

*Hearing Transcript*

**REFERENCE TO THE BOARD  
RATE MITIGATION OPTIONS AND IMPACTS  
MUSKRAT FALLS PROJECT**

**October 8, 2019**

**PRESENT:**

**The Board:**

**Board Members**

Darlene Whalen , Chair  
Dwanda Newman, Vice-Chair  
John O'Brien, Commissioner

**Board Counsel / Staff**

Maureen Greene, Q.C., Reference Counsel  
Sara Kean, Assistant Board Secretary

**Parties:**

**Nalcor Energy /**

**Newfoundland and Labrador Hydro**

David Eaton, Q.C., Counsel – Nalcor  
Geoff Young, Q.C., Counsel – NL Hydro

**Newfoundland Power**

Kelly Hopkins, Counsel  
Liam O'Brien, Counsel

**Consumer Advocate**

Dennis Browne, Q.C. – Consumer Advocate  
Stephen Fitzgerald, Counsel – Consumer Advocate

**Island Industrial Customer Group**

Paul Coxworthy, Counsel  
Denis Fleming, Counsel

**Witnesses:**

**Nalcor Energy /**

**Newfoundland and Labrador Hydro**

Stan Marshall, President & CEO, Nalcor

John Dalton and Michael Killeavy,  
Power Advisory LLC Panel

Page 1

1 (9:00 a.m.)  
 2 CHAIR:  
 3 Q. Good morning, everybody. Good morning, Mr.  
 4 Marshall.  
 5 MR. MARSHALL:  
 6 A. Good morning.  
 7 CHAIR:  
 8 Q. I guess there are no preliminary matters, I  
 9 understand, so we'll go straight to Nalcor  
 10 Hydro to introduce your presentation.  
 11 EATON, Q.C.:  
 12 Q. Thank you, Madam Chair. We have Mr. Stan  
 13 Marshall ready this morning. I'm going to  
 14 take Mr. Marshall through just some  
 15 introductory background and then there's a  
 16 slide presentation that he'll speak to. So  
 17 Mr. Marshall, you're currently the CEO of  
 18 Nalcor Energy?  
 19 MR. MARSHALL:  
 20 A. That's correct.  
 21 EATON, Q.C.:  
 22 Q. And have been since April of 2016?  
 23 MR. MARSHALL:  
 24 A. That's correct as well.  
 25 EATON, Q.C.:

Page 2

1 Q. And before that, you were with Fortis Inc?  
 2 MR. MARSHALL:  
 3 A. Yes, I was President and CEO until the end  
 4 of 2014. Actually, CEO until the end of  
 5 2014. I gave up the presidency mid 2014.  
 6 EATON, Q.C.:  
 7 Q. Can you just sort of go back and give us an  
 8 overview of your time with Fortis and the  
 9 preliminary – prior to joining Fortis?  
 10 MR. MARSHALL:  
 11 A. I joined Newfoundland Power in 1979 as their  
 12 legal counsel and became VP Legal Regulatory  
 13 Affairs. We set up Fortis in 1989. In  
 14 fact, I became the Vice-President  
 15 responsible for the development of Fortis.  
 16 In the mid 90s, I became President and CEO  
 17 of Fortis and that's where I remained until  
 18 I retired. Along the way, I was President  
 19 and CEO of many subsidiaries, Chairman of  
 20 some, Director of pretty well all of them,  
 21 and also served as a Director of some side  
 22 corporations, and I still do, Toromont, and  
 23 now Interflex.  
 24 EATON, Q.C.:  
 25 Q. The Fortis associated or subsidiary

Page 3

1 companies that you were involved with, can  
 2 you just give us an idea of what they were  
 3 and sort of the lines of business that they  
 4 were in?  
 5 MR. MARSHALL:  
 6 A. Most of them were regulated utilities.  
 7 Maritime Electric, I was President and CEO  
 8 for a year, and a Director thereafter. What  
 9 is now Fortis Ontario, I was CEO for a  
 10 period, a Director and Chairman, I think, at  
 11 a time. Belize Electric, Vice Chair and  
 12 Director. What is now Fortis PCI, I was  
 13 CEO, Chairman, and Director many years.  
 14 What is now Fortis Alberta and Fortis BC, I  
 15 was, I think, Chairman at a point, and  
 16 certainly a Director for many years. I  
 17 think that covers most of them. My last was  
 18 a utility in Arizona, but – sorry, Central  
 19 Hudson, United States, New York, I was a  
 20 Director there.  
 21 EATON, Q.C.:  
 22 Q. Belize Electric?  
 23 MR. MARSHALL:  
 24 A. Yes, I was Vice-Chair with Belize Electric.  
 25 EATON, Q.C.:

Page 4

1 Q. So You've spent your career in the –  
 2 MR. MARSHALL:  
 3 A. The reality was I was CEO of Fortis, but  
 4 responsible for all these subs.  
 5 EATON, Q.C.:  
 6 Q. Okay.  
 7 MR. MARSHALL:  
 8 A. And the acquisition, integration, and  
 9 performance of these subs. Fortis  
 10 Properties as well, CEO, Director, Chairman.  
 11 EATON, Q.C.:  
 12 Q. So that's what you've been doing for the  
 13 last few years?  
 14 MR. MARSHALL:  
 15 A. Yes, I first appeared here 40 years ago in  
 16 this room, or the equivalent of this room,  
 17 and I last appeared thirty years ago. I'll  
 18 be back again in about 30 years.  
 19 EATON, Q.C.:  
 20 Q. I hope I won't be here if that's the case.  
 21 CHAIR:  
 22 Q. Myself as well.  
 23 EATON, Q.C.:  
 24 Q. And I don't think – and it's nothing  
 25 personal. So if we can go to your slide

Page 5

1 presentation, I think you have a clicker  
 2 there that you can bring up the first slide.  
 3 MR. MARSHALL:  
 4 A. Okay, thank you. The first thing I want to  
 5 make clear is that, you know, from the time  
 6 I took over as President and CEO of Nalcor,  
 7 one of our principal functions was to see  
 8 what we could do to mitigate the rates. I  
 9 think in the very first conference I had, I  
 10 indicated our first priority had to be to  
 11 gain control of the Muskrat Falls Project,  
 12 to work on trying to do something with  
 13 electricity rates to a degree we could. So  
 14 throughout my term since then, we've been  
 15 working with the provincial government to  
 16 find solutions to mitigate rates and that  
 17 included participation in the province's  
 18 Rate Mitigation Committee. In fact, that  
 19 committee was set up on my recommendation,  
 20 and a lot of the information and data and  
 21 analysis that Deborah has used that she got  
 22 from us was originally developed and  
 23 presented to the Rate Mitigation Committee  
 24 and their own Board of Directors. So that's  
 25 been on the go for a couple of years and a

Page 6

1 lot of work was done. So with the  
 2 establishment of this reference, we've been  
 3 trying to cooperate fully with the PUB and  
 4 its consultants and I hope you see that.  
 5 EATON, Q.C.:  
 6 Q. And just before you move on, did you have a  
 7 chance to meet with anybody from Liberty  
 8 Consulting on this matter?  
 9 MR. MARSHALL:  
 10 A. Yes, I met with John Antonuk and Maureen  
 11 Greene, on behalf of the Board, for about an  
 12 hour, I think, one afternoon.  
 13 EATON, Q.C.:  
 14 Q. All right.  
 15 MR. MARSHALL:  
 16 A. So in the process of the Rate Mitigation  
 17 Committee, we gave some definitions which I  
 18 think are probably useful here. You might  
 19 not want to use them fully, but they do help  
 20 with the understanding, in my view, and what  
 21 we were doing when we talked about  
 22 mitigation, we were talking about the things  
 23 that we, Nalcor, could do on their own in  
 24 terms of minimizing costs and using the  
 25 Muskrat Falls assets to generate other

