

Court File N°: T-778-12

F E D E R A L C O U R T

BETWEEN:

CONSEIL DES INNUS DE EKUANITSHIT

Plaintiff

AND:

LE PROCUREUR GÉNÉRAL DU CANADA

L'HONORABLE KEITH ASHFIELD (MINISTRE DES PÊCHES ET DES
OCÉANS CANADA)

L'HONORABLE DENIS LEBEL (MINISTRE DES TRANSPORTS DU
CANADA)

L'HONORABLE JOE OLIVIER (MINISTRE DES RESSOURCES NATURELLES
DU CANADA)

NALCOR ENERGY

NEWFOUNDLAND AND LABRADOR HYDRO-ELECTRIC CORPORATION

Defendants

**EXAMINATION ON AFFIDAVIT
DEPOSITION OF MR. GILBERT JOHN BENNETT
EXAMINED BY Me DAVID SCHULZE**

APPEARANCES:

Me DAVID SCHULZE

for the Plaintiff

Me MAUREEN E. KILLORAN

for the Defendants

DT120828.A

**Danièle F. Tassé, s.o., o.c.r.
August 28th, 2012**

DANIÈLE F. TASSÉ

Sténographe officielle bilingue
(514) 248-2701 / (514) 394-0001
courriel: danièle_tasse@videotron.ca

I N D E X

PAGE

LIST OF UNDERTAKINGS. 3

EXAMINATION ON AFFIDAVIT

GILBERT JOHN BENNETT

Examination by Me David Schulze. 4

LIST OF UNDERTAKINGSPAGE

U-1 : To verify if a written proposal with
Hydro Quebec exists, referred to in
paragraph 18 of Mr. Bennett's
affidavit and if so to provide a
copy of same (Under Advisement). 37

IN THE YEAR OF OUR LORD two thousand and twelve
(2012) on this twenty-eighth (28th) day of August,

PERSONALLY CAME AND APPEARED;

5

GILBERT JOHN BENNETT, born the twenty-fifth (25th)
day of November, nineteen sixty-two (1962),
professional engineer, residing at thirteen (13)
Royal Sovereign Close, Mount Pearl, Newfoundland,
Labrador;

10

WHO, after having made a Solemn Affirmation, doth
depose and say as follows:

EXAMINATION BY Me DAVID SCHULZE

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on behalf of the Plaintiff:

1 Q- Good morning, Mr. Bennett?

A- Good morning.

2 Q- Maybe I'll start by asking you to tell me what
are the duties of the vice president, Lower
Churchill Project for Nalcor Energy?

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A- In general terms, I'm responsible for the
planning and ultimately we sanction the project,
the construction project.

3 Q- Sorry, "We. We sanction" meaning Nalcor does?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- That's right. So we'll make a sanction recommendation to our shareholder, the government of Newfoundland and Labrador and they ultimately make the decision.

4 Q- Okay. What was your position before you were vice president of Lower Churchill? 5

A- I wasn't employed at Nalcor prior to this position.

5 Q- Okay. So since when have you been...

A- Since May of two thousand and five (2005). 10

6 Q- Okay. And did you join Nalcor as vice president of Lower Churchill?

A- Yes, I did.

7 Q- Okay. I'm turning to -- this part of my questions, I'm going to generally go in sequence following along with your affidavit, if you have it in front of you. Although I'll jump around. And obviously I'll need to jump to some exhibits. So I am looking at paragraph 9 -- well, maybe you just clear this up. Nalcor is the successor to what we used to call "Newfoundland and Labrador Hydro?" 15

A- Nalcor is now the parent of Newfoundland and Labrador Hydro. 20

8 Q- Okay. That was the part that was a bit subtle 25

COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

for me. Nalcor is the parent. So Newfoundland and Labrador Hydro still exist, but by statute, it acquired an owner?

A- The -- with the Energy Corporation Act, Nalcor was created and then Hydro was established as a subsidiary of Nalcor.

5

9 Q- Okay -- because Nalcor has other subsidiaries?

A- Yes, it does.

10 Q- In oil and gas, I believe?

A- In oil and gas, that's right.

10

11 Q- Is there, in day to day terms, is there any practical difference between Nalcor, the roles of Nalcor in this project and Newfoundland and Labrador Hydro with respect to this project?

A- Yes, there is a distinction, yes.

15

12 Q- Which is?

A- Newfoundland and Labrador Hydro will be a customer of Nalcor, a customer of this project.

13 Q- Oh, I see. Oh, because Newfoundland Labrador Hydro has a distribution function, is that why?

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A- That's right. They're a distribution function, they're also the wholesaler for private utilities in the province.

14 Q- Okay. So the -- so Newfoundland Hydro is either the wholesaler where there is a private utility

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

like say Fortis or the wholesaler and the
retailer where there isn't, is that it?

A- That's right. So in rural parts of the province,
Hydro is a retailer to end customers, but it's
also the wholesaler for the Fortis' distribution
utility Newfoundland power.

5

15 Q- Okay. So would it be correct to say that for any
important purposes this is Nalcor's project?

A- That's right. Nalcor is responsible for the
development of Lower Churchill.

10

16 Q- Okay. Now you write in paragraph 9 that, near
the end of -- I'm in the last sentence, "*Nalcor's
mandate in this regard, that is pertaining to
energy resources including hydro electric
generation, is governed by...*" and it lists the
statutes, but you also say, "... the province's
long term policy document entitled "*Focusing on
our Energy, the Energy Plan*" which is Exhibit B.
And I notice, there's a few points -- I'm just
going to -- I'll just repeat, just to give you
the background to where I'm going with my
questions.

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At paragraph 23, you say: "*Nalcor's mandate
includes giving effect to the Province's Energy
Plan.*" Then if we actually go into Exhibit B and

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

I'm going to page 14, we see that Nalcor -- they're talking about the new provincial energy corporation, that is what Nalcor...

A- That is Nalcor.

17 Q- Okay. And the plan says, quote: *"It will take a lead role in the province's participation and development of our energy resources"* unquote. And then it says that, the last sentence: *"The direction of the mandate of this corporation in further defined throughout this energy plan."*

5

10

Okay. So I just took you through all of that, because, I mean, obviously as a lawyer, or I hope that as a lawyer, I understand how statutes govern the operations of a corporation like yours -- but I understand that in addition, this energy plan in particular has a kind of governing effect on the operations of Nalcor?

15

A- No. That policy document for the province of Newfoundland and Labrador outlines the policy used by the government. It's not a government's document.

20

18 Q- Okay -- but it sets out the mandate of -- Nalcor's mandate. I mean, it does other things, I understand that, but one of the -- do I understand correctly, that one of the purposes of

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

the energy plan is to set up Nalcor's mandate?

A- One of the purposes of the energy plan was to describe to the people of the province, the government's energy agenda and to explain the role of Nalcor as perceived by the government at the time.

5

19 Q- Has that energy agenda changed? Has it been redefined since this document?

A- I don't perceive it to be changed or redefined.

20 Q- Okay. And when the energy plan tells me that it's defining Nalcor's mandate, is Nalcor, as a separate entity, as a corporation in its own right, is it free to change that mandate, to add roles that are not in this energy plan, for instance?

10

A- The specifics of Nalcor's role are laid out in the Energy Corporation Act. And of course the government, as a shareholder is free to give us policy direction as it sees fit.

15

21 Q- Okay -- but so far, as you know, the way they've done -- you said -- the way they've done that is through this energy plan?

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A- Through the plan, the Electrical Power Control Act, the Energy Corporation Act, are the three (3) relevant guiding documents that we have.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

22 Q- Okay. And I'm wondering, would for instance, would Nalcor be free to adopt programs, for example, I'm just throwing out some examples. For instance, would it be able to adopt a conservation program or a local benefits program that's different and not one of the ones that's laid out in the energy plan? Could it do that without specific instructions from government?

5

A- I think it's fair to say that we maintain a close level one with our, you know, with our shareholder. At the end of the day, many of those decisions, in terms of how we would implement policies, would be something that we would discuss with our shareholder.

10

23 Q- Okay. So just to make sure I'm correct in how I understand how this applies, would for instance Nalcor be free to choose, choose to just not to develop energy resources, whose development is called for in the energy plan? Could Nalcor, as a corporation, say: "You know the energy plan says we're going to do this or that with this particular energy resource, but we think it's a bad idea. Now we're not going to do it."

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A- If there were a situation where, an initiative that was laid out in the plan were not feasible

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

or not warranted or not appropriate, we would raise that point with our shareholder. And ultimately, what you're describing sounds like an investment decision and we would have a role and responsibility to communicate issues with respect to that decisions to our shareholder.

5

24 Q- Okay. And just so I understand. The usual, I mean, the shareholder is Her Majesty, so who speaks for the shareholder in a practical sense? Is it the whole of cabinet, is it the Minister of Natural Resources?

10

A- They both have their role. There are certain decisions that are laid out with Lieutenant governor counsel for cabinet in the Energy Corporation Act -- but certainly any major investment decision that required, for example, like we from the province, would require, in all likelihood, a cabinet decision.

15

25 Q- And on a day to day basis, it's the Minister of Natural Resources to who...

20

A- On a day to day basis, we operate in alignment with the department. It's less a question of freedom and more a question of making sure that we're both apprised of relevant issues.

26 Q- Okay. Sorry, I didn't write down on what page,

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

but -- or maybe it's in your affidavit, but somewhere I found a reference to the Energy Plan being the -- oh no, sorry. It's paragraph 21 of your affidavit. So it just says:

"Then energy plan was a product of extensive consultations, which began in November in two thousand five (2005) with the release of a discussion paper..."

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So, and then it continues:

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"In the months that followed, the province engaged in a process that involved broad base public consultations including the receipt of 86 formal submissions from a range of stakeholders."

15

27 Q- So I just want to make sure I'm not missing something. Was there any consultation on the energy plan with the Innu of Ekuanitshit?

A- I'm not aware of the answer to that question. I don't know. Of course the energy plan and the consultation that was associated with it, was led by the government of Newfoundland and Labrador, not by Nalcor.

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28 Q- Would it be possible for you to simply, to inform

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

yourself and simply tell me "Yes" or "No?"

A- I may not have access...

Me MAUREEN E. KILLORAN

on behalf of the Defendants:

I think that is a question that's better
posed to the government of Newfoundland and
Labrador and they're not party to this
proceeding.

Me DAVID SCHULZE:

Okay.

29

Q- There's -- I can take you to the exhibit in which
Nalcor made the following statement for the
purpose of the environmental impact or for one of
the -- excuse me, one of the information requests
to the joint review panel -- but one of them
states, there's one that states, and I'm quoting.
It's Exhibit A-251, IR number JRP.2, attachment
1, page 6. So it's A-251. I'm just going to
read it to you, because it might take you -- if
it's controversial, we'll go to it, but otherwise
maybe it's easier if I read it to you.

*"The land claims of the Quebec
Innu in Labrador have been
accepted by Canada..."* - And it
continues -- "... but

COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

*negotiations have not yet started
 because the government of
 Newfoundland and Labrador refused
 in the early nineteen eighties
 (1980's) to negotiate and..."*

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The documents referring to the claim filed
 by the Conseil Atikamekw Montagnais, on the
 basis that it prioritizes settling the land
 claims of the aboriginal residents of
 Newfoundland and Labrador.

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My point is simply, that you'd agree with
 me that your submissions to the joint review
 panel acknowledged that there was a land claim in
 Labrador submitted and accepted for negotiation
 by the government of Canada, made by the Quebec
 Innu?

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A- I understand that to be the case.

30

Q- Okay. Now if I go back to the energy plan, on
 page 23 -- if I can find it. Excuse me just a
 second. So if you go to page 23. So on the
 right-hand side in that column in "regulatory
 framework" it says, "*The government of
 Newfoundland and Labrador will...*" and at the
 bottom it says quote, "*... work with the affected
 aboriginal governments and groups to ensure the*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

developments in areas under claim or subject to a treaty are managed efficiently and effectively for the benefit of those aboriginal peoples and other residents of the province" - end of quote.

So are you aware of anywhere in the energy plan or another policy document where the government of Newfoundland directs that the development under areas of claim by the Innu of Quebec should be, to take their words, "*managed effectively*" for their benefit?

A- When I look at that statement, I understand that to be within the context of actions of the government of Newfoundland and Labrador.

31 Q- Okay. I agree -- but I guess I'm more interested in who are the aboriginal governments and groups that are aimed at with that?

A- I don't know.

32 Q- Okay. Still in the energy plan, page 33. At the top on the left-hand side, it says, quote, "*Labrador residents will be primary beneficiaries of the Lower Churchill project. Jobs and business activity for the construction and operation of the project are the first and most tangible benefits*" - end quote.

So are there any instructions to Nalcor

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

from the government of Newfoundland concerning benefits for Innu, the Innu of Ekuanitshit or any other community in Quebec, with respect to benefits from jobs and business activity from the Lower Churchill project?

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A- No, there were no specific instructions.

33

Q- And do I understand correctly that in fact -- sorry, I'm going to rephrase that question. Isn't it the case, in fact, Newfoundland government policy is to give first preference in jobs and business activity first to beneficiaries of the impact and benefits agreement with Innu Nation, then residents of Labrador and then residents of Newfoundland?

10

A- That's partially correct. There are no instructions in the benefit strategy that would respect business opportunities. Business opportunities are available on a full and fair basis. There are expectations for Nalcor to promote those business opportunities, however, the impacts and benefits agreement that we have with the Innu Nation isn't specifically addressed to the benefit strategy, insofar as business opportunities are concerned.

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Insofar as employment opportunities are

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

concerned, there is a priority established and that priority list for the work in Labrador starts with beneficiaries of signed impacts and benefits agreements. And the second would be the residents of Labrador. The third would be the residents of the island of Newfoundland. And then from there the rest of Canada. And then if we have to go globally, we go.

