



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Interview

Todd Stanley

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*Commissioner: Honourable Justice Richard LeBlanc*

Friday

31 August 2018

**MR. LEARMONTH:** This is an interview held on August 30 –

**MR. RALPH:** 31.

**MR. LEARMONTH:** – 31, 2018, in the third-floor meeting room of the Muskrat Falls inquiry Commission. Present to be interviewed today is Todd Stanley accompanied by counsel for Her Majesty in Right of Newfoundland and Labrador, Peter Ralph and Nick Leamon. Also present is Michael counsel [sp Collins], co-counsel for the Commission, and speaker Barry Learmonth.

This interview is being recorded and I would ask Mr. Stanley to confirm that – or affirm that the evidence he will give at this inquiry will be the truth and nothing but the truth.

**MR. STANLEY:** I do.

**MR. LEARMONTH:** Thank you. Will you state your full name?

**MR. STANLEY:** Full name is Gregory Todd Stanley.

**MR. LEARMONTH:** And what is your education, Mr. Stanley?

**MR. STANLEY:** I graduated with a bachelors of commerce honours degree from Memorial in 1992, and a honours law degree, bachelor of laws from University of Toronto in 1995.

**MR. LEARMONTH:** After you graduated from University of Toronto, what did you do?

**MR. STANLEY:** I articulated with the firm, at the time, of Cox & Palmer – well, actually, predecessors to the firm where I work right now. I articulated with them and worked there for five years as an associate and then came and started work at the Department of Justice with the Government of Newfoundland and Labrador as a solicitor on the 4th of September, 2001.

**MR. LEARMONTH:** And you remained with the Department of Justice until what date?

**MR. STANLEY:** I was in the Department of Justice. I was a solicitor with the Department of Justice from 2001 'til about 2007. Then I was a manager in the legal department from – I might have these dates slightly wrong – 2007 'til around 2009. I was the director of the Civil Division from whatever that date is until August of 2013.

In August of 2013 – you can tell me to slow down if you want – in August of 2013, I was made the assistant deputy minister of Justice, and I was in that role until around August of 2016. Then I went as – for special counsel with the department of human resources [sp Human Resources Secretariat] for 10 months. And then in July of 2017, I was appointed deputy minister of Justice.

**MR. LEARMONTH:** And you left that position in –

**MR. STANLEY:** I left the government on the 11th of May, 2018, and now I'm counsel with the firm of Cox & Palmer.

**MR. LEARMONTH:** Thank you. While you were at the Department of Justice, I understand you were involved, to some degree, with the matters related to the Muskrat Falls Project?

**MR. STANLEY:** Yeah. So from about 2001 until, really, the fall of 2013, I was counsel to – my responsibilities at the Department of Justice were to be counsel to the Department of Natural Resources.

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So I was the lawyer at the Department of Justice doing work for the Department of Natural Resources, which continued as manager and director, and really only tailed off after I became appointed ADM. I wasn't the only lawyer doing that work, but, basically from 2001 to 2013, I was Natural Resources' lawyer for a significant number of issues, electricity and energy related.

**MR. LEARMONTH:** So can I assume that you were the senior justice solicitor –

**MR. STANLEY:** Yes, I would've been.

**MR. LEARMONTH:** – advising (inaudible) –

**MR. STANLEY:** Advising them –

**MR. LEARMONTH:** – (inaudible)?

**MR. STANLEY:** – on matters – yeah. Other than matters to do with areas such as Aboriginal or environmental laws, yeah, I would've been the senior solicitor.

**MR. LEARMONTH:** Did you have anything to do with Aboriginal issues?

**MR. STANLEY:** Most of the Aboriginal issues were handled by other counsel.

**MR. LEARMONTH:** I think Donald Burrage –

**MR. STANLEY:** Don Burrage –

**MR. LEARMONTH:** – was –

**MR. STANLEY:** – and then Justin Mellor and other lawyers at the Department of Justice.

**MR. LEARMONTH:** So you had, we'll say, limited exposure –

**MR. STANLEY:** Limited exposure to that, yeah.

**MR. LEARMONTH:** Limited exposure.

To whom did you report to in the Department of Natural Resources generally?

**MR. STANLEY:** Generally, I would have been working for and with the assistant deputy minister that was involved in energy-related work – either oil and gas or electricity – or the deputy minister.

So the deputy ministers that I remember – I came in, Brian Maynard was the deputy minister, then it was Chris Kieley, Bruce – actually, in between those was another individual – Bruce – I should know Bruce's last name; I can't remember – and then Charles Bown as the deputies with ADM's working for them. They had a division that was usually associated with energies – oil and gas and electricity.

**MR. LEARMONTH:** Yes. And so you'd be advising them, in addition to the Muskrat Falls file, on oil and gas –

**MR. STANLEY:** Yeah –

**MR. LEARMONTH:** – and whatever.

**MR. STANLEY:** I started off doing oil and gas work. That's what I came in to the province – I was doing oil and gas work for the first five years – Terra Nova negotiations – Terra Nova project negotiations. And when I came to government originally I was doing the oil and gas work for government to get the royalty regimes in place offshore and matters to do with the Atlantic Accord and licensing and the structures that we have.

**MR. LEARMONTH:** How does the reporting work when you're – when a solicitor of legal counsel for the Department of Justice is, we'll say, to use the term loosely, assigned to a specific department. How does – what's the reporting, what's the pecking order if there is one and so on.

**MR. STANLEY:** Generally – it can be a bit complicated. Generally, within the Department of Justice – just to clarify because as a solicitor for the Department of Justice – you have a manager and a director and an assistant deputy minister. You have an org chart that you're in.

Generally, the solicitors at the Department of Justice who are assigned to a client department are expected to work with that client department to provide legal services so that client department this – the Department of Justice basically operating as a law firm and the client department is the client. The interaction between a solicitor at Justice and a client department can vary from department to department and can be subject to flux based on the personalities of the people involved, how they want to work together, whether they want to work together, whether they get along or not. And it can be problematic.

For example, we've had circumstances where there were solicitors at Justice who were providing services to big departments, such as Service NL, which is an enormous thing. And everybody at the manager level or higher had the lawyer's telephone number. So the lawyer could be getting telephone calls – I remember at one point being in a person's office, they were providing legal services to that department, and they were getting a call from a guy who was standing over a septic dig site in the Port au Port Peninsula asking what the reg said, 'cause the guy was doing something weird with his septic system.

So managing who it is that's providing – who the lawyer's working for – can be complex. A little, you know – it can be something you gotta work out.

For Natural Resources, didn't have most of those issues, especially on the oil and gas stuff that I was working on. There was very little operational stuff. So I would have been providing services as required to the deputy minister – as the client.

But I wanna caveat that for a second. Ultimately, the client is the Cabinet secretary in the Premier's office. Where you see that crystallizing are issues to do with Cabinet papers that are going through the system. The client department writes the Cabinet paper; they ask Justice to provide commentary on it.

There are times when Justice provides commentary that is not in alignment with what the client department wants, 'cause Justice is fulfilling its role as advisor to Cabinet. You know, blowing the whistle on what's in the client's Cabinet paper, basically, if the client and the lawyer are not in agreement. Just to make sure that Cabinet knows the legal issues.

**MR. LEARMONTH:** So you have a higher duty –

**MR. STANLEY:** – a higher duty – so, right.

**MR. LEARMONTH:** – to Cabinet than you do to the –

**MR. STANLEY:** Department.

**MR. LEARMONTH:** – department.

**MR. STANLEY:** So to avoid being captured by a department, and feeling like you're part of the department team and you've got to, sort of, be on the board, that's one of the reasons why the Department of Justice is physically structured the way it is, where we keep all the lawyers together.

There is a constant pressure from the client departments to have the lawyers embedded with their executive – have your lawyer down the hall as opposed to in another building. But the – physically embedding the lawyers with the client departments results in a – can result in a – culture where the lawyer is all of a sudden playing for the – forgets which team they're playing for.

Through no fault of anybody – we've seen the best lawyers – you just – you start to adopt the place where you're working. So that's one of the reasons why the Department of Justice is structured that all the lawyers are kept together as a firm, so that they can independently provide advice together and work together to provide advice to the clients.

**MR. LEARMONTH:** Is that the rule or are there exceptions?

**MR. STANLEY:** There's one exception.

Traditionally, the Department of Transportation and Works had a lawyer embedded in it. That went on for, I think, 15 years. We no long – we – I keep saying we. You can call me on that eventually.

Justice doesn't do that anymore. The latest lawyer assigned to Transportation and Works is actually physically in Justice, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

So usually it's the firm providing services to a client, but not being captured by the client is, I guess, the intention.

**MR. LEARMONTH:** And the main client is the executive –

**MR. STANLEY:** At the end of the day, the main client is the Clerk –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – for lack of a better description, and the minister – our minister who has to provide legal advice to Cabinet as the Attorney General.

**MR. LEARMONTH:** All right. Thank you for clarifying that.

**MR. STANLEY:** I'm not sure that clarified it, but I appreciate your –

**MR. LEARMONTH:** No, you did.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** No, I didn't realize the –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – intricacies there, now I think I do.

In – you are the senior lawyer in Justice, who were responsible for legal matters of the department of national – Department of Natural Resources. Were there other lawyers working with you in that assignment?

**MR. STANLEY:** Yes. The Department of Natural Resources would have – well, first of all there would've been someone doing mining work for the department, which would come under the umbrella of the department, but be completely separate area of work. That work's been carried on by various solicitors over time.

On the oil and gas and energy related stuff, Randy Pelletier and Meaghan McConnell were two solicitors who worked with me on most things to do with oil and gas and electricity.

**MR. LEARMONTH:** I've seen Randy Pelletier's name come up –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – in a lot of the emails –

**MR. STANLEY:** Yeah. Yeah.

**MR. LEARMONTH:** – on the regulatory matters and –

**MR. STANLEY:** Yes.

Randy came to work for the department in – and I'm not exactly sure of the year, it would've been around 2006, 2007, I think. And Randy had a lot of regulatory experience, he was a lawyer for the PUB, amongst other things, and for – he'd been a lawyer with a pipeline project in Nova Scotia. So energy regulatory side, petroleum and natural gas stuff particularly, he was very familiar with.

**MR. LEARMONTH:** All right.

During the course of your employment with the Department of Justice, did you have any direct contact with Nalcor?

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay. Can you describe the basis and the nature of that contact and the people that you had contact with at Nalcor?

**MR. STANLEY:** So the contact with Nalcor – that's a kind of a difficult question to ask or to answer. The first contact with Nalcor – I had intensive dealings with the people in the oil and gas side of Nalcor. Jim Keating –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – and that sort of whole team.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** We negotiated the Hebron agreements together –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – and all that. On the electricity side –

**MR. LEARMONTH:** I could probably narrow that –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – 'cause I know that there was an oil and gas file that was very important. But in relation to –

**MR. STANLEY:** Muskrat.

**MR. LEARMONTH:** – Muskrat Falls Project.

[REDACTED]

[REDACTED]

**MR. LEARMONTH:** Was that the corporate restructuring of the Hydro group of companies?

**MR. STANLEY:** That may have been it.

**MR. LEARMONTH:** Was in 2007 – April 2007.

**MR. STANLEY:** Yeah, that may have been (inaudible) –

**MR. LEARMONTH:** Well, I'll show you that later –

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**MR. STANLEY:** Yeah, sure. Yeah.

So over time, I had a lot of dealings with people at Nalcor. I had dealings with Ed Martin, Gilbert Bennett, Rob Hull, Auburn Warren, the VP Finance, whose name escapes me for a moment.

**UNIDENTIFIED MALE SPEAKER:** It's not Gilbert, is it?

**MR. STANLEY:** No, no.

**MR. COLLINS:** Derrick Sturge?

**MR. LEARMONTH:** Derrick Sturge?

**MR. STANLEY:** Derrick Sturge.

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**MR. STANLEY:** Yes, Derrick.

As those people got hired with Nalcor, I would have met with them in discussions.



I had – I’ve always had a lot of dealings with Peter Hickman, who’s counsel at Nalcor. Not so much with the other counsel at Nalcor, though, I think Todd Newhook is over there. And who’s the other guys? The electricity regulatory guy – I should know – his name will come to me. I should know his name.

Nalcor, when it came to this project, didn’t have internal counsel. They had everything farmed out. So like, Peter Hickman didn’t have that – or Wayne Chamberlain, sorry, who was general counsel before he retired, they didn’t have that much to do with this project. Everything Nalcor was doing was farmed out to outside counsel.

I had a fair amount of contact with Nalcor’s outside counsel, which would’ve been the McInnes Cooper lawyers here in town, but in particular, their financing counsel who are with Stikeman Elliot in Montreal, and in particular, Xeno Martis. And there’s another woman whose name I can get you if you want it. They were in charge of – the part of the project that I was mostly dealing with was the financing side, and they were quarterbacking the financing side for Nalcor when we got into Lower Churchill financing.

**MR. LEARMONTH:** And the federal loan guarantee?

**MR. STANLEY:** Yeah, sorry – all of that together, yeah.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Did you have communications, at any time, while you were employed by the Department of Justice, with Nalcor on the business case, the cost estimates for the project?

**MR. STANLEY:** I can’t say I didn’t have any communication with Nalcor, but – on that topic, but that wouldn’t have been something that was in the ballpark of what they would’ve been bringing to me to deal with.

Nalcor’s formulation of its cost estimates for the project was from the legal point of view a black box. I wouldn’t know what they were doing, what would’ve went into it. I have no experience with that. I wouldn’t know the basis of what they were using.

I don’t know if I ever actually saw detailed documents on their cost estimates, anymore than presentations or information that would’ve been available generally with the Department of Natural Resources. I looked at a couple of the presentations that were in the documents that got sent to me last night, from Nalcor, and there were slides I’d seen before and other slides I – I had never seen the presentation. I might’ve seen a slide here or a slide there.

So I knew what the cost numbers that were coming out of Nalcor were for Decision Gate 1, Decision Gate 2, you know. Those were numbers that were bandied around in the same Cabinet papers that we were providing legal analysis on. But what was behind those numbers, we had no insight or expertise or knowledge or we were never asked to look at or anything. That was sort of delivered.

**MR. LEARMONTH:** So that wasn’t part of your mandate to –

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**MR. STANLEY:** No, no.

**MR. LEARMONTH:** – review the cost estimates or anything?

**MR. STANLEY:** Well, no, it wouldn't be – I mean, we wouldn't have any expertise to bring to it at the Department of Justice. Yeah.

**MR. LEARMONTH:** Right.

So you called it a black box?

**MR. STANLEY:** It was sort of – Nalcor spitting out numbers and I didn't know if anyone – someone was looking at them, but it certainly wasn't Justice double-checking the numbers.

**MR. LEARMONTH:** All right. Okay.

[REDACTED]

[REDACTED]

**MR. LEARMONTH:** Was that type of engagement under your direct supervision, the drafting of the legislation and so on, for those matters?

**MR. STANLEY:** [REDACTED] The only hesitation is: The drafting of legislation in government as a process is usually done in consultation between the department and the Legislative Counsel's office.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** When it came to drafting the – the structure and basis of drafting the legislation for – I think it was the *Energy Corporation Act* and the Hydro Act that we did in 2007. [REDACTED]

[REDACTED]

**MR. LEARMONTH:** Okay.

Now we have in the document – it should be in this binder here –

**UNIDENTIFIED MALE SPEAKER:** 1 of 1?

**MR. LEARMONTH:** No, excuse me, 1 of 1. Yeah, review 002.

**UNIDENTIFIED MALE SPEAKER:** Yeah, okay.

**MR. STANLEY:** Yeah, okay.

**UNIDENTIFIED MALE SPEAKER:** Yeah.

**MR. LEARMONTH:** Okay.

At tab 1 – is an email from you to Charles Bown and Dave Bazeley.

**MR. STANLEY:** Dave – yeah.



**MR. LEARMONTH:** You got – the email –

**MR. STANLEY:** – government –

**MR. LEARMONTH:** – that I referred to says –

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** – I’m worried my comments are buried in the track changes here –

**MR. STANLEY:** Right, okay.

**MR. LEARMONTH:** – let me know if you need to discuss. Overall, I think this –

**MR. STANLEY:** Overall, I think this looks pretty good.

**MR. LEARMONTH:** – looks pretty good. Yeah.

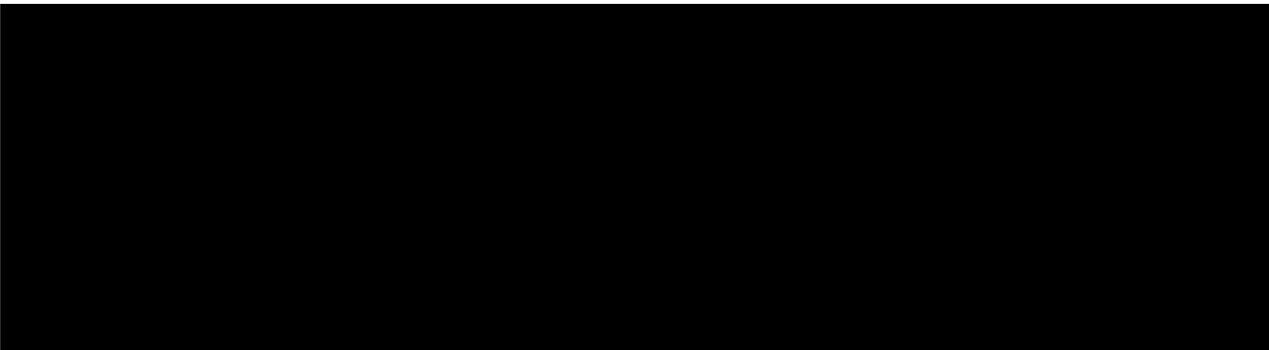
**MR. STANLEY:** So at this time – I’m not sure what the, basically, the provenance of this document would have been. At the time, Hydro was known to write up things that they thought were Cabinet paper-ish, kind of, quality and send them over to Natural Resources to try to do some of Natural Resources’ work for it, and then we’d have to go back though and revise to make it accurate. Because they didn’t always get everything right.

So this document would have been written to describe, I think, based on the timing, what we were doing to implement the new – as we were calling it at the time, Holdco, because we didn’t have – the Nalcor name didn’t come along until – for a year or two. And –

**MR. LEARMONTH:** So what was the philosophy behind or –

**MR. STANLEY:** Right, so.

**MR. LEARMONTH:** What was the objective of this reorganization and so on?





**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – to let you go forward with – I think the Energy Plan uses the term energy warehouse.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Yes. So if you're going to have the province being the entity that owns the energy warehouse, which was a decision in the Energy Plan, you needed an entity to be able to go do that work. So that was the idea.

**MR. LEARMONTH:** So just as an example, you didn't want the oil and gas –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – project to be somehow connected with the hydro project.

**MR. STANLEY:** Well, the oil and gas stuff as well, it didn't really come to a head until we were doing the Hebron negotiations in 2008. But the oil and gas stuff was difficult because we were elbowing our way into business arrangements that already existed with public sector partners. You know, we were going in for 10 per cent of Hebron –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – and we went in for 5 per cent. In order to get them to agree to that, we had to show the oil and gas company operated in its own bubble. It couldn't be part of a publicly – like, you couldn't have oil and gas matters go to the PUB – you know, that kinda thing.

**MR. LEARMONTH:** Yes. So that was one –

**MR. STANLEY:** That was one example of the sort of things we were getting into –

**MR. LEARMONTH:** – specific example of why it was necessary to initiate this process of restructure.

**MR. STANLEY:** Yes, yeah.

**MR. LEARMONTH:** In that same binder, at tab 17, is a memorandum to Executive Council – NR2007-019.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Are you familiar with that document, Mr. Stanley?

**MR. STANLEY:** I don't recognize it off the top of my head, but I think I probably would've had a hand in its development at the time as this would've been part and parcel of the same process, I think. This is only –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – six weeks later.

**MR. LEARMONTH:** Yup.

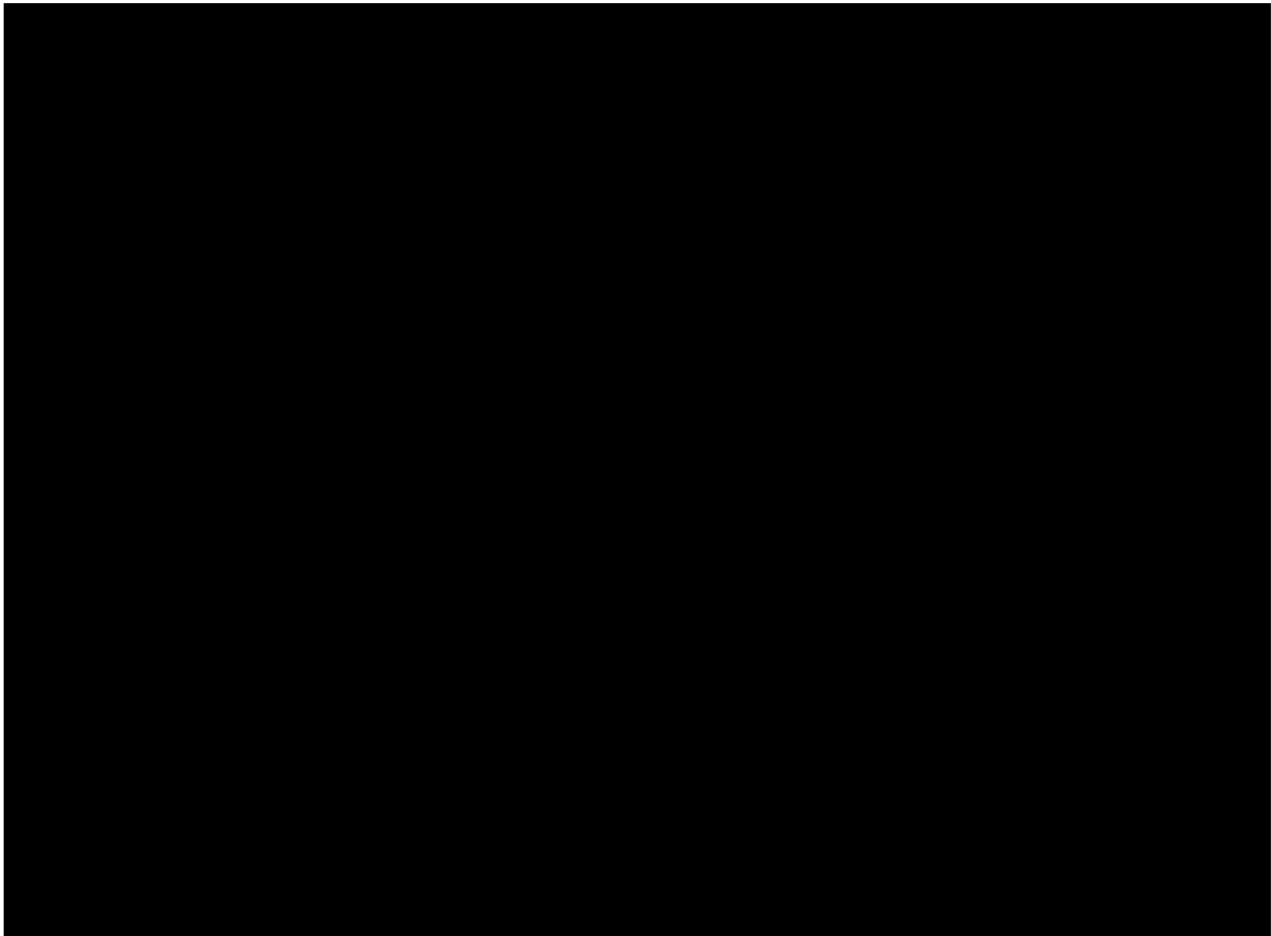
**MR. STANLEY:** Yup.

**MR. LEARMONTH:** So that's all obviously connected –

**MR. STANLEY:** Yes, yeah.

**MR. LEARMONTH:** – with the first document that I referred you to.

**MR. STANLEY:** Yeah.



I would've had – I would've probably looked at that or talked to them about it. I'm not sure whether I could say I vetted the communications planning 'cause usually what happens is the lawyer's answers to the questions are the ones the communications people don't want to give.

**MR. LEARMONTH:** Understood.

Then later on in this document, this Cabinet – this secret Cabinet secretariat analysis, and then there's the Cabinet directives, which give approval for the draft *Energy Corporation Act* –

**MR. STANLEY:** Right.

**MR. LEARMONTH:** – and so on. And so all this is approved by Cabinet and the Cabinet directives, and orders-in-council –

**MR. STANLEY:** Yes, yeah.

**MR. LEARMONTH:** The orders-in-council, they're necessary, I understand it, when changes are gonna be made to legislation as opposed to a Cabinet directive, where –

**MR. STANLEY:** No, the –

**MR. LEARMONTH:** Maybe you could explain –

**MR. STANLEY:** Yeah –

**MR. LEARMONTH:** – the distinction.

**MR. STANLEY:** Minutes in council are the records of the Cabinet meetings, which are generally considered to be extremely confidential. It's very rare to get records of the Cabinet deliberations and the decisions – all the decisions that are made in Cabinet.

Some decisions of Cabinet are required by legislation – or more the decisions that legislation requires – so you can have acts that say pursuant to decision by the Lieutenant-Governor in Council, whatever, blah blah blah.

Those are all required to be evidenced as orders-in-council. So usually what is an order-in-council is a function of meeting a legislative requirement to show that you've made a decision 'cause the decision has force of law. That's the short answer for a lot of it.

So the Cabinet directives that are back here are minutes in council – you can tell by the numbers –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – they're MCs – and then usually the next page is an OC – the next two pages are OCs – so these OCs – under the authority of the legislation is plans to authorize transfer – these OCs would have been something – the only question I got is about the timing of these – they are part of this Cabinet decision.

So –

**MR. LEARMONTH:** But they're dated earlier, in this case –

**MR. STANLEY:** No, they're in 2009 –

**MR. LEARMONTH:** – 2009, sorry –

**MR. STANLEY:** – that's actually what I'm looking at –

**MR. LEARMONTH:** – okay, so – yeah (inaudible) sure –

**MR. STANLEY:** – right. 'Cause that's why they don't make any sense.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** So the Cabinet decision was the 2007 –

**MR. LEARMONTH:** (Inaudible.)

**MR. STANLEY:** – approval to go forward to do the legislation –

**MR. LEARMONTH:** They're probably out of order. That's probably –

**MR. STANLEY:** Probably out of order.

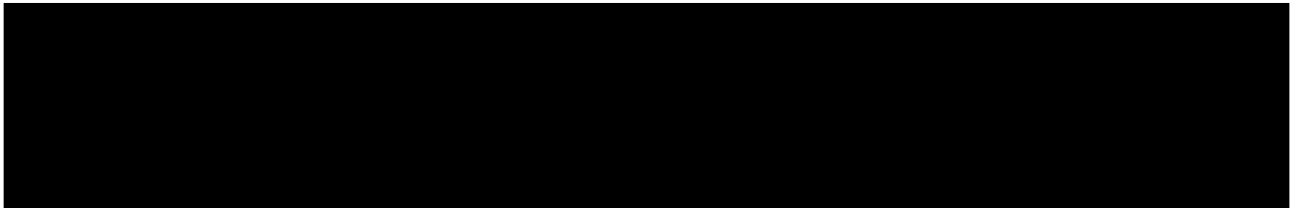
**MR. LEARMONTH:** That's probably out of order, I think.

**MR. STANLEY:** But they are related. But just of –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** So 2007 you go to Cabinet and get approval to introduce the legislation, it goes into the House, the legislation gets passed – if you look at the legislation, it provides for decisions by the Lieutenant-Governor in Council on certain points. These OCs are evidence of Lieutenant-Governor in Council having made those decisions.

So this would have been the – I think the second one here, 109, is the transfer of – authorizing the transfer of – from Hydro to Nalcor of corporations – this is just part of the restructuring.



**MR. LEARMONTH:** Excuse me, tab 18 –

**MR. STANLEY:** Oh, tab 18.

**MR. LEARMONTH:** – says NR2008O49.

**MR. STANLEY:** The amendments to the *Electrical Power Control Act* –

**MR. LEARMONTH:** This has to do with the water management –


**MR. STANLEY:** – oh, yes – this – yes, I was involved in this. Yes.

**MR. LEARMONTH:** Okay.

And then at tab – following tab 19 we have the issuance of water rights for the Lower Churchill River to the Energy Corporation.



**MR. LEARMONTH:** Yeah.



**MR. LEARMONTH:** (Inaudible) we're not gonna get into it now, but I think there was some error or perceived error in the description of the Lower Churchill in the first –

**MR. STANLEY:** I think the first –

**MR. LEARMONTH:** – (inaudible).

**MR. STANLEY:** – time we did it, we –

**MR. LEARMONTH:** It might've included the Upper Churchill –

**MR. STANLEY:** And there was something –

**MR. LEARMONTH:** – and that was –

**MR. STANLEY:** – we had done wrong –

**MR. LEARMONTH:** – amended.

**MR. STANLEY:** – and we had to go back and fix it.

**MR. LEARMONTH:** Amend it, yeah.

**MR. STANLEY:** I think in September we called the House back to do an emergency amendment.

**MR. LEARMONTH:** To make sure that there was no reference to the –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – Upper Churchill.

**MR. STANLEY:** Yeah, to make sure that we had everything done right.

**MR. LEARMONTH:** Yeah.



**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Nalcor has the rights.

**MR. LEARMONTH:** And the Lower Churchill Development Corporation, which was 50 per cent owned by (inaudible).

**MR. STANLEY:** Well, that was – yeah.

**MR. LEARMONTH:** 51 per cent. Do they – owned by Newfoundland –

**MR. STANLEY:** No, we took them out –

**MR. LEARMONTH:** – (inaudible).

**MR. STANLEY:** – too.

**MR. LEARMONTH:** Yeah –

**MR. STANLEY:** That was –

**MR. LEARMONTH:** – that was gone, too.

**MR. STANLEY:** That was gone, too, 'cause that was a historical –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – relic from 20 or 30 years before –

**MR. LEARMONTH:** Right.

**MR. STANLEY:** – that was just being kept around to make sure – I'm not sure why actually. Nalcor just kept that alive, but that wasn't an active participant.

**MR. LEARMONTH:** Yeah. That was cancelled or terminated, the agreement. There was –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – something (inaudible).

**MR. STANLEY:** Something like that.

**MR. LEARMONTH:** Some legal –

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** – procedure, so that –

**UNIDENTIFIED MALE SPEAKER:** To give the department –

**MR. STANLEY:** (Inaudible.)

**MR. LEARMONTH:** (Inaudible.)

**UNIDENTIFIED MALE SPEAKER:** – notice – six months notice.

**MR. LEARMONTH:** That's right.

**MR. STANLEY:** Yeah.

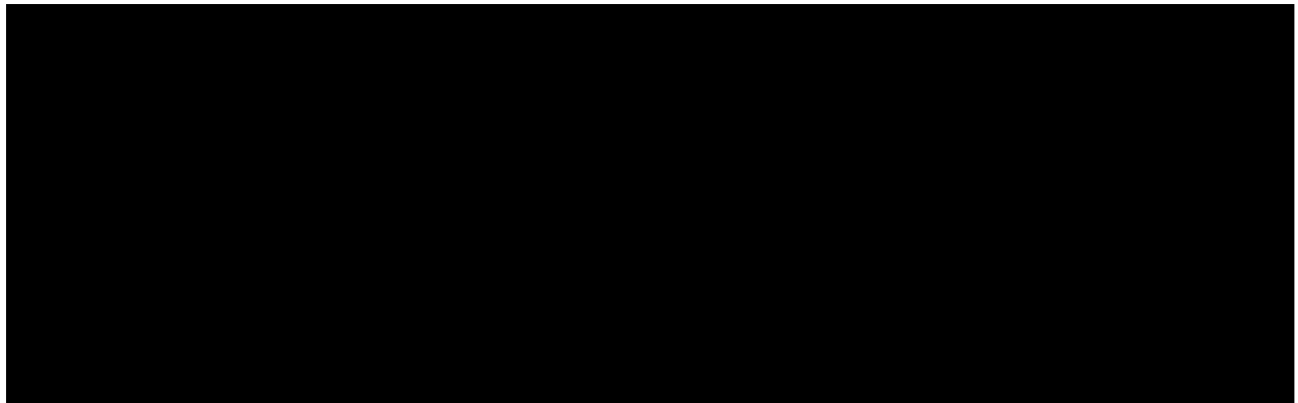
**MR. LEARMONTH:** So that the water rights could be assigned to the Energy Corporation.

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**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Yeah. The next – tab 20. Amendments to the *Energy Corporation Act*.