Page 7

1 revenues and cash flows that could be used  
 2 to help mitigate rates. So strictly  
 3 speaking that's what we were talking about  
 4 mitigation. The other two components we did  
 5 a fair bit of work on was, you know, using  
 6 other Nalcor cash flows to subsidize rates.  
 7 We called it Nalcor Subsidization, and then  
 8 there were cash flows that the province  
 9 might have that could be used to subsidize  
 10 rates. Because the province owns Nalcor  
 11 fully, you'd think initially looking at it,  
 12 there's no difference between those two,  
 13 and, in fact, in true economic terms there  
 14 isn't. For example, when this reference was  
 15 established, it was assumed that all oil and  
 16 gas assets would be transferred out of  
 17 Nalcor to a separate corporation. It's now  
 18 clear that the existing oil and gas assets  
 19 can not be, so they remain in Nalcor, and  
 20 that should not in any way impact the true  
 21 economics of that. It doesn't matter  
 22 whether they're in Nalcor or out, they're  
 23 still subsidization, and if you use them,  
 24 they impact the cash flows to the province  
 25 and the province's ability to use those for

Page 8

1 other purposes, whether hospitals or  
 2 education. However, from the Nalcor  
 3 perspective, and from the province's  
 4 perspective, there are differences, and  
 5 again the oil and gas is probably an  
 6 example. That is the province has to be  
 7 concerned that the monies it has borrowed to  
 8 finance the equity in Muskrat Falls could be  
 9 self-supporting, and so it has to have  
 10 revenues there to be able to do that and  
 11 demonstrate that. Otherwise, the bond  
 12 rating agencies would downgrade the  
 13 province's credit. It would cost more every  
 14 dollar the province borrowed. So that's one  
 15 concern. From a Nalcor perspective, we also  
 16 have to be concerned that if there's not  
 17 enough earnings from the assets, it could be  
 18 that those assets would be impaired and we'd  
 19 have to write them down, and again they  
 20 would show up on the books of the province.  
 21 So while there's no difference in true  
 22 economics, there are other considerations  
 23 and we don't want to have those unintended  
 24 consequences. So we're looking at those.  
 25 The fourth category which neither the

Page 9

1 province nor Nalcor can control or have much  
 2 influence, and that is to change the  
 3 statutory, regulatory, contractual  
 4 arrangements around Muskrat Falls. These  
 5 were put in place to do the financing. You  
 6 would not have gotten money if you didn't  
 7 have the terms that says basically the  
 8 Newfoundland consumer is on the hook for  
 9 everything. So that is not something I  
 10 wanted. I mean, it wasn't done in my time,  
 11 but it was done because that's the only way  
 12 we were going to get the money. So to  
 13 change that, I don't think you can change it  
 14 really. You might be able to find a way to  
 15 run it in conjunction with the federal  
 16 government to get some relief, and certainly  
 17 there were conversations on the go in that  
 18 regard. I haven't been directly involved in  
 19 it up to this point in time, but have asked  
 20 to be going forward. Some of my people have  
 21 been very much involved to do the analysis  
 22 for the provincial government.  
 23 EATON, Q.C.:  
 24 Q. You can just move the slide.  
 25 MR. MARSHALL:

Page 10

1 A. So in the same way there are implications to  
 2 the province and to Nalcor from  
 3 subsidization, there will also be  
 4 implications from a regulatory perspective.  
 5 By way of example, I'm not proposing this,  
 6 but by way of example, supposing we say that  
 7 the way we're going to do this is that the  
 8 rates to the consumer is going to be fixed.  
 9 If that's the case, then the Commission  
 10 would no longer have to inquire about cost  
 11 because cost will be fixed, and the Consumer  
 12 Advocate might want to become the tax paying  
 13 advocate because the cost would be about any  
 14 impact here, and, in fact, it could be the  
 15 reverse of that. It could be that if the  
 16 rates of the consumer is not going to be  
 17 affected, then by all means spend all kinds  
 18 of money to improve reliability because it  
 19 won't affect the rate to the customer, it  
 20 will affect the taxpayer. So it'll change  
 21 what the regulation is all about. On the  
 22 other hand, if you say that there's going to  
 23 be a fixed rate between Nalcor and Hydro,  
 24 then the jurisdiction of the Board over  
 25 Hydro and Newfoundland Power remains

Page 11

1 unchanged, and then there's no reason to go  
 2 back beyond that and you'd have a fixed rate  
 3 contract between Nalcor and Hydro and the  
 4 consumer would not be bearing the cost  
 5 because it would be subsidized. So these  
 6 are sort of – I just use these as examples  
 7 to show you that how you do it will impact  
 8 how you regulate as well. Obvious statement  
 9 that the interest of the customer are not  
 10 identical to the interest of the taxpayers.  
 11 There are some large taxpayers and some  
 12 small consumers and vice versa. So the  
 13 instance varies, they're not the same,  
 14 they're very similar in many cases,  
 15 individuals, and the other thing to note is  
 16 that regulation, for the most part, is based  
 17 on cost. There are no regulatory principles  
 18 that I know which will determine how much  
 19 the taxpayer should subsidize rates. That  
 20 is a public policy decision which can only  
 21 be done by your elected representatives, the  
 22 government of the province. So our approach  
 23 and our presentation here today is to talk  
 24 about our mandate, short and long term,  
 25 because that determines what we should be

Page 12

1 doing to respond to the consultants report  
 2 presented on behalf of the Board, and we  
 3 have our own consultants here, Power  
 4 Advisory, to talk about North American  
 5 electric utility organizations and market  
 6 structures. Although on all these things,  
 7 I'm prepared to answer some questions,  
 8 recognizing that the details belong to  
 9 others, and we have other panels talking  
 10 about organizational structure and the  
 11 finance panel as well. So hopefully we'll  
 12 be able to answer all the questions the  
 13 Board might have. In my view, it all starts  
 14 with Nalcor's mandate. This is a matter of  
 15 public record. We have the Electric Energy  
 16 Corporations Act, we have the mandate  
 17 letters given to the Minister of Natural  
 18 Resources to whom we report, and we also  
 19 have, of course, from time to time  
 20 directives from the Minister as well. So  
 21 this is what the province expects us to do.  
 22 This is why we were established, this is  
 23 what we're attempting to do. The mandate  
 24 becomes our mission, which is another way of  
 25 saying "mission", which leads me to the next

Page 13

1 slide because organizational structure has  
 2 become an issue here, and I reference back  
 3 to Peter Drucker, who is probably the  
 4 leading management consultant, management  
 5 guru, over the last 50 years, and he says  
 6 that “Mission defines strategy. Strategy  
 7 defines structures”, and I agree with that  
 8 100 percent. So our current structure and  
 9 the one that I will maintain until I leave,  
 10 with some adjustments, was established in  
 11 2016 with two focuses. One was to ensure  
 12 that Muskrat Falls got done. That was part  
 13 of what I was brought here to do. The other  
 14 thing was that it became clear to me that  
 15 Hydro and its relationship with the  
 16 regulator was less than ideal. In 2015, the  
 17 cost of regulation alone was close to 14  
 18 million dollars. That’s a direct cost  
 19 assigned to us for regulatory affairs.  
 20 Hydro had not been doing a good job. It was  
 21 clear to me that a lack of focus currently  
 22 within Nalcor, and from my experience in the  
 23 last 40 years, it’s quite clear to me you’ve  
 24 got to try to keep the regulatory function  
 25 as clear as possible to the degree we can