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34 Q- So just so I understand correctly. A resident of let's say, Shefferville, which is I'm not sure how many dozens of kilometers from the border, not many, would be third after a resident of let's say, St. John's?

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A- No, that's not correct -- oh, I'm sorry, it is. I misunderstood, when we look at Newfoundland, I was thinking Labrador for a second here. IBA, Labrador, Newfoundland and the rest of Canada.

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35 Q- Okay. I'm going to -- sorry, just because I worked through the exhibit sort of page by page, I'm going to change topics a little bit. Also on page 33, on the right-hand side, there's a statement of goals under the heading, "*Upper Churchill*" and it says, quote, "*The government of Newfoundland and Labrador will...*" and it continues "*... position the province to take full*

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

advantage of Upper Churchill power for provincial and export customers after the power contract expires", end of quote.

36 Q- Now the power contract expires in two thousand forty-one (2041), correct?

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A- That's right.

37 Q- Okay. And just so that I understand, the power contract expiring means that the power then belongs to -- I suddenly realize, I was going to say to Newfoundland, but it's more complicated right, because of the corporate structure? Whose power is it after two thousand forty-one (2041)?

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A- The owner of the power facility is Churchill Falls Labrador Corporation, which is an entity that's approximately two thirds (2/3) owned by Nalcor, one third (1/3) owned by Hydro Quebec.

15

38 Q- Okay -- but the voting structure is more complicated than simply ownership, correct?

A- After twenty forty-one (2041), the shareholders agreement will also have expired.

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39 Q- I see. So ordinarily the majority shareholder would control the resource?

A- There are, I think some other legal questions there that I'm not -- not being an officer of CFL, I'm not really in a position to understand

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

all the details...

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Q- I'm also not asking you for a legal opinion. I'm just trying to understand. I just realized that I was going to rush head line into a question and I want to make sure that I was understanding the situation properly -- but it would be fair to say that there's a sort of, as I read all sorts of documents, there's an expectation that as of two thousand -- or after -- with the expiry of the contract in two thousand forty-one (2041), Upper Churchill power will, by some legal means, that we don't have to settle now, be controlled in Newfoundland?

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A- I don't know that I can answer that question specifically, without a clear definition of what the terms and all the terms and conditions that are associated with...

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Me MAUREEN E. KILLORAN:

I think it's difficult to answer the question without having a legal understanding of the agreements and where everything lands. So I think that Mr. Bennett may have given you all that he can as a lay person.

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Me DAVID SCHULZE:

That's fair enough. It's not really where

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

I'm going with this question anyway.

41

Q- I want to understand this. If between now and two thousand forty-one (2041), the generating station is built at Muskrat Falls and is connected to the island of Newfoundland, can it be -- is there any reason to expect that in that context, Upper Churchill power would be needed for provincial customers after two thousand forty-one (2041)?

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Me MAUREEN E. KILLORAN:

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Mr. Schulze, I'm struggling with -- given that the judicial review is about the federal government response and a decision by the federal authorities pursuant to CEA, I'm struggling with the relevance of what's going to happen in the future to this project. How is it relevant to your judicial review?

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Me DAVID SCHULZE:

Well, the judicial review is, among other things, about the absence of economic analysis. So I'm trying to understand the economic context. It's a fairly simple proposition or question. You can decide whether you want your client to answer.

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Q- My understanding is, if Muskrat Falls is built

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

and connected to the island, the odds that the Upper Churchill power will be needed for provincial customers is very low.

A- That would require some speculation there in terms of what may happen in Labrador. There may be other developments in Labrador that could consume that power. It is fair to say that Muskrat Falls is capable of meeting our forecast of domestic needs. I think we presented that information at the panel. However, potential for other development in Labrador, in the island, from other developments, could require a supply from Churchill Falls.

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43 Q- Okay, good. Now if we continue to page 38, the bottom of page 38. I'm in the second sentence of the last paragraph. It says, quote, "*The provincial government, through NLH...*" and I'll just note that "NLH" is Newfoundland Hydro. Continuing the quote, "*... has investigated the long term options to address Holyrood emissions and decide to replace Holyrood generation with electricity from the Lower Churchill, through a transmission link to the island.*" End of quote. And when we're talking about "Holyrood" we're talking about the thermo generating station on

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

the island of Newfoundland, correct?

A- Yes, that's right.

44 Q- So now I looked this up on the internet, but I
understand the energy plan was released in
September two thousand seven (2007)? In any case
it's from two thousand and seven (2007)?

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A- Yes.

45 Q- September sounds right to you?

A- Yes.

46 Q- So does -- am I correct in understanding that the
energy plan, on page 38, effectively indicates
that the government of Newfoundland's decision,
by two thousand seven (2007), was it would supply
the island with hydro electricity from the Lower
Churchill project?

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A- In context with the first sentence on page 39,
which states that, *"In the event that Lower
Churchill does not proceed as anticipated,
reciprocators will be installed at the Holyrood
facility."*

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47 Q- Okay. Fair enough. And I'd be correct in saying
that you can't -- if you wanted to supply the
island of Newfoundland with hydro electricity
from the Lower Churchill, that would, that's
impossible without a transmission line across

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Labrador, cable across the strait and more
transmission lines through the island?

A- That's right.

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Q- I'm going to go to page 41 now. And if I go to
the fourth sentence, it's the third under the
heading, "*Labrador Island Transmission Link*", the
first sentence is, quote, "*Constructing the
transmission link, and delivering Lower Churchill
power to the island, is a more cost effective
alternative to an isolated island grid
increasingly dependent upon oil fire thermal
power resources.*" Now I realize this is the
government's document and not yours, but I don't
-- I have a problem with that sentence because it
doesn't complete its comparative. Lower
Churchill power is more cost effective than what?
Do you understand that to mean, more cost
effective than oil fire and thermal power or more
cost effective than the alternative?

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Me MAUREEN E. KILLORAN:

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I think we're now asking Mr. Bennett to
interpret the government document. If he has an
understanding that's independent of today and
we're not getting into the analysis of the
document, I have no difficulty with him answering

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

the question -- but I don't think it's
constructive to have him interpret this document.

A- I would have looked at that in the context of the
second paragraph, which indicates that there's an
increase in cost in oil at the Holyrood facility
and that that increase in fuel cost will result
in rate increases, to island rate payers.

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Me DAVID SCHULZE:

49 Q- Okay -- but does that -- should I understand and
I realize that I'm asking for your understanding
of government policy, but should I understand
that by two thousand seven (2007), in that case,
the government of Newfoundland had rejected small
hydro or wind or gas or conservation management
as alternatives?

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A- No, you should not draw that conclusion. And I
think it's important to separate the policy
guidance that we're seeing here from the province
of Newfoundland and Labrador and now
corresponding process and the level and extent
and effort that's required for us to plan the
mega project, either in the context with Lower
Churchill hydro project or in the case of
Labrador island transmission link.

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And, you know, while there's policy

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

guidance here that provides us with some insight into what government is thinking, there's a significant additional effort undertaken by Nalcor before we would bring forward this project, as one that we're going to develop.

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50 Q- Okay. The last paragraph on page 41 says, *"Therefore, we will build new transmission infrastructure to link our electricity systems in Labrador and on the island. The Labrador island link will enable us to meet almost all of our electricity demand with clean renewable electricity, essentially with no emissions."* End of quote.

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51 Q- So do I correctly understand then that the Newfoundland government's intention, as of two thousand and seven (2007), was to build a hydro electric generating station, or at least one, on the Lower Churchill and also a Labrador island transmission?

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Me MAUREEN E. KILLORAN:

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And again, Mr. Schulze, I think Mr. Bennett can speak to his understanding of their intentions, but perhaps not to their intentions.

Me DAVID SCHULZE:

Actually it would be fine with me if he

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

simply speaks to what he understood as of two
thousand seven (2007), the mandate of Nalcor was.

Me MAUREEN E. KILLORAN:

Perfect.

A- The mandate of Nalcor in two thousand seven
(2007), was to advance its planning and its
thinking and its deliberation for the potential
to move forward with those projects.

5

Me DAVID SCHULZE:

52 Q- Hang on. The mandate of Nalcor was to develop
its thinking...

10

A- To advance its thinking and develop its plan.

53 Q- Okay -- but the energy plan exists to give
direction to Nalcor and its sole shareholder
said, "We will build a new transmission
infrastructure to link our electricity systems in
Labrador and on the island. We will." That's
what your shareholder says. The decision seems
to be made.

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A- The decision is not made. I don't have
financing, I don't have equity, I don't have a
completed environmental assessment, I don't have
completed engineering, I don't have completed
aboriginal consultation. There's a number of
activities that are not complete, before I could

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

say the decision has been made to definitely build the project.

54 Q- Okay. And is that why, is that why your project registration of November two thousand six (2006) does not state an intention to build a Labrador island transmission link?

5

A- The registration of two thousand six (2006), identifies three (3) market alternatives for generation from the Lower Churchill hydro project. So throughout the environmental assessment, we've been clear that there were multiple options for the use of power from Muskrat Falls and Gull Island.

10

55 Q- Those three (3) market alternatives being, local, provincial consumption, customers you would provide through Quebec system and customers that you would provide through an alternative export route?

15

A- Industrial development Labrador, that was the third one.

20

56 Q- Sorry, it's the third one, okay. I guess I'm just confused. I have your shareholder saying, "We will do this" and you're telling me, but it doesn't mean that you were going to do it, as of two thousand seven (2007)?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- I think it's fair to say that we have a planning process or decision process has been laid out in numerous documents in the environmental assessment. And we look at the progress of the project from its initial concept, through it's feasibility study stage, through its detailed engineering phase. Ultimately to sanction and construction. And at the point in time in two thousand and seven (2007), a decision had not been taken to definitely build the project. So as policy guidance, the perspective of the province, of course very useful for members of the general public, who understand what the province's energy strategy is -- but I can categorically say that a decision to construct the project had not been taken in two thousand seven (2007).

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57 Q- When you "the project" we're talking about -- I just want to make sure what facility we're talking about

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A- I understood you to be referring to the transmission link at the time.

58 Q- Yes.

A- But the same is also true for the generation project.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

59 Q- Okay. That's true, it's true that presumably when
you file a registration for environmental
assessment, you're not -- the decision has not
been taken, in the sense that, and among things,
you're waiting for various permits and
authorizations and to go through the end process
-- but I'm looking at this document and I'm being
told that the government has decided that the
best way to replace Holyrood is with Lower
Churchill and that Lower Churchill should be
connected to the island with a transmission link.
So I don't understand how the transmission link
is any less certain in two thousand seven (2007),
than the generating station itself.

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A- I'm not sure that either was certain at that
time.

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60 Q- Fair enough, neither is -- but that's not really
my -- my point is, the government has said one of
the reasons we're going to build a dam at Lower
Churchill is to supply the island. The island
can only get supplied with a transmission link,
the transmission link is not mentioned in the
project registration.

20

A- In two thousand and two (2002), between two
thousand (2000), two thousand two (2002), the

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

government of Newfoundland and Labrador advanced the concept of potentially building Gull Island. There was no transmission link at that point in time.

61 Q- So you said between two thousand two (2002), two thousand two (2002), you mean... 5

A- Between two thousand (2000), and two thousand and two (2002).

62 Q- Oh, I see, okay.

A- A development concept was brought forward for Gull Island that didn't include a link to the island. 10

63 Q- Okay. Would you agree with me that the environmental impact statement that you ultimately filed in this assessment, that's at issue in this litigation, for Gull Island and Muskrat Falls, that it did not specifically address the cumulative impacts of Gull Island, Muskrat Falls and the Labrador island transmission link combined? 15

A- I need to stop and check the EIS on that one, because my recollection is that the cumulative effects of a potential transmission line being constructed were considered in the EIS. 20

64 Q- Okay. If I continue in the energy plan, I'm on 25

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

page 44 now, on the second paragraph towards the end and I'm quoting,

"NLH is well advanced in this process with respect to Lower Churchill and on schedule to present the provincial government with the opportunity to sanction the project in two thousand nine (2009)." End quote.

5

Does that -- should I understand from that that Nalcor advised the provincial government around two thousand seven (2007), that it would be able to present the Lower Churchill project for sanction by the end of two thousand nine (2009)?

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15

A- My recollection in two thousand seven (2007), is that the, when we look at the long distance transmission here, we have filed open access applications with Hydro Quebec Energy at the time. And we were thinking that it would be possible to sanction the project in two thousand nine (2009), yes.

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Q- Okay. Now also on that page, at the bottom, we read, quote: *"Two (2) export routes are being investigated and pursued: (1) an overland route*

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

through the province of Quebec..." and I'll skip the rest there. And then "(2) a sub sea route from the island into the maritimes or northeast United States, building on the transmission link from Labrador to the island." End quote.

5

And then it continues by talking about other kinds of sub sea links, like, in other parts of the world. So it's correct to say -- sorry, hang on just a second. When under No. 2, it says, "*Building on the transmission link from Labrador to the island...*" Do I understand correctly that logically, you can't export power from the island into the maritimes without first having the power supplied from Labrador to the island? We were talking about exporting Labrador power from the island and that necessarily requires a Labrador island transmission, correct?

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15

A- In the context of exporting energy from the Lower Churchill, yes, you would need a connection between Labrador and the island.

20

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Q- Okay. And was it ever, in two thousand seven (2007), or at some other time since then, was it Nalcor's intention to use that kind of sub sea route to export power produced by the Gull Islands, a generating station? Or would I be

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COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

correct in assuming that for the sub sea route we're always talking about exporting Muskrat Falls' power?