**MR. LEARMONTH:** Yes.

**MR. STANLEY:** I think that's what the amendment – that this was –

**MR. LEARMONTH:** Yeah, it –

**MR. STANLEY:** (Inaudible.)

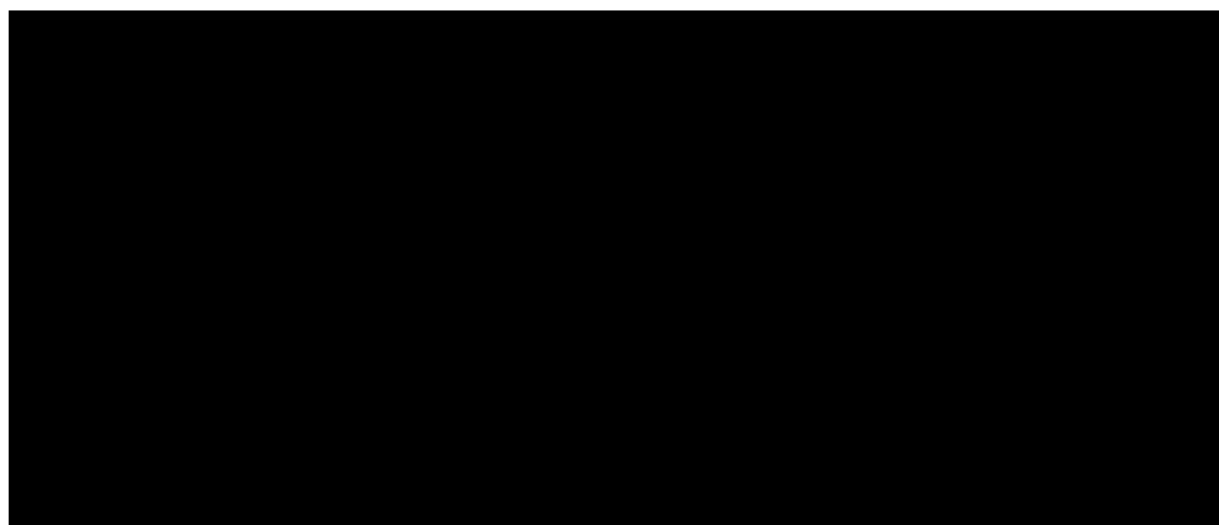
**MR. LEARMONTH:** – says that – well, the issue – underneath the first page – whether energy legislation amending to set forth a public disclosure claim and legislate exemptions applicable with the –


**MR. STANLEY:** Right.

**MR. LEARMONTH:** – Energy Corporation, and to allow it to operate in a commercially competitive environment –

**MR. STANLEY:** Right.

**MR. LEARMONTH:** Yeah.






So we had to make sure that we – if we were going to have an oil and gas company, it had to operate like an oil and gas company in order to maintain credibility to get the oil companies to just – to agree.

**MR. LEARMONTH:** Do you know if there was any discussion as to – well, let's just say – accepting that it was necessary for the oil and gas initiatives? But why would – why with – it would have to apply to all of the other –

**MR. STANLEY:** That –

**MR. LEARMONTH:** – elements of Nalcor?



But I'm pretty sure Nalcor would've maintained that they needed as much protection – they needed to be treated – Nalcor wanted to be treated like the publicly traded entity: same levels of scrutiny, same levels of control, same levels of freedom. So for example, the *Energy Corporation Act* exempts them from the *Public Tender Act*.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Because they wanted to be able to go and procure contracts at best value, not just lowest price.

**MR. LEARMONTH:** Yes.



**MR. LEARMONTH:** – and – but on the hydroelectric side, was it ever observed that perhaps this is a problem with oversight, with the degree of oversight that the government could have over Nalcor?

**MR. STANLEY:** The –

**MR. LEARMONTH:** Was there any discussion about that or any thought about that –?

**MR. STANLEY:** About government's oversight of Nalcor?

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yes, constantly.

**MR. LEARMONTH:** Can you expand on that, please?

**MR. STANLEY:** Yeah.

There was an aspect that Nalcor was – there were concerns at Natural Resources – concerns in government that there was insufficient oversight or insight into what Nalcor was doing, mostly on the control – on a host of fronts over time. Most of the work that Nalcor did from about – on the Lower Churchill – from, I don't know, 2009 to 2012 or '13, Nalcor was, you know, sort of reporting directly to the Premier's office and intervening departments found out later what was going on.

So the normal –

**MR. LEARMONTH:** That was during what period?

**MR. STANLEY:** I'd say, like, 2009 to 2013, but even past that.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** So you could have circumstances where Nalcor do – come into government and make a presentation on the eighth floor, go get the instructions and approvals, go back and then they'd call the government departments and tell them what they were doing. And the government departments would find out through Nalcor what had been approved on the eighth floor, and may not necessarily think the eighth floor had all the information in front of them that they should have when they made that decision and not agree with the decision.

So the whole issue of how Nalcor's operating versus how government was operating, and the level of control or insight or – that was a constant issue at lower levels of government than I – than like, sort of, the Premier's office. I'm not sure I'm putting that well.

There was constantly discussion going on that Nalcor was basically a fiefdom. And we didn't know – always know what was going on over there, you know, at the operational level.

**MR. LEARMONTH:** And assuming that relationship exists, whereby Nalcor could go straight to the Premier's office –

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** – and have some decision made without the Department of Natural Resources or another department. In that – is that an unusual type of situation, in your experience?

**MR. STANLEY:** Yeah, we usually – yeah, usually any client department coming through – any decisions that were being made would receive the benefit of analysis of the people in the departments involved.

**MR. LEARMONTH:** Hmm.

**MR. STANLEY:** You know, there were instances where we went over to Hydro, or Nalcor, for a briefing on something as to how the Muskrat project would be structured – this was fairly early days – and they would tell us it's gonna be A, B or C.

I remember a meeting where we went – and I can't remember what the briefing was, the topic of it – but the instructions were, like, you know: And it's gonna work like this. And the government people were sitting there and were like: Well, who said it's going to work like that? That's, you know, the perceived, at least, concerns about how that would be.

And Nalcor's response was, this was approved by the premier. And one of the Natural Resources people who was there said: Oh, that's interesting, I don't remember writing the policy analysis on that. The comment was facetious. There was no policy analysis on it. Right? It never came through the experts at Natural Resources to say: Okay, here's the wrinkles, here's the hairs on that, here's the problems with it.

Nalcor came and got approval from the Premier's office. We're gonna do this; marched off and had their instructions and their approvals. So that was unusual.

But it wasn't a function of ATIPP, like, the ATIPP provisions didn't –

**MR. LEARMONTH:** No, no.

**MR. STANLEY:** – have anything to do with that. Yeah.

**MR. LEARMONTH:** But did – you're referring to the period 2009 to 2013?

**MR. STANLEY:** I use that loosely. 2009 would have been about when we got the Energy Corporation set up, they had their ATIPP protections in place and you would've started the ball rolling on matters to do with – we were just getting – the engine was starting to heat up. After having Hebron done, the engine for development was starting to heat up – electricity development, as specified in the Energy Plan, was starting to heat up out there then.

**MR. LEARMONTH:** This direct relationship, I'll call it –

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** – that you described earlier, that whereby Nalcor would get approvals directly from the Premier's office. Was there any change in that relationship between Premier Williams's tenure and Premier Dunderdale's tenure, to your recollection? In other words, did things change –

**MR. STANLEY:** No, I understand.

**MR. LEARMONTH:** – from one premier to the other?

**MR. STANLEY:** It did.

Premier Williams – and this is all, like, you know, this is all my impression just from watching what was going on. Nalcor would get – Premier Williams was, you know, an advocate and a proponent of everything Nalcor was doing. But when Nalcor presented to Premier Williams they had to have their homework done 'cause he would cross-examine them, hold them – you know, double-check what was going on.

When Premier Dunderdale went in, for a bunch of reasons – well, when Premier – under Premier Dunderdale, the impression was that the control at that level of what Nalcor was doing and the questioning, or perhaps what they're being told by Nalcor, was probably less stringent. That may have been a function of personalities that were at the table every time Nalcor came in.

You know, it got more – it changed under Premier Dunderdale, because under Premier Dunderdale, Minister Kennedy was the Minister of Natural Resources.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** He didn't always have a good relationship with Nalcor. So he might be the one pushing back at Nalcor as opposed to – it became a very personality driven thing as the – you know, how the oversight was happening or where their rub points were or who was giving who a hard time or that sort of thing.

**MR. LEARMONTH:** You said Minister Kennedy didn't have a good relationship with Nalcor, can you give me examples of that –

**MR. STANLEY:** Well, he –

**MR. LEARMONTH:** – or your understanding of the reasons for it?

**MR. STANLEY:** That would presume insights in Minister Kennedy's thinking that I'm not sure I'm gonna put on the record.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** He, I think, viewed them as being, as a number of people in government did as you're getting into 2000 – I can't remember when he was there 2011, '12, I think. You know, they were sort of viewed as being a little bit of a runaway train that we didn't have any control over. You know, so they'd call over and asked, say – government – well, I need the following 15 things for the project to go ahead and I need it all done by Tuesday.

And you get these calls and then you'd be looking at it going this is, you know, three months work and massive policy issues, blah, blah, blah. But Nalcor's like I don't – we just need it done. So that – personality differences, that kind of stuff, he gave them a hard time or purported to give them a hard time on matters. I don't think he had much of a personal fondness for them or the project and the like.

But I don't have any actual hard examples of X went to Minister Kennedy and Minister Kennedy said no where another minister would've said yes, off the top of my head, no.

**MR. LEARMONTH:** Are you aware of any occasions –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – where Minister Kennedy would've said no to a request but then Nalcor would go to the premier and there'd be a yes?

**MR. STANLEY:** Not that I can recall at first instance, but I wouldn't have necessarily been in the loop on all of that anyways, 'cause he would've only called me if it involved legal issues.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Yeah, yeah.

**MR. LEARMONTH:** So this relationship (inaudible) would that have caused concern throughout the civil service or –

**MR. STANLEY:** Yes. Yes, there was a level of the civil service that was – whose attitude towards Nalcor as this was going on was – I dunno what – I dunno if I've got the terminology – exasperation, irritation, there was a – as I was saying there was times when Nalcor was treating government as the – the perception was Nalcor was treating government as an entity whose job it was to do whatever Nalcor needed to do to get the projects that it was working on done, whether it was oil and gas or whatever.

You know, most of the – I think most of the government, civil service, felt disrespected by – they didn't perceive that Nalcor had any idea what the role of Natural Resources was. The Department of Natural Resources would be perceived to be a check on Nalcor, what they were coming in with, and instead, they were assumed to be a cheerleader. So there's a fair amount of exasperation.

There were practical issues about timing, Nalcor's expectation that government – Nalcor could take six months to do something – miss a deadline by six months, but then expect government to be able to do it in three weeks. Whenever Nalcor got around to it. That sort of stuff. So there was a lot.

The other thing you shouldn't lose sight of, just for context, is, 2013, government was in budget cuts. We were laying people off, and Nalcor was hiring everybody they could find. So this perceived inequality of just plain old money, you know, resources. They got as much as – they can do whatever – they got resources to do whatever they want, and they're coming to government and asking us to do whatever we can get done. You know, I need this in three weeks or whatever, and we've got two-thirds of the people we used to have, 'cause the government never – the government didn't staff up or preserve resources to meet Nalcor's – to meet the requirements that Nalcor was shedding into government, basically.

So a lot of that generates, you know, classic – what was it – classic public-entity, interagency rivalry sort of stuff.

**MR. LEARMONTH:** But I think an average person, the public, would think that the relationship would be the reverse of that, that government's in control –

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** – for this wholly owned Crown corporation, and –

**MR. STANLEY:** But –

**MR. LEARMONTH:** – would be calling the shots –

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** – we'll say, as opposed to the way you described it.

**MR. STANLEY:** Well, government – for the things that Nalcor was coming in – when it came to matters of expertise that Nalcor had, you know, things that Nalcor's working on, government had no resources for insight into what – to critique what they were being told, as I said to Peter earlier on.

Through the course of this whole thing, there was no employee in government whose full-time job was the Lower Churchill Project until the secretary was hired for the Oversight Committee in 2014, 2015. I think it was Craig Martin, this was his first job. Up until then, everybody in government that was anything to do with Lower Churchill was doing it off the corner of their desk 'cause they had other work to be doing.

**MR. LEARMONTH:** I had some information that Charles Bown was given – that his sole responsibility was Muskrat Falls Project. In other words, he was assigned as the point man, we'll say, for government for the Muskrat Falls Project.

**MR. STANLEY:** He –

**MR. LEARMONTH:** I don't know. And they it way it was described – I'm not saying it was –

**MR. STANLEY:** Yeah, no.

**MR. LEARMONTH:** – like, a classification, but –

**MR. STANLEY:** Yeah –

**MR. LEARMONTH:** – de facto, he was –

**MR. STANLEY:** Oh, de facto, he would've been, yes. But he was also still Deputy Minister of Natural Resources during the whole period.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** You know, so that meant while the House was open he was watching Question Period and getting House briefings for four hours a day.

Like, there was no one whose job was Muskrat. So the assumption that you would have had – that government had a handle on what was going on – would have required government, internally, to have people in place who could question what was being told to them by Nalcor and have access to resources to stress test or analyze or critique.

And my perception was that, though no such resources existed in government, government was actually decreasing resources across the board by doing budget cuts, and that there wasn't much of a political will to do that anyways.

**MR. LEARMONTH:** So this obviously, I would suggest, had a – this relationship between Nalcor and government – had a big impact on the subject of government oversight of Nalcor.

**MR. STANLEY:** Well, there's – there was – it cut both ways.

So there were processes whereby government was trying to pursue Nalcor to institute and formalize oversight arrangements, particularly into the operations of Muskrat. That was being led by Natural Resources – they were in negotiations with Nalcor, but Nalcor was resistant to it at every front – actively resistant to what government wanted.

Government wanted more financial reporting on the project, such as when the management – even when the – before the set-up of the Oversight Committee and even after the Oversight Committee was set up, my understanding was – I wasn't on the committee at the time, but I had the people telling me that the Oversight Committee was asking for information from Nalcor about what was going on and was not getting the information – Nalcor resisted providing the information that was being demanded. Actively.

**MR. LEARMONTH:** Well how is that possible – that a Crown corporation could resist an information request –

**MR. STANLEY:** From (inaudible).

**MR. LEARMONTH:** – from the government?

**MR. STANLEY:** Right.

**MR. LEARMONTH:** Let me give you an example of what I'm saying –

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** – just to put it (inaudible).

In that situation, why wouldn't the premier, or someone else, call up Nalcor and say, listen, I want this information and I want it right now?

**MR. STANLEY:** So it was never entirely (inaudible) –

**MR. LEARMONTH:** That would seem to me to be a reasonable response to a wholly owned Crown corporation refusing to provide documentation and information to government, when government's on the hook for the whole cost.

**MR. STANLEY:** Right.

So it was never clear to me that the – the disputes around the delivery of information made it to the Premier's office – they were being – you know, the commission was asking for information; they were not getting it. I don't know the extent to which they approached or asked for political reinforcement of what was going on, and whether they were rebuffed or not. 'Cause you're right: in theory, that's how it should work. But you gotta have the premier who wants to make that call.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** It wasn't – I don't know if that's – I don't know – I don't have first-hand knowledge of whether that was debated.

I know that at the officials' level – so you're talking two or three rungs down the ladder in both organizations – there was significant resistance to sending any information over to government about the financial information to how things were going. In part, because of the concern that – I think from Nalcor used to say: Once we give it to government we don't know where it goes. Losing control of their financial information: subject to ATIPP, disclosure, leaks, they – all kinds of stuff.

But it was an antagonistic relationship, as I understand it at the time, between government and Nalcor in terms of trying to establish insight into what Nalcor was doing, at a very granular level, you know, monthly reporting. The – so the information – if, you know, if you were to talk to someone who's involved in the Oversight Committee, the information the Oversight Committee gets now evolved over

time. It was not being provided willingly by Nalcor at first instance when they established the committee, as I understand.

**MR. LEARMONTH:** Mm-hmm.

Now, this – there was a change of government after – when the Liberal –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – Party was elected. And you were working at the Department of Justice at that time.

Was there any change, to your knowledge, of the relationship between Nalcor and government as to what had been the relationship before the Liberals (inaudible)? From your observation (inaudible) –

**MR. STANLEY:** Yeah, I'm just – I'd have to go back and take a look.

Immediately, I don't remember anything – any event occurring. I mean, the biggest change that happened – the Liberals I think got elected in December, and I think by March was the timing of the events when Ed Martin went out the door.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** I think that's the – it's four months, not 14 months. It wasn't the next December – or the next March. It was that March, right?

**UNIDENTIFIED MALE SPEAKER:** (Inaudible), yeah.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay.

The next item that I'm gonna ask you to consider is – it's in our core book of documents you got there.

**MR. STANLEY:** Right there?

**MR. LEARMONTH:** Yeah.

**UNIDENTIFIED MALE SPEAKER:** Why are –

**MR. STANLEY:** Number one or two?

**UNIDENTIFIED MALE SPEAKER:** One –

**MR. LEARMONTH:** One – binder 1.

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** You have that do you?

**UNIDENTIFIED MALE SPEAKER:** Yes.

**MR. STANLEY:** Right here.

**UNIDENTIFIED MALE SPEAKER:** Which one is it? Which –

**MR. LEARMONTH:** Tab 12.

**MR. STANLEY:** 2011?

**MR. LEARMONTH:** Yeah, tab 12 –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – the memorandum to Executive Council.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Commitment letter to assist financing –

**MR. STANLEY:** Right.

**MR. LEARMONTH:** – of phase 1.

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** So that's 12. And then if you go to – and I'll be referring to this too, so I'll just tell you what the reference is. Tab 18 –

**MR. STANLEY:** Tab 18 is the actual letter.

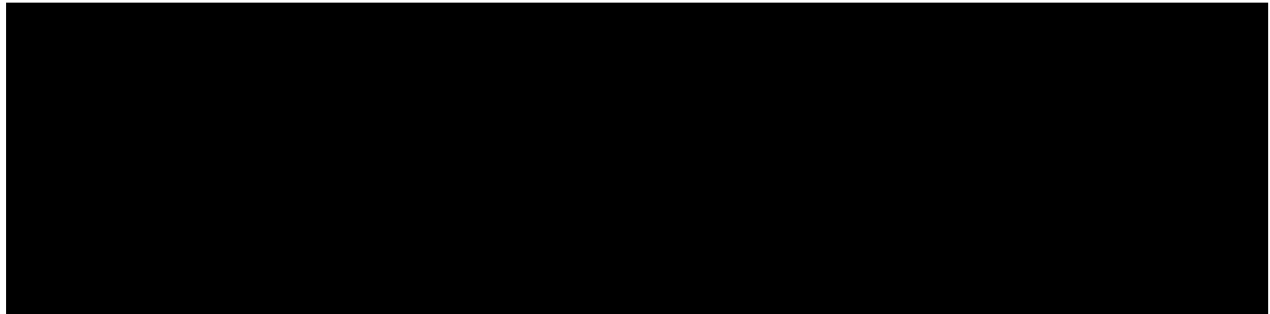
**MR. LEARMONTH:** Is the letter that –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – was issued pursuant to the order-in-council or Cabinet directive. This memorandum to Executive Council is self-explanatory and I don't want to go through it word by word. There was a Cabinet directive, MC20110489, which is included in the tab – dated September 6, 2011. Quote: The submission to the Minister of Natural Resources respecting commitment letter to assist financing of phase 1 of the Lower Churchill Project was considered; approval was given to me to sign a letter substantial on the lines. And that's the letter at tab 18.

**UNIDENTIFIED MALE SPEAKER:** Yeah.

**MR. STANLEY:** Yeah.



**MR. LEARMONTH:** Now, the memorandum was sent by then Minister Shawn Skinner.

**MR. STANLEY:** Yes, that would've been Natural Resources submission –



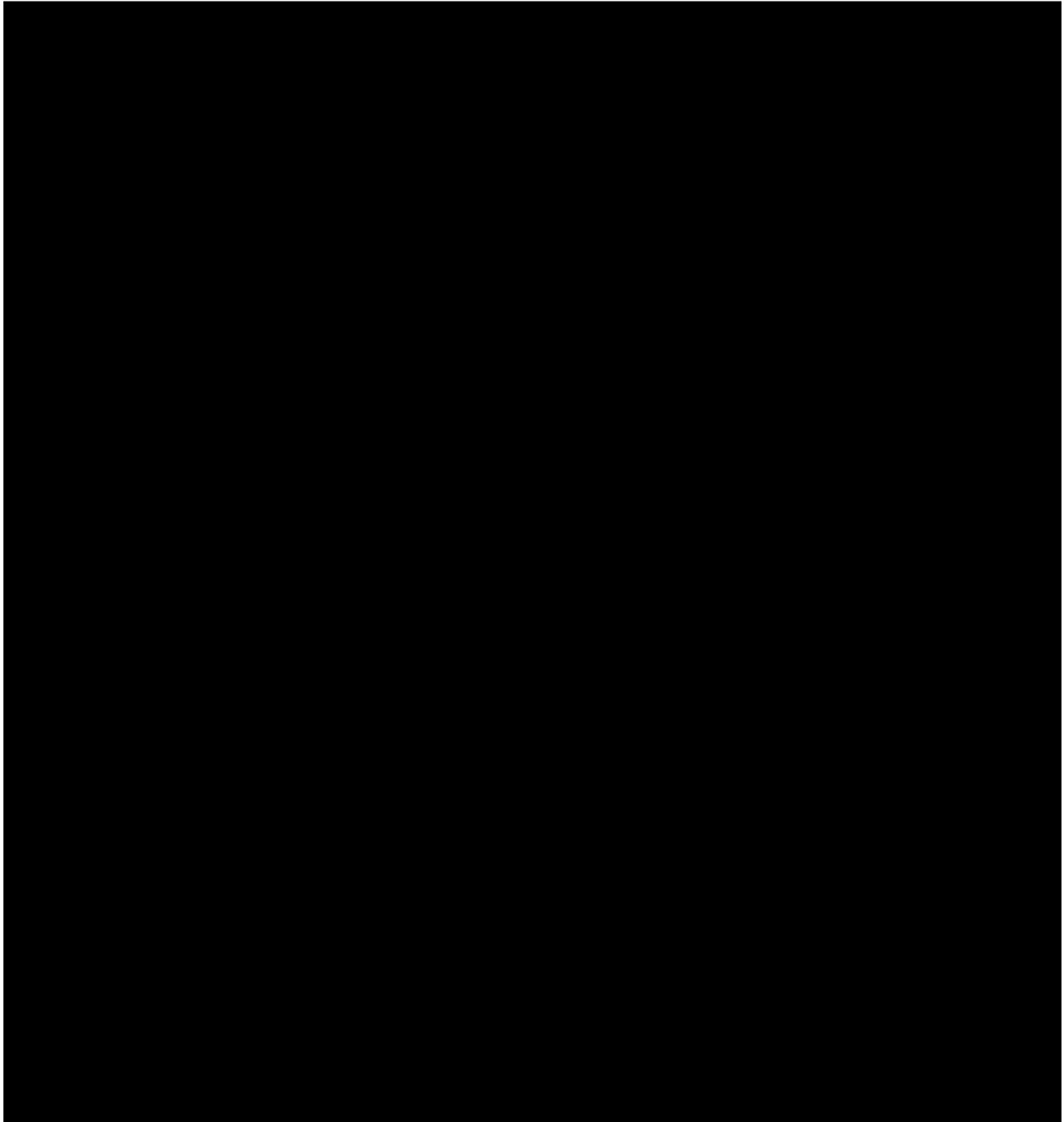
**MR. LEARMONTH:** Would that have been – would the memorandum to Executive Council have been prepared by Charles Bown? Would he –

**MR. STANLEY:** Well, it would've been written by the department.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** I don't think Charles would've actually written it. But it would've been written by the department and I think Charles was the deputy at the time or the ADM.

**MR. LEARMONTH:** Yeah.



**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Lack of a better description.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** And that this – the commitment in this letter, as I remember it, was that we would structure things in the province to ensure that occurred.

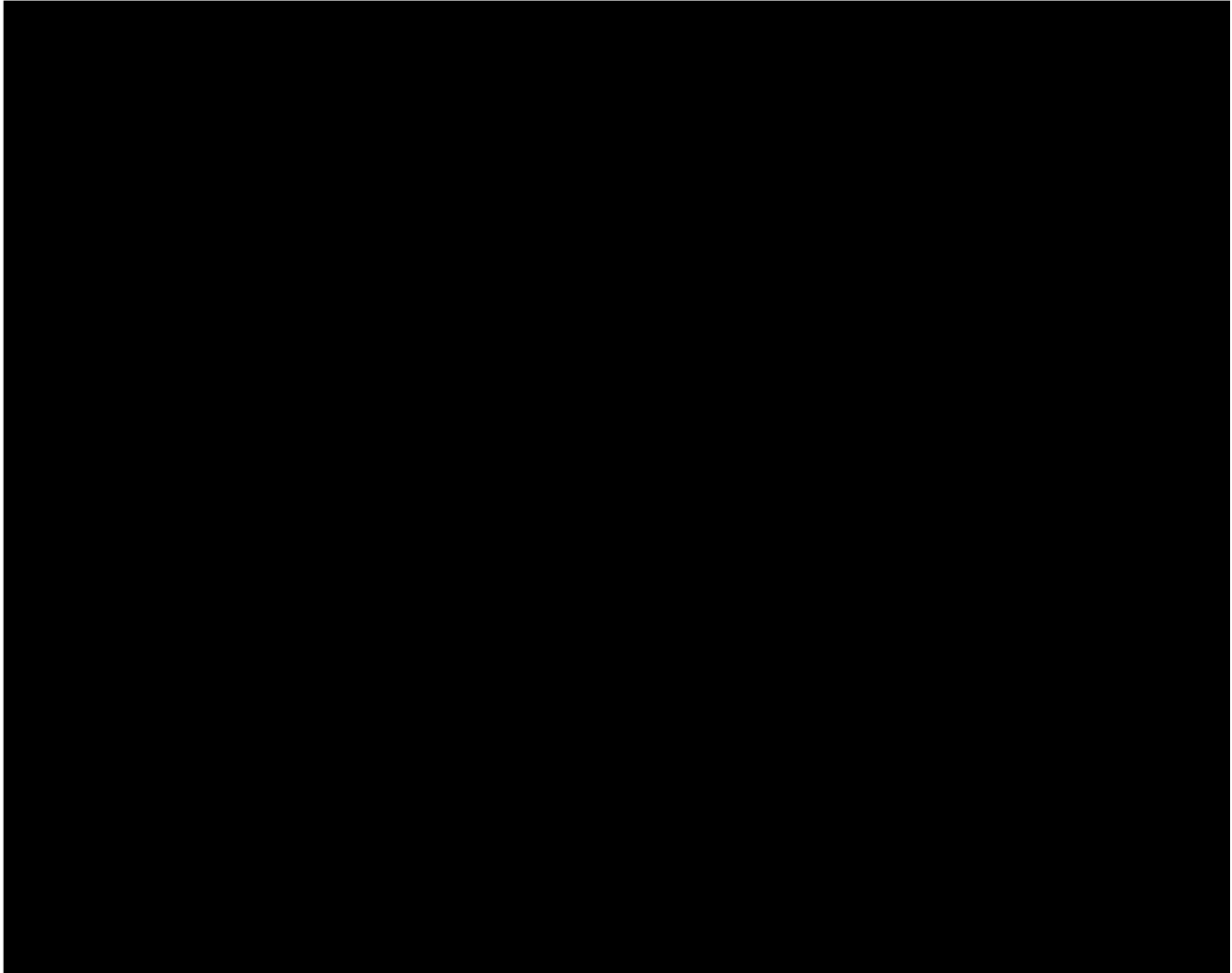
**MR. LEARMONTH:** Yes. Now, the paragraph 2 of the letter –

**MR. STANLEY:** Base and contingent equity support.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Now, this has been described by others as basically a blank cheque to Nalcor to –



So this was – I don't know – what is this, October 2011 – so this – I think this letter was drafted, like, September – it was in development for –

**MR. LEARMONTH:** No, October 18, 2011.

**MR. STANLEY:** October 18.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** So this would have been 10 months into minister – Premier Dunderdale being the premier – unexpectedly 'cause Premier Williams, kind of, signed the Emera deal and then left a week later –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – in –

**MR. LEARMONTH:** 2010.

**MR. STANLEY:** – fall of 2010.

They were facing an election in 2012 – '11? Was it 2011? Yeah –

**MR. LEARMONTH:** I'm not sure of the date.

**MR. STANLEY:** – seven, three, seven, '11 it would have been.

**MR. RALPH:** Yeah.

**MR. STANLEY:** They – that election, you know – that election was on – and talking well outside my brief as lawyer here, but just frankly – that election was gonna be on the Lower Churchill Project.

So they were basically locked into the Lower Churchill Project and what the guys at Nalcor were telling them was gonna be the cost estimates and the like.

And they had inherited a project and a team and a corporation and a structure where everybody was told all the time that they were the best people in the world that had ever been tasked to do this stuff, and they were world experts and they were gonna do it right and we had every contingency covered, and if you talked to Nalcor, it was nothing but confidence expressed.

So there was questions – you know, I'm – it was one of those things where the idea of, should we be doing it this way or what is this – I mean, the idea that we were paying to finish this thing – that decision had been made five years before, effectively, when we decided we were doing it, and that we weren't gonna take on any partners.

Was I party to meetings where people looked at each other and said, you know, should we be doing this? Probably, but they weren't formal ones because this train was leaving the station. It had already left the station. There was no internal process inside of government where anybody said, okay, we are doing this, now what are we gonna need to do to control costs.

The only extent to that was the attempt by government to insert a governance structure upon Nalcor that you should have if you – and in your disclosure documents you've probably got a host of emails back and forth from Natural Resources and government and – Natural Resources and Nalcor on this issue. We're

gonna talk about getting a more formal, you know, governance arrangement in place, et cetera, et cetera, but it never went anywhere for a while 'cause Nalcor resisted all of it.

But the tone at the time from the top was, you know, that Nalcor's the best thing since sliced bread.

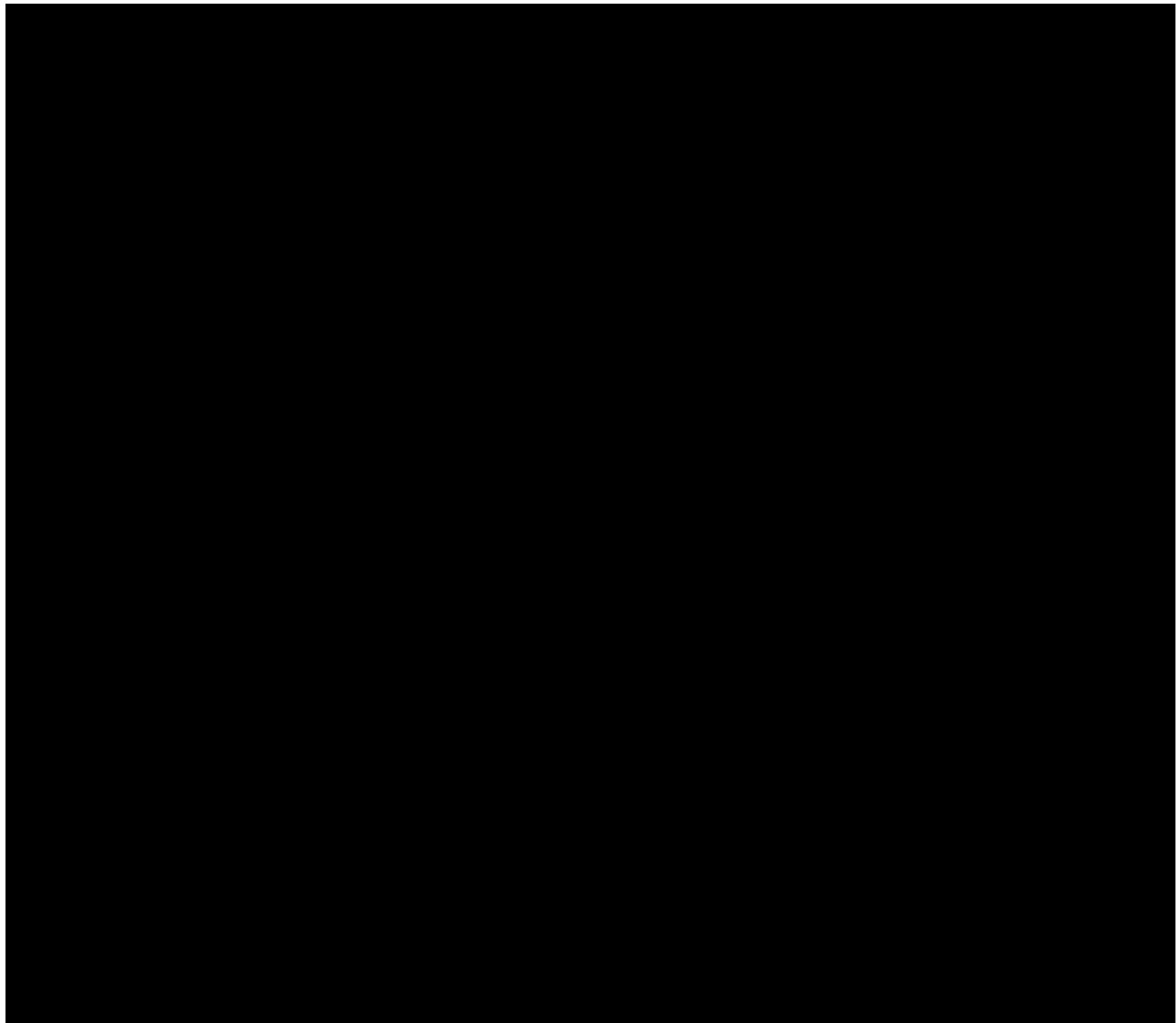
**MR. LEARMONTH:** The top being the Premier's office?