Page 14

1 demonstrate that there are functions that  
 2 can be shared, we do that, so we’re not  
 3 being foolish about it. I would like to  
 4 think, but I leave it to the Board’s  
 5 judgment, that the regulatory relationship  
 6 has improved, and certainly we’ve gotten a  
 7 lot more focus within Nalcor. From my  
 8 perspective then, I had to focus on  
 9 primarily Muskrat Falls, but there were lots  
 10 of other things going on within Nalcor. I  
 11 mean, if you look at it, Muskrat Falls for  
 12 the last couple of years has been one of the  
 13 largest mega-projects under construction in  
 14 the world. It’s very complex because it’s  
 15 not only a hydro plant, but a very intricate  
 16 transmission system. And I think the  
 17 failure to recognize that at the start has  
 18 been part of the problem. You know, we’re  
 19 trying to get out of the Quebec system, the  
 20 isolated Newfoundland system, the Maritime  
 21 system. At the same time we’re building a  
 22 new plant that’s tied together. So it’s  
 23 again no surprise to me that ultimately a  
 24 regulatory concern might be the  
 25 transmissions system. So a lot of the

Page 15

1 structures were all in place to bring focus  
 2 on those things, and it’s a good thing we  
 3 did, quite frankly. However, organizational  
 4 structure will change to reflect changing  
 5 circumstances priorities. I mean, as a  
 6 matter of fact, an organizational structure,  
 7 the people you have available. Some people  
 8 can handle very broad level of  
 9 responsibilities, some people can’t. It’s  
 10 very difficult to recruit within the Nalcor  
 11 organization because the salaries at the  
 12 senior level are not competitive. They’re  
 13 simply not competitive, not even close, so  
 14 you cannot recruit at the senior level. A  
 15 lot of the people in Nalcor are retirees  
 16 from Newfoundland Power and Fortis. I had  
 17 to bring back Jim Haynes, who had already  
 18 retired from Hydro, to fill a gap. Even  
 19 since I made these changes in 2016, two  
 20 executive vice-presidents, one is gone  
 21 completely. Jim Keating will be gone with  
 22 the oil and gas. He’d been doing other work  
 23 in Nalcor. The Chief Financial Officer is  
 24 on leave, and I doubt he will get back. So  
 25 you’ve got to deal with the people you have

Page 16

1 and try to fill your gaps.  
 2 (9:15 a.m.)  
 3 EATON, Q.C.:  
 4 Q. Before you move on, in terms of you say  
 5 “Change will reflect the changing  
 6 circumstances”, are there sort of things  
 7 coming up in the near future that will  
 8 reflect that change?  
 9 MR. MARSHALL:  
 10 A. Obviously, I mean, one of the positions  
 11 there was power production, hydro  
 12 development, power development. I mean,  
 13 reflecting the fact that you’re trying to  
 14 build a major project. I mean, as you get  
 15 to completion, that function will disappear  
 16 unless the province’s mandate or Nalcor gets  
 17 involved in another big hydro project, which  
 18 is not beyond the realm of possibility, but  
 19 as it exists right now once Muskrat Falls is  
 20 finished, that position will disappear and  
 21 you’ll make another change. In my vision,  
 22 you’ll end up with two divisions; one  
 23 regulated, one unregulated.  
 24 EATON, Q.C.:  
 25 Q. Just another question flowing from this

Page 17

1 slide relates to there was a suggestion that  
 2 maybe there should be a separate company  
 3 established to oversee future projects. Do  
 4 you see a distinction between that and what  
 5 Nalcor already does?  
 6 MR. MARSHALL:  
 7 A. Well, this is an ironic thing. I mean, the  
 8 government gave a mandate to look after  
 9 Churchill Falls and to try to deal with  
 10 developing the Churchill River, to develop  
 11 Muskrat, and that required the establishment  
 12 of Nalcor. Nalcor is that function. So it  
 13 makes no sense to merge it into Hydro, only  
 14 to turn around and re-establish it.  
 15 EATON, Q.C.:  
 16 Q. Okay.  
 17 MR. MARSHALL:  
 18 A. In order to do what's proposed by Liberty,  
 19 you'd have to change the mandate of the  
 20 province. They could do that, by all means,  
 21 but with the existing mandate, you can't.  
 22 EATON, Q.C.:  
 23 Q. Okay.  
 24 MR. MARSHALL:  
 25 A. So I'm almost repeating myself in terms of

Page 18

1 what our priorities were in 2016, which have  
 2 carried on. Muskrat Falls, we're not there  
 3 yet. The construction is essentially  
 4 complete, but just because you finish the  
 5 physical construction doesn't mean you're  
 6 finished. You have to start this thing up,  
 7 sort out the bugs, and the complexity of  
 8 these things means that really it'll be two  
 9 or three years before we reach steady state,  
 10 in my opinion. It's very complex, so we  
 11 have to prepare the grid, we have to sort  
 12 out the software issues, and for that, you  
 13 know, you'd want to carry on with the  
 14 separation of Hydro, which was done, like I  
 15 said, earlier, and we have to carry on the  
 16 other aspects of the mandate given to us by  
 17 the province, and part of that is to see if  
 18 we can use the unregulated assets for other  
 19 purposes to raise other revenues. Again  
 20 it's been difficult in the last year or so  
 21 because there's been so much hydro  
 22 production in the North East, which made it  
 23 difficult, but, you know, that's weather  
 24 related and weather will change. We know  
 25 that in Newfoundland, if nothing else. So

Page 19

1 what is the result of all this. Like I say,  
 2 we're essentially complete on construction  
 3 now. We've stabilized the situation. We  
 4 increased our efforts towards integration,  
 5 focusing on transmission as well. Any of  
 6 you who followed the Commission Inquiry were  
 7 told that one of the things we did very  
 8 early on was to put emphasis on transmission  
 9 when they thought it wasn't on the critical  
 10 path. Even though we took every effort to  
 11 accelerate that, it's still on the critical  
 12 path and will be. Hydro has gotten  
 13 refocused on the core business, which you've  
 14 seen increased reliability from Holyrood in  
 15 the last several years, and I hope this  
 16 Commission has seen increased regulatory  
 17 clarity. Reliability, I can demonstrate. I  
 18 mean, it's quite clear that there were some  
 19 years that it was under spent in terms of  
 20 maintaining the existing hydro assets. So I  
 21 think Nalcor is today well prepared to deal  
 22 with, like I said, the other aspects of our  
 23 mandate and look at other opportunities.  
 24 EATON, Q.C.:  
 25 Q. Just on that last point, how would the

Page 20

1 integration of merger of power supply into  
 2 Hydro affect the ability to be positioned to  
 3 respond?  
 4 MR. MARSHALL:  
 5 A. Well, the first thing, just because you got  
 6 titles, two different titles, if you go  
 7 along with Liberty's statement that you got  
 8 people with two titles, put them together  
 9 saves money, then no corporation would have  
 10 more than one division. Titles mean  
 11 nothing. What you got to do is structure a  
 12 corporation to be effective. If that means  
 13 you got one division over here and you got a  
 14 president, and another division over here  
 15 got a president, that's fine, they're doing  
 16 different tasks. When we restructured the  
 17 way I proposed, we didn't go out and hire  
 18 people, we just basically reorganized, put  
 19 folks on different jobs. I'm not saying we  
 20 didn't hire one or two people, but it wasn't  
 21 hundreds, it wasn't dozens. We took the  
 22 existing people, got them focused, gave them  
 23 different titles, parallel titles in the  
 24 regulated and unregulated, but you can't go  
 25 by titles. If you did that, you'd never

