmm.

**MR. COOKE:** So it seems to me that at some point there is a shift in terms of, if we look at prior documents it's really talking about the Government of Newfoundland and Labrador, and in this document it really centres on what Nalcor is doing in terms of consultation.

**MR. D. WILLIAMS:** You know, when it came to the project, Nalcor was intricately involved in the New Dawn Agreement, for example. Mr. Martin was probably at every important meeting that ever happened there, together with the minister and deputy – I think was Mr. (inaudible) and Aubrey Gover. So, that was kind of our team on those issues.

So if you are suggesting here that it's – now they are moving to more involvement in this then – perhaps, possibly as you are getting closer to potential decisions. That could have happened, I can't speak personally for it with accuracy.

**MR. COOKE:** Okay.

Those are my questions Mr. Williams. Thank you.

**MR. D. WILLIAMS:** No, thank you.

**THE COMMISSIONER:** Alright. Thank you. Grand Riverkeeper, Labrador; Labrador Land Protectors.

**MS. URQUHART:** Good afternoon, Mr. Williams.

**MR. D. WILLIAMS:** Good afternoon.

**MS. URQUHART:** I'm Caitlin Urquhart and I'm representing the Grand Riverkeeper and the Labrador Land Protectors, and I have a few questions for you today.

**MR. D. WILLIAMS:** Okay.

**MS. URQUHART:** So, leading up to the signing of the term sheet, and as recently as yesterday, you'd used a number of words specifically referring to the project, and so I'm going to get into what you mean by those words. So, particularly you refer to the project as green; can you tell me what you mean –

**MR. D. WILLIAMS:** As –

**MS. URQUHART:** – is – green?

**MR. D. WILLIAMS:** Green would be, from a greenhouse gas emission perspective, that it's water; there's no thermal emissions that would be – generally, I mean, the fact that we were quite proud that this was a climate-change project in our view. And I'm sure you have your own interpretation, but, you know, the fact that at the end of the day we would be 98 percent of what we would call clean energy.

**MS. URQUHART:** And so, you just, you –

**MR. D. WILLIAMS:** You know, with regard to environmental technology and definition – forgive me if I'm ignorant on some of the interpretation, some of the phrases, but that would be my general understanding.

**MS. URQUHART:** So, just to clarify: you're saying it's green from a greenhouse gas emission perspective?

**MR. D. WILLIAMS:** Right.

**MS. URQUHART:** And you used another word there: clean. Can you explain – elaborate on what you mean by that when you're referring to the project?

**MR. D. WILLIAMS:** Well that's – it's water; it's free of the emissions and the process that we'd go through with the thermal generation process.

**MS. URQUHART:** So you say it's free of emissions – and I'm sure you understand that there are emissions related to hydroelectric projects –

**MR. D. WILLIAMS:** Right.

**MS. URQUHART:** – so your –

**MR. D. WILLIAMS:** But generally – generally hydro; it even – it's interesting, in the States – they're not necessarily considered to be, you know, the clean projects, but that – I suggest to you that that's probably because of the coal lobby that's going on down there. There's a heavy emphasis to keep coal as a – the burning fuel in the States.

But from a personal perspective, I would – in the general scheme of things and by comparison to a lot of others, I would consider it to be a clean project – not perfect.

**MS. URQUHART:** So again, you said by comparison. So what exactly are you comparing to when you –

**MR. D. WILLIAMS:** Coal, oil and gas; even nuclear has an impact on me personally, in a sense that it's dangerous from my perspective, so ...

**MS. URQUHART:** So really when you say clean, you mean it has lower greenhouse gas emissions than burning fossil fuels.

**MR. D. WILLIAMS:** Yeah.

**MS. URQUHART:** Okay. And when you refer to the project as sustainable, what do you mean by that?

**MR. D. WILLIAMS:** Well, the project is sustainable from an economic perspective, but also from a – the water is flowing forever perspective; that would be part of it.

**MS. URQUHART:** The water's flowing forever. Okay, so that it's a renewable resource.

**MR. D. WILLIAMS:** Yeah.

**MS. URQUHART:** So again, we're comparing this to a non-renewable resource such as –

**MR. D. WILLIAMS:** Right.

**MS. URQUHART:** – fossil fuels.

**MR. D. WILLIAMS:** Exactly, yup.

**MS. URQUHART:** So, all of those are sort of intended to be in comparison to a fossil –

**MR. D. WILLIAMS:** Yes, yes.

**MS. URQUHART:** – fuel generation.

So, Madam Clerk if you could pull up 00170 please at page 2?

**MR. LEARMONTH:** Exhibit 10. Tab 10, I should say.

**MS. URQUHART:** And if you can just scroll down a little bit there, please? So I'm just gonna – and a little bit further Marcella, please, thank you.

So I'm just gonna read to you a –

**MR. D. WILLIAMS:** I'm sorry, Exhibit 00010? I went to 110.

**THE COMMISSIONER:** Tab 10.

**MR. D. WILLIAMS:** I'm sorry

**MS. URQUHART:** Tab 10, Exhibit 00170 on the second page there.

So it says here David Hales, who is a counsel for sustainability policy at Washington D.C.'s-based Worldwatch Institute, and he says: "... the recent outbreak of hydro enthusiasm in eastern Canada bucks the global trend. He noted that hydro dams may be cleaner than fossil-fuel plants but they still release significant amounts of greenhouse gases when flooded vegetation decomposes."

He goes on to say: "It's an approach that's kind of trapped in the 1970s and 1980s," – he said of the Newfoundland and Labrador – or sorry, Newfoundland and Quebec's plans. "It's ignoring too much of what we've learned about large dams." He goes on to say that it'd be much wiser for provinces to invest their billions in energy-efficiency programs.

So, I put this to you as – I expect that this was in May – on May 15 of 2006. So, at the time there was a body of research around the negative environmental impacts of mega-dams. So, I would put it to you that you were aware of that body of research?

**MR. D. WILLIAMS:** No, I would not have been aware of the volume of research; but I knew there was an opinion out there to that effect, yeah, and this is one of them.

**MS. URQUHART:** So, you were aware that there was a criticism or a counter, a counter opinion that was that these projects had negative environmental impacts.

**MR. D. WILLIAMS:** Yes, some negative environmental impacts.

**MS. URQUHART:** But that they had not – negative environmental impact?

**MR. D. WILLIAMS:** Nope.

**MS. URQUHART:** Okay, we can debate on that all day. So we can, we're going to go – I'm going to ask you to go to – it is Exhibit 00175, please Madam Clerk, at page 15.

**UNIDENTIFIED MALE SPEAKER:** Um, 15?

**MR. D. WILLIAMS:** (Inaudible.)

**UNIDENTIFIED MALE SPEAKER:** Fifteen.

**MR. D. WILLIAMS:** Thank you.

**MS. URQUHART:** So this is a – I suppose, a briefing or a meeting that – some materials that were prepared by Newfoundland and Labrador Hydro in November of 2006, I believe based – on looking at the context, it doesn't say specifically on it – but it's who I believe it was from. So in any event, it indicates there some potential communications points.