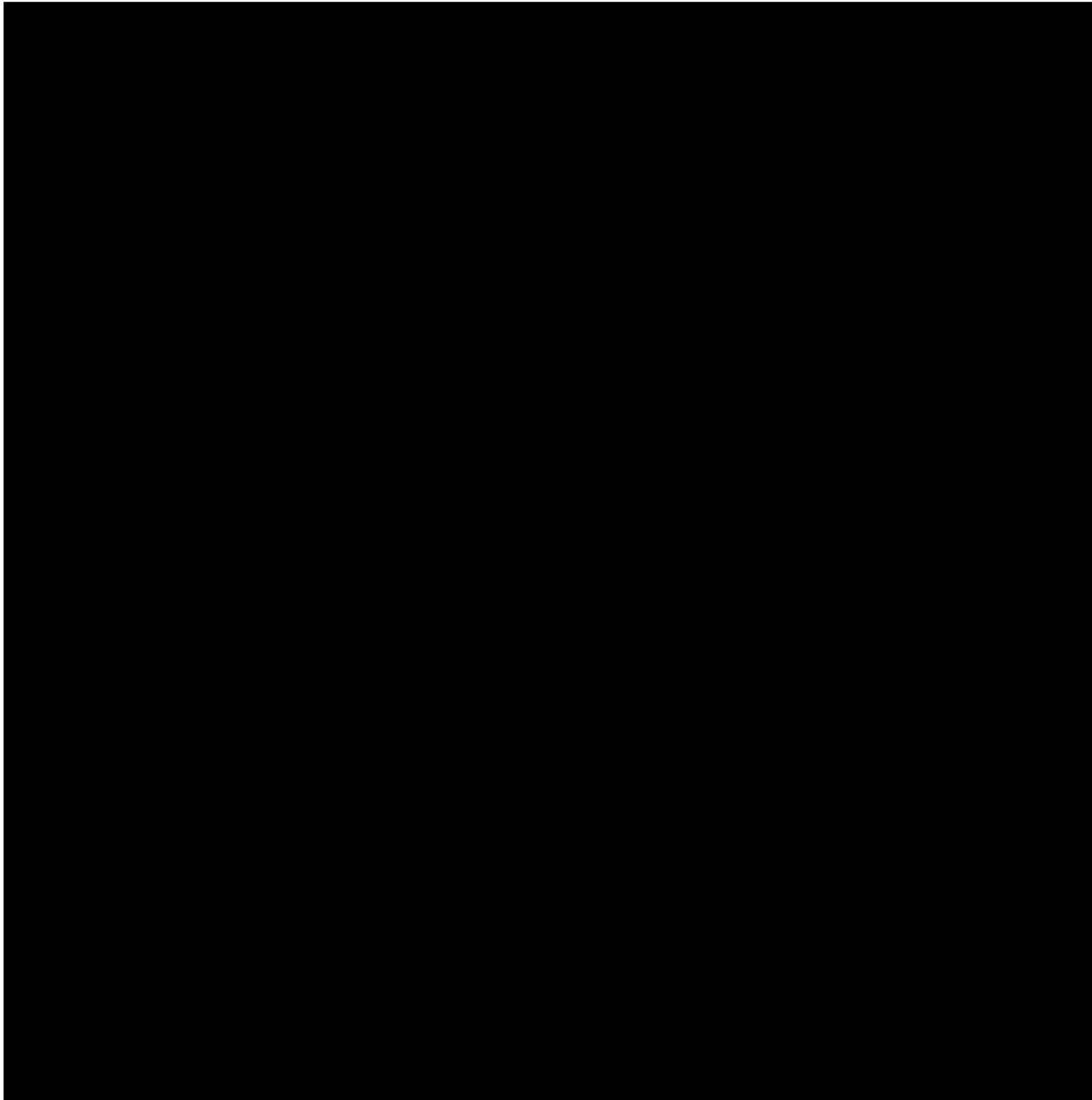
**MR. STANLEY:** And – yeah.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yeah. The political – you know, there was no desire there for – to walk into somebody's office to say we need a 15-person team here, put over there, to do nothing but question everything that comes from Nalcor, vet it, and the resources, there was no appetite to hear that, let alone, you know, to be the person walking in the office to propose it. And there was no funding. We had no money to do any of that –

**MR. LEARMONTH:** Yeah.





**MR. LEARMONTH:** Now at the time, let's say up until, let's say January 1, 2013, or even after that, January the 1st, 2014. Are you aware of any concerns expressed within government as to whether Nalcor had made and was making full disclosure to government of the actual cost estimates for the Muskrat Falls Project?

**MR. STANLEY:** The estimates or the actual costs?

**MR. LEARMONTH:** The estimates. In other words, was there any discussion about – I'm not sure there – we're getting the full picture here. Or was it that we can rely 100 per cent on Nalcor – we know we have to review –

**MR. STANLEY:** The –

**MR. LEARMONTH:** – you know, that subject matter generally.

**MR. STANLEY:** Right.

The – I don't remember there being a concern that Nalcor's cost estimates, as they were being provided at any point in time – were being lowballed or a concern that they were being artificially reduced or something. I don't remember that, the idea that – I don't remember any discussion that Nalcor's saying it gonna be X, but we don't trust that number, because we think they're gaming the number. I don't remember any discussion about that at all.

That may have been in part, because as I said before, what Nalcor was doing to generate those numbers, for the cost estimates for construction and the like, were largely – as, like I said, it's a black box. Government had no insight – you know, I didn't see any insight by government into what Nalcor was doing. And I don't think government had the expertise to say to Nalcor, send me over everything, I'm going to do an independent cost review. There's nobody in government to dictate that email, right?

Nalcor was producing – they were engaging in various processes internally to stress test all this stuff. They talk about cold eyes review – they had experts, they had outside people – and they were coming up with these cost estimates. And once they came out of Nalcor, I don't remember there being much questioning of what the cost estimates were.

**MR. LEARMONTH:** Yeah.

Do you have any knowledge as to whether the independent reviews, we'll say, of the Nalcor costing on Muskrat Falls, was provided to government or asked for?

**MR. STANLEY:** I'm not sure. No, I wouldn't've have seen that as –

**MR. LEARMONTH:** That wouldn't be part of your –

**MR. STANLEY:** That wouldn't be what the – the legal council – we wouldn't have gotten into that, no.

**MR. LEARMONTH:** Well, we've had some evidence, whether it's true or not will be determined, I guess, by the Commissioner after he hears all the evidence. But we have evidence, for example, that the November 18 term sheet announcement was that our Newfoundland and Labrador share would be 5 billion and Nova Scotia's would be 1.2 billion –

**MR. STANLEY:** This was the one –

**MR. LEARMONTH:** It was –

**MR. STANLEY:** – in the Emera announcement in 2010?

**MR. LEARMONTH:** November 18, 2010 –

**MR. STANLEY:** Yeah, okay.

**MR. LEARMONTH:** – the term sheet.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Ours is 5; Nova Scotia's is 6.2. Now, we've had evidence –

**MR. RALPH:** 1.2.

August 31, 2018

TODD STANLEY

**MR. STANLEY:** Or 1.2.

**MR. LEARMONTH:** It was 1.2 –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – for a total of 6.2. Now, we have evidence that the – at the time, Nalcor was reporting on Decision Gate 2 numbers.

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** And actually, the \$5 billion amount did not include a strategic risk amount between \$300 million and \$600 million. It wasn't included in the \$5 billion figure and the evidence – some of the evidence we have is that the strategic risk assessment in that amount was removed from the estimate at the request of Emera. And their justification for that was that it's gonna be – general, it's gonna be hard for us to get this past the Nova Scotia UARB.

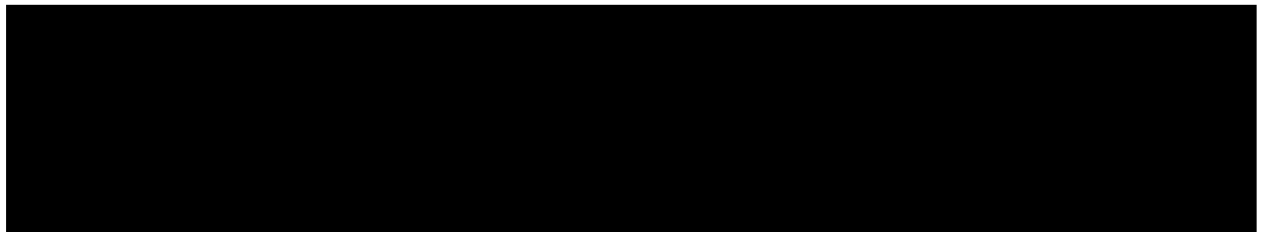
Did you – was there any discussion about that or –

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** – knowledge on that (inaudible)?

**MR. STANLEY:** I can say a hard no to that. I've never heard that before.

**MR. LEARMONTH:** You've never heard that before?



So that – I've never heard. No. I have no knowledge of the idea of someone sculpting the numbers to get them through sub-process. I never hear that at all.

**MR. LEARMONTH:** Well, the – I'm basing that on information we've received from Nalcor's project –

**MR. STANLEY:** Oh, yeah. Yeah.

**MR. LEARMONTH:** – management team, it's not just a hypothetical.

**MR. STANLEY:** Yeah. No, no. I can't say it's not true. I'm just saying –

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** – I've never heard that before.

**MR. LEARMONTH:** Never?

**MR. STANLEY:** No, no.

**MR. LEARMONTH:** Would that have given you concern? You were involved in negotiations –

**MR. STANLEY:** Well –

**MR. LEARMONTH:** – would that – I mean, in terms of the disclosure to the public and government. Would that have given you any concern?

**MR. STANLEY:** The disclosure to government, you know, if government knew that what the real numbers were and what was being –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – done. Well, then I guess I wouldn't have been concerned as long as government – I would be more concerned if I found out Nalcor was changing the numbers before they came over to government.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** That would've cause a lot of consternation.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** The idea that government knew Nalcor was doing something like that for – to get it through the UARB process, I don't know if that would've –

**MR. LEARMONTH:** I'm not suggesting government knew anything about this, by the way.

**MR. STANLEY:** Oh.

**MR. LEARMONTH:** No, no. I'm not suggesting government knew –

**MR. STANLEY:** Oh, okay.

**MR. LEARMONTH:** – knew this.

**MR. STANLEY:** All right, yeah.

**MR. LEARMONTH:** I'm suggesting, and as I said –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – it will be up to the Commissioner.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** That Nalcor did not disclose this to government. Would that have –?

**MR. STANLEY:** Yeah, I think that would've raised some eyebrows.

**MR. LEARMONTH:** Why?

**MR. STANLEY:** Well, the idea that Nalcor was publicly going out with costs that were understated, and all costs are hypothetical at this front, anyways.

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TODD STANLEY

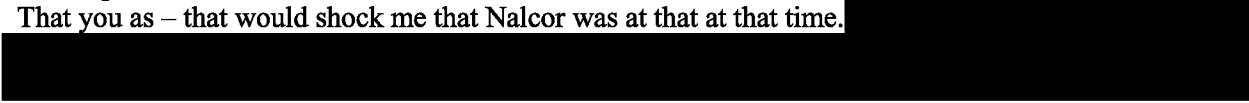
**MR. LEARMONTH:** Yes.

**MR. STANLEY:** There would've been Newfoundland politicians, including the premier at the time, who would be making press conferences, and one of the hardest parts of those press statements and Qs and As and you see – is the numbers.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** You know, the premier, the politicians stand up and say the number is X, the number is Y, right?

You get a situation where a politician is being told the number and it's not the real number, because Nalcor is trying to game what the politician is saying. Behind closed doors, that doesn't go well, usually, for the person who sent over the artificial numbers. You know, I – that's a very dangerous game to play. That you as – that would shock me that Nalcor was at that at that time.



So the idea that they would've been telling the premier numbers that were not true, and the premier may have gone forward with numbers that were not accurate, that would surprise me, especially at that period, you know. I'm not saying it didn't happen, I'm just saying that would surprise me, you know.

**MR. LEARMONTH:** Just following up on that issue of disclosure.

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** Have you read the Grant Thornton report? That's in the –

**MR. STANLEY:** Where's that at?

**MR. LEARMONTH:** That's the –

**UNIDENTIFIED MALE SPEAKER:** We looked at some of it.

**MR. LEARMONTH:** Yeah. Didn't I mention to you I was going to refer to some (inaudible) –?

**UNIDENTIFIED MALE SPEAKER:** You did with Terry, not with – that's okay. We looked at some of it. We looked at –

**MR. STANLEY:** Oh, Okay.

**MR. LEARMONTH:** Okay.

**UNIDENTIFIED MALE SPEAKER:** – at a couple of paragraphs that I think that you wanted to refer to.

**MR. LEARMONTH:** Okay. Yes. Yes.

**MR. STANLEY:** So just to be clear. So this came into government after I left, so I never saw this as a part of my job.

**MR. LEARMONTH:** Yeah.

**UNIDENTIFIED MALE SPEAKER:** The Commission retained –

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**MR. STANLEY:** Right.

**UNIDENTIFIED MALE SPEAKER:** – Grant Thornton to do this.

**MR. STANLEY:** Right. So I was aware that this was going on –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – while I was still in government, but I’ve never seen this report.

**MR. LEARMONTH:** Okay.

**UNIDENTIFIED MALE SPEAKER:** We looked at –

**MR. LEARMONTH:** I just wanted –

**MR. STANLEY:** Nalcor excluded 500 million – yes. So I think I’m on page 6.

**MR. LEARMONTH:** Yes.

**UNIDENTIFIED MALE SPEAKER:** Yes.

**MR. STANLEY:** Right. Okay.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** So – yeah.

**MR. LEARMONTH:** I’ll just read out the passage I wanted to ask you to comment on.

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** The following relate to cost estimates of the option that was selected by Nalcor of the Interconnected Island Option. Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW – that’s cumulative present worth calculation. We have been informed by Nalcor’s project team the strategic risk exposure was to be funded through contingent equity from GNL.

Now, the – just to expand a little bit more on that before I ask your to comment. The 6.2 billion, our share at the time of the announcement on December 18, 2012, it was – the sanction was authorized by government on December 7, 2012. The numbers that were given to government and Cabinet as to Newfoundland and Labrador’s share of the project, was 6.2 billion –

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** – at that point, with 1.2 being for the Maritime Link. But our share was \$6.2 billion.

**MR. STANLEY:** Yeah. Okay.

**MR. LEARMONTH:** That’s the figure.

Now, the suggestion is that Nalcor knew that there was a \$500 million amount of strategic risk and had not included it in the 6.2 billion figure, which was announced to the public. It wasn't included in there.

Would that – assuming that that's true: Would that give you any concern and, if so, why?

**MR. STANLEY:** Well, it's almost two heads you wanna answer that in. The lawyer being involved, I wouldn't have anything to do with the numbers. So the numbers are always –

**MR. LEARMONTH:** I understand that.

**MR. STANLEY:** – a bit of witchcraft.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Generally, as a civil servant seeing the process run, I'd query whether or not – that almost begs the question of whether or not government had put a figure on its risk of having given the completion guarantee.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** Which is essentially what this becomes.

**MR. LEARMONTH:** Hmm.

**MR. STANLEY:** As I understand what this is.

I don't know if government – I'm not aware of anytime where government actually asked anyone to do that analysis or to figure out whether or not we should be reporting that, or – you know, my understanding of the cost estimates from Nalcor was always, basically, hard core cost estimates with a contingency bump of, like, 10 or 15 per cent, 'cause they were so sure they had everything bolted down.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** I can't comment on whether or not it was appropriate for them to include or not include a strategic risk exposure number. I don't know accounting for –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – projects, right (inaudible) –

**MR. LEARMONTH:** Okay, but in terms of announcing to the public that this is a \$6.2 billion thing. If there was another \$500 million in strategic risk that was known to Nalcor –

**MR. STANLEY:** To Nalcor –

**MR. LEARMONTH:** – at the time, yet it wasn't included in the 6.2 billion, would that give you any concern?

**MR. STANLEY:** It would – yes, it would give me concern: it would give me concern as a taxpayer. But I guess I'd query as to whether or not one – whether it was apples and oranges with the other costs or using the 6.2. Like I said, government had always provided the completion guarantee on this, but I never saw that monetized as an amount –

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** – you know, in any cost estimates. We –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – the assumption was Nalcor is gonna get it built.

So yeah, whether as a matter of project planning and/or financial reporting, it should've been in there and it wasn't. That would be a concern. But I don't know enough about it to know.

**MR. LEARMONTH:** Yeah. I'm looking at a –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – point of view of a member of the public who is told that the cost –

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** – to the province is \$6.2 billion. Now, as a member of the public, if I find out later that there was an amount of 500 million –

**MR. STANLEY:** That should've been in that –

**MR. LEARMONTH:** – that was part of the –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – should've been part of the cost estimates at the time, I may have a concern that I wasn't told the whole story.

**MR. STANLEY:** Agree. I accept that.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yes, I agree. Yeah.

**MR. LEARMONTH:** Okay. Thank you.

**MR. STANLEY:** This is the first time I'd heard of this, though, as well. I didn't –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – know –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – anything about that (inaudible) –

**MR. LEARMONTH:** Well, I'm putting –

**MR. STANLEY:** – (inaudible).

**MR. LEARMONTH:** I'm putting this to the witnesses I interview.

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** It's on the understanding that – it's based on – it's not a hypothetical. It's based –

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** – on information –

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** – whether there's a plausible, rational explanation for it by Nalcor or someone else, that's something will have to be –

**MR. STANLEY:** Right.

**MR. LEARMONTH:** – determined by the Commissioner after he hears all the evidence.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** The – there are other things in the Grant Thornton report. I'm not going to go into it at this time.

**MR. RALPH:** I know you gave a copy to Mr. – or made one available. Is that right?

**MR. LEARMONTH:** To?

**MR. RALPH:** Mr. Paddon? Is –

**MR. LEARMONTH:** Yeah.

**MR. RALPH:** – that correct?

**MR. LEARMONTH:** Yeah.

**MR. RALPH:** Is it possible –

**MR. LEARMONTH:** I don't mind –

**MR. RALPH:** – (inaudible) –

**MR. LEARMONTH:** – referring – there's also things that –

**MR. COLLINS:** Another undertaking.

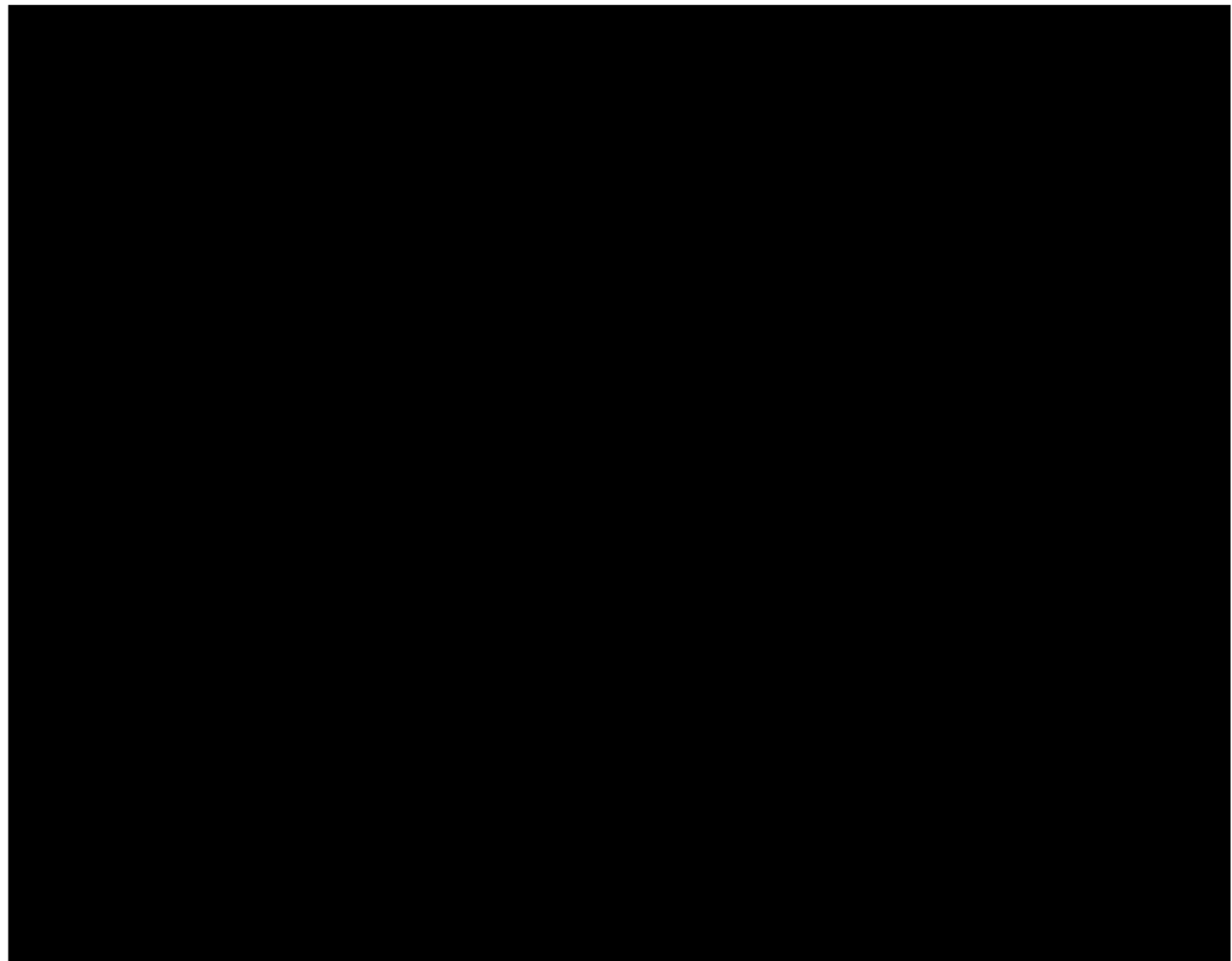
**MR. RALPH:** Okay.

**MR. LEARMONTH:** Okay.

**MR. RALPH:** We can get you a copy if you're prepared to sign an undertaking.

**MR. STANLEY:** Do I need a copy?

**MR. RALPH:** No.



**MR. LEARMONTH:** That's all right.

**MR. STANLEY:** Yep.

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**MR. LEARMONTH:** On – we'll say, at any time while you were in government – and I'm referring now to page 59 – excuse me.

**MR. STANLEY:** 59?

**MR. LEARMONTH:** No, I got the wrong page.

**MR. STANLEY:** Oh.

**MR. LEARMONTH:** Just let me – just searching for it.

Page 61, please?

**MR. STANLEY:** Strategic risk, risk schedule?

**MR. LEARMONTH:** Page 61 – yeah – or at the bottom.

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** It says: during a presentation at the Lower Churchill Project, we were shown the following. That's a graph. And the next page says: the above image notes that on July 15, 2007, schedule was a P1. This means there was a 99 per cent chance that the schedule for first power would not be met.

**MR. STANLEY:** In – as of July 2017.

**MR. LEARMONTH:** Well, the estimate – the – okay, just to give a little background – and you can rely on this for the purpose of the question – that Nalcor was proceeding on the basis that first power, in other words the project will be completed and capable of delivering first power by some date in July 2017. That was what they were going on.

**MR. STANLEY:** From DG2?

**MR. LEARMONTH:** No.

**MR. COLLINS:** DG3.

**MR. STANLEY:** DG3.

**MR. LEARMONTH:** Completion. Yeah.

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** Let's get it all completed July –

**MR. STANLEY:** Yup.

**MR. LEARMONTH:** – some date in July.

**MR. STANLEY:** Yup.

**MR. LEARMONTH:** Now, Nalcor had been told by their consultants that that was a very aggressive date; that there was a maximum of 1 per cent chance –

**MR. STANLEY:** Of making that date.

**MR. LEARMONTH:** – of making that date. A P1 means – well, P1 is 1 per cent, so it's somewhere between zero and 1 per cent.

**MR. STANLEY:** Oh, I'm sorry. Okay, yup.

**MR. LEARMONTH:** Yeah. This – and that's why it says, this meant there was a 99 per cent chance that the schedule first power would not be met. Now, on the basis that, you know, time is money, obviously, were you aware of that (inaudible) –

**MR. STANLEY:** No. No, I – I had no idea. At any given point in time, the issues around what the schedule of the project would be, and actually the dollar figures of the costs, weren't things that, as the solicitor involved, we were really involved in.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** You know, Natural Resources was carrying the ball on all of that kind of stuff and concerned with all that –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – and Finance was concerned with the financing. Our job was to just get the legal advice and the legal structures in place to get the project there. So I – I never heard that they knew they were gonna – that their original project schedule was a 1 per cent chance. No, I never heard that at all. That's a –

**MR. LEARMONTH:** Would that give you any concern if you had known that, say, at the time of sanction?

**MR. STANLEY:** Yes. I guess, the next question obviously becomes what's the sensitivity? You know, was it a 98 per cent chance it's gonna be two years late, or is it a 98 per cent it's gonna be two weeks late? You know –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – that's the next question you go to.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** But yes, it would've surprised me, again, if they were sending politicians to microphones to say the project will be done by X, or they were making public statements that the project would be completed by X, and they knew it was a 1 per cent chance. That does surprise me, yeah.

**MR. LEARMONTH:** Okay, well, I'm not gonna go through all the Grant – I just wanted to select some examples of – from the Grant Thornton report and then take it from there.

So maybe we'll take a 10-minute break now.

**MR. LEAMON:** Okay.

**MR. STANLEY:** Sure.

**MR. LEARMONTH:** Yeah. Is that okay?

**MR. STANLEY:** Yeah.

**MR. LEAMON:** How long do you think –?

(Break.)

**MR. LEARMONTH:** You all set? All right, we're back on the record. In the document binder – review 002 of binder 1 of 1, at tab 21.

**MR. STANLEY:** Hold on –

**MR. RALPH:** (Inaudible.)

**MR. STANLEY:** – hold on now.

**MR. LEAMON:** Yeah.

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**MR. LEARMONTH:** Tab 21.

**MR. RALPH:** Okay.

**MR. STANLEY:** Oh. Oh, okay.

**MR. LEARMONTH:** This is, of course, the agreement providing the terms and conditions for the federal loan guarantee.

**MR. STANLEY:** This is part of the agreement providing key terms and conditions. You're missing about six pages of table I think –

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** – at the tab.

**MR. LEARMONTH:** (Inaudible.)

**MR. STANLEY:** This one's – yeah.

**MR. LEARMONTH:** Obviously, I won't – I –

**MR. STANLEY:** Yeah.

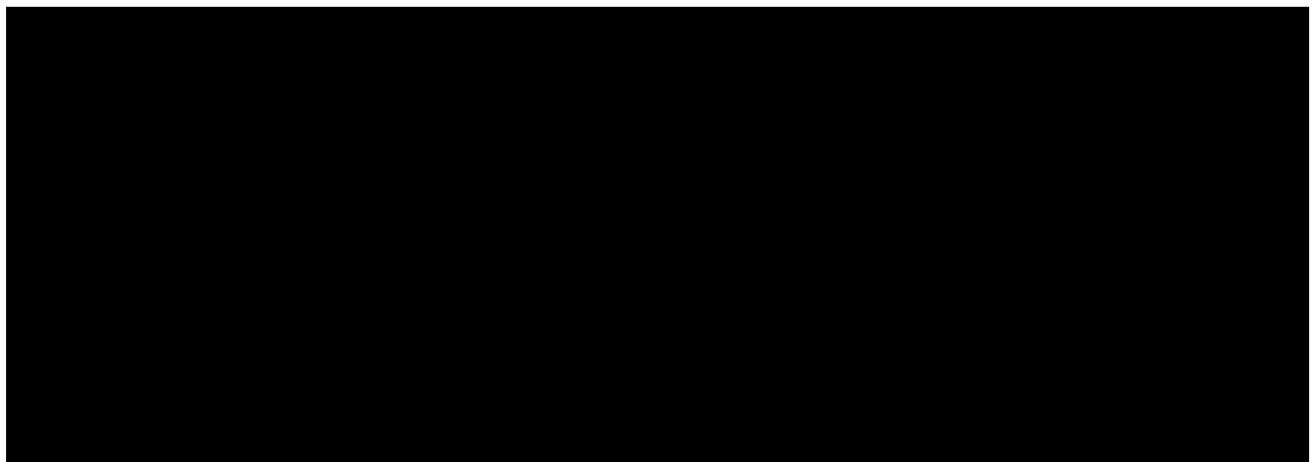
**MR. LEARMONTH:** I won't be asking questions about the terms and conditions –

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** – just the subject matter.

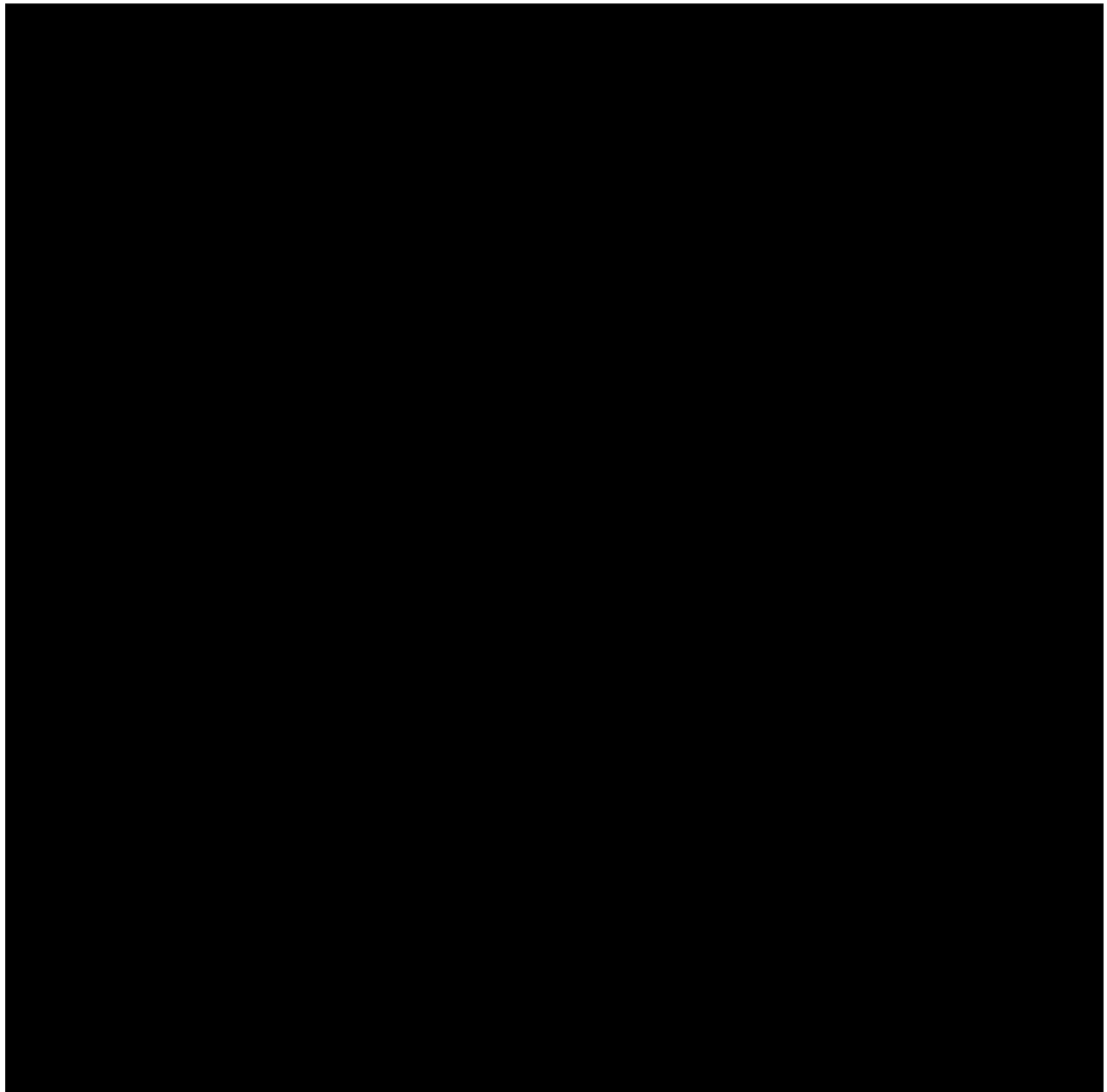
**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** But do you – were you involved in the negotiations on the federal loan guarantee?



