

**Submissions of Gerlinde van Driel, QC, solicitor for Mr. Terry Paddon, for consideration
in respect of the Hearing of Mr. Terry Paddon at the Commission of Inquiry**

At all times material to this matter until six (6) months prior to Sanction, Mr. Paddon was the Deputy Minister for the Department of Finance. On or about June 1, 2012, Mr. Paddon was appointed to the position of Auditor General for the Province of Newfoundland and Labrador, and held that role until his retirement on or about October 31, 2017.

With respect to the Hearing of Mr. Paddon in this matter on November 5, 2018, we hereby make the following submissions for the consideration of the Commissioner.

1. **The Department of Finance did not have the capacity to do a detailed costing or a thorough analysis and review of the costs of the Muskrat Falls Project. Mr. Paddon in his role with the Department of Finance would have known the cost estimates but would not have been able to, nor been expected to, be responsible for a detailed review. The resources and capacity for that type of undertaking were not available within the Department.**

Terry Paddon Hearing Transcript (November 5, 2018) – Page 29

MR. LEARMONTH: *And I want to start off by asking you whether while you were deputy minister of Finance, whether the Department of Finance ever conducted a review of cost estimates for the Muskrat Falls Project?*

MR. PADDON: *I guess I would have to – it really would depend on how you would define review.*

MR. LEARMONTH: *I'm talking about a review of the project cost estimates.*

MR. PADDON: *Knowing what the estimate of costs was is not the same as a review of the costs.*

MR. LEARMONTH: *That's right.*

MR. PADDON: *So if your question is: Did the Department of Finance go into Nalcor and do a fairly in-depth review of how those costs were built up? The answer would be no.*

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MR. PADDON: *We didn't do – we – well, I mean, we wouldn't have the capacity, really, to go in and have a detailed review of the costing – what's built up from the cost or the costing estimates coming out of Nalcor.*

MR. LEARMONTH: *So you wouldn't have had the resources, the capability to conduct such a review of project cost estimates?*

MR. PADDON: *Not to the level of detail I think you're thinking of. I mean, really, what you're talking about is looking at the detailed engineering and saying, you know, are we satisfied that, you know, it's – the engineering is done properly and that everything that should be included is included. I don't think we would have – you know, I'm not even sure where we would start if somebody asked us to do that. We would have to really go out and hire the expertise ourselves because, yeah, essentially, I guess the Department of Finance, in its simplest form, is a department of accountants and economists, not of engineers or people with the expertise that would be required, I think, to look at cost estimates in that level of detail.*

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Tom Marshall Hearing Transcript (November 6, 2018) – Page 8

MR. T. MARSHALL: *The role of the defence department – the Department of Finance, the minister of Finance, is to find the financing to fund the government programs and the capital expenditure programs and to fund its investments in government business enterprises. But government – in the department – the departments have a project – the department's utilizing, say, the works – the works division of the Department of Transportation and Works – and if the project is bigger, then they will go and hire expertise – you know, consulting engineers, architects who have the capacity and the experience in costing these things.*

2. **The Department of Finance doesn't have the engineering expertise to do detailed reviews of engineering work and costing estimates when project submissions come in for approval for financing. The Finance Department relies on the costing estimates for engineering work and the like done by the proponent of the project (i.e. the Department of Health if they want to build a hospital, or Nalcor in the case of Muskrat Falls). The Department of Finance is/was not the overseer for these purposes. This was borne out by Mr. Paddon's testimony, as well as by the testimony of Mr. Tom Marshall on November 6, 2018.**

Terry Paddon Hearing Transcript (November 5, 2018) – Page 30-31

MR. LEARMONTH: *Okay. Does the Department of Finance review, in the ordinary course of its work, other submissions for approval in terms of financing? Like, if someone – if there's a proposal to build a hospital, for example, does the Department of Finance undertake a review of the project cost estimates in that situation?*

MR. PADDON: *No, and that's similar to what I was saying just a few minutes ago. If a proponent, for instance, the Department of Health, came forward saying they wanted to buy or construct a hospital, they would be the ones that would do the – you know, arrange to have the engineering work done, all the costing. It would then come to us, but we wouldn't go back to the department and relook at the engineering estimates that came out of the department.*

MR. LEARMONTH: *But you relied – your department, I take it, relied on Nalcor to provide or to come up with accurate project cost estimates.*

MR. PADDON: *That's correct. That's correct.*

MR. LEARMONTH: *Yeah. Do you find it worrying or troubling that there was no review done by government or by MHI of the – Nalcor's project costs?*

MR. PADDON: *Probably in retrospect I do –*

MR. LEARMONTH: *But isn't there an oversight role for government over Nalcor? Wasn't there at the time of sanction an oversight role? In other words, I would suggest to you that it would be reasonable for the people of Newfoundland and Labrador to believe that their government would protect them before sanctioning this project by insisting that a detailed examination of the estimated project costs of the Muskrat Falls Project was carried out before sanctioning. Do you think that's – would be a reasonable expectation for the people of Newfoundland?*

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MR. PADDON: *Probably in retrospect, but at the time I don't think anybody really thought that was, I guess, necessary.*

MR. LEARMONTH: *Yeah. Well, why not?*

MR. PADDON: *As I said, I think there was some comfort taken from the fact that the expertise at Nalcor and the expertise that they had hired was sufficient to provide a level of comfort on the estimates.*

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MR. SIMMONS: *Right. So what role does Department of Finance play, then, in assessing the estimated cost of carrying out a project like building a school?*

MR. PADDON: *Well, we wouldn't do any assessment on those costs.*

MR. SIMMONS: *Mm-hmm.*

MR. PADDON: *We would rely, again, on the engineering work that was done by the particular department.*

MR. SIMMONS: *So does anything more come in – is there anything more input into the Department of Finance's work other than the Department of Education or public works saying the school will cost \$6 million?*

MR. PADDON: *Not really, no.*

MR. SIMMONS: *So here then, what kind of expectations did the Department of Finance have as your – when you were deputy minister, for the Muskrat Falls Project around what its role would be or its involvement would be in assessment of the capital cost?*

MR. PADDON: *It was really a similar type of a role. We would expect that that – you know, the organization, which was Nalcor, which had the expertise to develop the cost estimates, would have done their appropriate processes and due diligence to make sure that you had a robust cost estimate at the end of the day.*

MR. SIMMONS: *And was the Department of Finance working with Nalcor to assess the robustness of the cost estimate? Was there a direct relationship between Nalcor and Finance concerning that?*

MR. PADDON: *No, I don't think I would say that. No.*

MR. SIMMONS: *Mmm. Did the Department of Finance, either you or anyone else that were in Finance, set any criteria for the information that you wanted from Nalcor about cost estimates?*

MR. PADDON: *No, I don't recall that. No.*

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MR. BUDDEN: *Okay, what – and the department had a mandate, as you advised in your interview with Mr. Learmonth, to review any major projects such as that. That would be part of the mandate of the Department of Finance, I would assume.*

MR. PADDON: *Yep.*

MR. BUDDEN: *Sure. How would that scrutiny be carried out?*

MR. PADDON: *Well, the scrutiny is really carried out by ensuring that the department that the request for funding is coming through has done their homework in terms of engineering costs and those sorts of things.*

MR. BUDDEN: *Sorry?*

MR. PADDON: *That they've done their homework in terms ensuring the appropriate engineering's done as, you know, as they move through the process to get their project approved.*

MR. BUDDEN: *Okay. And how, in practice, would that actually be done? Would you simply say, guys, have you carried out the appropriate engineering or would it be more than that?*

MR. PADDON: *No, no. It probably would be not much more than that. But they would, you know, they would come forward and say, okay, we've done the detailed design work now, we've done the detailed engineering, here's what our engineering is saying; it's gonna cost \$10 million.*

MR. BUDDEN: *Okay. So was that very different than the way the Muskrat Falls oversight was conducted or was it about the same?*

MR. PADDON: *Conceptually, it was about the same, I guess.*

MR. BUDDEN: *Okay.*

MR. PADDON: *The magnitude was different, obviously, but ...*

MR. BUDDEN: *Sure. But if it's conceptually the same, was the degree of oversight all that different?*