So it's environmental issues; so I'm going to go through some of those. So firstly, you discussed methylmercury yesterday with Mr. Learmonth, and I just want to confirm that prior to signing the term sheet you were aware of concerns that

methylmercury as a consequence of reservoirs relating to hydro dams.

**MR. D. WILLIAMS:** Yeah, but I also felt that they were reviewed and had been considered.

**MS. URQUHART:** Sorry, can you put that into context; they were reviewed and had been considered?

**MR. D. WILLIAMS:** You indicated that prior to signing the term sheet in 2010, that I was aware that there were mercury issues.

**MS. URQUHART:** Mm-hmm.

**MR. D. WILLIAMS:** Yes, I was, and I also felt that they had been reviewed by the government, by Nalcor and through the environmental – the detailed environmental process.

**MS. URQUHART:** So, I'm just going to go back though. You were aware – so you understand the concept of how methylmercury is created – so vegetation, when it decomposes under water releases methylmercury.

**MR. D. WILLIAMS:** Yes.

**MS. URQUHART:** And you're aware that methylmercury is a consequence –

**MR. D. WILLIAMS:** Yes.

**MS. URQUHART:** – of reservoirs –

**MR. D. WILLIAMS:** Yes.

**MS. URQUHART:** – in hydroelectric projects. And you were aware of that prior to the term sheet.

**MR. D. WILLIAMS:** Yes.

**THE COMMISSIONER:** So can I just sort of step in a little bit here, Ms. Urquhart, because I think we (inaudible) sort of plant the seeds of where we are going with this environmental piece. So I'll remind you of paragraph 54 of my interpretation decision, where I indicated – this was in addition to what I was doing with the Indigenous groups.

I said “I will also investigate what analysis, risk assessments, etc., were done as regards environmental concerns and whether these were appropriate and reasonable in the circumstances based upon accepted industry standards and the knowledge that the parties had at the various times when the analysis or risk assessments were completed. Included in this” – review – “will be a review of the measures taken, if any, to address any legitimate environmental concerns. I will not, however, assess the correctness of the positions taken by the various parties.”

So I would ask you, in asking your questions of this witness and others, that you keep that in mind as we move forward, because this is not going to be another environmental assessment here. As I indicated in my decision, I don't have the time nor do I have the mandate to do that. So I just want to make sure we understand each other as we start and as we move forward, okay?

**MS. URQUHART:** Absolutely. Thank you, Commissioner.

You know, so I'm not gonna belabour the point but, essentially, I just wanted to confirm that, that you were aware of the concern or that methylmercury is a result of mega-dams and reservoirs. And additionally, I'm just gonna briefly go on this here – it talks about destruction of fish habitat in addition – so you would've been aware that there were concerns about the destruction of fish habitats.

**MR. D. WILLIAMS:** Yes. You know, there's already a project on this river as well.

**MS. URQUHART:** But we're talking specifically in relation to this project.

**MR. D. WILLIAMS:** I'm just stating a fact, that's all.

**MS. URQUHART:** And you were aware of these – so there was also concerns about destruction of the habitat along the river and the wetlands, and whatnot, that would be caused by this reservoir.

**MR. D. WILLIAMS:** As a result of Muskrat?

**MS. URQUHART:** Yes, correct.

**MR. D. WILLIAMS:** Yeah, not the – to some extent, you know, not to the extensive detail that you might understand, but no, I was aware that there would be some, yeah.

**MS. URQUHART:** So you said yesterday – when you were mentioning the benefits of this project, you indicated that Newfoundland and Labrador needed to have power, we were heading towards a capacity deficit.

And I would ask if Madam Clerk could go to Exhibit 00246, at page 13, please. So –

**MR. D. WILLIAMS:** Where is this?

**THE COMMISSIONER:** I'm just trying to find that for you now.

**MR. LEARMONTH:** (Inaudible.)

**THE COMMISSIONER:** Tab – 246 –

**MS. URQUHART:** I believe it's in – it forms part of the general exhibits, so we may not have it in a book.

**MR. LEARMONTH:** I don't see it in the –

**THE COMMISSIONER:** Okay, so it's at tab 15, but it's not in your materials. It's in another book of documents –

**MS. URQUHART:** So –

**THE COMMISSIONER:** – so I don't believe it's in front of you on paper, but I think it's up on – in front of you on the screen.

**MS. URQUHART:** And I can give you a bit of context.

**MR. D. WILLIAMS:** Sure.

**MS. URQUHART:** So this is referred to as the Marbek report, it's a report from January 31, 2008, and essentially was a report looking into what we call conservation and demand management measures.

**MR. D. WILLIAMS:** By whom and for whom?

**MS. URQUHART:** Sorry?

**MR. D. WILLIAMS:** Who did it – I'm sorry, by whom and for whom?

**MS. URQUHART:** Marbek.

**MR. D. WILLIAMS:** And who was that for?

**MS. URQUHART:** I believe it was for the Government of Newfoundland or else it was for – should say on the – or it was for – that would've been still Newfoundland Hydro at the time. I have it at my desk, but not in front of me here. So I'm trying to have as few papers as possible, as we are trying to make this a paperless process.

In any event, the findings, essentially, are summarized here on page 13, number 2: "The study findings confirm the existence of significant potential cost-effective opportunities for CDM in Newfoundland and Labrador's Residential, Commercial and Industrial sectors." So that's all sectors.

So I would put to you that conservation and demand management was also something that you were aware of, at the time, prior to the time of signing the term sheet?

**MR. D. WILLIAMS:** Yeah, I don't know where this – you know, I'm looking at 10 lines here, so I – if this was a study that was done by someone for someone, I can't say necessarily – unlikely that I've seen it before. So what I can add to that, I don't know. I –

**MS. URQUHART:** So – I mean, I –

**MR. D. WILLIAMS:** What do you want – what question are you –

**MS. URQUHART:** So I'm asking you: Conservation and demand management which are – I mean, conservation being conserving energy –

**MR. D. WILLIAMS:** Right.

**MS. URQUHART:** – and demand management being the use of – you know, we have supply and demand –

**MR. D. WILLIAMS:** Mm-hmm.



**MS. URQUHART:** – the use of measures to manage or reduce demand.

**MR. D. WILLIAMS:** Mm-hmm.

**MS. URQUHART:** So you were familiar with those –

**MR. D. WILLIAMS:** Yes.

**MS. URQUHART:** And I would go back – if we can go back to 00175 at page 15.

Again, this was one of the points of communication – was people should reduce. So, I guess, I would ask you whether – when you speak about the capacity deficit, whether or not – I believe you said was coming ahead at 2015 – whether or not that included conservation and demand management?

**MR. D. WILLIAMS:** That would've not have been what I was anticipating when I said capacity deficit.

**MS. URQUHART:** Earlier today you discussed with Mr. Budden, he asked you a question about protest delays and you responded that you never anticipated that.