**MR. LEARMONTH:** And government had retained outside counsel, you mentioned before –

**MR. STANLEY:** Yes, sorry.



**MR. LEARMONTH:** All right.

And then you – so you were working with Bordner [sp Borden] –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – Borden Ladner Gervais –

**MR. STANLEY:** Borden Ladner – yeah.

**MR. LEARMONTH:** – and – who were overseeing the negotiations between Canada (inaudible) –

**MR. STANLEY:** No, we were involved in the negotiations when it came to the terms of the documents that we were being required to sign. So it would've been the equity support guarantees, mainly. And we



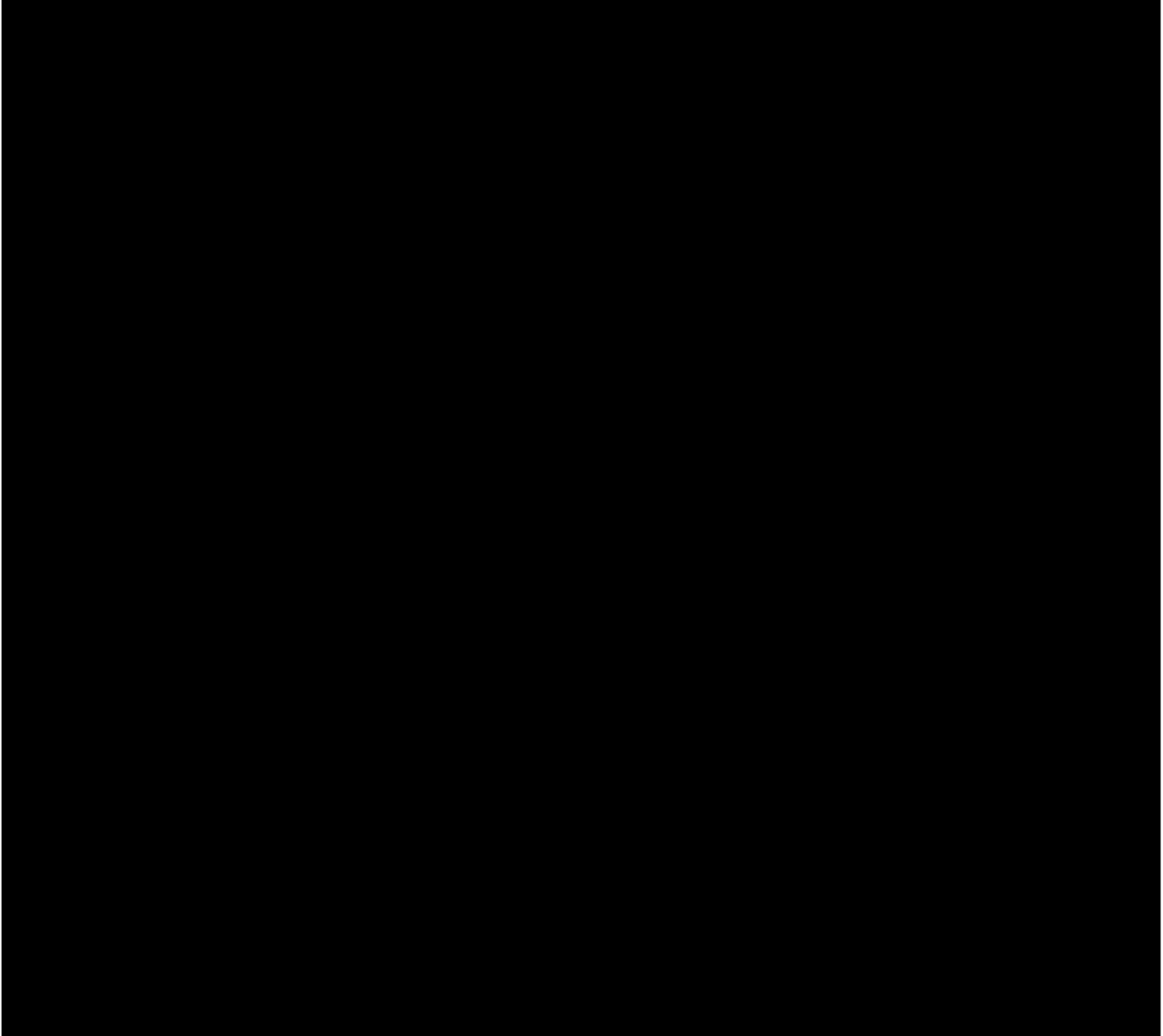
**MR. LEARMONTH:** Yes.

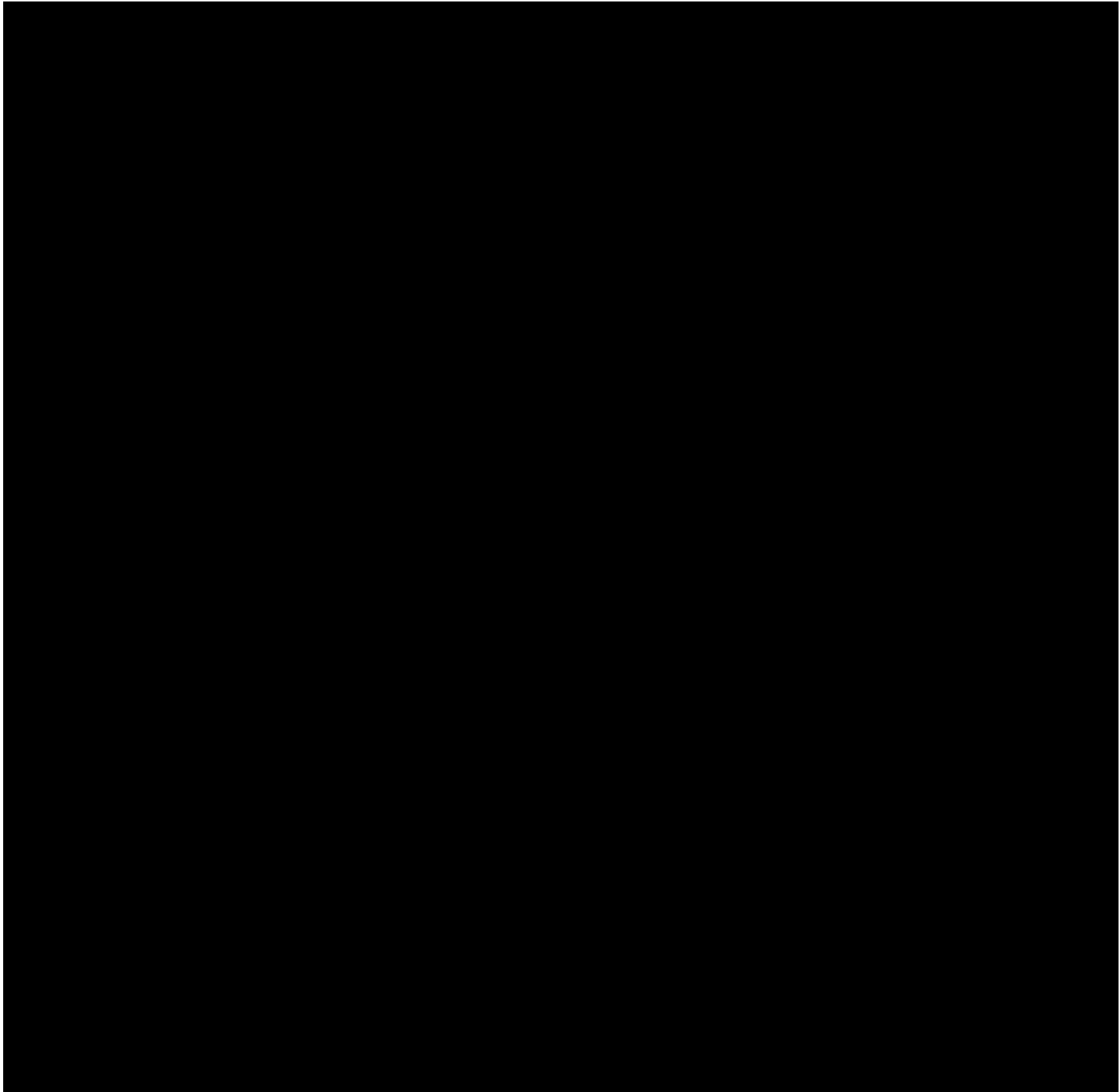
The – okay, that eventually was concluded I think November 30, 2013 –

**MR. STANLEY:** Yes, yeah.

**MR. LEARMONTH:** Okay. All right.

The next document – 22 – what we referred to as, sort of, the term sheet between Nalcor and Emera, dated November 18, 2010. Were you involved in the negotiation of these –





**MR. LEARMONTH:** Thank you. So then the agreement was signed and subsequently announced. We've already touched on that. The – moving to another topic – the Joint Review Panel report. Do you remember that? That was the environmental report that was issued in – filed in, I believe, August 2011.

**MR. STANLEY:** I remember the process for – the Department of Justice was involved in government's presentations in front of the Joint (inaudible) – the JRP.

**MR. LEARMONTH:** Yes.



**MR. LEARMONTH:** That's (inaudible).

**MR. STANLEY:** Or there's some of that.

**MR. LEARMONTH:** But there are other points.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** And the province prepared a response, which is at tab 14.

**MR. STANLEY:** Oh right. Yes, I saw that last night, sorry. Tab 14?

**MR. LEARMONTH:** Tab 14, yeah. The report is at tab 6.

**MR. RALPH:** Is that the right –

**MR. STANLEY:** No, it's not the right binder, sorry.

**MR. LEARMONTH:** This is core document.

**MR. STANLEY:** Okay, yup.

**MR. LEARMONTH:** The Joint Review Panel report is at tab 6, and the province's response –

**MR. STANLEY:** This is at 14.

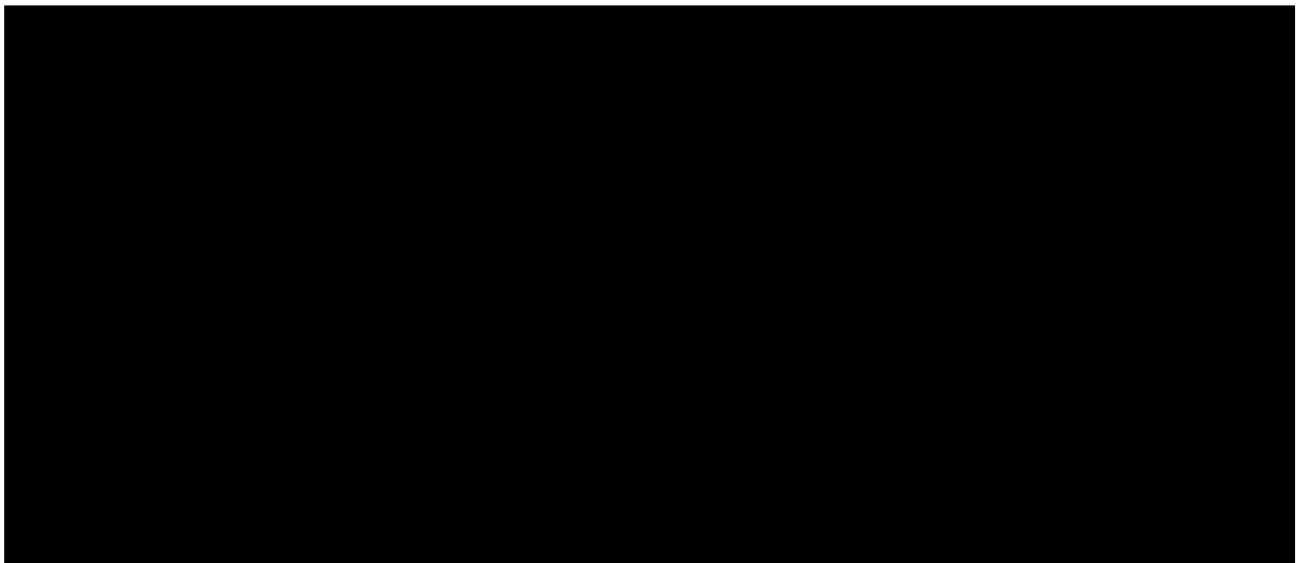
**MR. LEARMONTH:** – to the recommendations is tab 14.

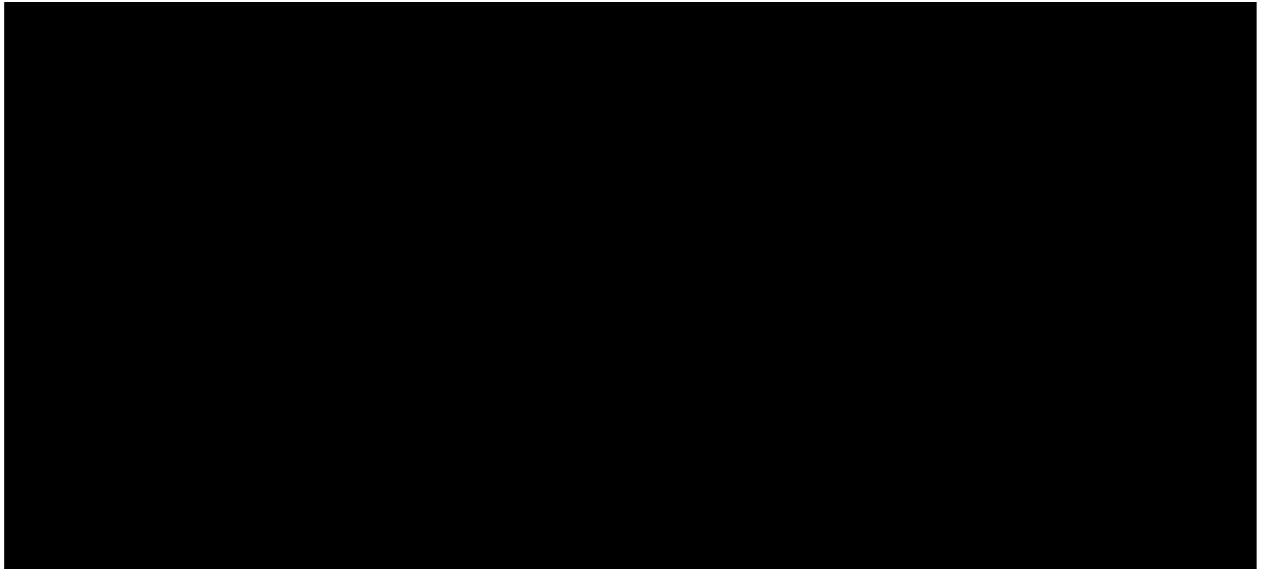
**MR. STANLEY:** Right. So –

**MR. LEARMONTH:** I wanted to know whether you had any input in the preparation of the Government of Newfoundland and Labrador's response to the JRP panel, which is found at tab 6.

**MR. STANLEY:** I –

**MR. LEARMONTH:** Excuse me, tab 14.





**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – issue.

**MR. LEARMONTH:** But I just took – I’ll give you a couple of examples.

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** On the first page of this March 15, 2012, response –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – it says: number 1 and then recommendation 4.1. The panel recommends that if the project is approved before making the sanction decision for each of Muskrat Falls and Gull Island – because that was in play at the time – government (inaudible) will make a separate and formal review that projected cash flow of the project component be considered for sanctioning – either Muskrat Falls or Gull Island to confirm whether that component would in fact provide significant long-term financial returns that would benefit – and the response of the province was that –

**MR. STANLEY:** It does not support –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – the assumption that the information –

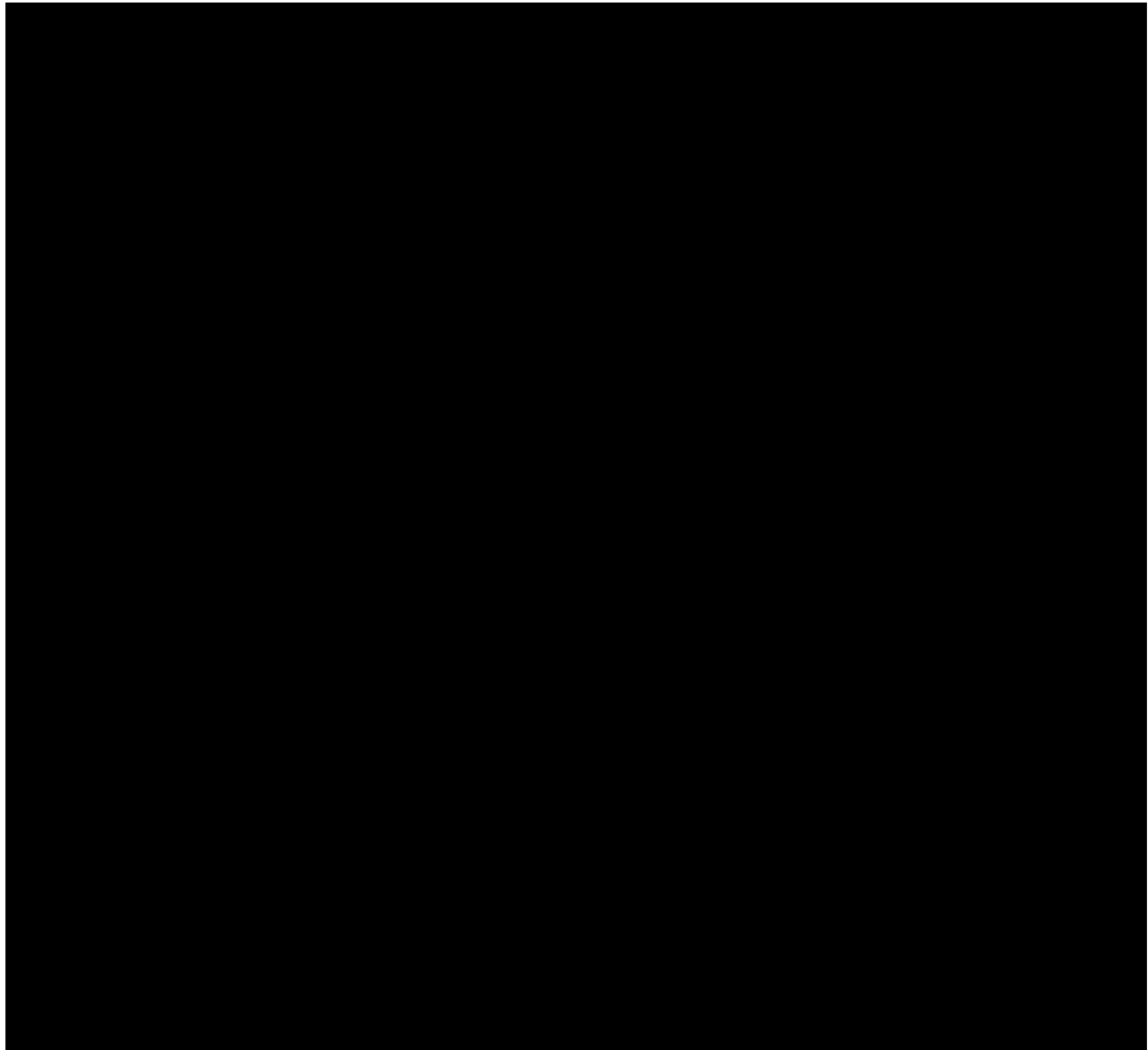
**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – provided by the proponent –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – was inadequate.

**MR. LEARMONTH:** Yeah. Would you have had any input into that?

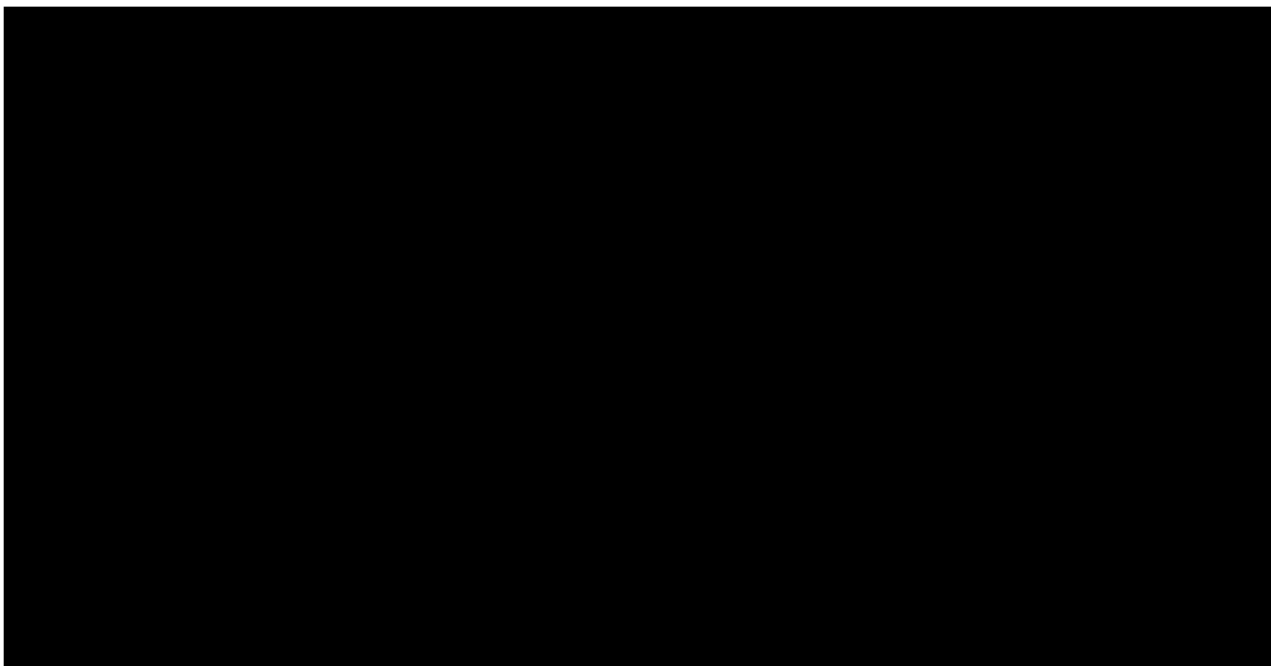


**MR. LEARMONTH:** Yes.

**MR. STANLEY:** We had the inquiry – I was telling Peter – we had the inquiry staffed – there was a lawyer who was doing basically the same job Peter is doing when it came to government witnesses going on the stand at the JRP in Goose Bay, where it was held. There was a government lawyer there just providing counsel and advice to the government witnesses.

**MR. LEARMONTH:** And I'll just give you one more example. I don't wanna go through the whole report. Recommendation 4.2, the panel recommends that before government make their decision, project (inaudible), Government of Newfoundland and Labrador and Nalcor commission an independent analysis to address the question: what would be the best way to meet domestic demand under the no-project option, including the possibility of the Labrador-Island interconnection no (inaudible) than 2041, et cetera.





I wanted to turn to the – there's no document on this point, but the – after the Nova Scotia UARB would not approve – decided not to approve the application in July 2013 unless there was a market-energy-priced obligation on Nalcor to offer –

**MR. STANLEY:** Yeah.



**MR. STANLEY:** They approved.

**MR. LEARMONTH:** In late November –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – 2017 and then a few days later the federal loan guarantee was (inaudible).

**MR. STANLEY:** I remember I was with Charles Bown when he found out that Nova Scotia had – the UARB had approved, 'cause that was one of our outstanding conditions precedent before the financing could occur.

**MR. LEARMONTH:** Yeah.

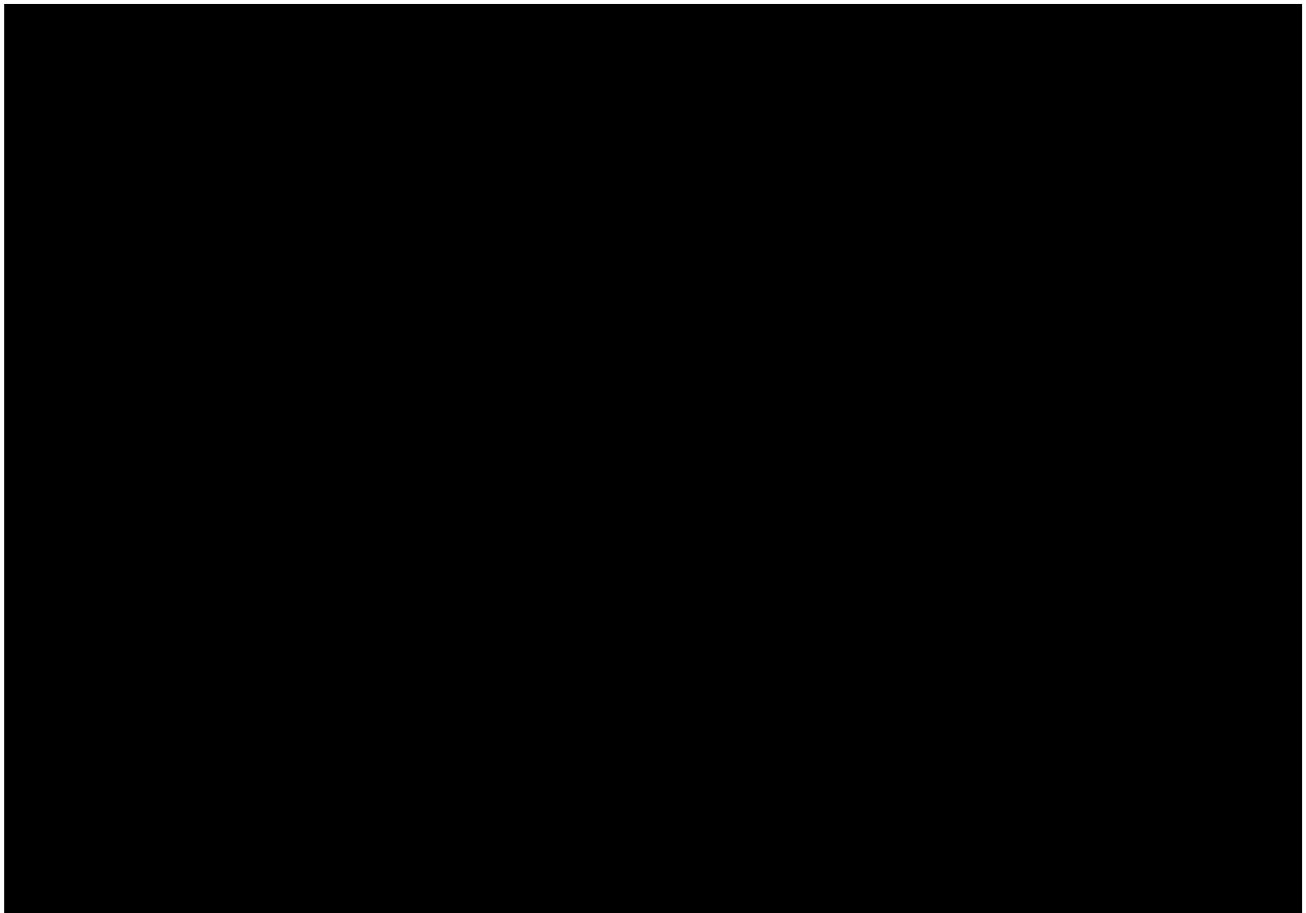
**MR. STANLEY:** Yeah.