MR. PADDON: *Probably not. You know, in this case, there was a reliance on Nalcor, who had the engineering expertise or had hired the engineering expertise to develop the cost estimates.*

MR. BUDDEN: *So if the Department of Education came along and said, look, we need a new high school in the west end of St. John's that gonna cost \$12 million. You would say, okay – you'd have a checklist, I presume, or not you personally but someone in your department would –*

MR. PADDON: *Right.*

MR. BUDDEN: *– said, you know, have you done this, have you done that, and so forth.*

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MR. PADDON: *Yep. That'd be about right, yeah.*

MR. BUDDEN: *Sure. And I would suggest to you that's actually pretty similar to what happened, when you get right down to it, with regard to Muskrat Falls and the oversight there.*

MR. PADDON: *In terms of cost estimates, for sure, yeah.*

MR. BUDDEN: *Sure.*

MR. PADDON: *(Inaudible.)*

MR. BUDDEN: *Okay. So whether it's a \$12 million school or a \$6 billion hydroelectric project, the level of scrutiny from the department would be about the same.*

MR. PADDON: *And again it gets back to, you know, the capacity to be able to challenge or to review the numbers. Again, we're accountants and economists. We're not engineers, so it would be difficult for us to do any substantive work to determine whether the costs are reasonable or not.*

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MR. T. WILLIAMS: *Okay. So would you agree with me or would you think it would be reasonable that government would rely on cost estimates that would be put forth by Nalcor. Not only that they're done by Nalcor themselves, but we have evidence – we had Mr. Paul Lemay on from SNC-Lavalin who, in fact, had a team assembled to do cost estimates over a seven-month period. We've had evidence and we'll hear further evidence that there's consultants retained by Nalcor, Westney, regarding risk assessment. So Nalcor had formulated outside expertise as well in doing these. So do you feel it's reasonable for government to have relied on this information that came forth from Nalcor?*

MR. PADDON: *I think it was reasonable at the time, for sure, to rely on them. They had the expertise and they knew the business and those sorts of things. Having said that, you know, the fact remains that we still did make a recommendation that perhaps there should be an independent review, And I – you know, a lot of our thought process was, you know, all these sort of reviews that had been done were all commissioned by Nalcor –*

MR. T. WILLIAMS: *Right.*

MR. PADDON: *– so, you know, as part of sort of a final process before going to sanction, something that the province has commissioned just to take a look at it.*

MR. T. WILLIAMS: *Okay, so –*

MR. PADDON: *But that's not to say that we didn't – that there was still the reliance on Nalcor –*

MR. T. WILLIAMS: *Sure.*

MR. PADDON: *– to provide the estimates of cost and other inputs into the decision.*

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MR. BUDDEN: *If I understood the evidence of Mr. Paddon, they would not have been subjected to – by the department, to a much greater degree of scrutiny than would be the capital cost estimates for building a new high school somewhere, or perhaps a courthouse.*

MR. T. MARSHALL: *No, no. No, that wasn't Finance's role. That was the role of the department to do that.*

3. **Mr. Paddon had no reason for concern that Nalcor was not making full disclosure of the project costs. The Department of Finance was cognizant, however, of the concern of possible cost overruns and they had considerable discussions with Nalcor on their estimates, their plans to mitigate risk, etc., and their understanding from Nalcor was that by DG3 or sanction, Nalcor would have nailed down the majority of the costs and would be on solid footing with respect to final cost output. We would again note that Mr. Paddon's role as Deputy Minister came to an end on May 31, 2012 at which time he was appointed Auditor General on June 1, 2012.**

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MR. LEARMONTH: *Right. At any time when you were – when you served as deputy minister, did you have any concern that Nalcor may not have been making full disclosure to government about the cost of this project?*

MR. PADDON: *(Inaudible.)*

MR. LEARMONTH: *Never?*

MR. PADDON: *No.*

MR. LEARMONTH: *No. And I know you've said that the Department of Finance did not conduct any independent review and that – of the cost estimates and that you're not aware of any other department that did, but was there any oversight done on the question of risk exposure that this project could present to the province's fiscal situation?*

MR. PADDON: *I guess from the time of, certainly, 2010 up to the time I left, the clerk at the time had established – I wouldn't call it an oversight committee, but, you know, a committee of senior officials within the province to essentially meet on a regular basis – and it was once a week, as I recall – to, I guess, ensure that things were being dealt with in a timely manner, that everybody was aware of what was going on in terms of the project and how it was progressing and the information that was being generated out of Nalcor, those sorts of things. So that was, you know, a fairly significant committee. I mean, there were probably about eight or 10 deputies on the committee, plus a representative from Nalcor.*

MR. LEARMONTH: *But was any concern – was there any focus on the concern about the possibility, if not, probability, that a megaproject like this would go over budget?*

MR. PADDON: *I think there was a fair bit of concern that the costs – you know, that there might be cost overruns on a project of this size. One of the – and there were, I would say, considerable*

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discussions with Nalcor, both from officials and with the political side of things to, I guess, get a sense from Nalcor as to how robust the estimates were and, you know, how are they – what was their plan to sort of mitigate their risk, if you want to say that. One of the messages I recall from Nalcor was that between DG2 and sanction, which was DG3, their expectation was that they would have, I guess, nailed down to a great extent a lot of the major costs of the components of the project through either contracts or bids. So they would have a fairly good handle on what the pricing was for all the major components; so that by the time you got to DG3 or sanction, you would have a fairly solid comfort that what they had in terms of cost was gonna be the final output.

4. **Mr. Paddon had not previously been aware that the project was a P1 until he read the Grant Thornton Report during this interview and Hearing process. He agrees that it would have been a significant variable to know and should have been disclosed to government.**

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MR. PADDON: *“The above image notes that July 15, 2017 schedule was a P1. This meant that there was a 99% chance that the schedule for first power would not be met. The LCP Project Team noted that ‘there was a low probability that a mid-2017 First Power date would be met. As such, the PMT recommended to Nalcor Executive that a provisional schedule reserve allowance should be made to account for the difference between the target date and the probable date. Given the desire to achieve the best possible date, Nalcor Executive wanted to maintain the Target Milestone Schedule, and thus no schedule reserve allowance was made to accommodate the residual risk exposure identified in the QRA.’”*

MR. LEARMONTH: *Okay. When did you first find out about that?*

MR. PADDON: *I believe when you showed it to me during our interview.*

MR. LEARMONTH: *Okay, so you understand what’s being said there that the July 15, 2017 date, which Nalcor was using –*

MR. PADDON: *There’s almost a zero per cent chance that was going to be met.*

MR. LEARMONTH: *Yeah, if – we’ll say a maximum 1 per cent chance.*

MR. PADDON: *Yeah.*

MR. LEARMONTH: *Which is not a very –*

MR. PADDON: *Almost zero.*

MR. LEARMONTH: *I suppose it’s a possibility, in this word that we use, that anything in life is possible but it’s not very comforting is it?*

MR. PADDON: *You would almost expect it to be the other way around: You’re gonna have a 99 per cent chance that it’s gonna achieve –*

MR. LEARMONTH: *Yeah, the reverse.*

MR. PADDON: *Yeah.*

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MR. LEARMONTH: *Yeah. Now, were you aware of this situation at any time before you read the Grant Thornton report?*

MR. PADDON: *No.*

MR. LEARMONTH: *Okay. Well, what do you make of it?*

MR. PADDON: *It's – I think, it's certainly something that – everybody should've been aware of that. This – basically this project, at that time, had almost no chance of achieving the schedule.*

MR. LEARMONTH: *Okay. Do you believe that that information should've been presented to government?*

MR. PADDON: *I believe so, yes.*

MR. LEARMONTH: *Why?*

MR. PADDON: *Well, the – anything to do with schedule, ultimately, will impact cost of the project and that would've been a significant variable to know.*

MR. LEARMONTH: *And this talk about management reserve and so on, did you – were you – while you were in the Department of Finance, did you have occasion to read anything about management reserve or strategic risk or anything like that?*

MR. PADDON: *I don't recall. No.*

MR. LEARMONTH: *You don't recall. No. And we – the evidence, the clear evidence, from the three representatives of Manitoba Hydro International is that Nalcor did not advise them, at any time, during their engagement for the Government of Newfoundland – did not advise them of the 500 million strategic risk or the P1 number. They were kept in the dark about that, so they say.*

MR. PADDON: *Mmm.*

MR. LEARMONTH: *Would that give you any concern, that Nalcor would not have disclosed that information to them?*

MR. PADDON: *Absolutely, yes.*

MR. LEARMONTH: *Absolutely?*

MR. PADDON: *Yeah.*

MR. LEARMONTH: *Once again, why?*

MR. PADDON: *It's – really two critical elements of the whole costing of the project and the whole timeline of the project. And if you're – you know, you've engaged somebody to give you some comfort that what Nalcor have done is correct, you would've expected that there would have been complete and whole disclosure of all that information to that.*

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5. Mr. Paddon's reference to "driving the bus" is not intended to suggest that Nalcor was controlling the province, but rather the Muskrat Falls project was so significant, it was dominating almost everything that was happening within government. The project had a full head of steam and so the project was "driving the bus" in the sense of the level of attention it generated in both the public and political side of government. That statement was not intended to suggest that government had no control over Nalcor.