Page 21	Page 23
<p>1 have more than one division in any                  2 corporation.                  3 EATON, Q.C.:                  4 Q. Okay, I stopped you from moving on.                  5 MR. MARSHALL:                  6 A. So going forward, again we have to meet our                  7 mandate. I talked about completion of                  8 Muskrat Falls. Everyone would acknowledge,                  9 especially with the GE situation, we're not                  10 there and it requires some efforts to get us                  11 there, and even when we get the software,                  12 we'll be two or three years sorting out all                  13 the bugs. It doesn't mean we won't operate.                  14 It means that we'll have to be very much                  15 focused on integrating those assets. That                  16 has to be one priority. There are a lot of                  17 other things going on. For example, we were                  18 successful – Hydro Quebec would argue that                  19 they were successful too, but certainly it                  20 was a split decision on the continuous                  21 (phonetic) energy case and the Quebec Court                  22 basically split the baby, which left a lot                  23 of loose ends here, and there are a lot of                  24 negotiations on the go between ourselves and                  25 Quebec to try to make this a practical</p>	<p>1 runner replacement, we're seeing that we can                  2 increase the productivity maybe by 2                  3 percent. Well, 2 percent on 5,000 megawatts                  4 is 100 megawatts. Again you're talking                  5 about tens of millions of dollars here. If                  6 we lose focus on that, Newfoundlanders will                  7 be another Newfie joke as far as I'm                  8 concerned, a bunch of idiots. There's a lot                  9 on the go here. These are immediate                  10 pressures. I've also talked about other                  11 things that we were mandated to do. This is                  12 not what Stan Marshall decides Nalcor should                  13 do. This is what the province says we                  14 should do, which I agree with, quite                  15 frankly. Again there are a lot of things on                  16 the go. For example, the Atlantic Clean                  17 Power Initiative. The Atlantic Provinces                  18 have been involved in looking at primary                  19 transmission for Atlantic Canada to solve                  20 some problems there. There's 2000 megawatts                  21 of coal in Nova Scotia and New Brunswick,                  22 which everybody who's listened to the news                  23 recently about clean energy, knows that                  24 that's going to come offline in the next ten                  25 years. 2000 megawatts of coal. That's an</p>
Page 22	Page 24
<p>1 situation and there's billions of dollars                  2 involved. You know, this is what I find                  3 very frustrating. Good people cost you                  4 nothing. You go out and pay a person half a                  5 million dollars a year. A good person could                  6 bring in tens of millions of dollars. All                  7 these things are in play at Muskrat Falls,                  8 hundreds of millions of dollars, and these                  9 negotiations, tens of millions of dollars.                  10 I want the very best people involved. They                  11 won't cost me anything. At the end of the                  12 day, they will deliver a lot more than they                  13 cost, and there are a lot of things on the                  14 go immediately. How to resolve these issues                  15 with this energy depends, will influence                  16 other factors in terms of storage at the                  17 Upper Churchill, who gets what. You know,                  18 the Churchill Falls situation is much more                  19 complicated than it was years ago. It's an                  20 older plant, there's a lot more capital                  21 being invested in there, a lot more things                  22 going on. For example, runner replacement,                  23 replacing the runners at Churchill, and we                  24 have a staged process for that. We say,                  25 that's not major. You know, so far with</p>	<p>1 opportunity for Newfoundland, as you can                  2 appreciate. We have to be seizing that.                  3 I've been involved with the Premier in                  4 discussions on that. We've had a lot of                  5 success, but it's on the go in the                  6 background. Other things we're involved in,                  7 you know, looking at power going to New                  8 York. New York City has indicated they want                  9 clean Canadian hydroelectricity. So, we at                  10 one point participated with Emera in                  11 proposals there. So, these are things on                  12 the go every day, day in day out.                  13 But then there are the longer term                  14 ones, if you want to talk about it in that                  15 context, because if you look at the Upper                  16 Churchill contract, 2041. Liberty says                  17 that's so far off we don't need to worry                  18 about it. I think the Province would                  19 disagree on that. The Commission in Inquiry                  20 raised it as a concern and want to make sure                  21 that we are looking at it. And in fact, if                  22 we weren't looking at it, again, we'd be a                  23 bunch of fools. Because in our business,                  24 there are very long lead times. No one's                  25 going to wait until 2041. By 2031, Quebec</p>

Page 25

1 would want to know what they're going to do  
 2 and we'd want to know. So, without going  
 3 into what's on the go, I can just tell you  
 4 we're doing a lot of work on it, as we  
 5 should.  
 6 Gull Island development, again Liberty  
 7 totally dismissed and this is where you say  
 8 well, when you start to focus on things, you  
 9 should have a separate corporation. My view  
 10 Gull Island won't be started within ten  
 11 years unless there's a big change respecting  
 12 clean energy. There are very few sites left  
 13 of substantial hydro in eastern North  
 14 America, in North America generally. The  
 15 biggest and the best is Gull Island, without  
 16 doubt. And so again, a lot of work has been  
 17 done on that, a lot of uncertainty. All  
 18 these things are unregulated, by the way.  
 19 If you look at even today, the Upper  
 20 Churchill produces 33 terawatt hours on  
 21 average of electricity. Muskrat Falls will  
 22 produce five terawatt hours of electricity.  
 23 So, 38 megawatts of electricity is being  
 24 produced on the unregulated side, of which  
 25 1.5 will be delivered to the regulated

Page 26

1 entity, less than five percent.  
 2 So, to say that Hydro should be looking  
 3 after this is having the tail wag the dog,  
 4 quite clearly and this would only get worse  
 5 if Gull Island were developed, which it will  
 6 be. Again, if you look at assets, the  
 7 assets of Nalcor are now reaching 20 billion  
 8 dollars. The assets of Hydro regulated  
 9 around 2.5 I believe. They're different  
 10 businesses substantially, even in terms of  
 11 if you say that well, both of them got some  
 12 generation, yeah. Hydro's got some historic  
 13 legacy hydro. It's in a regulated area,  
 14 you'd never take it out. You wouldn't  
 15 bother. It's the norm. Nalcor got some  
 16 transmission, yes, high voltage AV/DC.  
 17 Hydro doesn't have any of that.  
 18 While they're both in the electricity  
 19 business, they're substantially different  
 20 businesses is what I'm trying to get to, and  
 21 that's what what's recognized in the  
 22 organization we have, they have  
 23 substantially different mandates. Yes, they  
 24 both add to costs. But they're both – I  
 25 think the best way you do it is focus on

Page 27

1 keeping it separate. Hydro is regulated.  
 2 It's regulated by this Board. Surely to  
 3 goodness, you know great excess cost in it  
 4 by now. Otherwise the Board's not doing its  
 5 job and Hydro's not doing its job.  
 6 So, and the unregulated costs should  
 7 not be borne by the consumer. I agree with  
 8 that. The difficulty is, like I say, under  
 9 the existing contract with Muskrat Falls,  
 10 the costs are borne by the Newfoundland  
 11 consumer, but you're not going to change  
 12 that. You're not going to change Churchill  
 13 Falls contract by making it regulated,  
 14 trying to make it regulated. You'll never  
 15 get it regulated. You're not going to  
 16 change the construct for Muskrat Falls by  
 17 trying to make it regulated because all put  
 18 in place to make sure the financing was  
 19 done. I mean, the bond holders are not  
 20 going to agree to that. You got to leave  
 21 that in place.  
 22 So, all this Board could ever do was,  
 23 like the Auditor General, they could go in  
 24 and look at costs, but they can't disallow  
 25 them. Those costs are, by statute, have to

Page 28

1 be passed on. So, you know, let's be  
 2 practical about all this and look at what we  
 3 have, not what we wished, if we were setting  
 4 up today, that it would be.  
 5 EATON, Q.C.:  
 6 Q. So you've mentioned finally other  
 7 opportunities in Labrador, other than Gull  
 8 Island, the last point on your slide.  
 9 MR. MARSHALL:  
 10 A. Yeah, there are lots of things on the go,  
 11 being studied, and it's not only Gull  
 12 Island. The reservoir at the Upper  
 13 Churchill is one of the great reservoirs of  
 14 the world. There's a big difference between  
 15 energy and capacity. You could expand the  
 16 Upper Churchill to increase capacity. It  
 17 all depends upon the relationship you  
 18 establish with Quebec. Like I say, we  
 19 talked about runner replacements, increasing  
 20 the production. You talk about expanding  
 21 that. There are other tributaries. There's  
 22 a lot to be done in Lower Churchill and we  
 23 consider that as our mandate.  
 24 Now, if the Government – if the  
 25 Province wants to change that, go right