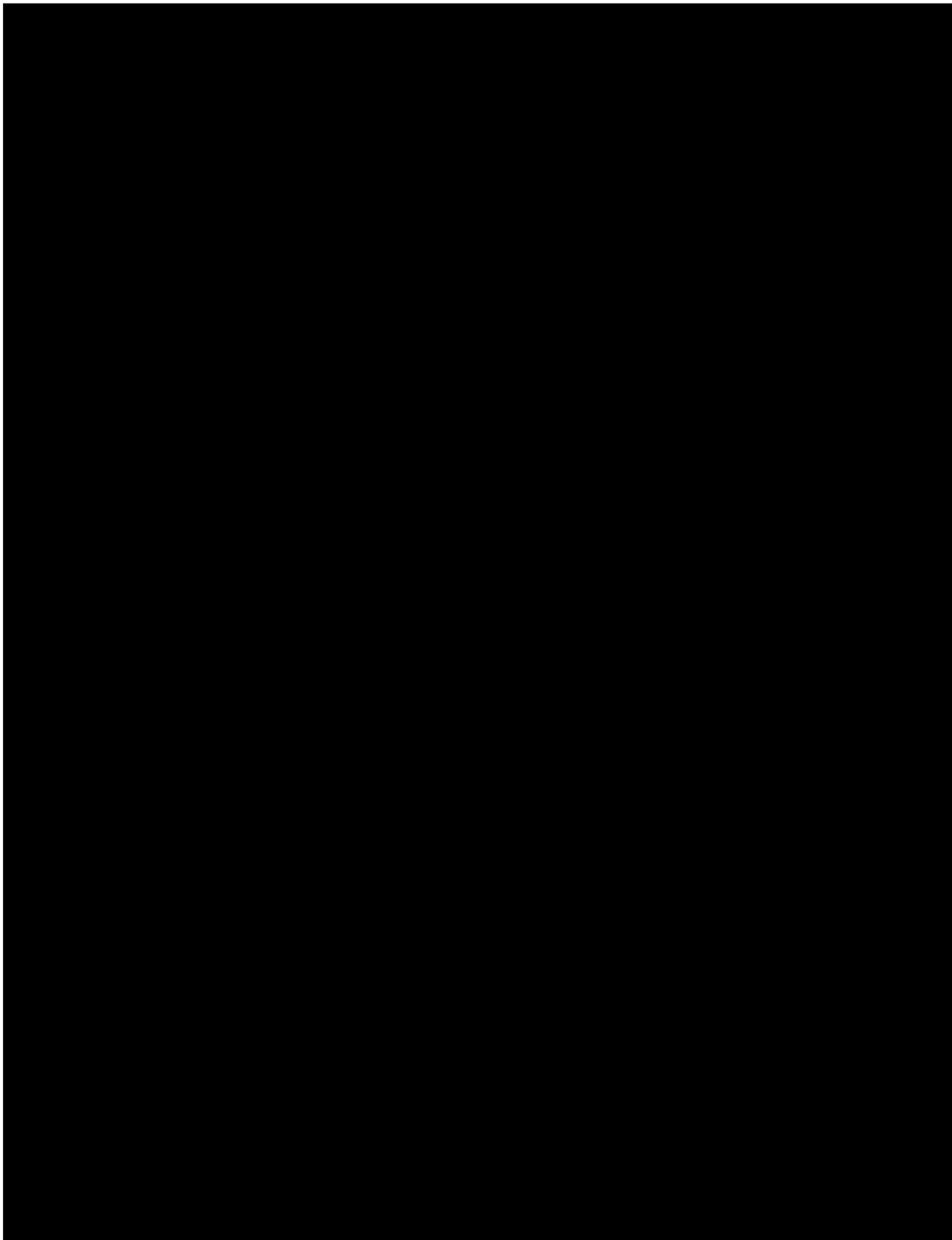
**MR. LEARMONTH:** Well, we – I think the reason for that was that unless Nova Scotia was part of the deal –

**MR. STANLEY:** The feds weren't coming in.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Yeah.



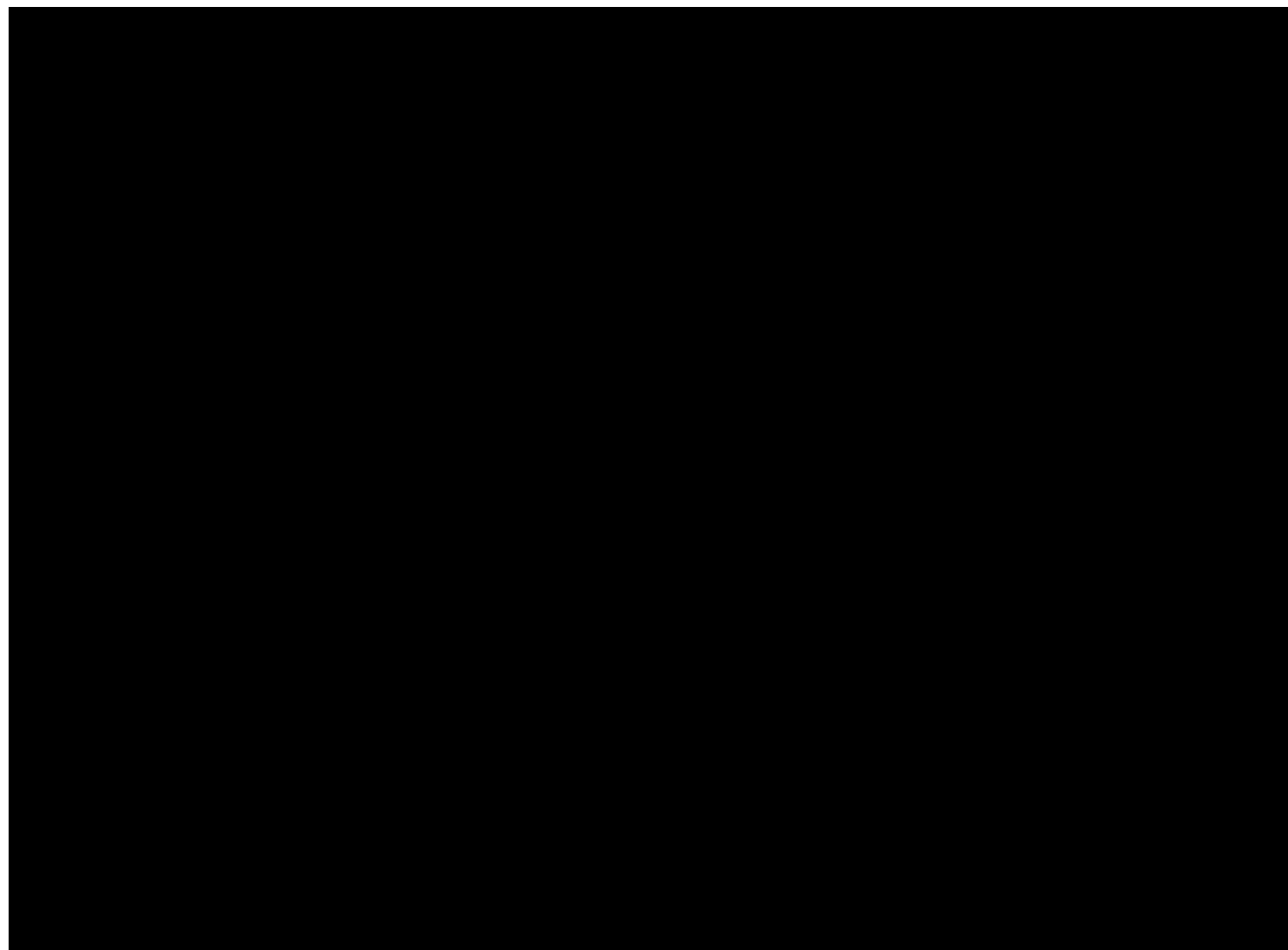




**MR. LEARMONTH:** What was the purpose of this? I mean, I know that –

**MR. STANLEY:** The only – so they were put up – they were publicly tabled, in the House, I think.

**MR. LEARMONTH:** Yeah. Yeah.



 it's (inaudible) –

**MR. STANLEY:** The documents are not on –

**MR. LEARMONTH:** – isn't it?

**MR. RALPH:** Well, you can still get them.

**MR. STANLEY:** You can still get them.

**MR. RALPH:** Yeah. It's on Nalcor –

**MR. STANLEY:** No, well that website –

**MR. COLLINS:** Yes, it's there –

**MR. RALPH:** It's on Nalcor.

**MR. STANLEY:** It's on Nalcor's stuff. That website, thepowerisinourhands.ca was actually, later I don't know what happened, but it ended up being for, like, a sushi yoga place in BC. I went looking for them in 2016, and I knew the website, thepowerisinourhands.ca, enter, and I got like a restaurant in BC, so you know –

**MR. RALPH:** Yeah, that's great.

**MR. STANLEY:** – it was funny, it was classic.

**MR. LEARMONTH:** Okay. But this – so why was this an important part of the government communication strategy of – I assume it was that – can we wait until 2041? Was this an attempt to – (inaudible) I should ask you, what was your understanding of the purpose of dealing with this question of can we wait until 2041?

**MR. STANLEY:** I don't know. At the time, I don't know where the questions that he was fending off were coming from, frankly. I don't if they were from the JRP or if they were from the public commentary that was coming left, right and center in the media at the time.

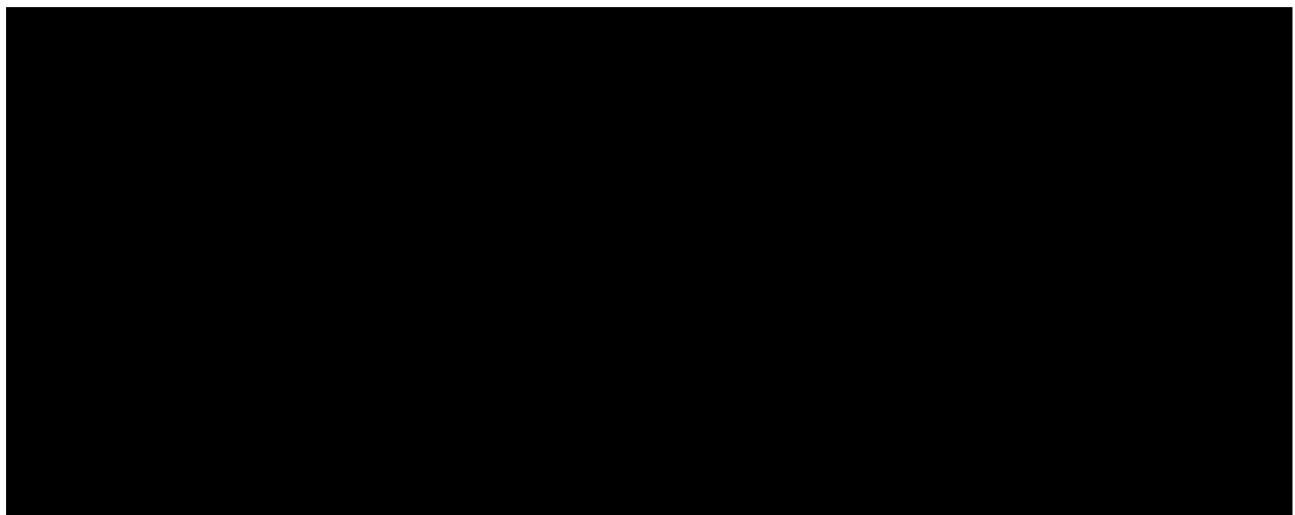
**MR. LEARMONTH:** Yeah.

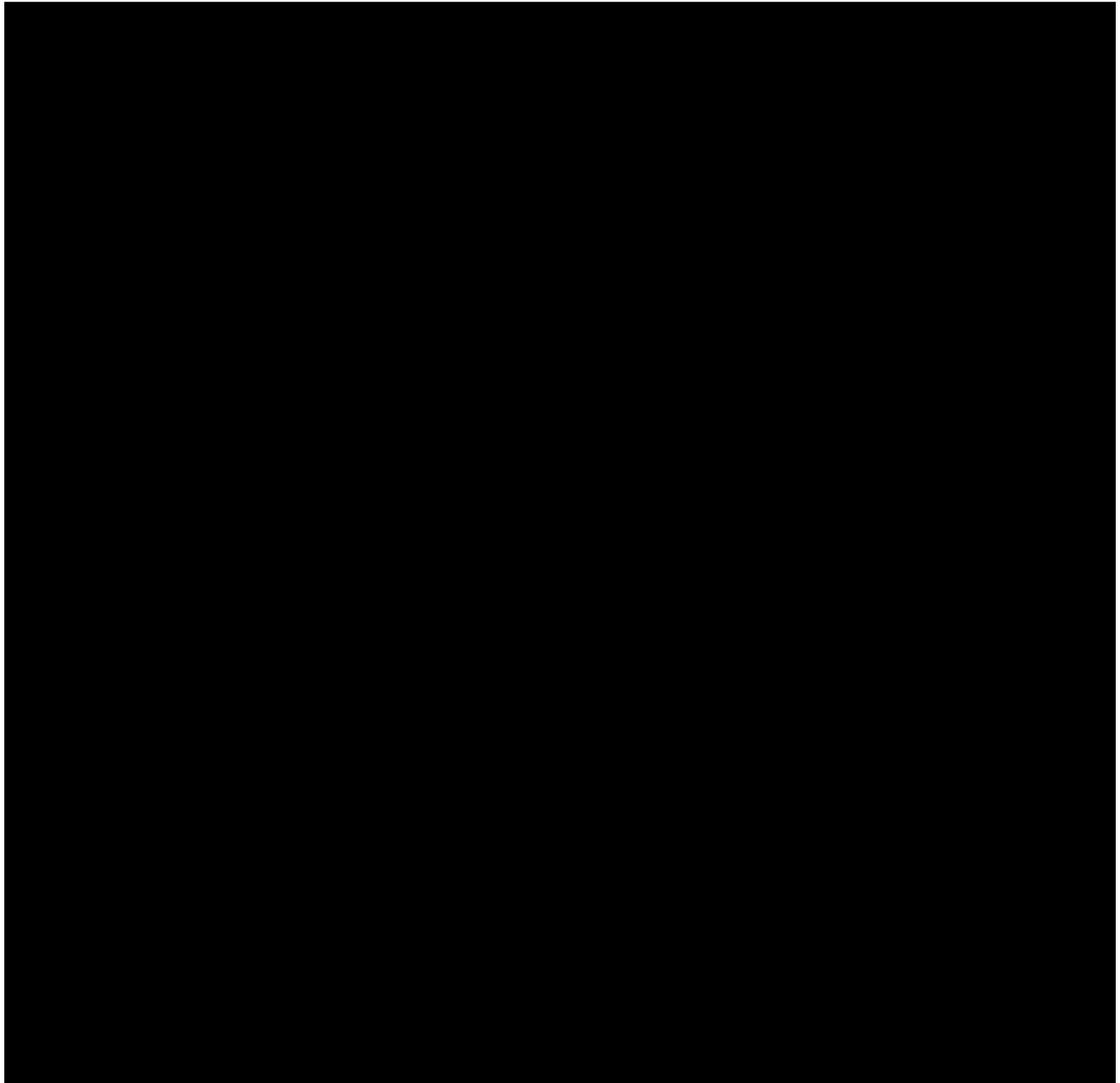
**MR. STANLEY:** I mean, the fundamental issue with it is – the fundamental assumption is that in 2041 we're gonna have all this power –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – which isn't an accurate assumption to start with, you know.

**MR. LEARMONTH:** Right.





**MR. LEARMONTH:** All right.

Well, I'm gonna turn to water management. Michael's going to take over after I introduce and make a few comments. I've included at – binder 1 refers to – tab 23 and 24. These are the –

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**MR. LEARMONTH:** – factums that were filed in Quebec's Supreme Court, because I think they're helpful in understanding the positions –

**MR. RALPH:** Sure.

**MR. LEARMONTH:** – (inaudible) parties in the – anyway, the water management issue. I think the starting point for the discussion is the – I think it was in November 2009 that Cabinet referred the matter to the Public Utilities Board – or passed legislation, which allowed the Public Utilities Board to make a –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – water coordination agreement [sp Water Management Agreement] on the Lower Churchill?

**MR. STANLEY:** I would suggest –

**MR. LEARMONTH:** What – correct if I'm –

**MR. STANLEY:** Yeah –

**MR. LEARMONTH:** – wrong because –

**MR. STANLEY:** – I would suggest it goes back before that –

**MR. LEARMONTH:** All right.

**MR. STANLEY:** – 'cause I think the amendments that were made to the *Electrical Power Control Act* to put a water management regime in place –

**MR. LEARMONTH:** Yeah, that's tab 18 –

**MR. STANLEY:** – are like –

**MR. LEARMONTH:** – (inaudible).

**MR. STANLEY:** – 2007.

**MR. LEARMONTH:** 2018 is the – there's a reference to that if you wanna turn that up.

**MR. STANLEY:** 2008. Okay, right.

**MR. LEARMONTH:** So –

**MR. STANLEY:** So –

**MR. LEARMONTH:** – it says: issue in the spring, 2006.

**MR. STANLEY:** Right.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** We passed – yes. We didn't –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yeah, so we did a lot of work on water management to get the amendments into the House in 2007.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** And then, the amendments were held and weren't promulgated until we had the regulations done.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** And then once the regulations were done – this was all done at the same in 2008 – and then a process started whereby, I think, CF(L)Co – Nalcor and CF(L)Co started a process to negotiate a water management agreement. At the end of the day, that wasn't successful. And then it was referred to the PUB, and then the PUB issued a Water Management Agreement.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – by the time it got done.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yeah.

**MR. STANLEY:** Is that tab 2? Am I looking at your –

**MR. RALPH:** No, this must be a different binder, is it?

**MR. STANLEY:** No.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** That's tab 2. It's not tab 2 of this one – okay, hold on now.

**MR. RALPH:** Okay ...

**MR. LEARMONTH:** Do you have that (inaudible) –

**MR. COLLINS:** There's – cover sheets are – got messed up (inaudible).

**MR. RALPH:** So this is –

**MR. STANLEY:** So tab 2 of this one is not that, okay.

**MR. COLLINS:** No.

**MR. STANLEY:** So I'm in the wrong –

**MR. RALPH:** Tab 2 is MHI report.

**MR. STANLEY:** But I saw that memo –

**MR. LEARMONTH:** Maybe you could give me your copy, Mike?

**MR. STANLEY:** I saw that memo last night –

**MR. COLLINS:** These (inaudible) – this is the one.

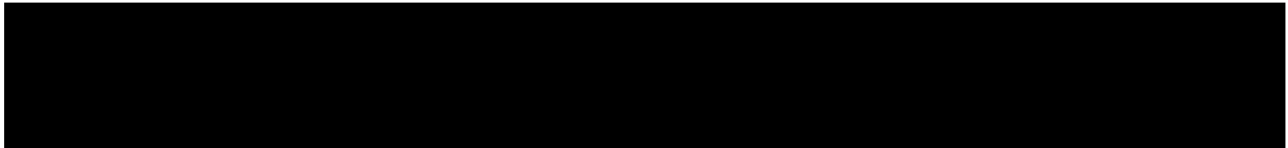
**MR. STANLEY:** – as I was going through it.

**MR. RALPH:** I'm sure it's here somewhere –

**MR. STANLEY:** It's here somewhere –

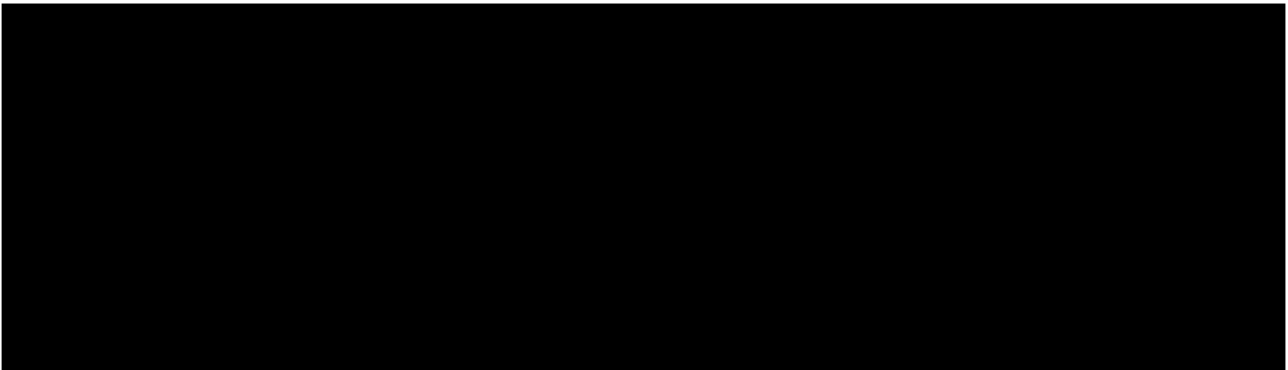
**MR. LEARMONTH:** (Inaudible) sure of that, yeah.

**MR. RALPH:** Here – that's great – here it is.



**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Yep.





**MR. COLLINS:** Yeah.

**MR. LEARMONTH:** So then the – anyway, the water management regulations were passed and the matter was referred to the PUB and –

**MR. STANLEY:** Yup.

**MR. LEARMONTH:** – just to move the conversation forward – Hydro-Québec was asked whether they wanted to participate. They didn't. They sent a letter saying our rights are protected by section 5.7, which generally said that –

**MR. STANLEY:** No adverse effect.

**MR. LEARMONTH:** – pre-existing –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – contracts would be – take priority –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – over the – the Water Management Agreement would be subordinate to the –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – pre-existing agreement. So they didn't participate.

**MR. STANLEY:** Not exactly that but yes, (inaudible).

**MR. LEARMONTH:** Okay, correct me –

**MR. STANLEY:** Yeah.

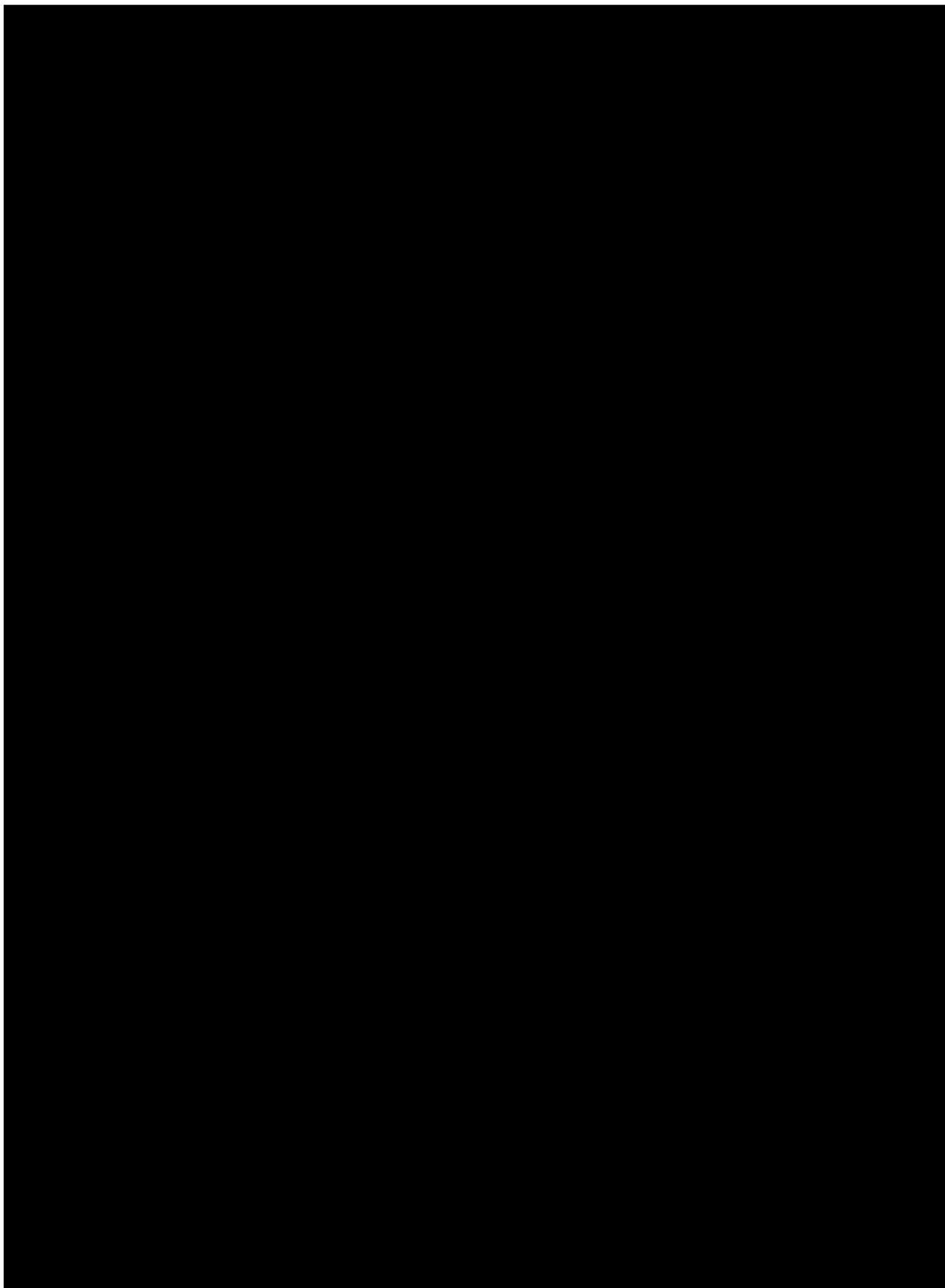
**MR. LEARMONTH:** – correct me.

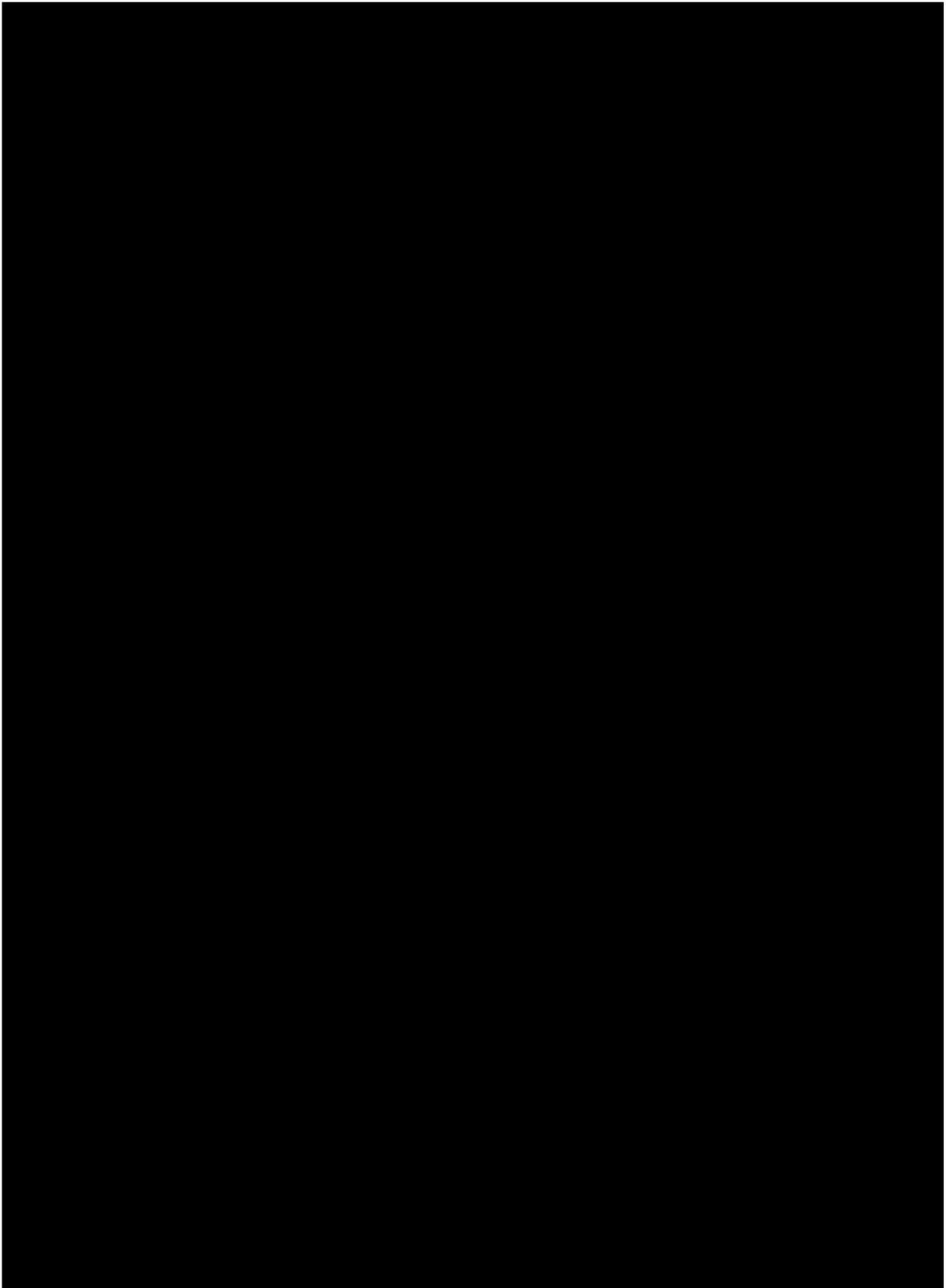
**MR. STANLEY:** Well, I think the section of the legislation says will not adversely affect –

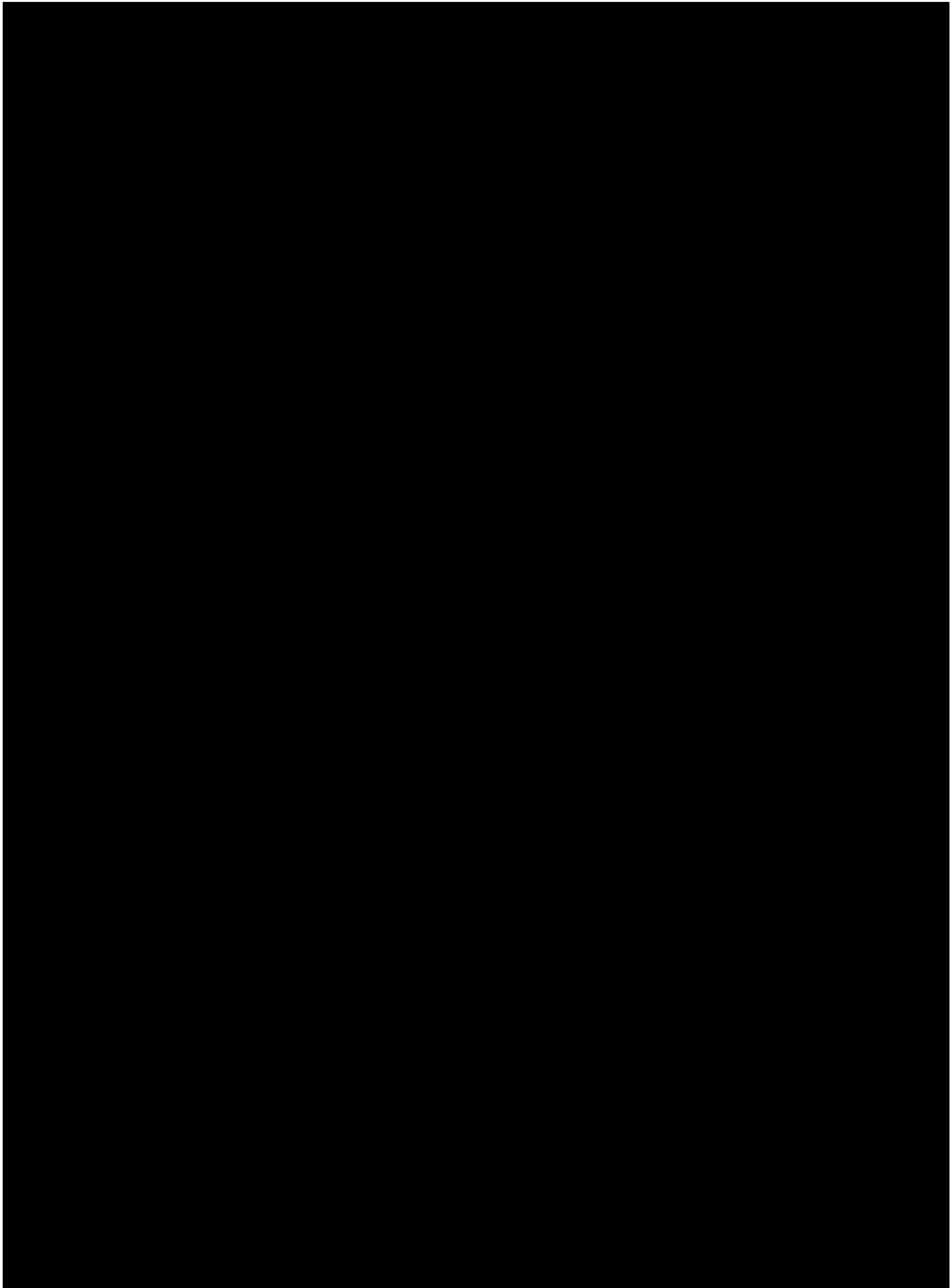
**MR. LEARMONTH:** Yes.

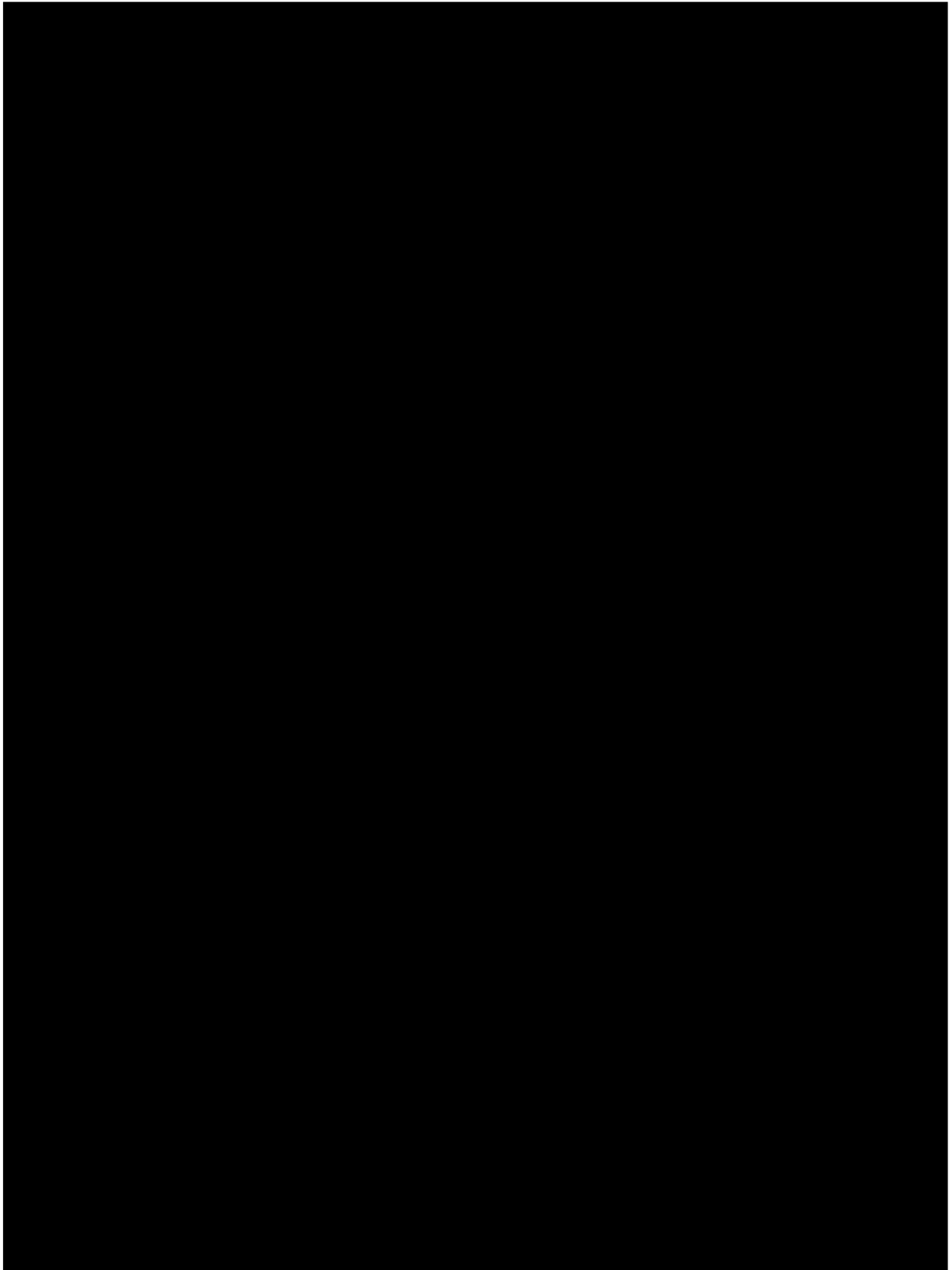
**MR. STANLEY:** – I think is the terminology.

