



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 25

Commissioner: Honourable Justice Richard LeBlanc

Thursday

25 October 2018

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.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

One matter outstanding from yesterday, I think it was Mr. Coffey asked to – asked whether we had the UARB Nova Scotia decisions filed, and they can be found as Exhibits P-00245 and P-00366. Those are the two main exhibits.

MR. COFFEY: Thank you, Sir.

THE COMMISSIONER: All right.

MR. LEARMONTH: The witness – first witness today is Fred Martin.

Could Mr. Martin be sworn, please?

THE COMMISSIONER: Okay, just stand, Sir, please, if you would, and take your right hand on the Bible.

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. F. MARTIN: I do.

CLERK: Please state your full name for the record.

MR. F. MARTIN: Frederick Herbert Martin.

CLERK: Thank you.

MR. LEARMONTH: Mr. Martin, you live in St. John's, do you?

MR. F. MARTIN: I do.

MR. LEARMONTH: Yeah, and what is your present occupation?

MR. F. MARTIN: I'm a retired electrical engineer.

MR. LEARMONTH: Please state your education after you graduated from high school in St. John's.

MR. F. MARTIN: I attended Memorial University to obtain a diploma in engineering, and then I went on to Nova Scotia tech in Halifax to complete my degree, resulting in a Bachelor of Electrical Engineering.

MR. LEARMONTH: In 1971?

MR. F. MARTIN: 1971, yes.

MR. LEARMONTH: What was your work history from 1971 up until December 31, 2005, when you retired from Newfoundland and Labrador Hydro? Just give us a summary of that, we don't need much in the way of detail.

MR. F. MARTIN: Okay.

On graduation I was employed by the federal Department of Public Works. That lasted about three months, until I realized that it wasn't, you know, what I had gone to university for, for five or six years. I saw an ad for an engineer in the paper with Newfoundland Hydro, I applied for it and I went through the interview process, and I was successful in getting employment with them. So that would have been, I'll say, July of 1971.

The process they wanted me to go through was as a, again, a junior engineer. I was to go to three or four locations around the system –

MR. LEARMONTH: Mm-hmm.

MR. F. MARTIN: – to become familiar with the various operations of the corporation.

MR. LEARMONTH: Okay.

MR. F. MARTIN: My first assignment was at the Bay d'Espoir Hydroelectric plant. These temporary assignments were supposed to be six months in length.

MR. LEARMONTH: Mm-hmm.

MR. F. MARTIN: I was in Bay d'Espoir for 22 months. Great exposure, wonderful exposure for a junior engineer.

From there I was posted to Bishop Falls –

MR. LEARMONTH: Right.

MR. F. MARTIN: – with the protection and control group. I was there for a year. From there I went to the Holyrood thermal generating station for 18 months. From there I was transferred into the engineering department in St. John's, and I was there until 1978.

In '78 I had an itching for – to look at some opportunities in the private sphere. I left Hydro. I was gone for 3½ years, realized that was not what I wanted. Another opportunity came up at Hydro, and in 1981-'82 I got the job there as the senior protection and control engineer in the engineering department.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: I was in that position until 1988 when I applied for the position of manager of telecontrol. I was in that position until 1995, when I applied for the position of director of engineering in the transmission and rural operations division. I was there until 2003, when I applied for the position of vice-president of transmission and rural operations. I was there until the fall – in that position until the fall of 2005, when the major reorganization within Hydro was in effect. And, at that time, I was appointed as the vice-president of engineering for Newfoundland and Labrador Hydro.

MR. LEARMONTH: And you stayed in that position – go ahead.

MR. F. MARTIN: I stayed in that position until the end of the year, December 31, 2005, I retired.

MR. LEARMONTH: And since your retirement on December 31, 2005, have you engaged in consultancy, consultants work on various occasions?

MR. F. MARTIN: Yes, I have engaged in three, what I would call three fairly significant

positions. The last one being the reference review.

MR. LEARMONTH: And the reference that we're here to discuss the day, that's the last –

MR. F. MARTIN: That's the last one.

MR. LEARMONTH: – consulting job that you took?

MR. F. MARTIN: Yes, it is.

MR. LEARMONTH: And you were a contractor in all these positions?

MR. F. MARTIN: That's right.

MR. LEARMONTH: Not an employee of any of the entities –

MR. F. MARTIN: That's right.

MR. LEARMONTH: – that hired you?

MR. F. MARTIN: One of them I was on the board of directors for the Qulliq Energy, which is the Nunavut –

MR. LEARMONTH: Yeah, okay.

MR. F. MARTIN: – electric utility.

MR. LEARMONTH: All right.

Now, before we get into the main part of your evidence, I just wanted to – you've advised me that you wanted to make a correction to the evidence that you gave in your interview on May 10, 2008?

MR. F. MARTIN: That's correct.

MR. LEARMONTH: I'm just gonna read this out and ask whether you can confirm that I have it right.

Your statement at page 10, and repeated at pages 42 to 45 of your transcript, was to the effect that the initial information delivered by Nalcor to the board on – by June 30 did not include the feasibility study of Muskrat Falls completed in 1999 to 2000.

That information was incorrect. And since your interview, you've advised me that, by reference to timesheets you prepared at the board, that in July 2011, he reviewed the feasibility study on Muskrat Falls, completed in 1999 or 2000.

So, on that basis, you now conclude that the feasibility report on Muskrat Falls, completed in 1999 to 2000, must have been delivered to the board by Nalcor by June 30, 2011. Is that your conclusion?

MR. F. MARTIN: Yes, that is correct.

MR. LEARMONTH: And that's the correction you want everyone to know in your interview transcript.

MR. F. MARTIN: Absolutely.

MR. LEARMONTH: Okay, that's fine. Thank you.

Now, Ms. Maureen Greene has gone through many of the documents, so I'm not going to repeat the evidence she gave by referring you to all the same documents, there will be some, but I'm just going to go to selected documents to move this on as best we can.

If you could turn to Tab 5, Exhibit P-00534? You got that?

MR. F. MARTIN: Yes, I do.

MR. LEARMONTH: Can you tell me what that document is?

MR. F. MARTIN: This is a document that actually engages me as the consultant – one of their advisors – with regards to the reference.

MR. LEARMONTH: Yeah. And on page four, we see that you signed that contract on May 26, 2011?

MR. F. MARTIN: That's correct.

MR. LEARMONTH: Okay, so that was a little bit before – a few weeks before the reference was delivered to the board – around the middle of June.

MR. F. MARTIN: Yes.

MR. LEARMONTH: So you were hired before then, were you?

MR. F. MARTIN: Yes, I was.

MR. LEARMONTH: Yep.

And I understand that one of your first duties was to send out requests for proposals for professional services on the cost estimates and the project, generally.

MR. F. MARTIN: Yes.

MR. LEARMONTH: Correct?

MR. F. MARTIN: That's right.

MR. LEARMONTH: Could you turn to Exhibit P-00536, which is at tab 7?

Can you identify that document, Mr. Martin?

MR. F. MARTIN: Yes, this is the request for proposals that we issued to three consulting companies for their services.

MR. LEARMONTH: Do you know who those companies were?

MR. F. MARTIN: Yes, they were Manitoba Hydro International, Knight Piésold and Kohn Crippen Berger.

MR. LEARMONTH: Yes. So you got their – they all responded, did they?

MR. F. MARTIN: They did.

MR. LEARMONTH: And you – there's a selection process at the conclusion, of which MHI was awarded the contract. Is that correct?

MR. F. MARTIN: That's correct. Yes.

MR. LEARMONTH: Please turn to tab 10 which is Exhibit P-00539.

Mr. Martin, this is a – the minutes of a meeting on June 17, 2011. So that's, I think, the day that you got the reference from government, attended by: Geoff Young, Dave Harris, Gilbert Bennett, Paul Humphries and Angela Dunphy of Nalcor

and on behalf of the PUB: Cheryl Blundon, Doreen Dray, Maureen Greene and Fred Martin.

Do you confirm you were at this meeting?

MR. F. MARTIN: I do.

MR. LEARMONTH: And what was the purpose of the meeting, generally?

MR. F. MARTIN: It was basically a kick-off meeting with Nalcor representatives to discuss the types of information that we were expecting, obviously, the schedule that we were working to and the processes which we were hoping to develop as we went forward to address the reference.

MR. LEARMONTH: Yeah. So why – was there any urgency in getting this information from Nalcor?

MR. F. MARTIN: Yes. I think, from the very beginning, the board was concerned about the schedule and the tightness of the schedule. So we wanted to move the thing along as quickly as we could.

MR. LEARMONTH: And from a technical or engineering point of view, were you concerned?

MR. F. MARTIN: Not at that point. I assume, again, from the discussions we had at this meeting that most of the information was available – readily available. But as time went on, I think all of us on the board side, and Nalcor, were concerned that the schedule was somewhat optimistic.

MR. LEARMONTH: Okay.

Please turn to tab 14, Exhibit P-00543.

Now, this is an email from Sam Banfield to you and Maureen Greene dated July 4, 2011. Just before I ask you about this document, was there an – did you have an understanding that there would be a large shipment of documents to the Public Utilities Board from Nalcor by June 30?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah. And was that expectation met?

MR. F. MARTIN: No, it was not.

MR. LEARMONTH: Okay, what type of documents, if any, did the Public Utilities Board receive on June 30?

MR. F. MARTIN: I think this is in my transcript. And I was the one, actually, over at the desk when the delivery of the documents occurred.

MR. LEARMONTH: You were at the desk?

MR. F. MARTIN: I – they called and said that the courier was there with the documents. And I went over to have a look for a memory, and the documents that I recall being in there were the Water Management Agreement that the board had already seen, the generation expansion plan from 2009 I believe it was, some additional sheets of paper and some additional dividers that would go in binders like this, as you compile a binder full of documents. There may have been other things there, but that's my recollection going back.

MR. LEARMONTH: And that didn't meet your expectations?

MR. F. MARTIN: By no means.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: We understood from that initial meeting you mentioned a few minutes ago that there was lots of documentation available and it would be forthcoming. The other thing was that we had not been advised, in advance of the arrival of this information, that it wasn't going to be what we expected, that it wasn't going to be anywhere near complete what we had been advised would be coming and it was disappointing.

MR. LEARMONTH: Right.

Now, just turning to that document that I referred you to at tab 14, P-00543, Mr. Banfield says: "Good to hear from you. I'm replying as Fred is busy ... with Nalcor. We have received a limited number of documents ... I'd estimate somewhere around 10% or less of what we requested."

Was that a fair estimate of – do you agree with that statement as of July 4, 2011?

MR. F. MARTIN: If this is referring to the documents that came with the courier –

MR. LEARMONTH: Yes.

MR. F. MARTIN: – no, I'd say 10 per cent was an overestimate.

MR. LEARMONTH: Okay.

MR. F. MARTIN: But it does say: or less, so ...

MR. LEARMONTH: Yeah, so how low would you go on that?

MR. F. MARTIN: Oh my. How low can you go?

MR. LEARMONTH: Okay.

Well, anyway, so it's less than 10 per cent?

MR. F. MARTIN: I would have thought it was, yes.

MR. LEARMONTH: Yeah.

And just to confirm that you were – one of your roles was to provide liaison services between MHI and Nalcor. Is that right?

MR. F. MARTIN: Yes, that's correct.

MR. LEARMONTH: And also to deal directly with Nalcor in obtaining the documents?

MR. F. MARTIN: That's correct.

MR. LEARMONTH: And you would identify the documents that you needed based on your experience at Newfoundland and Labrador Hydro. Is that right?

MR. F. MARTIN: Yes, that's right.

MR. LEARMONTH: You'd know what to ask for or ...?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: And we also asked for anything else that wasn't in the list that we thought might be helpful in reviewing the reference.

MR. LEARMONTH: Okay.

Now, tab 15 is Exhibit 00544. It's another email from Sam Banfield to Maureen Greene and you, referring to a meeting which would have been July 4. Do you recall attending a meeting on July 4 at Nalcor?

I'm sorry; this refers to a meeting with the board.

MR. F. MARTIN: With the board.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: Yes.

MR. LEARMONTH: Sorry about that.

MR. F. MARTIN: Yeah.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: Do I recall this specific meeting?

MR. LEARMONTH: Yes.

MR. F. MARTIN: No, I don't.

MR. LEARMONTH: You don't recall it.

Okay, well, I won't ask you anything about it.

Now, I referred to MHI. Can you just confirm that at tab 18? That's Exhibit P-00547, that's the contract with Manitoba Hydro International.

MR. F. MARTIN: Yes and a draft of this was actually attached to the RFP that went out, so they knew what type of agreement we were looking for.

MR. LEARMONTH: Yeah, well, this is a signed agreement.

MR. F. MARTIN: This is a signed agreement.

MR. LEARMONTH: It's signed on page 13.

MR. F. MARTIN: Yes.

MR. LEARMONTH: That's Exhibit 00547.

MR. F. MARTIN: That's correct.

MR. LEARMONTH: There's a letter at tab 19, it's Exhibit P-00548. This is a letter written by Maureen Greene to Nalcor. I know you weren't copied on this letter but I believe you've reviewed it.

Did this letter that Ms. Greene send reflect your understanding of events as of July 21, 2011?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yes. Okay.

Next I'd like you to turn to tab 21, which is an information note – we've been told – dated July 27, 2011. We've been told that these information notes or briefing notes was part of the protocols that were in existence at the Public Utilities Board –

MR. F. MARTIN: That's my understanding.

MR. LEARMONTH: – during this period.

So these are just updates or they're summaries of what has happened and what is expected. Is that correct?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Okay.

At tab 22, I'd like you to look at that, Exhibit P-00551. This is a memo that you prepared and sent to Maureen Greene and Sam Banfield following a meeting with Gilbert Bennett and Paul Harrington on Friday, July 29. Did you attend – do you recall attending that meeting?

MR. F. MARTIN: Yes, I do.

MR. LEARMONTH: Do you have a recollection of – independent of the information in the memo?

MR. F. MARTIN: Only that I had attended the meeting, yes.

MR. LEARMONTH: Okay.

And at the end of the – in the beginning paragraph you indicate that – you explain that the board was very frustrated with the flow of information from Nalcor, et cetera, and then the rest of it speaks to (inaudible). Was that a fair categorization of the position of the board –

MR. F. MARTIN: Yes.

MR. LEARMONTH: – from your point of view?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah.

And then at the end, on page 2, the last paragraph on page 2 you say: "In summary, I felt the meeting was very positive. This can only be confirmed on the subsequent actions of Nalcor. I did" – not – "ask when additional information would be filed. The response was that some would probably be filed today."

And so you were – you left the meeting with a positive frame of mind. Is that right?

MR. F. MARTIN: Yes, I did.

MR. LEARMONTH: And I understand that at these meetings – I know that there were issues with the production of documents, but is it correct that the meetings were always polite and cordial and Nalcor were respectful and helpful? Is that a fair way –

MR. F. MARTIN: Yes.

MR. LEARMONTH: – to put it?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah.

There's another document. I want you to refer to tab 23, that's P-00552, and that's another similar type memo of a meeting that you had with Gilbert Bennett, Paul Harrington, B. Barnes and

J. Kean on August 1, 2011. Do you recall that meeting, Sir?

MR. F. MARTIN: Yes, I do recall having the meeting. I'd like to – if you're going to ask me questions, I guess, I'd like to have a quick scan of it.

MR. LEARMONTH: Just have a quick look and –

MR. F. MARTIN: Yeah.

MR. LEARMONTH: You prepared this, right?

MR. F. MARTIN: Yes, I did, yeah.

MR. LEARMONTH: So just read – flip through it and – or go through it, and just see whether you can confirm that that was a correct record of what happened at that meeting from your point of view.

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yes, it is. Okay, thank you.

Tab 24, that's Exhibit 00553, there's a self-explanatory email from Cheryl Blundon. But this – on – the documents at page 2, 3, 4 and 5, that document, of Exhibit 00553 – just briefly explain what this was, this chart. What is it and what's the purpose of it?

MR. F. MARTIN: This is a chart of the exhibits that – with the expected filing date. Those that were filed – I think this is those, but I'm just – give me a sec – now, to be filed – yes. So it's an update of the documents that we had received and other documents with dates that the other documents would be received.

MR. LEARMONTH: Who would have prepared and maintained that document on an ongoing basis?

MR. F. MARTIN: I believe it was Ms. Blundon.

MR. LEARMONTH: Right, thank you. She was the secretary – still is the secretary there?

MR. F. MARTIN: Yes, she is.

MR. LEARMONTH: Yeah.

The – turn, please, to tab 27, Exhibit 00557. And this is a letter – or an email from Al Snyder. Now, can you just confirm that the three main representatives of MHI for their – on their contract were – the team leader, we'll say, was Paul Wilson.

MR. F. MARTIN: Right.

MR. LEARMONTH: And there was Mack Kast.

MR. F. MARTIN: Kast, yes.

MR. LEARMONTH: And he was the chartered accountant.

MR. F. MARTIN: Yes.

MR. LEARMONTH: And Allen Snyder.

MR. F. MARTIN: Right.

MR. LEARMONTH: And he had a background in – what was it – engineering at Manitoba Hydro?

MR. F. MARTIN: Manitoba Hydro, yes.

MR. LEARMONTH: Yes. So you dealt with those three persons –

MR. F. MARTIN: I did.

MR. LEARMONTH: – more so than anyone else?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah.

And they would provide you with regular updates, would they?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah.

Just as an example – I don't – we don't need to go through it, but at tab 28, Exhibit 00558, is a report from Paul Wilson. Would that be – represent the type of reporting that you were

receiving from MHI throughout their engagement?

MR. F. MARTIN: Yes, that's their biweekly reports that we received on a regular basis.

MR. LEARMONTH: Okay.

Tab 29, Exhibit 00559. I'd like you to look at that, please – and it refers to – just read through it, but then there's a – what is meant here by the terms that you use in the status report: accepted and unsatisfactory? Just explain what that document is.

MR. F. MARTIN: Yes, it keeps track, again, of the RFI responses, and it notes whether or not the response was satisfactory and that others may be unsatisfactory, and it may even indicate that others were under review – still under review.

MR. LEARMONTH: All right.

So this – and the – on pages 2 to 8, these are – this is the type of status report that you were receiving using those terms from Manitoba Hydro?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Okay.

Okay. Tab 30, Exhibit 00560. We don't need to go into – that's just one of those reports.

Tab 38, which is Exhibit 00568 – this is dated October 14, 2011. Now, before I – if you could just turn that up, but I wanna ask you can you give me a general sense as to your opinion on the production of documents by Nalcor as of October 14, 2011, or some time around that period.

MR. F. MARTIN: I thought – and again, this is just my own opinion, of course – I thought that the documentation we hadn't received up to that date was adding to the concern with regards to the overall schedule, that we are not receiving enough to be able to meet the deadline of December 30 for the board's report.

MR. LEARMONTH: Okay.

So now – you're on – this is – well, okay – well, as of October 14, the middle of October, you're getting sort of close to – well, closer to December 31, obviously. But did you feel at that time that it was a realistic expectation that you'd be able to – that the board would be able to complete its work and file its report by the end of December at that time?

MR. F. MARTIN: I – all I can say is I was concerned about the schedule at that time.

MR. LEARMONTH: Okay.

And were you continuing your efforts to speed up the process? Were you continuing to contact Nalcor and, you know, try and get them to provide the documents on a prompt basis?

MR. F. MARTIN: Yes, certainly.

MR. LEARMONTH: Was that an ongoing process?

MR. F. MARTIN: It was ongoing throughout the whole process.

MR. LEARMONTH: Yeah.

And did you – you had a concern as the representative of the Public Utilities Board. Did – based on your communications with Manitoba Hydro International, did Manitoba Hydro International have a concern as well?

MR. F. MARTIN: Yes, they did.

MR. LEARMONTH: Yeah.

And so that was an – was that an ongoing subject of discussion?

MR. F. MARTIN: It certainly was.

MR. LEARMONTH: Okay.

And I suppose as we progress further and further along, the –

MR. F. MARTIN: The level of concern increases.

MR. LEARMONTH: Yeah. Okay.

MR. F. MARTIN: I didn't mean to interrupt you.

MR. LEARMONTH: No, that's what I was gonna ask you. Thank you.

Now, tab 40, this is an update as of October 18, and this is just one of the standard updates that was prepared by – internally – for internal use at the Public Utilities Board, is that correct?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Okay.

Page – tab 42, that's Exhibit 00572. This is a copy of a letter that Maureen Greene sent to Geoff – excuse me, Cheryl Blundon. Although, apparently it was prepared by Maureen Greene, but anyway, Maureen – it went out under the signature of Cheryl Blundon. It's dated October 25.

Can you just – were you – have you seen this letter before, Sir?

MR. F. MARTIN: Yes, I have. Yeah.

MR. LEARMONTH: Okay, and do you have any comment on its – whether you believe it's an accurate representation of the position taken by the Public Utilities Board at that time?

MR. F. MARTIN: Can I take a minute to review it again?

MR. LEARMONTH: Yeah, just go through it quickly. Yeah.

MR. F. MARTIN: Yes, this is Maureen's letter, or she drafted the letter anyway, to Nalcor –

MR. LEARMONTH: Yes.

MR. F. MARTIN: – pointing out the inaccuracies that were in the previous correspondence.

MR. LEARMONTH: Yeah, so you agree with the –

MR. F. MARTIN: Yes, I do.

MR. LEARMONTH: – content of that letter?

MR. F. MARTIN: Yes, yes.

MR. LEARMONTH: Okay.

Now we have on – at tab 47, which is Exhibit P-00077, is the Nalcor submission to the Board of Commissioners of Public Utilities, dated November 10, 2011. So by November 10, 2011, had you received everything that you needed from Nalcor?

MR. F. MARTIN: Up until to that point we received, obviously, more information. I think we were still expecting more information; there were still outstanding responses to RFIs and so on, and I think the experts at MHI were still waiting for additional information to be filed.

MR. LEARMONTH: Okay, so there were a number of RFIs that were outstanding?

MR. F. MARTIN: As far as I remember, yes.

MR. LEARMONTH: Okay.

MR. F. MARTIN: There were RFIs outstanding even after the board issued its report.

MR. LEARMONTH: Okay. Even after the board issued its report?

MR. F. MARTIN: That's my understanding.

MR. LEARMONTH: You still hadn't received everything?

MR. F. MARTIN: Not – that's my (inaudible) – especially once, I think, from the Consumer Advocate. Now, I stand to be corrected on that, but that's my recollection.

MR. LEARMONTH: Okay.

So can you tell me, generally, what happened between November 10, 2011, when Nalcor filed its submission and December 31, the end of that year?

MR. F. MARTIN: One of the things I remember is that, I think, the board went back to government looking for an extension of the schedule in – somewhere in that time frame – maybe even before this date. Other than that we

were all pressing on. There were – I think there were drafts now coming in of – preliminary drafts of certain sections of the MHI report. But other than that it was pretty much business as usual.

MR. LEARMONTH: All right.

And did – so after – starting in January 2012, was there a steady flow of documents received from Nalcor?

MR. F. MARTIN: I don't think I should answer that. I honestly don't recall.

MR. LEARMONTH: You don't recall?

MR. F. MARTIN: Whether it was a steady flow –

MR. LEARMONTH: Yeah.

MR. F. MARTIN: – there may have been bits and pieces coming in and then we may have gotten a batch.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: I can't say there was a steady flow.

MR. LEARMONTH: All right.

Were there any – to your recollection, were there any plans for what's been referred to as a technical conference?

MR. F. MARTIN: Yes, there was.

MR. LEARMONTH: And what happened to those plans?

MR. F. MARTIN: The technical conference, as I recall, was cancelled, again, because of the timelines. But the government did eventually give us an extension to the end of March 2012. But even within that time frame, there was not enough time to execute a technical conference. That was one of the items that was dropped from the schedule.

MR. LEARMONTH: Okay. Now at some point – I won't take you through all the briefing documents and so on, but at some point you're

aware that there was an extension granted to this – to March 31?

MR. F. MARTIN: Yes, that's right.

MR. LEARMONTH: And was it your expectation when that extension was granted – which was before December 30, 31 – that that would be sufficient time?

MR. F. MARTIN: At some point it became obvious from our perspective that it was not. I can't say when that was specifically identified. I believe we had asked for an extension to March 31, which was granted. And then, again, because of the lack of delay and so on – the lack of filing, the board went back and asked for a further extension, which was denied.

MR. LEARMONTH: Okay.

There's a – I want you to turn to Exhibit P-00593, which is at your tab 66. That's in the second –

MR. F. MARTIN: Okay.

MR. LEARMONTH: – book of documents.

MR. F. MARTIN: Yes.

MR. LEARMONTH: Okay.

Can you explain the – this is an – it's an email from you to Maureen Greene and Sam Banfield, and then there's – below it there's emails from – one from Paul Wilson and Rick Horocholyn.

MR. F. MARTIN: Horocholyn, yeah.

MR. LEARMONTH: Horocholyn.

But what – can you just give us a summary of what's being discussed here in the bottom email, the one January 13, 2012? That's a technical point. I'd like you to just see if –

MR. F. MARTIN: As I recall –

MR. LEARMONTH: – you can (inaudible).

MR. F. MARTIN: – and I wasn't specifically involved in this – although, I think I was in on the conference call. MHI had an issue with the

outcome of the CPW looking at a cost-of-service approach, versus a PPA approach.

MR. LEARMONTH: Yes.

MR. F. MARTIN: And the way that this was going to be resolved – I should have a look at this again first.

Yes. The first paragraph at the top refers to the conference call we had with Nalcor. Mr. Horocholyn was the gentleman that was doing the detailed work on the CPW analysis. And we had others, obviously, on the MH – on the Hydro side – Nalcor side. And so the conference call was arranged and as I remember it, it was agreed – the parties did agree that one approach was right versus the other. And I believe it ended up being right in the view of Nalcor. Nalcor convinced MHI that the way it was approaching and stating it was the correct approach and that was accepted.

MR. LEARMONTH: And that was accepted by –

MR. F. MARTIN: Absolutely.

MR. LEARMONTH: Yeah, very good.

Now, we know that there was a – there were reports filed by MHI; they eventually filed their reports at the end of January – January 31, 2012. I'd just like you to speak about the process of your reviewing drafts of the report. We've had information that they would send drafts and then you would file responses to them.

What was the purpose, generally, in your providing comments to the drafts that were being submitted to you?

MR. F. MARTIN: Well, first of all, when the drafts came in they would be reviewed typically by myself and usually Mr. Banfield, who was the other advisor on the project, and Ms. Greene as well, under certain circumstances, certain parts of the drafts. And the idea was to ensure, I guess, ourselves and the board that the information contained therein was first of all accurate, was complete –

MR. LEARMONTH: That's a technical – the technical aspect.

MR. F. MARTIN: That's the technical side of it.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: But then again, also to look at common things like how the abbreviations were being used; that they were consistent throughout the entire document. You know, some writers used MF, others used Muskrat Falls. How the footnotes were referenced and were the footnotes accurate, that kind of stuff. And then, typically, what we did was we would mark up the draft that we had received and send these back to MHI as suggestions for changes.

MR. LEARMONTH: Yeah. So would the changes – okay, you did your technical review of them. That's one thing.

MR. F. MARTIN: Right.

MR. LEARMONTH: And were there issues with the findings on technical matters that you identified?

MR. F. MARTIN: In generally, no, not on the technical substance but perhaps on the way they might have been presented. For example, something may have been identified as a finding and it was really a recommendation. So, things like that we found. But overall, on the technical information, I don't recall anything of any significance that we found in their reports.

MR. LEARMONTH: So, would the changes be based more on, like, writing style and grammar and sentence structure, paragraph structure, consistencies and so on?

MR. F. MARTIN: Absolutely, and other minor things like the footnotes and so on, yes.

MR. LEARMONTH: Yeah, because I guess the – I understand that Manitoba Hydro had subcontracted a lot of this work out to various individuals and that they were – what the report was initially, in its initial stage, was they were drafts of certain sections prepared by like 10 or 15 people.

MR. F. MARTIN: That's correct.

MR. LEARMONTH: And so when you put them all together it didn't fit very well, is that –

MR. F. MARTIN: It didn't flow at all, no.

MR. LEARMONTH: And that was the reason that you prepared most of, certainly most of, your recommendations for changes, is that right?

MR. F. MARTIN: Yes.

MR. LEARMONTH: But you didn't have any problem with their findings?

MR. F. MARTIN: No, not that I recall.

MR. LEARMONTH: Okay.

Now, once – did you have any participation in the public hearing process that was undertaken in February 2012? Were you involved in that?

MR. F. MARTIN: We were in attendance. We did not sit out in the meeting room. I recall that Mr. Banfield and I, and maybe other staff members, were viewing it on a remote monitor and, again, that wasn't all the time, you know, we did that as our time was available. But that's how – that's my involvement, as I recall.

MR. LEARMONTH: Yeah. I asked earlier about this technical conference. Can you – based on your experience, can you provide us some information on the possible benefits that could flow from a technical conference for a reference like this?

MR. F. MARTIN: Well, I'd only heard of it in reference to, you know, other board hearings. I wasn't really knowledgeable in the whole thing, but a technical conference to me, and I think this is in my transcript, would be the opportunity for, I'll say experts, in certain fields to be able to come in and sit around and discuss and debate the contents of other – of reports and proceedings and whatever, to offer to the board their opinions and expressions with regards to the information they were given. That's my recollection of it.

MR. LEARMONTH: Based on your experience, is there any benefit to these technical conferences, generally?

MR. F. MARTIN: Based on my experience? Not that I'm aware of. I can see where they would be very helpful to the board.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: Yes.

MR. LEARMONTH: That's what I mean.

MR. F. MARTIN: Oh, yes. No, I would say they would be very beneficial to the board to see the different perspectives from different experts, yes.

MR. LEARMONTH: All right.

MR. F. MARTIN: Yeah.

MR. LEARMONTH: So the report was filed and you weren't directly involved in the hearing process.

MR. F. MARTIN: No.

MR. LEARMONTH: And after the hearing process, I understand the matter was left with the board, is that right?

MR. F. MARTIN: That's right.

MR. LEARMONTH: And you didn't have any involvement in the – after that, is that correct?

MR. F. MARTIN: I had involvement with the board in assisting them as required with their report.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: Yes.

MR. LEARMONTH: That would be on technical matters based on –

MR. F. MARTIN: Only on technical matters.

MR. LEARMONTH: – the evidence presented?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Based on the evidence presented?

MR. F. MARTIN: Exactly.

MR. LEARMONTH: Yeah, okay.

So the – so that was the extent of your involvement in that – in the report?

MR. F. MARTIN: Yes.

MR. LEARMONTH: Yeah. Now, the report was filed March 30, 2012. I take it that ended your work?

MR. F. MARTIN: I was there, I believe, until the – yes, the 30th of November – March 2012.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: Correct.

MR. LEARMONTH: The – you’ve given evidence that there was some delay in receipt of documentation from Nalcor. Was this a pressure-packed assignment for you, or was it something that was just a normal course?

MR. F. MARTIN: At times it was pressure packed. And I’m sure it was for Nalcor as well; the guys at Nalcor.

MR. LEARMONTH: Yeah.

MR. F. MARTIN: And for the board. I think everybody involved in this, at numerous times throughout the proceedings, felt significant pressure.

MR. LEARMONTH: Well, you were relieved when it was done?

MR. F. MARTIN: Yes, I was.

MR. LEARMONTH: Okay.

And there was some evidence that there was some public criticism of the board’s decision by politicians and – did you have any – did that have any effect on you at all?

MR. F. MARTIN: No. I had heard stuff like that many times in the past, and I didn’t pay any attention to it.

MR. LEARMONTH: You didn’t pay any attention to it.

MR. F. MARTIN: Not at all.

MR. LEARMONTH: Okay.

Is there anything else you’d like to say, Mr. Martin, about your participation in the – engagement in this process?

MR. F. MARTIN: Only that I went into it and accepted the assignment because I thought I could help the board, and I thought I could help Nalcor. And my wish, obviously, was that what came out of the assignment was of some value to the board.

MR. LEARMONTH: Okay.

MR. F. MARTIN: And I believe it was.

MR. LEARMONTH: And you did your best to assist the – both Nalcor and the board?

MR. F. MARTIN: Yes, I did.

MR. LEARMONTH: Okay. Thank you.

Those are all my questions.

THE COMMISSIONER: All right.

Province of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner, thank you.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Good morning, Mr. Martin. Dan Simmons for Nalcor Energy.

MR. F. MARTIN: Good morning.

MR. SIMMONS: Just one thing I wanted to ask you about.

MR. F. MARTIN: Sure.

MR. SIMMONS: You’d just given some evidence a few moments ago about the prospect of a technical conference as part of the process that was being considered here.

Do I gather that you, personally, had not participated in a technical conference in a regulatory hearing before?

MR. F. MARTIN: That's correct.

MR. SIMMONS: I think we heard yesterday from Ms. Green that the way the technical conference would work would be that the board members wouldn't actually be present at the technical conference. Did you understand that to be the case?

MR. F. MARTIN: Not until yesterday.

MR. SIMMONS: Okay. Thank you very much.

MR. F. MARTIN: You're welcome.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: Good day, Mr. Martin.

MR. F. MARTIN: Mr. Budden.

MR. BUDDEN: We, of course, have met before.

MR. F. MARTIN: We have.

MR. BUDDEN: Yes.

I have a few questions for you today; not a whole lot, but I have some.

We've heard evidence that you were hired by the board to select a consultant to assist the board in its analysis of this reference question. And I understand that you generated a list of – a long list, I guess, of potential consultants that had about a dozen names on it, but also you eliminated some of those names because they had already done work for Nalcor. That's what I understand from the – your transcript, which I've read of your interview with counsel for the Commission.

I guess, firstly, why would you, right off the top, eliminate a consultant who had previously done work for Nalcor?

MR. F. MARTIN: I guess because, in our opinion, they would've been in a conflict.

You're asking this consultant that we were gonna hire to be, in our opinion, a cold eyes, is the term I hear a lot of lately, and without any prior involvement with the corporation, with the board or Nalcor.

MR. BUDDEN: Okay. So you felt it was important that somebody comes in who had no history with any of the parties.

MR. F. MARTIN: Right.

MR. BUDDEN: Okay. And is that your understanding of best practices in this area of retaining consultants?

MR. F. MARTIN: Certainly.

MR. BUDDEN: Thank you.

MR. F. MARTIN: I need to follow up. You know, unless they were previously engaged on a similar assignment – and when I say a similar assignment, I don't mean with regards to the reference, but that they had done work before for Nalcor in a particular area. And it wouldn't be unusual for them to come back again and work on that (inaudible).

MR. BUDDEN: Okay, to continue their previous work.

MR. F. MARTIN: Right, right.

MR. BUDDEN: Okay.

I guess, what did you believe to be the key technical issues arising out of the reference question? And if it helps you, we can call up the reference question so you can see it, have it there in front of you. Perhaps we can do that.

MR. F. MARTIN: Yes.