**MR. D. WILLIAMS:** No, I said I would like to have think – thought we would've gotten out in front of it, then, hopefully prevented it and talked about it and worked our way through it. That would be – but I also said to him you can't prevent a protest.

**MS. URQUHART:** So you were aware that there was a risk of –

**MR. D. WILLIAMS:** I'm aware that – I assure you I'm aware there could be a protest here today outside the doors. As soon as you walk out the door there could be someone there, so it happens.

**MS. URQUHART:** And you were aware that there was a risk that protests could delay the project.

**MR. D. WILLIAMS:** Well, it depends on how much they delay the project. I would not have expected a protest to delay a project for, you know, a significant time, like a year or whatever

it happens to be. To put it back a year, I would not have anticipated that.

But to have people exercising their democratic right to protest, absolutely, but, you know, there's certain types of protests. There's protests were people stand out and they state their case, they have their signs, they speak their peace, they talk to the press, and then there's other protests were people enter premises and block progress and those are different type of protests, so there's lots of different types.

**MS. URQUHART:** I'm not gonna touch that one.

**MR. D. WILLIAMS:** Up to you.

**MS. URQUHART:** I'm going to ask you to go to – oh, I'm missing my number here. One second.

Sorry. Madam Clerk, 192 at page 2, please.

**CLERK:** Thirty-three.

**THE COMMISSIONER:** Tab 33?

**MR. LEARMONTH:** Thirty-three.

**MR. D. WILLIAMS:** Tab 33?

**MS. URQUHART:** And so if you can scroll down a little, please. Keep going, there should be a section: Proceeding with Environmental Assessment. Yeah. I'll just pass that (inaudible) to you.

So I'm just gonna note here – so the fourth line down – so: "This past year, a series of sessions were held throughout Labrador, allowing community members to speak directly to project members and have their feedback factor into ... planning and development of the Project."

So I note this passage because it appears to me that the notion that the project would be rejected on the basis of significant environmental cost was not in your contemplation at that time.

**MR. D. WILLIAMS:** Give me that again? Can you read that to me again and then put the question, if you don't mind?

**MS. URQUHART:** So I read this to say that people in Labrador were given opportunity to provide feedback and that would factor into planning and development for the project.

**MR. D. WILLIAMS:** Yes.

**MS. URQUHART:** Okay.

So when I read that, that appears to me that the idea or the notion that the environmental assessment process would lead to a rejection of this project or this project not being sanctioned was not in your contemplation.

**MR. D. WILLIAMS:** No, it always is. It was one of our major hurdles. The environmental assessment was, you know, a big plateau for us. We had to get through that or we didn't go anywhere.

**MS. URQUHART:** And so I would ask, Madam Clerk, if you can go to P-00213, please. The last slide, please.

**MR. LEARMONTH:** That's tab 56.

**MS. URQUHART:** I'm just going to note actually what – I don't know whose handwriting is on this, but I'm going to note the same thing as the person who wrote on it did, that – and, again, I'm not exactly sure when this document was created because it doesn't have a date at the first page, but it indicates here January 2011, award 2011 early works; March 2011, so two months later, general EIS approval.

And so for the public I'll just advise that EIS refers to environmental impact statement, which is the sort of initial process. And it's a part of the provincial environmental assessment process and as well is part of the – what was the joint environmental review panel.

So I note – sorry, did you have the date for it?

**UNIDENTIFIED MALE SPEAKER:** No.

**MS. URQUHART:** Sorry, I thought we might have – somebody might have had the date that this document was produced.

So I'm just going to refer you to that discrepancy there where it indicates that early

works would be awarded two months prior to approval of EIS.

**MR. D. WILLIAMS:** I was gone. I was gone then, so I don't – I don't know. This is too –

**MS. URQUHART:** I mean this would've been produced some time in 2010, right, because it's showing what's going on in 2010. And this, appears to me at least to be –

**MR. D. WILLIAMS:** I could've –

**MS. URQUHART:** – something going forward.

**MR. D. WILLIAMS:** It could've been in retrospect. I don't know. It could've been retrospective. I can't tell you because I just don't know. You just got to give me context rather than, like – like, I'm up here looking at a screen and I'm going to try and take something and relate to everything that's around it. But, you know, I can't speak for the period between January and March 2011 because I wasn't there.

**MS. URQUHART:** Well, I would put to you that Nalcor, based on this, was at least in the planning stages, anticipating that they would award early works in advance of approval of the environmental impact statement.

**MR. D. WILLIAMS:** You'd have to ask Nalcor that.

**MS. URQUHART:** I mean that's what it looks like to me. And so I guess – I just go back to this point that the idea that it would be rejected on the basis of environmental assessment was not really in the contemplation at the time.

**MR. D. WILLIAMS:** Can't speak to it. I mean, you know, I don't – but what Nalcor were going to do after I left, I have no idea. I was free, I was gone.

**MS. URQUHART:** I mean Mr. Learmonth referred you yesterday to what was Exhibit 00184 that indicated the project's committed sanction date of 2009. And I'm not going to go back into that, but I'm just – will raise it again as part of this process. And somehow when I reprinted these some of my numbers have gone. So give me one moment and I'll just – almost at the end.

I had – so if we can turn to Exhibit 00277, page 28, please. And this is a document –

**THE COMMISSIONER:** Tab 93?

**MS. URQUHART:** – that you might recognize: *a Danny Williams led Government, REAL Leadership, The New Approach*, is what it's entitled. It's from 2003.

**MR. D. WILLIAMS:** I recognize that one, yup.

**MS. URQUHART:** Sorry?

**MR. D. WILLIAMS:** A lot of work went into that one. I recognize that one.

**MS. URQUHART:** Absolutely.

So if you go there to page 28, please, can you keep scrolling there? Just right there, that's perfect. So I'm just going to refer to these two bullets here. They say – were referring to sustainable development and what the objectives of sustainable development will be for this government.

And so one of the points here is: "Safeguard the life supporting capacity of air, water, soil and ecosystems." It goes on to say: "Provide for ... sustainable development of renewable resources in a way that enables people to provide for their economic, social and cultural needs, while preserving the integrity of ecosystems and meeting the reasonably foreseeable needs of the future generations."

I put to you this forms part of a definition of sustainable development.

**MR. D. WILLIAMS:** Mm-hmm.

**MS. URQUHART:** And if we can go, Madam Clerk, please, to Exhibit 00041 at page 12. And I note that this is – mindful that this is after your time. So this is the Joint Review Panel's summary there. That's perfect.

**MR. D. WILLIAMS:** I think that's a separate – is that a separate handout we got today?

**MR. LEARMONTH:** That's not in our documents.

**MR. D. WILLIAMS:** I think, yeah, it would be – I do.

**MS. URQUHART:** You have a copy?

**MR. D. WILLIAMS:** It was given out just before we started.

**MS. URQUHART:** Oh great.

**MR. D. WILLIAMS:** So I do actually have it.

**MS. URQUHART:** Perfect.

So it's indicated there just that the Joint Review Panel – so as you're aware this is a panel of the Canadian Environmental agency, as well as the relevant Newfoundland and Labrador departments came together and produced this report.