A- You could draw no conclusion on that. If you look at option No. 1, we had alternatives filed with Hydro Quebec energy that would have seen the full production of both Gull Island and Muskrat Falls export into the Quebec market. So I can draw no conclusion on the source of that energy for the maritime alternative.

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67

Q- Okay. So you're saying that it's conceivable to send Gull Island power to the island and on to the maritimes?

A- Had Gull Island been advanced and sanctioned and there were a suitable market portfolio developed that included a realistic combination of development in Labrador exports and/or exports to Quebec and/or domestic need and/or exports into the maritime provinces, Gull Island could be sanctioned today. So the ultimate termination of the portfolio for Lower Churchill, Gull, Muskrat -- Gull and Muskrat sequence wasn't known in two thousand seven (2007).

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Q- Okay. And the sequence could have included Gull Island power going through by the sub sea route?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- Absolutely.

69 Q- Okay -- but you'd agree with me that the project
registration of two thousand six (2006), doesn't
include the sub sea route from the island?

A- I would agree that that wasn't included.

5

70 Q- If I continue to page 57 and I'm on the right-
hand side, under the heading, "*Land, Water and
Wildlife*" and it says, quote, "*The government of
Newfoundland and Labrador will...*" and at the
bottom it says, quote, "... ensure the
*stakeholders communities, aboriginal governments
and groups are consulted appropriately on the
development of energy projects.*" End of quote.

10

I think there was another quote to show
you, just give me a second. Oh, yes. And also
in the left column, second paragraph around the
middle or towards, halfway through, the sentence,
quote, "*Aboriginal governments and organizations
are and will be consulted on resource
developments in areas subject to land claims or
settled treaties.*" End quote.

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So are you aware of consultation in the
sense described on page 57 by the government of
Newfoundland with the Innu of Ekuanitshit
concerning the project we're discussing today?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- I understand the consultation's taking place, but I'm not aware of the scope, the extent or the details of that consultation.

71 Q- Okay. I'm going to turn now to Exhibit C. Just because -- now we're backing up twenty-five (25) years, but it's the next exhibit in your affidavit. So this is the report of environmental assessment panel on the Lower Churchill Hydro Electric Project from December nineteen eighty (1980). If I turn to page 20, left-hand column at the bottom, there's a reference to "LCDC" that's the Lower Churchill Development Corporation, correct?

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10

A- Yes.

72 Q- And it says, quote, "*LCDC stated that the output of the proposed Muskrat Falls power generating site would more closely match the initial provincial requirements, since Newfoundland and Labrador Hydro has indicated that the full output of this component of the Lower Churchill project...*" and as I understand it we're talking about, "*this component*" being Muskrat Falls. I continue the quote, "*... could be absorbed in the provincial power grid by nineteen eighty-nine (1989)*". That was -- so I understand in nineteen

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

eighty (1980), Newfoundland and Labrador Hydro expected all the power from Muskrat Falls would be absorbed by the provincial power grid by nineteen eighty-nine (1989). I realize that was then. Currently, does Nalcor expect that the full output of Muskrat Falls would be absorbed in the provincial grid?

5

A- In the long term, we do -- but initially we would see that we require approximately two (2) terawatt hours per year or about forty percent (40%) of production of Muskrat Falls and we require them on a provincial grid. I haven't done the math on what developments have happened since this report was completed in nineteen eighty (1980), and of course where we are on the island today. I know that several additional hydro projects have been built. And I haven't compared the load forecast that existed in nineteen eighty (1980), to the one we have today.

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Q- Okay. Fair enough. If we go back to your affidavit now and I'll just note, in paragraph 18, there is a reference to a proposal from nineteen ninety (1990), for hydro electric generation facilities at Gull Island and Muskrat Falls which you called the second project

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

proposal. I just wondered if we could get a copy of that?

A- A copy of?

74 Q- The actual proposal.

A- I don't know if there was a written document as opposed to an engagement with Hydro Quebec. So I'm not aware of any specific document, other than calling it "a proposal" that being an offer to Hydro Quebec to move forward.

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Me MAUREEN E. KILLORAN:

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Can we take that under advisement, Mr. Schulze and we'll see if the document exists.

Me DAVID SCHULZE:

Yes. So the undertaking is to provide the document referred to in paragraph 18 of Gilbert Bennett's affidavit.

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Me MAUREEN E. KILLORAN:

And my response is, we'll take that under advisement, because it may not actually be a document.

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UNDERTAKING U-1 (Under Advisement)

Me DAVID SCHULZE:

75 Q- If I continue to paragraph 19, it says, quote, "*Between nineteen ninety-eight (1998), and two thousand (2000), Nalcor and Hydro Quebec jointly*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

pursued the Churchill River power project..." and it mentions that that was for, "...included new hydro electric generation facilities at the Gull Island and Muskrat Falls locations." End of quote. Do you know whether the intention in that period, between nineteen eight (1998), and two thousand (2000), was for the Muskrat Falls' generating facility to supply the island of Newfoundland?

5

A- To the extent that the project incorporated both, I'm not certain as to what energy was supplied from which facility. There were three (3) development course that you included in this project. There was the extension at Churchill Falls and Gull Island and Muskrat and I don't know how power or energy would have been distributed among the facilities to the various markets.

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76 Q- Okay. And do you know whether the intention was to supply the island or you don't know?

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A- My recollection is that a link was in that concept.

77 Q- Okay. Well, and by "link" you mean...

A- DC transmission facility was included in that development concept.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

78 Q- Okay. And now I'm going to go to Exhibit D and
that is the energy plan -- sorry, not the energy
plan, it's the discussion paper of two thousand
five (2005), that preceded the energy plan. And
I'm going to go to page 45. Now this is under 5
the heading "*Future Supply*" and if I go to the
third paragraph at the last sentence, there's a
reference to a graph or a chart of "*Island system
load and electrical energy capability*" and the
last sentence says, quote, "*Significantly the 10
graph shows that the... capability as it is today
would be less than the forecast requirement from
two thousand (2000), and onward, so additional
supplies should be implemented by then.*" Was
additional electricity supply implemented on the 15
island between two thousand five (2005), and two
thousand nine (2009)?

A- No.

79 Q- And were requirements met nonetheless?

A- Requirements were met. And unfortunately during 20
that period, the latter half of the last decade,
two (2) of our major industrial customers on the
island shut down, those being the paper mills in
Stephenville and Grand Falls, respectfully.

80 Q- Okay. Is that, excuse my ignorance of 25

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Newfoundland industry, is that Abitibi Bowater?

A- That's right.

81 Q- Both of them?

A- Yes.

82 Q- Okay. Now I'm going to go back to your affidavit, I'm going to paragraph 36.

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OFF RECORD

Me DAVID SCHULZE:

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83 Q- So paragraph 36, quote, "*The JRP...*" and "JRP" standing for Joint Review Panel. "... *agreement was subsequently amended on May fifteenth (15th), two thousand and nine (2009), and June ninth (9th), two thousand ten (2010), to lengthen the public comment periods for aboriginal groups and to provide for translation of the JRP documents into aboriginal languages respectively.*" End quote. Isn't it actually the case that the amendment was to reduce the obligation to translate documents into aboriginal languages?

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A- My recollection is that that agreement, the amendment to the agreement provided or outlined the requirements for translation.

84 Q- Okay. And just so I -- you can tell me if I'm

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

correct about this. I seem to recall being told by people in the Canadian Environmental Assessment Agency that the financial obligation of translation in that case, belonged to the project proponent, which would be Nalcor. Am I correct about that?

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A- Our role was to comply with the guidelines and JRP agreement.

85 Q- Okay. So if the JRP agreement said such and such documents need to be translated, that was done by Nalcor as the proponent?

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A- There are panel agreement, there are documents completed by the panel, that were not provided by or were not translated by Nalcor. There were documents that we completed the work. So we need to look at the agreement, to look at specifically what documents needed to be translated.

15

86 Q- Okay.

A- Who was responsible.

87 Q- Thank you. It's a fairly technical point, I think. We can move on. Sorry, just give me one moment. The question, my next question has to do with aboriginal consultation. I just want to explain to you where I'm tying into your affidavit. I come to this because you -- it

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

starts around paragraph 48 of your affidavit and then at other points throughout you discuss Nalcor's responses on aboriginal consultation. 48, paragraph 48, 52 and then it comes up later and we'll get into that in more detail -- but you'll recall, I guess, that there was litigation at the beginning, just before, if I remember rightly, or at the very beginning of the Joint Review Panel hearings, there was litigation by the Nunatukavut, that being the organization we used to call the Labrador Metis.

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10

A- Correct.

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Q- Now if -- which is, if I recall, the exact issue correctly, that was an application for an injunction to stop the review panel hearings. And one of the issues brought up in that litigation, was the difference between consultation of Innu Nation and the consultation of Nunatukavut with respect to this project. I'm just setting up my question. There was an allegation that's repeated in the judgment, that Innu Nation had received about nine million dollars (\$9,000,000) in funding for consultation of Innu Nation by Nalcor with respect to this project. Is that an accurate figure?

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COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

Me MAUREEN E. KILLORAN:

Mr. Schulze, I struggle with the relevance of this. That was an injunction and the respondents were in addition to Nalcor, the province of Newfoundland and Labrador and the federal government. And we're now talking about two (2) other First Nations groups. Can you help me with why this is relevant to the Ekuanitshit?

5

Me DAVID SCHULZE:

It's relevant to what aboriginal consultation was. If you want, you know, the entire -- my discussion was of the injunction was simply to explain to the witness where I got this figure from. And the relevance has to do with certain discussions and exchanges between Nalcor and Ekuanitshit, my client, in order that we can understand, we can compare it to what was offered to other groups in a similar position. I'm really just trying to -- the question is, in that context, the question is simply to know. That number was bandied about and my question is whether that figure is accurate.

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Me MAUREEN E. KILLORAN:

Okay. I will allow our witness to answer that question under reserve, but I do take the

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

position that any negotiations or any numbers or
any accommodation of any other First Nation group
is irrelevant to the claim of the...

Me DAVID SCHULZE:

Okay.

5

A- I didn't bring the details of that breakdown with
me this morning. So I remember the nine million
dollar (\$9,000,000) through that proceeding, but
don't have the details as to how that was broken
down into studies and consultation activities.

10

89 Q- Okay -- but when you say you remember the figure,
you remember the figure as their figure or
Nalcor's figure?

A- I just remember the number coming up in here.

90 Q- Okay. And are you in a position to tell me
whether the number is accurate?

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A- I think I stated that I don't have all the
details in terms of the breakdown of our
expenditures with Innu Nation with me here today.

91 Q- Okay. Would it be possible to obtain that
breakdown?

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Me MAUREEN E. KILLORAN:

No. Again, if Mr. Bennett has recollection
that is consistent with yours and was able to
tell you that today, our position is that numbers

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

as they relate to the Labrador Innu are irrelevant to the Ekuanitshit.

Me DAVID SCHULZE:

Okay.

92 Q- Now I'm going to paragraph 53. And you state that, *"The JRP specifically encouraged Ekuanitshit to participate in the environmental assessment process, including providing the JRP with comments on materials filed by Nalcor, and additional information like Ekuanitshit's traditional land and resource use."* And you cite various exhibits. 5

93 Q- At that time, and we are in roughly August two thousand -- between, in the period between August two thousand ten (2010), and January two thousand eleven (2011), for that purpose, for the purpose of responding to the JRP's invitation, did Nalcor offer any financial support to Ekuanitshit? 15

A- We had offered consultation arrangement, including funding that would have helped Ekuanitshit provide this information, compile and provide this information. 20

94 Q- Okay -- but my question is much simpler. The correspondence that's in Exhibit O, okay, which is in February two thousand and ten (2010), and 25

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

December two thousand ten (2010). The JRP writes to my client, says, "You know, if you have information on this, we would like to see it." Did you, seeing those letters, did Nalcor contact my client and say, "We understood you've been asked for this directly by the JRP. Here's the capacity we're willing to offer to provide that."

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A- Do you mean in response to this specific letter?

95 Q- Yes.

A- Or do you mean...

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96 Q- No, in response to those specific letters.

A- I know that, I know that we had offered funding to accomplish this goal. That offer, I think had been made prior to this and unfortunately wasn't accepted -- but I don't recall us writing a specific response to this letter.

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97 Q- Okay. I'm going to take you to Exhibit V, if I can find it myself.

Me MAUREEN E. KILLORAN:

"V" did you say?

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Me DAVID SCHULZE:

Yes. And you know what the problem with Exhibit V -- you did a beautiful job on this, but for some reason -- on the whole thing -- but Exhibit V has no page numbers. So maybe we

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

should both find it and call it up on the screen.

Me MAUREEN E. KILLORAN:

Do you know what, in the lower left-hand
corner, I have a page number.

A- It looks like the consultation assessment report.

5

Me DAVID SCHULZE:

98 Q- Yes, but I'm looking for pages, starting at page
3-14. Give me a moment, I just need to take you
to something -- oh yes, okay. For instance -- so
I'm at page 3-14 of Exhibit V, are you there?

10

A- Yes, I have it.

99 Q- Okay. Then I'll just borrow or I'll put this in
the middle.

Me MAUREEN E. KILLORAN:

That's all right.

15

Me DAVID SCHULZE:

100 Q- So for instance, in the middle there there's a
question and then Nalcor response is, "*This issue
has been addressed and it refers to an Innu
Labrador contemporary land use and harvesting
study agreement of July second (2nd), two
thousand and ten (2010).*"

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Me MAUREEN E. KILLORAN:

July twenty-second (22nd), two thousand and
ten (2010).

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Me DAVID SCHULZE:

Sorry, yes, I'm sorry, I meant to say July
twenty-second (22nd).