MR. BUDDEN: It's Exhibit 00038, P-00038. Scroll down a tiny bit more, please, just so we frame the reference question. That's good. Yeah.

So I guess if it helps just to repeat the question, my question is: What did you regard as the key technical issues that arose out of this reference question?

MR. F. MARTIN: I think some of them are in the first bullet. Obviously, the load forecast –

MR. BUDDEN: Mm-hmm.

MR. F. MARTIN: – the system planning assumptions, with regards to the generation expansion plan, the cost estimates.

MR. BUDDEN: Okay.

MR. F. MARTIN: The results of the CPW analysis, obviously, would be one. I think that covers the major – fuel pricing.

MR. BUDDEN: Okay. Perfect. That gets me started.

MR. F. MARTIN: Okay.

MR. BUDDEN: I'll return to that in just a few. I'll return to that in a few moments –

MR. F. MARTIN: Sure.

MR. BUDDEN: – but I have a couple of more questions.

You, as we've heard, essentially spent your career at Hydro. And you've spoken you were at Bay d'Espoir, you were at Holyrood, so can I take it from that you would have had a familiarity with most of the generating components that made up the Isolated Island part of Hydro's plant?

MR. F. MARTIN: To a certain level, yes.

MR. BUDDEN: Okay.

MR. F. MARTIN: Yeah.

MR. BUDDEN: Perhaps you could elaborate on that a little bit. To what level would you say?

MR. F. MARTIN: Well, as I mentioned, when I was in Bay d'Espoir I was just a graduate engineer. The two projects that I was involved in on the generation side at that time was the complete overhaul of two 75-megawatt turbine generator units and a major extension to the 230 kV switchyard.

So I would certainly know what a rotor looks like, a turbine looks like and all the major components of the units. When I moved in to St. John's in 2006 I think it was, or '07, one of the first jobs I did was with regards to a new combustion turbine, 50-megawatt combustion turbine at the Hardwoods terminal station, so I had some experience there, obviously, from that. Holyrood, I was out there 18 months and I got to know a lot of the systems out there, the issues with regards to maintenance and so on.

MR. BUDDEN: Okay.

MR. F. MARTIN: But, again, you know, in a limited capacity with regards to the time I was there.

MR. BUDDEN: Sure.

MR. F. MARTIN: Yeah.

MR. BUDDEN: So you would've had at least an overview of the entire apparatus –

MR. F. MARTIN: Yes.

MR. BUDDEN: – arising out of your experience?

MR. F. MARTIN: Sure.

MR. BUDDEN: How about the Labrador projects or potential projects? I'm thinking particular of the plans that Hydro had on and off over, you know, a number of decades to possibly develop the Lower Churchill. How familiar would you have been with those plans?

MR. F. MARTIN: One of them I would've been very familiar with. I mentioned that in 1995 I became the director of engineering for TRO, Transmission and Rural Operations. Three years into that position, Premier Tobin – Premiers Tobin and Bouchard from Quebec announce this major development they were going to look at on the Lower Churchill; a very, very, very substantial project.

MR. BUDDEN: Okay.

MR. F. MARTIN: And I was asked by the executive of Hydro if I would, first of all, coordinate the engineering studies to be done by

outside consultants with support from our own internal engineering group. And I was also asked to – if I would be hydro's representative on the negotiating team with Quebec.

MR. BUDDEN: Okay.

You – we've heard, obviously, a fair bit of evidence just a few minutes ago about how Nalcor was slow to deliver the information that was sought, that was requested. Now, you spoke a half hour ago about being concerned of the schedule that was in the fall. Obviously, there can be many reasons why Nalcor was slow to deliver. This is obviously complex information; that's one reason: simply, the complexity of the task.

Another possibility is that they were – didn't have the skills or were otherwise inept at pulling this together. A third reason might be that they were deliberately delaying delivery of the information. You were in the middle of this. What impression did you have as to why Nalcor was so slow in delivering the information that the board was demanding of them?

MR. F. MARTIN: I don't think I can answer that question.

MR. BUDDEN: Okay.

MR. F. MARTIN: I did not get the feeling that someone was deliberately holding the information back. I'm fairly confident in saying – I'm very confident in saying that the Hydro people that I knew, who remained at Hydro after I left that were still involved in this, certainly had the skill sets to put the thing together; again, with their external consultants, SNC, Teshmont and so on. I really don't think I can comment on that.

MR. BUDDEN: Okay, the – you said the Hydro people you knew had the skill sets. Are you distinguishing there between, I guess, the Hydro people you knew and worked with and perhaps some of the new people, such as Mr. Harrington and Bennett and so forth who were relatively new to Hydro?

MR. F. MARTIN: Well, I didn't know them.

MR. BUDDEN: Okay.

MR. F. MARTIN: I didn't know those folks.

MR. BUDDEN: So the people you knew, who were you thinking of?

MR. F. MARTIN: I was thinking of people like Paul Humphries, Bob Moulton, Paul Stratton.

MR. BUDDEN: Okay.

So you had worked with these guys and you were comfortable that they were giving their full effort.

MR. F. MARTIN: Oh, yes, no question.

MR. BUDDEN: Okay.

Did you have the same confidence with those other individuals, the Paul Harringtons, the Gilbert Bennetts?

MR. F. MARTIN: Again, I had little or no experience with them.

MR. BUDDEN: Okay, so you don't feel comfortable passing judgment.

MR. F. MARTIN: No, absolutely not.

MR. BUDDEN: Okay.

MR. F. MARTIN: I think it's being unfair if I don't say I have absolutely no reason to believe that they were not capable of doing those things. I did know that Mr. Harrington had an extensive background in the offshore oil. I understood that Gilbert Bennett was a highly respected engineer and very capable, from folks that had worked with him before. So I have no reason to believe that they were not also doing what they could to get the thing done.

MR. BUDDEN: Okay.

MR. F. MARTIN: Yeah.

MR. BUDDEN: But, yet, would you agree that it's inexplicable, at least to you – you have no explanation as to why it took so long to deliver this information.

MR. F. MARTIN: No, I don't.

MR. BUDDEN: And when information was delivered, it was often, as in that first document dump, not at all helpful or productive.

MR. F. MARTIN: I wouldn't say it was not at all. It certainly wasn't sufficient for the exercise we had to go through.

MR. BUDDEN: I think you indicated your jaw dropped when – that was in your transcript. But it generally indicates a person is shocked, is surprised, is –

MR. F. MARTIN: I was very surprised. I believe someone mentioned the fact that it was going to – there was going to be a truckload and I think that was a good example of hyperbole at the time. But we were certainly expecting more than what we actually got.

MR. BUDDEN: And what you got wasn't much help in advancing the task.

MR. F. MARTIN: Not a whole lot.

MR. BUDDEN: Okay.

We've been tossing around terms such as DG2, DG3, so forth and, obviously, many people in the room are intimately familiar with those terms, others of us are not so much, shall we say. Perhaps, like, why does it matter that Nalcor is delivering what clearly were DG2 factors and I – my understanding was that you were seeking newer and better, ideally, DG3 factors. What's the difference? Why does it matter to the task at hand?

MR. F. MARTIN: Well, the newer numbers would have been obviously more accurate. The – if there was an update to the cost estimate, you might expect that the AACE Class 4 estimate of four might have at least moved somewhat towards the better estimate of AACE3. So a lot of the inputs – the load forecast may have changed, things like that. I mean, it would have made a difference to have those updates.

MR. BUDDEN: My understanding is that it would involve things like the number of person-hours the project might require, that at a DG3 they would be much more – ideally, much more advanced, much more precise. Would that be an expectation?

MR. F. MARTIN: I would think that's one of the things that could be, yes.

MR. BUDDEN: What were some of the other things that typically would be much higher quality information at DG3 than you were getting with the DG2 numbers?

MR. F. MARTIN: Well, the level of engineering would have increased.

MR. BUDDEN: Okay.

MR. F. MARTIN: The level of detail. A finer understanding of the risks perhaps imposed on the project. All of those things, I think, would have advanced between – what was it, November 2010? And we were in November 2011. There's a year's worth of work that would have been done, or close to it, by SNC and others to advance the project. And we just thought anything that we could have gotten in the way of an update would have been a benefit to the board.

MR. BUDDEN: Okay.

So when we see, right in that first bullet, the term of reference of comparing the estimated cost, was your sense at the time that this could not be done properly with DG2 numbers?

MR. F. MARTIN: I wouldn't say it couldn't be done. I mean, we actually did it. We did compare the cost of the two options as of DG2, so it could be done. I'm just saying the result would have been perhaps more informative if we had had additional information.

MR. BUDDEN: Thank you.

Another part of your biography is of interest to me. You spoke of being a director of Qulliq?

MR. F. MARTIN: Qulliq.

MR. BUDDEN: Okay. Tell us a little bit about that, what your role as director involved.

MR. F. MARTIN: Well, first of all, how I got it. I had a call from a colleague I had met through the Canadian electrical association asking – saying that they had a vacancy on the

board and asking me if I would be interested in filling it.

I asked him some additional questions with regards to what were the issues at the time and so on. And one of the things that they were looking at was the potential development of a small hydro facility up there to offload the diesel in Iqaluit, the capital. There were no other sources of generation in Iqaluit – in Nunavut – at the time except diesel, diesel plants, so that interested me.

And I had never seen that part of the country. It sounded like – it was something I had never done before, and I discussed it with my wife. There was a fairly small commitment to the job. I think we had, like, maybe five face-to-face board meetings a year. There would be other meetings by conference call if something came up. So I – and it was a two-year term, so I accepted it.

MR. BUDDEN: So this was a Crown corporation created by the Territory of Nunavut to manage its power generation and distribution network?

MR. F. MARTIN: That's correct.

MR. BUDDEN: And you were recruited to that board because you had expertise in hydroelectric development? That's why they sought you?

MR. F. MARTIN: I think that was one of the reasons. Another thing they were looking at was upgrading their distribution system from 4kV to either 12.5 or 25kV, and I had some background in distribution systems.

MR. BUDDEN: This Crown corporation utility thought it would be beneficial to have an electric engineer with your background and skills on its board?

MR. F. MARTIN: I hope so.

MR. BUDDEN: Okay. Thanks.

How long did you serve on that board?

MR. F. MARTIN: Just the two years. At the end of the two years, I was asked again. As a

matter of fact, I was told that the minister at the time had requested that I return for another term.

Over the two-year period, we'd had absolutely no luck in funding – getting funding for the hydro development from the federal government, so that thing seemed like it had come to a grinding halt.

The issue of the distribution system upgrade – I actually helped them with that before I left, and I believe that system has been upgraded since. So there was really no other impetus for me to stay on, so I graciously declined.

I really enjoyed my time up there. It was a wonderful experience to see the North like that.

MR. BUDDEN: Yes.

What other – now, I don't necessarily need their names – what other type of individual was serving on the board with you?

MR. F. MARTIN: Well, they used to have on the board what they called two southerners. So believe it or not, I was one of the southerners. The other gentlemen was a past president of Etobicoke power, I think, in the Toronto area. The chair of the board was a native of the region, as were others on the board. There was a financial guy on the board.

That's about all I can recall right now.

MR. BUDDEN: Okay. Interesting.

MR. F. MARTIN: It was a good group. A very small organization.

MR. BUDDEN: Okay.

And this was paid remuneration?

MR. F. MARTIN: I believe we got a stipend for every meeting we attended, and they paid us a per diem for meals and whatever, and they arranged all the travel and this kind – other than that there was no other remuneration.

MR. BUDDEN: Okay.

So you were paid by the meeting?

MR. F. MARTIN: By the meeting. And I believe it was something like \$500 a meeting at four or five times a year.

MR. BUDDEN: Okay.

MR. F. MARTIN: Yeah. And that was not why I took the assignment. I would've gone up there had they paid me anything.

MR. BUDDEN: Okay, you did it as a – saw it as an opportunity to give to the community, to travel, see part of the world and to continue with your profession? Okay.

MR. F. MARTIN: That's a good way of putting it, yes.

MR. BUDDEN: Those are my questions, Mr. Martin.

Is there anything I haven't asked you that you would like to say?

THE COMMISSIONER: That's a pretty open question, isn't it?

MR. BUDDEN: What's that?

THE COMMISSIONER: I said that's a pretty open question, isn't it? Probably lots he'd like to say, but whether it's –

MR. F. MARTIN: Yeah, I think – I appreciate the offer, but I think I'll decline.

MR. BUDDEN: Perhaps wisely. Thank you.

THE COMMISSIONER: Edmund Martin?

MR. CONSTANTINE: Good day, Mr. Martin. David Constantine, appearing for Edmund Martin today.

MR. F. MARTIN: Good morning.

MR. CONSTANTINE: I just have a couple of brief questions.

So we heard about your extensive experience with NL Hydro this morning. I was wondering if during your time with Newfoundland and Labrador Hydro, if you had extensive, hands-on

experience with long-term system planning or demand forecasting?

MR. F. MARTIN: No, and I believe it was in my transcript that my one – or one of my few regrets of being at Hydro was I never had the opportunity to be in the system planning department. I had applied for the job at one time. I was unfortunately superseded by Mr. Banfield, who was my colleague on the board review.

MR. CONSTANTINE: Okay, thank you.

And now, I'm going to bring you to –

MR. F. MARTIN: I need to say, I think, in that context, because he was a past planning engineer, the manager of system planning and the vice-president of the Churchill Labrador – Churchill Falls (Labrador) Corporation, he brought an extensive background to the review process.

MR. CONSTANTINE: Good.

So you said in your interview with Commission counsel that MHI did an excellent job on the review and that you agreed with their conclusion based on the inputs provided by Nalcor. Do you stand by that statement?

MR. F. MARTIN: I do.

MR. CONSTANTINE: Okay.

And my final question then is did you find any notable errors in the inputs provided by Nalcor to Manitoba Hydro International?

MR. F. MARTIN: I can't recall of any.

MR. CONSTANTINE: Thank you.

THE COMMISSIONER: Kathy Dunderdale?

MS. E. BEST: No questions, thank you.

THE COMMISSIONER: Okay.

Former Provincial Government Officials '03 to '15?

MR. KING: No questions, Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown?

MR. FITZGERALD: No questions.

THE COMMISSIONER: Robert Thompson?

MR. COFFEY: Good morning.

MR. F. MARTIN: Good morning.

MR. COFFEY: Good morning, Mr. Martin.

My name is Bernard Coffey. I represent Robert Thompson. I just have a couple of questions.

Yesterday, Mr. Learmonth, referred Maureen Greene to an email, I think it was November 16, 2011, and I apologize, Commissioner, I don't have it located right now.

But what it dealt with, Sir, is this, is that it forwarded a November 15, 2011 interim MHI report. And it referred to the report being about 320 pages or so, but 60 of them were a CV. Anyway, my point being this, that what's your recollection of how far along MHI was around that point in preparing its report?

MR. F. MARTIN: That's November 2011?

MR. COFFEY: Yes. November 15, 2011. And, bearing in mind, just to help you put it in context –

MR. F. MARTIN: Yep.

MR. COFFEY: – the Nalcor submission had been filed November 10. And that's why, you know, when you see an email within a week later from – or dealing with MHI having an interim report, and it's quite a number of pages long, as described, the report itself – the interim report is not there, but the description of its length is.

MR. F. MARTIN: Mm-hmm.

MR. COFFEY: So, can you tell the Commissioner, just to get some sense of it, how MHI's – the substance of their report, when it was created?

MR. F. MARTIN: You mean the draft – the interim –

MR. COFFEY: Draft, yeah, the draft.

MR. F. MARTIN: The interim report, as I understood it, was the first (inaudible) edit.

MR. COFFEY: Okay.

MR. F. MARTIN: And in November, I was – I'm assuming that they would have been – and I can't put a number on it.

MR. COFFEY: No worries.

MR. F. MARTIN: But they were still waiting for documentation –

MR. COFFEY: Yes.

MR. F. MARTIN: – to be included in the final report. I can't give you a percentage or anything.

MR. COFFEY: Oh, yeah –

MR. F. MARTIN: I really can't.

MR. COFFEY: – I understand that.

MR. F. MARTIN: Yeah.

MR. COFFEY: What I'm getting at is this, is, you know, looking back on it – because it's one thing to draft a report, and have it in, kind of, substance laid out, and perhaps in substance even written, subject to clarification through an RFI, as opposed to not having basic information to be able to draft the report substantively at all.

So I'm just trying to get some sense, again, for the Commissioner, as to how that unfolded; if you can recall.

MR. F. MARTIN: Yeah, I'm finding it difficult to –

MR. COFFEY: You probably have to see the actual interim draft.

MR. F. MARTIN: I think, even if I did, I'm not sure I would be able to answer your – it seems to me like a broad hypothetical question. I really don't know if I could respond to it.

MR. COFFEY: Okay.

You did refer, I believe, in answer to a question from Mr. Learmonth that the PUB had asked for an extension to March 31 and that was granted.

MR. F. MARTIN: That's my recollection.

MR. COFFEY: Okay, so that is your recollection.

MR. F. MARTIN: Yeah.

MR. COFFEY: Okay.

Is there – can I ask Commission counsel if there's any – that they're aware of any evidence that that is the case? That they had asked for an extension to March 31 itself, that's what I'm – I'm just –

THE COMMISSIONER: Well, we know there was a request for an extension–

MR. COFFEY: Extension.

THE COMMISSIONER: – to the end of March.

MR. COFFEY: Okay, there was. Okay, I just, again, just (inaudible) pointed to.

MR. LEARMONTH: I think the record is very clear from the documents that Ms. Greene reviewed yesterday.

MR. COFFEY: Thank you.

Finally, in your interview, Mr. Learmonth asked you – he put it to you, it's at the bottom of page 40, the top of page 41. Mr. Learmonth said: In this situation, as you can see from the questions, if the government had referred the matter back to the board for DG3, would you have been comfortable retaining MHI for the DG3 analysis? And your response was: Oh, I think, yes, absolutely. Mr. Learmonth: You would've? Mr. Martin: Oh, sure. Mr. Learmonth: Yeah, there was no problem with that. Mr. Martin: I wouldn't have had a problem with that, no.

So, that is again consistent with your response to a question several minutes ago, that you found MHI's work competent.

MR. F. MARTIN: The only issue I ever really had with MHI was it was in the report writing.

MR. COFFEY: Yes.

MR. F. MARTIN: And we've already discussed that.

MR. COFFEY: Right.

Thank you, Sir.

THE COMMISSIONER: Okay. Todd Stanley, Terry Paddon?

MS. VAN DRIEL: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Consumer Advocate?

MR. PEDDIGREW: Good morning, Mr. Martin.

MR. F. MARTIN: Good morning.

MR. PEDDIGREW: My name is Chris Peddigrew and I'm representing the Consumer Advocate and the ratepayers of the province, who are represented by the Consumer Advocate of course.

A few questions for you. The meetings that took place between Manitoba – or MHI and Nalcor, were you always at those meetings or were there meetings that took place between just Nalcor personnel and MHI?

MR. F. MARTIN: The latter.

MR. PEDDIGREW: The latter?

MR. F. MARTIN: Yes.

MR. PEDDIGREW: Okay, and same thing with the phone calls. Would there have been emails, say, that would've taken place between Nalcor and MHI that you would not have been copied on do you know?

MR. F. MARTIN: I doubt it, if there were, there would've been very few.

MR. PEDDIGREW: And what about phone calls? Would you always – if there was a conference call or phone call about a topic, would you be part of those phone calls?

MR. F. MARTIN: The understanding was as regards to – similar to the cost of service versus the PPA approach, if it was anything of a substantive nature, I would've been aware of it and probably participating in the conference call.

MR. PEDDIGREW: Okay, and so your first answer, just to clarify, did you said there would be meetings, perhaps, that took place without yourself in attendance?

MR. F. MARTIN: Yes, I remember distinctly going to meetings at Nalcor when we might have had two experts meeting with two different people, and I could've gone with one or the other or I could've stayed for part of the one and part of the other to see how things were going.

But I don't think – it wasn't a common thing, but it certainly wasn't the case that I was at every single meetings that MHI attended with Nalcor.

MR. PEDDIGREW: Okay.

In terms of the selection of MHI as the expert for the PUB, were you aware, or did it come up at all before selecting them, about some issues that Manitoba – well Manitoba – MHI is owned by Manitoba Hydro.

MR. F. MARTIN: Yeah.

MR. PEDDIGREW: Was there ever any discussion about the, I guess, the ongoing problems with the Keeyask project of Manitoba Hydro, and whether that may be a factor in choosing MHI or not?

MR. F. MARTIN: Not to my knowledge.

MR. PEDDIGREW: Were you aware of those issues?

MR. F. MARTIN: No, I was not. The only project I knew that Manitoba Hydro were even considering was Conawapa, I think it was called, in conjunction with Ontario Hydro.

MR. PEDDIGREW: Okay.

Madam Clerk, if we could haul up Exhibit P-00593, please? And if we can scroll down just a little bit. That's good, thank you.

So, Mr. Martin, this was a question that was asked – or this a document that was put to you a few moments ago.

THE COMMISSIONER: Tab 66.

MR. PEDDIGREW: Sorry, tab 66 in your binder, yes.

And in Paul Wilson's email to you on January 13, 2012, he says, "Hello Fred, as a result of the conference call with Nalcor on Thursday, Rick ..." – I'm not gonna try to pronounce that last name – "has revised the report and we are now in agreement with Nalcor's findings."

So I just wanted to ask you a few questions about that and about the next sentence as well. "Rick has outlined the changes made to Volume 2 which I will review this weekend."

So, I think, you said in your answer that Nalcor convinced MHI that their approach was right. Can you tell me a bit more about that?

MR. F. MARTIN: Well, first of all, I'll be quite frank with you. The cost of service versus a PPA approach, on the financial side, I really don't have a solid grasp of all the issues behind that.

There was obviously a question between the two organizations with regards to how that could be done, and the simplest way of fixing it was to have the two people involved – the two experts involved – make contact with each other, debate it and discuss it and to see if they could come to a successful agreement, and that's what this was.

MR. PEDDIGREW: And who are the two people that you refer to that were involved?

MR. F. MARTIN: I think it was Rick Horocholyn and somebody at Nalcor. And it could've been – I'm trying to think of who it could be. Steve Goudie was a financial analyst at Nalcor at the time. It could've been Anne Dwyer. I think her name is mentioned in some

of the correspondence or some of the meetings. I don't remember who it was, to be honest.

MR. PEDDIGREW: So you think it could've been Anne Dwyer or Steve Goudie –

MR. F. MARTIN: I thought I saw them in here somewhere, or maybe it was in another document.

MR. PEDDIGREW: So are those – would that be an example of discussions that might've taken place without you being present?

MR. F. MARTIN: I was on the phone.

MR. PEDDIGREW: During –

MR. F. MARTIN: I was on the conference call.

MR. PEDDIGREW: Right.

But – this conference call, but I guess what I'm asking about is when the convincing of MHI by Nalcor took place. Was that during that conference call, or did that take place before – were there other phone calls, conversations, that –?

MR. F. MARTIN: No, it was at this call.

MR. PEDDIGREW: Okay.

MR. F. MARTIN: I think I had it recorded somewhere that when I reported back that it seemed like Nalcor and MHI had come to an agreement that Nalcor's approach – or Nalcor's point – was accepted by MHI.

MR. PEDDIGREW: Right.

How much of the debate was there on this conference call?

MR. F. MARTIN: I had recorded in the notes somewhere it was less than 10 minutes.

MR. PEDDIGREW: Okay.

So was Nalcor – or were MHI difficult to convince on that point?

MR. F. MARTIN: No, I don't think so. It was a debate between two analysts or accountants as to

how this thing should be done and could be done, and again, it was very cordial. I mean, these are very sensible, very professional people, and it was discussed and resolved.

MR. PEDDIGREW: Okay. Yeah, no – I'm not – certainly not suggesting –

MR. F. MARTIN: No, no.

MR. PEDDIGREW: – that they weren't professional people. Professional people can still disagree on points, certainly. I'm just trying to get a sense of what the tone was or how much resistance, I guess, there was on MHI's part to that request from Nalcor.

MR. F. MARTIN: I think if there had been anything like that, I would've recorded on my note, and I did not.

MR. PEDDIGREW: Okay.

So Nalcor received drafts of MHI's reports, is that ...?

MR. F. MARTIN: I don't think they did. Not to my remembrance. I don't recall sending over drafts of MHI's reports to Nalcor. I'm not saying that didn't happen, but I don't recall it happening.

MR. PEDDIGREW: So in the email here where it says as a result of a conference call with Nalcor, Rick from MHI made a change and has made a change to volume 2 as well.

MR. F. MARTIN: Mm-hmm.

MR. PEDDIGREW: So that didn't arise as a result of a review by Nalcor of an MHI report, did it?

MR. F. MARTIN: You mean the discussion that they had to resolve?

MR. PEDDIGREW: I guess I'm just wondering how Nalcor became aware of this issue and had input into it before – and how it ended up in a change to the report.

MR. F. MARTIN: I'm assuming how it happened is that throughout the proceeding – I mean, the – Rick Horocholyn was one of the key

guys on the CPW analysis, and he would have had lots of documentation to review from Nalcor on the approach to CPW versus cost to service and either in response to an RFI or something like that –

MR. PEDDIGREW: Okay.

MR. F. MARTIN: – this disagreement arose.

MR. PEDDIGREW: So as far as you know – I guess that was my question – as far as you know Nalcor were not receiving drafts of Manitoba Hydro's reports?

MR. F. MARTIN: Not to my recollection.

MR. PEDDIGREW: Okay.

Mr. Martin, there was some evidence yesterday – or some discussion yesterday during questioning about the Consumer Advocate and the expert that was retained by the Consumer Advocate, Knight Piésold, who I know were one of the entities that the PUB was considering as well, before it hired MHI.

But in relation to the retention by the Consumer Advocate, do you know if that Knight Piésold report was ever completed? It was never – we found out yesterday it was not filed by the Consumer Advocate, but do you know was it completed?

MR. F. MARTIN: I don't know.

MR. PEDDIGREW: And did you ever see it or see a draft of it?

MR. F. MARTIN: Of the Knight Piésold report?

MR. PEDDIGREW: Yes.

MR. F. MARTIN: No.

MR. PEDDIGREW: Do you know who paid the cost of that report? Was that something that was paid for by the PUB?

MR. F. MARTIN: I'm not sure.

MR. PEDDIGREW: Sure. Okay.

So you don't know – there was some discussion yesterday about the cost of the PUB process. I believe, in some of that House of Assembly debates, Premier – then-premier Dunderdale referred to the cost being about \$2 million. You don't know if that would have been included in the – the Knight Piésold report would have been included in that figure?

MR. F. MARTIN: No. I don't know. I do remember in the reference the costs encountered by the board were going to be paid by Nalcor. That's in the reference question.

MR. PEDDIGREW: Okay.

And would that include the costs associated with Consumer Advocate, do you know?

MR. F. MARTIN: I don't know.

MR. PEDDIGREW: Don't know. Okay.

MR. F. MARTIN: I could guess, but it wouldn't be very valuable information.

MR. PEDDIGREW: Okay.

No, I wouldn't want you to guess.

Some questions now – and this may relate more to your time at Hydro, you know, given that you were – have a lot of experience with Hydro. And you're here today – just a few questions for you about that.

Do you know, or do you recall at what year that Hydro moved to a cleaner fuel at Holyrood?

MR. F. MARTIN: No, I don't.

MR. PEDDIGREW: Any idea around what – around when it would have been?

MR. F. MARTIN: No, again, I'd only be guessing.

MR. PEDDIGREW: Only be guessing.

MR. F. MARTIN: A lot of my career was spent on the transmission, distribution side. And my – when I was a director of engineering for TRO – Transmission and Rural Operations – there was

another engineering group in Hydro at the time that covered the generation side of the business.

MR. PEDDIGREW: Right.

MR. F. MARTIN: So they might have been involved in that. I don't recall.

MR. PEDDIGREW: Okay.

Do you recall what the anticipated life of the Holyrood generating station was?

MR. F. MARTIN: I've heard everything from 40 years to 60 years and everything in between.

MR. PEDDIGREW: Okay.

Just going back for a moment to your – I think you referred to yourself as the liaison between Nalcor and MHI, is that – would that be a fair assessment?

MR. F. MARTIN: That's a fair statement.

MR. PEDDIGREW: And I think you gave three names from the people at MHI that you dealt with primarily. One was Paul Wilson. What were the other two again?

MR. F. MARTIN: Mack Kast.

MR. PEDDIGREW: Mack Kast.

MR. F. MARTIN: I think his name was Mackenzie. Mack Kast and Allen Snyder.

MR. PEDDIGREW: Okay.

And when – who were, at Nalcor, the counterparts? Who would you primarily have been dealing with at Nalcor when you were – in terms of your involvement with MHI?

MR. F. MARTIN: There were several. I mean, everything from Gilbert Bennett, on occasion, Paul Harrington. On the engineering side there would have been Paul Humphries, Bob Barnes. On the financial side there would have been Steve Goudie – and there was more. I'm just – these are the names that come to me off the top of my head.

MR. PEDDIGREW: Okay.

And some of these people, would they have been – how often did you meet with them? Was it weekly, was it –

MR. F. MARTIN: No, it wasn't specifically laid down like that. Whenever an expert felt they needed to have a meeting, we would set it up beforehand – before they came in. Most of the meetings were conducted, I believe, before the middle of September.

MR. PEDDIGREW: Okay.

MR. F. MARTIN: But again, there was no fixed schedule. We had enough information available to us that the hydrology expert would want to meet with his counterpart, and I would set up the meeting. They would arrange their airfare. They would come in, we'd meet, and then we would meet again and he would do some work probably in St. John's while he was here; preclude the fact that he might go back and then have to come again.

MR. PEDDIGREW: Right.

MR. F. MARTIN: But – so that's kind of the way it went.

MR. PEDDIGREW: So the MHI people would fly-in, fly out? Fly-in for a meeting and fly out again?

MR. F. MARTIN: Well if –

MR. PEDDIGREW: Or were they here for extended periods (inaudible)?

MR. F. MARTIN: – if they weren't coming back.

MR. PEDDIGREW: I'm sorry?

MR. F. MARTIN: I said if they weren't coming back, you know – there was no intention of coming in, staying for a day for an interview, flying back and then coming in again next week. There was none of that, if that's what you're thinking.

MR. PEDDIGREW: Right. So depending on what they had scheduled.

MR. F. MARTIN: Yeah.

MR. PEDDIGREW: But they weren't here for weeks on end or anything like that?

MR. F. MARTIN: Mr. Horocholyn was here, I remember specifically, for two weeks in a row, because I took him out one Saturday morning for a tour of the city.

MR. PEDDIGREW: Okay.

MR. F. MARTIN: So some of them were here for extended periods of time and others weren't.

MR. PEDDIGREW: Just a question now about the role of SNC-Lavalin at the DG2 stage. What was your understanding of what their role in the project would be (inaudible) as of the fall of 2011?

MR. F. MARTIN: My understanding is that they were – had been retained by Nalcor to be their EPCM contractor. So at that stage they would've been doing a lot of additional work on the design side, on the cost estimating side, drawings, maybe even starting some specifications. That type of thing.

MR. PEDDIGREW: And was there much information from SNC that was considered as part of MHI's analysis?

MR. F. MARTIN: I don't think we saw anything from SNC. That's my recollection.

MR. PEDDIGREW: And did you have any – or what was your understanding of what SNC's role would be if – or, I guess, as of the fall of 2011, I guess you didn't know if Muskrat Falls was going to be sanctioned, 'cause it wasn't until 2012. But what was your understanding of what SNC's role would be if the project was sanctioned?

MR. F. MARTIN: And, again, this is just my own understanding, they would continue on to be the EPCM contractor for the duration of the project.

MR. PEDDIGREW: Mr. Martin, you've been involved, I guess, in the electricity business or industry for many years. Just interested in what your thoughts are on – we clearly know that the Muskrat Falls Project has gone well over budget,

well behind schedule. What are your thoughts on why that has happened?

MR. F. MARTIN: There – I'll just answer it in general. There are numerous reasons – and I honestly don't know. I've heard some things in the media – I don't pay any attention to it. There could be a myriad. And I'm sure it's not just one issue or one problem. But other than that, I'd say there could be dozens.

MR. PEDDIGREW: During your time with Hydro, a forecast period, normally how long would that be if you're forecasting electricity needs?

MR. F. MARTIN: Again, this was done by the System Planning Department, but my recollection is it was done on a 20-year basis.

MR. PEDDIGREW: Twenty years, okay.

MR. F. MARTIN: That's my understanding.

MR. PEDDIGREW: Just a couple of more questions, Mr. Martin.

I just want to be – to follow up on one thing you were asked a few moments ago before I came up here. But if we could look at P-00048, please, Madam Clerk?

MR. F. MARTIN: Is there a tab for that?

MR. PEDDIGREW: There is. It's the Manitoba Hydro report. I don't know what the tab number in your binder would be. There you go, yeah. Page 20 of that report, Mr. Martin.

MR. F. MARTIN: It's Volume 1?

MR. PEDDIGREW: Yes.

And if we could just scroll down a little bit there, under the AC Integration Studies heading there. So this is some comments by Manitoba – or by MHI in its Executive Summary.

And so here it says: "The ac integration studies which have been conducted previously were for a Gull Island development with a 1600 MW three terminal HVdc system linking Labrador to Newfoundland and New Brunswick. Significant changes have been made to the overall project

definition but the system integration studies that would support the changes have not been completed. As a result, the full requirements for the integration of the revised Labrador ... HVdc Link with the ac system on the island are not known. There are additional risk factors that may impact the cumulative present worth of the Infeed Option such as a requirement for additional transmission lines or upgrades, standby generation, or other major equipment.”

So in that, I guess, in that context – so when you said that you accepted MHI’s report –

MR. F. MARTIN: Could I interrupt you?

MR. PEDDIGREW: Sure.

MR. F. MARTIN: I can’t find it.

MR. PEDDIGREW: Oh, sorry.

MR. F. MARTIN: I’m on Exhibit 00067.

MR. PEDDIGREW: Sorry. Page 20, and the page numbering –

THE COMMISSIONER: Tab 67.

MR. F. MARTIN: Sixty-seven.

THE COMMISSIONER: Yeah, 67.

MR. F. MARTIN: Sixty-seven. And page 20 of 67 –

MR. PEDDIGREW: Yeah, and your page numbering may – if you look at the top –

MR. F. MARTIN: Oh, you’re talking about the top of the page.

MR. PEDDIGREW: Top right corner of the page.

MR. F. MARTIN: Sorry, sorry, sorry.

MR. PEDDIGREW: Yeah, that’s okay. Sorry, there’s page numbering that has to –

MR. F. MARTIN: Yes, I know.

MR. PEDDIGREW: – do with Commission page numbering in the report. Sorry about that.

MR. F. MARTIN: Can I just read it –

MR. PEDDIGREW: Sure, sure.

MR. F. MARTIN: – before you ask?

MR. PEDDIGREW: Take your time, yes.