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MR. LEARMONTH: *Page 31, you say: I guess it's fair to say that Nalcor was driving the bus, and you know, it had a head of steam. That's what you said.*

MR. PADDON: *But I think the context was is that the Muskrat Falls Project was a fairly significant project. It was dominating what was happening within government. So from that perspective, yes, it was – I guess, perhaps, you could call it driving the bus. And certainly once you got past DG2, there's no doubt there was a head of steam. I mean, you know, the project was moving and moving fairly quickly.*

MR. LEARMONTH: *Yeah, but you're saying Nalcor was driving the bus. I suggest to you that government should have been driving the bus, not Nalcor.*

MR. PADDON: *Depends –*

MR. LEARMONTH: *Because of government's obligation to protect the taxpayers. Do you have any comment on that?*

MR. PADDON: *I don't – when – you know, describing Nalcor as driving the bus from that perspective –*

MR. LEARMONTH: *No, no. I'm not describing.*

MR. PADDON: *No, no.*

MR. LEARMONTH: *You are.*

MR. PADDON: *But I wasn't describing it that Nalcor was running the province, which is sort of the impression that is being led here. Certainly, I think there was a fair bit of control over Nalcor, but there's no doubt that the project was such – of such a magnitude that it was generating a fair bit of attention within the public service and the political side in government at the time.*

6. The role of Mr. Paddon and the Department of Finance in respect of the federal loan guarantee was not a significant one. Nalcor and the Department of Natural Resources were driving that negotiation. The Department of Finance had a person who liaised with others who were involved, but they didn't participate in any detailed meetings on the subject.

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MR. LEARMONTH: *Okay. The – I wanna ask you some questions about the – your involvement in the federal loan guarantee issue. Department of Finance was – played a significant role in that endeavour, is that correct?*

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MR. PADDON: *I'm not sure I would call it a significant role. It was more driven out of Natural Resources and Nalcor in terms of negotiation of the loan guarantee.*

MR. LEARMONTH: *So it was the department of – well, can you describe for me the Department of Finance's role in the –?*

MR. PADDON: *We had a – I had a person from the department who was liaising with the others who were involved in the loan guarantee, reviewing documentation, those sorts of things. But we didn't participate in any detailed – excuse me – meetings with either the federal government or whoever was dealing with it.*

7. **Attempting to determine revenue streams and net economic benefits is more the type of work that Mr. Paddon and the Department of Finance would be involved in, not dealing with cost estimates or financial review.**

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MR. LEARMONTH: *Tab 4, Exhibit P-00963, is an email from Robert Sharpe to a number of people, including you. Now, is this the type of – if we could just bring that up and go to page 3 – 2 and 3. Can you describe this document, Mr. Paddon?*

MR. PADDON: *Yeah, this would typically be the output that –*

MR. LEARMONTH: *Yeah.*

MR. PADDON: *– the department would have from their economic model.*

MR. LEARMONTH: *Yes.*

MR. PADDON: *So it would look at the revenue streams coming to the province over a –*

MR. LEARMONTH: *Yeah.*

MR. PADDON: *– period of years and try to determine the net economic benefits, I guess, to the province.*

MR. LEARMONTH: *Yeah. And when we spoke earlier about – this is a typical – an example of what you were talking about –*

MR. PADDON: *That's right.*

MR. LEARMONTH: *– the type of work that you would do.*

MR. PADDON: *That's right, yeah.*

MR. LEARMONTH: *Is that right?*

MR. PADDON: *Yeah.*

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MR. LEARMONTH: Right, rather than the cost estimates.

MR. PADDON: That's right.

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MR. LEARMONTH: Thank you. Mr. Paddon, earlier this morning I believe you indicated or suggested that any review, financial review would be done by the Department of Natural Resources rather than Finance. Is that what you said?

MR. PADDON: I don't recall saying that. I may have indicated that if there was going to be a review of costs –

MR. LEARMONTH: Mm-hmm.

MR. PADDON: – it would be done by the Department of Natural Resources.

MR. LEARMONTH: So you did say that?

MR. PADDON: I may have –

MR. LEARMONTH: But I – I believe, I stand to be corrected but I recall Shawn Skinner, I think I recall him saying the opposite, that any review of financial matters or costs would be done by Finance so – do you have anything further to say about that?

MR. PADDON: He may have said it but I don't think there was any basis – I mean we still wouldn't have the capacity for it so –

MR. LEARMONTH: Yeah, okay. Anyway, as I said that's my recollection. If I'm wrong then the question won't have any value but I think Minister. Skinner – er, Shawn Skinner said something along those lines. If not, then it's my mistake.

...

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MR. BUDDEN: So I take it that it wasn't regarded as part of the department's responsibility, or you as DM did not regard it as part of the department's responsibility to determine whether there was a sound business case for Muskrat Falls?

MR. PADDON: We were certainly involved in looking at the business case. So, you know, I mean, the numbers that came out of Nalcor in terms of the revenue and the costs, we looked at those for sure. But that's not the same. So, you know, does the mathematical integrity of the models work? And, you know, does the business case throw off, you know, sort of the expected profit or, you know, whatever? But that's not the same as going in and saying, okay, now, we're gonna do a detailed review of what's substantive behind that, the detailed engineering costs of the – which was –

MR. BUDDEN: Sure.

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MR. PADDON: – probably the most significant item.

8. Neither Mr. Paddon nor the Department of Finance would have been involved in the PUB reference and any decision not to have the PUB engage in a review. He and the Department may have been sent a copy of the email on the subject as a matter of form, but it would not have been a matter for Finance.

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MR. LEARMONTH: Okay, well, you must have been involved then, to some extent, in the PUB reference if Mr. Sturge is sending you this. Is that a safe assumption for me to make?

MR. PADDON: No, I don't think – I wasn't involved in the reference to the PUB. This would have been in when? 2011?

MR. LEARMONTH: Yeah.

MR. PADDON: I mean that would've been done through the Department of Natural Resources.

MR. LEARMONTH: Would – do you know why you would have been sent a copy of this?

MR. PADDON: I might have been sent a copy just as a matter of form. I don't know.

MR. LEARMONTH: Well, a matter of form, but I mean the email is sent originally to – just to you. It's not sent to even Natural Resources, if I'm reading it correctly.

MR. PADDON: I don't know.

MR. LEARMONTH: Okay, well, in any event, you didn't have anything to do with the PUB review or that discussion of whether it was advisable to have that – the PUB review this, is that correct?

MR. PADDON: That's correct.

9. The Office of the Auditor General was not the auditor of Nalcor. They rely on the work of Nalcor's external auditors; however, in order to fulfill the Office's responsibility to express an opinion on the financial statements of the province, they have procedures in place set out by auditing standards to do what is necessary to ensure Nalcor's auditors have done the appropriate work.

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MR. LEARMONTH: All right. Tab 35, this is while you were Auditor General too, but the bottom email on page 1 of Exhibit P- 00993, you're writing to Julia Mullaley – making a couple of observations. The second sentence in the first – second full – second paragraph is: "As you are aware, we rely on Nalcor's external auditors and review their working papers." So you don't – you didn't conduct a detailed audit of Nalcor's work, is that right?