101 Q- So as of July twenty-second (22nd), two thousand
ten (2010), Nalcor was still signing new
agreements with Innu Nation on the preparation of
land use studies, am I correct? That's what I
should understand from the phrase "agreement?"

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A- Yes.

102 Q- And do you have an idea of what the monetary
value of that agreement was?

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A- No, I don't have that detail.

103 Q- Okay -- but you'd agree with me that that was,
that followed -- by two thousand ten (2010), that
followed easily a decade of agreements on various
land use studies by the Innu Nation?

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A- There had been a number of efforts to capture
land usage, yes.

104 Q- Okay. I'm going to go back to your affidavit.
Paragraph 75. And then you write, "*In the months
that followed...*" and just so that we understand,
we're in the months that followed your May two
thousand (2000) letter. "... *Nalcor continued to
provide...*" I'm quoting now. "... *Nalcor
continued to provide Ekuanitshit with information*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

about the project." end of quote. Now I want to take you to an exhibit -- I apologize, I want to make sure that I'm taking you to the right exhibit. I think I want to take you to Exhibit Z. I'll just make sure that's the one I'm looking for, before we spend too much on it. No, it's not Exhibit Z. I apologize. Give me just a moment, I'll tell you which -- I'm looking for your May two thousand and eight (2008) letter. It says that it's Exhibit Z, but it's not.

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OFF RECORD

Me DAVID SCHULZE:

105 Q- So I'm in Exhibit AA and I'm looking at your letter of May thirteenth (13th), two thousand and nine (2009). So this letter, among other things, encloses a community consultation agreement and then they conclude saying, "*I'd be grateful if you would review the attached and, if you are in agreement with its terms, please return two (2) signed copies to the following address.*" end quote.

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Now I'm just going to draw your attention to -- well, to two (2) points in the draft

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

agreement that's attached. You'd agree with me
that the work plan in the draft agreement is
blank?

Me MAUREEN E. KILLORAN:

Where are you looking, Mr. Schulze?

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Me DAVID SCHULZE:

In the draft agreement, if you continue,
it's appendix A.

106 Q- The work plan is blank. And you'd agree with me
then at appendix B, the eligible expenditures, is
a bullet, not an amount?

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A- That's correct.

107 Q- Okay. And then I'll take you to paragraph 8.7 --
sorry, not 8.7, 8.8, which reads, quote,

*"The parties agree that
compliance by Nalcor with the
provisions of this consultation
agreement completely fulfils the
requirements of the environmental
impact statement guidelines and
discharges the obligations of
Nalcor with respect to
consultation with Ekuanitshit in
respect to the environmental
impact statement guidelines."* End

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COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

quote.

So I just want to make sure I understand. In May two thousand and nine (2009), you are asking my client to sign an agreement, with no amount and no work plan, but that would state that compliance would completely fulfil Nalcor's obligations?

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A- The intent in the letter -- go back to the cover letter in the third paragraph. *"That the agreement is intended to regularize ongoing consultation on the environmental effects of the two (2) projects and to provide funding in accordance with an agreed upon community consultation work plan."* So I would have expected that we would have achieved that agreement. And then the appendices could have been added.

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108 Q- Okay -- but once it's signed, you did the agreement, the intent -- you drafted this agreement to be able to show it to the JRP and say you've done everything you needed to do?

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A- If we had completed the work plan, I would have expected that we would have fulfilled the requirements of the plan.

109 Q- And then why did you ask him to sign it and send

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

it back with no work plan?

A- I would have expected that we could have concluded that agreement.

110 Q- Okay. While we're on that topic, I'll take you to Exhibit BB. And this, in your affidavit, you say this Exhibit BB, are notes of a meeting between Nalcor and Ekuanitshit that was held in the community on June first (1st), two thousand and nine (2009). And I note that it's labelled at the bottom, "Notes by..." and it's also labelled June seventh (7th), two thousand and nine (2009). So should I understand from that that the notes were prepared on June seventh (7th).

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A- That would be my understanding.

111 Q- And just to be clear, you were not at that meeting?

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A- That's correct, I was not at the meeting.

112 Q- Okay. I'm going to ask you some questions that come out of Exhibit A 336, which is not one of your printed exhibits. Actually maybe we might as well both pull it up. Wait a minute, have I got the right one? Know what, sorry, I'm at maybe the wrong number, because I've just pulled it up and it's the wrong one. I'm looking for the panel update on consultation agreements and

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

for some reason that's not -- my notes say it's
AA 336, but AA 336 is something else.

SHORT RECESS

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Me DAVID SCHULZE:

I had the wrong number. It's 366 and it's
the panel update on consultation activities and
negotiations of agreements of May two thousand
and ten (2010).

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A- I have it, yes.

113 Q- Okay. I have to tell you what page I want to go
to. Wherever the -- there it is on page,
whatever that is, 5 of 7.

Me MAUREEN E. KILLORAN:

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Beginning with, *"Although Ekuanitshit has
been identified..."*

Me DAVID SCHULZE:

Yes. And then of course, the phrase that's
of interest to me is, quote, *"Existing
information available to Nalcor indicates no
record of historic or current land and resources
use and occupancy by the community in the
project..."* And then it continues, quote,
"Notwithstanding this lack of evidence, during

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

the past year Nalcor has been engaged in meetings, correspondence and discussions with the Ekuanitshit respecting the terms and conditions of formal community consultation arrangements."

End of quote. So if I were to take you back to Exhibit BB and these then are the notes from the June first (1st) meeting in the community. Sorry -- are you with me?

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A- Yes.

114

Q- Okay. And the first page, "*Participants...*" there's a bunch of people mentioned and the fourth person is Ms. Rita Mestokosho, is listed as a counsellor. Now I'm going to turn to page 4, there's a heading that says, "RM" my understanding is that that would refer to Rita Mestokosho. And you'll see that the first paraphrase of what she said is, quote, "*My great uncle has been all over this territory and written a book about it with an anthropologist. What happened in the past is still part of today and will be read tomorrow.*"

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And the third point that she paraphrases as saying, quote, "*My great uncle moved freely without boundaries. It's difficult for us to imagine boundaries. My grandmother left here on*

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

foot for Sheshatshiu when she was a little girl."

End of quote. Now I don't know if this is part of your information that you'd be familiar with, but were you aware that Rita Mestokosho's great uncle was Mathieu Mestokosho?

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A- No, I was not aware.

115 Q- And are you familiar with a book by the anthropologist Serge Bouchard which is called, in French it's called, "*Récits de Mathieu Mestokosho, Chasseur Innu*" and in English, the English translation was called, "*Caribou Hunter a Song of a Vanished Innu Life*". Have you seen that book?

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A- No, I'm not familiar with that book.

116 Q- So you wouldn't be aware that that book describes Mathieu Mestokosho's travel between Mingan and Labrador in the 20th century?

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A- No.

117 Q- Do you know whether Nalcor had information available to it that would indicate that that book was inaccurate?

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A- I don't know.

118 Q- I'm going to draw your attention to Exhibit A-109 and actually to make it a little easier, you can just go to -- do any of you have our affidavits

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

with you?

Me MAUREEN E. KILLORAN:

I don't.

Me DAVID SCHULZE:

119 Q- Okay. So then just to go Exhibit A-109 that will
be fine. Okay, so you've got it into "components
studies," so take a minute. So if you go into
component studies, then you need to go into
folder 4, "socio economic studies" -- are you
with me so far?

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A- Yes. You know what you're looking for.

120 Q- I did actually make some copies of the parts that
interest me. So I am looking at -- I think I'm
mostly looking at, I think it's 5, Historic -- so
I'm in the sub folder which is "cultural heritage
resources" and then I think I'm in the document
5, "Historic resources Labrador study." That's
right.

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A- Yes, I have a long list of components that exist,
it's going to take me a minute to look it up, but
if we can just refer to your hard copy for...

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121 Q- Okay. First of all, let's just make sure I
understand. These documents they're a little
confusing to me actually, but as I understand
them, they were filed in two thousand and nine

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

(2009), but prepared quite a bit earlier. This one, for instance -- okay, it's filed in two thousand and nine (2009), prepared in nineteen ninety-nine (1999), and it is a historic resources study for the project area.

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A- That's right. So the component studies, and there are many of them, were compiled over a number of years and some have been updated along the way and some have been updated with information in the EIS. So we have a basis of information for the environmental assessment that goes back many years.

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122 Q- Okay -- but if you filed it as a component study for the EIS, do I understand correctly that for the purposes of the environmental assessment, you were still standing by its contents? "You" I mean Nalcor, not you personally.

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A- Yes, the study would have contained relevant information to the environmental assessment. And it's also possible that subsequent studies may have built upon the body of information that was contained in those component studies -- but all of the studies that we filed are on the record, the old ones and the new ones.

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123 Q- Okay. So you'll see that on the hard copy that

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

I've given, for instance, page 33 there's a discussion of events at Winokapau post in 1872, and we're -- and the sentence that I highlighted or the sentence that drew my attention is in the second full paragraph, quote, *"In a later entry for that season it states that about sixty (60) families of Mingan and St. Augustin indians are hunting in the vicinity of Winowkupa..."* it's spelt differently there, it's spelt (W-i-n-o-w-k-u-p-a). And then on page 78, under the heading, *"Site, Camp and Feature Attributes and Location"* I read, *"During the interviews, several references were made to specific site locations including the following..."* and one of the bullets says, quote, *"People from Mingan used to camp on the south shore of Gull Lake."* end of quote.

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Me MAUREEN E. KILLORAN:

Mr. Schulze, we're struggling to find that quotation, can you help us?

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Me DAVID SCHULZE:

Oh, I'm sorry, maybe I didn't give you that page. Sorry...

Me MAUREEN E. KILLORAN:

No, no, we found it, right near the bottom.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Me DAVID SCHULZE:

124 Q- Okay. And then do you have page 80? I think so.
Under the heading "Travel Routes and
Transportation" and the last sentence of the
first whole paragraph, "Innu senior informants
made reference to a number of other areas that
were used not only for subsistence purposes, but
also consolidates social ties with other Innu
groups, including those from the St. Lawrence
River north shore (e.g. Sept Iles and St.
Augustin) and the Quebec Labrador deep interior
(Shefferville and Kaniapiscau) where Innu and
also Cree territories (overlap)" end of quote.
And then "Significant statements regarding
places, travel routes and portage trails
include..." and at the very bottom, quote, "From
Two Rivers and Shoal River to Mathieu Andre's
store near Mecatina River and Mingan, year after
year." So I'm just trying to understand. Should
I take these studies to be correct and in that
case, why does the consultation report to the JRP
say that Nalcor found no evidence of historic use
by the Innu of Ekuanitshit? I'm sorry, I should
say, we all understand that Mingan is another
name for Ekuanitshit, correct.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- Yes, we do. I think it's fair to say that probably a typed definition of the project area in the report recognized that these are part of the record, and I think it's fair to say that the consultation assessment report, which is filed subsequent to this monthly report, contains maybe a more comprehensive view of the traditional area of the Innu of Ekuanitshit.

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125 Q- So to make sure I understood. Which one contains the more comprehensive review?

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A- The consultation assessment reports. So the supplementary report to JRP 151.

126 Q- Okay. So when I'm looking at that supplementary report, that's more comprehensive than...

A- Certainly a later report and more substantive description than what we have in the monthly progress report. And I would agree that there is information on the record that shows historic use of the land by the Innu of Ekuanitshit in Labrador.

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A- Okay. Thank you. I had noted in reviewing Nalcor's supplement to the information request, 151, which concerns aboriginal consultation and also in the environmental impact it's the statement itself. There is no reference that I

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

could find to any historic or current land use of the project area by the Innu of Natuashish. Are you aware of any such documentation?

A- We have extensive record of consultation documentation with Innu Nation, within a nation.

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127 Q- Okay -- but Innu Nation represents two (2) communities, ... and Natuashish. And I agree there's ample documentation of historic and current land use and occupancy of parts of the project area -- but what I'm saying to you is, I have found none, none for Natuashish which is the other community that Innu Nation represents.

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A- It would be difficult for me to go back and look at the entire consultation record with Innu Nation and describe which members of Innu Nation are currently or who have been previously residents of Labrador Innu communities. So I am not in a position to definitely say where the residents of each community originally came from.

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128 Q- Okay -- but it would be fair to say that -- or do I understand correctly rather, that since the two (2) communities, since Innu Nation represents those two (2) communities, the two (2) communities share in the impact and benefits agreement, signed with Nalcor?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- We have an impact and benefits agreement with Innu Nation. The operation of the band councils, in relationship between the band councils and Innu Nation is something that I have no knowledge of.

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129 Q- Okay. All right. If I go to Exhibit V. So if I'm in Exhibit V, there is somewhere in Exhibit V. Maybe we can find it together. There is a study entitled, "*Land and Resource Use Interviews Report Pakua Shipi*" which is appendix 4 to the supplement to this document. Here it is. It's near the end. Do you have it? Okay. So would you agree that this report was a result of the Innu Pakua Shipi, which is another Quebec Innu community, having signed a community consultation agreement in substantially the same form as what you have proposed to Ekuanitshit?

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A- I haven't specifically prepared both agreements, but I understand that we signed the community consultation agreement with Pakua Shipi.

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130 Q- Okay. Well, actually if you look in and I'll just give you the reference now, and we'll see if we need to go to it -- but in A-432 there is -- which was the information response JRP-151, there's an attachment which was called "*Community*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Consultation Agreement Template for May 2010" so would I -- just my understanding, when I saw that document, is that there was a basic template, there was a basic format of a community consultation agreement that Nalcor proposed to all the Quebec Innu communities, is that correct?

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A- That's correct.

131 Q- Okay. And the only Quebec Innu community that signed such an agreement was Pakua Shipi?

A- That's my understanding.