MR. F. MARTIN: Okay.

MR. PEDDIGREW: Okay.

And so I guess given your background is mainly in the area of transmission, this would be a significant, sort of, qualification of MHI’s finding that the least-cost option is Muskrat Falls, would you agree?

MR. F. MARTIN: I would agree, yes.

MR. PEDDIGREW: And if we could scroll down a little bit further, Madam Clerk, I believe to the next page. Right – a little tiny bit further. Yeah, right there is good.

And Mr. Martin, if you could read the last paragraph there.

MR. F. MARTIN: Okay.

MR. PEDDIGREW: Okay.

Again, so this would be – you would agree as well, I guess, this would be a significant qualification on MHI’s conclusion about what was the least-cost option? I think what they’re saying is here it’s, you know, it’s based on the key inputs and assumptions that would’ve come from Nalcor, is that –?

MR. F. MARTIN: Absolutely.

MR. PEDDIGREW: And there’s discussion in – Madam Clerk, I believe it is on the next page, if you could scroll down. No, sorry about that. There’s discussion in the MHI conclusions as well about the need for – the possibility of a need for – oh, here we go, it’s actually the indented paragraph here.

Mr. Martin, if you could just have a quick read of that paragraph. I just have a couple questions for you on it. (Inaudible) “Given the significance.”

MR. F. MARTIN: You mean starting with “Given”?

MR. PEDDIGREW: Yes.

MR. F. MARTIN: Okay.

MR. PEDDIGREW: Okay.

So just about halfway down that paragraph it says “In the case” – and I think what this paragraph is about is about the risk of the system going down.

MR. F. MARTIN: It’s risk of transmission line failure.

MR. PEDDIGREW: Right.

MR. F. MARTIN: Yeah.

MR. PEDDIGREW: Okay.

And so could you just explain what does a one-in-50-year reliability return period mean?

MR. F. MARTIN: It basically refers to the fact that you could see one event in a 50-year period that could damage your line.

MR. PEDDIGREW: Right.

MR. F. MARTIN: Or the likelihood of that happening would be once in 50 years –

MR. PEDDIGREW: Right, okay.

MR. F. MARTIN: – is probably a better way of putting it.

MR. PEDDIGREW: Okay. Which seems to be not frequent.

But it seems to be that the standard here is a one-in-500-year reliability return – so, again, one event in 500 years. Is that –?

MR. F. MARTIN: That’s right.

MR. PEDDIGREW: And then about halfway down that paragraph where it says: “In the case where an alternate supply is available, e.g. the Maritime Link or backup generation.”

So is your understanding that the suggestion there – is that the Maritime Link would be a backup source of power in the event that the Labrador-Island Link were – system were to go down?

MR. F. MARTIN: That’s what this indicates to me, yes.

MR. PEDDIGREW: Okay.

And it’s – where it says: “or backup generation.” Do you know what might have been considered as the, I guess, the other backup generation source?

MR. F. MARTIN: The other backup generation could’ve been combined cycle thermal units, more Hydro – of which there were still only three small ones left – a myriad of combustion turbines. Those types of things.

MR. PEDDIGREW: Would Holyrood be –?

MR. F. MARTIN: Oh Holyrood, certainly, if it was still available, yeah.

MR. PEDDIGREW: I think those are all my questions. Thank you.

MR. F. MARTIN: You’re welcome.

THE COMMISSIONER: Nalcor Board Members?

MS. G. BEST: No questions.

UNIDENTIFIED MALE SPEAKER: No questions.

THE COMMISSIONER: Thank you.

Mr. O’Flaherty?

MR. O’FLAHERTY: Yes, thank you, Mr. Commissioner.

Just briefly, Mr. Martin, you were asked questions –

THE COMMISSIONER: Are you able to – would you come up to the (inaudible) please?

MR. O’FLAHERTY: Oh, I’m sorry. Yup.

Good morning, Mr. Martin.

MR. F. MARTIN: Good morning.

MR. O'FLAHERTY: Just briefly – you were asked questions by Commission counsel and by Mr. Coffey regarding the date to which the board had requested an extension for the filing of its report. Do you recall that?

MR. F. MARTIN: Yes.

MR. O'FLAHERTY: And you answered that question based on your present recollection today, correct?

MR. F. MARTIN: Yes.

MR. O'FLAHERTY: Just to clarify for the Commissioner: You were not directly involved in the determination of what date the board would request an extension to, were you?

MR. F. MARTIN: No, I was not.

MR. O'FLAHERTY: And therefore, the letters that document the request for extensions, and the responses from government, would be the best record for the Commissioner of the dates of any requested extensions and any responses?

MR. F. MARTIN: Absolutely.

MR. O'FLAHERTY: Thank you. Those are my questions.

THE COMMISSIONER: Thank you.

All right, thank you, Mr. Martin. You can step down.

MR. F. MARTIN: Thank you.

THE COMMISSIONER: So we're ready for our morning break here. So we'll take our break and move to the next witness when we return.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right, next witness, Mr. Learmonth.

MR. LEARMONTH: Darlene Whalen. Could Ms. Whalen be affirmed or sworn?

THE COMMISSIONER: Okay, which do you prefer this morning, to be sworn or affirmed?

MS. WHALEN: I'll be sworn.

THE COMMISSIONER: Okay, just stand up please then.

UNIDENTIFIED FEMALE SPEAKER: Mic.

THE COMMISSIONER: Is your microphone on there?

MS. WHALEN: Is it supposed to be red or green? Red.

THE COMMISSIONER: Yeah.

CLERK: Do you swear that the evidence you shall give this Inquiry shall be the truth, the whole truth and nothing but the truth so help you God?

MS. WHALEN: I do.

CLERK: Please state your name for the record.

MS. WHALEN: Darlene Whalen.

CLERK: Thank you.

MR. LEARMONTH: Thank you for coming to give us your evidence, Ms. Whalen. You're a resident of Conception Bay South, is that right?

MS. WHALEN: Yes.

MR. LEARMONTH: Yeah. And you're – what is your present position?

MS. WHALEN: I'm currently chair and CEO of the Public Utilities Board.

MR. LEARMONTH: And how long have you been chair in – of the Public Utilities Board?

MS. WHALEN: It's fairly recent, March 14, 2018, I think my appointment was.

MR. LEARMONTH: May 14 would it be?

MS. WHALEN: March –

MR. LEARMONTH: March.

MS. WHALEN: – 14.

MR. LEARMONTH: March 14, 2018, all right. First, can you tell us about your education after high school?

MS. WHALEN: I graduated high school from – in Corner Brook in 1979. To save you the math, I'm 56 years old. I did two years of physics, chemistry studies at Sir Wilfred Grenfell College in Corner Brook, transferred in, in 1981, continued my chemistry, physics work. And I think in 1983 I was admitted with advanced standing into the Faculty of Engineering and I completed my civil engineering degree in 1986. Did my master's degree in environmental engineering and applied science in 1990, graduated in 1996.

MR. LEARMONTH: Okay, just state that again? You graduated in 1996 with a master's degree in –?

MS. WHALEN: Environmental engineering and applied science.

MR. LEARMONTH: Yes. And where –

MS. WHALEN: From Memorial, sorry.

MR. LEARMONTH: From Memorial.

MS. WHALEN: Both from Memorial.

MR. LEARMONTH: So you have a master's degree?

MS. WHALEN: Yes, I do.

MR. LEARMONTH: And –

MS. WHALEN: And I was a fellow of the School of Graduate Studies for academic achievement in that program.

MR. LEARMONTH: Okay.

After you finished your undergraduate at Memorial, did you go to work?

MS. WHALEN: I did. I started – two days after graduation I started work with a small consulting firm here in – it was actually in this building, I think: Acres International.

MR. LEARMONTH: Yes.

And after your – how long did you stay there?

MS. WHALEN: That was from May of '86 'til October of '89, I believe. And I left – I was asked to join the faculty of engineering in the co-operative education program to help with the experiential learning component of that program.

MR. LEARMONTH: Was that a full-time position?

MS. WHALEN: Yes, it was.

MR. LEARMONTH: Yeah. And how long did you continue on in that position?

MS. WHALEN: I was there from 1989 'til May of 2000.

MR. LEARMONTH: To 2000. And after 2000, that's when you went with the Public Utilities Board full time?

MS. WHALEN: Yes, I joined the board full time as – in May of 2000. I was a part-time commissioner with the board from 1997 'til 2000.

MR. LEARMONTH: Was it 1991 when you were first –

MS. WHALEN: Oh –

MR. LEARMONTH: I think it goes back that far.

MS. WHALEN: Yeah, I –

MR. LEARMONTH: Just tell us a little bit about that.

MS. WHALEN: My time with the board sort of spans a couple of decades in different capacities.

My first exposure to the board was I was appointed as an interim commissioner for a single matter. I sat on a panel; I think it was a disposition of assets in Labrador. And there would have been some – I guess there's a provision to appoint an interim commissioner where there might be some conflict or something. Anyway, I was asked to sit and we did that work, wrote our decision and then that was it.

And then in May of 1997, I think, under former Chairman Vardy, I joined the board as a part-time commissioner. And then, when the chair – current – the vice-chair at the time left, I was asked if I would be interested in being considered for the vice-chair, so ...

MR. LEARMONTH: And that was in 2000?

MS. WHALEN: Yes, May of 2000.

MR. LEARMONTH: And so you were vice – appointed vice-chair as –

MS. WHALEN: I was appointed commissioner and then vice-chair at the –

MR. LEARMONTH: And is vice-chair –

MS. WHALEN: – same time.

MR. LEARMONTH: – a full-time position?

MS. WHALEN: Yes. Yeah.

MR. LEARMONTH: Yeah.

So you've been working full time at the Public Utilities Board since 2000.

MS. WHALEN: Since May of 2000.

MR. LEARMONTH: In different capacities.

Could you just give us a summary of the terms of your – I'm not talking about financial, but the terms of your retainer? Do you have a contract? Is it a fixed-term contract or is it something that continues to roll over? Just give us some information on that, please.

MS. WHALEN: My appointment is through OC, through an order-in-council. And I was

appointed under legislation that predates the existing legislation. Existing commissioners, as they're appointed, have 10-year terms. When I was appointed I was appointed to age 70. Some people refer to it as a lifetime appointment. I don't like to use that term, but I'm appointed to age 70.

MR. LEARMONTH: So you're appointed until – so that's a long way off?

MS. WHALEN: Yeah, hopefully.

MR. LEARMONTH: Yeah.

But, anyway, so your appointment is literally 'til you're 70 years old.

MS. WHALEN: I'm – there's some suggestion that it's a lifetime appointment truly, because I think the age restriction has actually been eliminated by virtue of other legislation, but –

MR. LEARMONTH: Yeah.

MS. WHALEN: – I won't be there 'til I'm 70 so it'll be a moot point.

MR. LEARMONTH: Okay, but you have security –

MS. WHALEN: A security of tenure, yes – tenure, yes.

MR. LEARMONTH: – until you're 70 years old.

MS. WHALEN: Absolutely.

MR. LEARMONTH: So you have that independence built in –

MS. WHALEN: Yeah.

MR. LEARMONTH: – to your position.

MS. WHALEN: Yeah.

MR. LEARMONTH: Okay. Thank you.

MS. WHALEN: The other commissioners at the board are all appointed for 10-year terms now.

MR. LEARMONTH: Ten years.

MS. WHALEN: The newer commissioners.

MR. LEARMONTH: All right.

So how did this come – I must confess I’ve never heard of this appointment ’til 70. Is that something unique to you or is that something that’s happened in –

MS. WHALEN: It’s something – well, within the board it’s something unique to me just by virtue of the fact that I predated the legislative change which changed the terms. It’s not unique to boards like ours; I think the commissioners at the Nova Scotia Utilities and Review Board are appointed to age 70 as well. I’m not sure with other boards, but certainly not – I know that’s the case in Nova Scotia.

MR. LEARMONTH: Okay.

Now, I – we have a large – there’s two volumes of documents and I’m sure (inaudible). And I’m not going to ask you to go through all or, actually, many – even many of the documents because they’ve all been referred to by Ms. Greene and, to a certain extent, by Mr. Martin. There are some documents I’m going to refer you to but not many.

You know what you’re here for today, to talk about the reference which was made on or about June 13 of the order-in-council was June 13, 2011. I understand that before the order-in-council that you had – you attended one organizational meeting with Charles Bown of the Department of Natural Resources. Is that correct?

MS. WHALEN: Yes.

MR. LEARMONTH: And where was that meeting?

MS. WHALEN: It would’ve been at the board office.

MR. LEARMONTH: The board’s office?

MS. WHALEN: Yeah.

MR. LEARMONTH: And who else would have been in attendance?

MS. WHALEN: My recollection it would be the four commissioners – Ms. Greene. And I can’t recall if there were any other government officials there or anyone else from the board but they – that would be the core group that I would have been, I guess, cognizant of. There may have been other people in the room. I can’t recall.

MR. LEARMONTH: And what was the subject of the – or what was discussed at this meeting, which I presume would’ve been in May –?

MS. WHALEN: It would’ve been sometime in May. It –

MR. LEARMONTH: Yes.

MS. WHALEN: It might – I say that – no, I think it would’ve been closer to the date of the – perhaps in June more so than May I’m thinking, but –

MR. LEARMONTH: You’re not sure.

MS. WHALEN: I’m not sure, no.

MR. LEARMONTH: Okay, but you only attended one meeting –

MS. WHALEN: Yes and –

MR. LEARMONTH: – with government.

MS. WHALEN: And the reason I think it might’ve been closer to June is because it would’ve been more of a transmittal kind of meeting where the reference was being, sort of, provided to us as the four commissioners.

MR. LEARMONTH: Yes.

And was the – so Mr. Bown was representing the Department of Natural Resources – well, the Government of Newfoundland and Labrador. And if you could just turn to your tab 8, Exhibit P-00537 – do you have that?

MS. WHALEN: Yes, I do.

MR. LEARMONTH: And page 2.

MS. WHALEN: Yeah.

MR. LEARMONTH: That's the terms of reference and reference question. Now, at this meeting you had with Charles Bown, were the – was the wording of the terms of reference a subject of discussion?

MS. WHALEN: Not in much of a detailed way, no. And the terms of reference were essentially fixed at that time. And we had been – as commissioners, I think we had been aware of what the question was that was coming because there was a bit of back and forth between Ms. Greene and Mr. Bown previous to this.

MR. LEARMONTH: All right.

And the – you know, the scope of the question, is just – there's two choices. Did you – did that give you any concern given the somewhat narrow scope of the question, which is stated on page 2, you know, there was two choices.

MS. WHALEN: Yes. Yeah.

At the time, I think I would have had some – it's hard to phrase it as a concern or a problem or – but it's the nature of the reference question being, you know, to evaluate between two options. And the thought would've been, you know, it's a big question and to have it scoped to just the two options, it was just how we would do this. But, again, it's the LGIC's prerogative to scope the reference and we would take it and go –

MR. LEARMONTH: Yeah. So the government has the right to send you –

MS. WHALEN: Absolutely.

MR. LEARMONTH: – whatever reference they want and –

MS. WHALEN: Yeah.

MR. LEARMONTH: – it's not your role to –

MS. WHALEN: We would do the work and –

MR. LEARMONTH: – redo or rework it.

MS. WHALEN: Yeah.

MR. LEARMONTH: So the purpose of this meeting was not to, we'll say, negotiate or discuss the –

MS. WHALEN: No, absolutely not. No.

MR. LEARMONTH: It was a scheduling meeting, more or less, agenda –

MS. WHALEN: Well, it would've been here's the reference, you know. We – I guess it gives Mr. Bown a chance to see the four commissioners and sort of deliver the reference and we thank him for it and ...

MR. LEARMONTH: Now, there were – we've been told that from both Ms. Greene and Mr. Martin earlier today that one issue that emerged after the reference was sent to you that – was the production of documents from – by Nalcor to the board. You – can you say anything about that?

MS. WHALEN: Well, I –

MR. LEARMONTH: In a general sense. I'm going to show you some documents –

MS. WHALEN: Sure.

MR. LEARMONTH: – but just in a general sense can you give us some indication of your recollection of that issue?

MS. WHALEN: As commissioners, we're not – we wouldn't have been actively involved in the day to day back-and-forths between – we would refer to them as our project team or our advisors and Nalcor, with respect to the actual production and the documents that were coming or going, but there certainly was a sense right from the get-go.

And because there had been some discussions about the possibility of a reference question coming to us and the nature of what the reference question was, I know that there was some effort put into, even in advance, of the terms of reference coming to us to be ready, just to hit the ground running because we understood that December 30 was going to be the deadline date.

And there was a sense that that wasn't a lot of time to do what appeared to be a significant piece of work. So, you know, I think there was a fair amount of effort going into the kinds of information that we would be looking for. And I think there was a listing of documents, possible initial documents that we would – we could expect to get almost immediately, would've been perhaps completed by Mr. Martin in conjunction with Ms. Greene and Mr. Banfield. So –

MR. LEARMONTH: Would the – did I cut you off?

MS. WHALEN: No, I'm sorry.

MR. LEARMONTH: No.

MS. WHALEN: You go right ahead.

MR. LEARMONTH: Okay.

Did – so this, like the schedule being with a deadline of December 31, even before you recognized that there may be a problem with the timing of the delivery of documents, even before that did you believe that the schedule was ambitious or, you know, heavy lift –

MS. WHALEN: It wasn't so much then the schedule, it was just being able to be ready to get to work immediately because we knew we would need expert expertise and we knew that there would be a lot of information. One of the – and I – one of the things that I remember is, you know, this was really coming to us almost in a vacuum because we didn't regulate Nalcor. We don't regulate Nalcor, so we had nothing and there would not be an application.

In the normal process, we get an application, you know, eight or nine binders of evidence shows up with the application and we kind of have a starting point, but we didn't have a starting point. So the focus would have been on just trying to start filling the record so to speak. So –

MR. LEARMONTH: Yeah.

MS. WHALEN: And the sooner we could do that the better.

MR. LEARMONTH: Now, as a board member, am I correct that – in believing that you would not be involved in the day-to-day communications between your legal counsel and Mr. Martin and Nalcor, although you would be aware that these communications were going on?

MS. WHALEN: That's correct. That's correct, yeah.

MR. LEARMONTH: You wouldn't be directly involved.

MS. WHALEN: No.

MR. LEARMONTH: But would you be copied on the correspondence that was sent out?

MS. WHALEN: Not necessarily. Unless it was something that would have required – or would have been expected to be coming to us for some direction or some, you know, action; but, no, as a general rule, no.

MR. LEARMONTH: Okay, just let me show you just as an example – and as I said, I'm not going to go through all these documents – at tab 12, Exhibit P-00541.

MS. WHALEN: Yeah.

MR. LEARMONTH: This is a letter that Cheryl Blundon – I believe it was drafted –

MS. WHALEN: Mmm.

MR. LEARMONTH: – well, it may have been drafted by Maureen Greene. Anyway, it went under – out under the signature of Cheryl Blundon, sent to Geoffrey Young. The second paragraph on page 1 of P-00541 is: Information required to be filed with the board no later than June 30 was outlined in our letter, et cetera. Would you have been copied on this letter or would you have seen it or ...?

MS. WHALEN: Yes. I think I can say in the general sense that any correspondence that would have gone out under Ms. Blundon's signature as board secretary would have been put to Mr. Wells or myself –

MR. LEARMONTH: Yeah.

MS. WHALEN: – before it went out.

MR. LEARMONTH: Okay.

And tab – at tab 16, it's Exhibit P-00545. That's another letter –

MS. WHALEN: Yeah.

MR. LEARMONTH: – July 12 from – this one is signed by Maureen Greene to Geoffrey Young. Would this letter be something that you believe you would have seen before today?

MS. WHALEN: I would have seen it, yes.

MR. LEARMONTH: Okay. And I've just got – show you a couple more, I'm not going to ...

MS. WHALEN: Sure.

MR. LEARMONTH: Okay, let's look at tab 19. That's P-00548.

MS. WHALEN: Yes, I would have seen that one as well.

MR. LEARMONTH: You would have. Okay, so this type of letter you would have been aware of and you would have been kept advised about the status of the document disclosure by Nalcor. Is that correct?

MS. WHALEN: Yes, yeah.

MR. LEARMONTH: But not involved in the day-to-day –

MS. WHALEN: Yeah.

MR. LEARMONTH: – nitty-gritty communications and so on.

MS. WHALEN: That's correct, yeah.

MR. LEARMONTH: So if there was a meeting between, say, Maureen Greene and Fred Martin at Nalcor and there'd be minutes produced, would you see the minutes or would you just possibly be advised that there had been a meeting?

MS. WHALEN: I would have – I can say I probably would. We're a really small office so –

MR. LEARMONTH: Yeah, I realize that.

MS. WHALEN: – I think I would've known – perhaps known that there would've been a meeting. Maybe not, I wouldn't say that with certainty. With respect to the minutes, no, I – we had a process in place where Ms. Greene and the board secretary – if there were meetings sort of held at the board office where there was going to be a record, the board secretary would sit –

MR. LEARMONTH: Yeah.

MS. WHALEN: – and then produce minutes. I wouldn't necessary have even seen those –

MR. LEARMONTH: No.

MS. WHALEN: – except it was important that it be kept for the record.

MR. LEARMONTH: Yeah.

MS. WHALEN: Ms. Greene would have updated the four commissioners at the one – at the same time, usually following perhaps, when we have board meetings every – biweekly. And, you know, we may have not necessarily every second week –

MR. LEARMONTH: Yeah.

MS. WHALEN: – but on a fairly regular basis Mr. Greene would have produced –

MR. LEARMONTH: And she's your legal counsel, I expect she –

MS. WHALEN: She would've been our in-house legal counsel then as well, yeah, so ...

MR. LEARMONTH: I expect she would keep you up to date on matters.

MS. WHALEN: Yes, absolutely.

MR. LEARMONTH: Okay.

MS. WHALEN: Absolutely.

MR. LEARMONTH: Now, we know that, in the beginning we'll say, at the time the reference was referred to you – to the board – that there

was a plan to have a technical conference. Were you aware of that –

MS. WHALEN: Yes.

MR. LEARMONTH: – that that was the original plan?

MS. WHALEN: Yeah.

MR. LEARMONTH: Can you advise us what the nature of a technical conference and your understanding of the potential benefits of having a technical conference?

MS. WHALEN: I think when the initial schedule was developed that the idea of the technical conference – and I think some reference has been made to this – it was a – it's not used a lot by the board in its hearing procedures, but when we – and I was – I did – I was involved in the automobile insurance review in 2005 which would've been the first time in my time there, I think, that we would have instituted such a process.

When you have a number of highly technical experts – and in the automobile insurance case we have, I think, three actuaries who had produced expert reports. And we strive to stay away from the adversarial type of process in our hearings, so the more information that can come out in a sort of an information-exchange way or, you know, between counsellor or between the parties in advance of, or during, we find it to be most valuable.

So we would have had a technical conference as part of that proceeding, and we found that it worked very well because the actuaries had the discussions and they can resolve their technical issues. I mean it's at their level of expertise, it's very – it's at a really – at a level of expertise that most people in the room perhaps wouldn't (inaudible) R-squared values and statistical modelling and all that stuff.

And it just helps, perhaps, crystalize some positions, helps identify some issues, settle some issues. Sometimes some issues just slide off the table and they no longer are contentious so they don't have to be – they don't have to come before us and I don't really have to deal with them then, so ...

MR. LEARMONTH: Okay. We'll come back to that in a little while.

MS. WHALEN: Yeah.

MR. LEARMONTH: But – so, anyway, we know from the evidence that's already in before the – before us that there was this issue of document production and response to RFIs went on into the late fall. Then, ultimately, on November 10, 2011, the submissions of Nalcor were received by the PUB, but there were still issues of disclosure.

We also know that there was an extension given 'til March 31, although there had been a request for a longer extension but, anyways, it was given 'til March 31. Did the March 31 extension, when it was given – did it appear to you to be satisfactory? In other words, did you think that the extension was long enough to enable you to complete your work and do the technical conference and so on?

MS. WHALEN: No.

We had – under the Section 5 of the EPCA when a reference comes to us we are required to have a public hearing. And a public hearing, in our context, has a certain set of – certain processes that come to bear on that, and one of them is public consultation and giving the public the opportunity to come before us. We would also have, for example, issued a notice of intention to participate in a request for intervenors, however you might want to refer to it.

So that process itself was to start in the fall and because of the delay, we really hadn't gotten to it. And, normally – I'm thinking now – perhaps, you know, that just getting the process underway is significant because there's public notice required of the hearing, there's public notice required for the call for request for intervenors and, you know, you sort of just get in (inaudible) so you kind of want to allow about a six-week period, I would expect, or something to that effect.

So the fact that we were well into the fall, we knew it wasn't going to happen in the fall, but March didn't – also didn't seem to be enough time to allow for that kind of process that we had contemplated which I think is why we

initially requested June. And it was more – it was process-driven, I think that was, because we were really looking then at – MHI's report, I think, was anticipated after Christmas. So it was – no, the March 31 deadline, I think it was, didn't seem on its face to be something that we would be able to do with our normal processes.

MR. LEARMONTH: Okay.

Now, you know, it's – I'm not going to ask you in hindsight whether the technical conference would have potentially changed things and that, but I just want to know: Do you feel that the fact that you were of the view that the technical conference could not be conducted because of the deadline, did that cause you any concern?

MS. WHALEN: It's hard to say. The technical conference – it would have depended on some things that might have happened before that and whether we had had our notices of intention to participate and we had other parties involved, as an example. And there were a number of expert – other expert reports had been made available, you know. In that case perhaps but, again, it became a moot point when we weren't able to hold it, in any event. I can't say whether it would have. It may have. I'm not – I can't say.

MR. LEARMONTH: Yeah, okay.

So then you had the public – you presided over the public hearing.

MS. WHALEN: I was one of –

MR. LEARMONTH: Well, you didn't, Andy Wells was the chair –

MS. WHALEN: I was one of the sitting commissioners.

MR. LEARMONTH: – but you were one of four commissioners and you had your public hearings. Were they – did you have enough time to conduct enough – as many public hearings as you felt were appropriate?

MS. WHALEN: We hadn't made a decision as to whether we would travel. For the previous review we had done, which involved a significant public consultation piece, we travelled around for the automobile insurance

review. The chair at the time and myself travelled around the Island and went to Labrador and that – you know, that took up – and with the Consumer Advocate, actually – took two or three weeks of actual time.

We hadn't come to a decision as to whether we were going to do that with this piece of work, but for the time we had – I think we had allocated two weeks: one for expert – you know, the technical piece and the second week, I think, for public presentations. It was really all the time we could allow, so...

And we had good participation. I mean there were – and we webcast the proceeding as well and I think there was 600 or 700 people viewing the webcast each day, so...

MR. LEARMONTH: Did you feel that if you had been able – had enough time to travel, like, throughout the province or at various places in the province, that that could potentially have assisted you in your deliberations?

MS. WHALEN: It's hard to say.

MR. LEARMONTH: It's hard to say.

MS. WHALEN: I mean it's part of our processes, and it's – sometimes we have travelled and convened a hearing session and nobody has shown up, and we've convened hearing sessions in other locations, and the room has been full. So it's hard to say. It's more about the opportunity for public input.

MR. LEARMONTH: Okay.

So after the public hearings were completed, I take it that the board turned its attention to assessing the evidence and then writing a report?

MS. WHALEN: The commissioners, yes.

MR. LEARMONTH: Yeah.

And was that – did you feel that you had, you know, time to do that at a reasonable pace or not?

THE COMMISSIONER: Can I just, sort of, step in here for a moment?

I want to be very cognizant of the fact that this is a quasi-judicial board, and notwithstanding that it is a reference, I think that there is – there are good reasons why discussions about what was in the mind of the commissioners at the time they made their decision is really something that we should not be inquiring about, nor should we be going behind the decision of the board members with regards to this.

So we're skating on a bit of thin ice here right at the moment, and I'd like everybody to think about questions like that before they're put, and how they're put, I think, is very important as well.

So –

MR. LEARMONTH: All right, that's fine.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay. I won't –

THE COMMISSIONER: I could say more –

MR. LEARMONTH: I'll withdraw –

THE COMMISSIONER: – but I'm gonna hold – withhold right at the moment.

MR. LEARMONTH: I'll withdraw that question then.

Anyway, your report was – the commissioners prepared a report, and it was – I think in your interview evidence, you said it was delivered on March 30, a Friday night –

MS. WHALEN: At –

MR. LEARMONTH: – at 10 o'clock at night?

MS. WHALEN: Ten, yeah.

MR. LEARMONTH: Yeah.

But was there – were you working on a regular basis in order to prepare this report? Or was there a big time demand?

THE COMMISSIONER: Again, I don't really want to get into that part. I don't think it's appropriate for a board member to speak about

how they deliberated or how long they deliberated or whatever.

MR. LEARMONTH: All right.

Okay, well, anyway – your report was delivered on March 30, at 10 o'clock on a Friday night, and I understand that an issue – after you delivered your report, an issue arose about the fact that MHI was seeking an engagement with the Government of Newfoundland to review – to take on another assignment.

Can you explain your recollection of that issue?

MS. WHALEN: Yeah. I don't know if I can say that it was MHI seeking an engagement.

But we issued our report on Friday night. Saturday there wasn't much. I think I heard in the media on Sunday that a statement from someone in government – and I can't recall who it was. It may have been reported by the media as something coming from government – that MHI had been engaged to do the review of the DG3 work, I think, or for – had been engaged by government.

It was just a timing thing. I mean, it was Friday night our report was issued, and Sunday morning, I think, there was some representation being made that MHI, our consultant, had been engaged by government.

MR. LEARMONTH: Did you have a problem with that?

MS. WHALEN: I did.

MR. LEARMONTH: Why was that?

MS. WHALEN: Well, as of Friday night, my position was that MHI was still our consultant, and we hadn't really, sort of, wrapped that piece of it up.

And I think, from a professional ethics concern, you just don't leave one client and go work for another client and do the same work. I mean, that's – that was really the – and when I say I had a concern, it would have been: I'm a professional engineer – I'm a registered professional engineer in this province, and I

would have had that concern. That's where it came from for me.

MR. LEARMONTH: Mm-hmm.

Did you communicate that concern to anyone at MHI?

MS. WHALEN: I did.

MR. LEARMONTH: What? How?

MS. WHALEN: I spoke to Mr. Wilson.

MR. LEARMONTH: When would this have been? Given your report – March 30 was a Friday – what – when would that –

MS. WHALEN: It would have been Monday or Tuesday. Maybe – I'm thinking maybe Tuesday, because I would have had to try to – with the time difference – I can't – yeah, I don't know. It would have been Monday or Tuesday. It would have been early that week.

MR. LEARMONTH: Okay.

MS. WHALEN: Myself, and I asked Commissioner Newman to sit in with me.

I spoke to Mr. Wilson and expressed to him our concerns, and it was really a case then of – we didn't have any further work for MHI to do with us. It was just really – I thought even a courtesy call, I think, would have taken care of it, perhaps.

But at the time, I expressed my concern and asked them – well, essentially said you're going to have to write us and ask to be released, and I identified the potential conflict of interest that I thought might exist there just vis-à-vis the client relationships, and they wrote us a letter, and we released them. That all happened within a couple of days.

MR. LEARMONTH: Okay, can you just turn to tab 77, Exhibit 00602.

MS. WHALEN: (Inaudible.)

MR. LEARMONTH: That's in binder 2.

MS. WHALEN: Yup.

MR. LEARMONTH: Okay, can you identify that letter?

MS. WHALEN: That would be the letter Mr. Wilson wrote the board.

MR. LEARMONTH: Okay.

And then if you just turn to the next exhibit in tab 78, that's P-00603.

MS. WHALEN: Yeah.

MR. LEARMONTH: Yeah. That's a – can you identify that letter?

MS. WHALEN: That would be the – essentially, I would call it a letter of release from the board to Mr. Wilson of MHI.

MR. LEARMONTH: Well, the issue was resolved and –

MS. WHALEN: Yeah.

MR. LEARMONTH: – you agreed to allow them to –

MS. WHALEN: Yes, it was never –

MR. LEARMONTH: The board agreed to consent to their being retained by the Government of Newfoundland?

MS. WHALEN: Yeah. And we did put a condition on the consent that we expected MHI to observe its ongoing professional and ethical obligations to the board with respect to the work it had done for us. But yes, they were released.

MR. LEARMONTH: Now, after the report was filed, there were a number of comments made by politicians and former politicians about the job that – you know, about the decision that had been filed. Are you – do you know what I'm talking about?

MS. WHALEN: Yes, yeah.

MR. LEARMONTH: Yeah.

And there were some comments that government had lost confidence in the board, hadn't done its job, had – just show you some of

them. If we just turn to exhibit – tab 83, Exhibit 00727.

MS. WHALEN: Yes.

MR. LEARMONTH: Do you see that?

MS. WHALEN: Yeah.

MR. LEARMONTH: Okay.

So in the second paragraph – this is – under the – April 2, 2012, release of the Executive Council and Natural Resources, heading, “Provincial Government Responds to Release of PUB Report.”

First – second paragraph, ““Our government has been intent from the outset on ensuring the proposed development of Muskrat Falls is subject to scrutiny and analysis prior to any decision on sanction of the project. This is why we engaged the PUB in the first place,” said Premier Kathy Dunderdale. ‘I am disappointed that after nine months, in excess of \$2 million spent, and the PUB having access to thousands and thousands of pages of documentation, that they have chosen not to fulfill their responsibility as it relates to the terms of reference for their review to determine whether Muskrat Falls is the least-cost option.’”

And then in the next paragraph: “The information available to the PUB in its review is the same information that was available to Manitoba Hydro International and the Consumer Advocate – both were able to reach a conclusion while the PUB” was not.

And then there were other – I’ll just refer you to one other article, because the subject – the comments, the nature of the comments is similar, and that’s – second document is P-00728 at tab 84.

MS. WHALEN: Yes.

MR. LEARMONTH: Do you have that?

MS. WHALEN: Yeah.

MR. LEARMONTH: So Mr. Kennedy says, among other things: “Asked if the PUB report

came back to bite the government, Kennedy replied, ‘I think it came back to bite them.’”

And then he says: “Kennedy chided the PUB for not understanding what it been asked to do, including working with cost estimates that it knew would not be final projections.

““It just showed a lack of respect for the process on their part, a failure to comply with their statutory mandate.”” And there were other comments that the government had lost confidence in the board.

Did these comments have any effect on you?

MS. WHALEN: Personally, I took them – yeah, I took those comments personally.

MR. LEARMONTH: What did you – how did you feel about these comments?

MS. WHALEN: Well, I took the comments as an expression of non-confidence in the board. And for a board like ours that acts in the public interest, that’s really what – we have to have public confidence to be able to do the work we do.

So to have a minister express a – essentially, you know, an expression of non-confidence in the board, I took it as non-confidence in the work, the ability of the commissioners to continue to do their work as well. And my – I just felt if there was an expression of non-confidence expressed so publicly that he should have fired us.