MR. PADDON: No, we weren't the auditors of Nalcor itself. They had their own external auditors. But our responsibility was to express an opinion on the financial statements of the province and of

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course Nalcor's equity on the province's books is a significant component of it. So we did have procedures in place that are set out by auditing standards as to what you have to do to reassure yourself that their auditors have done the appropriate work to express the opinion that they did on Nalcor's books.

10. **Mr. Paddon and the Department of Finance recommended that an independent review be sanctioned by the province and made the case quite clearly for it (a copy of the Decision/Direction Note referred to below as Exhibit 00807 is attached for reference purposes). Furthermore, in his role as Deputy Minister, Mr. Paddon took the matter of calling for the independent review as far as he could at the time, providing this input before the decision of Cabinet.**

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MR. LEARMONTH: *And in January 2012?*

MR. PADDON: *Well, in fact, it probably was reasonably consistent with our way of thinking in that we did think that there should be an independent review sanctioned by the province of the risks – you know, the assumptions – the input into the decision-making process.*

MR. LEARMONTH: *But according – are you thinking of the MHI report – review? Something like that?*

MR. PADDON: *Well, our recommendation wasn't necessarily MHI. Our recommendation was that you would get somebody equivalent to, say, an E & Y or a KPMG or – Grant Thornton to do the review.*

MR. LEARMONTH: *Yeah, and that's a – don't you agree that that's a reasonable approach to take? Look, we're gonna have this, you know, reviewed from top to bottom before we sanction it?*

MR. PADDON: *Well, that's why we had recommended it, yes.*

MR. LEARMONTH: *Yeah. And who recommended it?*

MR. PADDON: *Well, Charles Bown and I put together the note, and it was signed by Ministers Marshall and Skinner.*

MR. LEARMONTH: *Yeah. Now, that's tab 39. I'd like you to turn to that. It's Exhibit 00807. And if we turn to page 4 of this document, Sir, you can see it's prepared – it's entitled "Decision/Direction Note" – Department of Finance and Natural Resources. It's prepared by Paul Myrden, Department of Finance, and approved by Terry Paddon and Charles Bown, and then it's signed off by both ministers. That's Mr. Skinner and Tom Marshall. So that's not like that Tymchak one. This is a real, formal document, isn't it?*

MR. PADDON: *Right.*

MR. LEARMONTH: *Yeah. And is it normal for there to be so many people signing off on a ministerial review of a document like this? Is that significant?*

MR. PADDON: *That's the – no, that's just the protocol.*

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MR. LEARMONTH: *That's the protocol. Okay, let's just turn back to page 2 of this document. The top: "Decision/Direction Required: Whether to approve the selection and retention of a qualified consultant to provide an independent review and report on the detailed project analysis prepared or commissioned by Nalcor, including an assessment of the various risks associated with the Muskrat Falls Hydro Development Project ... and their potential implications for the Province." Well, that sounds to be – do you agree that that's a very reasonable approach to take?*

MR. PADDON: *Right.*

MR. LEARMONTH: *And then, you're going down in the second-to-last paragraph of page 2, and you're thinking of Pricewaterhouse and different groups who – or different people to conduct the review. And then you refer, at the bottom of page 2, that "In addition to the above, Nalcor is also planning to undertake additional due diligence as follows: Completion of a project cost analysis by Independent Project Analysis ... an international organization that specializes in the review of large scale projects. "Completion of a an" all " thorough review and commentary on the readiness of the project to proceed by Independent Project Review, a group recognized for their knowledge and experience in particular aspects of large scale project delivery. "Retention of a consultant to complete an updated review of the Island Supply Decision." Now, you – someone in government must have known about this Independent Project Analysis and about this Independent Project Review, because if they didn't know about it, they wouldn't be able to refer to it in – that report, that's pretty obvious.*

...

Terry Paddon Hearing Transcript (November 5, 2018) – Page 62

MR. LEARMONTH: *Well, we'll get into this later on, but Nalcor did not include it in the DG3 package, and we'll have to find out the reason for that. So you're coming to the conclusion, or you've reached the conclusion, you need this independent review. You argue, you know, quite clearly for it. Well, what happened? I mean, that's exactly what the province needed. What happened?*

MR. PADDON: *I don't recall if – well, certainly there was no independent review as we envisages here. You know, the Manitoba Hydro one was, I guess, implemented shortly after this. I don't recall it being intended to be this type of review that we were talking about. So I think this just didn't go anywhere.*

MR. LEARMONTH: *Well, if this – this was prepared at, I would say, a high level – two senior ministers.*

MR. PADDON: *Right.*

MR. LEARMONTH: *If it was not followed, who would've turned it down?*

MR. PADDON: *Ultimately, I mean, this would've gone up to, I would say, the premier's office to get the decision. I mean, typically something like this, you're looking for a decision out of the premier's office to take action.*

...

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MR. LEARMONTH: *No. Okay. But you can say that the recommendation was not accepted by government, can you?*

MR. PADDON: *It doesn't appear to be, unless government considered the Manitoba Hydro review to be the independent review.*

MR. LEARMONTH: *Yeah. Well, you –*

MR. PADDON: *But I don't know.*

...

Terry Paddon Hearing Transcript (November 5, 2018) – Page 91

MR. FITZGERALD: *So from February 2011 you had a level of comfort with SNC Lavalin being retained as the EPCM contractor. And despite that level of comfort, you and Mr. Bown decided to take that extra step and recommend that an independent review occur.*

MR. PADDON: *That's right.*

MR. FITZGERALD: *So you went over and above the level of comfort that you did have and tried to go further and recommend more to your officials?*

MR. PADDON: *I guess, yes, yeah.*

MR. FITZGERALD: *And I note that this was dated May 9, 2011. I don't work in government but I would suggest to you that this document didn't – was not drafted overnight.*

MR. PADDON: *I would suggest you're right.*

MR. FITZGERALD: *How long, roughly, would it take, generally, to get a note like that prepared?*

MR. PADDON: *Something like this I would say would have been maybe a week or two.*

MR. FITZGERALD: *Okay. And I would also suggest to you that it was not you and Mr. Bown sitting down over a cup of coffee drafting this, that your officials in your departments were also involved.*

MR. PADDON: *That would be a fair assumption, yeah.*

MR. FITZGERALD: *So it would be input from the departments, then you and Mr. Bown would review it and take it to your ministers.*

MR. PADDON: *That's right.*

MR. FITZGERALD: *The background, if we just scroll down a little bit in this exhibit, page 2 – sorry, that's good. Bullet two: "Project size and related financial requirements are significant relative to the capacity of the Province. Given the combined Nalcor and Provincial commitment of*

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\$4.4 billion, development of the MFP will add substantially to Provincial debt and could possibly impact future borrowing capacity for other uses. For this reason alone, it is prudent for the Province have a clear and independent review of project risks and their potential consequences.” So at that point in time, you and Mr. Bown were recognizing the seriousness of this issue and were recommending further action by government.