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132 Q- And this report is the result of that?

A- Right.

133 Q- Okay. I may come back to this report -- but for now that's, that will be it for that. I'm going to go back to your affidavit, paragraph 97. So the first sentence in paragraph 97 is, quote, "*Nalcor concluded that the project would not likely result in significant adverse environmental effects on caribou.*" End of quote -- but if we go to the JRP report itself, which I had a minute ago -- I only have in French. You know what, I think for the purposes of the questions I'm going to ask you, probably the easiest thing to look at now, would actually be the government of Newfoundland response, where

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

they put all the recommendations together --
because I want to ask about a recommendation --
which is -- well, you have it on paper...

Me MAUREEN E. KILLORAN:

Which letter?

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Me DAVID SCHULZE:

It is Exhibit T.

134

Q- So if I go to recommendation -- so I'm using the
government of Newfoundland response, just so that
you have the recommendation with the provincial
response. So if I go to 7.6 -- sorry, I'm going
to try and -- take your time, if you want to read
these. I'm going to try, for my questions,
though not to read the entire recommendation
response -- but the recommendation 7.6 concerns
recovery of the Red Wine Mountain Caribou herd
and the panel recommends that the project is
approved.

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*"The Department of Environment
and Conservation should require
Nalcor to play an enhanced role
in the recovery process for the
Red Wine Mountain Caribou herd,
by putting resources into the
process for research and recovery*

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COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

*efforts and to participate
 actively in the overall effort to
 ensure the recovery of the
 caribou herd."*

And there is a response by the government of
 Newfoundland that mentions, that Nalcor is a
 member of something called "The Labrador Woodland
 Caribou Recovery Team." Now other than being a
 member of that recovery team, is Nalcor devoting
 resources to research and recovery efforts for
 the Red Wine Mountain Caribou herd, as
 recommended by the JRP?

A- Just to be clear, the panel recommended, as I
 understand it, that Nalcor should play an
 enhanced role in the recovery process. So we'll
 participate in efforts through the recovery team,
 which has other representation including
 provincial government associated with it.

135 Q- Okay. If I look at recommendation 7.10, it's
 under the heading, "Monitoring Follow Up and
 Adaptive Means for the Trust Real Environment."
 One of the -- the second recommendation is,
 quote, "*Monitor the response of the Red Wine
 Mountain Caribou herd, including any population
 changes through the construction phase and early*"

COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

part of the operation phrase." Sorry, that's a recommendation about what Nalcor should do. Now there's a response by the government of Newfoundland about what the Department of Environment Conservation will do. I just want to understand, is Nalcor specifically planning to monitor the response to the Red Wine Mountain Caribou herd, as the panel recommended?

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A- We will organize our monitoring efforts, particularly with the province and we'll also undertake monitoring programs for caribou throughout the entire province. So we'll make sure that our efforts are coordinated with those of the province. There have been situations where we've been asked to undertake specific work and we'll work that out with the Department of Environment and Conservation Wildlife division.

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136 Q- Okay. If you go to recommendation 9.3 on page 7, under the heading "*Community Level Land and Resource Use Monitoring.*" It says, quote,

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"The panel recommends that if the project is approved, Nalcor involve all aboriginal groups in the design and implementation of its proposed community land and

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

*resource use monitoring program
for the duration of the
construction period, to ensure
that parameters of importance to
these groups and traditional
knowledge are included."*

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So is there, has there been or will there be a
community land and resource use monitoring
program which the Innu of Ekuanitshit will be
invited to participate in?

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A- We haven't finalized the details of our community
level land and use resource use monitoring
efforts.

137 Q- Okay. I go to 11.1, the next one, "*Involvement
of Aboriginal Groups in the Management and
Protection of Historic and Archaeological
Resources*" It's again a recommendation aimed at
Nalcor and it says, among other things, quote,

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*"Nalcor shall also give
consideration to inviting
participation by interested
aboriginal communities in Quebec.
Nalcor should share with
aboriginal groups the results of
its work on the monitoring of*

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

*historic and archaeological
resources."*

So has there been any, have there been any steps
by Nalcor to implement recommendation 9.3 with
respect to aboriginal communities in Quebec?

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Me MAUREEN E. KILLORAN:

In recommendation 11.1, I think you mean.

Me DAVID SCHULZE:

Yes, I'm sorry, did I say 9.3, I did mean
11.1. I apologize.

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A- I think the, what I understand the legislation in
this area, the responsibility for historic and
archaeological resources lies with the provincial
archaeology office. So we don't have the ability
to undertake this work directly by ourselves. We
will collaborate with the PAO -- but ultimately
this, this recommendation and it's maybe why the
province accepted the intent, responsibility does
lie with the PAO, not with Nalcor.

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138 Q- Okay. And if I look at 15.5, that's on page 32,
under the heading, "*Lower Churchill Project
Monitoring and Community Liaison Committee...*"
it's very long. I'm going to try to cut to the
chase. It says, "*The panel recommends that prior
-- if the project is approved, prior to the start*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

of construction, the provincial Department of Environment and Conservation appoints a monitoring and community liaison committee using a committee based nomination process." and it says, near the end of the, near the end of the mandate for the proposed committee, it says, it includes -- I'm on the next page, quote, *"Have representation for community based agencies and non governmental organizations, aboriginal organizations, relevant federal and provincial government departments and Nalcor."* end of quote. The government of Newfoundland's response is, the second sentence, quote,

"A committee will be established by Nalcor to provide feedback and advice to the proponent and government on the effects of the project. The government is committed to ensuring consultation with affected aboriginal groups, communities and relevant stake holders to address public concerns and communicate monitoring results." end of quote.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

So this committee will be established by Nalcor?

A- Yes, it will

139 Q- Okay. And should the Innu of Ekuanitshit be
expected an invitation to participate in that
committee?

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A- We'd be definitely interested in having a
conversation to consider, you know, the interest
in areas where the community is interested in
understanding -- what issues are interested, I
guess what issues are interested in understanding
and how they might want to participate.

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140 Q- Okay. Thank you. I'm going to go back to your
affidavit. I'm sorry, I just want to make -- I
don't want to make this too complicated. There's
a discussion in paragraphs 107 and following of
the decision process, but what I actually want to
take you to is the environmental impact
statement. I know you have it handy there -- I
have to pull it up on the screen. It's A-108.
I'm pretty sure I'm in the first volume, just
bear with me while I make sure I am. I'm in the
Volume 1A of the environmental impact statement
and I'm at page 3-3, I think -- sorry, just a
moment. Well, I'm on page 66 of 344, if you've
got it electronically.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- All right, I'm there.

141 Q- Okay. So I'm at the third paragraph of that
page, which is, I think, page...

Me MAUREEN E. KILLORAN:

Entitled, "*Engineering and Procurement
Contracting*"

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Me DAVID SCHULZE:

I think so -- I don't have a heading on
that page. I'm on page 3-3, under Volume 1A,
Chapter 3, "Project Planning" page 3-3, which if
you've got a PDF, it's page 65 of 344. So we're
all at the same, as the saying goes, "We're all
on the same page?"

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Me MAUREEN E. KILLORAN:

Yes. And the heading is 3.3.1 "Gateway
Process?"

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Me DAVID SCHULZE:

Just above it.

Me MAUREEN E. KILLORAN:

Just above it, okay.

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Me DAVID SCHULZE:

142 Q- So it's the paragraph that reads, quote, "*All
aboriginal groups will be encouraged to
participate actively in the project. In
accordance with the Tshash Petapen (New Dawn)*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

agreement between Innu Nation and the province, Nalcor Energy is negotiating an IBA with Innu Nation that, once finished will define how the Labrador Innu will participate in and benefit from the project." end of quote.

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And by "IBA" we mean an impact and benefits agreement, correct?

A- Yes, that's correct.

143 Q- Okay. Are there any impact and benefits agreements planned to define how any other aboriginal group will benefit from this project?

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A- No, there are not.

144 Q- Now I'm going to -- and I'm going to ask you a few questions about the gateway process. Maybe I'll keep this on the screen, that I'm going to go back to your affidavit. If I look at paragraph 110 of your affidavit, there's a discussion -- well, we're in the context of a discussion of the gateway process, which has six (6) phases. And then in paragraph 110, there's a discussion of the second phase, which is entitled, "*Generate and Select Alternatives*" and further in paragraph 110 we're told that phase 2 involves, among other things, power sales and access, financing strategy, advanced engineering

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

studies, early construction planning and economic analysis. And do I understand this correct -- sorry, paragraph 111 says, "*In November 2010 the project passed decision gate 2*" So should I understand that to mean that as of November two thousand ten (2010) for instance, power sales and access were settled and economic analysis was complete? I took you through all that stuff so you'd understand how I got to this question.

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A- No, you shouldn't include that. The level of those activities that were completed in phase 2 were sufficient for us to make a feasibility decision at the end of that process that decision gate 2.

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145 Q- So they're not -- none of those elements in phase 2 which are listed, which are; aboriginal negotiations, additional power sales and access finance strategy, advanced engineering studies, early construction planning, economic analysis, none of them are finished when phase 2 ends, they're just done to the level of allowing you to conclude that the project is feasible, okay.

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A- And we select our preferred development alternative at that point in time. And we move forward. In this case we're moving forward with

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

the first stage of the project with Muskrat Falls.

146 Q- Well, exactly -- so...

A- And what I mean, when I say "move forward" I mean that we move forward into detailed engineering, definitive agreements in the commercial and we prepare for construction.

5

147 Q- Would it be fair to say or should I understand that Nalcor has concluded that Gull Island is feasible?

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A- You should conclude from this, at this point in time, we have not advanced Gull Island through decision gate 2. When the project has been examined and markets have been developed to a point where we're satisfied with the feasibility of Gull Island, we'll pass to gate 2.

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148 Q- And do you have a schedule for that?

A- We don't have a specific schedule. We're driven by deliverables, not by time.

149 Q- So when you say "deliverables" you mean?

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A- In other words, we need to demonstrate feasibility and then we'll move forward.

150 Q- Okay. And with respect to Gull Island, it would be fair to say that feasibility means you have to build, to send the power somewhere, doesn't it?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

A- Markets, feasible markets, market access, commercial arrangements are prerequisites just as they were for Muskrat Falls.

151 Q- Okay. Is it fair to say Muskrat Falls is not currently feasible without access to the Quebec transmission system?

5

A- I think you mean Gull Island.

152 Q- Sorry, I meant Gull Island, yes, I'm sorry.

A- It's possible that with the level of development in Labrador that's currently planned and maybe markets for some or at least some of the production of Gull Island. So I'm not going to make a definitive conclusion on the feasibility of Gull Island, as far as exports to Quebec are concerned.

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153 Q- Okay -- but if development in Labrador can't use up -- what is it twenty-two (22), twenty-three hundred (2,300) megawatts...

A- Megawatts.

154 Q- ... then it needs to be exported.

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A- We would be looking for export markets.

155 Q- And is there some way to send that power somewhere other than the Quebec system?

A- I think it's fair to say that Quebec would be an important part of Gull Island's export capability

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

-- but certainly, you know, those plans are ongoing, continue to work on market access and to advance that file.

156 Q- Okay. At paragraph 14 you say that -- sorry, 142, I apologize. You say that, "*Assuming an affirmative DG3 decision Nalcor's current construction schedule contemplates construction commencing in the fall of two thousand twelve (2012).*" So why would it begin in the fall of two thousand and twelve (2012)? Is that required in order to ...

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A- Well, a DG3 or a sanction decision would be required. It would need to be affirmative before we would start construction work.

157 Q- Okay. This is something I have to admit that I didn't understand perfectly from the materials. For Nalcor what is a sanction decision? I understand it's a decision by the provincial government, is that correct?

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A- Yes, it's -- the provincial government of course is our shareholder, but a sanction decision is a commitment to start with a view to completing construction of the project.

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158 Q- And what form does it take? Is it an order in council, is it just a letter from, I don't know,

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

from the minister or from cabinet?

A- Well, provinces have stated thus far that prior to making this decision, there would be a debate in the House of Assembly in Newfoundland and Labrador. The actual form of the decision has not been communicated to me. I would expect that it would probably be an order in council, given the size of the commitment.

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159 Q- And you say that construction is contemplated in the fall of two thousand twelve (2012), but there is a right of way that's just been cut near Muskrat Falls...

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A- We've undertaken some preliminary work at the site.

160 Q- Okay. And is there a reason that that doesn't qualify as "construction?"

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A- It's a -- that work is not the full scope of the project. There were some specific activities that we identified that were helpful in mitigating risks associated with the project. So having access to the construction site -- in other words, the construction of the access road and the provision of construction power to the site, as well as the availability of communication facilities were important. And it

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

was important that we would have access to those
in a timely manner, were we to sanction the
project.

161 Q- Okay.

A- So we looked at the risks of completing that work
in advance of a sanction decision and we looked
at the risk of not having that work completed
when a sanction decision were called. We
concluded that it would be beneficial to the
project if that work were undertaken today. So
we could start work immediately in the event that
the sanction decision was made.

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162 Q- Okay. So the work that would start immediately
with the sanction decision, would be what?

A- First step in construction, after a sanction
decision, would be the completion of bulk
excavation at the site, so that we can start
construction of the major works at the dam site
itself. More particularly the power house.

15

163 Q- Okay. So for you, when you read about -- when
you talk about construction in your affidavit --
I don't want to put words in your mouth, but the
essence of it is the excavation?

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A- When we think about construction here, I think it
would be important to look at it in context and

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

this is the statement here, will be construction, completion of the construction of the full facility. So to start work with a view to constructing the entire facility. I didn't intend that to mean preliminary work that would be completed for activities that are ancillary to the project itself.