Page 29

1 ahead, and I won't be around anyway. But I  
 2 think they'd be foolish to do that. We have  
 3 a great resource in this Province and we  
 4 need to maximize the benefit.  
 5 (9:30 a.m.)  
 6 EATON, Q.C.:  
 7 Q. Just before you move on, you did make some  
 8 comment about New York and what's going on  
 9 in Nova Scotia and there's been some  
 10 evidence to suggest that there might not be  
 11 a market for new hydro energy.  
 12 MR. MARSHALL:  
 13 A. There are many markets. Like I say, the one  
 14 I just talked about Atlantic Canada.  
 15 Where's Nova Scotia and New Brunswick going  
 16 to find 2,000 megawatts of clean energy?  
 17 And the United States has all been driven by  
 18 substitution of natural gas for coal and the  
 19 price of natural gas. That allowed to  
 20 reduce their carbon emissions. But gas  
 21 reduces probably about half. But there's  
 22 still carbon emissions. In this country,  
 23 there's a substantial different attitude  
 24 towards carbon emissions than there are in  
 25 the United States. So, you know, and now

Page 30

1 you haven't even talked about finding a pro  
 2 which is another 660 megawatts that has to  
 3 come off-stream in about 20 years. It's  
 4 been renewed once. So, yes, there's a  
 5 market.  
 6 I think we should be looking – and we  
 7 are now finally, after discussions we've had  
 8 over the last year or two, looking at Canada  
 9 first. In the northeast, it's different  
 10 than it is in the rest of the United States.  
 11 There are constraints on gas going into  
 12 Boston, for example. And New York  
 13 recognizes that even gas-fired has carbon  
 14 emissions and that's why the Mayor of New  
 15 York has said "well, we want to see clean  
 16 Canadian hydro". Now they have to be  
 17 prepared to pay for that.  
 18 So, a lot of what Liberty is saying is  
 19 correct in terms of what gas has done to the  
 20 United States. But the United States is not  
 21 one market. There are all kinds of  
 22 constraints as well, you know, whether you  
 23 have gas or not. It's very difficult to  
 24 build things in the United States. Not as  
 25 difficult as Canada, but there are

Page 31

1 constraints on supply.  
 2 So, again – I guess I've gone – covered  
 3 a lot of this in terms of, you know, 20  
 4 years is not a long time in our business. I  
 5 mean, look how long the Muskrat Falls thing  
 6 has been under construction. While we're  
 7 approaching physical completion, we can't  
 8 lose – take our eyes off the ball right now.  
 9 Everybody recognizes the software problems  
 10 with GE. A lot of uncertainty there. We  
 11 just can't sit around and say "woe is me"  
 12 and so, within the next week, I'll be  
 13 heading to Europe to talk to GE again to get  
 14 a first-hand view of what's really going on  
 15 and see what can be done there. You know,  
 16 we will – (unintelligible) change.  
 17 And I guess the rest of the stuff, I've  
 18 really covered in my remarks and answer to  
 19 your questions. The same goes for this  
 20 slide as well, talking about difficulties  
 21 facing us. I should add here that, for  
 22 example, we talk about costs and that. One  
 23 of the things that this Board has to deal  
 24 with is the reliability. You talk about,  
 25 what are we going to do with Holyrood?

Page 32

1 Well, that depends upon what standard you  
 2 want of reliability. I think we have to  
 3 keep it operating 'til we're comfortable  
 4 that LIL is fully operational and has all  
 5 the functionality we need and is reliable.  
 6 So again, that's an uncertainty. It's not  
 7 one I control. It's one the Board will have  
 8 influence on, as they should be. But that  
 9 will impact costs.  
 10 So, next two or three years will still  
 11 be challenging for us is what I'm really  
 12 trying to say and we're not at steady state.  
 13 So, we can talk all we want about what the  
 14 organizational structure should be and what  
 15 the savings will be once we reach steady  
 16 state. A lot of things are going to happen  
 17 in the next two or three years which  
 18 influence that.  
 19 And so the path to steady state is  
 20 released in this slide, I'm saying take a  
 21 phased-in approach. We need a steady core.  
 22 We can't lose focus at this point in time.  
 23 Clearly, we are – in addition to trying to  
 24 bring Muskrat Falls to completion, we've had  
 25 a plan for downsizing. We've been showing

Page 33

1 Government slides for years. What does it  
 2 look like for to estimate, you know, what  
 3 our staffing levels will look like. Once we  
 4 reach steady state, there's an opportunity  
 5 for staff reductions, particularly related  
 6 to Holyrood, but 'til we know what's going  
 7 to happen to Holyrood, we can't give any  
 8 degree of comfort in what the actual numbers  
 9 will be. And in the meantime, who knows  
 10 what happens in the other areas, what demand  
 11 – what the Province want to do under other  
 12 aspects of the mandate.  
 13 So, look, you make your decisions right  
 14 now for what you need right now. You try to  
 15 be consistent with what you think you need  
 16 in the future, but you have to maintain  
 17 flexibility. That's all I'm saying. Don't  
 18 try to decide now what we'll need in two or  
 19 three years.  
 20 So, the big point here is that Liberty  
 21 has looked at – and Synapse, they looked at  
 22 a lot of data here, a lot of analysis we've  
 23 done and the big picture, we agree. That's  
 24 the first takeaway. We agree that you  
 25 should, in terms of operations and costs,

Page 34

1 you should do what you can to try to  
 2 minimize those. We agree upon that. We  
 3 also agree that O&M alone with not change  
 4 the big picture. It's because this is a  
 5 massive capital investment.  
 6 O&M are less than 20 percent of the  
 7 total cost built into the rates. So, even  
 8 if Santa Claus and his dwarfs came down and  
 9 agreed to operate Muskrat Falls project for  
 10 nothing, it still wouldn't change the big  
 11 picture. I think last – we were looking at  
 12 estimates of 100 million dollars a year for  
 13 O&M. Takes 66 million dollars a year to  
 14 change the rates by one cent approximately.  
 15 This is a big capital investment.  
 16 Rates were going to go up substantially in  
 17 any event. You had an old thermal plant at  
 18 Holyrood, 5,000 – 500 megawatt roughly. You  
 19 had to replace it with a new one. It's 50  
 20 odd years old. Rates were going to go up  
 21 just if you replaced it like with like, an  
 22 old plant for a new one, new costs. If you  
 23 built a hydro plant, which is more capital  
 24 intensive, with lower operating, it would go  
 25 up even further.

Page 35

1 So, look, when you talk about the rate  
 2 increases and talk – everybody is focused on  
 3 the cost increase at Muskrat Falls which I  
 4 have tried (phonetic)--people, yeah, it  
 5 didn't help. But the big thing is you built  
 6 a plant three times – producing three times  
 7 as much energy as you were going to need and  
 8 you got really no good market for the  
 9 remaining two-thirds. So, the Newfoundland  
 10 consumer is paying for it all, just a  
 11 multiple of three for any good rate  
 12 (phonetic). So, I went through this all  
 13 with this commission and it's all on the  
 14 public record and don't want to carry on  
 15 here.  
 16 But so, we agree with Liberty on that.  
 17 They're validating our calculations. We  
 18 agree upon the big conclusions. That's the  
 19 major takeaway I would say from this  
 20 hearing.  
 21 Where we disagree really talks about  
 22 other part of the mandate of Nalcor. I've  
 23 gone through it. If the Province wants to  
 24 change the mandate, if you want to say  
 25 forget about 2014, if you want to say forget