MR. PADDON: *Yes. Seriousness – certainly we recognized the size of the project and its significance to the province.*

MR. FITZGERALD: *And potential consequences as the note says.*

MR. PADDON: *Absolutely. Oh yeah.*

MR. FITZGERALD: *Yeah.*

MR. PADDON: *Yeah.*

MR. FITZGERALD: *Okay, if we could just go to the following page, please, under – keep going. Not process. Thank you, no, back up please. Page 3 at the bottom. No, page 3. Thank you. So, ultimately, in order to move the initiative forward, you also recommended to your ministers Ernst & Young, KPMG and possibly Grant Thornton as potential candidates for doing such a review.*

MR. PADDON: *That’s right.*

MR. FITZGERALD: *And I believe in your response to Ms. Best, it wasn’t just an MHI-type review, you wanted a bit more in depth, you were thinking about fuel prices and other things.*

MR. PADDON: *I think so, yeah. Yeah, because that’s sort of the things that were outlined in the scope just – well, yeah, design engineering risk, construction risk, generation technical risk, market risk, financial risk, contractual risk. So all those things we were looking at.*

MR. FITZGERALD: *So all these risks were brought forward by you and Mr. Bown in May of 2011*
–

MR. PADDON: *That’s right.*

MR. FITZGERALD: *– in the form of this note.*

MR. PADDON: *Right.*

MR. FITZGERALD: *It was signed by both ministers, if we can go to the last page.*

MR. PADDON: *Correct.*

MR. FITZGERALD: *Minister Marshall and Minister Skinner.*

MR. PADDON: *Skinner, yeah.*

MR. FITZGERALD: *Yeah. Would that be an indication that those ministers were receptive to your recommendation?*

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MR. PADDON: *They wouldn't sign it if they didn't agree with it.*

MR. FITZGERALD: *So on the ministerial level at least, you did have some support.*

MR. PADDON: *That's right.*

MR. FITZGERALD: *And I don't believe you know what the outcome of this recommendation was, do you?*

MR. PADDON: *Not directly, no. I don't know if the Manitoba Hydro review was considered to be this. I have no – I just don't know.*

MR. FITZGERALD: *Would you agree with me as deputy ministers conducting your due diligence, you took this issue as far as you could at the time?*

MR. PADDON: *At the time I think we did, yeah.*

MR. FITZGERALD: *If you disagreed with the decision of Cabinet, what was the result for you or Mr. Bown?*

MR. PADDON: *Well, we provided our input before the Cabinet decision, not – you know, once Cabinet's made a decision, essentially officials will carry out the directive of Cabinet.*

MR. FITZGERALD: *Yes, and you'll – you're the employees and they're the employer.*

MR. PADDON: *Essentially, yeah.*

MR. FITZGERALD: *Yes.*

11. Minister Tom Marshall also discusses the matter of the independent review during his Hearing and makes specific reference to the advice from “excellent civil servants” like Mr. Paddon and others, and that the Department of Finance did its job.

Tom Marshall Hearing Transcript (November 6, 2018) – Page 10

MR. T. MARSHALL: *On a project of that size, you'd want an independent – a cold eyes review – an independent review. And based on advice from some excellent civil servants like Terry Paddon and Charles Bown, Minister Skinner, who is the minister of Natural Resources and had, you know, lead for the file, and I, as minister of Finance, signed a paper to government or to the premier recommending that there be an independent financial analysis. And I think we recommended, like, senior or top-level accounting firms, management consulting firms, like Ernst & Young, Pricewaterhouse, Grant Thornton.*

MR. LEARMONTH: *Yeah.*

MR. T. MARSHALL: *We recommended that be done.*

MR. LEARMONTH: *Yeah. So you believed that that was necessary?*

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MR. T. MARSHALL: *Yes, I did.*

MR. LEARMONTH: *Yeah.*

MR. T. MARSHALL: *Yeah.*

...

Tom Marshall Hearing Transcript (November 6, 2018) – Page 87

MR. BUDDEN: *Yes. And I'm suggesting to you – and I won't beat this to death anymore – but as minister of Finance, given the oversight responsibility that's right there – you know, the absolute public face of the department when one logs on to their website is this oversight of public spending; that the minister of Finance has a distinct and unique, and perhaps, paramount responsibility to ensure that that review is done and done properly. And would you agree –?*

MR. T. MARSHALL: *The Department of Finance – the Department of Finance made its recommendation as to what should be done. But the government decided to go in a different direction. The Department of Finance suggested a way it should be done, but another way was decided upon. So the Department of Finance performed its role, it recommended a particular review, but the government decided, after considering, I guess, considering different situations and policies, decided to go with the PUB and then when that didn't work they, the government, decided to go with MHI.*

MR. BUDDEN: *Did you –*

MR. T. MARSHALL: *So the Department of Finance did its job.*

...

Tom Marshall Hearing Transcript (November 7, 2018) – Page 2

MS. VAN DRIEL: *Okay. Thank you. Then my colleague, Mr. Budden, spent a bit of time with you yesterday on basically putting to you that he felt that the Department of Finance had not executed its responsibility in terms of governmental financial controls.*

MR. T. MARSHALL: *Mm-hmm.*

MS. VAN DRIEL: *And I believe that your answer was that, yes, you hadn't hired independent cold eyes or independent reviewers of the costing but that Department of Natural Resources had. Is that correct? Did I understand –*

MR. T. MARSHALL: *Well –*

MS. VAN DRIEL: *– you correctly?*

MR. T. MARSHALL: *– Nalcor had.*

MS. VAN DRIEL: *Or Nalcor had.*

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MR. T. MARSHALL: Yes.

MS. VAN DRIEL: And then, of course, government, at some point, hired MHI, Manitoba Hydro International?

MR. T. MARSHALL: We did for the DG3 numbers, yes.

MS. VAN DRIEL: Right –

MR. T. MARSHALL: Because –

MS. VAN DRIEL: – for the DG3 numbers.

MR. T. MARSHALL: That's correct.

MS. VAN DRIEL: Yeah.

MR. T. MARSHALL: That's correct.

MS. VAN DRIEL: So my question simply to you is: Do you feel that you, as minister, or that your Department of Finance in any way absconded its responsibilities?

MR. T. MARSHALL: No. The officials in the Department of Finance are, you know, some of the finest – some of the finest public servants in the country. They were very thorough, they considered the risks. They – I have total confidence in Mr. Paddon and the team he had with him.

...

Tom Marshall Hearing Transcript (November 7, 2018) – Page 87

MR. T. WILLIAMS: Okay. Yesterday it was put to you that you were intentionally misled by Nalcor with respect to certain aspects of this project. And the day preceding we had evidence from Mr. Terry Paddon; whose evidence was publicly criticized by a party with standing, Mr. Penney here of the coalition, who described his evidence as a shocking and disgraceful indictment of our public service. And this was in regards to a former Auditor General and respected deputy minister –

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: – for whom served under your ministry.

MR. T. MARSHALL: Right.

MR. T. WILLIAMS: Given your 11 years in government, what was your experience and how would you describe the honesty, integrity and the commitment of the civil service that you dealt with in the Province of Newfoundland and those at Nalcor in respect to this approach?

MR. T. MARSHALL: It was – I've always considered it a privilege and an honour for me to have been able to work with the civil service of the province. People like Terry Paddon and Charles Bown, they, you know, are outstanding individuals. The province is lucky to have them. They did great work. And I had complete confidence in them. And to me they're – although, you know, Mr.

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Learmonth put me – put to me questions about whether or not I felt I was misled based on assumptions that he gave me. The conclusion was that I was misled. But I'm anxious to hear the other side and – 'cause I do not believe that I was misled and I would be very surprised to see any evidence to that effect. But the civil service – you know, the people of the province can rest assured that – top quality civil servants – as I said, it was an honour for me to work with them and it was an opportunity that I'm grateful that I had. They would not mislead me. Errors could be made – we all make errors. We all make mistakes. And we can't predict the future. You just make decisions that involve the future. All you can do is go on the best information you can and try to get the best people you can and then you make the decision. And mistakes get made.

12. **The Department of Finance did not have other tools or resources to exercise any greater oversight or scrutiny of Nalcor on the Muskrat Falls Project beyond, as previously stated, ensuring they had done the appropriate engineering work and estimates and were satisfied with them, which is another reason why Mr. Paddon and the Department recommended the independent review.**

Terry Paddon Hearing Transcript (November 5, 2018) – Page 73

MR. BUDDEN: *Okay. In hindsight, I mean, I realize obviously this is hindsight. This whole Inquiry is, but casting your mind back, were there tools in the tool box of the Department of Finance available to you that could have been used to exercise a greater degree of oversight than in fact was carried out over the Muskrat Falls Project.*

MR. PADDON: *I'm not sure if there was any other tools in the tool box, you know, other than had there been this sort of independent review that we had recommended.*

MR. BUDDEN: *Okay. Do you see that as a, I guess, a structural weakness, in retrospect, obviously? Or, okay, let's do it differently. At the time, were you concerned about that as deputy minister, did you see that as a lack of a necessary resource within in the Department of Finance to be able to have some mechanism for conducting capital cost reviews?*