5

164 Q- Okay. Paragraph 150 you allege,

"Nalcor understands that so long as this proceeding is unresolved, Nalcor may be unable to obtain the necessary federal permits and approvals required to commence construction of the project. It may also be unable to secure the federal government's financial guarantee pursuant to the memorandum of agreement."

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So when you say "Nalcor understands" have you received communications from the federal government to that effect?

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A- We pointed out that we may be unable to.

165 Q- I understand what you pointed out. I mean, it's fairly simple, you say, "we understand this" but somebody in the federal government say, actually

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

say to Nalcor, either in writing or verbally...

A- No, our understanding is based on the possibility that while this proceeding is under way, that we may be prevented or unable to obtain these permits.

5

166 Q- Okay -- but you have in fact applied for federal permits in the meantime, correct?

A- We have not had requirement to date for a federal permit.

167 Q- I'm just going to show you a document. Sorry, for the benefit of Maître Veillieux and Letarte, I'm going to show the witness from Transport Canada, dated August twenty-fourth (24th) to Jean-Charles Pietacho. In fact...

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A- Yes, this is...

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168 Q- And it concerns -- just to say in English. It concerns an application for a Navigable Waters Protection Act permit.

A- We will require this.

169 Q- Oh, I see what you mean. When you say you haven't acquired it yet, you...

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A- I said "to date."

170 Q- To date, but you have applied for it?

A- Yes. It will come a point in time where we require to construct the power line across the

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Churchill River.

171 Q- And it's signed -- so it's dated August twenty-fourth (24th), two thousand eleven (2011), it's addressed to Chief Jean-Charles Pietacho and it's signed by J. Jason Flanagan of Transport Canada.

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And have you seen this correspondence previously?

A- I'm familiar with the application for the construction power line, yes.

172 Q- Okay. And were you aware that Transport Canada had given my client thirty (30) days to provide his comments on ...

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A- I understand that they're circulating the permit applications for comment.

173 Q- There are a number of recommendations that were made by the joint review panel that concerned federal permitting and what Nalcor could do. I thought I would just in -- I want to take you through some of these to see what Nalcor's follow up had been. So actually -- the easiest place might be if we go back to the provincial -- I don't have the JRP report in English here, so maybe I'm just going to go back to the provincial response. What was that exhibit, V? 6.4. It's T -- I'm just using that because it has -- the provincial response has all the recommendations

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

together, but it really doesn't matter, anywhere
you have the recommendations will do.

A- Just for clarity, you're thinking the provincial
response or the federal response?

174 Q- I'm not going to be quoting anybody's response, 5
I'm just using the provincial response so I have
all the recommendations.

A- Okay, that's fine.

175 Q- In fact I'm going to take you through the
recommendations on federal issues. So I'm at 6.4 10
-of the JRP report.

Me MAUREEN E. KILLORAN:

So you're at recommendation 6.4?

Me DAVID SCHULZE:

That's right. It's entitled, "*Mitigating* 15
Entrainment Effects" So quote, "*The panel*
recommends that if the project is approved,
Fisheries and Oceans Canada require Nalcor to
take the following steps before receiving the
section 35 (2) authorization with respect to 20
potential entrainment losses: (a) carry out
further baseline sampling at Gull Island to
verify both adult and juvenile fish movements in
this area and (b) prepare a mitigation and
adaptive management strategy..." and I'll skip 25

COURT FILE NO. T-778-12
 CONSEIL DES INNUS DE EKUANITSHIT
 vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
 EXAMINATION ON AFFIDAVIT
 Me DAVID SCHULZE

the details. And it adds, quote, "*This strategy should also address compensation measures should it become apparent that high loss of the specific species is inevitable.*" So since Nalcor does not yet have its section 35 (2) Fisheries Act authorization, has it taken any of the steps recommended in 6.4?

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A- Okay, so there are two (2) issues in 6.4. First of all, the preparation and mitigation adaptive management strategy, I expect that to show up in the management plan, more specifically for phase 1, for Muskrat Falls. That will be discussed with DFO. So discussions with DFO in terms of compensation are ongoing. The requirement for baseline sampling of Gull Island, of course, will be tied to construction at Gull Island. And we would discuss that with DFO at phase 2, we advance Gull Island into construction.

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176 Q- Maybe I can make this question a bit simpler. If I look at -- If I look at -- there's recommendation 6.6 on "*Fish Habitat Compensation.*" There's 6.9 "*Development of the Aquatic Monitoring Program*" and there's 7.2 "*Repairing and Compensation Plan.*" And they're all recommendations on what Nalcor should do or

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

what Fisheries and Oceans Canada should require Nalcor to do. So I guess my question is this, if Nalcor is concerned about getting federal permits quickly, shouldn't it be implementing these recommendations right away?

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Me MAUREEN E. KILLORAN:

I'm not sure that's a proper question, Mr. Schulze. I think you can ask him if they are implementing them right away, but should -- or I mean, I'm not quite sure what the standard is.

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Me DAVID SCHULZE:

Okay. Fair enough.

177

Q- Are you implementing these recommendations right away?

A- My understanding is that the habitat compensation plan that would be required under the Fisheries Act, would be, once completed in draft form, would be submitted for public and aboriginal comment and then there would be consultation on the plan. So to the extent that the plan, for example, I reasonably expect that aquatic monitoring is going to be a component of our long term plan. How we facilitate that whether, you know, whose ultimately responsible for that plan, I think we would view that as a proponent

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

responsibility. I certainly would look at the development of a plan -- I fully expect, for example in 6.9, I fully expect that development of an aquatic monitoring program will be one of our long term monitoring plans. Development of habitat compensation plan, as required, under the Fisheries Act.

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So I think in general terms, we see that the scope of these recommendations, you know, is consistent with our thinking. There are details in here that we may or may not see in the same way as the panel did, but certainly in general terms, to your point, these issues are under consideration by us.

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178 Q- Okay. If I go back to your affidavit, but I'm still on the same topic, paragraph 120, quote, "*A delay of a year or more could affect the viability of the project*" end quote. Are you saying that a delay of a year or more could compromise the viability of the project or just affect it?

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A- Well, I think compromising would be, that would be an affect.

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179 Q- Fair enough -- but "affect" is a very broad word. If you're delayed for a year, could the whole

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

project have to stop because of that year's delay? Is it possible the whole project would need to be cancelled?

A- I can think of consequences of a delay of a year or more that could be very serious. And if you look at paragraph 118, *"The notion of a delay in construction start, in terms of jeopardizing our ability to obtain key personnel, to continue to retain SNC Lavalin and the 200 people plus that they have currently working on the project, completing engineering and procurement activities."* If we're unable to retain that team and we're unable to retain key members of our own team, because they're not confident that the project will move forward, that could certainly be a substantial problem for us.

180 Q- Okay -- but SNC Lavalin is not the only engineering firm in the country. You're talking about the availability of personnel and outside expertise that is available elsewhere if one firm or certain staff members would go?

A- I don't think that, based on the experience that we have today, in terms of retaining our EPCM contractor, I could pick up the phone tomorrow and call any consulting firm and have them show

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

up immediately with two hundred (200) people to start work on the project. We put a lot of time and effort in retaining SNC Lavalin and having them develop the team that they currently have on site.

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181 Q- All right. In paragraph 121 you say, quote, *"Each year of delay in achieving project in service and the subsequent delay in replacing Nalcor's thermal generation is expected to cost the province's electricity rate payers \$400,000,000"*. What's the basis for the expectation that rate payers will pay four hundred million dollars (\$400,000,000)? When we're saying, *"... replacing thermal generation"* by the way, we're talking about replacing Holyrood?

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A- Holyrood facility. So when we look at projected fuel bill for Holyrood in twenty seventeen (2017), twenty eighteen (2018), time frame, we will look at spending close to four hundred million dollars (\$400,000,000) or approximately four hundred million dollars (\$400,000,000) in fuel in that facility.

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182 Q- So you're talking about five (5) years of spending on fuel?

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

- A- That's one (1) year.
- 183 Q- Four hundred million (400,000,000) is one (1) year, sorry. But if fuel prices go down, then it's less, correct?
- A- And if they go up, it's more. **5**
- 184 Q- Yes.
- A- So we look at our forecast, our forecasted fuel price and we look at the energy that we expect to get from Muskrat Falls, do the math and we find it's approximately four hundred million dollars (\$400,000,000). **10**
- 185 Q- And wouldn't the rate payers save an equivalent amount by differing the cost of building Muskrat Falls and the Labrador Allen Transmission Link?
- A- They benefit from the development of the project. **15**
- 186 Q- Well, I'm not accepting that premise, but it still costs money, correct? Building it costs money, every year they don't build it, the ratepayers don't have that cost built into their bill, correct? **20**
- A- It is true that if we don't build the project, then we won't incur that bill. The worst case scenario is that we're in a situation where the project is partially built and we're incurring expenses on both sides of the ledger. **25**

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

187 Q- At paragraph 128 you say, quote, "*The Muskrat Falls review is separate and distinct from the environmental assessment process commenced pursuant to the CEA and the EPA...*" And "CEA" is of course, Canadian Environmental Assessment Act and "EPA" is the Provincial Environmental Protection Act. I assume you're familiar with the federal government response to the joint review panel report?

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A- Yes, I am.

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188 Q- Okay. And you're aware that -- I can take you through it. I'll have to pull it out. Maybe I could just read it to you from it or would you prefer to pull it up on the screen?

Me MAUREEN E. KILLORAN:

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I think if we have it on screen, it would be good to have it.

A- It would be good to have it.

Me DAVID SCHULZE:

Yes, that's fine.

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Me MAUREEN E. KILLORAN:

Or we could take the English version...

Me DAVID SCHULZE:

No, no, take the time to put it on the

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

screen. I agree, it's better if we...

A- I'm just questioning if I have it here now,
that's my ...

189 Q- It's somewhere in your beautiful A, Exhibit A,
near the bottom.

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A- Okay.

Me MAUREEN E. KILLORAN:

It may not be in Exhibit A.

Me DAVID SCHULZE:

No, it's not in Exhibit A, you're right.

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190 Q- Okay, I'm going to read to you from it and then
-- I think we don't have it with us, but I'll
read it from the English version and if you want
we can pull it up on the screen some other way.
So the federal government response says, quote,

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*"In considering whether the
significant adverse and
environmental effects of the
project could be justified in the
circumstances, the government of
Canada counted 4: and then among
other things..." it says, quote,
"An economic analysis of the
project that was conducted by the
government of Canada, while*

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

*identifying risks and
uncertainties, concluded by
supporting Nalcor's assertions
that the project represents the
least cost option for meeting
anticipated provincial
electricity demand." It adds
then, quote, "This finding has
been corroborated by an
independent report undertaken by
Manitoba Hydro International for
the Newfoundland and Labrador
Public Utilities Board."*

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So was the federal government wrong to take the
position that the Manitoba Hydro International
report produced for the Public Utilities Board
confirms that the project is the least cost
option? I mean -- what I'm saying is -- let me
put this question a little more simply, I
apologize.

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Me MAUREEN E. KILLORAN:

I'd rather not be in a position to have
that witness testify that the federal government
was wrong, but if you want to compare the two
(2), we're fine with that.

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Me DAVID SCHULZE:

191 Q- You say the Muskrat Falls review is separate from
environmental assessment. I'm just saying to
you, is it not the case that the federal
government actually relied on the report produced
as part of the Muskrat Falls review, to conclude
that the project was justified on an economic
basis?

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Me MAUREEN E. KILLORAN:

I struggle with this witness telling you
what the federal government relied on -- but if
you can ask him, as the representative of Nalcor,
his view of whichever reports are of interest to
you, we're happy to answer those questions -- but
I don't think we can -- you will have an
opportunity to examine the federal government
representative and I suggest you put those
questions to him.

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Me DAVID SCHULZE:

Okay. Fair enough. We can leave it at
that.

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192 Q- Paragraph 131 you say, quote, "*The transmission
link was announced...*" and we're now in -- sorry,
I'll start again. You say, quote, "*The
transmission link was announced as the preferred*"

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

option to provide the first stage of transmission access for export and domestic island needs on November 18, 2010." And your preceding paragraph says that, *"A route from Labrador to the island and through to the maritimes and northeast United States, is the transmission link."* When you're talking in 131 about the transmission link, you're talking about what your preceding paragraph talks about, is the route from Labrador to the island and from the island to the maritimes?

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A- It's being careful here, because the transmission link is a capitalized term, so looking back, you see specifically where we introduced that definition.

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193 Q- Yes, fair enough.

A- My recollection is that that would have been the Labrador island transmission line. Yes, it is. And that's in paragraph 5, sub H.

194 Q- And I'm not mistaken, am I, that in order for the transmission link to be the least cost option to meet the domestic electricity supply requirements to the island, you need to build a generating station in Labrador, correct? The transmission link by itself is not going to supply the island

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

without a generating station, correct?

A- We looked at alternatives in our planning for the transmission link to see whether it would be feasible to import from elsewhere and concluded that the preferred development option would see the development of the generating source on Churchill River.

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195 Q- "Elsewhere" would have been, I imagine, Upper Churchill or Quebec?

A- Quebec, Ontario, New England, New York.

10

196 Q- Okay, because of...

A- And import from other areas.

197 Q- And can you -- do you know around when, approximately when Nalcor concluded?

A- Ultimately we concluded that November eighteen (18), twenty ten (2010). So in our decision, May two (2) decision, we recommended those projects as being phase 1 of our plan.

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198 Q- Okay. I'm just going to take you to, I'm going to take you to page 226 of the joint review panel report. I'm going to have to pull it up on the screen myself. That's 226 as number, not 226 as a PDF. The phrase that caught my eye on that page is -- I'm just trying to find it on the screen. "Nalcor stated that if the Muskrat Falls

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

facility is constructed first, as proposed, a construction of the Labrador island transmission link would occur concurrently."