MR. LEARMONTH: Should have fired you if he felt that way.

MS. WHALEN: That’s where I went with that. That was my personal –

MR. LEARMONTH: Yeah.

MS. WHALEN: Yeah.

MR. LEARMONTH: Did you feel that you were going to get fired?

MS. WHALEN: There was a point in time in those couple of weeks following the release of our report that I – yes, yes, yeah, I – yes.

MR. LEARMONTH: You thought you might be fired or –?

MS. WHALEN: I went in one weekend and packed up my office, I was ready to leave.

MR. LEARMONTH: You packed up your office?

MS. WHALEN: I did, yes.

MR. LEARMONTH: Why?

MS. WHALEN: Well, I had, sort of, heard these firings don't go very well and I was just – wanted to be ready just in case, I guess. It was a really low point in my time at the board.

MR. LEARMONTH: Now, there's been some reference to a telephone conversation that Andy Wells is alleged to have had with Kathy Dunderdale within a few days of the filing of the decision. Do you know what I'm talking about?

MS. WHALEN: I do, yes.

MR. LEARMONTH: Okay, now I know you weren't present or anything like that, but what information, if any, did you receive from Andy Wells or anyone else about this telephone conversation and the nature of the telephone conversation?

MS. WHALEN: Mr. Wells – and, again, it would have been perhaps in the hallway or – you know, it wasn't sort of a – in an informal way said that he had received a call from the – from Premier Dunderdale and that it wasn't a pleasant call.

MR. LEARMONTH: Did he tell you what – can you give us any idea about what Mr. Wells told you about the call, like what was said?

MS. WHALEN: I probably wouldn't be repeating exact words that he said to me just with the passage of time, but it was something to the effect of: She had said I'm sick of you and your board or something to that effect. And, again, I wasn't there.

MR. LEARMONTH: No, no, but –

MS. WHALEN: I wasn't party to the call.

MR. LEARMONTH: – I'm sick of you and your board, that's –

MS. WHALEN: Something –

MR. LEARMONTH: – your recollection of the gist of what Mr. Wells –

MS. WHALEN: Something to that effect.

MR. LEARMONTH: – told you was –

MS. WHALEN: And I'm reluctant to even – you know, I –

MR. LEARMONTH: Yeah.

MS. WHALEN: – that that would have been communicated from Mr. Wells to me.

MR. LEARMONTH: And to you directly.

MS. WHALEN: Yes, yes, yeah.

MR. LEARMONTH: And you don't know when?

MS. WHALEN: My recollection is it was around the time when we were – when I was having discussions with Mr. Wilson with MHI. It was after the report, but in that sort of short couple of days after that. That's my recollection.

MR. LEARMONTH: Okay.

Okay, those are my questions.

THE COMMISSIONER: All right, cross-examination, the Province of Newfoundland and Labrador.

MR. RALPH: No questions.

Thank you, Commissioner.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: Good morning, Ms. Whalen, Dan Simmons for Nalcor Energy.

MS. WHALEN: Good morning, Mr. Simmons.

MR. SIMMONS: Just a few things for you.

I know you were here this morning to hear the evidence from Mr. Martin.

MS. WHALEN: (Inaudible.)

MR. SIMMONS: Did you – were you able to hear Ms. Greene's evidence yesterday, because I know it's broadcast.

MS. WHALEN: I'm working on another reference report as we speak, so while I was writing I had it on on the side and it kept freezing up. So I heard most of it.

MR. SIMMONS: Okay, yeah.

MS. WHALEN: I think I did.

MR. SIMMONS: Okay, well, that may help shorten things up a little bit here now.

MS. WHALEN: Okay.

MR. SIMMONS: Just a couple of general questions about process, really. And the first is that I understand that in proceedings like those before the Public Utilities Board, unlike in a court where all the evidence has to come out through witnesses on the witness stand and documents have to be proven and it all has to happen before the judge, that in a Public Utilities hearing, it's – pre-filed evidence plays an important part in it.

MS. WHALEN: Yes.

MR. SIMMONS: And can you just tell me just a little bit about how that works in the context of your hearings?

MS. WHALEN: In our normal –

MR. SIMMONS: Yes.

MS. WHALEN: In our normal processes? Our normal process is usually – well, most of them will follow essentially the same processes, so there's no – I don't need to make reference to specific types of applications, but the applications will come in with the prayer for relief with – the evidence comes with it.

So the engineering studies to support capital projects, for example, the expert evidence

usually follows. But the – all of the background material to support the approvals that the utility, for example, would be requesting, the applications are usually very substantial. That opens up the opportunity immediately for our staff to start their review and start the internal RFI process generation.

We can do our notice immediately, we do our call for – notice for intervenors, it goes up on the website, so you know, it starts the process right from the get-go. The RFI process is usually a – we may have one, two, three rounds of requests for information.

If consultants – if the intervenors, once they get involved, actually take an interest in a certain specific area in depreciation or cost of capital or something, there may be other expert reports that may start another RFI process within – on the expert reports and we – those have gone to second and third rounds as well.

So by the time we get to the hearing process, it's usually – I remember our first Hydro GRA. I think by the time we got there I think there like 40 binders of evidence before us.

MR. SIMMONS: Yes. So for the kind – I asked Ms. Greene about this yesterday and I understand that the more typical larger regulatory proceedings –

MS. WHALEN: Yeah.

MR. SIMMONS: – in the utility world would be the annual capital budget approvals and the periodic rate approval applications. And I think – am I correct – that for the capital budget approvals, there's a schedule that all the parties can anticipate, so the utility knows that by a certain date they have to have their complete package prepared, all their evidence gathered and they have the opportunity to work up to filing that (inaudible).

MS. WHALEN: They also have capital budget guidelines. Sorry for interrupting, but the capital budget guidelines really drive that process because they're actually – it's very prescriptive as to what they have to file.

MR. SIMMONS: Yes.

MS. WHALEN: Yeah.

MR. SIMMONS: And for rate applications, I think we heard although there's not an annual schedule, the applicant, whether it be Hydro or Newfoundland Power, has some opportunity to trigger when the process actually starts –

MS. WHALEN: Mm-hmm.

MR. SIMMONS: – so they can do that when they're ready and they've collected their evidence together.

MS. WHALEN: Unless they've been directed to file it.

MR. SIMMONS: Yeah.

And, generally, does that contribute to making the process more efficient once the hearing starts, that it's triggered when the applicant is ready to present their evidence?

MS. WHALEN: I would think, yes.

MR. SIMMONS: Yes, okay.

And a question for you, and you've probably just answered it in what you've said, the requests for information, the RFIs, there's not normally a set of RFIs issued at one point in the process, then all have to be answered. It's more like what I'll call iterative, where there will be requests, there'll be responses, that may spawn more requests. Expert reports may come in which may spawn more requests and that'll continue through to the process.

MS. WHALEN: We do keep control of the process, so we set – we do set a schedule. So, the first round of RFIs have to be filed by a certain date by all parties. The responses have to be filed by a certain date by the applicant. And if there was a need then for a second round, we'll set the schedule for those, so with that caveat, yes, it's – but it can be iterative. And, again, it's iterative because it's in everyone's best interest to have as much of this information flushed out before we get into the hearing's room.

MR. SIMMONS: So some RFIs will be initiated early in the process.

MS. WHALEN: Yes.

MR. SIMMONS: Some will actually come later.

MS. WHALEN: Absolutely.

MR. SIMMONS: And will have to be dealt with later.

MS. WHALEN: Sure.

MR. SIMMONS: And, in your experience, RFIs, are they typically not just limited to requests for existing documents, what would require analysis explanation gathering of further evidence?

MS. WHALEN: That's correct. Yeah.

MR. SIMMONS: Yes. Okay.

Just a question about the technical conferences. It sounds like they are relatively uncommon –

MS. WHALEN: Mm-hmm.

MR. SIMMONS: – in the board procedures and, am I correct, that the commissioners don't participate in technical conferences?

MS. WHALEN: They don't – it would depend and I – my recollection for the Automobile Insurance Review is that the commissioners were in the room but I would have to – but it seems – I recall watching the actuaries having their discussion back and forth.

MR. SIMMONS: Yeah.

MS. WHALEN: And being a bit of a math geek, I thought – I was kind of interested in the exchange between the modelling and stuff, so I must've been there, I guess. I think I was – the commissioners were present. But it is – it's all transcribed and, you know, it's – there are other processes that we have that are also involve, you know, the experts getting into a room, and we've done those in capital budget processes where –

MR. SIMMONS: Yes.

MS. WHALEN: – the utility with, you know, with an expert perhaps may sit with board staff

or may, you know, it's just whatever process suits the application that's before us and the nature of the work that we're trying to get to.

MR. SIMMONS: So, we heard from Mr. Martin this morning –

MS. WHALEN: Yeah.

MR. SIMMONS: – that – who was the facilitator for the MHI experts who were brought – consultants were brought in to conduct aspects of expert review and facilitating the communication with –

MS. WHALEN: Yeah.

MR. SIMMONS: – Nalcor people. We've heard from him this morning that there was some of this direct contact back and forth between the MHI experts –

MS. WHALEN: Yep.

MR. SIMMONS: – and the people at Nalcor. But would – do you have any view as to whether that would, in part, address some of the things that might have been dealt with in a technical conference here?

MS. WHALEN: I would think it would. The technical conference wasn't – I mean it was contemplated in a – in the initial schedule as we were going through and we were trying to just make sure that the schedule allowed for the processes that we thought might be needed, and, you know, and assessed as the – as most applications, as they unfold they take on a life of their own sometimes so

MR. SIMMONS: Now, at the outset of this process, after the – when the reference had come in to the board, we've heard yesterday that there was a schedule prepared by board staff that was presented to – and it was described, I think, as – well, I'm going to paraphrase it, it may not be right, as working backward from the date on which the –

MS. WHALEN: Yes. Yeah.

MR. SIMMONS: – report had to be prepared. Were the commissioners involved in that schedule preparation or was that staff work?

MS. WHALEN: I don't recall being involved in the drafting of it. I may have been involved in commenting on it, or, you know, I mean – again, we're a small office and, you know, we collaborate on most of –

MR. SIMMONS: Mm-hmm.

MS. WHALEN: – most of that.

MR. SIMMONS: Right.

MS. WHALEN: I mean, the schedule would have had impact on all of us, so I would expect at some point it would've been put to me, but I don't recall.

MR. SIMMONS: Right. There were – there was a lot in the schedule –

MS. WHALEN: Yes.

MR. SIMMONS: – to be done, I would suggest, and I'll ask you if you have any comment, you may or you may not, on whether – because there was a fixed date for delivery of the report – whether all the activities in that schedule were more compressed than perhaps they would have been had there not been that fixed schedule.

MS. WHALEN: The nature of it is when you're given a date that you have to deliver – we started with December 30 and kind of worked back as to, you know, we kind of – when we're developing a draft schedule and you sort of allow six weeks for the commissioners to –

MR. SIMMONS: Mm-hmm.

MS. WHALEN: – to say that gets you to the 15th of November, and then you sort of start going back. So, you know, it ends up being what it is, and so –

MR. SIMMONS: Right.

MS. WHALEN: – we have two weeks then to –

MR. SIMMONS: So, if you follow that process, you work back to the point where at the beginning there's only so much time left for the initial information to be –

MS. WHALEN: Yeah.

MR. SIMMONS: – provided to get the process started.

MS. WHALEN: Yeah.

MR. SIMMONS: Yeah. Okay.

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

MS. WHALEN: Thank you, Mr. Simmons.

THE COMMISSIONER: All right. Concerned Citizens Coalition?

MR. BUDDEN: Good morning, Ms. Whalen.

My name is Geoff Budden, I'm the lawyer for the Concerned Citizens Coalition.

MS. WHALEN: Good morning, Mr. Budden.

MR. BUDDEN: Good morning to you.

The Coalition is a group of individuals who, for a number of years, have been critics of the Muskrat Falls Project. One of them, I would imagine, is known to you, David Vardy.

MS. WHALEN: Yes, very well.

MR. BUDDEN: Yes, and how do you and Mr. Vardy know each other?

MS. WHALEN: I worked for Mr. Vardy as his vice-chair.

MR. BUDDEN: Okay, as his vice-chair when he was on the PUB.

MS. WHALEN: Yes.

MR. BUDDEN: Okay.

MS. WHALEN: And as a part-time commissioner as well, actually.

MR. BUDDEN: Okay, so you –

MS. WHALEN: He was there for that seven years or so.

MR. BUDDEN: Okay.

MS. WHALEN: Yep.

MR. BUDDEN: Back in the early 2000s?

MS. WHALEN: Mid-90s to 2002 or '03 of – whenever, yeah.

MR. BUDDEN: Gotcha.

And he would have appeared as an intervenor – he and Mr. Penney – on this reference question, I believe.

MS. WHALEN: They presented to us.

MR. BUDDEN: (Inaudible.)

MS. WHALEN: They made a presentation to us, yes.

MR. BUDDEN: Okay.

I'm going to be referring to Exhibit 00038 now in a moment, so perhaps this is a good time to call it up. And I'm not sure what tab that is –

MS. WHALEN: (Inaudible.)

MR. BUDDEN: – but it's a reference question. We're working from exhibits; you guys are working from tabs.

MS. WHALEN: Oh.

MR. BUDDEN: Thirty-eight; it's a reference question. P-00038 as an exhibit. Yeah, there we go.

And when you can scroll down the frame, the reference question. I'll get to that in just a moment. I thought I would save time by getting it before us now.

But before I get there we've heard evidence from Ms. Greene and from Mr. Martin that the reference question was given to the PUB in June, I believe, of 2011. And there were significant delays through the spring, summer and early fall of 2011, getting information – necessary information off Nalcor.

Was that your understanding, as well, of the situation?

MS. WHALEN: Yes.

MR. BUDDEN: Okay.

Can you offer any explanation as to why that was so?

MS. WHALEN: No.

MR. BUDDEN: You cannot. Okay.

Were you surprised at the time that it was so?

MS. WHALEN: I – well, yeah, I would have been at one – at some point, yes, I would have surprised, I think, only because we had some expectation that there would – the information would be available. So, you know, there would've been a – sort of a backing away from that –

MR. BUDDEN: (Inaudible.)

MS. WHALEN: – from that piece, yes.

MR. BUDDEN: Gotcha.

MS. WHALEN: I don't know if I'd classify it as surprised, but that's as good enough a word as any, I suppose, sure.

MR. BUDDEN: Okay, well, we'll take that for now.

The PUB ultimately did receive DG2 information and, as you probably heard, I asked Mr. Martin, the previous witness, to tell us a little bit, I guess, about the – what are the important differences between DG2 information and what you guys were looking for, which I would take as DG3 or similar information?

MS. WHALEN: I'm not sure that, at any point, we were actually looking for DG3 information. I think my impression of the information piece as it unfolded was that we became aware that there was some updates being done to some important pieces of information and that was even coming out during the hearing process. So the whole – whether it was DG3 or whether it was updates to the DG2 numbers, which I presume were

feeding into the DG3 piece, I'm not sure whether it was DG2, you know, DG3 compared to DG2, but it was just the importance of having updated information – was more the issue, I think.

MR. BUDDEN: Sure. Because as I understand it, it's a process of refinement, of becoming more detailed, more specific in the information that's on offer. That's the real process that gets you from DG2 to DG3.

MS. WHALEN: That would be my understanding.

MR. BUDDEN: So for instance, a DG3 figure would have much more particularity in terms of the labour force required.

MS. WHALEN: Mmm, presumably.

MR. BUDDEN: The engineering would be more sophisticated, more precise and obviously cost estimates, which flow out of some of that other information, would be more refined as you move beyond DG2.

MS. WHALEN: Yes –

MR. BUDDEN: You would agree with – yeah.

MS. WHALEN: – that would be my understanding, yes.

MR. BUDDEN: So these are meaningful differences?

MS. WHALEN: They could be.

MR. BUDDEN: They could be. And your understanding – in this instance, the board's understanding was that there would be meaningful differences in the information available, subsequent to the DG2 numbers that you had been presented with.

MS. WHALEN: I don't know if I could say they would be meaningful, but I would understand they would be different.

MR. BUDDEN: They'd be different and you –

MS. WHALEN: Could be different. Could be different. And I (inaudible) say they would be different – they could be different. Yes.

MR. BUDDEN: They could be different, and those differences could well be meaningful if they're speaking to things like a more precise labour force figure, a more precise figure with regard to some of the engineering particular specifications.

MS. WHALEN: Sure.

MR. BUDDEN: Okay.

Were you aware of any contact between the PUB officials on the one hand and the senior Government of Newfoundland and Labrador bureaucrats and/or ministers on the other hand during the time period from when the reference was received in June until you ultimately delivered your report in March – June of 2011 to March of 2012?

MS. WHALEN: Which PUB officials would you –?

MR. BUDDEN: I'm thinking of Mr. Wells, Ms. Greene, in particular – yourself perhaps.

MS. WHALEN: Not myself. I had no other interaction, other than the first meeting with Mr. Bown when the reference was delivered. I think I would've been aware of one meeting that Ms. Greene and Mr. Wells attended with Minister Kennedy –

MR. BUDDEN: Okay.

MS. WHALEN: – I think it was.

MR. BUDDEN: Pardon?

MS. WHALEN: With Mr. Kennedy.

MR. BUDDEN: Sure.

Did any of the – were you aware of meetings with a Mr. Bown or a Mr. Thompson; who were senior Government of Newfoundland bureaucrats?

MS. WHALEN: I don't recall.

MR. BUDDEN: Okay.

MS. WHALEN: I don't.

MR. BUDDEN: Do you recall any meetings, including the one with Mr. Kennedy, you spoke of that – you at the time, or for that matter now, regarded as unusual or inappropriate?

MS. WHALEN: No.

MR. BUDDEN: Okay.

MS. WHALEN: No.

MR. BUDDEN: So you had no concerns brought to you in that regard?

MS. WHALEN: No.

MR. BUDDEN: Okay.

The – this Inquiry has heard evidence – you didn't have the opportunity to take in Dr. Guy Holburn's evidence on – earlier this week, did you?

MS. WHALEN: Again, I was in and out of the office. I listened to some of it in – to the extent that I may have understood his entire piece. I'm looking forward to reading his report when I get a chance, but no –

MR. BUDDEN: Sure.

MS. WHALEN: – I did listen to some, but ...

MR. BUDDEN: Sure. And as you're aware, Dr. Holburn was brought before the Inquiry because he was an expert in the governance and regulation of energy utilities.

MS. WHALEN: Mm-hmm.

MR. BUDDEN: And as a chair of such a utility, I would imagine you did find his report to be interesting.

MS. WHALEN: I think I will find it interesting.

MR. BUDDEN: When you get to read it.

MS. WHALEN: Yeah.

MR. BUDDEN: As opposed to multi-tasking and taking it in out of the corner of your eye.

MS. WHALEN: Sure.

MR. BUDDEN: Yeah.

Did you – or he – I'll tell you what he testified to, and I'll be corrected, I'm sure, if I'm wrong, by one of my many colleagues here.

His evidence was that, at least in some instances, the kind of megaproject equivalent of what was done with Muskrat Falls would be met at the provincial level – would have to be – would be regulated by that province's equivalent of a Public Utilities Board. Which in practice meant a proposal would be made, there would be public hearings with intervenors, funded intervenors, with expert reports being commissioned by the utility board and a process of hearings that would go on for, you know, sometimes weeks.

MS. WHALEN: Mmm.

MR. BUDDEN: You are aware, obviously, from your contacts with other provinces, that is the norm in many other provinces of Canada.

MS. WHALEN: I would be generally aware of that, yeah.

MR. BUDDEN: Yes. But that is not the legal mechanism which Newfoundland has in place at the moment, by and large?

MS. WHALEN: Well, only by virtue, I guess, of the fact that we don't regulate Nalcor, and Nalcor was proposing this project.

MR. BUDDEN: Yes.

MS. WHALEN: If Hydro had been proposing the capital project and it hadn't – it wasn't exempted under a specific exemption, it would go through our normal capital budget –

MR. BUDDEN: Yes.

MS. WHALEN: – process, yeah.

MR. BUDDEN: And the – you were instead given a reference question which is, as we all

acknowledge, of somewhat more limited scope. You were given a choice between options.

MS. WHALEN: Mm-hmm.

MR. BUDDEN: I guess my question to you – if a request had been made, if the government had decided to go a different route, to say: Look, we're not going to avail of the exemptions, we're going to do this as it's done in other provinces – some other provinces and we give the PUB the authority to address this proposal as it is brought forward.

Did the PUB have the capacity to have such a process, such as Dr. Holburn envisions, with hearings, with intervenors, with commission reports and so forth?

MS. WHALEN: That's what we do.

MR. BUDDEN: That's what you do. Okay.

MS. WHALEN: I –

MR. BUDDEN: (Inaudible) – pardon?

MS. WHALEN: I would think, and just to expand just slightly, we would probably have had to bring in some expertise and, as you can see, I mean, that was what we have to do, as well. We wouldn't have the internal capacity with my 12 staff but –

MR. BUDDEN: Yes.

MS. WHALEN: – we would bring in whatever expertise or capacity we needed to make sure that that ...

And just as an example, I mean, we do capital budget approvals every year – I think since I've been there, 2000 – hmm, I probably have participated in 98, 97, yeah, 95 per cent plus of the approvals of all the capital budgets that have come from Newfoundland Power and/or – and Newfoundland and Labrador Hydro. It's about \$3.5 billion worth of capital expenditures and we've approved all of those.

MR. BUDDEN: Okay.

MS. WHALEN: Some of them through public hearing processes and some through paper

hearing processes, but they go through the same rigorous review with the public notices and requests for intervention and the whole process, yeah.

MR. BUDDEN: So the scale of this might be different but the subject matter is not particularly unique to the PUB?

MS. WHALEN: Well, no –

MR. BUDDEN: Thank you.

MS. WHALEN: – I would say no.

MR. BUDDEN: That might be it, but I'm just gonna take a moment to review my notes.

Thank you, Ms. Whalen.

MS. WHALEN: Thank you, Mr. Budden.

THE COMMISSIONER: Edmund Martin.

MR. SMITH: (Inaudible) Ms. Whalen –

MS. WHALEN: Morning, Mr. Smith.

MR. SMITH: – Harold Smith for Edmund Martin.

Could I ask the Clerk to put up 00592, please?

THE COMMISSIONER: Tab 65.

MR. SMITH: That's fine.

Ms. Whalen, I was wondering – in answer to one of the questions of counsel for the Concerned Citizens group, you indicated that you were not aware of why it took so long to get information from Nalcor, and I was wondering if you had been apprised of this letter to the attention of the chair, Mr. Andrew Wells.

MS. WHALEN: Yes, yeah.

MR. SMITH: And doesn't that letter –

MS. WHALEN: (Inaudible.)

MR. SMITH: – set out some of the reasons why there was delays in getting information from Nalcor?

MS. WHALEN: Yeah, as of January 11, yes.

MR. SMITH: Okay.

MS. WHALEN: It does, yes.

MR. SMITH: But I wasn't sure from your evidence whether you were talking about generally or just specifically in the timeline of June to December.

MS. WHALEN: I'm – I may have been responding to a question. I think it was a sense of whether I was aware at the time that the information was coming in, whether I knew why, but I read this letter. Yes, I'm absolutely familiar with it, yes.

MR. SMITH: Okay.

And there was information prior to December?

MS. WHALEN: Mm-hmm.

MR. SMITH: In fact, the evidence shows that there was a lot of information transferred from Nalcor during that period, June through December, and into the following year.

MS. WHALEN: It was a lot of information that came –

MR. SMITH: Right.

MS. WHALEN: – to the – came to us, yes.

MR. SMITH: So in terms of not getting all the information, would not this letter have explained some of that reasoning as to why all the information that you were looking for hadn't come?

MS. WHALEN: It's – it would set out Nalcor's reasons –

MR. SMITH: Reasons.

MS. WHALEN: – why they felt the information wasn't coming, sure. I accept that, yeah.

MR. SMITH: So to the extent only of what Mr. Martin said in his letter to the board –

MS. WHALEN: Yeah.

MR. SMITH: – there was an explanation given to the board as to why the defer – or delay – in getting some of the information you were looking for?

MS. WHALEN: Yes.

MR. SMITH: Thank you. That's all the questions I have.

THE COMMISSIONER: Thank you.

Kathy Dunderdale?

MS. E. BEST: Good afternoon, Ms. Whalen. I'm Erin Best.

MS. WHALEN: Good afternoon, Ms. Best.

MS. E. BEST: Thank you. I'm counsel for Kathy Dunderdale.

I want to take you to your interview transcript, please. Sorry, I don't – oh, you have it, okay.

MS. WHALEN: Yes.

MS. E. BEST: Good.

Page 23.

So I'll let you find it, but you say on there: This is not what we do, so it was even a more difficult assignment.

Do you see that there?

MS. WHALEN: On page 23? Oh, the very last line. Yes. I have it. Yeah.

MS. E. BEST: You have it?

MS. WHALEN: Yeah.

MS. E. BEST: Okay.

The assignment that you're talking about, that's the reference question –

MS. WHALEN: The work. Yes.

MS. E. BEST: – right? Okay.

So: this is not what we do. Can you expand on that? Just explain it to us, please.

MS. WHALEN: I think in this context it was – it had more to do with the fact that it was a reference from Nalcor, and we don't regulate Nalcor.

MS. E. BEST: Okay. So ...

MS. WHALEN: And we also don't do many reference questions, although I'm doing a number simultaneously now it appears, but –

MS. E. BEST: But back then?

MS. WHALEN: But back then, no.

MS. E. BEST: Okay.

So you didn't have much experience either dealing with Nalcor or responding to a reference question?

MS. WHALEN: I had been – in my time with the board, I did the automobile insurance reference in 2004 and '05, and this would have been the second one that I had been involved in.

MS. E. BEST: Okay.

And then on page 30, you say something similar: This was just so new to us.

MS. O'BRIEN: Sorry, page 30?

MS. E. BEST: Page 30.

MS. WHALEN: I don't have page –

MS. E. BEST: Oh.

MS. WHALEN: – 30, I don't think.

MS. E. BEST: There's not a page 30?

MS. O'BRIEN: Well, page 30 is just – thank you very much. It seems to be the last page.

MS. E. BEST: Oh. It must be page 29 then. I can – do you want me to pull it up exactly (inaudible)?

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MS. WHALEN: I do see it there. Yes, I do.

MS. E. BEST: Okay. Thank you.

Yes. So it is page 29. I think when I pull it up on the PDF version –

MS. WHALEN: Oh sure.

MS. E. BEST: – the pages are a little bit different.

MS. WHALEN: (Inaudible.)

MS. E. BEST: So this was just so new to us, and that was a challenge, and then you say it was a big learning curve.

So are you talking about – again, you’re talking about their reference question?

MS. WHALEN: I’m talking about the reference question and the fact that it was – it came to us not in the context of our normal ongoing regulatory work so – yes.

MS. E. BEST: Okay.

MS. WHALEN: So we had to learn Nalcor, essentially.

MS. E. BEST: Right.

And my last, sort of, comment in that area – so on page 24, you refer to, I think, again the automobile insurance review that you just mentioned.

MS. WHALEN: Mm-hmm.

MS. E. BEST: And you say that was a different piece of work because it’s within our area of expertise. You see that phrase there: it’s within –

MS. WHALEN: I do, yeah.

MS. E. BEST: – our area of expertise? And you’re referring to the automobile insurance review.

MS. WHALEN: Mm-hmm.

MS. E. BEST: So I’m taking from that that a review of the Muskrat Falls Project, or the reference question specifically, was something that’s not within the PUB’s area of expertise?

MS. WHALEN: I wouldn’t go that – I think, in this context, again, it – we were still having a discussion, I think, about – it was flowing from the – my reaction to the fallout from our report. And it was – we had gotten the reference question – it’s – it was not to do with our area. I don’t – and again, our area of expertise, in this context, the way you put it – sort of in a – yeah – it’s –

MS. E. BEST: But in the way you put it, right?

MS. WHALEN: Yeah.

MS. E. BEST: I mean, that – those are your words.

MS. WHALEN: Yeah, when you read – when I hear you say it, it’s not – but the expert – the area of expertise has more to do with the fact that it’s not our ongoing work, our day-to-day work. When we – we’re – we regulate Newfoundland Power and Newfoundland and Labrador Hydro, we know those utilities very well. We know their operations, and we know –

MS. E. BEST: You know what you’re doing?

MS. WHALEN: Well, we know what they’re doing –

MS. E. BEST: Okay.

MS. WHALEN: – more so.

MS. E. BEST: And this was not like that?

MS. WHALEN: This was different, because it was Nalcor, a new entity. We had very little – we had no interaction with Nalcor on an ongoing, regulatory basis, and that’s really the context there for that.

MS. E. BEST: Thank you.

I have to address the issue of the alleged phone call with my client, Ms. Dunderdale.

MS. WHALEN: Mm-hmm.

MS. E. BEST: So I note that in your interview transcript, you did not say – you did not recall then or you did not say the words that – the phrase – or you did not talk about what Ms. Dunderdale had said to Mr. Wells on the phone.

MS. WHALEN: I did. I think I said something to the effect –

MR. LEARMONTH: That's not correct.

MS. E. BEST: Okay.

MR. LEARMONTH: Bottom of page 24.

MS. WHALEN: I've had enough of you people –

MR. LEARMONTH: (Inaudible.)

MS. WHALEN: – or something to the effect. Yeah, it was there.

MS. E. BEST: Okay.

So what did you say then?

MS. WHALEN: I've – it was something the effect of: I've had enough of you people or something to that effect. It was –

MS. E. BEST: Okay.

MS. WHALEN: Yeah.

MS. E. BEST: So then – what – Commission counsel put to you the phrase I'm sick of you and your board is what – is the phrase that he put to you. That's not what you recollected at the time of your interview, was it?

MS. WHALEN: Well, I wasn't very exact here, either. I don't know what – exactly what the words were, but it was something to that effect.

MS. E. BEST: Okay.

But you don't recall what the words were?

MS. WHALEN: I don't –

MS. E. BEST: Okay. Thank you.

MS. WHALEN: – know what the words were, no. I wasn't party to the call.

MS. E. BEST: No, you – okay, that's – I'm glad you mentioned that. And so you're not – you don't – you can't say with any certainty that –

MS. WHALEN: No.

MS. E. BEST: – Ms. Dunderdale said that to Mr. Wells. Okay.

And I put to Ms. Greene yesterday, and she agreed, that Mr. Wells has a tendency to exaggerate from time to time. Do you also agree with that?

MS. WHALEN: I'd prefer not to comment on that. Mr. Wells has strong opinions and ...

MS. E. BEST: I don't know if you can prefer not to comment.

THE COMMISSIONER: I think she can.

MS. E. BEST: Okay.

THE COMMISSIONER: You're going to have Mr. Wells here this afternoon.

MS. E. BEST: Okay.

Well, but – and I'll move on, but – and I know that Mr. Wells is going to be here to question, but she has had experience with Mr. Wells and she has had actually very close experience with him, having worked with him for some time.

THE COMMISSIONER: Mm-hmm.

MS. E. BEST: So I would think that she would be in a good place to answer that question.

THE COMMISSIONER: But she preferred not to answer it.

MS. E. BEST: Okay.

And this alleged telephone call, from your evidence I gather, it's alleged to have occurred after the report was issued?

MS. WHALEN: That's my recollection of when Mr. Wells told me about it. And it was

shortly after the phone call, so it was, you know, sort of within the same afternoon or something. So I – that’s my recollection. It was the following week after our report was issued. That’s my recollection. I didn’t make any note of it or – you know, so I have nothing to ...

MS. E. BEST: Thank you. Okay.

And if Ms. – so just to clarify, if Ms. Dunderdale had said anything to Mr. Wells – which, as us lawyers say, is not admitted – but if she had said anything, it certainly didn’t influence what was in your report, right? It couldn’t have, could it?

MS. WHALEN: It was after the report.

MS. E. BEST: Right. Thank you.

MS. WHALEN: That’s my recollection.

MS. E. BEST: Okay.

MS. WHALEN: Yeah.

MS. E. BEST: Did you read Mr. Wells’s interview transcript before you testified here today?

MS. WHALEN: I – Mr. Wells’s interview transcript was provided to me as chair of the board because it came over to us to review to make sure there was nothing in there that was confidential or – well, just in terms of, you know, names and stuff, that’s all. But I didn’t read it, it was – I mean I don’t recall it, but I would have seen it.

MS. E. BEST: Okay.

And so Andy Wells was chair of the PUB at the time of the reference, right?

MS. WHALEN: Yeah.

MS. E. BEST: Did you know that at the time of the reference that he was good friends with Ron Penney, who was against the project? Were you aware of that?

MS. WHALEN: I know that he knows Mr. Penney. I don’t know if I would be able to say whether or not they were good friends, but I know he knows Mr. Penney.

MS. E. BEST: Okay.

In his interview, Mr. Wells talks about how maybe in late 2011 or early 2012 he was at an event with Mr. Penney. And he said then that the –

MR. O’FLAHERTY: Mr. Commissioner, it’s Peter O’Flaherty, I’m counsel for Ms. Whalen.

I’m wondering – while I haven’t objected to any of the questions throughout this piece, I wonder how relevant this can be when Mr. Wells is testifying this afternoon as to his relationship with Mr. Penney?

THE COMMISSIONER: So let me, first of all, try to sort of set the tone for this afternoon, because I have a funny feeling it’s going to be a bit of a different afternoon.

So my expectation here is that Mr. Wells will get on the stand and he’ll testify, and then he will be questioned on relevant matters related to his involvement with the PUB. There may well be a bit of a sideshow between various parties and various people suggesting various things.

I’m really, as I indicated earlier, not really interested in any of that. And I’m interested in the main show, which is telling the story about what happened.

So you’re – I’ll just say to Mr. O’Flaherty, first of all, I haven’t heard the end of the question so I can’t really comment on whether or not it is relevant or it isn’t relevant, but I am sort of trying to say right now, just so I don’t have to repeat it later, that I’m going to be expecting, basically, very relevant information to the terms of reference – not relevant to what some people might feel is important, but relative to the terms of reference. That’s the way I want the questions to go.

I have a schedule to maintain; I don’t have time for sideshows. So let’s just keep to the terms of reference and where we’re going with those.

Right now, the Board of Public Utilities is not – the question of whether the Board of Public Utilities is sort of on trial here is not part of my terms of reference, so I’m not dealing with it, okay?

MS. E. BEST: Yeah.

THE COMMISSIONER: So ask your question and then I'll assess whether or not that's a relevant question. Put it this way, I'm not overly concerned about what you're asking about right at the moment, but I didn't get all of your question so I don't really know where you're going with this. So maybe you could just fill us in and then I can hear from Mr. O'Flaherty again if he has an objection to it.

MS. E. BEST: Sure. Thank you.

So what my question will go to – and going back to the terms of reference, I think part of the terms of reference we have to look at whether it was reasonable for – whether government, whether it was reasonable to not have the Muskrat Falls Project have a full review by the PUB.