Page 36

1 about Gull Island, if you want to say forget  
 2 about other opportunities, even if you  
 3 improve earnings from CF(L)Co. I mean, even  
 4 today. So, we own two-thirds of CF(L)Co.  
 5 That represents – our earnings represent  
 6 about 35 million dollars a year. That's  
 7 still more than Hydro earns. It earned 30  
 8 million.  
 9 Again, people lose track of what's  
 10 going on here because people see the rates  
 11 coming out of Hydro, but really the big  
 12 massive things are in Nalcor unregulated.  
 13 Anyway, our other witnesses will deal more  
 14 on this and able to answer any questions  
 15 that the other intervenors have.  
 16 And I've really, really brought myself  
 17 around with the – to a conclusion. So, I'm  
 18 now ready for any questions you might have.  
 19 EATON, Q.C.:  
 20 Q. Thank you.  
 21 CHAIR:  
 22 Q. We're going to keep our order, now it's Mr.  
 23 O'Brien.  
 24 MR. O'BRIEN:  
 25 Q. I think it's me, Madame Chair. Good

Page 37

1 morning, Mr. Marshall. I'm back corner  
 2 here, Liam O'Brien.  
 3 MR. MARSHALL:  
 4 A. Sorry, Liam.  
 5 MR. O'BRIEN:  
 6 Q. Not a problem.  
 7 MR. MARSHALL:  
 8 A. I see you.  
 9 MR. O'BRIEN:  
 10 Q. Newfoundland Power. My questions for you  
 11 this morning, Mr. Marshall, are really  
 12 around the organizational structure and  
 13 you've given us a fair bit of information  
 14 there now. I can tell you're passionate  
 15 about that and I just have a few questions  
 16 about it. In your slide, you talked about  
 17 the corporate priorities in 2016 when the  
 18 organizational structure that we have now, I  
 19 guess, was really put in place. I wonder if  
 20 we could bring up just slide 8. So, those  
 21 were the main priorities, I guess – sorry,  
 22 there's four priorities on slide 8. There  
 23 we go. So, that would have been the  
 24 corporate priorities, I guess, that were the  
 25 underpinnings for the structure. Is that

Page 38

1 fair?  
 2 MR. MARSHALL:  
 3 A. That's correct.  
 4 MR. O'BRIEN:  
 5 Q. And the first two, from what I gather, were  
 6 short term priorities and are still short  
 7 term priorities. Is that fair?  
 8 MR. MARSHALL:  
 9 A. Short term you mean next two or three years?  
 10 MR. O'BRIEN:  
 11 Q. Yes.  
 12 MR. MARSHALL:  
 13 A. Yes.  
 14 MR. O'BRIEN:  
 15 Q. I guess in the next two or three years. And  
 16 that last one is a short and long term, I  
 17 guess, in terms of your overall mandate for  
 18 energy development in the Province. Is that  
 19 fair?  
 20 MR. MARSHALL:  
 21 A. Yes, and use the assets to try to find  
 22 revenues to mitigate rates.  
 23 MR. O'BRIEN:  
 24 Q. Okay. And in the previous slide there, No.  
 25 7, and you talked briefly about that

Page 39

1 earlier, about organization structure will  
 2 change to reflect changing circumstances and  
 3 priorities. Do you see that as a  
 4 possibility in the future of organizational  
 5 structure changing when your priorities  
 6 change?  
 7 MR. MARSHALL:  
 8 A. Absolutely. I've already indicated that,  
 9 for example, like once we complete Muskrat  
 10 Falls.  
 11 MR. O'BRIEN:  
 12 Q. Yeah.  
 13 MR. MARSHALL:  
 14 A. Power Development would not have a reason to  
 15 exist unless we do another project.  
 16 MR. O'BRIEN:  
 17 Q. Okay.  
 18 MR. MARSHALL:  
 19 A. So they would merge into Power Supply, which  
 20 is the unregulated part of Nalcor.  
 21 MR. O'BRIEN:  
 22 Q. Okay. And that's – I guess that's where I  
 23 was going. So, in terms of Power  
 24 Development and Power Supply, they were  
 25 created really – Power Development was

Page 40

1 created for the short term to complete the  
 2 generating project and Power Supply was for  
 3 the maintenance and operation and  
 4 completion, I guess, of the LIL and the LTA.  
 5 Is that fair?  
 6 MR. MARSHALL:  
 7 A. Power Supply is to deal with it once it's  
 8 all finished.  
 9 MR. O'BRIEN:  
 10 Q. Once it's all finished.  
 11 MR. MARSHALL:  
 12 A. Right.  
 13 MR. O'BRIEN:  
 14 Q. Yeah, okay. I wonder in terms of priorities  
 15 as well, when we looked at the four  
 16 priorities there, in terms of once  
 17 commissioning occurs would that – could that  
 18 actually include rate mitigation as being a  
 19 more focused priority for you?  
 20 MR. MARSHALL:  
 21 A. Rate mitigation was the priority from the  
 22 day I came on board.  
 23 MR. O'BRIEN:  
 24 Q. Okay. And you did mention that; that at the  
 25 start that that was one of your focuses and

Page 41

1 I wonder whether or not once commissioning  
 2 is done whether that would be a larger focus  
 3 for you.  
 4 MR. MARSHALL:  
 5 A. More room for it, for sure.  
 6 MR. O'BRIEN:  
 7 Q. Yeah, okay. Now, the Power Development and  
 8 Power Supply, I guess they're looking at –  
 9 those entities were created to focus on the  
 10 unregulated assets, and those were – and you  
 11 talked about part of the structuring was to  
 12 separate the unregulated from the regulated.  
 13 Is that fair?  
 14 MR. MARSHALL:  
 15 A. Right.  
 16 MR. O'BRIEN:  
 17 Q. And they were unregulated by policy, I  
 18 guess, by Government policy, those assets?  
 19 MR. MARSHALL:  
 20 A. Well, it was beyond that. If you look at  
 21 what Power Supply does, these are big, huge  
 22 developments that for the most part are  
 23 selling into a competitive market as I  
 24 indicated. If you add up the Upper  
 25 Churchill and Muskrat Falls, you got say 38

Page 42

1 terawatt hours of energy every year of which  
 2 only 1.5 goes to the regulated. They're  
 3 substantially different businesses.  
 4 MR. O'BRIEN:  
 5 Q. Okay. No, I understand that. I guess in  
 6 terms of – and it was more a statement of  
 7 observation more that Government had  
 8 indicated these assets would not be  
 9 regulated by the Board. Is that fair?  
 10 MR. MARSHALL:  
 11 A. Well, don't—you're (unintelligible) CF(L)Co.  
 12 CF(L)Co. was never regulated.  
 13 MR. O'BRIEN:  
 14 Q. No.  
 15 MR. MARSHALL:  
 16 A. I mean, those were export markets. In order  
 17 to finance Muskrat Falls, the financial  
 18 entities required it be removed from  
 19 regulation. They want certainty.  
 20 MR. O'BRIEN:  
 21 Q. Yeah, and so -  
 22 MR. MARSHALL:  
 23 A. So, it's not a matter of particular  
 24 Government policy, but by necessity.  
 25 MR. O'BRIEN:

Page 43

1 Q. Okay. Now, you did speak about this. I  
 2 guess Mr. Eaton had asked you about it as  
 3 well, but you spoke about Liberty's opinion  
 4 as expressed upon commissioning of bringing  
 5 in Power Supply back into Hydro and Liberty  
 6 indicated in their report and from their  
 7 testimony that it would seem to make sense  
 8 from an operational standpoint, and I know  
 9 you spoke about it, but I wonder if you  
 10 could just elaborate on why you don't think  
 11 that makes sense.  
 12 MR. MARSHALL:  
 13 A. Well, first of all, they're different  
 14 businesses. The facilities they operate are  
 15 worlds apart. I mean, HVDC line from LIL.  
 16 Newfoundland Power has nothing comparable to  
 17 that. The big power plant at Churchill  
 18 Falls. You know, Hydro has some legacy  
 19 hydro, primarily Bay d'Espoir and Cat Arm.  
 20 If you start from fresh today, you'd  
 21 probably take those out too. But you're  
 22 never going to because, you know, they were  
 23 dedicated to public purposes. They're in  
 24 the rate base. There's no reason to take  
 25 them out. There is maintenance of the