So in other words, the plan is to build the Muskrat Falls hydro electric generating station and the Labrador island transmission link at the same time?

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A- That is our current plan, yes.

SHORT RECESS

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Me DAVID SCHULZE:

199 Q- So in paragraph 50 of your affidavit, you say and I'll just cut to the chase, the heart of it. In the last sentence you say, quote,

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"The transmission link and other transmission options were considered to be reasonably foreseeable and were therefore considered by Nalcor and the JRP in the context of the environmental assessment of the project."

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So anyway your last sentence says that the transmission link was -- in the paragraph about

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

cumulative effect assessment and you say the transmission link was considered by Nalcor and by the Joint Review Panel?

A- That's correct.

200 Q- Okay. And if you go to the JRP report at 267, the very bottom of 267, quote,

"It is the view of the panel that a cumulative effect assessment process for this project is an example of the poor track record of project based cumulative effects assessment."

So while it's true that the cumulative effects assessment of the transmission link may be considered by the JRP, the JRP says that was a poor cumulative effect assessment. So when do we remedy that?

Me MAUREEN E. KILLORAN:

Sir, can you be more specific in your question? We can read what the panel has said, but when you ask...

Me DAVID SCHULZE:

Well, for instance, the panel has said that it was a poor accumulative effect assessment particularly because of the focus of the entire

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

assessment on a particular project. So do you expect that poor accumulative effect assessment to be remedied by the current environmental assessment of the transmission link or do you disagree with the JRP that it was a poor cumulative effect assessment?

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Me MAUREEN E. KILLORAN:

Well, I think we have to be careful paraphrasing. So you read what they've said, which is, the process for this project is an example of the poor track record of project base cumulative effects assessment, and I think maybe Mr. Bennett can advise whether he understands that and whether they have a plan -- but beyond that, I think your question is inappropriate.

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Me DAVID SCHULZE:

Okay.

A- I think the only observation that I can make here is that, you know, the cumulative effects assessment for this project was completed in a manner consistent with the guidelines and our understanding of the practice. Now I have heard others say that there may be different approaches to cumulative effects that are not project based, but beyond that, I can't speculate as to what the

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

panel was thinking about, their rationale for improving cumulative effects on a regional or on other basis. We know that, for example, in Alberta there has been discussion about more of a regional as opposed to a project base approach -- but whether that was what the panel was thinking, they didn't clearly say that.

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201 Q- Okay. Thank you. So we'll take a break and I'll have more questions for you after.

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LUNCH BREAK

Me DAVID SCHULZE:

202 Q- So Mr. Bennett, we were talking about the land use, land and resource use interviews report Pakua Shipi which is appendix 4 I think to -- well, it's in Exhibit V to your affidavit, but it's an appendix to supplemental -- it's an appendix to the consultation assessment report of September two thousand and ten (2010). And I'll let you get out Exhibit V of your own affidavit. So if I go back to the -- if you want to stop and look at the documents yourself, that's fine, but if I go back to the environmental impact statement guidelines, they say,

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

*"The EIS shall demonstrate the
proponent's understanding of the
interests, values, concerns,
contemporary and historic
activities, aboriginal
traditional knowledge and
important issues facing
aboriginal groups and indicate
how these will be considered in
planning and carrying out the
project."*

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And then it names aboriginal groups including, in
Quebec, the Innu communities of Pakua Shipi and
also Ekuanitshit. So is it your position that
this document fulfils some or all of Nalcor's
obligations under 4.8 of the EIS guidelines?

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A- I would say that this document informs our
understanding, yes.

203

Q- Okay. Did you file any more documents about
Pakua Shipi, any more detailed documents. I'm
not talking about say a paragraph or two (2) in
a consultation report, but any more detailed
study?

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A- Right -- because there is a chapter associated
with Pakua Shipi in this document that you're

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

referring to, like the consultation assessment report.

204 Q- Fair enough -- but beyond Exhibit V, beyond the consultation report of September two thousand ten (2010), are you familiar with any significant document filed by...

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A- No, I'm not aware of anything else.

205 Q- You also filed other documents about, developed with Innu Nation, correct?

A- Yes.

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206 Q- Okay. And there is, for instance, if you -- there's a document called -- I think it was filed with the environmental impact statement, it's called

"Innu Environmental Knowledge of the Mishta-Shipu (Churchill River) area of Labrador in relation to the proposed lower Churchill Project. Report of the work of the Innu Traditional Knowledge committee, dated June 20, 2007."

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It's -- I'll just, to help counsel, it's in, that is in Exhibit A and it's -- sorry, it's in Exhibit A and it's in what is it, 109 is the EIS,

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

I think?

Me MAUREEN E. KILLORAN:

And it's attached to the EIS?

Me DAVID SCHULZE:

Yes -- sorry, it's in the component studies. So if you go into component studies in Exhibit A of 109 and then it's in Socio Economic Environment and then I think it is -- I have it on the screen, but...

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A- I have it, but I don't have the full names on it. Yes, okay, now I know the code. "TEU" is terrestrial environment, so socio economic is the "SE" series.

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207 Q- No, I think it might be - sorry, it might be cultural heritage. Yes, it's in cultural heritage.

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Me MAUREEN E. KILLORAN:

Yes, which is in socio economic.

Me DAVID SCHULZE:

Right. And then at 2, Innu Environmental Knowledge.

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A- January oh nine (09).

Me DAVID SCHULZE:

208 Q- Yes. 1 of June, two thousand -- Oh, because

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

your first page says January oh nine (09), I think that refers to when you filed it.

A- When it was filed, right. Two thousand seven (2007), was...

209 Q- So if it was done in June -- finished by June two thousand seven (2007), then it was -- well, actually we have, right at the beginning of it, the introduction it says, "*In August 2007 Innu traditional knowledge committee was constituted by the Innu Nations under the terms of a process agreement Newfoundland and Labrador Hydro*" and I assume that must mean, be it the wrong year, because otherwise it would have been agreed upon before the report. All I want to go to and it will just take me a second. There's some dates on when this was prepared. Okay, the ITKC was -- this on page 4, was constituted November two thousand six (2006). So this work had begun around the same time as the project registration and was finished before the EIS was filed, correct?

A- Yes, that's right.

210 Q- Whereas the Pakua Shipi report is August two thousand ten (2010), so we're in the last batch of information responses. And you'll also notice

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

-- you'd agree with me it's a considerably longer document?

Me MAUREEN E. KILLORAN:

Than? Considerably longer than?

Me DAVID SCHULZE:

Than the Pakua Shipi report.

Me MAUREEN E. KILLORAN:

I mean I think that speaks for itself. I'm not sure the witness can...

A- Yes, it is.

Me DAVID SCHULZE:

211 Q- And you'll notice that it is by Peter Armitage, Peter Armitage is the author, do you see that on the title page?

A- Yes, I do.

212 Q- Okay. Are you familiar with his work?

A- I won't say that I've read his work. I'm familiar with who he is.

213 Q- Okay.

A- He's a consultant who has operated in this area.

214 Q- Okay. And I'm assuming if you filed this report, then Nalcor had confidence in the quality of this work?

A- To the extent that the report was a work that was prepared by Innu Nation, it was, it contributed

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

to our understanding and we therefore, filed a report.

215 Q- I'm just wondering if you were aware that Peter Armitage was extremely critical of the Pakua Shipi report -- among other things their comments...

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Me MAUREEN E. KILLORAN:

Can you direct the witness to the comments or to the source of the criticism?

Me DAVID SCHULZE:

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Sure.

216 Q- I have an email here, if you go down to the bottom, it says, "*Subject: LUL study for your files, 21 June 2011*" If you turn over the page, you'll see that it's an email from Peter Armitage to a number of -- well, most of whom are anthropologists, to the best of my knowledge.

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And it says, quote, "*Dear Colleagues, please find dependent a copy of a report recently prepared by Nalcor Energy Newfoundland and Labrador, concerning land use and occupancy by "Pakua Shipi" St. Augustin Innu on the Quebec North Shore. This document is in the public domain, so please feel free to circulate it as an example of rubbish research. Unfortunately this*

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

is the kind of muck that too many proponents are far too happy to see done in aboriginal communities. I consider it unethical and certainly of little or no benefit to the members of these communities. If you have any questions about this, don't hesitate to contact me. Best wishes, Peter Armitage."

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Me MAUREEN E. KILLORAN:

Okay, Mr. Schulze, we're looking at email exchanges between yourself and Mr. Armitage and other people, none of whom are Mr. Bennett in relation to Pakua Shipi and another First Nations group. And I struggle with the relevance of any of this as it relates to Ekuanitshit or for that matter what Ekuanitshit seeks through the judicial review.

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Me DAVID SCHULZE:

Okay. Fair enough. Here is why I think it's relevant. The agreement, the Pakua Shipi report was done pursuant to the community consultation agreement offered to Ekuanitshit.

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Me MAUREEN E. KILLORAN:

Which they rejected.

Me DAVID SCHULZE:

Which they rejected -- but Nalcor's

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

position, as I understand it, is that that was the offer and it was an adequate offer. And that that community consultation produced a report that, in the opinion of...

Me MAUREEN E. KILLORAN:

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Mr. Armitage.

Me DAVID SCHULZE:

... of Mr. Armitage, is virtually worthless.

Me MAUREEN E. KILLORAN:

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In my view, totally irrelevant.

Me DAVID SCHULZE:

Okay.

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Q- I'm going to change topics now. If I go back to your affidavit, in 3A you refer to the -- sorry, 5A -- sorry, where's your definition paragraph? 3A, it says, "*Lower Churchill Hydro Electric Generation Project*" is the project -- but then 15 defines it and says, it is, "*The Gull Island facility and the Muskrat Falls facility*" correct? I mean, that's...

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A- This is right.

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Q- ... that's the project for the purpose of your affidavit and that's the project submitted for...

A- Environmental...

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

219 Q- ... environmental assessment?

A- Yes, that's right.

220 Q- Okay -- but when we get to -- I'm going to jump
-- 111. You say, "*The project passed decision
gate 2*" You told me this morning that Gull
Island has not passed decision gate 2, correct?

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A- Gull Island has not passed decision gate 2,
that's correct.

221 Q- Okay. So in 111 the project is now just Muskrat
Falls? I mean, I don't want to actually get into
definitions of what the project is. I just want
to be absolutely clear. Notwithstanding the fact
that 15 defines the project as Gull Island and
Muskrat Falls, when you say in 111 that the
project has passed decision gate 2 and when you
say Nalcor's continued to advance the project,
through the gateway process. Now we're talking
about Muskrat Falls?

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A- It probably would have been clearer had we said,
"*The component of the project had passed decision
gate 2.*"

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222 Q- Okay. And we had discussed earlier, and it comes
up actually in 112, we talked about the decision
by Nalcor and its shareholders to sanction the
project. And you had said to me this morning,

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

sanction consists -- I just want to make sure I understand. Sanction consists of a recommendation by Nalcor to its government and a decision by the government, which the exact form of which you don't know -- but you anticipate could be an order in council and it is being announced in this case will follow a debate in the House of Assembly?

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A- That's right.

223 Q- Okay. Now what form does the recommendation by Nalcor to government take when it recommends sanctioning? Is it a report? Is it -- I mean, is it a lengthy document or just a short letter?

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A- I expect it will be a report that will summarize the analysis to support the decision, combined with a, I guess with a recommendation from Nalcor that we proceed.

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224 Q- Okay. And is it made public?

A- There may be aspects of that report that are commercially sensitive that won't be public.

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225 Q- Okay -- but in -- okay -- but is it...

A- Ultimately the decision on making of that material public would be beyond my purview.

226 Q- And when you say that,

"Decision gate 3 is the decision

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

*to sanction the project and
decision gate 3 includes
ratification of the IBA,
completion of the environmental
assessment, positive response
from government, receipt of
permits and approvals,
advancement of detailed
engineering and design, market
confirmation of financing
strategy and finalization of
definitive commercial agreements"*

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At this point, which of those things are missing?
Which of those that Nalcor not yet have? Is
there anything, other than federal permits?

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A- I don't think all of the commercial agreements
and financing were complete.

227 Q- Okay. Would the loan guarantee, which I
understand at this point is a non binding
memorandum of agreement, would it have to be a

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A- I think the province has said that progress on
the loan guarantee, further progress is required
as a condition of sanction -- but ultimately the
extent to which the negotiations with... are

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

complete, ultimately the province will now be considered, consider that as a factor in determining when to sanction.

228 Q- Okay. And finalization of definitive commercial agreements, are we talking about -- can you tell me which commercial agreements are necessary for this purpose? Are we talking about commercial agreements with like suppliers, like say, your construction company or are we talking about commercial agreements with your customers?

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A- So typically, in this context here, I'd be looking at this as, as customer agreements as opposed to supplier agreements.

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229 Q- And once there is a sanction, is that, is that then definitive that the project goes ahead or are there circumstances when -- let me break up the question. Once the sanction decision is taken, assuming that it's positive, are there other decisions still required in order to carry out the project? I mean decisions other than, I don't know, day to day business decisions? Are there government authorizations still needed past sanction?

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A- Once we have direction from government to -- or mandate from government rather, to proceed, then

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

we wouldn't expect to require further direction.

230 Q- And once the project is sanctioned, does -- is it possible -- are there circumstances where the project could be halted or cancelled notwithstanding sanction?

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A- To the extent that I've heard of other construction projects that terminate before they're completed, I suppose it's possible that a situation may arise where somebody decides that was an appropriate course of action. Our view of sanction is that we've been given direction to proceed with construction and to carry it through to the end.

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231 Q- And when you say -- well, I think we've already covered this, but just to be clear. None of decision gate 3 and the sanction itself, none of that will apply to Gull Island at this point?