And what I am interested in finding out here today from Ms. Whalen is if potentially the chair of the PUB at the time had already held preconceived notions with respect to the project, because I think that that would've had an influence if that was known to government. And I think that would have had an influence on their confidence in the ability of the board to deal with the issue.

THE COMMISSIONER: Well, I guess my response to that would be this: The government decided to send this reference to the PUB. I can only assume that they knew who was on the PUB, and that as a result of sending it to the PUB there was a legitimate reason and a legitimate understanding of what the PUB was going to do.

So the terms of reference, basically 4(c), talks about whether or not – "... whether the determination that the Muskrat Falls Project should be exempt from oversight by the Board of Commissioners of Public Utilities was justified and reasonable and what was the effect of this exemption, if any, on the development, costs and operation of the Muskrat Falls Project."

So I don't see here what this issue is. I'm trying to figure out how it can be related to the determination of whether or not it should be

exempt from oversight. They sent it to the board, so the facts that I'm dealing with right at the moment are the reference that was sent to the board.

I know they didn't go back to the board afterwards and ask for DG3. I don't know what reason they had and I'm sure I'm going to hear those reasons, but it's not really of any concern to me with regards to 4(c).

MS. E. BEST: But, actually, the events that I was going to point out that had occurred, according to Mr. Wells's transcript, occurred after the reference question was put to the PUB. So the government –

THE COMMISSIONER: Okay, so let's –

MS. E. BEST: – would have put the question –

THE COMMISSIONER: Okay.

MS. E. BEST: –and then found out about these issues.

THE COMMISSIONER: Okay.

So you'll put a question to Mr. Wells about whether he was predisposed or whatever the scenario is. Put those to him and I'll see how far I'm going to let that go.

MS. E. BEST: And I can't ask Ms. Whalen if she had any concern about that at the time, or if she observed it herself.

THE COMMISSIONER: She's a fellow member of a quasi-judicial board, how she felt about somebody else is nobody's business.

MS. E. BEST: Okay, well, not felt but observed that at the time.

THE COMMISSIONER: She's not going into deliberations with regards to the PUB. It's off limits.

MS. E. BEST: What about outside the deliberations?

THE COMMISSIONER: Outside of the deliberation? Fine.

You can ask her – well, I’m not going to tell you what to ask her, but I’m really not that worried about this or concerned about this right now. If somebody else wants to raise evidence later on, let them raise it. Your client is going to testify. I’ll hear it from her.

MS. E. BEST: Okay. Thank you.

Well, I guess I’ll ask if there – if Mr. Wells seemed to have any preconceived notions about the project outside of the deliberations, but prior to issuing your report.

THE COMMISSIONER: That she’s aware of.

MS. E. BEST: That you’re aware of, yes. Yeah.

MS. WHALEN: I observed no indication from Mr. Wells that he had a closed mind.

MS. E. BEST: Okay. Thank you.

Those are my questions. Thank you.

THE COMMISSIONER: Thank you.

All right, it’s 12:30 now, so we’ll take out break. We’ll come back with former provincial government officials after lunch.

CLERK: All rise.

THE COMMISSIONER: 2 o’clock.

Recess

CLERK: All rise.

This Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: Just before we begin this afternoon, I understand yesterday afternoon we had two outages on our broadcast or our webcast. My understanding is that this occurred as a result of a general breakdown of the Internet system in government.

For those who might be watching, or who are interested in watching, that does not take away from the fact that the archived versions of the hearings from yesterday are complete and they

are on the website. It’s just that the live broadcast or webcast was lost on two occasion’s yesterday afternoon, and it was something really beyond our control.

All right. So next we have Former Provincial Government Officials ’03-’15.

Not here yet. They may just – Mr. King, I’m going to move on to the next one because you’re just getting here. I’ll let you get your breath.

MR. KING: I have no questions.

THE COMMISSIONER: Oh, no questions. Okay.

Julia Mullaley. Charles Bown?

MR. FITZGERALD: Good afternoon, Ms. Whalen.

I’m Andy Fitzgerald, I represent Charles Bown and Julia Mullaley.

MS. WHALEN: Good afternoon, Mr. Fitzgerald.

MR. FITZGERALD: I just have a couple of very brief questions.

You referenced a meeting in June, I believe, of 2011, with my client, Mr. Bown.

MS. WHALEN: Yes, I did.

MR. FITZGERALD: Yeah. That was the only meeting you had with Mr. Bown?

MS. WHALEN: Yes.

MR. FITZGERALD: Okay. And I believe from your evidence it was a transmittal meeting.

MS. WHALEN: That’s how I would categorize it. It was a – here’s the reference and –

MR. FITZGERALD: There was no discussion of the merits of the reference at that meeting.

MS. WHALEN: No.

MR. FITZGERALD: Can you just speak up a little?

MS. WHALEN: Oh, sorry. No.

MR. FITZGERALD: No. He was simply providing you with the message from the Department of Natural Resources.

MS. WHALEN: Yeah, that's a pretty standard practice.

MR. FITZGERALD: I thought in your transcript, as well, that's a practice that's also ongoing with the Automobile Insurance Review.

MS. WHALEN: Yeah.

MR. FITZGERALD: I guess the representative from government would come over and provide you with the information?

MS. WHALEN: Absolutely. To the participating commissioners, yes.

MR. FITZGERALD: Okay. Would that be normally the practice when something is going to go before the PUB that the representative from government would come over or –?

MS. WHALEN: It would only happen in the case of a reference.

MR. FITZGERALD: Okay. But in reference cases it would be a normal practice?

MS. WHALEN: It hasn't happened very often, but in the ones that I've been involved in, yes, it's been the case for all of them.

MR. FITZGERALD: Thank you very much.

MS. WHALEN: Thank you.

THE COMMISSIONER: Thank you.

Robert Thompson?

MR. COFFEY: Good afternoon, Ms. Whalen.

MS. WHALEN: Good afternoon, Mr. Coffey.

MR. COFFEY: Good afternoon, Ms. Whalen.

My name is Bernard Coffey. I represent Robert Thompson.

Just a question on – 'cause you've been there, and I'm taking advantage of you being here now, you've been with the PUB for a long time. Do you ever recall the PUB reviewing, what I'll refer to as, a Greenfield generation project where the proponent was Newfoundland and Labrador Hydro, before the 2011 reference? I'll repeat the question if

MS. WHALEN: Well, it would have come to us. I'm trying to think. It would have come to us through our capital budget process because Hydro's regulated, and my recollection would be, no, I don't think so. I can't think of a project, so, no. I would say no.

MR. COFFEY: And, as well, you have mentioned a number of times in response to questions – you've referred – you've been asked about technical conferences, and, in fact, you have referred to one in particular that stands out in your memory which is the insurance –

MS. WHALEN: Yeah.

MR. COFFEY: – reference case. Do you know, or have you ever – are you aware of any technical conferences involving – matters involving electricity that the board has ever held?

MS. WHALEN: We may not refer to them as technical conferences in the context of the hearing process, but there have been technical conferences where the parties have gotten together with the utility to explain a particularly complex project that might be proposed, and the intervenors, counsel would just arrange for there to be an exchange of information, sort of, at that informal setting. Just so everyone can ask your questions, and sometimes you just don't need to do the formal process to get some clarification.

MR. COFFEY: Okay. So you –

MS. WHALEN: I wouldn't have been involved in those.

MR. COFFEY: Okay, yes.

MS. WHALEN: They would have been done at the staff level.

MR. COFFEY: They have – the ones that you would be kind of generally aware of have occurred outside the –

MS. WHALEN: (Inaudible.)

MR. COFFEY: – presence of the board members.

MS. WHALEN: Yes.

MR. COFFEY: Okay.

MS. WHALEN: Yes.

MR. COFFEY: And – but in relation to something called – like, that was labelled actually as a technical conference, you're not aware of one that made it that – to that level of formality involving the electrical business?

MS. WHALEN: I don't recall, no.

MR. COFFEY: Thank you very much.

THE COMMISSIONER: Thank you.

Todd Stanley, Terry Paddon?

MS. VAN DRIEL: No questions, Commissioner.

THE COMMISSIONER: Consumer Advocate?

MR. PEDDIGREW: Good afternoon, Ms. Whalen.

MS. WHALEN: Good afternoon, Mr. Peddigrew.

MR. PEDDIGREW: My name is Christopher Peddigrew, I represent the Consumer Advocate.

There's been some question, I guess, or some suggestion as to why the board didn't adopt Manitoba Hydro International's, I guess, phrasing of the conclusion. I mean, it's – you know, they found that it was the least-cost option, subject to some conditions. The PUB did not adopt that decision.

I'd just like to take you to P-00600 for a moment which is the report of the PUB. I'm not sure what tab number it is in your binder.

THE COMMISSIONER: So, again, just to give you a reminder, we're not going into –

MR. PEDDIGREW: Yes.

THE COMMISSIONER: – the deliberations of the board or the reasons, the board decision speaks for itself. So as long as we're not going into reasons why something was said, something wasn't said, whatever, that's fine.

MR. PEDDIGREW: Okay. I don't think my question is going to go there, Commissioner –

THE COMMISSIONER: Yeah.

MR. PEDDIGREW: – but I certainly stand to be corrected.

THE COMMISSIONER: Okay, tab 75.

MR. PEDDIGREW: Page 15 of that, Ms. Whalen.

MS. WHALEN: The red-numbered pages?

MR. PEDDIGREW: Pardon me?

MS. WHALEN: The red number?

MR. PEDDIGREW: The numbers up in the top –

MS. WHALEN: Yes.

MR. PEDDIGREW: – right corner, yes.

MS. WHALEN: Okay.

MR. PEDDIGREW: Yeah.

So on page 15 just acknowledge that there were a number of presentations from – as we see on page 15 from some parties on behalf of Nalcor there on the bottom of that page. And then if we turn to the next page, on February 20, 21 and 23, some representations from other parties as well.

You would agree that –?

MS. WHALEN: Yes.

MR. PEDDIGREW: Okay.

MS. WHALEN: Yeah.

MR. PEDDIGREW: And then if we look to page 114 – just again there a list of public participation comments. I believe some of these came in through the Consumer Advocate.

MS. WHALEN: Yes.

MR. PEDDIGREW: But I guess my question is besides Manitoba Hydro, there was other information that you had in reaching the decision that you did in your report. You would agree?

MS. WHALEN: Everything is there, yeah.

MR. PEDDIGREW: Right. Okay.

Did Newfoundland Power make any submissions as part of the hearing?

MS. WHALEN: If it's not in the report they didn't, because we would have referenced them.

MR. PEDDIGREW: Not that you recall.

MS. WHALEN: Not that I recall.

MR. PEDDIGREW: Okay.

And last question: Government would have had the option to seek judicial review of the PUB's decision?

MS. WHALEN: I don't know that.

MR. PEDDIGREW: Okay, but they didn't. They did not seek judicial review –

MS. WHALEN: Well, I guess –

MR. PEDDIGREW: – to your knowledge, anyway.

MS. WHALEN: Well, I guess, yeah, I don't know if they had the option or not. I'm not sure.

MR. PEDDIGREW: Right. Okay.

Okay, thanks. Those are all my questions.

MS. WHALEN: Thank you.

THE COMMISSIONER: Former Nalcor Board Members?

I don't think there's anybody there.

MR. GRIFFIN: No questions.

THE COMMISSIONER: Okay, thank you.

Mr. O'Flaherty?

MR. O'FLAHERTY: No questions. Thank you.

THE COMMISSIONER: Thank you, Ma'am, you can step down.

Next witness?

MR. LEARMONTH: Andy Wells.

THE COMMISSIONER: All right, Andy Wells.

MR. LEARMONTH: Thanks.

THE COMMISSIONER: Do you wish to be sworn?

CLERK: Do you swear the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth so help you God?

MR. WELLS: Absolutely.

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

MR. WELLS: Andy Wells.

CLERK: Thank you.

THE COMMISSIONER: You can be seated there, Sir.

Mr. Learmonth.

MR. LEARMONTH: Yes.

THE COMMISSIONER: Oh, put your mic on there, Andy.

MR. WELLS: Oh, sorry.

THE COMMISSIONER: Just push the button.

MR. LEARMONTH: Now, Mr. Wells, you live in St. John's. Is that correct?

MR. WELLS: I do, Sir.

MR. LEARMONTH: How long have you lived in St. John's?

MR. WELLS: Since 1952.

MR. LEARMONTH: 1952.

Were you – are you from St. John's?

MR. WELLS: I'm a reject from Corner Brook.

MR. LEARMONTH: All right.

Can you tell us what you have done, career-wise and education-wise, since you finished high school?

MR. WELLS: Well, I –

MR. LEARMONTH: Just a summary, not the whole –

MR. WELLS: Sure.

MR. LEARMONTH: We're not going to hold you strictly to dates, but give us an idea of your –

MR. WELLS: Oh, it's pretty boring but I'll try to be quick. I got degrees in history and education from MUN. I started to work at Memorial University in 1979. I worked there until – I'm sorry, 1969. I worked there 'til 1979.

At Memorial, I became involved in the labour movement; I was a union organizer for probably – and a union official for 15 years. When I finished up with the Canadian Union of Public Employees as a business agent I had 2,500 employees, I think, 25 collective agreements. And I can say in front of this panel of lawyers

here I was also an expert in labour law because I took the study up and I was very good at it.

I moved on to –

MR. LEARMONTH: When was this? When did you leave CUPE?

MR. WELLS: Well, I got another job. I was offered the job with the – I think it was probably 1985 I got a job with the Nurses' Union and that didn't last. In '86 I was appointed to Peckford's Royal Commission on Employment and Unemployment.

And arising out of – after that there was a lot – the old saying: plus ça change, the more things change the more they – gee, the more things change the more they stay the same. At the time there was no – with respect to utility regulation, there was no Rate Stabilization fund. So consumers were getting excited about energy prices, so Peckford – the Peckford government appointed me to the Public Utilities Board, my first round there as a consumer commissioner.

MR. LEARMONTH: Yeah.

MR. WELLS: Back to – from '77 on, though, I was also a municipal councillor. I won eight straight elections and I served 20 years on council and 11 years as mayor.

But with the – my previous incarnation on the Public Utilities Board, I was there five years. I took up the study of public utilities regulation very intensively. I managed to qualify myself to get admitted to New Mexico State University school of regulatory studies and I nearly completed a master's degree in regulatory economics before Mr. Wells decided to fire me in the House of Assembly.

So then I went – that was the end of that first round and I pursued my municipal activities and I ran a small business in the '80s and '90s. And in – I was appointed to the Public Utilities Board for my second round in 2008 and that lasted until June 2017 when I was suspended by Mr. Parsons under dubious circumstances, which is of no interest here.

And I foolishly decided to try and get myself re-elected for mayor which was obviously an act of

folly. So I am now officially retired or unemployed involuntarily, but that's life.

MR. LEARMONTH: Okay. Thank you.

So you were – your first stint on the Public Utilities Board was from what year to ...?

MR. WELLS: '85 to '90.

MR. LEARMONTH: Were you appointed for a fixed term in 1985?

MR. WELLS: I was appointed for 10 years.

MR. LEARMONTH: And did you serve 10 years?

MR. WELLS: I did not serve.

MR. LEARMONTH: And you were fired, were you?

MR. WELLS: I was fired, Sir.

MR. LEARMONTH: Yeah, and –

MR. WELLS: Then I went to the Supreme Court of Canada. That's one of the – apparently one of the founding – a major case in employment law because we soundly trounced Mr. Wells and his government.

MR. LEARMONTH: All right.

The – now you indicated that you have a formal education at Memorial, but you – do I take it that you have developed over the years an interest in the energy law and utility regulation matters such as that?

MR. WELLS: Yeah, well, I think when you're given a job and you take an oath you have a responsibility to the people that you're serving. And I'm an obsessive apparently, because if I get a job – if I'm given a task, I will dig in and I will study and I will learn and I'll ask questions. I'm smart enough to know what I don't know and I've never had any trouble finding people who are smarter than me to help me learn.

MR. LEARMONTH: Okay, but is this an ongoing interest that you have?

MR. WELLS: It's been a – I – absolutely. I mean, I – to this very day. I mean, I'm an obsessive when it comes to public policy issues. I – when I got appointed to the board on the second round, course I had to remember and refresh my mind on public utility regulation, but I actively took up the study of energy policy, climate change, and all the issues surrounding electricity generation.

I mean, I was at it very steadily. I can't say day and night, but certainly – it certainly was a major preoccupation to me, 'cause you want to understand how things work before you make your decisions.

And I was fortunate to work at the board with a group – I think this was May – clearly – it was clearly in evidence in the last two or three days – with an outstanding group of individuals that I was proud to be associated with, and I had a deep and abiding respect for all them.

MR. LEARMONTH: Okay.

MR. WELLS: And I'll get to that later on my evidence when the time comes.

MR. LEARMONTH: All right.

Now, I just want – just for the record, I want to turn tab 2 – that's five – Exhibit 00531. That's in your book, Mr. Wells.

MR. WELLS: The one in front of me?

MR. LEARMONTH: Yeah. Tab 2.

Binder 1, tab 2.

MR. WELLS: Okay.

MR. LEARMONTH: Have you got it?

MR. WELLS: "Premier Comments on Appointment to PUB"?

MR. LEARMONTH: Yeah.

So this is a February 13 release of the Executive Council where you're appointed to the – this is the second – your second stint at the Public Utilities Board. Is that right?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: I just note at the last paragraph: “The Premier said people should not forget that the mayor has dedicated much of his life to public service. ‘While Mayor Wells is known to’” – quote: “‘While Mayor Wells is known to be outspoken and controversial, he is also dedicated and committed to public service and I look forward to his continued contributions.’”

That’s 10 years ago, but the comment that you’re outspoken and controversial still applies, would you say?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Thank you.

MR. WELLS: But I am prone to exaggeration, too, apparently.

I’m the only one in the room.

MR. LEARMONTH: Okay.

Now, this reference to the board of the Muskrat Falls issue, the reference question, as I said earlier in speaking to Mr. Martin – so I’m not going to take you through all the documents, because I think you’re aware your legal counsel, as she was at the time, took us through all the documents, and that’s been supplemented by Mr. Martin’s evidence and, to some extent, Ms. Wells’, so – no, Ms. Whalen – so I’m not going to, you know, go through that procedure again.

I’m gonna ask you for some specific – ask you some more specific questions.

Mr. Wells, you were asked – or when I say you, I mean, as chair of the board. You were asked to prepare and submit your report to government on December 31, 2011, is that correct?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: And you got the reference, we’ll say, around June 17, 2011, is that correct?

MR. WELLS: I think the public record shows that I thought it was earlier, but if there’s any

conflict between what I say and what the public records say, well, there’s – the public record stands.

MR. LEARMONTH: Well, I think there was – I think the evidence that we have is that government had preliminary discussions with you back in May –

MR. WELLS: Mm-hmm.

MR. LEARMONTH: – and also that the evidence is that you, with the other commissioners and Maureen Greene, attended a meeting with Charles Bown in either late May or June – early June to set up scheduling.

MR. WELLS: I can’t recall that meeting to be honest, but –

MR. LEARMONTH: Yeah.

MR. WELLS: – but if it shows that I was there, I was there. I just – that’s one meeting I, for some reason, I do not recall.

MR. LEARMONTH: Okay.

So the report wasn’t prepared and filed by December 31. In a general sense, can you give us your observation for the reason that you are – the board was unable to supply its report by December 31, 2011? What was the problem?

MR. WELLS: Well, the problem was, clearly, that Nalcor was not forthcoming. I didn’t realize that Mr. Bennett had said there would be a truckload of documents over there.

But it’s worth comparing, for the sake of the public record here, as someone who has been around this circle a few times, to compare Newfoundland Hydro and Nalcor to Newfoundland Power.

If Newfoundland Power had been handling an application like this, the day the thing was called there would have been a truck load of documents over there, because Newfoundland Power takes its regulatory obligations seriously, ’cause the principals in Newfoundland Power have what they call skin in the game, and if they’re wrong, the shareholders take the hit.

I – with respect to Nalcor and Newfoundland Hydro, I find it inexplicable that they could not respond in a timely and efficient fashion.

If – as apparently there is in evidence to indicate that – evidence to indicate that they had done a tremendous amount of work on this project and that they were world class in dealing with this matter, why wasn't there a truckload on time when Gilbert Bennett said he would provide the information?

Now, there's only two explanations, as far as I'm concerned, are that they didn't have the information ready, or they were withholding information. There's only two explanations.

I honestly believe that they expected to get an easy ride from the Public Utilities Board with respect to this review for what I – you know, I can get pretty blunt if you want me to, but I – look, as far as I was concerned, this review quickly went downhill. We fully expected, as I say, to get sufficient documentation for us to get to work to try and do this analysis.

And we were months and months behind schedule. We asked for one – as the record shows – one postponement or one increase in time. And we – I think we wanted another three months. We wanted actually six months. We did not get the time that was – we were supposed to have to do the proper review, and I blame that entirely on the provincial government, and I blame it entirely on Nalcor.

MR. LEARMONTH: Well, why didn't you get it done by December 31?

MR. WELLS: Well, you've got to have – you – we had – we did not have enough. We did not have the information. And when Maureen Greene comes to us and says, you know, there's extensive documentation here, we were getting nowhere. And I found it totally and completely outrageous, unacceptable, unprofessional. And I think it was disrespectful of the process, and I would go so far as to say I think it was intentional.

MR. LEARMONTH: Okay.

The – now, there's a number of letters in the file. And I think, if you saw Maureen Greene's

evidence, she referred to them where she was continually, if not constantly, sending letters to Nalcor asking for documentation. And there was – Nalcor responded and so on. There's no question about that.

But were you – between the period, we'll say, June 17, 2011, and, we'll say, January 2012, were you kept up to date by your legal counsel – that's Maureen Greene – as to the efforts that she was making, along with Fred Martin, to obtain these documents? Were you apprised of the situation on an ongoing basis?

MR. WELLS: Absolutely. Maureen Greene is, as you saw yesterday, an outstanding person, an outstanding woman, an outstanding lawyer. I mean, for me, it was an honour and a privilege to be able to have access to somebody of that calibre –

MR. LEARMONTH: Yeah.

MR. WELLS: – along with the other members of the board. I mean, these people were terrific. There was no agenda here. We just wanted to do a responsible job. We take – all of us take oaths of office when we take these positions, and we have an obligation to the public trust, and that's not to be taken lightly and it's not to be abused.

MR. LEARMONTH: Yeah.

MR. WELLS: We were concerned about what we were – when Maureen comes – when Madam Greene comes to me or comes to the rest of the board and says, look, there's problems here. Well, you've got to take them seriously.

MR. LEARMONTH: Yeah.

Now, I think, just for the record, that you sent a letter, it's at – let's have a look at it – tab 37. That's Exhibit P-00567.

MR. WELLS: Tab 37?

MR. LEARMONTH: Yeah, do you see that?

MR. WELLS: I will get it, Sir. To Skinner – Shawn Skinner?

MR. LEARMONTH: Yes.

MR. WELLS: Yes, Sir?

MR. LEARMONTH: Okay. This is a letter dated September 22 where you're advising government that you couldn't meet the – the board couldn't meet the December 30, 2011 deadline, but you didn't make a specific request for an extension. You sent that letter, did you?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Yeah, so at that point you knew – we're only in September, the end of September – you knew by that time that you weren't going to be able to meet the December 31 deadline?

MR. WELLS: Yes, Sir. To me, it was rapidly going downhill.

MR. LEARMONTH: Yeah. Downhill in the sense that –?

MR. WELLS: Well, this is the 22nd of September?

MR. LEARMONTH: Mm-hmm.

MR. WELLS: So that's what – July, August, that's three months into it – two months into it and we were, basically, pretty well spinning our wheels.

MR. LEARMONTH: Okay. And then if you go to the next binder, the second one there, binder 2. That's tab 52.

MR. WELLS: Fifty-two.

MR. LEARMONTH: Of the next binder.

MR. WELLS: I don't seem to have – I seem to have 55 here.

MR. LEARMONTH: Fifty-two.

MR. WELLS: But it starts at 55, or am I missing something?

MR. LEARMONTH: No, the binder should start at 51, binder 2.

MR. WELLS: Binder 2, I must – well, b'y, I don't seem to have it here. I don't know what I'm missing.

It starts with 55 here, Sir, look.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. WELLS: Oh, okay. Thank you.

MR. LEARMONTH: Okay, this is Exhibit P-00045.

MR. WELLS: Yes.

MR. LEARMONTH: And this is a letter to you from then Minister Jerome Kennedy.

MR. WELLS: Yes, Sir, okay.

MR. LEARMONTH: And this refers to that letter I just showed you, September 22, 2011, where you asked for an extension.

MR. WELLS: Yes, Sir.

MR. LEARMONTH: And the –

MR. WELLS: December 12, 2011?

MR. LEARMONTH: Yeah.

MR. WELLS: Okay.

MR. LEARMONTH: You got it?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Okay. So, anyway, you hadn't asked for a specific date for an extension but he, I guess, responded to your letter saying he would give it to March 31.

MR. WELLS: Yes, Sir.

MR. LEARMONTH: And I take it that that wasn't acceptable?

MR. WELLS: No, not according to the, you know, the reports and the analysis that was coming up to the commission, to myself and the other members of the board, from our staff.

MR. LEARMONTH: Yeah. And then if you go to tab 55, which is Exhibit –

MR. WELLS: Yeah, I can –

MR. LEARMONTH: – P-00046.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. WELLS: Yes, (inaudible). Thank you.

Fifty-five, I got it, Sir.

MR. LEARMONTH: And this is another letter where, after receiving the letter from Minister Kennedy saying that March 31 was the date, you went and asked for an extension to June 30, 2012, which was not accepted.

MR. WELLS: That's what the record shows, Sir.

MR. LEARMONTH: Yeah. So why did you think you needed all that additional time?

MR. WELLS: To do your job. To do a proper analysis. To try and come up with some analysis and some conclusions and some recommendations that would be based on credible analysis and, you know, opinions arising therefrom.

MR. LEARMONTH: Yeah.

MR. WELLS: Simply to do a proper job.

MR. LEARMONTH: Okay.

Now, I think you've heard the Commissioner, he doesn't – the Commissioner doesn't want us to get into the reasons for the decision.

MR. WELLS: Mm-hmm.

MR. LEARMONTH: There's been a decision filed, –

MR. WELLS: Mm-hmm.

MR. LEARMONTH: – and the reasons speak for themselves. So I don't want you to speak to the reasons for the decision because it speaks for itself.

MR. WELLS: Yes, Sir.

MR. LEARMONTH: The final document. But did you have any concern about the fact that – which appears to be a fact that you – the board was in receipt of DG2, Decision Gate 2 numbers and cost estimates as opposed to anything more advanced. Was that an issue in your mind?

MR. WELLS: Well, that – this DG2 business became immediately obvious to me not long after we got the reference. I saw – I read, among other things, Uncle Gnarley's Blog, and I saw there early in the game, there was somebody named J. M. who was writing a series of very interesting articles on energy and other issues in the Province of Newfoundland. And he had a footnote there to the effect that: It is not advisable to use DG2 numbers because of the absence of sufficient project definition. And I think he used the – I think he said a DG2 number stops at a 10 per cent outline, project definition. And I think we've heard evidence here that others say it's even lower than that, it's 10 per cent and 5 per cent.

Now, you don't have to be an engineer, you just have not to be a fool or an idiot to understand that you cannot make a major decision involving the expenditures of potentially billions of dollars in the context of a project definition of less than 10 per cent, it defies logic and reason; you don't have to be very smart.

MR. LEARMONTH: Okay, all right.

The next document I want you to look at is tab 64, which is Exhibit P-00591.

MR. WELLS: Tab 64. Yes, Sir.

MR. LEARMONTH: This is that article in *The Telegram* that – where you were quoted as complaining about the process.

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Okay, now this is January 10, 2012.

MR. WELLS: Mm-hmm.

MR. LEARMONTH: So why did you feel it appropriate to comment in the media with

respect to a reference that was before the board but had not yet been decided? Why did you feel justified in doing that?

MR. WELLS: Well, this – the board is, as everybody knows, a quasi-judicial tribunal and it has, you know, it has the status for regulatory decisions of a lower court, subject to appeal, and had this matter been a regulatory matter where we would have been rendering a decision, I would have had absolutely had no comment whatsoever to anybody, but we were rendering – we were giving an opinion here.

So, I took a bit more of a relaxed approach to it and what I was expressing here, finally, after what, this was probably at least six months, close to six months, probably seven months because it's January 10, expressing extreme procedural frustration.

I mean, here we are – you said June 17 was the OC and this is January 10. Well, I'm still complaining on behalf of the board, and rightfully so. As of January 10 we still had problems, procedurally, dealing with Nalcor and for that matter dealing with the government – let's be clear here, what we're talking about.

MR. LEARMONTH: So, because this was a reference as opposed to a decision-making process, you felt that there was a distinction there that entitled you to comment in public?

MR. WELLS: Yeah, I mean, all we were trying to do was: Look, please, you know, pay attention. Will you abide by the rules of engagement? Provide the information. Give us the necessary, you know, the RFIs and the reports that we have obsessively, I would submit, I mean, our staff were far more patient with respect to this than I would have been, but I listen to people and I'm – you know, I don't get credit for it, but I do. And I – but I thought it was appalling the way the board, procedurally, was being treated by Nalcor – and for that matter, as I say, the government.

MR. LEARMONTH: Okay.

There's a – in the first – on the left-hand side, the first column, there's a reference to the – on the – under the heading: Muskrat Falls review

on track. It's stated that "There will be no technical conference."

Do you remember the issue of the technical conference and why it wasn't held?

MR. WELLS: Absolutely.

Our – the board team that we had put together – and remember, look, you know, we had Maureen Greene, 26 years' experience; Fred Martin, 35, I think, Fred; Sam Banfield, 35. And people are – there's been attempts by other parties at this hearing to make light of the qualifications of members of the board and the staff at the board. We had experienced staff here, and we were well equipped to handle – and we also knew enough to know when we didn't have the expertise to go outside and retain.

But, I mean, we had some excellent people here and we went out and retained excellent people. And, obviously, in the context of a decision like this, you need – it's, you know, demonstrably obvious, you need technical analysis. You need to compare, make accurate, well-informed comparisons and analyze the economics of it in order to make an intelligent decision. And we weren't not – we were not given the opportunity to do that. And because of the time constraints we were, obviously, forced – as the record shows – to cancel the technical conference.

MR. LEARMONTH: Okay.

Had you participated in technical conferences at the Public Utilities Board, at any time, during either of your two tenures?

MR. WELLS: No, not that I can recall.

MR. LEARMONTH: No. No.

Okay, now –

MR. WELLS: And I participated in capital budget reviews –

MR. LEARMONTH: Right.

MR. WELLS: – and there would be technical information there that one would look at, but, you know.

MR. LEARMONTH: Yeah.

Now, I – your transcript indicates that you had a number of meetings or discussions with members of government, or officials of government or former politicians and I want you to – to take you through those meetings.

The first one is – I think there's a reference to in – on page 8 of your transcript to a meeting with Minister Skinner. Who was – do you remember meeting with Minister Skinner?

MR. WELLS: That was – yes. That was, obviously, before the provincial election and I – we met with – I met with Mr. Skinner.

MR. LEARMONTH: At whose request?

MR. WELLS: His.

MR. LEARMONTH: His?

MR. WELLS: Oh yes.

MR. LEARMONTH: So you met him in the Confederation Building?

MR. WELLS: Yes.

MR. LEARMONTH: And what was the – what was discussed at the meeting?

MR. WELLS: Well, I think, I was probably expressing some concern, by that time, about how things were going and I was hoping that, you know, I said: Look, we're just here to do a job. We're here to try to give the government some good advice on this issue and just we hope that, you know, we'll be able to do our job properly.

MR. LEARMONTH: Yeah. So was it a cordial meeting?

MR. WELLS: That one certainly was, absolutely.

MR. LEARMONTH: Yeah. And you had known Shawn Skinner because you were both on council together –

MR. WELLS: Yes.

MR. LEARMONTH: – is that right?

MR. WELLS: Yes.

MR. LEARMONTH: So that was a – you had no problem with –

MR. WELLS: Absolutely not.

MR. LEARMONTH: – anything that was said at that meeting?

MR. WELLS: No.

MR. LEARMONTH: Okay.

On page 7 of your transcript you indicate that you had a meeting with Robert Thompson and others at the Confederation Building –

MR. WELLS: Yes.

MR. LEARMONTH: – in the fall of 2011.

MR. WELLS: Yes.

MR. LEARMONTH: Could you describe the meeting? First, who asked for the meeting?

MR. WELLS: The Government did.

MR. LEARMONTH: Did Mr. Thompson call you or –?

MR. WELLS: I can't recall. I don't know whether a call came to my office or, I think, maybe a call came to our office: They want you over at the Confederation Building, I'm gonna (inaudible) 10 o'clock tomorrow morning. I didn't know who was gonna be there.

MR. LEARMONTH: Okay. So you went, I take it?

MR. WELLS: Absolutely.

MR. LEARMONTH: And who was there?

MR. WELLS: Thompson was there. There was a lawyer from Justice, a fellow Scott, I believe. And there was some other person there, I think his name was Taylor, from Dunderdale's office, he was either – I stand to be corrected – either a

chief policy advisor or chief of staff. There was three of them. And myself – I was by myself.

MR. LEARMONTH: And what was discussed at this meeting?

MR. WELLS: It was a very short meeting. I went in and sat down. Thompson said to me: I am not satisfied with some of the questions that your lawyers are asking of Nalcor.

MR. LEARMONTH: That was Robert Thompson?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Yeah. And with what level of confidence do you recall that conversation?

MR. WELLS: Absolute confidence.

MR. LEARMONTH: Okay. So he said it – just say it again.

MR. WELLS: I – the only – I or we – I believe it was an I – are not satisfied with some of the questions that your lawyers are asking of Nalcor.

MR. LEARMONTH: Well, what business would that be of Mr. Thompson?

MR. WELLS: That, Sir, was precisely my response. And I said: It is not for you or for me or for anyone else to question our lawyers with respect to any questions they may ask of Nalcor. That ended that conversation.

I then turned to – I'm gonna say – Taylor, and I said to Mr. Taylor – and this is verbatim – I said to Mr. Taylor: Are you concerned about the cost of this project?

And Mr. Taylor looked at me – and I suppose I'm editorializing, and if I violate the rules I'll withdraw it quickly – laughed at me insanely, and said: No b'y, of course not, we're not concerned about the cost of this project, we are only concerned about he optics.

I said: Thank you very much. And I walked out.

MR. LEARMONTH: How long was the meeting?

MR. WELLS: As long as it took me to describe it now.

MR. LEARMONTH: Okay.

MR. WELLS: And I can tell you, I was deeply offended. I thought it was an attempt at intimidation of a regulatory tribunal. I thought it – I'm not a lawyer – obstruction of justice, procedural corruption. It was extremely improper. Extremely. At best, improper.