Page 44

1 thing. So, one entity is a big entity  
 2 dedicated primarily to export markets. The  
 3 other is more like Newfoundland Power,  
 4 although has more focus on transmission than  
 5 it is on distribution.  
 6 MR. O'BRIEN:  
 7 Q. So, in terms of, I guess, -- and I saw in  
 8 Power Advisory's pre-filed evidence, and I  
 9 guess this has been adopted as well by  
 10 Nalcor, that you feel that the current  
 11 structure with Power Advisory outside of  
 12 Hydro meets with your strategy priorities.  
 13 Is that -  
 14 MR. MARSHALL:  
 15 A. Absolutely.  
 16 MR. O'BRIEN:  
 17 Q. That's fair. And is that just being outside  
 18 of it or is that with the – like Liberty has  
 19 indicated there's a number of FTEs that  
 20 could be reduced or some manpower that could  
 21 be reduced by bringing it in, from a cost  
 22 effective perspective.  
 23 MR. MARSHALL:  
 24 A. There's reduction to be had not by bringing  
 25 it in.

Page 45

1 MR. O'BRIEN:  
 2 Q. Okay.  
 3 MR. MARSHALL:  
 4 A. By reaching steady state. All Liberty had  
 5 to do was look at positions. I go back to  
 6 it. When I did the split, I didn't create  
 7 new positions. I created new titles.  
 8 MR. O'BRIEN:  
 9 Q. Right, okay.  
 10 MR. MARSHALL:  
 11 A. I didn't hire – went out and hire a lot of  
 12 people. So, if I didn't hire a lot of people  
 13 when I split them, what makes you think I'm  
 14 going to have a lot of people to lay off  
 15 when I put them back together?  
 16 MR. O'BRIEN:  
 17 Q. Okay. And is there -  
 18 MR. MARSHALL:  
 19 A. They were serving different functions, so I  
 20 gave them different titles and focus.  
 21 (9:45 a.m.)  
 22 MR. O'BRIEN:  
 23 Q. And Liberty seemed to feel that there was  
 24 some overlap, I guess, in terms of the  
 25 functions of some of these individuals that

Page 46

1 could be – there could be some efficiencies  
 2 with Power Supply and Hydro being combined.  
 3 Is there any – did you look at any  
 4 opportunities for that type of efficiency  
 5 once commissioning had occurred in Power  
 6 Supply?  
 7 MR. MARSHALL:  
 8 A. We've looked at – yeah, we have a – you'll  
 9 see sheets we developed. Once we reach  
 10 steady state, there will be opportunities,  
 11 you know, to reduce it because some of the  
 12 functionality in Power Supply will – or  
 13 Power Development disappear.  
 14 MR. O'BRIEN:  
 15 Q. Okay.  
 16 MR. MARSHALL:  
 17 A. But the other thing too, you know, don't  
 18 forget, there's a cost of regulation. The  
 19 year before I came onto Nalcor, you know,  
 20 the direct cost of regulation at Nalcor was,  
 21 I think it's 13.8 million dollars. Now,  
 22 it's only half that, you know. I'm not  
 23 necessarily saying it's due to this  
 24 reorganization, but I think it would help  
 25 that we brought a focus to it so the people

Page 47

1 on that part of the business be focused on  
 2 what they're required to do in reporting. I  
 3 mean, the last thing you want to do now is  
 4 throw everything back into it and totally  
 5 confuse the situation. You spend more time  
 6 trying to segregate, you know, unbake the  
 7 cake, than you probably would by saving one  
 8 or two positions.  
 9 I mean, we didn't totally isolate them.  
 10 Where there was opportunities for savings,  
 11 for example, in procurement which remained  
 12 in Hydro. IT systems which remained in  
 13 Nalcor. So, where there's a demonstrable  
 14 saving, you try to achieve those. And yes,  
 15 there probably could be a few additional  
 16 positions by merging them together, but then  
 17 you'd have – as Liberty itself said, you  
 18 have to turn around then and hire a VP of  
 19 regulation. Well, you know.  
 20 So, look, all that will do is totally  
 21 confuse the situation. The same as if  
 22 Fortis tried to operate as part of  
 23 Newfoundland Power. You'd have all these  
 24 costs mixed in together, trying to sort them  
 25 out, you know, and allocate them. Would you

Page 48

1 save – just because you got a Vice-President  
 2 of Finance at Newfoundland Power and you got  
 3 one at Fortis, does that mean there's a  
 4 great savings to put them together? They're  
 5 doing different jobs.  
 6 MR. O'BRIEN:  
 7 Q. I guess I get your point on that. But when  
 8 it comes to a situation where certain aspect  
 9 of the costs, like Power Supply costs, and  
 10 from what I can gather, and correct me if  
 11 I'm wrong, but certain aspect of those costs  
 12 are borne by customers in a regulated sense  
 13 in that they're borne by regulated  
 14 customers, but their costs are not  
 15 regulated. Would it make sense to move some  
 16 of that in under the regulated head?  
 17 MR. MARSHALL:  
 18 A. The cost of Muskrat Falls are borne by the  
 19 Newfoundland consumer by statute. Even if  
 20 you put them together, this Commission could  
 21 not say "I'm going to disallow that cost".  
 22 MR. O'BRIEN:  
 23 Q. Oh, I agree.  
 24 MR. MARSHALL:  
 25 A. Whatever the costs were, the Newfoundland

Page 49

1 consumer got to bear it.  
 2 MR. O'BRIEN:  
 3 Q. It would have to be a policy decision.  
 4 MR. MARSHALL:  
 5 A. All the Commission could do is do the same  
 6 thing the Auditor General could do right  
 7 now, is go and look at our costs and say  
 8 "you guys are extravagant over here. You  
 9 could save some money here." I mean, we –  
 10 you don't need to change anything for that.  
 11 If the Commission wants access to that  
 12 information going forward, they got it.  
 13 It's got nothing to do with changing the  
 14 capital structure to get it. I mean, we're  
 15 open and transparent. Anybody wants – if  
 16 the costs are being borne by the  
 17 Newfoundland consumer and you wanted to look  
 18 at the data, it's there. I mean, Hydro's  
 19 going to be looking at it, trying to make  
 20 sure that they're not paying for anything  
 21 they shouldn't. If the Commission wants to  
 22 see it, they'll see it. If the Auditor  
 23 General wants to see it, they'll see it.  
 24 So, it's two different topics. You'll never  
 25 change the regulatory scheme because, like I

Page 50

1 say, it's put there to protect the bond  
 2 holders.  
 3 MR. O'BRIEN:  
 4 Q. Okay. And you mentioned the – and this is  
 5 I'm paraphrasing here, but if you need to  
 6 just expand on it that one of – and this is  
 7 from Nalcor's submission; that one of the  
 8 requirements for having Power Supply  
 9 separate would be to deal with emerging  
 10 opportunities in the future in the energy  
 11 market. Is that fair?  
 12 MR. MARSHALL:  
 13 A. Not only deal with them, to pursue them.  
 14 MR. O'BRIEN:  
 15 Q. Pursue them, okay.  
 16 MR. MARSHALL:  
 17 A. There's hundreds of millions of dollars at  
 18 stake here. The magnitude of these things –  
 19 now, it won't go directly to Newfoundland  
 20 customers, but it'll go to Newfoundland  
 21 coffers, taxpayer. So, you know, but you  
 22 know, we have these assets. We've got to  
 23 maximize their value.  
 24 MR. O'BRIEN:  
 25 Q. Is there a way to do that that may be more

Page 51

1 cost efficient? I mean, in terms of the  
 2 numbers of people that you have. Is there a  
 3 way to keep the intellectual capital that  
 4 you need to do that without the same  
 5 numbers?  
 6 MR. MARSHALL:  
 7 A. There's always room for improvement.  
 8 MR. O'BRIEN:  
 9 Q. Yes.  
 10 MR. MARSHALL:  
 11 A. But I can tell you that the difficulty we  
 12 have with recruiting at Nalcor, our salaries  
 13 are a tiny fraction of what Fortis is  
 14 getting. I think I'm earning about five or  
 15 ten percent of what I earned in my last year  
 16 at Fortis. It's very difficult getting  
 17 people. You're not going to get them from  
 18 the outside. You have to worry about  
 19 succession planning. It's not only, you  
 20 know—for example and I'll be 70 years old  
 21 next year. I'm not going to be around much  
 22 longer. Jim Hayes is 66. I've told you  
 23 we've lost several executive vice-presidents  
 24 thus far. You know, you've got to have  
 25 people around you to run these things.