**MR. LEARMONTH:** Yeah.











**MR. LEARMONTH:** It won't be –

**MR. STANLEY:** But that's what the thinking was –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – we wanted – right.

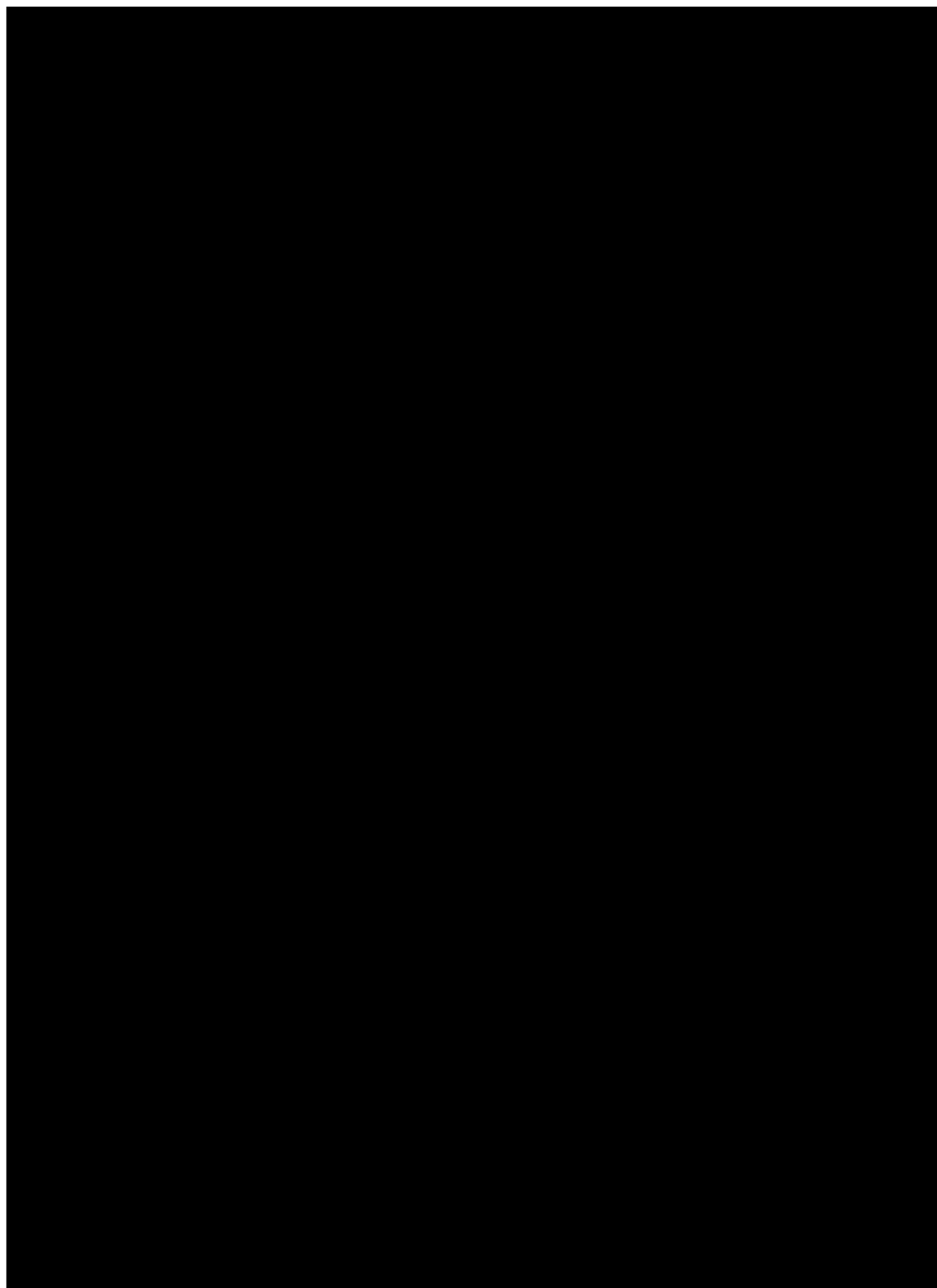
**MR. RALPH:** 'Cause we had this discussion before we came over.

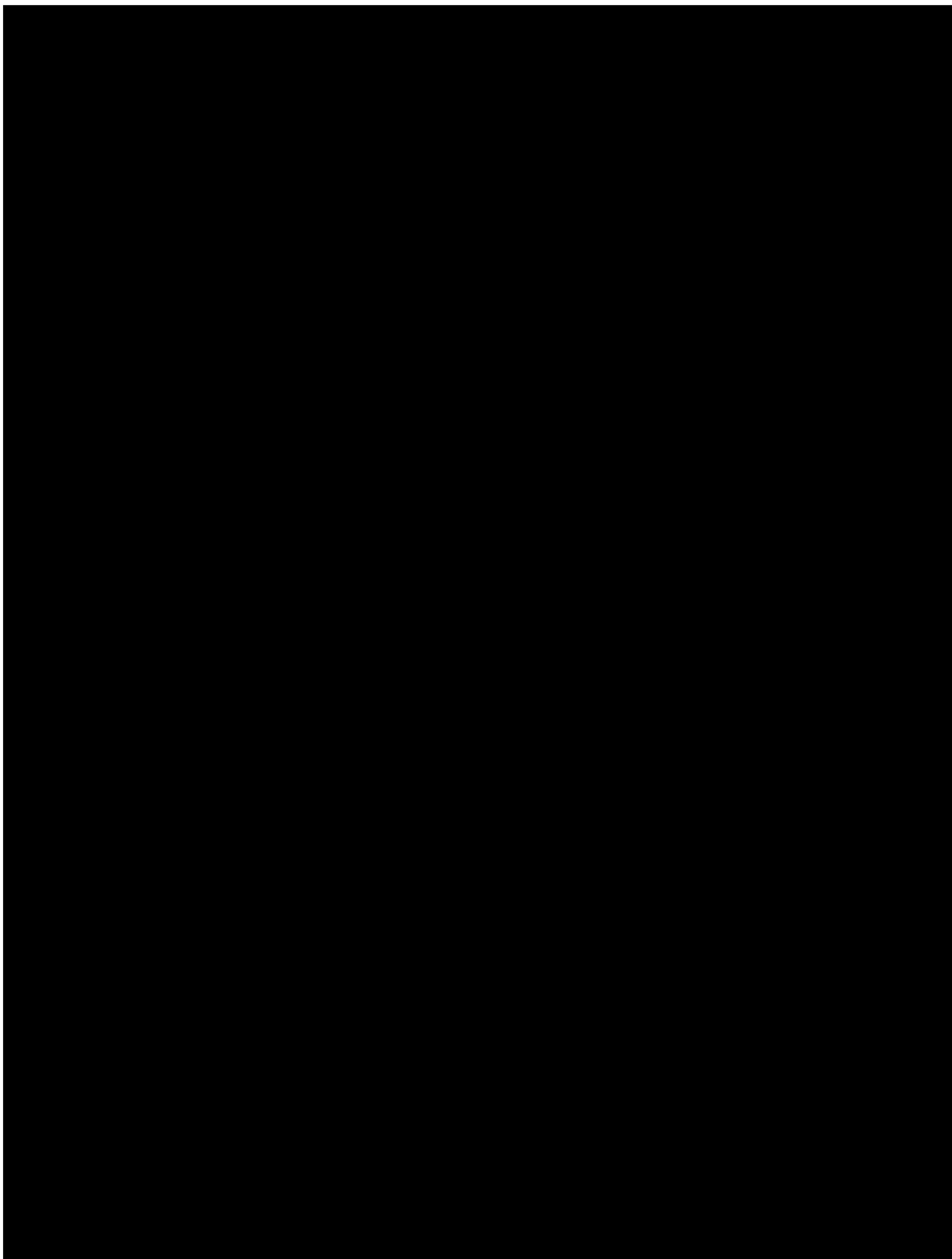
**MR. STANLEY:** Yeah.

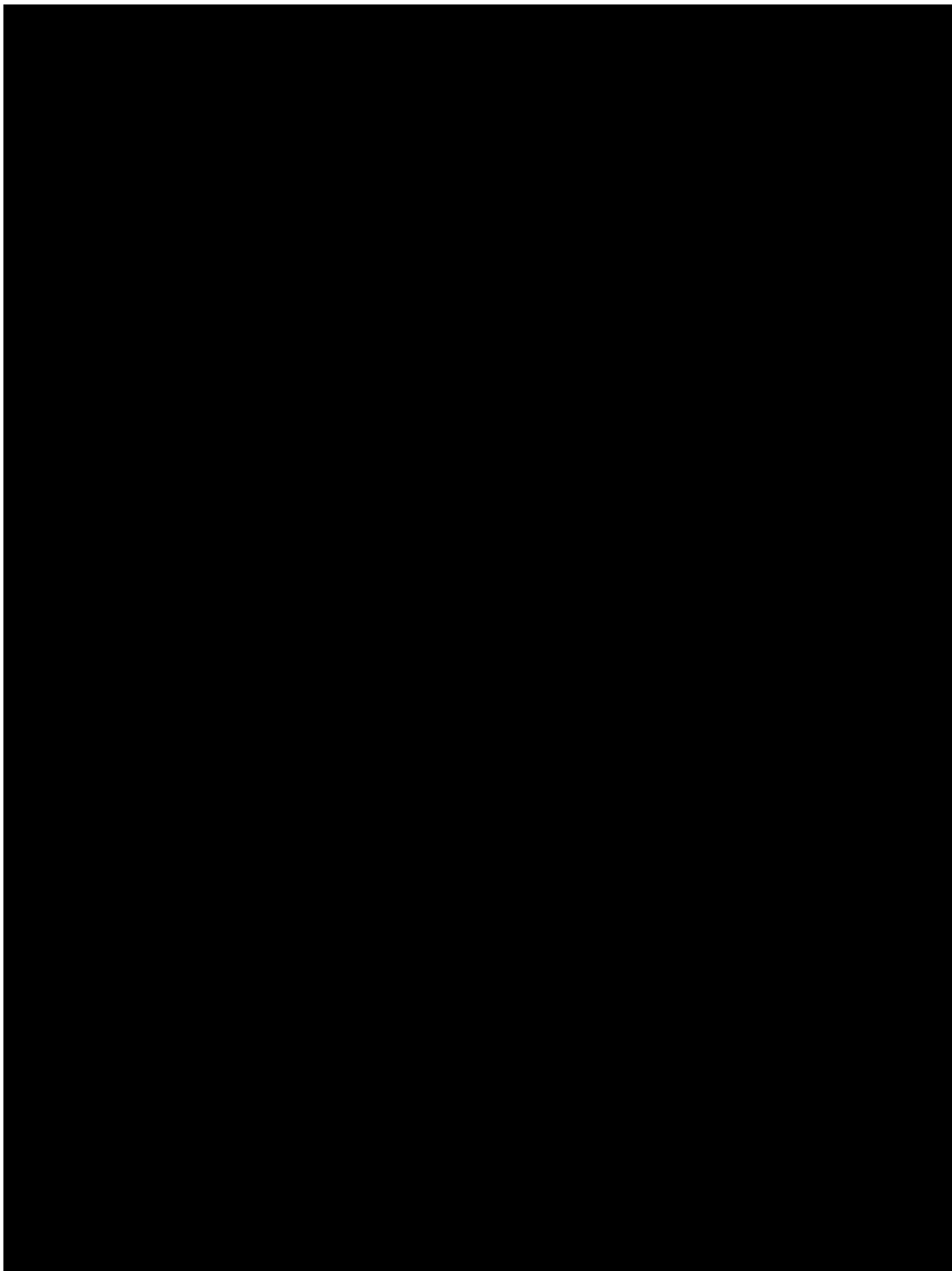
**MR. RALPH:** On the one hand, we have –

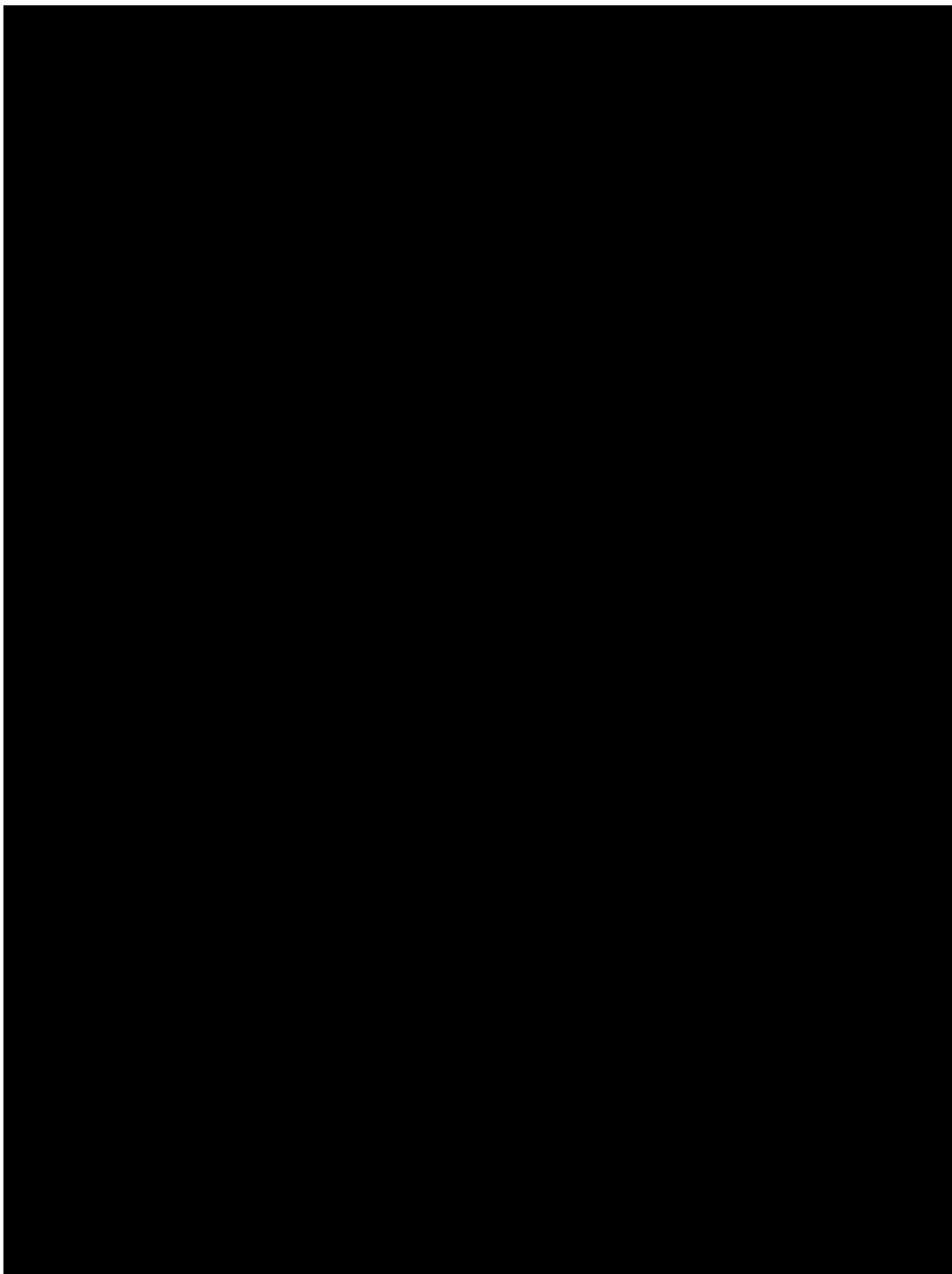
**MR. STANLEY:** Yeah.

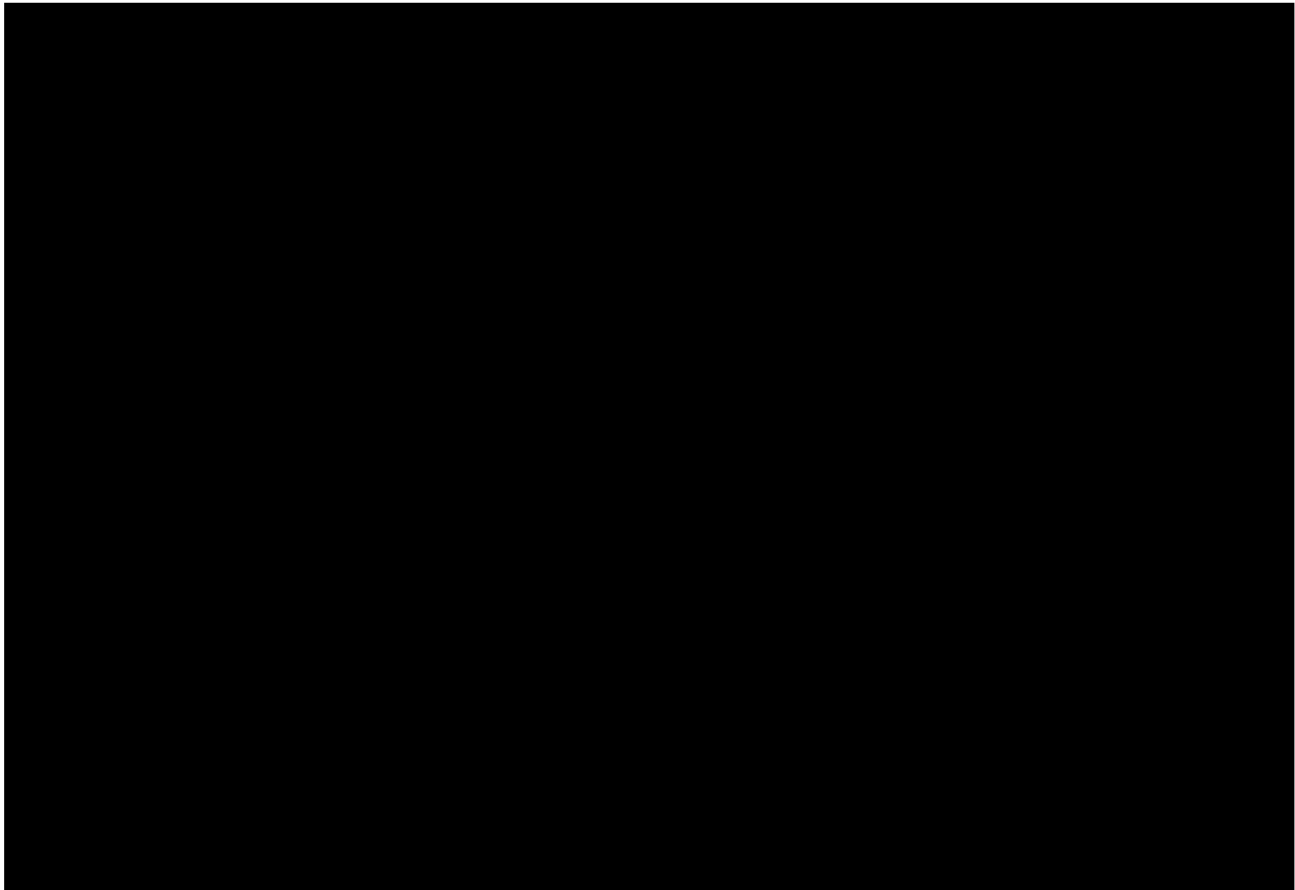










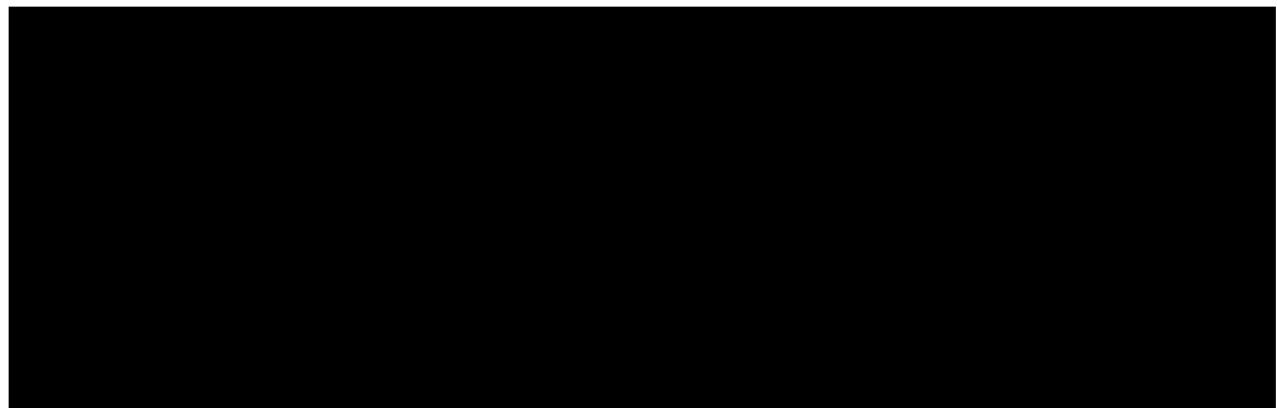


**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** It's a weird space. Because we've been hearing all this stuff. You know, there were periods of time where basically you go to someone and say: Look, this is the media, this is what's out in public. This is part of what drove Minister Kennedy to finally wanna get something out. This is what they're saying in the press.



So those issues, on a number of fronts but on this one in particular, is what prompted Minister Kennedy to write those information things to at least get the record straight on some of this stuff. Because he'd run into debates with people to stand up and go: When the province signed the power contract.



**MR. LEARMONTH:** The premier came out saying: We gotta come out swinging on this. Like, it was a big deal made about –

**MR. STANLEY:** Right.

**MR. LEARMONTH:** – something that probably should've been –

**MR. STANLEY:** Well, that's –

**MR. LEARMONTH:** – met with a very moderate response.

**MR. STANLEY:** Well, that's a –

**MR. LEARMONTH:** But that's a –

**MR. STANLEY:** – political decision.

**MR. LEARMONTH:** That's a political decision.

**MR. STANLEY:** I mean, I don't have any question that the implications for CF(L)Co or the possible implications for CF(L)Co's power deliver obligations and Nalcor's plans to monetize energy out of the Upper Churchill under the renewal contract.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** All of that's on the table.

**MR. LEARMONTH:** Yes.

**MR. LEARMONTH:** So it's not –

**MR. STANLEY:** – (inaudible) say –

**MR. LEARMONTH:** – just one issue, there's a lot different –

**MR. STANLEY:** There's a lot of stuff.

**MR. LEARMONTH:** A lot of stuff.

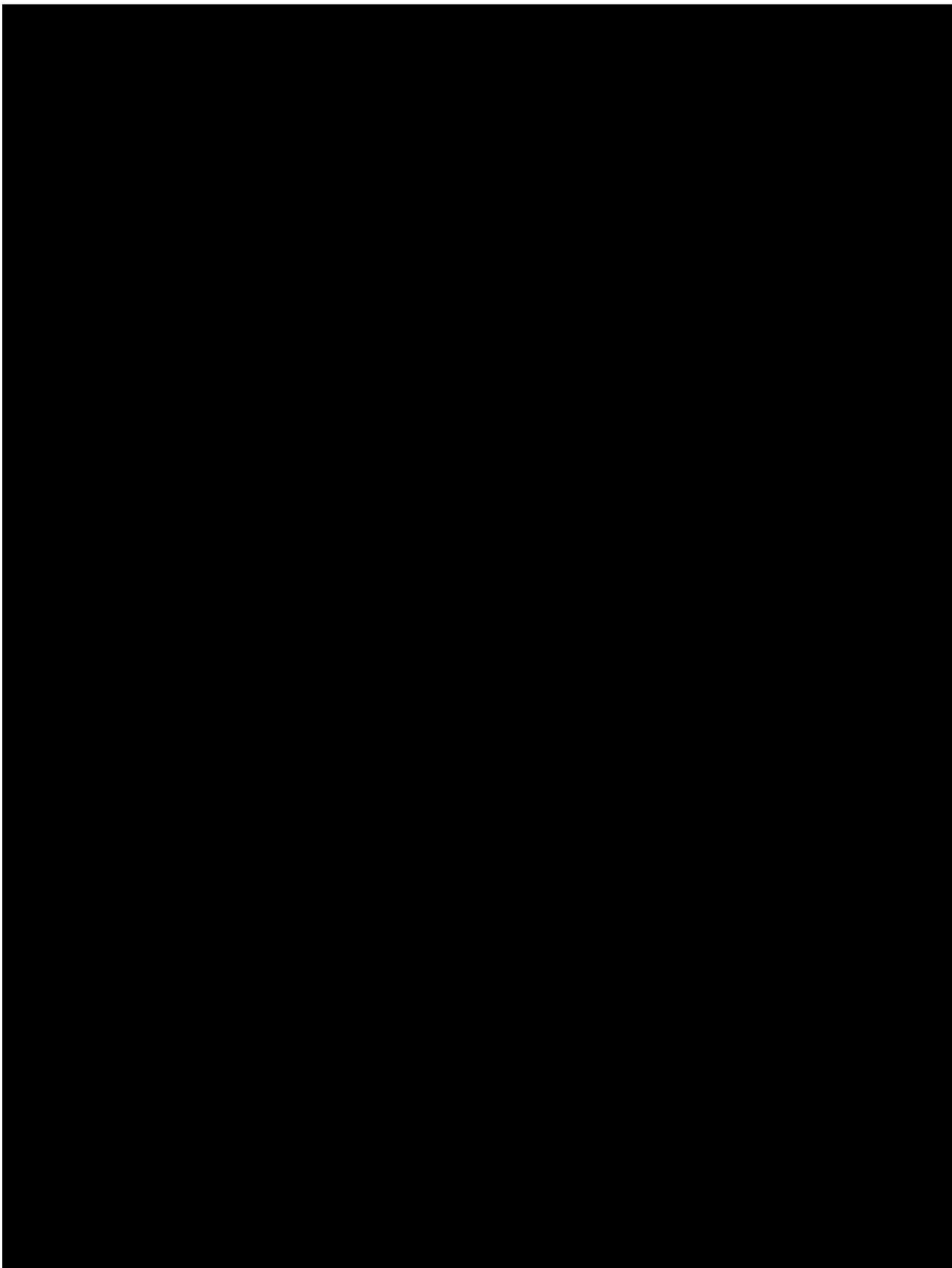
**MR. STANLEY:** My God, there always is on this –

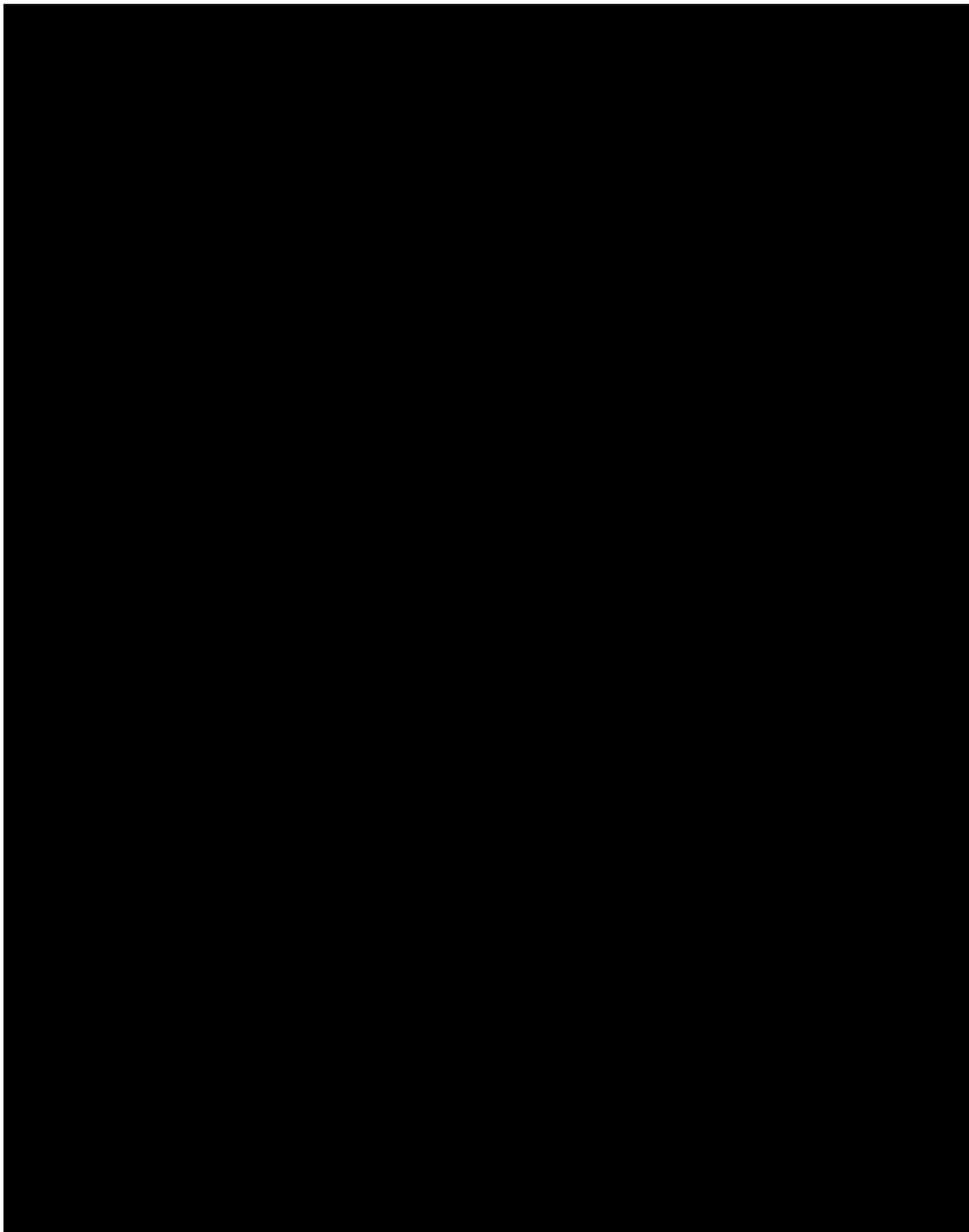
**MR. LEARMONTH:** Yeah.