MR. PADDON: *No. You know, the types of capital cost that we looked at within the government were quite a bit different. Certainly, the scale was completely not the same at all. I didn't see that there was a need for us to have somebody on our staff who could then go in and – you know, an engineer or a multi-disciplinary person, as you suggest. But, you know, at the end of the day, you know, perhaps you're all one family. I was part of government, so, you know, you rely on the expertise that's developed in the various departments. That's why they have the expertise to be able to do that, so ...*

MR. BUDDEN: *Sure.*

MR. PADDON: *Similar to Nalcor, I guess.*

MR. BUDDEN: *So your – if I understand you correctly – the Department of Finance, which obviously had many responsibilities, it wasn't regarded as one of those responsibilities to give a close scrutiny when another department came to you and said we have a capital cost project that we require financing for?*

MR. PADDON: *Only to the extent that we would make sure that they had done the appropriate engineering work and they were comfortable with the cost estimates, those sorts of things. But other than that, no.*

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MR. BUDDEN: *Okay. If it wasn't a responsibility of the Department of Finance, I guess my question is: Did anybody within the Government of Newfoundland – or can you think of any division within the Government of Newfoundland, department or otherwise, that would have had a responsibility for doing such a close review of a Crown corporation which, after all, is outside the structure of government?*

MR. PADDON: *It's outside the structure of government, but it's still a Crown corporation, still owned by government, so it's part of the government family if you want to call it that.*

MR. PADDON: *The only other department that would have potentially looked at it or could have looked at it would have been the Department of Natural Resources because that was the department that, you know, was responsible for Nalcor. Nalcor reported through them. But I'm not aware that they did anything.*

MR. BUDDEN: *Okay, were – was it your –*

MR. PADDON: *Other than – I'll go back to that, you know, recommendation that we made, which both me and the deputy of Natural Resources had made, that there should be an independent review.*

MR. BUDDEN: *Okay. So Finance would have relied on Nalcor and perhaps on the – on Department of Natural Resources.*

MR. PADDON: *Perhaps, yeah.*

...

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MR. T. WILLIAMS: *Okay. So would you agree with me or would you think it would be reasonable that government would rely on cost estimates that would be put forth by Nalcor. Not only that they're done by Nalcor themselves, but we have evidence – we had Mr. Paul Lemay on from SNC-Lavalin who, in fact, had a team assembled to do cost estimates over a seven-month period. We've had evidence and we'll hear further evidence that there's consultants retained by Nalcor, Westney, regarding risk assessment. So Nalcor had formulated outside expertise as well in doing these. So do you feel it's reasonable for government to have relied on this information that came forth from Nalcor?*

MR. PADDON: *I think it was reasonable at the time, for sure, to rely on them. They had the expertise and they knew the business and those sorts of things. Having said that, you know, the fact remains that we still did make a recommendation that perhaps there should be an independent review, And I – you know, a lot of our thought process was, you know, all these sort of reviews that had been done were all commissioned by Nalcor –*

MR. T. WILLIAMS: *Right.*

MR. PADDON: *– so, you know, as part of sort of a final process before going to sanction, something that the province has commissioned just to take a look at it.*

MR. T. WILLIAMS: *Okay, so –*

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MR. PADDON: *But that's not to say that we didn't – that there was still the reliance on Nalcor –*

MR. T. WILLIAMS: *Sure.*

MR. PADDON: *– to provide the estimates of cost and other inputs into the decision.*

13. The concerns in the Information Note of January, 2012 (*Exhibit 00922*) raised by the “lower-level” officials in the Department of Finance were never brought forward nor advanced to Mr. Paddon. The information came as a surprise to him when it was shown to him during this process. We note that Mr. Harold Smith in his questioning suggests that it is a summary of the positions of the various individuals referenced in the Information Note as opposed to a personal expression of opinion of the author(s) of the Note itself, and we submit that this is a more plausible scenario as to the purpose of the Note. We further highlight that Mr. Paddon is clear that it was not a conclusion of the Department of Finance.

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MR. BUDDEN: *Okay. Would you agree that this analysis conducted by – apparently by lower level officials in your department appears to have been more prescient as to some of the concerns than was the analysis conducted at the highest levels of your department?*

MR. PADDON: *Certainly he had a view that, in retrospect, has proven to be probably correct.*

MR. BUDDEN: *Okay. And you weren't, at the time, aware of this information note?*

MR. PADDON: *No, I wasn't, no.*

MR. BUDDEN: *Did you – and think carefully about this because I believe it's important – did you have any sense at all that certain of your officials – I know it was a big department, but did you have a sense that some of the individuals at a somewhat lower level of the department held these concerns?*

MR. PADDON: *No.*

MR. BUDDEN: *So this was a total surprise to you?*

MR. PADDON: *I was very surprised when I saw that, yeah.*

MR. BUDDEN: *Okay. So you had no idea at all this view, this dissent existed?*

MR. PADDON: *That's right.*

MR. BUDDEN: *Okay. Were there any mechanisms by which concerns of this nature could be brought forward to you as DM?*

MR. PADDON: *I would think that if they felt strongly – I mean they would normally go through their – whatever the hierarchy is that came up through that if they felt strongly enough – well, ultimately, they could've come to me, directly. There was no reason not to. But the normal protocol would have been to come through their ADM and sort of ask for that to be advanced.*

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MR. BUDDEN: *So somewhere between them writing this prescient memo and you, the news stopped?*

MR. PADDON: *Yeah. I have no idea what happened to it, but it obviously didn't get that far.*

...

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MR. SMITH: *Good afternoon, Mr. Paddon. Harold Smith, for Edmund Martin.*

MR. PADDON: *Hello.*

MR. SMITH: *Could I have P-00022, please? 00922, I'm sorry. 00922, sorry. I'm getting Ms. O'Brien's dropping the first number.*

THE COMMISSIONER: *That's tab 38.*

MR. SMITH: *Tab 38, Mr. Paddon.*

MR. PADDON: *Yup.*

MR. SMITH: *I'm looking at the title of this document: "Information Note; Department of Finance," and I know you said that this didn't come to your attention. You didn't actually see this until it was shown to you, et cetera, by the Commission counsel.*

MR. PADDON: *(Inaudible.)*

MR. SMITH: *And I'm looking at the title: "Economic Opinions on Development of Muskrat Falls," and then it says a "Review and analysis of opinions of economic experts David Vardy, Jim Feehan ... Wade Locke on the development of Muskrat Falls as the least-cost option for Nalcor to address" the "forecasted capacity shortfalls." And if we scroll down very slowly. Okay. We'll see – keep going please – we see some background information. That's okay, keep going. And a little further, please. And then we see a summary of Mr. Vardy – commentary, I believe, Mr. Vardy's commentary, publicly, okay, as well as perhaps in correspondence to the government. Continue, please, down. And now we see Jim Feehan summary of his position. We've heard from both of those gentlemen so far. And if we keep going, we'll see Mr. Wade Locke's summary. And keep going. And we get to "Conclusion." Now, with respect, that – those conclusions somewhat mirror the statements of Mr. Locke, Mr. Feehan and – oh my –*

UNIDENTIFIED MALE SPEAKER: *Mr. Vardy.*

MR. PADDON: *Vardy.*

MR. SMITH: *Sorry, Mr. Vardy. And therefore don't appear to be conclusions of the Department of Finance but merely a summary of what these gentlemen are saying publicly. Is that a fair assessment from your read of it?*

MR. PADDON: *Perhaps.*

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MR. SMITH: *Yeah. Any other thoughts?*

MR. PADDON: *I mean, this is not my –*

MR. SMITH: *No.*

MR. PADDON: *– piece of work.*

MR. SMITH: *No.*

MR. PADDON: *So I really can't offer any conclusive insight into the process.*

MR. SMITH: *But when you look at that document, and you see that each of the gentlemen are summarized and then the conclusion, it's not a conclusion of the department. It's a conclusion as to what they're saying. It's a conclusion of their position.*

MR. PADDON: *Well, you might call it a summary of their position.*

MR. SMITH: *A summary –*

MR. PADDON: *Yeah.*

MR. SMITH: *A summary of their position. Exactly.*

MR. PADDON: *To be clear, it wasn't a conclusion of the department.*

MR. SMITH: *It wasn't a –*

MR. PADDON: *Yeah.*

...