And I'm going to just read one – this one passage: So that the panel determined that the project would have significant adverse environmental effects on aquatic and terrestrial environments, culture and heritage and, should consumption advisories be required in Lake Melville, on land and resource use. So you've used the words "green, clean and sustainable" in describing this project –

**MR. D. WILLIAMS:** Mm-hmm.

**MS. URQUHART:** – and in my view your definition of those is quite narrow and, in fact, actually conflicts with your own definition of sustainable development that you've provided. And I wonder if you can – knowing – you know, given the hindsight that we have now today that you still feel comfortable using those words to describe this project.

**MR. D. WILLIAMS:** Yeah, you know, in trying to strike the balance between the environment and environmental concerns and industry and developing industry, it's not easy as a politician or as an administrator of a government. So you've got to try and strike the balance between – and that really goes to political philosophy; if you're far on the left or you're far on the right. But you got to strike the balance so that you can create industry and which will create revenues that will ultimately benefit the social needs of the province.

And on the other hand you've got to meet the environmental requirements and satisfy – not satisfy, because you can't satisfy anybody on either side, but at least try and address the legitimate concerns of environmentalists, if you don't mind me using that term, which I think is fine.

So – and that's not easy, you know? And so you – you know, you tend to rely on, you know, when there's an environmental – a comprehensive environmental process that's gone into by the federal and the provincial governments, that's kind of one that I kind of partially delegate my own line saying like, you know, people who know a lot more about this are looking at it and looking at it thoroughly in the best interests of their electorate or the people they represent.

As well, it's my understanding that Nalcor would've done, you know, some studies or checked into or looked into what the concerns were. I also have a department of the Environment – it was Environment and Conservation or whatever the name was at that particular time – and they would look at it. And so those were, you know, complex issues that I would have to leave to people who knew more about them than I did.

We did, you know, in the course of the Energy Plan, go through a consultation and, you know, invited people who had an interest in the Energy Plan. And I would suggest that, you know, based on the blueprint which was out there people who were interested in a sustainable environment would make representation. I myself actually met with your clients at one point – I can't give you the exact date but I've met with them as well – and addressed their – not addressed, I discussed their concerns; whether I addressed them or not that – beauty is in the eye of the beholder so ...

But having said all that so, you know, to the best of my ability I tried to, you know, have as much scrutiny and as much filter and as much attention placed to these issues as I could do in my somewhat limited ability to delve right down deep because of the position I held.

**MS. URQUHART:** So, I mean, I'm just going to – you said these are complex issues and I'm

just going back to this point that you distilled them down to these sort of neat words that – as we've discussed earlier, words have particular meanings, and so you refer to this project over and over as clean, green and sustainable.

And I'm just wondering, knowing what we know now, given the concerns that people have had, given the fact that the JRP's indicated that it has significant adverse environmental effects, and in the context of your own definition that you've provided in 2003 of what sustainable development means, do you feel that you can stand by assertion that this project is clean, green and sustainable?

**MR. D. WILLIAMS:** Yes.

**MS. URQUHART:** Thank you, Commissioner.

**THE COMMISSIONER:** Emera Inc.

**MR. NOEL:** No questions, Commissioners.

**THE COMMISSIONER:** Former Nalcor Board Members?

**MS. G. BEST:** No questions.

**THE COMMISSIONER:** Newfoundland Power?

Have I missed anyone? I see – I don't think I've missed anyone. Okay, redirect Mr. –

**MR. T. WILLIAMS:** You missed one.

**THE COMMISSIONER:** I'm sorry – oh, so I did. Most important one. Mr. Williams.

**MR. T. WILLIAMS:** I wouldn't go that far.

**THE COMMISSIONER:** Well, for today anyway. So this is former government officials, '03-'15.

**MR. T. WILLIAMS:** Thank you Mr. Commissioners. Good afternoon, Mr. Williams.

**MR. D. WILLIAMS:** Good afternoon, Mr. Williams.

**MR. T. WILLIAMS:** I hope – I don't have to introduce myself to you –

**MR. D. WILLIAMS:** No, no.

**MR. T. WILLIAMS:** – but for the benefit of those who may be viewing, I'm here in the capacity of legal counsel for the former government officials for the period of 2003 to 2015, with the expectation of former Premier Dunderdale who has her own counsel.

And I only have some very brief wrap-up questions. And I know that we have canvassed a lot of these issues very thoroughly throughout the last two days, so in the interest of time, I just want to touch on some points. It may be a little repetitive in some instances.

But one of the issues I want to touch on that I think probably came out more today than yesterday was with respect to some of the bigger issues, those being the Energy Plan, the decision of your administration to move forward with the Muskrat Falls Project on your own, as we say, or on our own as it has been described, the Maritime Link.

There has been a lot suggestion that these were personal preferences for you and, the assumption being made, that's why they proceeded on that basis. I'd like to get your opinion as to whether or not, it's an act with reflection at the time or whether or not there were other considerations in place in respect to these decisions?

**MR. D. WILLIAMS:** No, I mean, I think there's evidence before the commission that, you know, the – I'd – where I'd stated that this was a personal preference, but that has to be in perspective. You know, certain alternatives would've been a preference only in the basis of background knowledge I had.

But for purposes of proceeding with this project, it was only after extensive review – and I'm trying not – I'll try not to be as repetitive if I can, Mr. Commissioner – but it was after extensive review and after looking at all the options, conclusions were reached, and they were based on independent reviews as well and whether the – that it was done by the independent people hired by the government or independent people hired by Nalcor or people who, after the fact, even after I went, came out of the scene and reviewed this.

So decisions were basically made on a lot of information and elimination of alternatives so that it was not a situation of, okay, this is my personal preference, here's where I want to be at the end of the day, and I'm just gonna find a way to get there.

That's just absolutely not the case.

**MR. T. WILLIAMS:** And with respect to a lot of these decisions, would these be made solely for – by you or would these go through an entire governmental process when any decision of a substantial nature was made?

**MR. D. WILLIAMS:** No, I just said we had a team approach. We actually even went down to our caucus and – where all the government members in the province – and we went through and discussed these issues with them. We had done, you know, public consultations, so we were out there talking to the people of the province. We had gone to – I had gone through two elections; Minister Dunderdale went through an election after I was gone.

So you know, these issues and these mandates were put to the people of Newfoundland and Labrador, and they supported those. So you know, it was only – and Nalcor, of course, obviously played an intricate part in all of that. And so wherever we could get good advice and good information, we sought it out, and then we tried – and that was always my philosophy. You know, it's none of us know it all and none of us should pretend we know it all.

So you try and get the best information and the best people around you and broadly consult and then reach a conclusion that's based on the best available.