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A- Gull Island will be subject to a separate sanction decision.

232 Q- Okay. After it, after all of this is in place?

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A- Right. The prerequisite.

233 Q- All the elements that I read in paragraph 112?

A- And the pre-requisite to that is that Gull Island of course pass decision gate 2. We would confirm the feasibility. Once we confirm the feasibility

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

of Gull Island, then we'll be in a position to invest in the detailed engineering and the other activities that are associated with phase 3 of our decision. And pending completion of those, then we would be in a position to make a sanction on Gull Island.

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234 Q- Okay. Now there's also, in your affidavit you also discuss -- of course we were talking about it this morning, the transmission link. Does the transmission link require a separate sanction?

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A- It requires an affirmative sanction decision, yes.

235 Q- That would have to be separate from...

A- How those are organized, how, you know, the direction is provided by the province, whether it's one (1) direction or two (2). What's important to us is that we receive direction that covers the Labrador Island link.

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236 Q- Okay. And if for any reason the Muskrat Falls project were not sanctioned, the transmission of the project would not go ahead, correct?

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A- A current understanding is that the optimum source of energy for the island is Muskrat Falls -- If one of those conditions weren't there, we'd have to look at the situation and consider the

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

consequences.

237 Q- Okay. And we discussed this morning, but in paragraph 148 you say, "At the time the project was registered for environmental assessment in November 2006, no decision had been taken by Nalcor or the province's transmission of electricity from the project to market." So the decision was, I think, correct me if I'm wrong. It seems to me this morning you said, that decision was taken in November two thousand ten (2010), or am I mixing it up? I'm sorry, I may...

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A- The project passed decision gate 2 in the fall of two thousand and ten (2010). It was announced, if I recall, November eighteen (18), two thousand and ten (2010). And at that point in time, both the generation project and the link were considered to have passed decision gate 2.

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238 Q- By November two thousand ten (2010), the crucial event there is the announcement, is it not, of the Maritime link and the sale, the sale of the power to Nova Scotia...

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A- That announcement was made on November eighteen (18). Excuse me for a second, I need to go back and look at the news release if I can, because

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

there are two (2) dates that are relevant,
November eighteen (18) and November twenty-five
(25). I think it was the eighteenth (18th) and
I believe Premier Williams resigned on the
twenty-fifth (25th).

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Q- I think that's right. Yes, it was his swan song,
I believe. Okay, we're not talking about Danny
Williams resignation, we're talking about the
announcement. All right, that's fine. 149 of
your affidavit you talk about several possible
options for transmitting power from the project
to the markets. So there's -- I'm going to just
summarize a bit. There is using the Quebec
system (A). (B) there is the Labrador Island
transmission link. (C) there's the island
Maritime link. And (D) the serving local
Labrador markets and new customers to the
Labrador electricity grid -- but you'd agree with
me that (C) depends on (B), that is to say that
the Maritime link depends on the Labrador Island
link, correct? There's not enough, there's not
an expectation of generating capacity on the
island without Labrador sufficient to justify
building the Maritime link?

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A- To the extent that paragraph is prefaced with, as

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

options for transmitting power from the project,
yes. I would agree that the power come from the
project.

240 Q- Fair enough. And with respect to (D), serving
local Labrador markets, we discussed this this
morning about Upper Churchill, but we're talking
about "*the project*" for the purpose of your
affidavit, which is Gull Island and Muskrat
Falls, there's not presently enough demands in
Labrador for those two (2), for the capacity of
those two (2) generating stations, correct?

A- There is potential for demand in Labrador that
certainly would exceed the capability of Muskrat
Falls if it were all to move forward. So if we
look at the various, the various opportunities
that have been discussed, be that IOC's
expansion, Alderon, Labrador Iron Mines, Grand
River Iron Sands, Valet and Aurora Uranium
development, those projects are all out there
with developers. I don't think I would go so far
as to say that all of them have advanced to the
point where they're truly feasible, but those
developers have their own planning, have those
projects in various stages of development from
initial concept through to something that looks

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

like a feasibility review. And they use gateway processes that are similar to ours. Some of those projects are actually in environmental assessment today.

241 Q- So if you add them all up, you're saying that's more than Muskrat Falls? 5

A- Yes, definitely.

242 Q- And actually just out of curiosity, what if they all come out -- if you hadn't been building Muskrat Falls, what would they have -- is there enough spare capacity in Upper Churchill for them? 10

A- No, there's not. There's about, in the winter, there's about eighty (80) megawatts capacity available from Churchill Falls. So we would have to look at what to do with that situation. We have an obligation to meet the demand, so we would look at available options to us, surplus from Muskrat, importing from market, the import with the Muskrat generation. So we would look at what we would have to do with that situation. 15 20

243 Q- You're currently in -- you've taken the decision by the Regie de l'énergie to... in Superior Court, correct?

A- Correct. 25

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

244 Q- Concerning -- I should explain, concerning access
to Quebec's transmission system.

A- That's right.

245 Q- Okay. If you were to win that case, would that
then provide an additional export route for the
Muskrat Falls power? I shouldn't say, if you won
that case, because we don't know what the
judgment would be. Let's put it differently. If
you had access on to the Quebec system, would
that be, would it even be possible with -- for
the power from the Muskrat Falls, as you're
presently planning to build Muskrat Falls, to be
exported by that route?

A- It could go through that route.

246 Q- Okay. In paragraph 131,

*"The transmission link was
announced as the preferred option
to provide the first stage of
transmission access for export
and domestic island needs on
November 18, 2010."* which is the
date of the announcement of the
agreement with Nova Scotia.

So do I understand correctly, the Labrador Island
transmission link became a preferred option once

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

the Maritime link was, how shall I put it,
feasible as a way to export power?

A- No, that's not correct. The supply of energy
from Muskrat Falls delivered over the
transmission link was determined by Nalcor to be
the least expensive option for the island of
Newfoundland, to supply independent Maritime...
So our analysis at that point in time in late
November concluded that if we were to spill the
surplus production from Muskrat Falls, it would
still justify the Labrador Island transmission
link.

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247 Q- Sorry, if you were to "spill it?"

A- Yes, if we were to spill the surplus beyond what
the island needed in the short term, you could
still justify Muskrat Falls and the link.

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248 Q- How much would you be spilling?

A- In the early years, approximately three (3)
terawatt hours.

249 Q- Which is what percentage?

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A- Sixty percent (60%).

250 Q- I just need to go to an exhibit for a second. In
Exhibit WW to your affidavit -- I'll tell you,
it's the project registration for the Labrador
Island transmission link. The registration is

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

dated January twenty-ninth (29th), two thousand and nine (2009), and revised September fifteenth (15th), two thousand nine (2009). So it's registered as a project, but the decision wasn't really taken till November two thousand ten (2010)?

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A- Correct. Just for clarity on that -- that's consistent with the environmental assessment process being undertaken early in the project's life cycle so that we can incorporate feedback into our planning process.

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251 Q- I'm going to take you to one of your information responses, so bear with me. I have to get you to go to your computer and go to A251.

A- So which information request number is that?

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252 Q- That would be No.17, the document, the PDF 17, which is in response for information request No. 2 and 3.

A- Okay. So JRP2...

253 Q- I'm on JRP25S. I guess it's a supplement to JRP25. So the JRP had asked the question or request for information about industrial development in Labrador and the financial indicators for that and your response is, "your" I mean Nalcor's, quote, "Any industrial customer

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

would be expected to pay a rate for energy and capacity that covers the project's cost and a reasonable rate of return with the risks associated with the project.

As I understand, the issue is, what would an industrial rate in Labrador be? That's what I understand this discussion to be. If I'm misunderstanding it, you can tell me.

A- Just for clarity, is that JRP -- which question in 25S...

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Q- Question C.

A- Question C, okay. Yes, okay. So "... rate for energy and capacity that covers the project's cost and a reasonable rate of return with the risks associated with the project."

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Q- So do you have an idea of what that rate would be?

Me MAUREEN E. KILLORAN:

Are you looking for a number, Mr. Schulze?

Me DAVID SCHULZE:

Yes, if Mr. Bennett has one.

A- I'm not in a position today to offer a number. It would depend on the cost of transmission to the customer. How much, what the capacity factor of their load was. A number of other factors

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

associated specifically with their request.

256 Q- If I go back to your affidavit, paragraph 127,
you allege, quote,

*"On June 17, 2011, the province
request that the PUB undertake a
supplemental review of the
Muskrat Falls portion of the
project, to determine whether
Muskrat Falls together with the
proposed transmission link
represents the least cost option
for the supply of power to
Newfoundland Hydro island
interconnected system customers
over the period of 2011 to 2067
as compared to an isolated island
scenario, whereby the island's
electricity grid would continue
to operate in insolation of the
North American electricity grid."*

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But as I understand the PUB process, there was a
single -- there were two (2) scenarios presented
to PUB, the Muskrat Falls portion of the project
that was sent to EA with the transmission link or
a particular scenario that would see the island

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

unconnected to the North American grid, correct?

A- That's correct.

257 Q- There wasn't more than one (1) isolated island scenario presented?

A- Well, I think maybe to clarify. The isolated island scenario that was presented was the least cost isolated island scenario developed on consideration of a series of generation alternatives that were technically operationally and economically feasible. So there were a host of generation options considered in that process. We looked at that portfolio of options and using our planning tools, identified the least cost option, which we used then for analysis comparison to the interconnected island scenario, the one that included -- the generation project of Muskrat Falls and the transmission link.

258 Q- Okay. And when you were doing -- during the environmental -- wait a second, let me look at my notes, so I can ask you the right question. If I take you to -- I'm going to take you to the JRP report, it's just with this PDF it's hard for me to tell you what page -- I think I'm at page 31 or 32 of the Joint Review Panel report, but I'm having trouble finding it. Page 28, which is

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

page 62 as a PDF document. So here we have no project for the purposes of the Joint Review Panel and I'm quoting now, quote,

"Nalcor stated that Newfoundland Labrador Hydro had recently assessed alternative combined generation scenarios that would include refurbishing the Holyrood plant in combination with hydro electric wind and other forms of generation required to meet future demand if the project did not proceed."

Now that is not exactly the same scenario that you've presented to the Public Utilities Board, is it?

A- Actually it is.

259 Q- Including the wind?

A- Yes. There's fifty-four (54) megawatts of wind in the isolated island scenario and the sensitivity analysis was completed to see the effects of additional wind -- but yes, there was wind generation included in the scenario that we brought forward to the PUB. And maybe to put some context around it, there were limits on the

COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

amount of wind that could be successfully integrated because of the isolated nature of the island system -- but there was additional wind generation added in that portfolio.

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Q- So in that case, is it your position that -- if we go to, in the JRP report there's recommendation 4.2, it's on page 34. And recommendation 4.2 says, among other things -- or begins by saying, quote, *"The panel recommends that, before governments make their decision on the project, the 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 new project option?"* So is it your position then that the PUB review responds to recommendation to 4.2? I mean, whether deliberately or effectively? It doesn't really matter to me whether it's deliberate or not.

A- And I think, from my perspective, in terms of the authority who is responsible for responding to the JRP, that being the government of Canada and the government of Newfoundland and Labrador, I have no perspective on the extent to which the review commissioned by the government of

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

Newfoundland and Labrador addresses this recommendation. So that's a government question. It's probably fair to add to that point, of course the government of Newfoundland and Labrador didn't accept that recommendation from the panel and concluded that the information provided by Nalcor provided an adequate basis for their conclusion. That was addressed in their response.

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261 Q- The only other question I think I have is that we discussed before the effects of delay of the project, but isn't it fair to say that the most significant delay for the project has been the delay in sanction? And delay in sanction has been caused by the fact that the House of Assembly has not yet debated the project?

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A- I think it's fair to say that, you know, the importance of climbing the magnitude of expenditures, the level of commitment by Nalcor and its shareholders increase as we progress through the project. And, you know, if we look at our work in phase 2, in our phase 2 planning, we're doing feasibility work, that expenditure was worth tens of millions of dollars. In our phase 3 work effort right now, in detailed

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

engineering procurement, you know, we're committing hundreds of millions of dollars. My guess, the big concern here is that if we sanction the project and the in service gets delayed, that was the point in my affidavit, the situation where the construction effort extends, the commitment and the consequences become much greater. So, you know, we are at a point now where we're getting to the end of our phase 3 work. We'll be in a position to deliver a sanction recommendation and I think it's important, from our perspective, that that sanction decision be dealt with expeditiously, so we're not caught, you know, being ready to move to the next step and not having a decision one way or the other. That was a key point.

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Q- Okay, all right -- but you'd agree with me that the main actor who has been promising a decision on this and hasn't provided it since the beginning of two thousand twelve (2012), has been the government of Newfoundland?

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A- Ultimately we have to prepare the sanction recommendation. We're diligently working on that. Over the course of two thousand twelve (2012), we've been undertaking our detailed

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COURT FILE NO. T-778-12
CONSEIL DES INNUS DE EKUANITSHIT
vs. PROCUREUR GÉNÉRAL DU CANADA & AL

GILBERT JOHN BENNETT
EXAMINATION ON AFFIDAVIT
Me DAVID SCHULZE

engineering procurement in support of that
sanction decision, we're completing that work.
So, you know, we're not at a point where the --
till, I guess in the near future we'll have a
sanction recommendation ready. So to date we've
not been delayed by the province.

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SHORT RECESS

Me DAVID SCHULZE:

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So we're back on the record to say that
those are all our questions. Were there any
questions from counsel for the other party?

ME BERNARD LETARTE:

There are none on our side.

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Me MAUREEN E. KILLORAN:

Thank you.

AND FURTHER WITNESS SAITH NOT

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