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MR. BUDDEN: *Okay. And we've already discussed – so I won't go a great length but the – then there was the information note of January 2012.*

MR. T. MARSHALL: *Mm-hmm.*

MR. BUDDEN: *And so if I understand this correctly, it was brought to you by one of your officials and said: Look this is the work of –*

MR. T. MARSHALL: *No, no. It – I think it just appeared. I had it and I looked at it and I said – you know, I read it and it was a summary of what others had said and it gave an opinion.*

MR. BUDDEN: *Okay.*

MR. T. MARSHALL: *And I said: Well, what do I do with this? Do they want to see me? Do they want to come in and talk to me? And no. And they were just letting me have their views.*

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MR. BUDDEN: *Okay. Did you discuss that with your deputy minister, Tony [sp Terry] Paddon?*

MR. T. MARSHALL: *(Inaudible.)*

MR. BUDDEN: *I'll let you know there – he says that he'd never seen it before.*

MR. T. MARSHALL: *No, I – I think it was Bob Constantine that had the – and it was a brief discussion. It was that they just want you to look at it.*

14. The questions to Mr. Paddon by Mr. Budden on whether the mistakes were due to errors in the civil service or errors in political direction was in our view not a particularly fair or proper question to be posed to him, as it presupposes that errors were made which were an “either or” caused by the civil sector (either through their own fault or in the direction they were given) and removes Nalcor completely from the consideration.

We submit it is very critical to highlight the fact that in the end, while Mr. Paddon answered the question as best he could, it was very clear that his answer did not state that he believed mistakes were made by the civil service. He clearly answers the question in the hypothetical and multiple times states “IF” there were mistakes made, before he goes on to give his answer that it’s probably a shared responsibility, but again, that is his answer only IF there were mistakes made, which he did not say there were, he simply took it as an assumption for the purposes of answering the question. Mr. Budden’s own questioning bears this out as well, as he later clarified his question to ask “*If there were failures, were there failures of you and your fellow high-level civil servants, or were there failures in the people instructing you at the political level?*”

We would further draw attention to the virtual impossibility of answering this question without the benefit of hindsight. The Commission indicated that they were trying to look at things as they might have occurred at the time, yet a question was allowed which could not be objectively answered without knowing what had transpired since.

Finally, we submit that this question is more of an articulation of the point of view of Mr. Budden and his client(s) and that putting the question out there may have been more important than actually getting a “yes” answer from Mr. Paddon.

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MR. BUDDEN: *Okay. Do you believe that the mistakes that have led us here today, the errors that have led us here today, are primarily an issue of errors made within the civil service, or more in terms of the political direction given to the civil service?*

(some discussion ensued at this point about whether the question should be answered)

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MR. PADDON: *Ultimately, what happened is the province’s electrical utility came to the province and said: Listen, we’re going to run out of power in a number of years, so we need to do something about it. Which was perfectly within their mandate. I mean, that was something that they should’ve done.*

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Now, the process around Muskrat Falls and, sort of, the information – that sort of thing – there was – whilst there was information flowing through officials, there was also information flowing, you know, at the political level as well. And maybe there could've been some more barrier put there; I'm not sure whether that would've changed anything or not. But you know, it – sort of a – something that occurs to me. You know, I can't say whether that was good, bad or indifferent but it was certainly a fact that that, sort of, informational structure existed.

You know, whether that was a fault with how the political side of things set things up – you know, perhaps. I'm not quite sure it's – it was – is at the end of the day – was the key thing. You know, perhaps, you know, as it's being suggested and talked about here, you know, an overreliance by perhaps both officials and the political element on the work that was done by Nalcor was, you know, it was – we wouldn't be here today if things hadn't – had occurred, as they said. But I think there was definitely a – certainly a reliance on the information and everything that was done by Nalcor. And maybe, you know, that's probably where things really, sort of, maybe fell off the rails or met – you know, had there been that sort of, I guess, maybe parallel process because of the significance of this that might've provided, sort of, initial comfort on the costing. You know, maybe that's something that could've – but I, you know, I don't – I'm not – I'm struggling with your question. I'm not sure if I get a few more minutes I'm gonna be able to answer it any better.

MR. BUDDEN: *I guess – so I'm wondering is: If there were failures, were there failures of you and your fellow high-level civil servants, or were there failures in the people instructing you at the political level?*

MR. PADDON: *Yeah, well, the – I'm struggling with – when you say “instructing” because, yeah, there was no – there was nobody saying: Yeah, you go get that project done come hell or high water. It – so I – that's the impression I get when I hear the words that you're –*

MR. BUDDEN: *I meant –*

MR. PADDON: *– using.*

MR. BUDDEN: *– instructing in the broader sense –*

MR. PADDON: *Yeah (inaudible).*

MR. BUDDEN: *– politicians instruct. Yeah.*

MR. PADDON: *Right. So, I mean, you know, at the end of the day, I mean, if there was failure at the bureaucratic and political level, I mean, it's probably a shared responsibility. But I wouldn't say it's one more than the other. I – it – nothing just strikes me, you know, that, you know, I can provide a, sort of, a definitive answer.*

...

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MS. E. BEST: *Never? I have to ask you about something that I think I heard you say when Mr. Budden was asking you a question there. I think you said something like: Perhaps if there had been a parallel process to review the cost estimates that Nalcor had produced. Do you recall saying something like that? You definitely said a parallel process.*

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MR. PADDON: *Oh yes, I recall. Yeah.*

MS. E. BEST: *So I just want to figure out what you were talking about there, just to see if – when we bring it out in the open, if you think – if it's reasonable, if you – if that's really what you're talking about. So are you talking about – because we know the Department of Finance didn't have the expertise to review, you know, the base cost estimates, because that comes – you need an engineer to do that, right? And, similarly, Natural Resources, for those base cost estimates, would be in the same boat. So when you're talking about a parallel – so government had created Nalcor to do this work. Are you suggesting that government should have created Nalcor two to review Nalcor one?*

MR. PADDON: *Ms. Best, I was grasping at straws to kind of try to come up with an answer*

MR. PADDON: *– that was reasonable, but –*

MS. E. BEST: *That doesn't sound reasonable, though, does it?*

MR. PADDON: *Certainly not. You know, it sounds reasonable in retrospect, when you –*

MS. E. BEST: *Right.*

MR. PADDON: *– see everything that's gone on.*

MS. E. BEST: *Sure.*

MR. PADDON: *But, certainly, there was no suggestion at the time that we have this parallel process and I didn't think that way at the time. But the –*

MS. E. BEST: *And in fact –*

MR. PADDON: *– context of the question was – it was a retrospective question, really. You know, knowing that what we know now –*

MS. E. BEST: *Okay.*

MR. PADDON: *– I think the Commissioner sort of was wondering, you know, what sort of things could we look at.*

MS. E. BEST: *Okay. Fair enough, yeah. I guess, for phase 1, I thought we were trying to stick with – stay away from the hindsight bias, but –*

THE COMMISSIONER: *Not totally.*

MS. E. BEST: *Okay.*

THE COMMISSIONER: *I mean, hindsight is – you know, I said in my interpretation decision – may as well straighten this out right now. I said in my interpretation decision, obviously, you can't look at it totally with hindsight but, obviously, you know, I can't – we can't, basically, exclude from*

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our minds the fact that this project is well over budget and well over time and we're trying to figure out what happened.

MS. E. BEST: *Mmm.*

THE COMMISSIONER: *Right?*

MS. E. BEST: *Yeah.*

THE COMMISSIONER: *So I mean I'm not sure if that's hindsight or not, but I'm sure it's more than hindsight that we're looking at.*

MS. E. BEST: *Yeah.*

THE COMMISSIONER: *Right?*

MS. E. BEST: *And I didn't mean to really comment on that, all I meant was I just want to distinguish if that was something that he thought of at the time, back then –*

THE COMMISSIONER: *Mm-hmm.*

MR. PADDON: *No.*

MS. E. BEST: *– or if this is just something you're saying now.*

MR. PADDON: *No, that was because I was put on the spot with the question, basically.*

...