**MR. T. WILLIAMS:** Would that also be based on input from relevant government departments at the time and those who would be in positions of authority in those departments?

**MR. D. WILLIAMS:** Absolutely. And I mean, when I say it was the team, it's (inaudible), and that really is kind of an oversight on my part.

Absolutely, government involvements would be very much involved. For example, you know, Natural Resources would be lead on this, but

Justice were involved because we were getting legal opinions; Finance were involved because of the financial implications; environmental – the Environment would be involved because as we just discussed; international – Intergovernmental Affairs, Labrador and Aboriginal Affairs, Women's Policy, you know, there's – you know, all departments at some point really had something to do with it.

**MR. T. WILLIAMS:** So would they be involved in all the important decisions that were made in relation to the project?

**MR. D. WILLIAMS:** Yes, I would like to think there was always input. As things came up to the Cabinet table, you know, they would process through Cabinet secretariat, and Cabinet secretariat would disperse out that particular issue to whatever departments they felt were relevant.

Now, you know, I'm trying to think of one that may have not been as relevant. I – you know, maybe supply and services mightn't have been as relevant on all these issues. But there was a core of major departments that were all involved, and the expertise down through government that existed in all those departments.

**MR. T. WILLIAMS:** Okay.

I would like move into another area, that being Nalcor, and we spoke quite extensively with respect to your support and opinion with respect to the staffing of Nalcor, but in terms of the corporate organization, obviously this was created under your tenure. What did you see as the importance? Why was it so important to create a new energy corporation?

**MR. D. WILLIAMS:** I guess it was – the genesis was just, kind of, looking at Hydro-Québec and saying, like, you know, they do a good job of doing what they do for the people of their province. You know, they're dogged, and we went through that, and I'm not going to go back through that again. But you know, they really represent the people of Quebec very well – their interests, you know, to the detriment of others, which is not their job. So Hydro-Québec was one of the models. Then I travelled to Norway and looked at the Norsk Hydro-Statoil model, and that was a, you know, basically a

state company that represented the major energy assets of Norway.

I kind of thought, okay, what is that model, because they put, you know, away significant funds over the years. They built a heritage fund, and we didn't have the luxury of doing that in the beginning, because we had schools to build and mold to get out of schools and roads to build. So – but we liked the model, and I thought it's best if we can, kind of, maximize our strengths here. We are a small province.

But I was also inspired by Iceland. We went through Iceland, and there's 300,000 people up there that are a country. And you know, I went back to 1949 then, and I kind of thought, you know, these people made it on their own, and they have a successful country.

So anyway, I was trying to basically put all our strengths together in one package and get the expertise in that package and get the best that money could buy and that we could find in order to come work for us, so that then when we are in negotiations with a Hydro-Québec or a Chevron or an ExxonMobil that we would have, you know, good people at the table.

Because in all fairness to our senior civil servants, who are bright and as competent as a civil service can be, they get shuffled. You know, they get moved from Tourism; they go to Natural Resources. That's the nature of the bureaucracy. So I wanted to make sure they also had the specific energy expertise whether that was in oil and gas or hydro or whatever it happened to be.

**MR. T. WILLIAMS:** So there would be no suggestion that Nalcor was created to facilitate the Muskrat Falls Project in particular?

**MR. D. WILLIAMS:** Oh, no. No.

**MR. T. WILLIAMS:** In the bigger picture?

**MR. D. WILLIAMS:** No, not at all.

Nalcor, Nalcor's – I'm hoping is going to be the crown jewels, what I refer to it as, the goose that lays the golden egg. Sometime in 2050, when that company is worth tens if not hundreds of billions of dollars, because of the assets that it

can generate, it'll pale in comparison – its wealth will pale in comparison to what the debt of the province will be. So hopefully, the province will just go and say to that company we need dividends of X dollars to do what we want to do and pay off our debt if we have any debt in those days.

So it was intended to be, you know, ultimately a cash cow for the Government of Newfoundland and Labrador, and ultimately, the people of Newfoundland and Labrador.

**MR. T. WILLIAMS:** Thank you.

Madam Clerk, if we could bring up an Exhibit P-00286, please?

We could just –

**MR. LEARMONTH:** (Inaudible) tab 102.

**MR. T. WILLIAMS:** Pardon me? Oh, tab – okay.

**MR. LEARMONTH:** Tab – that's for Mr. Williams' –

**MR. T. WILLIAMS:** Okay.

**MR. LEARMONTH:** – assistance.

**MR. D. WILLIAMS:** I recognize that face.

**MR. T. WILLIAMS:** And the reason – I don't want to – and you're certainly free to reference the exhibit that I have up, but a number of times during your examination, both yesterday as well as today, you made reference to the support of the people of the province and other milestones, both at the time of your announcement in December of 2010, as well as continued support for the project.

And I'd like to get your comments on why you saw – and I use this article as a reference to that, being probably one of the most recognizable Newfoundlanders – why you saw public support and support by others in the community and at large important for this project?

**MR. D. WILLIAMS:** Can we roll that just up to the script that's below it?

**MR. T. WILLIAMS:** You can bring it down, yeah, to the text, please.

**MR. D. WILLIAMS:** Bring it down. Yup.

It says, basically, if I can read it, Mr. – or “Crosbie, a former federal and provincial cabinet minister, supports the plan to generate power on Labrador's Churchill River and export it through subsea cables to Newfoundland. Similar cables would send as much as 40 per cent of the energy to Nova Scotia and other markets.

“In an interview with CBC News, Crosbie said the political reality is that Newfoundland and Labrador does not have many other options for moving the energy.”

He went on to say: “It's the only way I can see [in which] we are going to escape from the trap that we're in now with respect to Quebec and the failure of federal governments to exercise their powers under the BNA act to force provinces to accept transmission of hydroelectricity, or electricity generally, across the provinces, just as they have done ... for oil and gas, ...”

So I, you know, I took – let me see, that's probably the gist of it. You know, I took great comfort in that. There's the senior statesman in my – one of the senior statesmen, I don't want to (inaudible) disrespect to other parties – one of the senior statesmen in the province, who's passed judgment on this and has basically said, we don't have any other options, that this gets us out of the trap that we're in with regard to Quebec.

Now, he's had the experience. He's went through the era in the Moores government, and then he was a federal minister, he was also in – one of the exhibits that's before us is where he actually made a recommendation is that if we don't get any satisfaction out of Quebec and Gull then I think we should do Muskrat. That's actually in an order-in-council.

So, you know, he would be one of the people that I, again, would take great comfort in. He's been there, he's seen it all, he knows what the options are, he's explored them himself, he was in a government federally and provincially as a minister and he supports what we're doing here.

So, you know, I know he was criticized for that article afterwards but, you know, it is what it is.

**MR. T. WILLIAMS:** And, I guess, kind of keeping on that trend, because you've dealt with some of the historic references with respect to the project. And so, I guess, in kind of a capsuled question in that: Why do you feel your government – you've talked about the aligning of the stars and things of that nature – why do you feel your government and/or successor governments – and I refer to the Dunderdale administration when they ultimately sanctioned the project – why was this – these administrations able to proceed with this project when others couldn't? What do you attribute allowing Newfoundland, to finally after 50-odd years, to be able to proceed with this project?