MR. LEARMONTH: And the –

MR. WELLS: I could go further, but I shan't because I understand there are rules here.

MR. LEARMONTH: Oh, we get your point.

MR. WELLS: Okay.

MR. LEARMONTH: The – now we – I understand – you've told us what you recall was said at this meeting. What was the tone of the conversation? Or the exchange?

MR. WELLS: Well, Thompson was – I mean, he was, you know, aggressive. I mean, it was just we're not happy with you – that tone of voice. Imperious – is that the word? Imperious –

MR. LEARMONTH: That is a word, yeah.

MR. WELLS: Yeah, well I'm gonna use that one.

And the other, Taylor, was just – I mean, he was mocking. He was making fun of me. I didn't mind that, I don't care about – people laugh at me all the time. Don't bother me.

But what bothered me was he was laughing at the people of Newfoundland. We're concerned about the optics. And I found that appalling.

MR. LEARMONTH: Now, you said – you thought it was Taylor. Now, in fairness, if you're not sure –

MR. WELLS: No, okay. I – Mr. Learmonth, I did find a note. I saw a name there called Jerry Taylor, and I'm not sure that's true. And I mean, I apologize to any Jerry Taylors who were not there. But – and this can be confirmed. I mean,

it's not hard to find out who the representatives – so – but I do want to stand corrected on that.

MR. LEARMONTH: Okay, so you're not sure?

MR. WELLS: No –

MR. LEARMONTH: You think it may –

MR. WELLS: – I wouldn't – no.

MR. LEARMONTH: You think it may have been a person named Jerry Taylor?

MR. WELLS: But he was a big wheel in Dunderdale's office. No question about that.

MR. LEARMONTH: Okay.

Now, you also met – according to the record, and correct me if I'm wrong, but my understanding is you had a meeting with a minister of Natural Resources, Jerome Kennedy, on January 4, 2012?

MR. WELLS: Yes, that's what the record shows.

MR. LEARMONTH: Yeah.

MR. WELLS: Yeah.

MR. LEARMONTH: There's a – there is actually a –

MR. WELLS: Yeah.

MR. LEARMONTH: – a minute –

MR. WELLS: Yes.

MR. LEARMONTH: – notes in the handwriting of –

MR. WELLS: Yes.

MR. LEARMONTH: – Jerome Kennedy, that's been –

MR. WELLS: Yes.

MR. LEARMONTH: – identified of the meeting. So the meeting certainly took place based on that.

How did it come to be that you met with Jerome Kennedy on the 4th of January? Did you call him? Did he call you to want to (inaudible)?

MR. WELLS: No, no, the calls always were one way. And I – we instigated nothing. I mean, any time I was called over to the building, I was responding to a government functionary or a Cabinet minister who wanted to talk to me.

MR. LEARMONTH: Okay. Did you ever consider saying, no, I'm not going over to talk to you, don't call me. I mean, this is a quasi-judicial board acting on a reference, it's none of your business what we're doing. Something to that effect.

MR. WELLS: No. I mean, look, this is a Cabinet minister or a government official wanting to talk to you. Presumably, they're trying to move – I assumed that they were trying to find out what we were – I think they were trying to find out what we were up to. Because it was – I think, they had different expectations of what the board was gonna do in this matter. And so they were trying to see how – what we were – how we were handling things, what we were – you know, what the complaints were.

I went because I wanted to emphasize at any and every opportunity: Boys and girls, if you want us to do – if you're serious, get after Nalcor. Get them to start taking their responsibility seriously and give us the truckload of documents that we were promised on June 17.

That was – and I was just trying to – there – with respect to encounters like that, further the goal, hopefully, of being able to do our charged responsibilities.

MR. LEARMONTH: Okay. How long did that meeting last?

MR. WELLS: Oh, I wouldn't say it was very long. Probably 15 minutes, you know.

MR. LEARMONTH: Was it cordial?

MR. WELLS: Yes.

MR. LEARMONTH: Yes. Okay, and just for the record, you don't have to refer to it, but –

MR. WELLS: Mm-hmm.

MR. LEARMONTH: – the note of this meeting in the handwriting of Mr. Kennedy is Exhibit P-00586.

MR. WELLS: Mm-hmm.

MR. LEARMONTH: Okay.

Now, the records indicate that you also met with – again with Jerome Kennedy and Maureen Greene –

MR. WELLS: Mm-hmm.

MR. LEARMONTH: – the day after on January 5, 2012.

MR. WELLS: Mm-hmm.

MR. LEARMONTH: And that's Exhibit P-00588, tab 61. Those are the notes of Mr. Kennedy.

MR. WELLS: Mm-hmm.

MR. LEARMONTH: Do you want to turn to that?

MR. WELLS: Sure.

MR. LEARMONTH: Sixty-one. Your tab 61.

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Okay. So this is in the handwriting of Mr. Kennedy. It's been identified as his handwriting, so what – you met with him – with Minister Kennedy on January 4, so why would you meet with him again on January 5? That's (inaudible).

MR. WELLS: I can't – I don't know. I can't recall. I don't know.

I mean, obviously, we got another call. And, I think, in consultation with our vice-chairman and our commissioners and Madam Greene, I think I decided – or we decided – that it would be better for me not to go to a meeting

outnumbered, because I had been outnumbered on other meetings and I didn't like how this was kind of shaping up.

So, I asked Maureen and we – the rest of the members of the, you know, the board thought it was a good idea.

MR. LEARMONTH: Yeah.

MR. WELLS: We worked as a team. There was no one-man shows here.

MR. LEARMONTH: Okay.

Now, the next meeting that is referred to in your transcript, page 9 and 10, is a February 12, 2012 meeting with Charles Bown?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Do you – did you attend that meeting?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: At whose request was the meeting held?

MR. WELLS: At his.

MR. LEARMONTH: So it's the same thing, someone called you and said –

MR. WELLS: Yes, Sir.

MR. LEARMONTH: – can you come to a meeting, and you went.

MR. WELLS: Yes.

MR. LEARMONTH: And did you go alone?

MR. WELLS: That one I did, yeah.

MR. LEARMONTH: But that –

MR. WELLS: Yeah.

MR. LEARMONTH: – wasn't in accordance with Ms. Greene's advice, was it?

MR. WELLS: No, I guess not. But I did go. Yeah –

MR. LEARMONTH: Yeah.

MR. WELLS: – you're right.

MR. LEARMONTH: Yeah.

MR. WELLS: You're right.

MR. LEARMONTH: Yeah. And –

MR. WELLS: Now, I think I told – I mean, I certainly informed other members that I was going. I mean, as I say, there was no one-man shows, or one-woman shows here. We worked together.

MR. LEARMONTH: Yes.

So, anyway, at this February 12, 2012 meeting with Charles Bown, what was discussed?

MR. WELLS: Well, he wanted to know – and, I mean, I can pretty well quote verbatim that one, too. He wanted to know, how it was going, Andy?

MR. LEARMONTH: Is that the tone?

MR. WELLS: I'm pretty sure, yeah. How's it going, Andy? I said: It's not. I said: It's not going anywhere, Charles. We're spinning our wheels. We're not getting any co-operation from Nalcor. It looks terrible. And I said, I'm deeply concerned that, you know, this is not a good thing for the province, this project, from what we've been seeing.

And his response was, and I'll quote: Based on what you have observed to date, would you recommend to the government that the Muskrat Falls Project be shut down?

MR. LEARMONTH: He said that to you?

MR. WELLS: Yes, Sir.

And I said: Based on what I have observed to date, I would call the Premier's office and I would tell her to call Ed Martin and I would say, Mr. Martin, shut this project down right now. And he said thank you very much and the meeting ended.

MR. LEARMONTH: And you walked out?

MR. WELLS: I did, Sir.

MR. LEARMONTH: So how long did that meeting take?

MR. WELLS: However long it took me to tell you – to give you the script here.

MR. LEARMONTH: Yeah, and I think the – if anyone's interested perhaps you'll be cross-examined on this. If we go to tab 79, that's Exhibit P-00604, these are notes in your handwriting, which contain particulars of some or all of these meetings, is that right?

MR. WELLS: Yes, it is. Yeah.

MR. LEARMONTH: Okay. And you would have made them when?

MR. WELLS: Oh, these were made – these were, you know, they were current.

MR. LEARMONTH: Contemporaneous –

MR. WELLS: Oh, yes, absolutely.

MR. LEARMONTH: – as it's on goings.

MR. WELLS: Yeah.

MR. LEARMONTH: Yeah.

MR. WELLS: I mean, I got one there too with my encounter with Marshall, you didn't ask me about that one. But –

MR. LEARMONTH: Well, do you want to tell us about that?

MR. WELLS: Well, this was early in the game. I mean, this is shortly after the – we got our OC. And so I don't know, a week or two weeks.

MR. LEARMONTH: You mean Thomas Marshall?

MR. WELLS: Tom Marshall that was then minister of Finance.

MR. LEARMONTH: Right.

MR. WELLS: So, we got our OC, we're starting to – well, we're not starting to work

because we couldn't find any work to do or not – anyway, Tom Marshall was in the paper, and it can be documented, he was in the paper singing the praises of Muskrat Falls or the great project was gonna be for the province, yada yada yada.

And I'm saying to myself: Why would they send a reference over to the board to do an analysis if they think it's such a good deal? Why is the minister of Finance, of all ministers in the government, after the premier, why is he out singing the praises of Muskrat Falls?

And by this time we were getting – as I say we were starting to get the procedural concerns, the truckload hadn't arrived. So I – my hangout in the morning – my office in the morning from 7:30 to 9 o'clock is Tim Hortons in Churchill Square. I'm there seven days a week. And I – he used to go over there, I used to see him.

I ran into him and I just stopped him, I said, Tom, b'y, look, from – look, just to let you know, I saw you – I heard you or saw you, and I said, if I were you, I wouldn't be singing the praises of Muskrat Falls. From what we're seeing – from what I'm seeing it doesn't look that good, that's all. And he just looked at me and walked on.

MR. LEARMONTH: He didn't say anything?

MR. WELLS: No.

MR. LEARMONTH: No.

MR. WELLS: And I mean, I – you know, you wonder. This guy is minister of Finance, why wouldn't he – b'y come over to the office, I want to pick your brains or – anyway, it didn't matter.

MR. LEARMONTH: Okay. Yeah.

Well, anyway, on page 11 of your transcript you refer to some contact with Danny Williams. You say – the top of page 11: Anyway, of course, Kennedy quit by then, so that was off the table, all right? That didn't happen, but we fully expected to be – you know, to be sent packing. And they would – I had a conversation, actually, with Williams.

Is that a reference to Danny Williams?

MR. WELLS: Is that in my transcript?

MR. LEARMONTH: Yes.

MR. WELLS: Where would that be?

MR. LEARMONTH: Page 11.

MR. WELLS: Of ...?

MR. LEARMONTH: Do you have your transcript?

MR. WELLS: I got it here in my briefcase.

MR. LEARMONTH: Well, I'll just show it to you. This is what you said in the interview, the top paragraph.

MR. WELLS: Yeah, that was actually the – this conversation took place in 2017.

MR. LEARMONTH: 2017.

MR. WELLS: Yeah.

MR. LEARMONTH: Okay, so that didn't apply to – you didn't have conversations with him during the –

MR. WELLS: Oh, I did.

MR. LEARMONTH: When?

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. WELLS: With Mr. Williams? I would've had, certainly, one if not two meetings during the period 2011 to 2012.

MR. LEARMONTH: When the matter was – the reference was before the board?

MR. WELLS: Yeah.

MR. LEARMONTH: Okay, well, who –

MR. WELLS: He did.

MR. LEARMONTH: You didn't mention this in your interview but, anyway –

MR. WELLS: Didn't I? I'm sorry, I thought I did, but I apologize.

MR. LEARMONTH: Okay. This –

MR. WELLS: Well, you know what, he called me up and wanted to talk about it. And I went up to his office and I – look I'm saying this –

MR. LEARMONTH: Okay, did – when was this? Can you give us any idea?

MR. WELLS: I would think it would be in late '11, I know there was certainly one in '12.

MR. LEARMONTH: Mmm.

MR. WELLS: Which I can firm up pretty easily because I got some reference dates. But there was at least – yeah, there was two.

MR. LEARMONTH: Can you tell us what –

MR. WELLS: Well, he wanted to know how it was going and I said: It's not going, Danny. I said: We're not getting anywhere with this. It's terrible what Nalcor and the government were doing with respect to this.

And he said: Ah, that's that Maureen Greene, that Nalcor bunch or something like that, they're all disgruntled. And I said – well, I can't say what I said to him here, but I certainly put the – I said: That's – you know, that's nonsense, not true. It's scandalous, you know, this.

MR. LEARMONTH: And that meeting was where?

MR. WELLS: At this office in – on – the old Paramount Theatre.

MR. LEARMONTH: Okay.

And you think that was in 2011?

MR. WELLS: Yes. There would've been one in 2011 – very definitely a repetition in 2012.

MR. LEARMONTH: Before or after you'd filed the –

MR. WELLS: Before.

MR. LEARMONTH: Before?

MR. WELLS: Yeah.

MR. LEARMONTH: Well, where was – was that a telephone conversation or a meeting?

MR. WELLS: That would've been a meeting probably January – I'm going to guess – 2012. There was a phone conversation for sure because I had made some – well, I guess it arises out of the comments I had made in the press about the procedural. And he was – he called me up and said that he didn't think it was right that I was criticizing Nalcor like that. Well, I said: That's too bad. I said: We're fed up with the way this is going, it's not fair.

MR. LEARMONTH: So that was a meeting or a telephone call?

MR. WELLS: That was a telephone conversation.

MR. LEARMONTH: Okay.

Now, the – your transcripts also indicates that you had a telephone conversation with then-Premier Dunderdale. Is that right?

MR. WELLS: Yes.

MR. LEARMONTH: Can you tell us about that telephone conversation?

MR. WELLS: I can.

MR. LEARMONTH: Well, please do.

MR. WELLS: When we filed our report –

MR. LEARMONTH: That's March 30, 2012.

MR. WELLS: Yes, and of course the report was tabled in the House of Assembly, I believe, on that Monday, April 1, I believe it was. And, of course, Dunderdale and the rest of the – you know, they were – well, they booed at me.

There was people from 2041 in the gallery and I mean I was astounded that members of the public were showing up to participate in a democratic process, and then get harassed and jeered by Cabinet ministers and the people on

the floor of the House of Assembly because they didn't like our report, I was appalled by that. I mean that's – to me, you're just a step away from fascism. And, I mean, as far I'm concerned we – by that time in Newfoundland we had degenerated into a fascist state.

Anyway, after that was over, I guess the government announced, or we found out, that MHI had gone to work for the government. And Darlene came to see me, to tell me and she –

MR. LEARMONTH: Darlene Whalen.

MR. WELLS: Well, I'm sorry, Madam Chairman now – Madam Chairperson now – came to me and said: Look, this is not acceptable, this is – there's an unethical circumstance here that's very, very improper. And she called, I guess, Mr. Wilson, I think she said this morning, was it?

MR. LEARMONTH: Paul Wilson of MHI.

MR. WELLS: Yeah, that's what – she called somebody from MHI –

MR. LEARMONTH: That's what she told you, right?

MR. WELLS: – to express her displeasure –

MR. LEARMONTH: Mm-hmm.

MR. WELLS: – and we (inaudible) them. Now, that was in the morning and I – shortly after that, I left the office and went home. I went home to lunch. And Dunderdale had called the office looking for me and her office was told he's home, so I got the call at home.

MR. LEARMONTH: From who?

MR. WELLS: From Dunderdale's office. And there was this imperious voice on the other end of the line saying: Premier Dunderdale wants to talk to you. And I said: Sure. So Dunderdale came on the line and I, you know, said: How are ya. And she said: I am sick of you and your damn board. Now, you get this MHI thing straightened out right away. Slam, she hung up on me.

MR. LEARMONTH: Did you say anything? Did you get a chance to –?

MR. WELLS: I may have said: Yes, Ma'am. I mean you got to understand the circumstance I was in. I'm not just speaking for Andy Wells, I was chairman and CEO. There was 12 or 14 employees – commissioners and employees who were, you know, involved in this. And for me to, in any way, challenge the premier of Newfoundland, if it was one-on-one, if it was just me, I probably would have, but I said I did not because I didn't want to place those people in jeopardy.

I mean I think you heard this morning Madam Whalen tell you that she had cleared out her office. She expected to be fired; we all thought we were going to be fired.

MR. LEARMONTH: Did you think you were going to be fired?

MR. WELLS: Yeah, I mean – well, you know the old saying, is it, history is – first time is a tragedy, second time is a farce. I was going to get fired from the Public Utilities Board twice in a row, what's the odds on that? I mean ...

MR. LEARMONTH: The –

MR. WELLS: And I – actually –

MR. LEARMONTH: You're the only person to be fired twice for the same (inaudible).

MR. WELLS: The only person to be fired twice. And, I mean, I actually – I mean it was – for the rest of them it was serious. I mean, you saw how Darlene – I'm sorry, the vice – the current chairman was affected by today. But, I mean, for me it was – you know, we thought we were out the door and we thought by the end of the year because Kennedy threatened us with legislative extinction too – I think that's in the public record: We'll be dealing with the board later on this year.

So these were a pack – from my perspective, they were a pack of bullies. And they went after our board and our employees, people that I – that we – people that were trying to do an honest job in assisting and fulfilling our mandate. And to be insulted and harassed and intimidated by a

bunch of political – well, I don't know if I can use the word, but it was – for me, it was – as I say, it had – the jackboots weren't marching in the streets, they were certainly marching in the suites. I was appalled.

MR. LEARMONTH: Yeah.

And this conversation with Premier Dunderdale, I know that it's been – you – the evidence is that you told Darlene Whalen about it and also Maureen Greene, of course.

MR. WELLS: I told everybody.

MR. LEARMONTH: Yeah, but you did say – I just want to point this out.

MR. WELLS: Mmm.

MR. LEARMONTH: You did say at your interview that you made a record or a note –

MR. WELLS: Yes, I did.

MR. LEARMONTH: – handwritten note, and that you had deposited it at the –

MR. WELLS: Yes

MR. LEARMONTH: – in the records –

MR. WELLS: Yes.

MR. LEARMONTH: – of the Public Utilities Board –

MR. WELLS: Yes

MR. LEARMONTH: – but it can't be found. Do you have any comment on that?

MR. WELLS: Well, I made a note, and I gave it to the then-secretary, Barbara, and I don't know whether the board checked with her, but she had filed it away. She'd filed it away.

MR. LEARMONTH: Yeah.

But in any event, how – you gave a pretty well verbatim account of that telephone conversation. How confident are you that your recollection is correct?

MR. WELLS: Oh, absolute.

MR. LEARMONTH: Yeah.

And the tone of Ms. Dunderdale was what?

MR. WELLS: Menacing, threatening. This was an angry person. This was a bully.

MR. LEARMONTH: Okay.

I just want you to turn to volume – that's binder 2, you probably have it in front of you, Mr. Wells – tab 83.

MR. WELLS: Yes.

MR. LEARMONTH: Now, this is a reference to a – tab 83, Exhibit P-00727.

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Right, you got that?

MR. WELLS: Yes, Sir.

MR. LEARMONTH: Okay.

So Premier Dunderdale says, with Mr. Kennedy present apparently, she says: “‘This is why we engaged the PUB in the first place,’ said Premier Kathy Dunderdale. ‘I am disappointed that after nine months, in excess of \$2 million spent, and the PUB having access to thousands and thousands of pages of documentation, that they have chosen not to fulfill their responsibility as it relates to the terms of reference for their review to determine whether Muskrat Falls is the least-cost option’” – et cetera. What is your – do you have a comment on that comment?

MR. WELLS: It was shocking, ill-informed, clearly somebody who doesn't know anything about energy policy, knows nothing about what we were trying to do. We made it quite clear that you cannot make a decision, a rational decision, on the basis of a DG2 level of project definition, and the report speaks for itself. We pointed out some – what we thought were severe problem with the demand analysis.

MR. LEARMONTH: Mmm.

So you disagree with that comment?

MR. WELLS: Yes. I mean, the – for anybody who understands anything about energy and energy policy in this province – I mean, you were dealing with this group. You were dealing with people who were amazingly, in my view, energy-illiterate. I mean, I was astounded at some of the statements.

MR. LEARMONTH: Okay.

Then we'll just turn to the next exhibit at tab 84, which is P-00728 –

MR. WELLS: Yes.

MR. LEARMONTH: – and this is an *On Point* interview with Natural Resources Minister Jerome Kennedy. He says, in the third paragraph: “Asked if the PUB report came back to bite the government, Kennedy replied, ‘I think it came back to bite them.’”

MR. WELLS: Yes.

MR. LEARMONTH: Do you have any comment on that?

MR. WELLS: Yeah, he's a bully. He's a –

MR. LEARMONTH: Was that –

MR. WELLS: That was a statement that a thug would make.

MR. LEARMONTH: Yeah.

MR. WELLS: “... came back to bite them”? What – sure that tells me, yes b'y, we're all gonna be out the door.

MR. LEARMONTH: Yeah.

MR. WELLS: What respectable public servant, Cabinet minister, would make that kind of a statement about a tribunal – an independent tribunal that was trying to do an honest job?

MR. LEARMONTH: Okay.

And then just later, he says – he's attributed to have said – this is Minister Kennedy: “‘It just showed a lack of respect for the process on their part, a failure to comply with their statutory mandate.’”

Do your earlier comments apply to that? I mean, we don't have to –

MR. WELLS: Absolutely.

They were – the government and Nalcor, as far as I'm concerned, were showing a lack of respect for the process. They – I think they honestly treated this as a joke.

MR. LEARMONTH: Why do you say that?

MR. WELLS: 'Cause we couldn't – we were not getting – we were not – procedurally, they were bankrupt. Where was the truckload, folks? What's going on here? What do you – what – why the delay?

MR. LEARMONTH: Okay.

MR. WELLS: So I mean, it was clear to me by – I mean, I – before this – that this was not genuinely motivated. Just – I thought – I think they expected us to somehow give them the Public Utilities Board housekeeping good seal of approval. That's what they expected we would do. And when we did not do it, they got nasty.

They – I – for some reason – and I can speculate here if you want, but I don't wanna cross that line.

MR. LEARMONTH: Yeah.

MR. WELLS: I think I know what was going on here.

But when they found out that we were playing a straight game – we were playing a straight, honest game – they got nasty. And when they finally got the report, of course, as was witnessed in the House of Assembly and witnessed by Dunderdale and witnessed by Kennedy, they showed their nasty, thuggish side. This was a –

MR. LEARMONTH: Okay.

MR. WELLS: – nasty business.

MR. LEARMONTH: Okay.

Now, Commissioner, I wanna ask Mr. Wells some – to give his position – not a long

statement, but a reasonably length statement on the Muskrat Falls Project.

I point out that other witnesses have been able to express opinions without being qualified as an expert. Mr. Wells has indicated that he's educated himself in energy policy and also taken courses.

Would I be able to ask Mr. Wells for – to provide a brief statement of his position on Muskrat Falls in general?

THE COMMISSIONER: It's going to be a rough afternoon anyway, so you may as well.

MR. LEARMONTH: Okay.

Well, you can, I guess –

THE COMMISSIONER: Just one second –

MR. LEARMONTH: – come out of your shell now, Mr. Wells –

THE COMMISSIONER: Just a second – just one second –

MR. LEARMONTH: – and tell us what your views –

THE COMMISSIONER: – Mr. Learmonth. We have – Ms. Best is on her feet. So we'll hear from Ms. Best. Can you turn your mic off?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

UNIDENTIFIED MALE SPEAKER: You got to turn off one.

MS. E. BEST: Yes. I'm still trying to digest your comments, Commissioner, from earlier today when I was questioning Ms. Whalen, and I have to say that – and I really am still trying to figure that out, and I have been thinking about it over the lunch break, and – so this is more of question, I guess, than a comment, but I fail to see how much of this testimony is relevant to the question asked in the terms of reference.

So to add a statement on top of this as to what he thinks of the project, that was the feather that

kind of broke the camels back for me, because I don't really see how a lot of this is relevant.

THE COMMISSIONER: Thank you.

All right, I don't entirely disagree with you, Ms. Best, on that. My view on this, when I look at section 4(c) of the terms of reference, is what I'm really looking at is trying to understand how a properly – whether or not it would be appropriate to take a project like Muskrat Falls – and that was the project at the time – and allow it to be reviewed by a Public Utilities Board or something of that ilk.

That assumes, of course, that the board is operating as a fully and properly constituted board prepared to make a decision on the basis of the evidence that is presented. So not having a full understanding of exactly what Mr. Wells was going to be saying when he took the stand – you know, obviously, he has some views, so I am prepared this afternoon, notwithstanding the fact it is not entirely relevant to that question, to allow Mr. Wells to be questioned with regards to his evidence with regards to having meetings for instance with government and/or Nalcor officials and some of his other comments. Because I think in fairness to the parties, he is making aspersions, very strong aspersions that are negative against others that I think he needs to be able to be questioned on.

How relevant that's going to be, ultimately at the end of the day, to my decision, I would say would be – it might be more relevant to the recommendations I might make at the end of the Inquiry. But that's where I am right at this particular point in time.

On the question of whether or not Mr. Wells should express a view on the Muskrat Falls Project – I'm not sure he hasn't already done that. So I don't really see the need at this stage of the game to go there. I'm suspecting that as questions are asked he may well divulge that information, but that depends on whether or not questions are asked and what the nature of the questions are. I don't know how else to deal with this. I'm just trying to keep this Inquiry on track and do what I need to do to respond to this in the most appropriate way.

And so as I said this afternoon, and I said this this morning, I think, to you Ms. Best – I’m sorry if I didn’t, but I thought I’d had said that, you know, there is a time to question Mr. Wells and that time was coming this afternoon. So, you know, you’ll have that opportunity as well all other counsel, should they wish to take advantage of it. So I take your question as an objection, and if I didn’t take it as an objection, I’m gonna take it on my own prerogative and say I’m not interested in Mr. Wells’s answer with regard to whether or not the Muskrat Falls Project is a good one.

And I don’t mean to be disrespectful to you, Sir, I’m just trying to be – to keep my mind focused on what it is I’m able to do and what I’m going to do.

MR. WELLS: Absolutely, Sir.

THE COMMISSIONER: Okay.

Mr. Learmonth.

MR. LEARMONTH: (Inaudible) I can’t ask him that question –?

THE COMMISSIONER: No. You might want to turn on your mic.

MR. LEARMONTH: The – I don’t know whether that’s a blanket objection to asking him any questions about Muskrat Falls. I was gonna ask him whether his – what his observations are and a potential for rate increases as a result of Muskrat Falls. Would that be permissible? I mean, he is an experienced man and –

THE COMMISSIONER: He’s no longer a commissioner.

MR. LEARMONTH: No.

THE COMMISSIONER: So – yeah, I will permit that question.

MR. LEARMONTH: Okay.

Well, Mr. Wells, can you answer – can you give us your comments on your observations as to what, if any, impact Muskrat Falls will have on the ratepayers of the province?

MR. WELLS: Sure.

Well, one of the things I did to try and understand the rate implications – (inaudible) myself – I mean, there is this Power Purchase Agreement floating around, and apparently under that Power Purchase Agreement the last payment is in 2069 and I think it amounts to \$1.9 billion. And that’s an astronomical sum.

So what I did – and I called it Muskrat Falls for dummies because I did it for myself. I just wanted to understand what, in broad terms, are the rate implications. So I took the current rate base – Newfoundland Hydro, Newfoundland Power. Newfoundland Hydro is primarily generation, transmission; they do have some domestic customers. I think they got 33,000, I believe, I’m not sure. Newfoundland Power is primarily LDC, local distribution company; they do have a little bit of transmission – or generation, I’m sorry.

Their total asset base as of – I did this in 2016 – is \$3.3 billion. Total revenues from rates is around – I think I had the number 808 million. So I just took it at – I took – okay, let’s say Muskrat Falls is gonna come in at 14 billion. And I just broke it up. I said, in a traditional utility rate base situation you’ve got debt and you’ve equity, and you run your capital structure at 60 per cent debt and 40 per cent equity. Equity attracts a higher rate of return.

Newfoundland Power, I believe, now is allowed 8½ and I think – 8½ per cent after taxes. And I believe they’re gonna – under the Power Purchase Agreement, Emera is allowed to earn 8½ on their return and Nalcor’s gonna earn 8½ on its return. The debt issue – I understand the federal debt guarantee, so I said that they’re probably going to be paying, I think – let’s say 4 per cent.

And all I did was say: Okay, we’re putting the equity portion together, 40 per cent times – I’m sorry, 40 per cent of your rate base times 8½ and 60 per cent. So what will be the overall revenue – interest requirement? And I said, I think 5 per cent on average would be a pretty – a good approximate sum. At 14 billion, that would amount to an interest payment of \$700 million a year. So you got to repay your debt on top of that; you’ve got to operate the plant, operate the

system. And I presume they're gonna take depreciation. People don't remember that, there's a – if you're gonna replace your assets, keep your asset base, you know, current, you've got to replace your assets. So all I did was say: Okay, well, dams and stuff like that, they got it (inaudible) – I mean, there's probably – dams are probably infinite. They'll last a hundred and hundred years. And I said, let's just say we're gonna depreciate half the project.

And I just ran a series of numbers and I came up with a – assuming \$14 billion – a revenue requirement of – additional revenue requirement of a billion dollars a year. And that is simply not possible. It's impossible. Even at \$6 billion – \$6 billion added to 3 billion would be a 300 per cent increase in your rate base. And the system – the system would not be able to handle, in my humble opinion, even a 50 per cent increase in power rates.

And I think I saw evidence here or before the board where they're talking about doubling the rates. That cannot be done in Newfoundland. The system will collapse. You will have massive rate shock, you will have massive departures from the system; people will not be able to afford to pay their power bills. It cannot be done.

So when the government is – when the provincial government, in my opinion, is telling Newfoundlanders that any significant amount of the cost of Muskrat Falls can be recovered in rates, I believe they're being deceptive. I don't believe they're telling people the truth. It cannot be done. In my humble opinion, even a 25 per cent – and I understand now the application before the board is – contemplates up to 23 per cent increase in rates. A 25 per cent increase in rates would – it's gonna result in massive energy poverty.

Now, we heard from, I think Professor Feehan on some elasticities. And all I did was to get some kind of – just to confirm those elasticities, I went to a couple of sites – I found the Energy Information Agency in the United States – there's the IEA and the EIA – the EIA is the US one. And I just did an extrapolation from what they're find – they're finding about one-third of American households now are struggling with energy poverty. Now, the GDP in the US when Obama left office was 53,000 US. That's about

70,000 Canadian. What's our GDP here, 50,000 Canadian? So we're facing massive energy poverty here if they push ahead with these rates – can't be done.

So it's just as well for the politicians to acknowledge, Muskrat Falls is not going to be a rate issue. Muskrat Falls is going to be a public debt issue. You will not have an energy system, it will collapse. So that's from a rate based, rate-of-return perspective, and I think I'm well in the ballpark there. Even if I'm out by, you know, 10 or 15, 20 per cent, they're massive increases. So, I think, it's just not possible.

And if, you know, I don't like counterfactuals, but if we had been allowed to do our work, we probably would've looked at the rate base implications of a \$6 billion plant. And it would've been massive at 6 billion, as I say. So, no, it's not on; that's the economic reality that the politicians – Nalcor are not telling the people of Newfoundland. We could have outwards of 40 to 50,000 families facing energy penury – energy poverty.

The definition according to the European Union: If the family spends 10 per cent of its income on energy costs, they're facing an energy precarity. And we're gonna have a lot of that in Newfoundland. I mean, I – gee, what do you tell a woman, a lady who I dealt with who's – she lives on \$1,700 a month and she's concerned about her power bill. If her power bill went up 25 to 30 per cent, what's going to happen to her?

And there's thousands of them out there like – people like that. And a lot of them, of course, are – happen to be female because women outlive the men, but still families. People on the penetration by electric, you know, floorboard heating – baseboard heating apparently in Newfoundland is exceptional. And people like that are – I mean it's just not possible. So there's no realism here. There's a general lack of realism in energy policy anyway, and I'll just conclude very quickly, but they think they can close the Muskrat – or the Holyrood generation station. They cannot. They cannot. That will never happen, in my view; cannot be done.

Liberty's report has pointed out that there's major problems with the anticipated problems at Muskrat Falls. There's major problems currently

with the hydro system. And to suggest that it makes sense to contract out your winter supply, your winter availability, your winter peak in power, your baseload energy to Nova Scotia is, as far as I'm concerned, is completely irresponsible. It's energy illiteracy. It's astounding that that would be contemplated.

That is the future that we could be facing here in Newfoundland. We've got – by way of conclusion, we've got major reliability problems now, major reliability problems emerging and we've spent \$14 billion. We are no – we're not further ahead, we're further behind than we were in 2011 when this process started 'cause we're \$14 billion in the hole. That for me is the stark reality. And we still, as I say, we're still facing – even though we had to deal with Dark Newfoundland and all the associated problems with that. I mean that was astounding.

All they had to do to prevent Dark Newfoundland, by the way, I'm sorry, for going on, and I'll stop. Hydro could have probably prevented Dark Newfoundland. I asked this question because I wanted to know: How much money would you have had to spend in order – would they have had to spend in the period 2009 to 2013 to avoid Dark Newfoundland? \$750,000, Mr. Learmonth, might have prevented Dark Newfoundland. And there was two people died because they never had power.

Now, that's the kind – this – that's the kind of a number – that's the small kind of number that we were talking about while these people were giving them bonuses – giving themselves bonuses. No wonder I'm outraged. If you're – you'd have to be a psychopath not to be outraged by that. And, I mean, I was astounded. And that's what the people of Newfoundland are facing now.

Sorry for going on.

MR. LEARMONTH: Okay.

Well, thank you for your answer. And now you'll be cross-examined by the counsel for the other parties.

THE COMMISSIONER: I think we'll take our afternoon break first and

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Government of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: Good afternoon, Mr. Wells. We've met before. Dan Simmons for Nalcor Energy.

Just a couple of things I wanted to ask you. So, hopefully, we'll be done before too long.

MR. WELLS: That's a relief.

MR. SIMMONS: Early in your evidence, earlier today, you had made – you'd been asked about the delivery of documents and answers to, I guess, RFIs that were provided by Nalcor Energy during the course of the review process, and I had a note that you had said something to the effect that when asked us to – if you knew why Nalcor had not been able to deliver the material as promptly as had –

MR. WELLS: Mm-hmm.

MR. SIMMONS: – been requested and had been suggested. And I have a note that you said that either they didn't have the info ready or they were withholding the info as to alternatives. And a little bit after that you said something to the effect that: I think it was intentional.

So, my first question is just a fairly straight forward one: Is it a matter of opinion that you are expressing, that Nalcor was deliberately withholding information –

MR. WELLS: It's my –

MR. SIMMONS: – and –I'm – just let me finish, please.