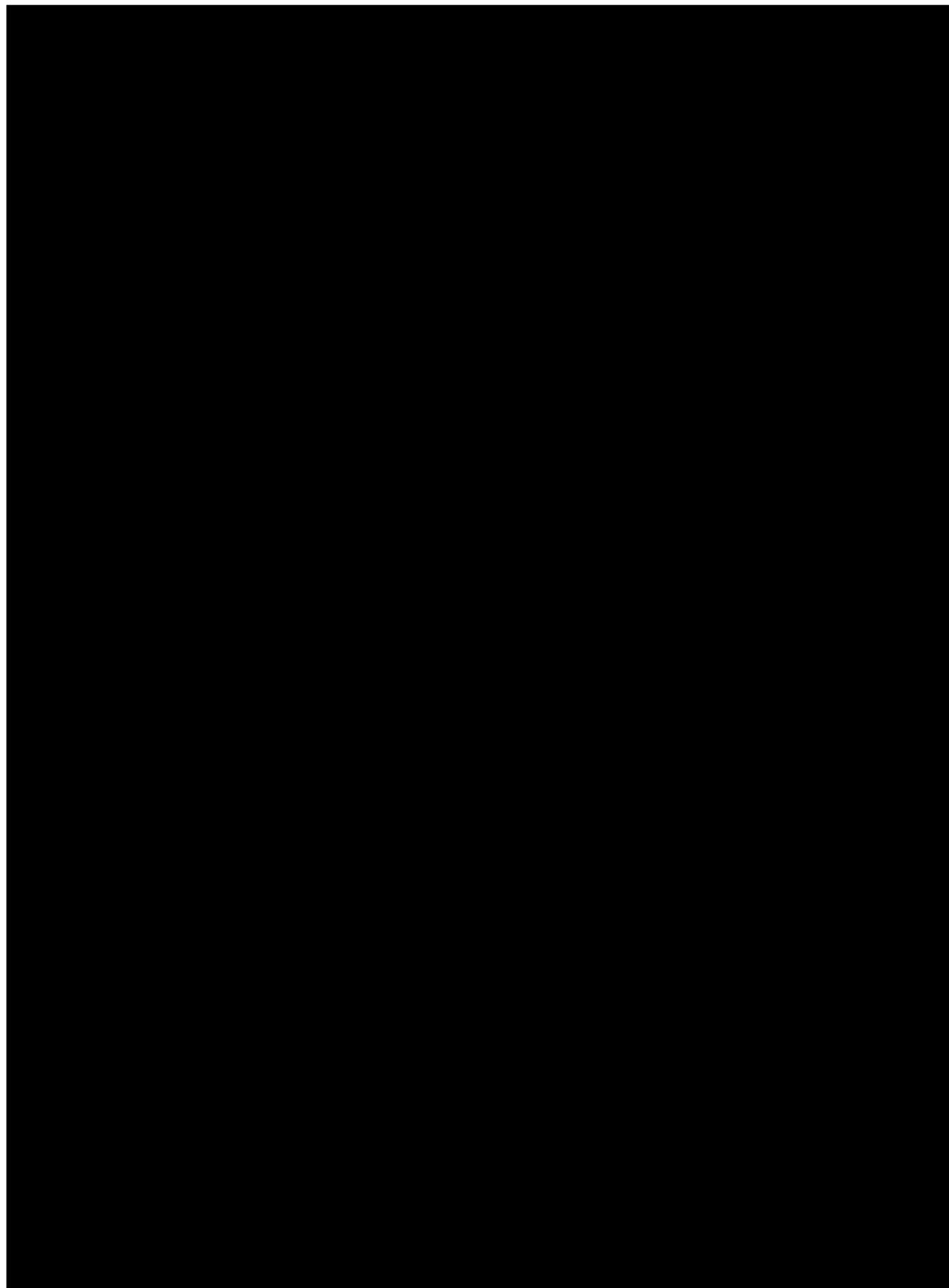
And the – before I turn over to Michael –

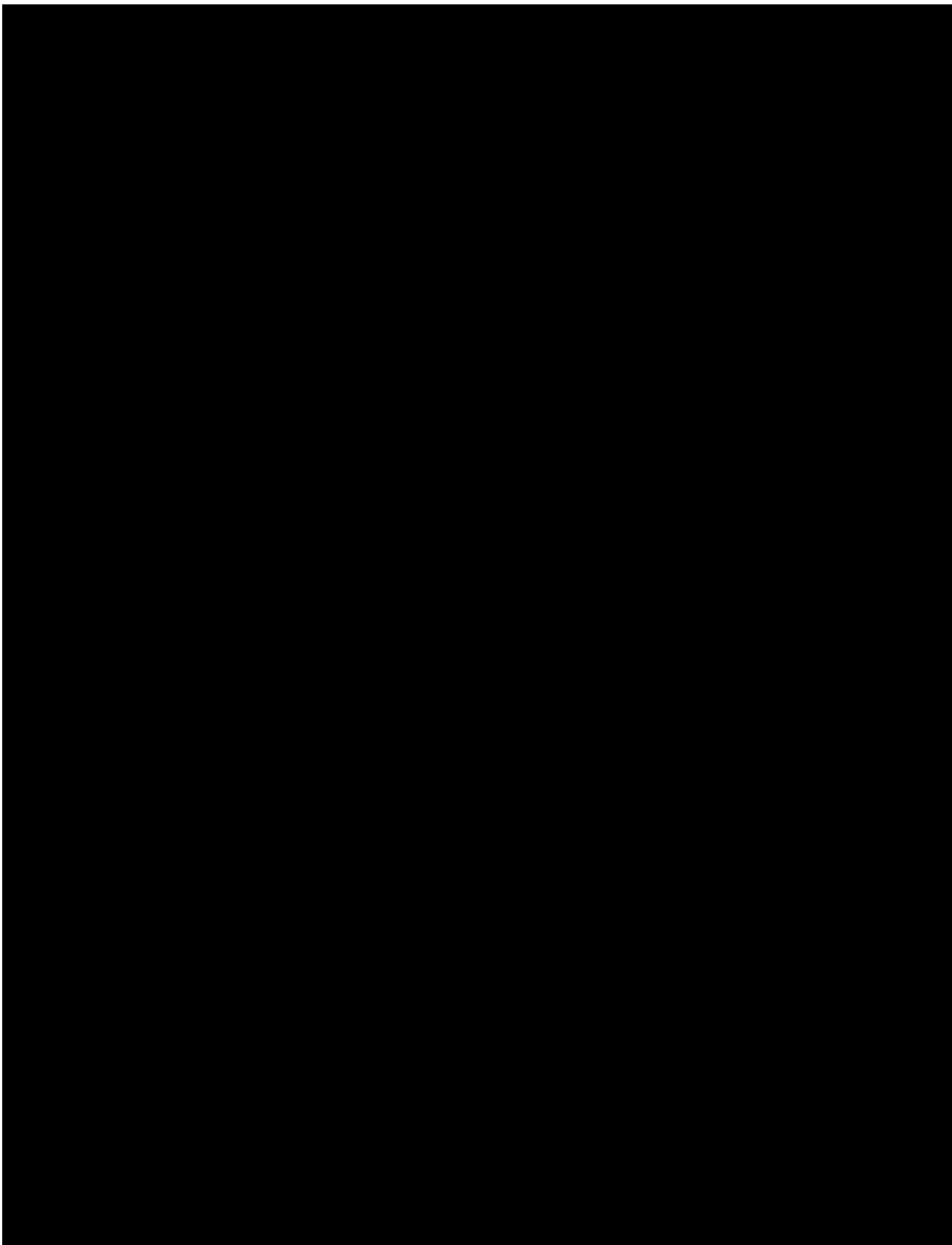
**MR. STANLEY:** Yeah.











August 31, 2018

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**MR. STANLEY:** It's in the spring.

**MR. RALPH:** It's in December (inaudible).

**MR. LEARMONTH:** – December 4 of this year.



**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Oh yeah, so I would never have seen these, and I would be surprised if –

**MR. RALPH:** They're not in the departments – I don't think so.

**MR. STANLEY:** – anybody in (inaudible) departments saw those.

**MR. RALPH:** You didn't get them – you got them right directly from the registry.

**MR. LEARMONTH:** From the registry.

**MR. RALPH:** Yeah.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Well, I got –

**MR. RALPH:** They weren't in the department, I don't think, really –

**MR. STANLEY:** No.

**MR. RALPH:** – through the disclosure –

**MR. LEARMONTH:** No.

**MR. STANLEY:** No.

**MR. RALPH:** No.

**MR. LEARMONTH:** I got, actually, one from – I got the – them from two different parties, actually.

**MR. STANLEY:** Right.

**MR. LEARMONTH:** I think I got something from the court registry.

**MR. STANLEY:** They're in English.

**MR. LEARMONTH:** Yeah.

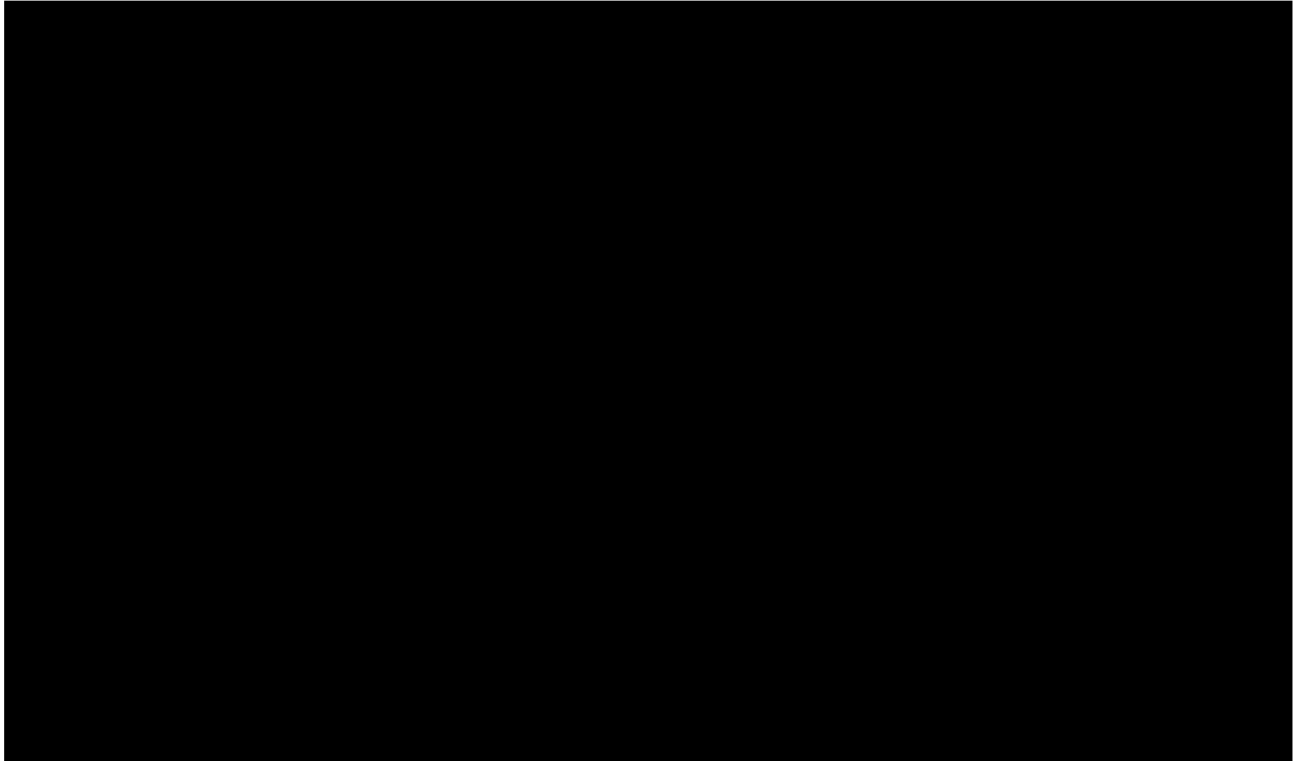
**MR. COLLINS:** It was translated.

**MR. LEARMONTH:** They're translated.

**MR. COLLINS:** It was translated, it wasn't English.

**MR. STANLEY:** Oh, okay. Unofficial translation, right?

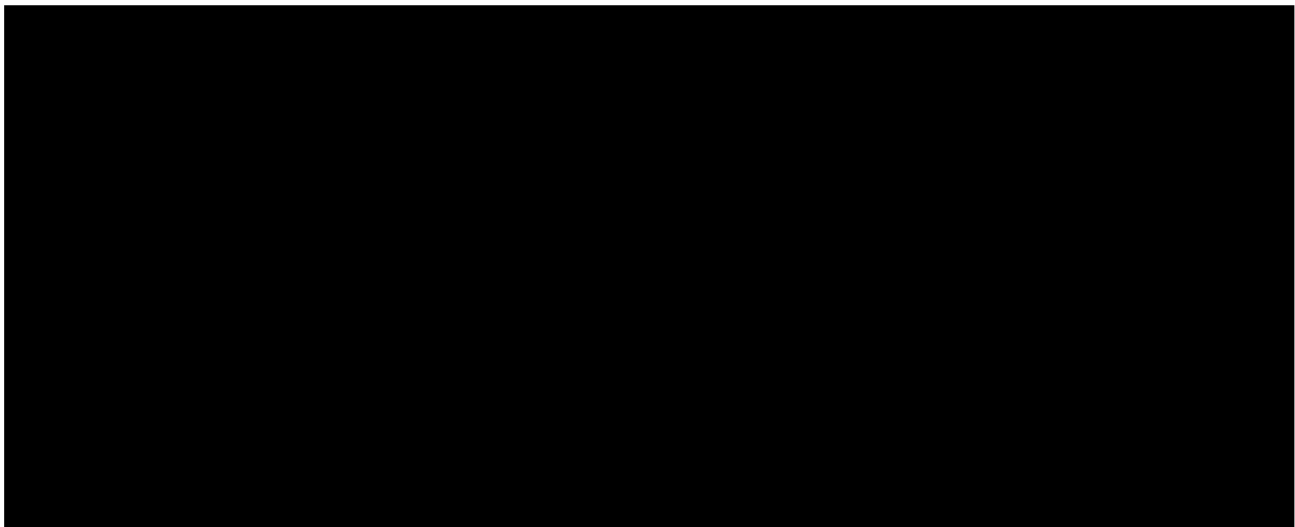
**MR. LEARMONTH:** Yeah.

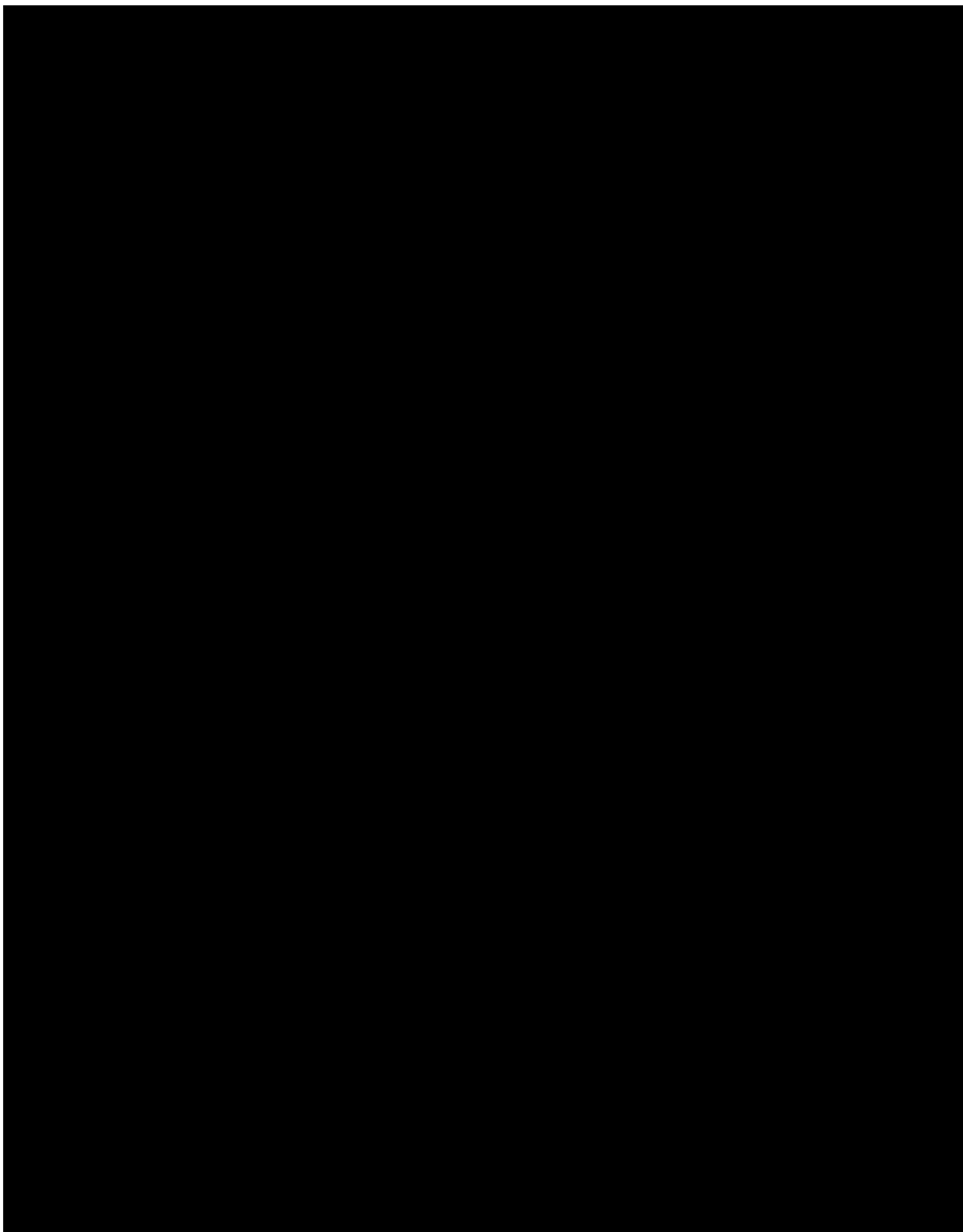


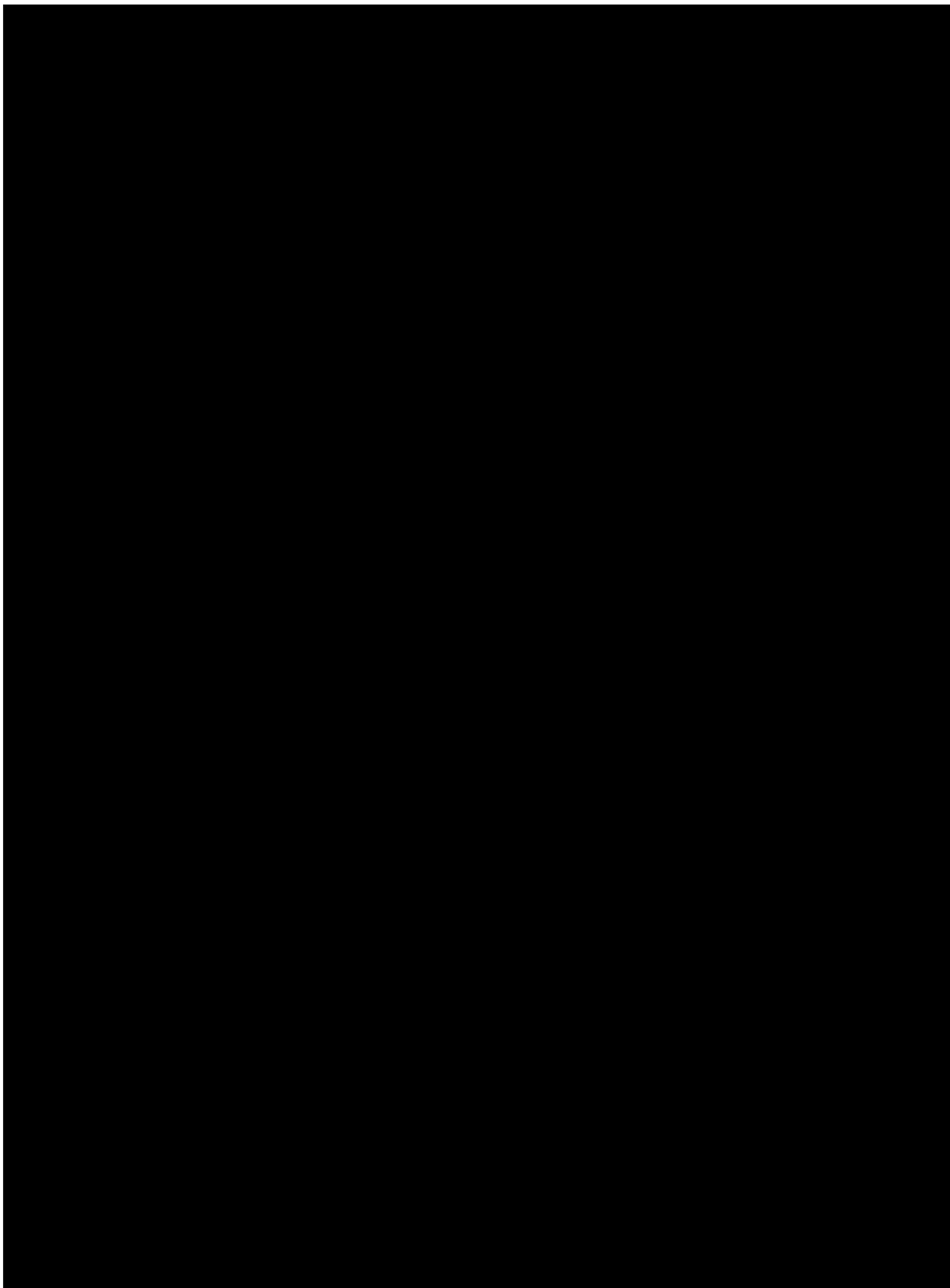
**MR. LEARMONTH:** Okay.

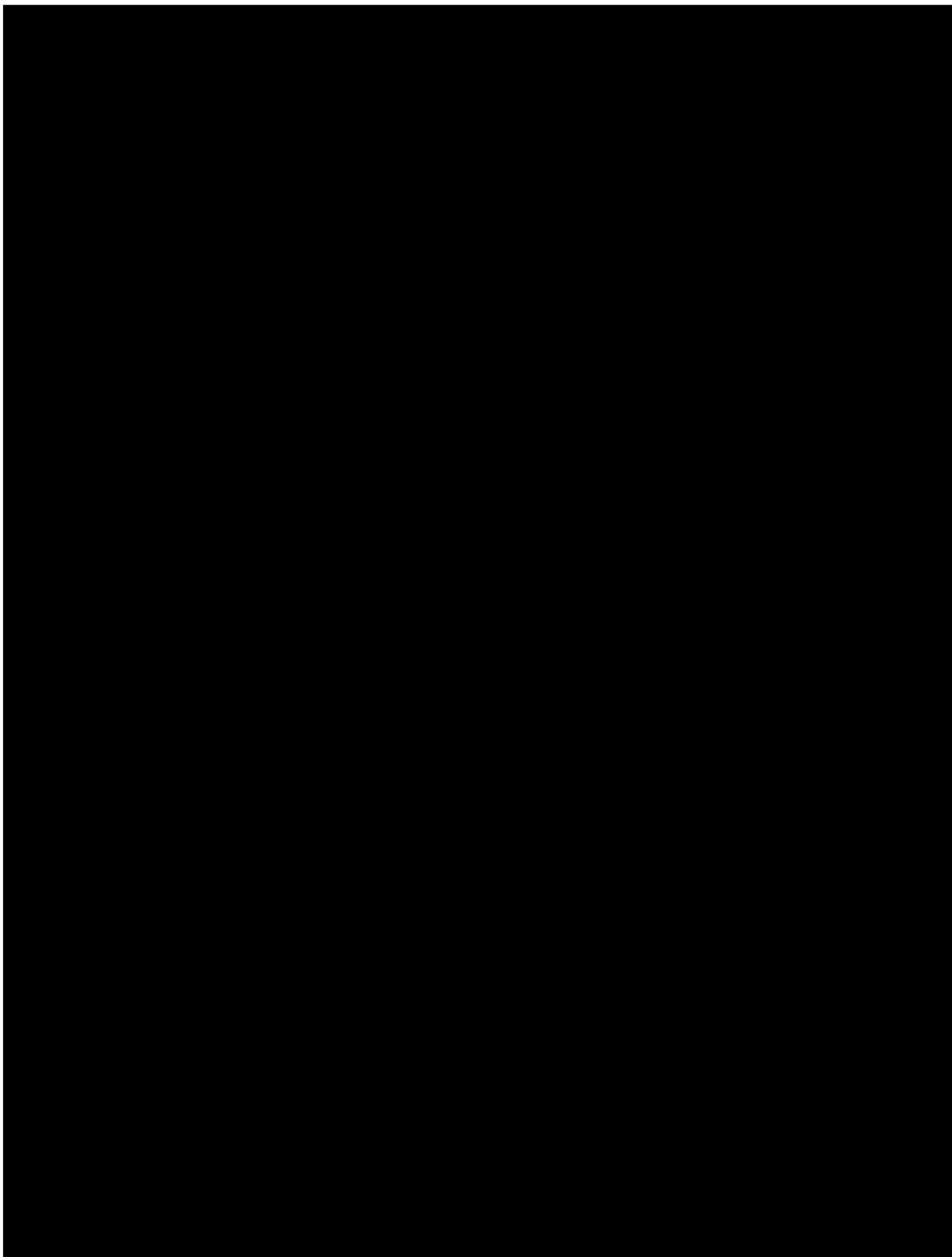
Now, I'm going to – thank you very much. I'm gonna ask Michael if he has any questions.

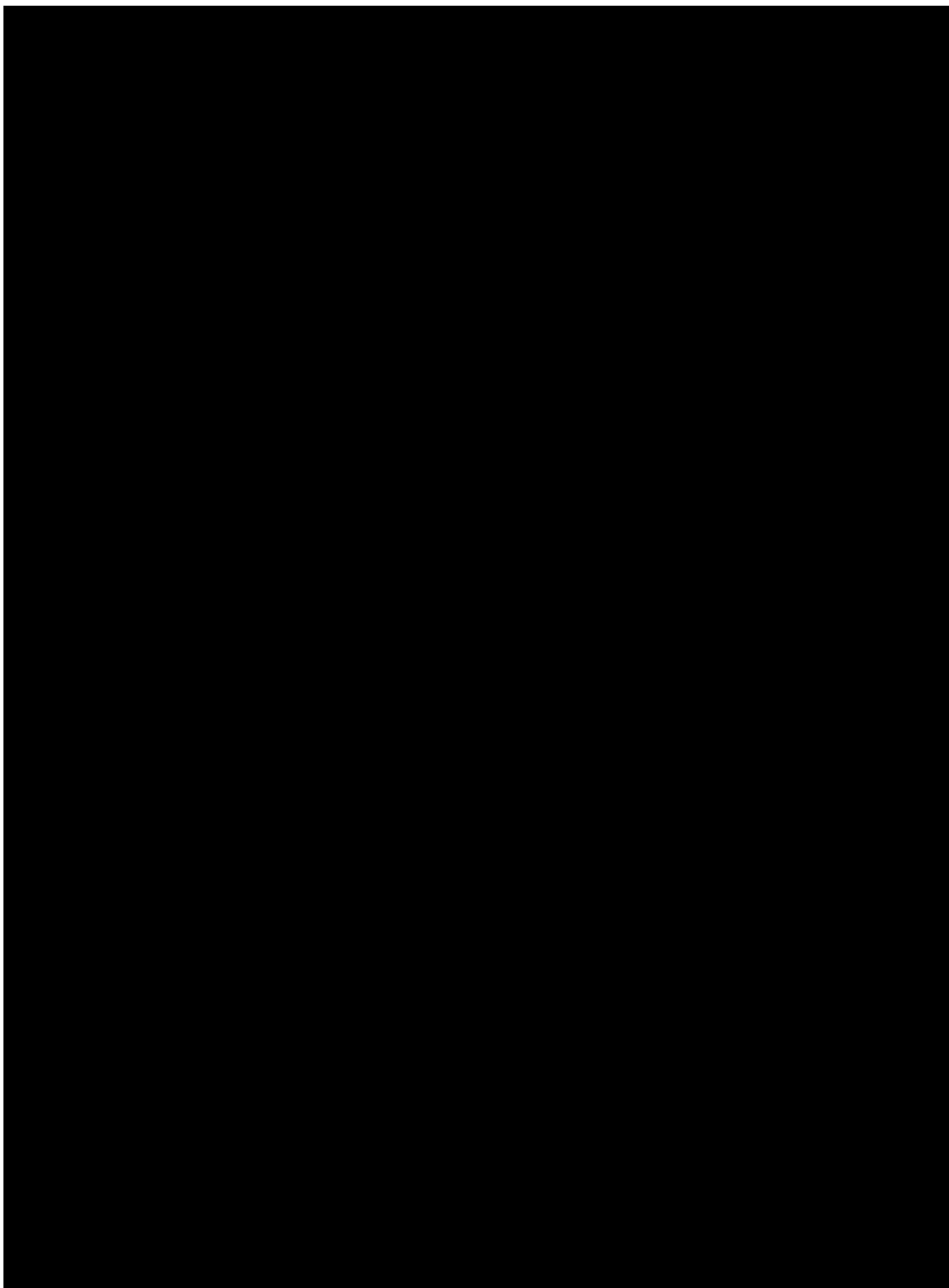
**MR. COLLINS:** So you – you've answered most of my water management questions.