**MR. D. WILLIAMS:** Well, you know, in fairness to other governments, in fairness to Mr. Peckford's era – in Premier Peckford's era, Premier Wells or Premier Tobin, you know, the fiscal situation of the province was not perfect during that time. The cod moratorium was on the go, there were lots of unfortunate things that were happening in the province.

But from our perspective, some people would say we couldn't afford to, but my opinion is we couldn't afford not to. You know, we had as good an alignment as we were ever gonna get. I know when the – back in the – 1980 when the lower Muskrat was recommended by Vic Young's group at the Lower Churchill corporation, there were certain hurdles that they had to get over. And there was the PPA, Power Purchase Agreement, the Aboriginal rights, the water rights, the financial – the guarantee from the federal government, there's one I'm missing but that's most of them.

These things were in place. We got those things in place. We were in a – had just come out of a recession, we were in a time of the lowest historical interest rates, probably ever in 30, 40 years. And, you know, it was there. It was the right time to do it, the hurdles were out of the way, the province was in good shape financially, you know, we'd come back with \$2 billion, which had gone out of the coffers from Ottawa.

So the time was right, and in all fairness to all previous premiers, they'd all had a shot and

they'd all tried it, and I felt we were there and we should do this.

**MR. T. WILLIAMS:** And in that context how would you reply to the recent comments, as recently as this weekend, that said that – that described this project as being, and I quote, the biggest economic mistake ever made?

**MR. D. WILLIAMS:** Well, I'm gonna put that in a political context. In fairness, that was made at a fundraiser, at a political fundraiser. So let's put it there for what it is and say it's the bluster of what goes on when you're trying to rally the troops.

Having said that, you know, how this can be – was it an economic – what was the term?

**MR. T. WILLIAMS:** Biggest economic mistake –

**MR. D. WILLIAMS:** Biggest –

**MR. T. WILLIAMS:** – ever made.

**MR. D. WILLIAMS:** – economic mistake.

Well, you know, there was – there's an article in – back in the '90s that said Hibernia was a sinkhole. Well, that's turned around. Hibernia is not a sinkhole. Hibernia happens to be, you know, very bountiful for us. Upper Churchill was seen as being a great thing and that's turned into an economic mistake.

My statement to that would be that this will prove to be, over time, and I've said it before I might be around the see it, but this – over time this will prove to be very sound economically, and very fruitful for the people of Newfoundland and Labrador. You know, the economic mistakes would be years ago giving the fishery to the – jurisdiction of the fishery to the federal government. I mean, we – from an economic downturn perspective, we had 30,000 people out of work in one day here during the cod moratorium.

The Upper Churchill has cost us \$50 billion. How can this be the biggest economic mistake we've ever had? So I just take that and I park it, and I say that's just a political statement that was out there. Ask the six – the five, 6,000 people



who worked up in Churchill, ask them if they think it was an economic mistake. I've talked to some of them; they think it's greatest thing since sliced bread.

They've not only made money but they've also had an opportunity to further their careers and now can go out further into the world, in any part of the world and do a job. Ask the people of Labrador whether this was an economic mistake. You know, right now, off the top of the thumb calculation is that out of that \$10 billion that's been spent at least \$3 billion – at least \$3 billion – has gone directly into benefits. The million hours for the Innu, the many, many, many, many hours of employment that have been created for all Newfoundlanders and Labradorians; not only the ones in Labrador who get priority, but the ones who fly back on these planes that we see, one of the – if we get the chance to go up and fish for three or four days, you know, these are the people that are benefiting from this.

So this, you know, this is not the biggest economic mistake, and in fact I would suggest that it's been very helpful in keeping Labrador prosperous. And the guy who owns the convenience store in Labrador – in Happy Valley-Goose Bay is probably delighted it was up there too, I would think.

**MR. T. WILLIAMS:** Okay, and one final question and –

**MR. D. WILLIAMS:** Yup.

**MR. T. WILLIAMS:** – you've made reference to –

**MR. D. WILLIAMS:** Sorry, Mr. Commissioner, I don't want (inaudible) –

**MR. T. WILLIAMS:** – the people of the province and references to that, and I guess my last question is along those lines.

Is that given that you're obviously seen as the person who kick-started the current development, and given a number of the obstacles that have occurred over the course of the development and some very legitimate concerns from people of the province that have expressed those over the last number of years, in terms of the project's continuance. What would

you say to the people of the province where we are with respect to this project now?

**MR. D. WILLIAMS:** Well, the very first thing I would say is that, you know, with regard to rates, that will be resolved. Don't get concerned, don't leave this great province of ours and don't, you know, get spooked. You know, rates will be taken care of. They will go up somewhat, there's no doubt about that. The world's rates are going up but rates – increases in power rates that are due to Muskrat Falls can and will be mitigated by presumably, hopefully, by this government, but the mechanisms are there to do it.

From a perspective of the project itself, I don't want to minimize the overruns because I would prefer there were no overruns, there's no doubt about. But having said that, when the overruns of the \$4 billion are put in perspective with the potential of what we have on the Churchill River when we – in 2041 when Upper comes back, if we develop Gull, what we have from Muskrat when that's up and running. You know, Muskrat hasn't even started yet and we're here in 2018 conducting, you know, a detailed Inquiry as to what is seriously wrong with it.

I mean I – you know, I personally – and this is for the Commissioner, obviously, but, you know, I think we're going to find that this is a very good project. I'm actually delighted to see that the new CEO has gone from boondoggle to, you know, this is a project that any – you know, any megaproject in the world would be proud of where this is right now, that it will give us the – some of the lowest, most stable rates in North America on a go-forward basis; that the dam costs are not – not damn – D-A-M costs are not so – not out of whack.

You know, he's – in recent days he's made a lot of – recent months he's made a lot of positive statements and I would suggest that that's because he's basically seen where it is now and, you know, once we get over the hurdle of those overruns which occurred – and, obviously, the Commissioner will deal with why those occurred and even maybe even more so in the next phase – but we're going to end up with a project up there that – and you've all seen it, it's a beauty to behold from an engineering prospect. But, you know, we will have built it, we will

operate it and we will own it at the end of the day, and it'll be paid off forever.

And, you know, we're building – and, you know, with all due respect to the questions from the Grand River people – and I get that, I understand exactly what they're saying – but in the climate change world this is a clean, green project. It's not perfectly clean, it's not perfectly green, I acknowledge that, but it is clean and green in the big scheme of things. And we're now moving in a world that, you know, that's changing, and the world in 20 years' time is going to be dramatically different, and where fossil fuels are going to fit into that world I would suggest probably be drastically diminished. Hopefully we've sold all our oil by the time all that happens.