MR. WELLS: Sorry. I beg your pardon.

MR. SIMMONS: Was it a matter of your opinion that Nalcor was deliberately withholding information and that was intentional or is – or did you have any evidence or facts at the time to base that conclusion on?

MR. WELLS: Well, there was a statement made by Mr. Bennett that there would be a truckload –

MR. SIMMONS: Mm-hmm.

MR. WELLS: – by June 17.

MR. SIMMONS: Mm-hmm.

MR. WELLS: That's evidence isn't it?

MR. SIMMONS: So the –

MR. WELLS: That tells me –

MR. SIMMONS: Yes.

MR. WELLS: I'm sorry. Go ahead

MR. SIMMONS: That could be evidence of either of the alternatives that you suggested. Either that the info wasn't ready or that they were withholding it.

So, my question is, are you telling us that you had some evidence on which to base a conclusion that there was a deliberate, intentional –

MR. WELLS: No.

MR. SIMMONS: – withholding of information?

MR. WELLS: No.

MR. SIMMONS: You don't.

MR. WELLS: That's my opinion.

MR. SIMMONS: Okay. Thank you.

Thank you very much. That's it.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: Good day, Mr. Wells.

As you know my name is Geoff Budden. I represent the Concerned Citizens Coalition.

You were, I understand, appointed to the PUB by the Williams' Government in 2008.

MR. WELLS: Yes, Sir.

MR. BUDDEN: What was your own history, if any at all, with Mr. Williams? And what I'm thinking there is we've heard from, you know, Mr. Shortall and Mr. Ken Marshall, and they were long-term friends and business associates of Mr. Williams. Were you also a long-term friend and business associate?

MR. WELLS: No.

MR. BUDDEN: Okay. What was your history with Mr. Williams?

MR. WELLS: Well, I think that's a matter of, I guess, pretty well public record.

MR. BUDDEN: My recollection of it, that it was a difficult relationship. I remember hearing on the news, you know, him saying things about you, you saying things about him.

MR. WELLS: No, no. He said stuff about me; I never said anything about him.

MR. BUDDEN: Okay, but he certainly at one point, I think, he suggested, or wished, or hoped, that –

MR. WELLS: It was colourful.

MR. BUDDEN: – somebody kicked the shit out of you, or something like that.

MR. WELLS: That was – that was made, yes. That statement was made 20 years ago.

MR. BUDDEN: Okay. And then you were appointed 10 years ago. Were you surprised to be appointed to the board by Mr. Williams?

MR. WELLS: In the overall context, yes.

MR. BUDDEN: Okay.

MR. WELLS: That wasn't the – I was surprised by being asked to put my name forth for the chairman of the Petroleum Board.

MR. BUDDEN: Okay.

MR. WELLS: So, yes.

MR. BUDDEN: And that didn't go through as – I think it's also a matter of public record. And at that point you were requested – it was requested that you put your name forward to be chair of the PUB.

MR. WELLS: Well, the position was offered to me, certainly, Sir.

MR. BUDDEN: By Mr. Williams, personally?

MR. WELLS: Yes, Sir. Yes, Sir.

MR. BUDDEN: Okay.

This came out for the first time in your direct today, but do I understand correctly that during the period of time that this reference question was before the PUB that Mr. Williams contacted you and asked to meet with you or speak to you?

MR. WELLS: Yes.

MR. BUDDEN: Okay.

During these meetings or calls what, if anything, was discussed that was relevant to the subject matter of this Inquiry.

MR. WELLS: Well, it was how's-it-going meetings. And I basically said, as I've said throughout this piece to anybody who – it's not, it's not going.

MR. BUDDEN: Okay

MR. WELLS: And then, you know, there was suggestions made that we were being influenced by disgruntled former Hydro employees, which was a canard and malicious and unacceptable, and I very quickly dealt with that. I wouldn't tolerate it.

MR. BUDDEN: Okay. And that was the end of the matter?

MR. WELLS: Yes, Sir.

MR. BUDDEN: Okay.

Perhaps we could turn to Exhibit P-00337, which is a 2 page exhibit. It's –

MR. WELLS: 00337?

MR. BUDDEN: 00337, now the tab number I'm not sure, or even if it is before you as a tab. It's quite short, when it comes up it's a 2-page exhibit. We – it was put up with Ms. Greene as well.

Yeah, if you can scroll to the second page.

If you could briefly review this Mr. Wells, and once you've done so let me know.

MR. WELLS: It's on the screen here?

MR. BUDDEN: It is.

MR. WELLS: Yeah.

MR. BUDDEN: If indeed, Mr. Kennedy – we'll ask him, but if indeed –

MR. WELLS: Yeah.

MR. BUDDEN: – Mr. Kennedy was referring to the meeting that he had on February 5 with yourself and Maureen Greene –

MR. WELLS: Mm-hmm.

MR. BUDDEN: – is that an accurate account of what transpired or what was said?

MR. WELLS: Well, I believe, Maureen had raised the issue of mill closures. And, I mean, it is clear and it has been clear in this province for years that Kruger pulp and paper is only surviving on public subsidy. I mean, I find that that's another aspect that – now that you bring it up – the government subsidizes Kruger paper and then uses Kruger demand to, you know, to justify Muskrat Falls in a sense.

MR. BUDDEN: That's a whole other subject, but –

MR. WELLS: Sorry.

MR. BUDDEN: – just to keep it focused.

MR. WELLS: Okay, sorry.

MR. BUDDEN: Mr. Kennedy here talks about, quote, “I told the Public Utilities Board chair and their lawyer, unequivocally,” –

MR. WELLS: Mm-hmm.

MR. BUDDEN: – “...there is no evidence...how does this find its way into the report?” Did he put – Ms. Greene’s evidence, which I believe you were present for –

MR. WELLS: Mm-hmm.

MR. BUDDEN: – was that she brought up, by way of an example when discussing –

MR. WELLS: Yes.

MR. BUDDEN: – load forecast and demand and –

MR. WELLS: Absolutely.

MR. BUDDEN: – industrial demand, in particular, and say, well, what if we lose the mill?

Did you get this kind of pushback from Mr. Kennedy that he speaks of? Do you recall that?

MR. WELLS: I do not.

MR. BUDDEN: Okay, thank you.

My final question, you were also present, I believe, for Dr. Holburn’s evidence?

MR. WELLS: Yes.

MR. BUDDEN: So we’ll cut to the chase.

MR. WELLS: Mm-hmm.

MR. BUDDEN: He spoke about the other regulatory regimes that other provinces have. What, I guess, he would characterize, or at least I would, as a more robust regime where if Nalcor, say, wished to develop the Muskrat Falls dam, they would come before the PUB and would, you know, have a proposal, that there

would be hearings, there would be intervenors, funded intervenors, expert reports and so on. He, basically, it seems clear, identified that as the way the process unfolds elsewhere. As we know, it is not the way the process unfolded or does unfold in Newfoundland.

I’ll ask you the same question I asked Ms. Whalen. Can you think of any reason why the Public Utilities Board, as it is constituted in Newfoundland, could not run a similar process as opposed to the limited terms of reference that you did in fact have to run?

MR. WELLS: Not a reason in the world. That’s what the board is supposed to be constituted for.

MR. BUDDEN: Okay. Thank you, Mr. Wells.

THE COMMISSIONER: Edmund Martin.

MR. SMITH: Afternoon, Mr. Wells.

MR. WELLS: Sir.

MR. SMITH: Harold Smith for Edmund Martin.

I only have a couple of questions.

You’re aware, I assume, that prior to the reference, Nalcor was exempted from review of the PUB. Is that correct?

MR. WELLS: It’s a lily that’s been well gilded.

MR. SMITH: Okay.

And with respect to that gilded lily, would it be a part of the government’s decision-making – sorry, maybe I’ll rephrase that. Would the PUB ordinarily involve itself in some of the public policy issues that might drive a project, such as elimination of greenhouse gases, et cetera?

MR. WELLS: If the Province of Newfoundland had a sensible environment wherein it would be possible to discuss intelligently, coherently public policy issues, it seems to me that an essential part of that process should be the development and creation of an energy policy – I would prefer to use the word power policy because I don’t think there’s – I don’t know how many people in this room know the difference

between energy and power, but there's a fundamental difference.

And it seems to me that if you're going to have sound public policy formation, you would ask the board, or order the board, or the board has – would have given by an OC jurisdiction to deal with the creation of an intelligent power policy for the people in this province to assure next month, when it starts to get cold, the lights are going to go on.

And that would involve, in my view, a full suite of public hearings, requests for proposals to look at alternative sources of energy, analyzing such things as what is necessary to have a reliable power policy, what is the long term, what is the immediate strategy. That was not done.

This obsession with CO₂, by the way, I find probably insane. Newfoundland, for the record, I think is responsible for one and a half per cent of Canada's greenhouse gas emissions. Canada is responsible for one and a half per cent of the world's greenhouse gas emissions. China is now building – people don't understand this – 279 gigawatts of coal power. So, please, don't talk to me about CO₂ – tasteless, odorless, colourless, harmless.

MR. SMITH: So greenhouse gas emissions is not a priority as far as you're concerned?

MR. WELLS: What we do in Newfoundland, Mr. Smith, is totally and completely irrelevant. What Canada does is totally and completely irrelevant. We're not going to change anything, we're going to impose – you asked the question, you're going to impose a useless tax on Canadians.

MR. SMITH: So –

MR. WELLS: Well, actually, you're not because you're not going to get away with it.

MR. SMITH: So looking at like, for example, the access to the Atlantic Canada and North American grids, that's not a public policy issue?

MR. WELLS: A very important public policy issue.

MR. SMITH: And is that something typically that the PUB would deal with?

MR. WELLS: Well, no, but the – well, I think there's – again, there's a – and this is one of the points I wanted to make about the Muskrat Falls costs. There is an – as I understand it there is something called an open access tariff. When we're part of the North American grid, I understand there will be free trade in electricity.

In – we're part of the North American grid; there's a buyer and seller's market. If Newfoundland Power can come into the board sometime in the future and say, look, we've got a contract for six months for – I'll just pick a number – seven cents a kilowatt hour and the Government of Newfoundland or Nalcor is trying to say, no, you got to buy it from us at 36 cents or 26 cents, I guarantee it's going to be a revolution. Not going to work, it's not going to play.

Plus, I believe, it's the – this monopoly given to Nalcor with respect to generation and supply, I think, is probably illegal, but I'm not a lawyer. That's make-work for you guys and you're very good at making work for yourselves.

MR. SMITH: Now, I'll leave those issues because I think they've been canvassed before the Commission by other witnesses so I won't belabor the point. I'd like to have your opinion on the MHI report with – that was filed for the consideration of the board. It's just an opinion on the report. Was it thorough? Was it a quality report –?

THE COMMISSIONER: So before you answer that question: That is outside the bounds of what I am permitting.

MR. SMITH: Okay.

THE COMMISSIONER: Okay?

MR. SMITH: Yeah, that's fair.

THE COMMISSIONER: This all goes to deliberations and whatever and I don't feel – for public policy reasons I don't think it's appropriate for a Commission to get into that.

MR. SMITH: Yeah and, you know, I understand.

Well, thank you, Mr. Wells. That's all I have.

THE COMMISSIONER: Okay.

Kathy Dunderdale?

MS. E. BEST: No questions. Thank you.

THE COMMISSIONER: Okay.

Provincial – or Former Provincial Government Officials '03-'15.

MR. J. KING: Hi, good afternoon, Mr. Wells.

Justin King, on behalf of a group of provincial former government officials 2003 to 2015, many of whom you'd be familiar with.

I just want to start out with a more general question, I guess. In terms of the PUB exemption itself, you're aware the Muskrat Falls was exempt from oversight in around 2000, the original order.

MR. WELLS: Ad nauseam.

MR. J. KING: And you're aware that subsequent administrations didn't exempt the project but simply maintained that exemption?

MR. WELLS: Yes.

MR. J. KING: And you're aware that other projects – this could have potentially been during your first term with the board – other projects were exempted including Bay d'Espoir, Granite Canal and Star Lake. Were any of those during your time or ...?

MR. WELLS: We had evidence yesterday from Madam Greene, Sir.

MR. J. KING: Okay.

In your earlier evidence you discussed some telephone calls or meetings, or whatever the case may be, with Danny Williams? And I think you said those were in 2011, 2012. Are you sure on the dates on those?

MR. WELLS: I'm certainly sure on the years.

MR. J. KING: On the years? Okay.

MR. WELLS: I can come pretty close on the February 12 meeting because it was after I made a public statement complaining about the lack of response to Nalcor.

MR. J. KING: Okay.

So did you initiate the call or did he call you or ...?

MR. WELLS: No, no, I didn't initiate anything.

MR. J. KING: Okay.

And do you know around what time of the year it was just generally or ...?

MR. WELLS: I – the – November 11 or the – 2011 when – I'm just – I speculated within the late fall.

MR. J. KING: Okay.

And, again, you said that was over the phone?

MR. WELLS: I had, yeah, one or two phone calls and one or two meetings.

MR. J. KING: Okay.

And you stated basically, and correct me if I'm wrong, but that Mr. Williams just wanted to know how it was going effectively being the reference.

MR. WELLS: Mmm.

MR. J. KING: And what was the nature of the conversation? Was it cordial or ...?

MR. WELLS: Oh yeah.

MR. J. KING: Okay.

MR. WELLS: For us. It was cordial for us.

MR. J. KING: Cordial for you, yeah.

Any records or – of those calls or meetings that you might have?

MR. WELLS: I don't write anything down like that.

MR. J. KING: Okay, so there would be no record of that?

MR. WELLS: No.

MR. J. KING: Okay.

MR. WELLS: Well, I write some stuff down, but not that stuff.

MR. J. KING: And, obviously, you provided – you gave an interview with Mr. Learmonth earlier in the year.

MR. WELLS: Yes.

MR. J. KING: And you didn't bring up any of those calls or meetings with Mr. Learmonth despite Mr. Williams being discussed.

Why might that be –

MR. WELLS: I – look –

MR. J. KING: – (inaudible)?

MR. WELLS: I honestly confess that was an oversight. I don't know. I mean, it was – certainly was not deliberate on my part.

MR. J. KING: Okay.

In terms of your interview – just a few questions in relation to that.

In your interview, you indicated you had a meeting – and we discussed this as well this morning – meeting with Minister Skinner – it's at page 8 of your interview – and, subsequently, a meeting with Minister Kennedy.

And in relation to Mr. Kennedy, in your interview, you stated that you might have called that meeting? Do you have any –

MR. WELLS: No, I didn't.

MR. J. KING: – recollection of that?

MR. WELLS: No, I didn't.

MR. J. KING: Okay.

So –

MR. WELLS: No.

MR. J. KING: – in your interview, you say – this is at page 25. I'm not sure if you have it –

MR. WELLS: Mm-hmm.

MR. J. KING: – in front you, but I'll read it out to you –

MR. WELLS: Yeah.

MR. J. KING: – in any event.

You said, I think I requested – maybe I requested a meeting with Kennedy to complain, right, about the lack of –

MR. WELLS: Okay.

MR. J. KING: – cooperation.

MR. WELLS: Well.

MR. J. KING: So you can't recall if you requested meeting or if ...?

MR. WELLS: No, I can't. I may – I can't.

MR. J. KING: Okay.

MR. WELLS: I may have requested it –

MR. J. KING: Okay.

MR. WELLS: – and then a second one probably arose from the first, but I'm not sure.

MR. J. KING: Okay.

And I guess, just in relation to those meetings generally, both with Minister Skinner and with Minister Kennedy, would you agree that the general purpose of those meetings was just to discuss scheduling and process?

MR. WELLS: No.

The first one with Skinner was just process, and – but by the time I was meeting with Kennedy,

we were expressing concerns that the June 17 truckload was still in transit.

MR. J. KING: Okay.

So I guess we could say process and scheduling?

MR. WELLS: We were – probably, but look, I – we were probably at that time raising the question of the fact that our timelines had been – prostituted, I guess, is the word. Like, they were irrelevant – I mean, they just didn't matter anymore.

We needed – people talk about resources here. Did the board have enough resources? The only resource we needed to do a better job was something called time.

MR. J. KING: Mm-hmm.

MR. WELLS: And that was a resource the government was not prepared to give us.

MR. J. KING: And that's not – I mean, my question isn't in relation to resources; it's just in relation to the content of those meetings would have been process and scheduling.

MR. WELLS: Well, it – with Kennedy, laterally, I would have been complaining. I think I would have raised some – I did raise some problems with the lack of co-operation from Nalcor, and he did express – he did state that he would look into it.

MR. J. KING: Mmm.

MR. WELLS: But nothing changed.

MR. J. KING: Is it fair to say that those concerns were also scheduling concerns in terms of – you know, you were looking for the information and that was impacting the timeline involved?

MR. WELLS: Well, clearly, if we're not getting information, our schedules are being eroded –

MR. J. KING: Yeah.

MR. WELLS: – are being – you know?

MR. J. KING: Mmm.

And I believe you heard Ms. Greene's evidence yesterday, and her evidence was that basically, in relation to that meeting with Mr. Kennedy, it was in relation to process and scheduling. Would you agree with that?

MR. WELLS: Well, if it's any conflict between what I'm saying and what Maureen Greene is saying, I urge you to listen to Maureen Greene.

MR. J. KING: Okay.

At page 27 – so, in relation to Mr. Kennedy – did you say that you're not sure if there one or two meetings with him?

MR. WELLS: With who?

MR. J. KING: Minister Kennedy.

MR. WELLS: I think the record shows two. I mean, I –

MR. J. KING: Okay.

MR. WELLS: – you know.

MR. J. KING: Again, in your interview, at page 28 you were asked: Did you ever have meetings with Mr. Kennedy? And your response was: I had one. And then Mr. Learmonth –

MR. WELLS: Yeah.

MR. J. KING: – asked: Just the one? And that's the one?

MR. WELLS: Yes.

MR. J. KING: And you said: I'm pretty certain.

MR. WELLS: Yeah.

MR. J. KING: I don't think there was two.

MR. WELLS: But I was mistaken.

MR. J. KING: Okay.

So again, just sticking on your interview's transcript – page 2 you indicate: Basically, what we had was a bunch of insiders, government

insiders, Nalcor group, members of Cabinet, the House of Assembly, who would use the system to their own advantage.

MR. WELLS: Mm-hmm.

MR. J. KING: That's one quote. I had a bunch of questions there –

MR. WELLS: Mm-hmm.

MR. J. KING: – but I'm (inaudible) on for –

MR. WELLS: Yes.

MR. J. KING: – time purposes. And then you state: –

MR. WELLS: Yes.

MR. J. KING: – There were politicians who were miserable and corrupt and dishonest, but I didn't realize it was systemic. That's fundamentally what's going on here.

So you recall making those statements?

MR. WELLS: Yes.

MR. J. KING: So my question is have you reviewed the forensic audit report that Grant Thornton produced for the Commission?

MR. WELLS: No. But my comments have nothing to do with a forensic audit.

MR. J. KING: Your comments don't –

MR. WELLS: No.

MR. J. KING: – but I'd ask if you're aware of the results of their investigation?

MR. WELLS: No, I'm not familiar with the forensic audit.

MR. J. KING: Okay.

And if I put it to you that there was no findings of any fraud or anything on behalf of the government, would you have any comment on that?

MR. WELLS: No, I wouldn't be able to –

MR. J. KING: Because you'd have to read the report. Okay.

MR. WELLS: No. My issue was a larger one.

MR. J. KING: Okay.

Well, I guess – I mean, Grant Thornton will be looking at larger issues, as well.

MR. WELLS: No. No. It's nothing to do with Grant Thornton. It's fundamentally got to do with the way the system operates –

MR. J. KING: (Inaudible.)

MR. WELLS: – which is beyond this purview here, I understand.

MR. J. KING: So keeping on page 2 there of your interview, you say – again this is among the same (inaudible): The problem is systemic in our society that politicians – the people that we elect are not there for the public interest.

So my question is – I mean, you've had a long political career yourself –

MR. WELLS: Mm-hmm.

MR. J. KING: – 30 years. How do you reconcile that type of comment with your own career, which, again, as we've said this morning, was, we'll say, controversial if that's fair?

How do you reconcile comments like that with your own career?

MR. WELLS: If you – I had, you know, I had numerous opportunities to move up into the House of Assembly. I always turned them down, because once you join a political party and become a Member of the House of Assembly, you become a paid liar. There's three parties; they have three sets of lies. They're not interested in, as far as I'm concerned, good public policies, so there's no place there for me. I can't tolerate the dishonesty. I always played it straight.

And I will put my – whatever remuneration I got from the public in any capacity – Public Utilities chairman or member of council – I will put my remuneration up against benefits that I actually

generated for my constituents, for the people that appoint me. I don't want to brag about it. It's not of – of no concern here. If you want me to take up the time I will, but I don't want to, because I don't think –

MR. J. KING: I don't –

MR. WELLS: – it's very interesting.

MR. J. KING: I certainly don't want to take up the time.

MR. WELLS: I'm not interested in it, so I don't know why anybody else would –

MR. J. KING: Okay.

MR. WELLS: – be.

MR. J. KING: Page 40 of your interview, you state: You know, Newfoundland for me at the time – it almost degenerated into a fascist state of (inaudible) –

MR. WELLS: Mm-hmm.

MR. J. KING: – because people weren't physically threatened –

MR. WELLS: Mm-hmm.

MR. J. KING: – (inaudible) were threatened and people were afraid to speak out.

MR. WELLS: Yes.

MR. J. KING: And I think you state at page 6 that you were aware that there was significant support for the project at the time.

MR. WELLS: Yes.

MR. J. KING: So during that time, was that a view that you held, given –

MR. WELLS: It –

MR. J. KING: – that there was so much support for the project?

MR. WELLS: It was a developing view. I mean, in life, you're a participant, but you're

also an observer, and you try to figure what's going on.

And I – you know, I've been it at it 30 – well, 50 years. I mean, I was the founding – one of the founding members of the NDP party in Newfoundland. That's so foolish – I was when I was young, but one of the things you try to do is to learn and to observe, and I thought that particular politicians were corrupt and venal, but I didn't know just how –

MR. J. KING: Just to kind of rein it in, I guess – in terms of that – when did you start to, you know, kind of have that belief, I guess?

MR. WELLS: I was coming to it.

MR. J. KING: Okay, sorry, go ahead.

MR. WELLS: It started with the whole Muskrat Falls review process, the whole atmosphere that had been created in this province by this project. The lawyer for Madam Dunderdale said that 80 per cent of the population were in favour of Muskrat – it's like a popularity contest.

If Fortis Newfoundland were making an application for something, there's no controversy. There's no, you know, manipulation of public opinion. This was, as far as I'm concerned, orchestrated and manipulated, and the Dunderdale government systematically bought off people –

MR. J. KING: Again, I think we're getting on –

MR. WELLS: Well, okay –

MR. J. KING: – a bit of a tangent here.

MR. WELLS: – you asked the question.

MR. J. KING: The question is approximately what year.

MR. WELLS: Around 2011.

MR. J. KING: Okay. That's my question.

MR. WELLS: I'm a classical liberal. Class analysis is my theoretical approach to where I am now with this, and I'm probably the only one in Newfoundland thinks that way, but that's it.

MR. J. KING: Fair enough.

MR. WELLS: What can I do?

MR. J. KING: That's an answer to my question.

Page 5, you reference – and we talked about this with Mr. Learmonth – you running into Tom Marshall at Tim Hortons. And in your interview you state: So I ran into him – being Tom Marshall – at Tim Hortons –

MR. WELLS: Mm.

MR. J. KING: – because he used to go there. I said: Tom – I just stopped him. I said: Tom b'y, I just want to know, like, we just started, you know, with this process. And I said: If you, as an elected – you know, he was minister of Finance at the time. I said: I wouldn't be out shooting off about how great Muskrat Falls is.

MR. WELLS: Yeah.

MR. J. KING: I said: All I can tell you at the very preliminary level, what I'm seeing doesn't give me much, you know, much confidence in the viability of the economics of the project.

MR. WELLS: Yeah.

MR. J. KING: He just looked at me and walked on, no interest.

So I think that reflects what we said this morning – or this afternoon –

MR. WELLS: Mm-hmm.

MR. J. KING: – in terms of that meeting. And this meeting was two days after you had received –

MR. WELLS: It wasn't a meeting.

MR. J. KING: I'm sorry, this – well, this run-in, I guess we'll say –

MR. WELLS: Yeah.

MR. J. KING: – at Tim Hortons. This was two days after you received the PUB reference?

MR. WELLS: I apologize there, I think I've got that – that meeting or that encounter probably took some – a little bit later because I – there's two possible times, but I think it may have been further down the line. It may have been towards late July, into August.

MR. J. KING: Okay.

MR. WELLS: And that was a – you know, just a –

MR. J. KING: But, certainly, soon after the PUB reference was received.

MR. WELLS: Well, it became fairly – it became, you know, fairly quickly aware, to me anyway, that b'y, this – I mean, you know, where's that truckload?

MR. J. KING: Yeah.

So just to, you know, point that out, so this meeting did happen soon after the PUB reference.

MR. WELLS: Oh, yeah, I mean ...

MR. J. KING: Yeah. Sorry, I called it a meeting again but the run-in.

And then later in the interview you expressed disappointment that Mr. Marshall didn't have any interest in speaking to you about the issue and you said: B'y, come down, talk to me off the record or something, give me some idea about what you're talking about; nah, just walked away.

MR. WELLS: Hmm.

MR. J. KING: Do you recall making that statement?

MR. WELLS: No, no, no. I didn't – I didn't ask him for a meeting. I just said –

MR. J. KING: Sorry –

MR. WELLS: I just said what I'm seeing, it doesn't look very good and he just walked away.

MR. J. KING: So your statement –

MR. WELLS: That was my observation arrived –

MR. J. KING: Your statement in the interview was: B’y, come down, talk to me off the record or something, give me some idea of what you’re talking. Nah –

MR. WELLS: No, I –

MR. J. KING: – just walked away.

MR. WELLS: What I was saying – what I said there was I – one would have thought that a Finance minister may have – that may have been a rational response to my – what I had said.

MR. J. KING: Okay, because that’s not how that reads –

MR. WELLS: Yeah, I –

MR. J. KING: – to me.

MR. WELLS: – well, I can’t apologize for that but, I mean, that’s what happened.

MR. J. KING: So, obviously, there you make a suggestion about an off-the-record conversation.

MR. WELLS: No, I didn’t make any suggestions to Mr. Marshall, absolutely not.

MR. J. KING: So you said: B’y, come down, talk to me off the record or something.

MR. WELLS: Well, I – look, I – that is not correct in the transcript. I – that’s what I thought he should have done but I didn’t say that to him.

MR. J. KING: Okay, but you would agree with me that that’s how that reads.

MR. WELLS: Well, I can’t – yes, if that’s what it reads, but I – look, I didn’t read the transcript closely enough. I probably would have – should have had that edited out or corrected.

MR. J. KING: Okay.

Would you have had any off-the-record discussions with anyone else while the PUB reference was ongoing?

MR. WELLS: No.

MR. J. KING: And –

MR. WELLS: Only what we’ve documented here.

MR. J. KING: Yeah.

And did you see anything wrong about engaging a Minister of the Crown in a discussion on the merits of the project at a Tim Hortons in Churchill Square while the matter was actually under review?

MR. WELLS: Just – well, look, it’s just a casual encounter. As I said in my – the premise for all of this was that this – we were not dealing with a – if this had been a rate application or a – you know, a true quasi-judicial proceeding, I would have spoken to nobody about it. But in this context, this was we’re rendering or offering an opinion, so I just thought that I’d – that was just a casual comment.

MR. J. KING: Okay.

And do you see any problems with, as you said, a quasi – the chairman of a quasi-judicial board discussing opinions and while the matter is still in front of the board?

MR. WELLS: As I say, not in this context. I was deeply concerned here that this was rapidly running off the rails. I mean I’m just – I was just concerned about the public interest. We were charged with trying to – you know, to execute the public interest. That’s – there was no hidden agenda here. I was just saying –

MR. J. KING: So you see no issues with that conversation?

MR. WELLS: No.

MR. LEARMONTH: Could I just clarify? I don’t think that you’ve read the whole paragraph of Mr. Wells’s discussion with Mr. Marshall. I think if you read it, you’ll see he didn’t say anything about come by, he said he could have said that.

I’ll read the paragraph out: So, you know, I thought, I mean – you would have thought that

he might have wanted to know what the chairman of the Public Utilities Board was talking about. I don't know, I mean it seemed to be a logical question. I know he's not supposed to be because of my (inaudible), but he could have said, b'y come down, talk to me off the record or something, give me some idea of what you're talking about. So Mr. Wells's characterization of that discussion is, I believe, correct and yours is wrong.

MR. J. KING: Thank you, Mr. Learmonth. I agree with your assessment there.

So you say several times in the interview that you knew the project was going to be a disaster at pages 1, 4 and 10. How early in the process did you come to the conclusion that that was the case?

MR. WELLS: Well, certainly after the meeting with Thompson and the official from Dunderdale's office, when I asked that guy is he concerned about the cost of the project and he laughed in my face and said: No b'y, we're not concerned about the cost; we're concerned about the optics.

MR. J. KING: So when was that? When – what was the date of that meeting?

MR. WELLS: September.

MR. J. KING: Okay.

MR. WELLS: I said to myself: We are doomed. That's what I said to myself. I don't know if I said it to anybody else. We are doomed.

MR. J. KING: And just one more excerpt here from the interview – actually, I might have more. But along the same lines on page 16 you describe a run-in with Chief Justice Green at Costco. Do you recall discussing that in your interview?

MR. WELLS: Yeah.

MR. J. KING: Okay.

You say: I ran into Chief Justice Green, Derek. I know Derek, met at Price Club in, jeez, December of 2011.

MR. WELLS: Yeah.

MR. J. KING: I said: Derek, there's going to be – just letting you know, I said, there's going to be an Inquiry in this Muskrat Falls business, you know.

MR. WELLS: Yeah.

MR. J. KING: And he kind of looked at me and said: What do you mean? I said I'm telling you right now. I said: I know I can see the way this is unfolding. I said: You'd be the perfect one for that.

So you recall that meeting with Chief Justice Green?

MR. WELLS: Oh yeah.

MR. J. KING: So even at this early stage, this is December 2011, you were convinced there was going –

MR. WELLS: This was six –

MR. J. KING: – to be an Inquiry?

MR. WELLS: This was six months in.

MR. J. KING: Six months in? Yeah, so you were convinced at that time that there was going to be an Inquiry?

MR. WELLS: Well, time proved me correct.

MR. J. KING: I can't fault you there.

In terms of, you know, I guess just going back to this question about the appropriateness of engaging people in a public setting while the matter is in front of the PUB, I suspect your answer is going to be the same as what you just provided. I don't want to –

MR. WELLS: To Mr. Green?

MR. J. KING: Well, just on the appropriateness of engaging, you know, members of the public in a public setting.

MR. WELLS: Well, this was a casual conversation.

MR. J. KING: Right.

MR. WELLS: I mean I've known Derek Green; I have great respect for him. And I, you know ...

MR. J. KING: Yeah.

Just one final question on your interview transcript: On a couple of occasions you reference Ron Penney. At page 25 you mention him going to Denis Mahoney of the Board of Trade. That's just to give you some context because of –

MR. WELLS: Mm-hmm.

MR. J. KING: – those references. And at page 4 you reference attending a book launch and you refer to Mr. Penney as your pal. So would you describe your relationship with Mr. Penney as a close one?

MR. WELLS: We're – we've been colleagues and, you know, I mean he – I've known him for a long time. He ended up a solicitor down at city hall and he ended up as chief commissioner. I had an allergic reaction to city management, so they decided to call him chief commissioner. And I was against it at first but I got to know Ron Penney well and he's a fine, upstanding human being and he's one of the most honest people I know.

MR. J. KING: So that relationship, is it – you know, does it go outside of, I guess, a business relationship? Are you close friends outside of (inaudible)?

MR. WELLS: Well, it came up in the hearings we're –

MR. J. KING: Yeah, I know it came up on –

MR. WELLS: We occasionally socialize and talk about stuff.

MR. J. KING: So –

MR. WELLS: We're part of the city hall recovery group that meets from time to time.

MR. J. KING: Okay.

And I mean, I'll – I guess I'll just cut to the chase. In terms of, you know, while the matter was in front of the board, would you have had any discussions with Mr. Penney as it pertains to the Muskrat Falls Project?

MR. WELLS: I may have but it wouldn't have been any –

MR. J. KING: Not that you specifically recall?

MR. WELLS: – wouldn't have had any influence on results. I mean, no.

MR. J. KING: So it was discussed during that period?

MR. WELLS: I – we may have talked about it, sure.

MR. J. KING: Okay.

Thank you, Mr. Wells. That's all my questions.

MR. WELLS: Thank you.

THE COMMISSIONER: Julia Mullaley and Charles Bown?

MR. FITZGERALD: Thank you, Justice.

Good afternoon, Mr. Wells.

MR. WELLS: Good afternoon, Sir.

MR. FITZGERALD: Andy Fitzgerald, I represent the – Mr. Bown and Ms. Mullaley, two public servants who are doing their job throughout this Inquiry at the direction of government.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: I just have a couple of clarifications, more than anything else. And, I guess, before I get into that, you were present for Maureen Greene's evidence?

MR. WELLS: Yes.

MR. FITZGERALD: Yes, and you think very highly of Ms. Greene, I take it, from your evidence.

MR. WELLS: She's an outstanding woman. She's an outstanding lawyer. I enjoyed – probably one of the most interesting aspects of my tenure at – the (inaudible) tenure at the board was having access to someone like that who understood public utility regulation and law. If she had to been president of Nalcor, we wouldn't be in the mess we're in today.

MR. FITZGERALD: In terms of her evidence, and you heard it, do you take any issue with her evidence? Is there anything you disagree with what she said?

MR. WELLS: Maureen?

MR. FITZGERALD: Yes.

MR. WELLS: No. Blessed God. She's sterling, b'y.

MR. FITZGERALD: Okay.

Now, Ms. Whalen gave evidence earlier today.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: And you heard Ms. Whalen's evidence?

MR. WELLS: Yes.

MR. FITZGERALD: And she's a fellow – or was a fellow commissioner with you when you were on the PUB?

MR. WELLS: She's now chairperson.

MR. FITZGERALD: I take it you have a lot of respect and admiration for her as well?

MR. WELLS: Absolutely, first-class human being.

MR. FITZGERALD: I didn't notice this morning if you were here for all of her evidence.

MR. WELLS: I was here for every word of it.

MR. FITZGERALD: And you don't take issue with her evidence?

MR. WELLS: On the contrary.

MR. FITZGERALD: So you would accept her evidence then?

MR. WELLS: Absolutely.

MR. FITZGERALD: Okay.

MR. WELLS: (Inaudible) gold plated.

MR. FITZGERALD: Now, I'd like to direct you to Exhibit P-00544, please?

MR. WELLS: I got to get one of these numbers, haven't I?