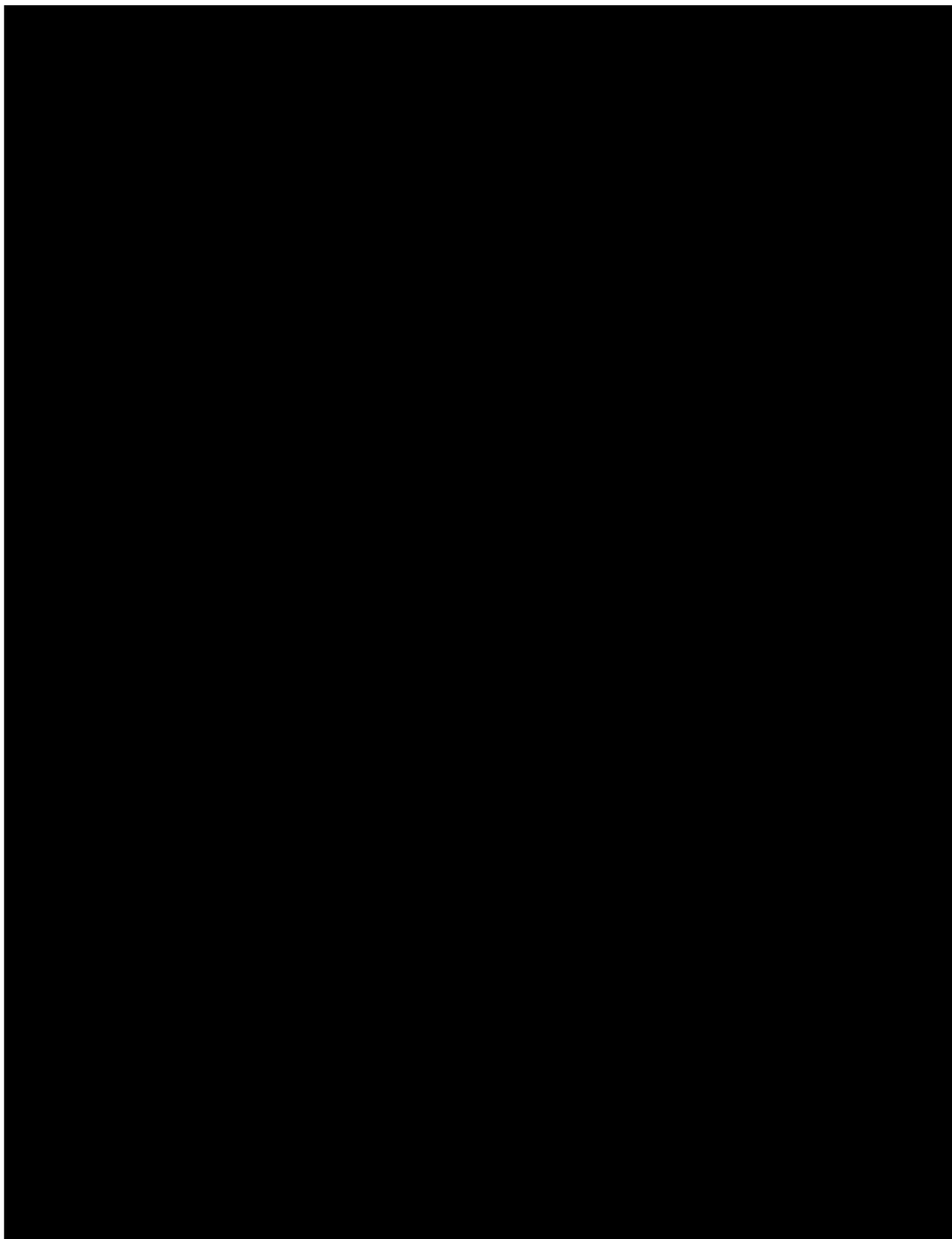


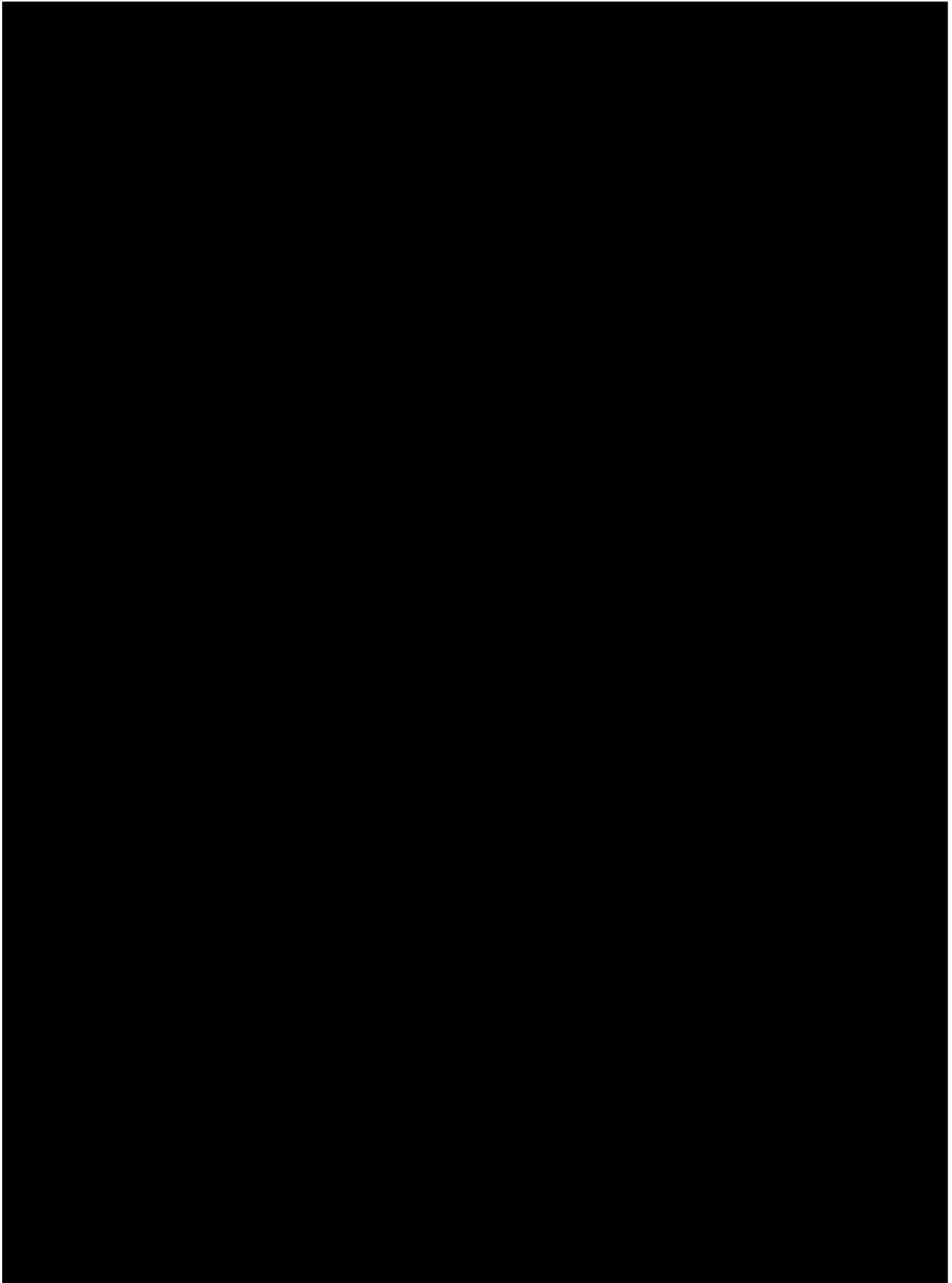


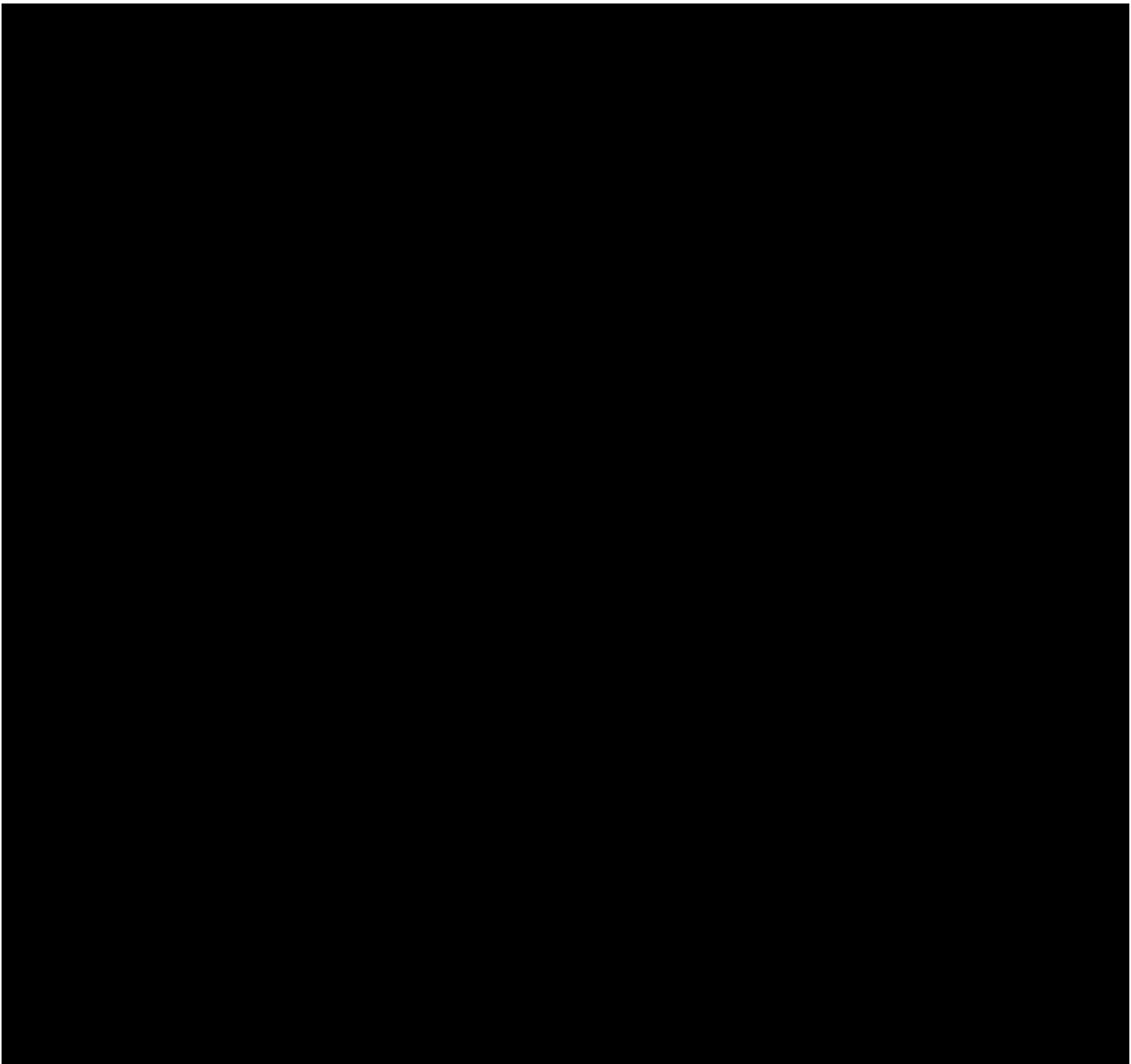












**MR. LEARMONTH:** I have a question that I meant to ask you.

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** The information we have from Nalcor is that, generally, that there was a good flow of information about the costs to the Minister of national [sp Natural] Resources, senior civil servants and the premier. That's a good flow of information. But we don't find anything in writing.

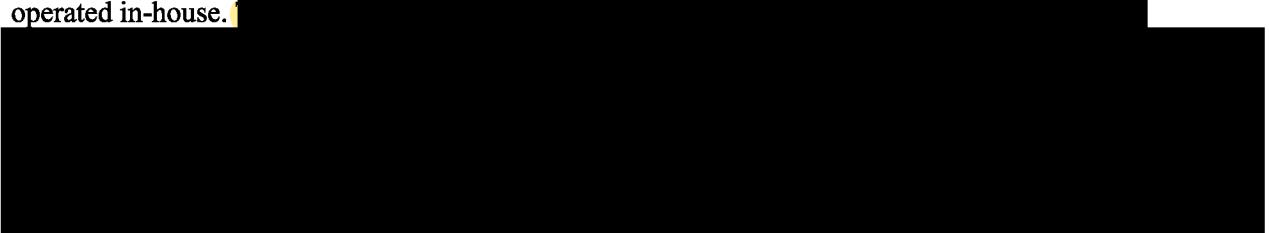
**MR. STANLEY:** Do you find any information?

**MR. LEARMONTH:** The information on the cost estimates seems that there's very, very little in writing. And Nalcor is basically saying that these were done in telephone conversations and meetings rather than in emails or anything like that.

Is that a normal way for a Crown corporation to communicate with politicians and senior civil servants?

**MR. STANLEY:** The – there's no metric upon which to compare Nalcor in how they operated when it came to communication with anybody else, because we don't have another Crown corporation out doing anything remotely resembling what Nalcor is up to.

Nalcor's default means of communication is the PowerPoint deck. There was a joke that – we had a joke at Justice, 'cause we used to write up stuff, and you'd see what we'd write and send it over to Nalcor and they'd be like: I need that in a deck. The joke used to be, we don't have PowerPoint; you don't have Word. Right? You used to – everything that you wrote was in a PowerPoint deck.

So you're not going to find a 10-page position paper from Nalcor detailing whatever. It will be a graph and a slide that prompted a discussion in a meeting. You know, and that was a known way that they operated in-house. 

But they were not sending over what you would hope to find, I think, as – given what your guys' job is. That's not how they operated. And I think if you went over and scrape their record centres clean you wouldn't find – I don't think they prepare it in-house. It's not like they had big position papers in-house and they came over to government with the PowerPoint. The PowerPoint is how they made the decisions in-house. The whole project was approved on PowerPoints, basically.

**MR. LEARMONTH:** Thank you.

**MR. STANLEY:** Does that explain what you're seeing?

**MR. LEARMONTH:** It does.

**MR. STANLEY:** Yeah, yeah.

**MR. COLLINS:** So I have two questions about the implications of the strategic reserve – of understating cost estimates.

**MR. STANLEY:** Okay.

**MR. COLLINS:** So one place the cost estimates go is into the federal loan guarantee. The federal loan guarantee –

**MR. STANLEY:** Yeah.

**MR. COLLINS:** – guarantees the estimated costs of the project. If you understate the costs, do you understate the amount of coverage you get under the FLG?

**MR. STANLEY:** The original FLG amount was 5 billion.

**MR. COLLINS:** Yeah.

**MR. STANLEY:** Which was based on a cost description, I guess, at the time. But it was also, if you were gonna understate the costs then, one questions: Well, should you have been going to the federal government for 5.5?

**MR. COLLINS:** And if you'd gone to the federal government for 5.5 –?

**MR. STANLEY:** Would they have said yes? I don't know the answers to those things.

But you've got to recognize that the extra money you're talking about is the contingent – is a monetization – as I understand this, because I've never seen these numbers before. As I understand it, it's a monetization of a recognition of the contingency reserve required to finish the project. Basically, the province's completion guarantee.

**MR. COLLINS:** No.

**MR. STANLEY:** No?

**MR. COLLINS:** It's the estimated value of the completion guarantee.

**MR. STANLEY:** Okay, that's what I mean. It's a –

**MR. COLLINS:** Because the completion guarantee, they're – they had a range of strategic risk values –

**MR. STANLEY:** Yes.

**MR. COLLINS:** – which ran significantly higher than 500.

**MR. STANLEY:** Oh, okay, all right. But this –

**MR. COLLINS:** 500 –

**MR. STANLEY:** – was it the P50 number of the –?

**MR. COLLINS:** It was the P50 number.

**MR. STANLEY:** P50 number of the – right, okay.

So I've never seen that. I've never seen the P numbers – it's interesting, actually.

Where – I don't know the answer to your question about whether it would've made a difference in the negotiations. Because the federal government knew we were signing on to finish the thing no matter what.

**MR. COLLINS:** Absolutely.

**MR. STANLEY:** So if the federal government looked at, well, what could that mean and wanted to stress test whether or not – well, if the thing goes completely bonkers and you end up having to spend \$6 billion on addition to the –

**MR. COLLINS:** Yeah.

**MR. STANLEY:** You know what I mean? Whether or not there would've been a brake on it then. I'm not sure.

**MR. COLLINS:** Absolutely.

**MR. STANLEY:** Right? 'Cause at the end of the day, they were guaranteeing 5 – and remember, they were guaranteeing 5, they weren't giving us 5.

**MR. COLLINS:** No.

**MR. STANLEY:** The feds would've never put money in – a dollar into this. They were guaranteeing 5; they had to book the guarantee on their books. So that was a problem for them, as a contingent guarantee. But that's their only exposure and as long as they had the revenue pipeline in place. I don't remember there being any analysis of what happens if it goes really poorly and you start to get into the fuzzy areas of, you know, demand spirals and all of that. No.

**MR. COLLINS:** The other place that the cost estimates go, are the Emera agreements.

**MR. STANLEY:** Yes.

**MR. COLLINS:** They cover 20 per cent of the estimated costs.

**MR. STANLEY:** Lowballed estimated costs.

**MR. LEARMONTH:** The 6.2 –

**MR. STANLEY:** Arguably.

**MR. LEARMONTH:** – it was capped –

**MR. COLLINS:** Exactly.

**MR. LEARMONTH:** – 20 per cent of that so –

**MR. STANLEY:** Right.

**MR. COLLINS:** So if you lowball the costs, you lowball Emera's bill. Is that also –

**MR. STANLEY:** Well, so I've always been a bit fuzzy – I wasn't involved in – I was around when they negotiated with Emera, but I was never involved when they actually set that framework idea of 20 for 20.

**MR. COLLINS:** Right.

**MR. STANLEY:** And yeah – but – if you go in – yeah, we're giving them 20 per cent, and you've lowballed everything – no question. But then there's no incentive for Nalcor to lowball those numbers at that point, unless there's some pressure like – you're talking about – a UARB issue.

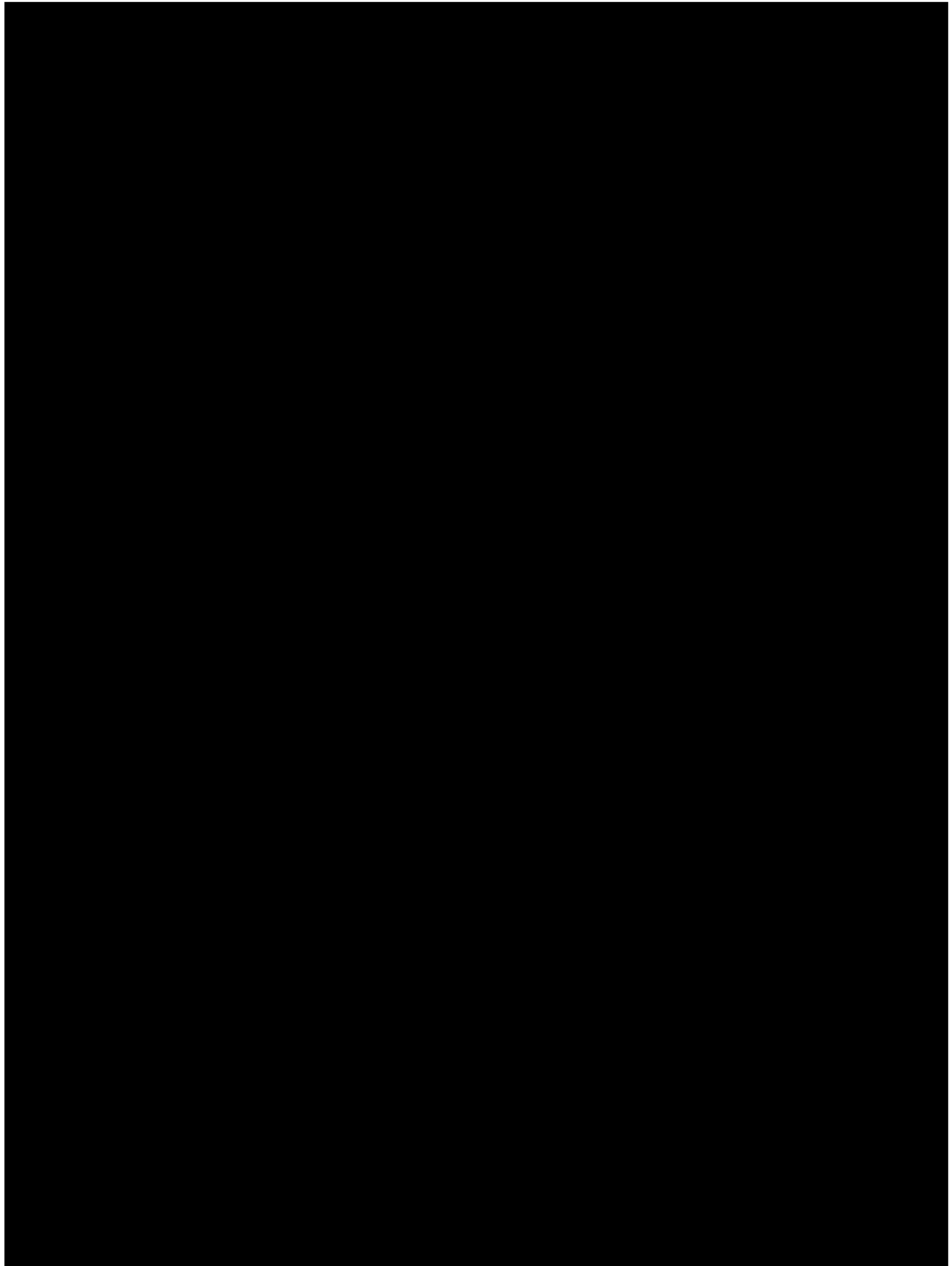
So that puts Nalcor in a really weird spot 'cause they should be going in to Emera and saying the project's gonna cost 10 million – \$10 billion and I need 20 per cent of it from you or somethings – I need as much money as possible.

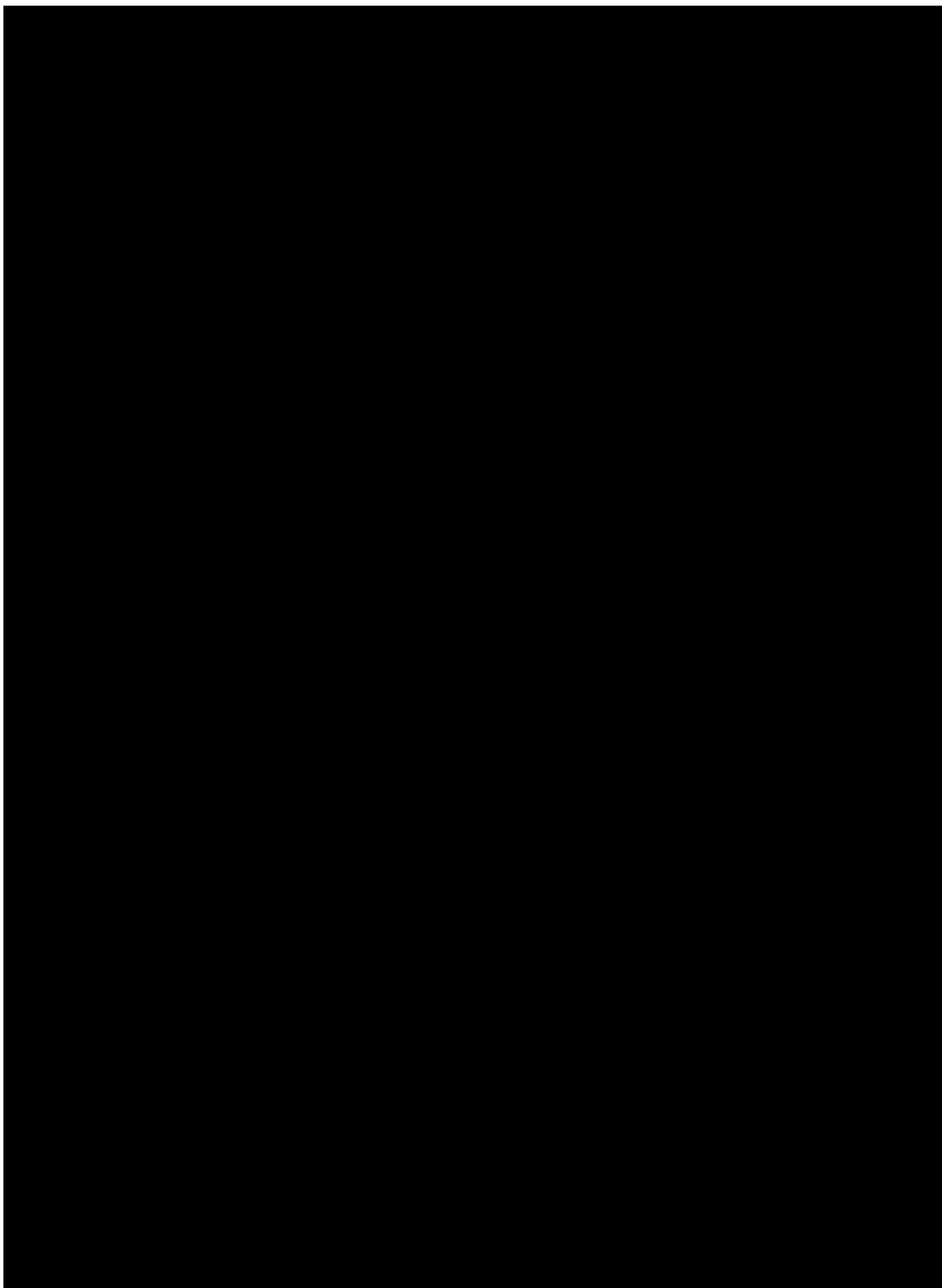
So I don't know what that could be – I have no insight into that, but I don't remember hearing discussions of any of that at the time.

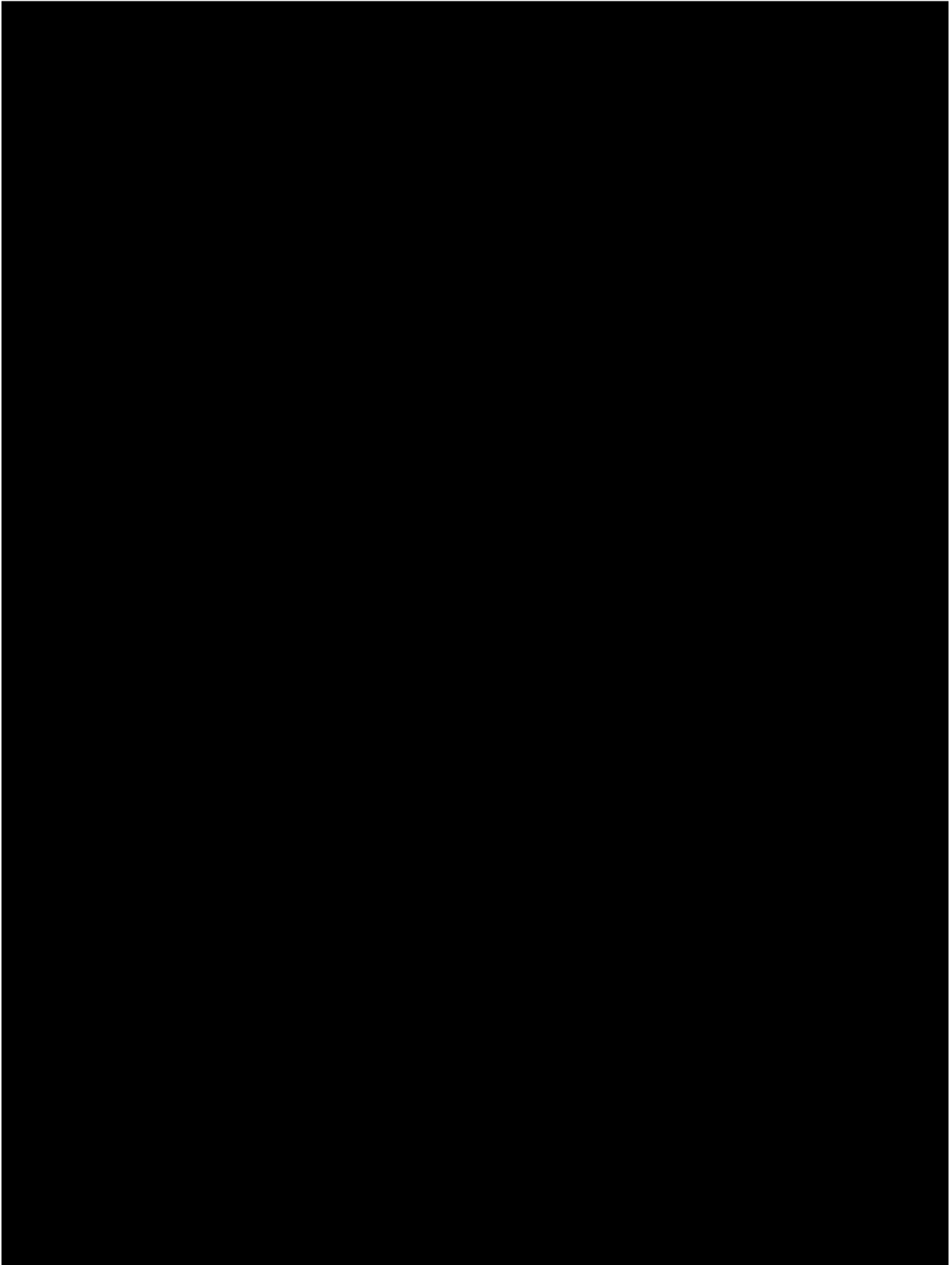
**MR. COLLINS:** One last question, it's about the *Can we wait until 2041?* paper.

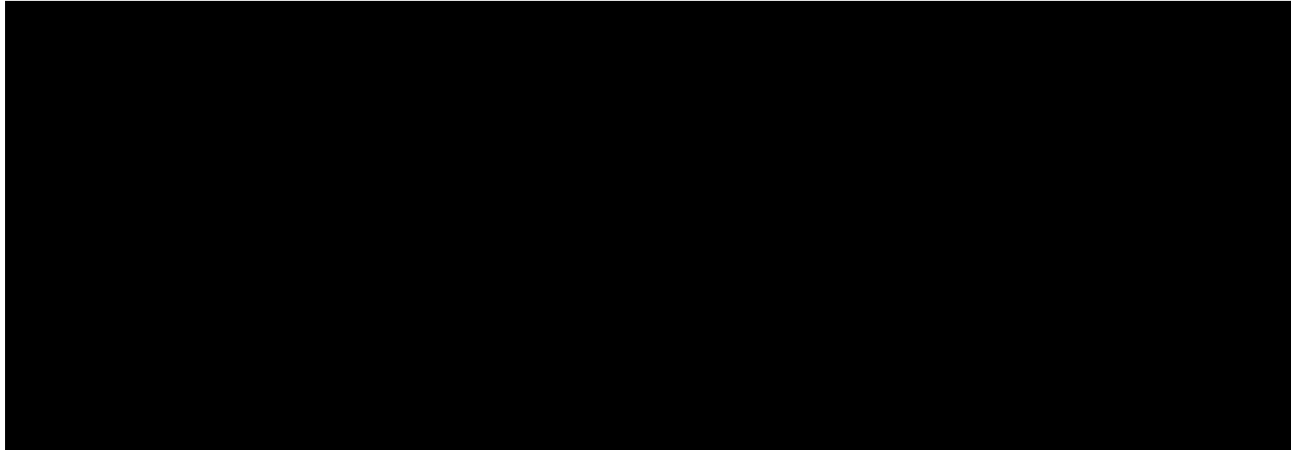
**MR. STANLEY:** Okay.











**MR. LEARMONTH:** Well, it was because there was no – that's when Peckford was (inaudible).

**MR. STANLEY:** It was Wells that had a deal. I'm not sure how well Wells's deal was –

**MR. LEARMONTH:** But that was –

**MR. STANLEY:** – known.

**MR. LEARMONTH:** Yeah, there was another one.

**MR. STANLEY:** Yeah. The '84 was Peckford.

**MR. LEARMONTH:** And –

**MR. COLLINS:** '89?

**MR. LEARMONTH:** – I think one of the reasons –

**MR. RALPH:** 'Cause '89 was Wells –

**MR. STANLEY:** Wells.

**MR. RALPH:** – right?

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** And '98 was –

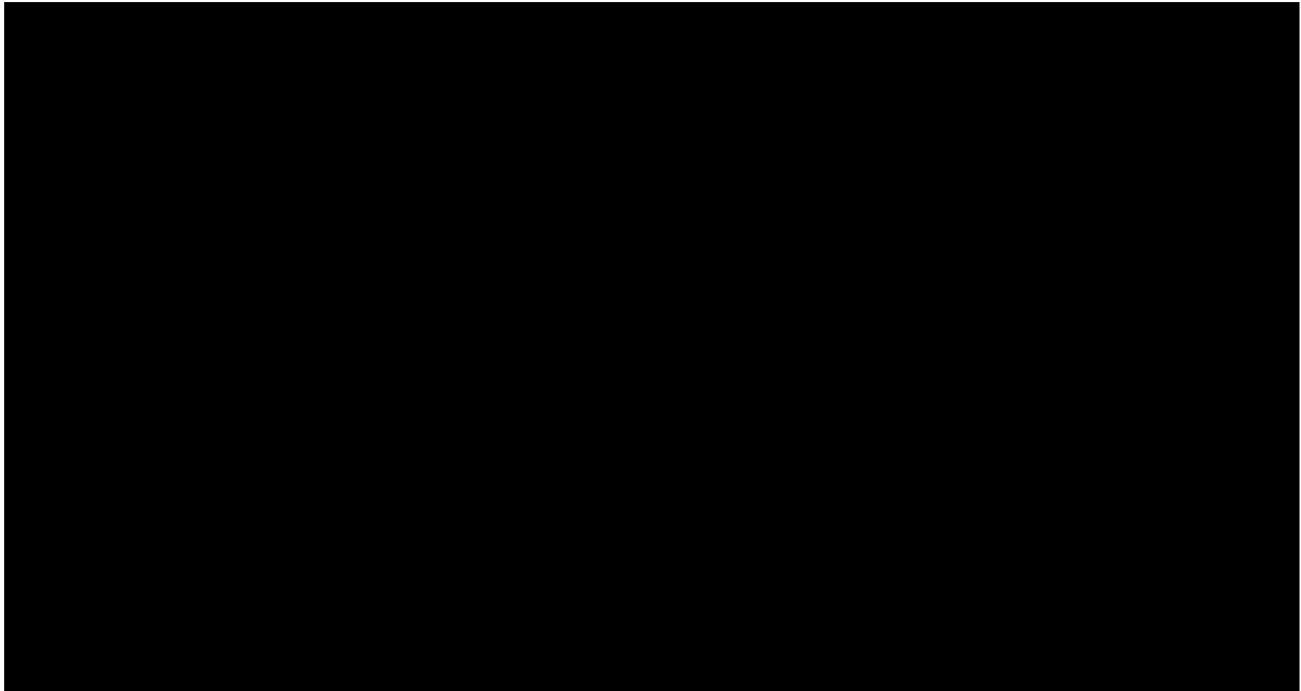
**MR. STANLEY:** Tobin.

**MR. LEARMONTH:** Tobin, yeah –

**MR. RALPH:** Yeah.

**MR. STANLEY:** Yeah, '98 was Tobin.

**MR. LEARMONTH:** – and Bouchard. Yeah.



**MR. LEARMONTH:** There's gonna have to be something done, like, no later than the early '30s (inaudible).

**MR. STANLEY:** You would think Hydro-Québec needs certainty.

**MR. LEARMONTH:** Yeah –

**MR. STANLEY:** Yup.

**MR. LEARMONTH:** – because if they have to build additional –

**MR. STANLEY:** Yeah –

**MR. LEARMONTH:** – supply –

**MR. STANLEY:** – and they got nowhere to do it anymore. The Aboriginal stuff, as you can see from the poor old federal government –

**MR. LEARMONTH:** They'd never –

**MR. STANLEY:** – can't get –

**MR. LEARMONTH:** – get it done.

**MR. STANLEY:** – never get it done. I mean, the '98 deal was gonna reverse three rivers?

**MR. LEARMONTH:** Yup. Romaine (inaudible) –

**MR. STANLEY:** Romaine and whether – and there was 11 to 12 Aboriginal communities on those rivers, and we were gonna dam them and reverse the flow and send them into the reservoir. A different time.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** Yeah, that was to increase the capacity of –

**MR. STANLEY:** Yeah, you get more water –

**MR. LEARMONTH:** – the Upper Churchill.

**MR. STANLEY:** And everything and –

**MR. LEARMONTH:** Their main river –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – would be diverted.

**MR. STANLEY:** Diverted.

**MR. LEARMONTH:** A few others (inaudible).

**MR. STANLEY:** But the headwaters would – we'd turn them around –

**MR. LEARMONTH:** Yep.

**MR. STANLEY:** – and increase the reservoir size. And if we're doing this project, you'd be – you'd have more water to play with, right? It made perfect sense, if you ignore that fact that you'd never, ever get it through any level of review, ever, right now.

**MR. RALPH:** Yeah.

**MR. STANLEY:** Right? Oh yeah.

**MR. LEARMONTH:** Okay. We're done. Thank you very much.

**MR. RALPH:** So – yeah. (Inaudible.)

**MR. LEARMONTH:** Do you have any questions?

**MR. RALPH:** You can turn it off. No, you can turn it off.