But, you know, we have – we do have a world-class project there. We needed the power. We got the lowest cost alternative. No matter what has been presented so far to the Commission it's still proving to be the lowest cost alternative. And, you know, so my conclusion is, is that this is a good project and for a whole pile of reasons. I've submitted – and I wouldn't even go near that list, Mr. Commissioner, but I've submitted 20-odd reasons there as to why this is good.

So, you know, I feel good about it. I – it's also so important for the people of this province that participated in this and did it, and they did it right, and they did it to the best of their ability. And, you know, any kind of slurs now – that we have to get on our hands and knees in order to go to the federal government to bail us out of this – absolutely unnecessary and this will prove to be a good project in the end.

**MR. T. WILLIAMS:** Thank you. That's all the questions I have.

**MR. D. WILLIAMS:** Thank you.

**THE COMMISSIONER:** Redirect, Mr. Learmonth?

**MR. LEARMONTH:** I have one area that I wanted to cover in redirect.

Mr. Williams, in answer to Mr. Williams's questions, I believe you mentioned that there was a team in government which included a

number of departments: Finance, Justice, Department of Natural Resources and possibly others that were involved in, you know, studying and eventually approving the Muskrat Falls Project, at least up to the signing of the term sheet.

Now, I want to ask you this question on this subject: In the course of our investigation we've searched for reviews, reports, analysis that may have been prepared by Department of Finance, Treasury Board, Natural Resources, any government – any government department –

**MR. D. WILLIAMS:** Mmm.

**MR. LEARMONTH:** – which would've entailed a review of the project costs – an analysis and review of the project costs, those being at DG2 in November 2010. We've searched for those records. We've searched for records that would, you know, indicate that there was an analysis done by government of the possible impact on the province's fiscal situation should there be serious cost overruns, and we haven't found anything at all.

Now, I know you said that you believed that these studies would have been done –

**MR. D. WILLIAMS:** Yeah, I didn't say studies but I believed, you know, there's (inaudible).

**MR. LEARMONTH:** Yeah, but we haven't found anything to –

**MR. D. WILLIAMS:** Okay.

**MR. LEARMONTH:** So that would contradict the assertion that these reviews were done. Do you have any information – any specific information – that could lead us to find some reviews or analysis in the government records?

**MR. D. WILLIAMS:** I don't have anything in my possession but, you know, understand when I'm talking about the team, the – this wasn't the sort of a panel that was – even though there were panels put together at different times, this wasn't a panel that was put together to be the Muskrat Falls information filter –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – processing panel. The – you know, over the course of the eight years that it took to bring this to sanction, you know, all these departments would’ve been involved, they all would’ve had input.

**MR. LEARMONTH:** Mmm.

**MR. D. WILLIAMS:** You know, the lead department is Natural Resources and that was Minister Byrne, Minister Rideout, Minister Dunderdale, Minister Skinner. So there would be different ministers involved and different deputy ministers as well. So – and in – when it comes to Cabinet table it would come in through the specific – that specific department. And, you know, if there was financial implications Finance would speak to it.

You know, I’m not aware of any major concerns that were brought to my attention but, you know, I do know that these would’ve gone through a department. The degree of analysis and papers produced, I would not have – I would not have seen because it would be processed and then it would move through –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – as it was accepted or it was approved. If there was anything that was negative or serious or, you know, people –

**MR. LEARMONTH:** Mmm.

**MR. D. WILLIAMS:** – a minister or a deputy minister said, oh no, you know, this has got to be brought to your attention, that would’ve happened.

**MR. LEARMONTH:** Yeah.

Well, you know, I don’t – I know you’re giving your evidence based on everything you know, but based on what we have found in our investigation, it appears that government simply accepted the review and work and cost estimates provided by Nalcor, up to Decision Gate 2 anyway, on November 18 without any analysis or review.

**MR. D. WILLIAMS:** I don’t think that would be a fair comment. I know you’re not, you know –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – trying to be mean here or anything or unfair but –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – no, I mean there – without any review with how the analysis – no, absolutely not; there’d be review, there’d be analysis. As to – I’m sorry – as to what the degree of that would be and in what areas, I can’t tell you, but there’s certainly –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** You know, I don’t want to leave you with the impression that, you know, information came in from Nalcor and then it just went right up this clean pipe –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – through government and, you know, and basically was not filtered in any way whatsoever, I would not – well, that certainly didn’t happen.

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** But there would be – there is a process and, you know, perhaps the clerk – or, you know, one of the clerks who gives evidence or –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – the deputy ministers could give you some idea as to ...

**MR. LEARMONTH:** Well, I don’t want to extend this into a debate back and forth, but we have questioned the senior representatives of government from different departments and have asked for these, you know, analyses or reviews and we haven’t really received anything because they’re – appear to be nonexistent.

**MR. D. WILLIAMS:** If they say they don’t exist, well then, they would know, but you –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – we can't make the blanket statement, though –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – that nobody looked at any of this going through because I mean there's –

**MR. LEARMONTH:** No.

**MR. D. WILLIAMS:** You can see from the briefing notes and whatever's been presented to the Commission that there's a paper trail there with deputy ministers –

**MR. LEARMONTH:** Yes.

**MR. D. WILLIAMS:** – and other officials that are in that. So if you're talking strictly about the in-depth degree of risk analysis, for example, which I know is an issue, and/or finances, you know, you can rest assured that the deputy minister of Finance would certainly be looking at the impact of this particular project generally on the fiscal situation of the province.

It would not roll through – up through a deputy minister or minister and they go, well, you know, that's okay, let that run – let that one go through.

**MR. LEARMONTH:** Well, anyway, I'll leave it like this: If such reviews were carried out by the deputy minister of Finance and that, we have not located them. We'll continue to look for them but we haven't located them yet. We know there are some documents in the Department of Finance that indicate there was a – you know, projections done about the economic effect of spending this money in the province, you know, the multiplier effect.

There are – there were studies like that but, well, as I said earlier we haven't found anything to suggest that government conducted an independent review of the cost estimates and the analysis of the possible effect on the province's fiscal position, should there be serious cost overruns. Haven't found those, and I'm speaking up until November 18, 2010, when the term sheet was signed.