MR. FITZGERALD: Yeah, I'm not sure what that is.

MR. WELLS: P-005 – what, 55 –?

MR. FITZGERALD: 00544

MR. LEARMONTH: Tab 15, Mr. Wells.

MR. FITZGERALD: Tab 15, Mr. Wells.

MR. WELLS: Tab 15?

MR. LEARMONTH: First book.

MR. WELLS: Okay.

I don't see – okay, I got it. Yeah, page – 00544?

MR. FITZGERALD: Yes.

Now, it's my understanding from your direct evidence that it was always the government who would call the PUB, that's what you said on direct.

MR. WELLS: Yeah.

MR. FITZGERALD: Now, this is a note from Sam Banfield and Maureen Greene.

MR. WELLS: Yeah.

MR. FITZGERALD: "Yesterday afternoon Fred and I met with the Board and reviewed the progress to date."

MR. WELLS: Yeah.

MR. FITZGERALD: “Understandably the Board was not pleased with Nalcor’s response and after” getting “the meeting Andy, Darlene and Jim phoned Minister Skinner” –

MR. WELLS: Yes.

MR. FITZGERALD: – “to discuss the situation.”

MR. WELLS: Okay.

MR. FITZGERALD: So, is it possible that you were mistaken in saying that it was always the government reaching out to the PUB? This seems to be the PUB –

MR. WELLS: Yeah – no, I –

MR. FITZGERALD: – reaching out to government.

MR. WELLS: – that – that’s accurate, that is true. I meant in terms of myself as chairman –

MR. FITZGERALD: Okay.

MR. WELLS: – direct.

MR. FITZGERALD: I just wanted to point –

MR. WELLS: This was –

MR. FITZGERALD: – that out.

MR. WELLS: – a collective effort.

MR. FITZGERALD: Okay.

And in your evidence, and I quote – I think I quote – you said: The government needed to get after Nalcor. Get them to take their job seriously. Get us the documents. You said that a few minutes ago during – on direct. The government needed to get after Nalcor – get us the documents. You recall saying that?

MR. WELLS: Sure.

MR. FITZGERALD: Okay.

So, if we look at the rest of this email: “Shortly thereafter Fred received a call from Geoff, Paul Humphries and Paul Harrington. It was apparent

that they had received feedback from the Government and told Fred that they had been given 24 hours to get a ‘report’ to the Board which would ‘bring things together’. We’ll await the receipt of this information and evaluate what we receive.”

MR. WELLS: Mm-hmm.

MR. FITZGERALD: It was my understanding that a report came in shortly thereafter, once the government got involved, which is what you wanted the government to do.

MR. WELLS: Whatever the record shows.

MR. FITZGERALD: Oh, yeah, I know it’s what the record does show, and I’m just saying that –

MR. WELLS: Still a –

MR. FITZGERALD: – you made –

MR. WELLS: – pretty poor effort.

MR. FITZGERALD: Well, I mean, that’s your opinion, but, you know, you get after Nalcor, get them to take their job seriously, get us the documents, and that’s what happened.

MR. WELLS: We were after Nalcor ’til the middle of February, sure, ’til we were forced to shut down.

MR. FITZGERALD: Okay. I’m just commenting upon what you’ve said, and I’m asking you questions.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: ’Cause I get to ask the questions and you get to give me the answers.

MR. WELLS: I’ll do my best.

MR. FITZGERALD: Thank you.

Now, so we go from there. So now we know that it wasn’t always the government going directly to the PUB; sometimes the PUB went directly to government.

You heard Maureen Greene's evidence yesterday. And there was a meeting on May 16 and May 20, 2011 with my client, Mr. Bown. She referred to two meetings.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: Ms. Greene did.

MR. WELLS: Yeah.

MR. FITZGERALD: And she said there was no discussion on the merits of the matter. There was no interference; it was all about progress and scheduling. She was very clear on that.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: I think she was even quoted in *The Telegram* this morning.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: You have no issue with that?

MR. WELLS: Sure, that's the record.

MR. FITZGERALD: Well, you have no issue with it?

MR. WELLS: No.

MR. FITZGERALD: Thank you.

Subsequently, this morning we heard from Ms. Whalen there was a June meeting, and once again she said this was when the letter of transmittal came over from the – from government to the PUB with the terms of reference.

And, if you heard her evidence, she said that this was a process meeting; it was a very short meeting. There was no discussion of the merits. That was her evidence this morning.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: You agree?

MR. WELLS: Sure.

MR. FITZGERALD: Thank you.

I'm only asking you to say it again 'cause sometimes –

MR. WELLS: No, that's fine.

MR. FITZGERALD: – it doesn't come up in the transcript.

MR. WELLS: I mean, I'm not sensitive.

MR. FITZGERALD: Oh, I know you're not.

October 20, 2011 there was a letter that was sent to – by Nalcor to the PUB, it was an issue on the RFIs and the trouble that the –

MR. WELLS: Mm-hmm.

MR. FITZGERALD: – PUB was having getting documents.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: And subsequently, there was a meeting on October 30 – 31, sorry, Ms. Greene gave that evidence yesterday –

MR. WELLS: Mm-hmm.

MR. FITZGERALD: – with Mr. Bown –

MR. WELLS: Mm-hmm.

MR. FITZGERALD: And she indicated that at this meeting there was no interference, and there was also no discussion on the merits. You heard that evidence yesterday?

MR. WELLS: Yes.

MR. FITZGERALD: Yeah. So that throughout all this, Mr. Bown has been a facilitator of trying to move the process and scheduling along.

MR. WELLS: Oh, I never, ever suggested Mr. Bown's not a facilitator.

MR. FITZGERALD: Okay, (inaudible).

MR. WELLS: Oh, no. Let me – I – my own – my only – my comments on Mr. Bown are in the record. And I do not cast, I – no – absolutely no comment on Mr. Bown's role in this process except for my encounter with him.

MR. FITZGERALD: Yeah, and that –

MR. WELLS: Other than that, nothing.

MR. FITZGERALD: – and that’s where I’m getting.

MR. WELLS: Well –

MR. FITZGERALD: I mean, I have a pattern of consistency here with Mr. Bown where he’s respecting the quasi-judicial office, he’s not involved with any discussion on the merits and scheduling, and yet we had a conversation which you allege occurred in February, 2012, and it seems inconsistent according to – when you look at Mr. Bown’s behaviour.

MR. WELLS: Well, I can’t help that. That’s what happened.

MR. FITZGERALD: In your – that’s your recollection.

MR. WELLS: I can only give you my recollection.

MR. FITZGERALD: Mr. Bown’s going to give a recollection too.

MR. WELLS: Mr. Bown will give his recollection. And in so far as it plays any part in these proceedings, I presume the gentleman that will decide that is sitting to my left.

MR. FITZGERALD: Oh, absolutely. But would you agree with me that if you look at the history of Mr. Bown’s conduct here –

MR. WELLS: Mm-hmm.

MR. FITZGERALD: – what you’re saying with respect to February 2012, is inconsistent with how he – Mr. Bown was conducting himself throughout this matter.

MR. WELLS: No.

MR. FITZGERALD: Why isn’t it?

MR. WELLS: Sure I never said that Charles wasn’t do – performing his role as a civil servant. I’m saying that he asked me a direct question and I gave him a direct answer.

MR. FITZGERALD: On the merits of the matter you’re saying?

MR. WELLS: Look, do you want me to go over it again, what –

MR. FITZGERALD: No, we don’t need to go at it again. I’m just suggesting to you, Mr. Wells, that that conversation you’re discussing is inconsistent with his pattern of conduct throughout the record, to date.

MR. WELLS: Well, you’re entitled to your opinion.

MR. FITZGERALD: Well, it’s not an opinion. I’m asking you a question.

MR. WELLS: It is your opinion. I don’t think –

MR. FITZGERALD: I’m asking you a question.

MR. WELLS: Yeah.

MR. FITZGERALD: Would you agree with me it’s inconsistent?

MR. WELLS: No.

MR. FITZGERALD: It’s not inconsistent?

MR. WELLS: It’s not inconsistent.

MR. FITZGERALD: Okay, all right. Not inconsistent.

So, Mr. Bown was doing his job as a facilitator throughout?

MR. WELLS: The only contact I had with Mr. Bown throughout this whole procedure, Mr. Fitzgerald, was that one meeting. Other than that, I don’t believe – I cannot recall having any interaction with him. It was that one session.

MR. FITZGERALD: Okay.

MR. WELLS: So I’m not in a position to offer any commentary on Mr. Bown’s role in this process – none. Whatever is in the public record, or whatever’s been entered into evidence stands. I have only evidence with respect to the meeting

that I had with him that we talked about earlier today when Mr. Learmonth was questioning me.

MR. FITZGERALD: Would you agree – and I accept that.

MR. WELLS: Mm-hmm.

MR. FITZGERALD: Would you agree with me that the alleged conversation, it was more of along the lines – I believe your evidence was this morning, he said: Andy, how's it going in terms of – I think he wanted to know how the process was going.

MR. WELLS: Yeah.

MR. FITZGERALD: Okay, so you would agree with me on that?

MR. WELLS: Sure, that's what I said.

MR. FITZGERALD: Just making sure. I don't want you to be taken out of context.

MR. WELLS: Oh, that never happens.

MR. FITZGERALD: Oh, you never know.

In terms of these casual conversations with respect to – I know you gave some answers to Mr. King there with respect to Mr. Marshall and with respect to former Chief Justice Green. When you were appointed as the chair of the PUB did you take an oath of confidentiality?

MR. WELLS: You would have to get the – I took an oath.

MR. FITZGERALD: Okay. You don't recall if it was an oath of confidentiality?

MR. WELLS: I would suspect there would be something there with respect to the disclosure of documents and information which the board deems to be of a confidential nature. You would have to respect that. Yes.

MR. FITZGERALD: Okay.

And would you agree with me that part of having an oath of confidentiality, or at least an important aspect of it, is not talking about board matters in public.

MR. WELLS: With respect to a quasi-judicial proceeding, I would totally and completely concur with you. That's a fundamental responsibility of the board and it would be extremely, extremely poor for any member of the board – the Board of Commissioners of Public Utilities to talk about a matter that is seized quasi-judicially, yes.

MR. FITZGERALD: Would you agree –

MR. WELLS: With respect to this reference, we were rendering an opinion. I said I took a more relaxed approach to it and my complaints were of a – my concerns, complaints were of a procedural nature, not a substantive nature.

MR. FITZGERALD: Was there any such thing as a relaxed oath when you took your oath to become the commissioner?

MR. WELLS: No.

MR. FITZGERALD: Okay. Thank you.

In terms of whether or not you should be discussing these matters in public, is it your opinion or your view that you can't discuss matters that you're seized with in public, but if there's other matters out there that may someday get in front of you, it's okay for you to talk about it.

MR. WELLS: You're asking me a hypothetical, are you?

MR. FITZGERALD: No. Well, I'm trying to get –

MR. WELLS: You used "may."

MR. FITZGERALD: Okay, well, maybe I am asking a hypothetical.

MR. WELLS: May is conditional.

MR. FITZGERALD: It seems like we ask a lot of hypotheticals at this Inquiry.

So let's say now that there's nothing before you and you're out talking in public about things with respect to electricity and regulation – in the public – voicing opinions on it. Do you think

that's proper for a judicial officer who someday may have to rule on those items or those issues?

MR. WELLS: What?

THE COMMISSIONER: And who's the chair of the board?

MR. FITZGERALD: Mr. Wells is the chair of the board.

MR. WELLS: I don't know what you're talking about, b'y. You're talking about generally or specifically?

MR. FITZGERALD: Well –

MR. WELLS: If people –

MR. FITZGERALD: You used –

MR. WELLS: If somebody was to ask –

MR. FITZGERALD: You used –

MR. WELLS: Go ahead.

MR. FITZGERALD: You used the word "seize," Mr. Wells –

MR. WELLS: Yes.

MR. FITZGERALD: – in your answer.

MR. WELLS: Yes.

MR. FITZGERALD: So if you're not seized with something, it's okay for you to go and talk about these other issues while you have a quasi-judicial capacity?

MR. WELLS: Somebody – if it's outside the context of a quasi-judicial process, like a rate application, I mean, that's the most fundamental issue that we deal with.

MR. FITZGERALD: Agree.

MR. WELLS: Economic and it's – you – and it's – would be highly improper for a member of the board to make any comment to anybody. Even I understand that and I can tell you I was lectured constantly by Madam Greene about you're – remember, you're a regulator. And

she'd never – I had a nickname for her – and so I was – beside from my own knowledge, I was constantly reminded what to say. As a – as somebody who has an interest in any energy issues, I'm over to Tim Hortons and someone can't ask me a question: Where do – what's – what do you think is going to happen with the electricity rates next year? I mean, you know –

MR. FITZGERALD: But –

MR. WELLS: I'm not allowed to talk about that?

MR. FITZGERALD: No, people are free to ask you questions.

MR. WELLS: Yeah, but I exercise my freedom to respond.

MR. FITZGERALD: Even though you're in a quasi-judicial role. Shouldn't the answer be, Mr. Wells: I'm sorry, I can't talk about that because that might come in front of me some day? I believe that's what a judge might do.

MR. WELLS: There's something wrong with you, b'y. I mean –

MR. FITZGERALD: There's absolutely nothing wrong with me, Mr. Wells.

MR. WELLS: Give me a concrete example.

MR. FITZGERALD: (Inaudible.)

MR. WELLS: If you're dealing with concrete matters –

MR. FITZGERALD: I'm dealing with (inaudible).

MR. WELLS: – that come before the board –

MR. FITZGERALD: I'm dealing with principles of confidentiality –

MR. WELLS: So I have to go around –

MR. FITZGERALD: – and board governance.

MR. WELLS: I have to go around with a sign: Please do not ask me any questions about electricity matters –

MR. FITZGERALD: No, I never said –

MR. WELLS: – I’m chairman of the Public Utilities Board.

MR. FITZGERALD: You can wear whatever signs you want.

MR. WELLS: Yeah.

MR. FITZGERALD: I never said you had to wear a sign.

MR. WELLS: Yeah.

MR. FITZGERALD: I’m saying in conducting yourself in public, the public is free to come up and approach you. It’s how you react is the question. Do you discuss these issues with a member of the public even though you’re on –?

MR. WELLS: If it’s a matter of quasi –

MR. FITZGERALD: Can I finish my question?

MR. WELLS: Sorry.

MR. FITZGERALD: Even though you’re under an oath of confidentiality –

MR. WELLS: Yeah.

MR. FITZGERALD: – and you have a judicial role, do you think it’s okay for you to have those conversations about things that could be in front of you?

MR. WELLS: Not if it’s a quasi-judicial matter, absolutely not.

MR. FITZGERALD: But you’re holding a quasi-judicial office. It’s not a nine-to-five job, is it?

MR. WELLS: No, it’s not a nine-to-five job, but I mean if we have a – I will repeat for you, Mr. Fitzgerald: If we have a rate application before us, which is a quasi-judicial procedure, I don’t talk to my dogs about it. I say nothing to anybody because I understand the nature of the quasi-judicial process.

But in matters of general – not that there’s people running up to me asking me about questions about electricity, I mean if someone asked me in a casual conversation, you know, a general question about electricity or about energy or about ... you know, I’ll answer it.

If it’s not a matter that has – that’s cloaked in ‘quasi-judiciality,’ I will answer it, but if it is, I won’t respond. I’m fairly normal, you know, when it comes to conversations.

MR. FITZGERALD: Thank you.

When you’re having these conversations – these external conversations – with Chief Justice Green at Costco, did it turn your – ever turn your mind that that matter that you were discussing could potentially land in front of him in a judicial proceeding?

MR. WELLS: I think I told him he’d make a good chairman.

MR. FITZGERALD: Of an inquiry.

MR. WELLS: But I mean I just – look, it was – I ran into Derek and I said: Derek, b’y look, I’m just letting you know this is not looking very good. I said: This could end up as an inquiry. It was seven years ago. It was seven years ago probably this time of the year.

MR. FITZGERALD: Did you make –

MR. WELLS: A very casual conversation.

MR. FITZGERALD: Did you make that conversation before or after the PUB ruled in – with respect to –

MR. WELLS: Before.

MR. FITZGERALD: So that was before?

MR. WELLS: Mmm.

MR. FITZGERALD: So before a decision has been made, you are making a comment to the chief justice of Newfoundland that this is going to end up in an inquiry.

MR. WELLS: It did not look very good, Sir.

MR. FITZGERALD: But –

MR. WELLS: It did not look very good.

MR. FITZGERALD: But before your mind was made up.

MR. WELLS: Yes, absolutely.

MR. FITZGERALD: And there's no prejudgment there.

MR. WELLS: No.

MR. FITZGERALD: You were just telling him an inquiry's coming.

MR. WELLS: I just said: B'y look, it's looking terrible the way these things are going.

MR. FITZGERALD: When you were making these comments to external individuals, did you give any consideration to how other commissioners on the board would feel about that and the position you might be putting them in?

MR. WELLS: No, I never mentioned it to them. It's not a matter of – it was not a matter – you're making it a matter of public record. I didn't make these comments publicly.

MR. FITZGERALD: The –

MR. WELLS: These were private interactions that I had. You're the one that's making it a matter of public record now. I –

MR. FITZGERALD: Last time I checked, Mr. Wells, Costco wasn't very private. Looked like a public place to me. So does Tim Horton's.

MR. WELLS: People have –

MR. FITZGERALD: You can –

MR. WELLS: – private conversations –

MR. FITZGERALD: You can laugh all you want, Mr. Wells; I'm dealing with some serious conflicts here.

MR. WELLS: I wasn't at the stadium on the PA, b'y; I was having a casual conversation with

somebody I met. I wasn't on the microphone saying: Attention everybody. There's going to be a public inquiry and I think Derek Green would make a great chairman.

MR. FITZGERALD: No, you just told it to Derek Green before you had ruled.

MR. WELLS: Yeah. Well, sure you're the one that's making a fuss about it, not me.

MR. FITZGERALD: No, these are your words from –

MR. WELLS: Yeah but –

MR. FITZGERALD: – the transcript. I don't make a fuss out of anything.

MR. WELLS: I did not make it a matter of public record.

MR. FITZGERALD: Justice, I have, like, one more question.

THE COMMISSIONER: Let's move on.

MR. WELLS: And I'm not saying that the current chairman is not a good chairman either. I don't want to insult him.

MR. FITZGERALD: No, no, I don't expect you to pass comment on a current member.

MR. WELLS: Hmm.

Mr. Green will never speak to me again. I blame you.

MR. FITZGERALD: Well, I got no control over that.

Thank you, Mr. Wells, for your time this afternoon.

THE COMMISSIONER: Robert Thompson.

MR. WELLS: Oh, boy.

THE COMMISSIONER: I would note it is almost 4:30. But I – my preference would be to try to finish this witness. I'm not going 'til 6:30 tonight.

I'm assuming there's no strong disagreement. If there is we'll have Mr. Wells come back tomorrow, but ...

Okay, Mr. –

MR. COFFEY: (Inaudible.) Thank you, Commissioner.

THE COMMISSIONER: – Coffey.

MR. COFFEY: Mr. Wells, my name is Bernard Coffey. I represent Robert Thompson. I have just a couple of questions.

If we could bring up, please, P-00564?

MR. LEARMONTH: Tab 34.

MR. COFFEY: Oh yeah, Mr. Wells, you're looking at it on the screen, great.

MR. WELLS: Yes, Sir, I am.

MR. COFFEY: Thank you.

And we can go, please, to – I believe it's page 2. It'll come up there in a second. Just the items to be discussed and I understand that this – these are the notes made on a meeting that occurred September 12, 2011. If we could just scroll up a bit, please? No, up. Thank you. Up above. Right there, thank you.

2 that afternoon in the PUB boardroom, Geoff Young, Dave Harris and Gilbert Bennett were present from Nalcor, Ms. Blundon and Ms. Greene were there for the PUB. And this was a meeting, Mr. Wells, where there was an agenda, which is on page 1, and then these are the notes, as I understand it.

Under items to be discussed, terms of reference, dash, scope –

MR. WELLS: Sorry, I'm listening to you, Sir.

MR. COFFEY: Sure. No, you go ahead, get water.

Thank you.

Now, you sat through – as you pointed out in Ms. Greene's evidence here and she was taken

to this. But in particular the second paragraph there toward the bottom of the screen: "GY" – which would be Geoff Young – "raised the most recent RFI's that were sent on the previous Friday as an issue for Nalcor, particularly those that which vary some of the components of 'Schedule B' and RFI 55, *(to prepare a generation expansion plan and CPW analysis removing the scrubbers)*." Gilbert Bennett inquired – (inaudible) GB, presuming – Gilbert Bennett "inquired about the reasonableness and validity of additional sensitivities in view of the Terms of Reference." Okay, and it goes on from there.

Mr. Wells, have you had a chance to read this? There's a paragraph below that as well. It goes on and it's really to the end of that page.

MR. WELLS: The paragraph that –

MR. COFFEY: And continue – you continue on and then read to the – so you get some sense of the subject matter.

MR. WELLS: Well, that's your traditional used and useful standard for inclusion of items in the rate base, I assume.

MR. COFFEY: Yes. And if we could just –

MR. WELLS: (Inaudible) discussing social policy, I don't think that's within the board's mandate.

MR. COFFEY: Yes. If we look to the bottom of what's on the screen right now –

MR. WELLS: Yeah.

MR. COFFEY: – there's a paragraph which reads: "Discussion ensued as to how this question and other RFIs raised by the Board fit into the scope of the Terms of Reference."

MR. WELLS: Mm-hmm.

MR. COFFEY: "It was agreed that both Counsels would further discuss the RFIs that Nalcor were having issues with once Nalcor completed its review and advised the Board of the questioned RFIs."

MR. WELLS: Mm-hmm.

MR. COFFEY: This meeting occurred on September 12. Would Ms. Greene or Ms. Blundon, or both have then advised you about this – I don't know if I'd describe it as a difference of opinion between Nalcor and the PUB or difference of interpretation of the terms of reference in relation to some of the RFIs. Would you have been told about that?

MR. WELLS: I'd have to look at what the distribution was on that. I mean, just flick it back up and let me have a look.

MR. COFFEY: Yes. (Inaudible.)

MR. WELLS: I might've saw that. Yeah.

MR. COFFEY: Yeah.

MR. WELLS: Looks like something I'd see.

MR. COFFEY: Yes. And –

MR. WELLS: But I can't be sure. And I – look, I'll be perfectly blunt, unless there's – if there's not a – like you get overwhelmed with paper. I mean, if a decision is not required I – sometimes I'm not too interested. If I gotta make a decision I can get obsessive, but if it's not a decision I'll just – I mean, I'll just pass it on. But if, you know – so I may have saw that.

MR. COFFEY: Yes.

And Ms. Greene – and you would've heard her say yesterday that this – if I recall correctly – she said that this was the first time it became apparent to her that there might be some difference of view between Nalcor and at least the PUB staff, or some of the staff, concerning the scope of the terms of reference.

MR. WELLS: Mm-hmm.

MR. COFFEY: You heard her say that yesterday? Okay.

MR. WELLS: Sure.

MR. COFFEY: And it's the sort of subject matter, I'm going to suggest to you, that once Ms. Greene, being as thorough as she is, if that happened she's as likely as not to have told you

that that had arisen as an issue, or potential issue.

MR. WELLS: She could've.

MR. COFFEY: Yeah.

Now, you – I believe an answer to a question that Mr. Fitzgerald asked you, indicated that you thought the interview – or the meeting, I'm sorry, with Mr. Thompson and somebody from the Premier's office occurred in September of 2011.

MR. WELLS: Yeah.

MR. COFFEY: I'm going to suggest to you – and in fact (inaudible) told the Commission now – that there will be evidence forthcoming that it was September 14, 2011 –

MR. WELLS: Yeah.

MR. COFFEY: – morning.

MR. WELLS: Yeah, sure. Whatever the record shows.

MR. COFFEY: And as of September 14, 2011, lawyers – I'll put it this way, the RFIs, would you have characterized them as questions that the PUB's lawyers were asking?

MR. WELLS: Well, that would be part of the process.

MR. COFFEY: Yeah –

MR. WELLS: We had a team generating RFIs and, I believe, Manitoba Hydro were also generating RFIs –

MR. COFFEY: So –

MR. WELLS: I mean, we were – these people were churning them out. We were taking our responsibility seriously, and we were generating requests for information –

MR. COFFEY: Yes.

MR. WELLS: – in order to get a handle on what was going on.

MR. COFFEY: Sure, and the record bears that out –

MR. WELLS: Yes.

MR. COFFEY: – Mr. Wells.

What I'm asking you now to reflect upon is: Would you, in your mind, have characterized them as questions by the PUB's lawyers directed at Nalcor? The RFIs were questions, in your mind, by lawyers directed at Nalcor.

MR. WELLS: But that's what they were, weren't they.

MR. COFFEY: Thank you. That's fine, I just put –

MR. WELLS: But what else could they be?

MR. COFFEY: No –

MR. WELLS: I mean, I don't – I mean –

MR. COFFEY: If I could –

MR. WELLS: I'm sorry, I'm –

MR. COFFEY: When –

MR. WELLS: I didn't have any RFIs.

MR. COFFEY: Pardon me?

MR. WELLS: I didn't have any RFIs.

MR. COFFEY: No. When you were interviewed by the Muskrat Falls Commission counsel –

MR. WELLS: Mm-Hmm.

MR. COFFEY: – I believe that was on February 9, 2018. Do you recall, at least twice and perhaps three times, telling Commission counsel that you thought that Ms. Greene – and you were pretty certain as you put it – that Ms. Greene attended the meeting with Mr. Thompson.

MR. WELLS: Yeah, I was wrong about that.

MR. COFFEY: Okay, so ...

MR. WELLS: It was just me.

MR. COFFEY: So your memory in early February of this year, at that time, under oath, was you were pretty certain that it occurred.

MR. WELLS: What?

MR. COFFEY: That Ms. Greene was at the meeting. And now –

MR. WELLS: No, no I – no, I was wrong. I was at the meeting by myself.

MR. COFFEY: Oh, yes. And I accept that –

MR. WELLS: Mm-hmm.

MR. COFFEY: – but your memory, on February 9 of this year, was you were – as you explained to Mr. Learmonth and Ms. O'Brien – that you were pretty certain?

MR. WELLS: Yes. And I was wrong.

MR. COFFEY: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Todd Stanley, Terry Paddon?

MS. VAN DRIEL: No questions, Commissioner.

THE COMMISSIONER: Consumer Advocate?

MR. HOGAN: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Former Nalcor Board Members?

UNIDENTIFIED MALE SPEAKER: Sorry, Glenda.

MS. G. BEST: It's okay.

Good afternoon, Mr. Wells. I'm Glenda Best.

MR. WELLS: Good afternoon to you.

MS. G. BEST: I just have a couple of questions for you. The first being since you've ceased

work with the Public Utilities Board, has your opinion with respect to Muskrat Falls and its viability changed?

MR. WELLS: Yeah, it's gotten worse. This is a disaster.

MS. G. BEST: Okay.

MR. WELLS: It will bankrupt us.

MS. G. BEST: You've had – I've had an opportunity to review some of your tweets with respect to opinions expressed on members of the board, government officials, economists, other experts, Nalcor.

MR. WELLS: Mm-hmm.

MS. G. BEST: The statements that you've made in those tweets, do stand by those statements?

MR. WELLS: If you can – yeah, I mean, I've – whatever I tweeted, I tweeted. So I got to stand by them, they're out there on Twitter.

MS. G. BEST: Okay. Thank you very much.

With respect to the question that was placed before the PUB by government –

MR. WELLS: Mm-hmm.

MS. G. BEST: – I want to refer you to page 3 of your transcript.

MR. WELLS: Three of my transcript. I think I got that here.

THE COMMISSIONER: Do we have a copy or –

MR. WELLS: I think I got it here, just –

THE COMMISSIONER: Okay. If not, Mr. Learmonth might have a copy.

MR. LEARMONTH: (Inaudible.)

MS. G. BEST: Mm-hmm.

MR. LEARMONTH: (Inaudible.)

MR. WELLS: I got it, I think.

MS. G. BEST: Thank you.

So I want to –

MR. WELLS: Page 3?

MS. G. BEST: Yes –

MR. WELLS: Yeah.

MS. G. BEST: – thank you very much.

I want to refer you to the third paragraph from the bottom of your transcript.

MR. WELLS: Yeah.

MS. G. BEST: You state that the object should have been how do we get to 2041.

MR. WELLS: Yes.

MS. G. BEST: Was that your understanding of what the question ought to have been by the government, what they ought to have placed before the board?

MR. WELLS: Not particularly. What I was trying to say here is that if we had rational energy – I even want to use the word power, because I'm sick of talking about energy, as I said – a rational power policy for the province –

MS. G. BEST: Mm-hmm.

MR. WELLS: – strategy should have been, back in – instead of this mad energy plan with 8,000 terawatts of wind, and yada yada, we're going to be the land of milk and honey, we should have said look, what is our major concern here in this province? And the major concern – as far as I was concerned is to get this – the people of Newfoundland to 2041 when we've got access to this plethora of power, some 5,500 megawatts of power that may cost us, I don't know, three or four cents at the busbar in Labrador. How do we get there?

And we get there through having a reliable, on-island system, which necessarily means a Holyrood generation station or equivalent. And that should be the goal. That should have been the goal, and that has been thrown away, in my opinion – that has been – it's gone – and we've

got ourselves saddled with this monstrosity now that's going to sink us.

MS. G. BEST: So –

MR. WELLS: That is a tragedy for the people of Newfoundland. This opportunity was there and it was squandered for selfish interests of the people that run the show in this province.

MS. G. BEST: So was that your opinion at the time the reference was placed before you?

MR. WELLS: Probably not. I was working towards that.

MS. G. BEST: Thank you.

And you suggest that – in the last paragraph – that by 2041 the power will essentially be free. You say: I mean, it's free – basically at a fifth of a cent, it's free.

Is that what your opinion is with –

MR. WELLS: Well, I was –

MS. G. BEST: – respect to the cost of power?

MR. WELLS: – corrected on that. I mean, I saw that somewhere that – well, you see, it depends, this is a lot of power. If we had access to this power, all you got to do is keep your minority shareholder happy with a – with his or her required, reasonable rate of return. As long as you respect the rights of the shareholder – the minority shareholder – to earn a fair and reasonable rate of return, you could use that power, that cheap power. All you've got to do is to get it to Newfoundland, and who knows, in 15 years from now, how power is going to be, you know, transmitted.

MS. G. BEST: Possibly –

MR. WELLS: The idea that you can make a major decision on a power project based on a barrel of oil that's gonna be \$140 – \$135 a barrel in 2028 is insane.

MS. G. BEST: So, do you acknowledge then that there is always a possibility whether or not the – Nalcor proceeded with the Muskrat Falls

option, that a transmission line would be required between Labrador and Newfoundland?

MR. WELLS: Well, certainly, you've got to have a transmission line.

MS. G. BEST: Okay, thank you.

MR. WELLS: But who knows, 15 years – we had lots of time, we didn't have to rush this.

MS. G. BEST: And is – I want to be clear in my understanding. Do you believe – because I may have misunderstood you – that depending on the nature of the matter that's before the Public Utilities Board –

MR. WELLS: Mm-hmm.

MS. G. BEST: – the commission – or the board, sorry, may change from a quasi-judicial role to some other role?

MR. WELLS: Well, what I've said, that in – when we're acting, when the board has seized of a rate application or any other matter that requires a decision that carries the weight of a, you know, court order – quasi-judicial, the board members need to remain absolutely silent on the matter; absolute utter and complete silence.

With respect to the reference issue, because we were rendering an opinion and because I saw what was happening in the province, I mean, this was – this, at the time, was completely irrational. This was a Muskrat Falls parade, and, b'y, you get aboard the ship or you're, you know, you're gonna be left at the station –

MS. G. BEST: Mr. Wells –

MR. WELLS: – and sign up.

So I took a different attitude there, I said – and I had indications that there's things, things were looking – going wrong.

MS. G. BEST: Mr. –

MR. WELLS: Sorry.

MS. G. BEST: My question is did you have any understanding that the role of the PUB as a quasi-judicial board –

MR. WELLS: Mm-hmm.

MS. G. BEST: – changed because of the nature of a question that was before you, or the nature of a matter that was before you?

MR. WELLS: We were not acting in a quasi-judicial capacity, we were rendering an opinion, so I took a more relaxed approach to the process.

MS. G. BEST: Okay.

I wanna refer you, finally, to page 4 of your transcript.

MR. WELLS: Okay.

MS. G. BEST: And you in your – I guess third from the bottom and second from the bottom paragraphs talk about attending a –

MR. WELLS: Mm-hmm.

MS. G. BEST: – book launch with –

MR. WELLS: Yeah.

MS. G. BEST: – Mr. Penney.

MR. WELLS: Yeah.

MS. G. BEST: Can you tell me when that was?

MR. WELLS: That'd be in late 2011.

MS. G. BEST: Late – so it was while the matter – the PUB matter was –

MR. WELLS: Yeah.

MS. G. BEST: – the Muskrat Falls matter was still before the PUB?

MR. WELLS: Yeah.

MS. G. BEST: Okay, thank you very much.

MR. KELLY: No questions, Mr. Commissioner.

THE COMMISSIONER: Thank you, Mr. Wells. You can step down.

MR. WELLS: Wow.

THE COMMISSIONER: Just before we break, I'm hoping tomorrow – I understand the witness tomorrow morning is not going to be – potentially, not gonna be the whole morning, depending on what's being done. I know there's some things going on in the background.

I'd like to have a meeting with counsel on the issue of water management right after that. So if you could sort of plan your day that way.

And I understand, Mr. Ralph, you still have a few tidying up issues with –

MR. RALPH: Yeah, that's correct.

THE COMMISSIONER: So as long as we can get that done today so that they're – certainly before tomorrow so we can get this straightened out on water management.

Very good, thank you very much.

UNIDENTIFIED MALE SPEAKER: Commissioner, do you have –

THE COMMISSIONER: We're adjourned.

Oh, sorry.

UNIDENTIFIED MALE SPEAKER: Sorry, do you have an expected time? I may not be here –

THE COMMISSIONER: Okay.

UNIDENTIFIED MALE SPEAKER: – in the first part of the morning for those counsel (inaudible).

THE COMMISSIONER: Ms. O'Brien – I'll give it to Ms. O'Brien to let you know what we think.

MS. O'BRIEN: Thank you.

I'm expecting really to be less than 30 minutes on direct. The witness that we have I'm really just taking to a very focused issue. So far less than 30 minutes. I don't expect there'll be a whole lot of cross-examination. So I'd say, you know, it could be – within an hour we could be all wrapped up and into the water management meeting.

THE COMMISSIONER: So around 10:30,
does that help?

UNIDENTIFIED MALE SPEAKER: Yeah.
Perfect.

THE COMMISSIONER: Okay.

So we'll adjourn then until tomorrow morning at
9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the
day.