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MS. VAN DRIEL: *But – the question was: Do you think that the errors made are within the civil servants or the direction given to the civil servants by ministers or the politicians? That was the question.*

MR. PADDON: *Right.*

MS. VAN DRIEL: *Correct. So, it's a big assumption being made in this question, in my view, namely that errors were made by – maybe civil servants, or maybe by ministers. Would you agree with that?*

MR. PADDON: *It seems to be from the way the phrase – the question is phrased, yeah.*

MS. VAN DRIEL: *Right. So, in answering that question, you assumed, for purposes of answering the question, that errors were made.*

MR. PADDON: *Essentially, yes.*

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MS. VAN DRIEL: *Right. And – but one very important element of looking, overall, in hindsight, as you were asked to do, was very – one important element was left out of this, and that is Nalcor itself.*

MR. PADDON: *Right.*

MS. VAN DRIEL: *Would you agree with that?*

MR. PADDON: *Yes.*

MS. VAN DRIEL: *Yeah. So, it's very difficult to answer a question, hypothetical as it is, assuming that errors were made, and leaving out – even out of a hypothetical question – Nalcor, which was an essential component of the question.*

MR. PADDON: *Right.*

MS. VAN DRIEL: *Would you agree with that?*

MR. PADDON: *Yes.*

Respectfully submitted at the City of St. John's, in the Province of Newfoundland and Labrador,
this 9th day of August, 2019.


Per: Gerlinde van Driel, QC
VAN DRIEL LAW
Whose address for service is:
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Decision / Direction Note
Departments of Finance and Natural Resources

Title: Muskrat Falls Hydro Development Project

Decision / Direction Required:

- Whether to approve the selection and retention of a qualified consultant to provide an independent review and report on the detailed project analysis prepared or commissioned by Nalcor, including an assessment of the various risks associated with the Muskrat Falls Hydro Development Project ("MFP") and their potential implications for the Province.
- Finance and Natural Resources are supportive of the proposed initiative as it represents both good business practice as well as an enhancement to the existing robust due diligence process.

Background and Current Status:

- The development of the MFP was announced by the Province and Nalcor on November 18, 2010 with the project to include a generating station at Muskrat Falls, a Labrador transmission line, a Labrador-Island link and a Maritime link to Nova Scotia. Emera Inc., a Nova Scotia based electrical utility, will partner with the Province and Nalcor on the transmission component and will own 29% of the Labrador-Island link and 100% of the Maritime link. Total project capital costs are estimated to be \$6.2 billion with Emera's share to be \$1.8 billion and the balance of \$4.4 billion to be shared between the Province and Nalcor.
- Project size and related financial requirements are significant relative to the capacity of the Province. Given the combined Nalcor and Provincial commitment of \$4.4 billion, development of the MFP will add substantially to Provincial debt and could possibly impact future borrowing capacity for other uses. For this reason alone, it is prudent for the Province have a clear and independent review of project risks and their potential consequences.
- From a credit rating perspective, the best current indicator of the market's perception of the project comes from Standard and Poor's which recently upgraded its rating for the Province from A to A+. Commentary in the news release announcing the upgrade included the following statement - "While the decision to proceed with the Lower Churchill project augurs well for the local economy, we think it could expose Newfoundland to substantial construction risk and borrowing requirements." In terms of future outlook, they also made the following comment - "... sustained deterioration in economic performance, operating surpluses, or liquidity, or any cost overruns or other developments at Lower Churchill that add material risk to the province or Nalcor could lead to a downgrade or an outlook revision to negative." Both statements should be interpreted as a warning regarding the potential for the project to have a negative impact on Provincial finances.
- In terms of due diligence procedures already applied, Nalcor has completed the following:
 - Retention of PricewaterhouseCoopers ("PWC") to provide independent analysis.
 - Internal financial analysis including sensitivity assessments.
 - Discussions with financial advisors related to capital markets issues.
 - Engagement of rating agencies with respect to potential credit rating challenges.
 - Preparation of a detailed submission seeking Federal loan guarantee support.
- In addition to the above, Nalcor is also planning to undertake additional due diligence as follows:
 - Completion of a project cost analysis by Independent Project Analysis Inc., an international organization that specializes in the review of large scale projects.

- Completion of an thorough review and commentary on the readiness of the project to proceed by Independent Project Review, a group recognized for their knowledge and experience in particular aspects of large scale project delivery.
- Retention of a consultant to complete an updated review of the Island Supply Decision Review.
- While the due diligence work completed and contemplated by Nalcor is rigorous, it has all been initiated or completed by Nalcor and has, therefore, been developed primarily from a Nalcor perspective. While the concerns of Nalcor and the Province are aligned in many ways, the Province might benefit from an expanded view given its various roles, both project-specific such as shareholder and equity contributor, and those more general in nature, such as responsible custodian of Provincial finances. This need to take a broader view would be premised on the possibility that there could be issues or risks, of an overriding Provincial nature or concern, that may not be as apparent or relevant to Nalcor's considerations and its due diligence processes.

Scope

- The retention of an independent consultant by the Province would be intended to obtain a new MFP project specific assessment of both the fundamental assumptions underlying the project development plan and the detailed accompanying analysis completed by Nalcor or its agents and advisors. It could also include an assessment of the due diligence completed to date including a report on the rigour of this process. It would be a risk-based assessment which would focus on the various types of project risk and the potential implications for the Province.
- While preliminary in nature, the risk assessments that might be included in the consultants' mandate could include the following:
 - Design and engineering risk.
 - Construction risk.
 - Generation / technical risk.
 - Market risk.
 - Financial risk.
 - Contractual risk.

These themes will have to be expanded into a detailed statement of work which will be required as a pre-condition of negotiating the retention of a consultant.

- A key component of the project financial structure will be a Power Purchase Agreement ("PPA") between the Nalcor generating entity and NL Hydro. In addition to the risk assessments above, the consultant could also be asked to provide an independent assessment of this PPA.

Process

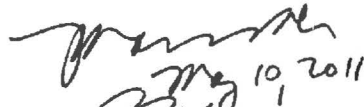
- To move this initiative forward, the first decision points involve the identification of possible qualified consultants and determination of the process which will be employed for the selection of the successful one. The ideal consultant would most likely be an international management consulting firm as these organizations have the ability to combine strong general business expertise and advice, while also incorporating expert input from in-house industry specialists. The pool of such potential candidates would appear to be limited by the fact that at least two are conflicted as a result of existing relationships with Nalcor. This would rule out Deloitte, as Nalcor's auditor, and PWC, as the current consultant to Nalcor on the Lower Churchill project generally. This leaves Ernst & Young, KPMG and possibly Grant Thornton as potential candidates.
- With respect to a process for selection of a consultant, consideration should be given to the high level of confidentiality required, the limited pool of potentially qualified candidates and the compelling need

to move forward expeditiously. Given these factors, it is felt that a public selection process would unnecessarily delay consultant selection and, ultimately, project deliverables. It would, however, be the intention to have a limited call for proposals to the extent there are sufficient qualified candidates.

- In order to proceed on this basis, approval could be requested from Treasury Board under paragraph 3.6(b) of the Consultants' Guidelines for an exemption from the requirement to call limited or public proposals. This could be justified on the basis that there are an insufficient number of qualified consultants and a limited time to have the work completed such that the overall project development timetable is not disrupted. It could also be argued that the highly confidential nature of the project could justify an exemption under 3.6(c) of the Guidelines. As well, Cabinet approval of the consultant selection, pursuant to section 4.1 of the Guidelines, will be required as the total fees and expenses are expected to exceed \$100,000.
- If the above exemption is provided, an informal process could be developed to scope out the statement of work and identify and interview one or more preferred candidates with a view to negotiating an arrangement to complete the work as required. Authority to execute and approve such a process, including the selection of a consultant, could be delegated jointly to the Ministers of Finance and Natural Resources.
- In terms of timelines, the process of consultant screening and selection should be completed by early May with the consultants' work to proceed over the summer months with a target initial reporting date in September. Once the initial report is completed, it may well be desirable to have the consultant provide periodic updates as the project progresses.

Prepared By: Paul Myrden, Department of Finance
Approved By: Terry Paddon/Charles Bown

Ministerial Review:
Date: May 9, 2011


May 10, 2011

May 11/11