I do realize that the government had the DG3 numbers –

**MR. D. WILLIAMS:** Right.

**MR. LEARMONTH:** – reviewed by Manitoba Hydro, but I'm just speaking up to the time that you left government.

**MR. D. WILLIAMS:** Well, you know, if the ministers were Minister Sullivan, Minister Marshall, Minister Kennedy –

**MR. LEARMONTH:** Yes.

**MR. D. WILLIAMS:** – knowing these individuals, I can tell you there certainly would be scrutiny of –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – the numbers going through as responsible ministers. There's – you know, I can assure you of that. There's no doubt about that. And, you know, what paper trail you were looking to find –

**MR. LEARMONTH:** Yes.

**MR. D. WILLIAMS:** – you know, obviously, you talked to the deputy ministers about that. But, you know, all I can say is that, you know, I would assume –

**MR. LEARMONTH:** Yeah.

**MR. D. WILLIAMS:** – that it happened on the way through.

**MR. LEARMONTH:** But I – do you agree with me that since you can't point to any document –

**MR. D. WILLIAMS:** No, I don't – I don't have them.

**MR. LEARMONTH:** – that's an honest assumption.

**MR. D. WILLIAMS:** But I wouldn't have those documents, right?

**MR. LEARMONTH:** But that's an honest assumption you're making, that that –

**MR. D. WILLIAMS:** Yeah.

**MR. LEARMONTH:** – would've happened, yeah.

**MR. D. WILLIAMS:** You know, based on what I know to –

**MR. LEARMONTH:** Yes.

**MR. D. WILLIAMS:** – you know, the level of detail –

**MR. LEARMONTH:** Okay.

**MR. D. WILLIAMS:** – that these ministers would have that –

**MR. LEARMONTH:** Okay.

**MR. D. WILLIAMS:** – you know (inaudible).

**MR. LEARMONTH:** Well, we'll know – I just wanted to get your perspective on that and we –

**MR. D. WILLIAMS:** Sure.

**MR. LEARMONTH:** – will be calling evidence from other Cabinet ministers and senior executives or senior civil servants (inaudible) wanted to put that to you since it was raised in the (inaudible) mention of it in answer to Mr. Williams's question.

So that's all I have. Thank you.

**THE COMMISSIONER:** Just as a follow-up to that – and I don't want to make more out of this than what needs to be made out of it right at the moment – but I gather from what I'm hearing from you that this would not be a situation where a Crown corporation would come in as a proponent for a very – for a project, basically put numbers in front of the government and government would be expected to accept those numbers as gospel.

**MR. D. WILLIAMS:** No. No, the – you know, the – they are the experts on the composition of the numbers. I wouldn't think that there would be anybody in Finance themselves, for example – or maybe there is – who could actually break down each transmission line and say, okay, fine, tick that box, that adds up to \$2.1 billion.

They wouldn't have that level of expertise. There would be a general scrutiny of it, but the reliance would be on the expertise that was contained within Nalcor. And that also goes to even what I said before about the risk – the strategic risk assessments and all that. Those would be done and be analyzed by Nalcor, because they – you know, as obviously, you know, there's – the power projects are complex projects and, you know, the generation and the transmission are complex and they require, you know, an engineering knowledge as well as an accounting knowledge.

**THE COMMISSIONER:** All right.

See, I understand that, and I can appreciate the specialty involved in this, but I just think in the normal course of events if you had somebody coming, even one of the departments that are basically proposing to spend government money on a project, from my understanding from what I've seen so far from the documents that we have seen is that there's a fairly rigorous consultation, if I can call it that, with various departments asking what their input might be, how it might affect them.

Finance usually does a piece on it; Treasury Board would normally do something on it. If there were any ramifications potentially to, particularly the fiscal position of the province or whatever, it would be addressed. One thing we haven't found so far is any of that in any of the documents that were produced, at least up to November of 2010.

And so it is a bit surprising to us that we haven't seen that and we may well find it. In fairness to everyone, I mean, we have 2½ million documents and more now, so we're still looking and we are basically questioning people about it. But I gather from what you said you would be surprised if that was not done?

**MR. D. WILLIAMS:** Yeah – and yes, Commissioner. And, you know, and there was a process that went on for actually six years while I was there, and even in the course of the EOI and the assessments of those options and the rejection of some options and the consideration of others, at that point there was also some drilling down as well as to what those costs could be.

Now, albeit in the beginning Muskrat was included so they were lumped together, so it wasn't easy to ultimately break them down to Muskrat alone, which basically occurred in the summer of – the summer or early fall of 2010. But, you know, there was a process on the way through at least where these departments and/or Finance were considering this.

And, as well, I remember that there was scrutiny by, I think, the Bank of Nova Scotia and the Royal Bank, so I would suggest that possibly they had been recruited, for want of a better term, by the government to give us an opinion exactly as to, you know, what the financial capability was in order to finance these projects, and there would be analysis.

As we move further on, even beyond my time, and then you've obviously got all these independent advisors, you know, the ones, the Navigants and the MHIs and all the other ones that came in and had a look at it. You know, this has also gone through the environmental process; it's gone through the federal loan guarantee process, so you would have the scrutiny of the federal government and all their people on it as you went through the sanction phase, and the other independent advisors that were involved in this.

So there's a lot of people that went through this and had a look at it and assessed it. So if it wasn't being done directly by the Department of Finance, as maybe suggested, then should look to any other independent ones that were done, because I do remember on the way through, in reviewing the evidence, that the banks – and I remember that actually being told to us – that the banks were okay with this.

So they couldn't be just okay with it. I would suggest that they would drill down, too. So, you know, presumably there would be something that will corroborate, you know, what you're looking for in that respect.

**THE COMMISSIONER:** Okay.

So just one other question: Would there be a difference making a proposal to government if it was coming from a private corporation versus coming from a Crown corporation in – with

regards to the work that would be done within government to assess the proposal?

**MR. D. WILLIAMS:** Well, I'd have to say, yes. On a project of this magnitude I would have to say no, only on the basis that there was – there would've been an integration, too. There was a process here with Hydro and/or Nalcor whereby some of our civil service were interchanging with them.

So, for example, at the end of the day in the Emera meetings, I would think that there would – their senior civil servants or one or two would've been at that. As we move through various meetings and stages there would've been an integrated team at various points in time. So – but if the final output came, there may have been a certain satisfaction level on the basis that these people had worked together on getting to this point so, therefore, information was being shared and they were privy to some of that information.

You know, I just think we really got to try to analyze how they interworked during that period to get what information was being gleaned as you moved up to that final decision in 2010.

**THE COMMISSIONER:** Okay. Good.

Thank you, Mr. Williams.

**MR. D. WILLIAMS:** Thank you, Commissioner.

**THE COMMISSIONER:** You can step down.

**MR. D. WILLIAMS:** Thanks.

And, Commissioner, if I may, just thanks to you and your staff and the legal team. Like, you mentioned a couple of million documents; like, this is a monumental task. How you ever managed to just filter through the documentation that's here and get it to counsel and to witnesses in a presentable way is a feat of no mean accomplishment, I can tell you right now.

What you've taken on here is a big deal, but to come in here and have this move as efficiently as it does and have the benefit of the documentations that are relevant, just hats off to everybody that's been involved in it.

**THE COMMISSIONER:** Okay. Thank you.

So I believe we have our witnesses set for tomorrow. So we're going to be finishing a bit early this afternoon and we'll start again tomorrow morning at 9:30.

Did we want to address what we're doing tomorrow, by the way, with regard to the witnesses? Or we've already sort of set that out; everybody knows where we're going tomorrow?

**MS. O'BRIEN:** I think so.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** Okay. Good.

Thank you very much. We're adjourned.

**CLERK:** All rise. This Commission of Inquiry is now concluded for the day.