Page 52

1 You're investing, in Muskrat Falls alone, 13  
 2 billion dollars. Don't nickel and dime it.  
 3 You've got to operate it.  
 4 MR. O'BRIEN:  
 5 Q. Yes, and I guess what –  
 6 MR. MARSHALL:  
 7 A. It's a struggle.  
 8 MR. O'BRIEN:  
 9 Q. Yes.  
 10 MR. MARSHALL:  
 11 A. It's a struggle to get these people.  
 12 MR. O'BRIEN:  
 13 Q. I gather. Yes. I guess one of the –  
 14 MR. MARSHALL:  
 15 A. And it will be a struggle.  
 16 MR. O'BRIEN:  
 17 Q. The questions before this Board really is to  
 18 look at whether or not—I mean Liberty has  
 19 identified some operational advantages with  
 20 that potential merger, but suppose you don't  
 21 do that, is there a way to obtain those  
 22 operational advantages over the next 10 or  
 23 12 years, say when you're starting then to  
 24 get ready for the 2041 era and then  
 25

Page 53

1 restructure again? Is that a possibility?  
 2 MR. MARSHALL:  
 3 A. Oh, look, you'll continue restructure.  
 4 MR. O'BRIEN:  
 5 Q. Yes.  
 6 MR. MARSHALL:  
 7 A. You're continually looking for savings.  
 8 MR. O'BRIEN:  
 9 Q. Yes.  
 10 MR. MARSHALL:  
 11 A. I started the day I came. I do it today.  
 12 I'll do it tomorrow if I'm around. I'll do  
 13 it around ten years if I'm around.  
 14 MR. O'BRIEN:  
 15 Q. Yes.  
 16 MR. MARSHALL:  
 17 A. I won't be, but if I were.  
 18 MR. O'BRIEN:  
 19 Q. Yes.  
 20 MR. MARSHALL:  
 21 A. You know this is ongoing. You're always  
 22 trying to cheat these things, but it's not—  
 23 like I say, you've got to recognize if  
 24 you've spent all this money on assets, you  
 25

Page 54

1 know, you've got to get the best people you  
 2 can to operate them with the best  
 3 organization you can, the most effective  
 4 organization. I mean organization depends  
 5 not only on the mandate, but the people  
 6 available to you, as I said earlier.  
 7 MR. O'BRIEN:  
 8 Q. Yes.  
 9 MR. MARSHALL:  
 10 A. You know, if you've got people who are  
 11 capable of only a narrow ranveck (phonetic)  
 12 thing, you might have to have more of them  
 13 at the VP level.  
 14 MR. O'BRIEN:  
 15 Q. Yes.  
 16 MR. MARSHALL:  
 17 A. It's a very pragmatic situation.  
 18 MR. O'BRIEN:  
 19 Q. And I guess on that last point you  
 20 mentioned, the organization depends on the  
 21 mandate, and in your presentation earlier,  
 22 you talked about how it may be up to the  
 23 provincial government to change that mandate  
 24 and that's possible, but for now this is our  
 25

Page 55

1 mandate. I wonder can you—do you have any  
 2 thoughts on the fact that, I guess as part  
 3 of this reference, the provincial government  
 4 has actually asked this Board to look at, in  
 5 terms of rate mitigation, the organizational  
 6 structure of Nalcor and its subsidiaries?  
 7 Can you comment on that in terms of where  
 8 government may be with its mandate or its  
 9 focus?  
 10 MR. MARSHALL:  
 11 A. I have no indication from the government  
 12 that they're going to change the mandate.  
 13 MR. O'BRIEN:  
 14 Q. Yes.  
 15 MR. MARSHALL:  
 16 A. If anything, they want us to pursue these  
 17 things. We've been pursuing them since I  
 18 came by. The Board is faced with a  
 19 difficult task.  
 20 MR. O'BRIEN:  
 21 Q. Yes.  
 22 MR. MARSHALL:  
 23 A. First of all, like I say, you're looking  
 24 into the future when you haven't even  
 25

Page 56

1 finished the project. You know, I  
 2 sympathize with it.  
 3 MR. O'BRIEN:  
 4 Q. Yes.  
 5 MR. MARSHALL:  
 6 A. We're all looking for savings and we will,  
 7 but it's going to be difficult to identify  
 8 them two or three years out when you haven't  
 9 even completed the bloody thing. We haven't  
 10 even looked at whether you're going to shut  
 11 down Holyrood yet and when. You know, you  
 12 do what you can now. You're consistent with  
 13 the future, and when the future comes, you  
 14 make those changes.  
 15 MR. O'BRIEN:  
 16 Q. And do you take anything from the fact that  
 17 the provincial government has asked the  
 18 Board to look at that structure as an  
 19 indicator that they want you to make some  
 20 changes or to focus on the short-term versus  
 21 the long-term?  
 22 MR. MARSHALL:  
 23 A. I think the big thing, they want to validate  
 24 the numbers we gave them.  
 25

Page 57

1 MR. O'BRIEN:  
 2 Q. Yes.  
 3 MR. MARSHALL:  
 4 A. I think that's the biggest part of the  
 5 exercise. You've been giving the government  
 6 an awful lot of data and analysis, and to be  
 7 fair, everything has validated the big  
 8 picture. They made some recommendations  
 9 we're not consistent with which basically  
 10 involved changing the mandate. We haven't  
 11 said to the government, "We want to change  
 12 the mandate." If the government wants to do  
 13 that, that's their prerogative.  
 14 MR. O'BRIEN:  
 15 Q. Okay. So, for you for now, do you feel that  
 16 the status quo in terms of structure is –  
 17 MR. MARSHALL:  
 18 A. The key thing right now, the absolute key  
 19 thing is to maintain our focus.  
 20 MR. O'BRIEN:  
 21 Q. Yes.  
 22 MR. MARSHALL:  
 23 A. There's too many dollars at stake. If we  
 24 had that LIL operating ready in the last  
 25

Page 58

1 several months, we would have saved 100  
 2 million dollars because there's all kinds of  
 3 excess energy out there. We would have  
 4 brought it in.  
 5 MR. O'BRIEN:  
 6 Q. Yes.  
 7 MR. MARSHALL:  
 8 A. So, it didn't cost anything out of our  
 9 pocket. It was a great opportunity cost.  
 10 People have got to recognize that the money  
 11 at stake in getting this thing done right  
 12 far overwhelms everything else.  
 13 MR. O'BRIEN:  
 14 Q. I understand that is their key focus.  
 15 MR. MARSHALL:  
 16 A. And even as I said in the O&M.  
 17 MR. O'BRIEN:  
 18 Q. Yes.  
 19 MR. MARSHALL:  
 20 A. I'm not saying that we should forget about  
 21 the O&M.  
 22 MR. O'BRIEN:  
 23 Q. Yes.  
 24 MR. MARSHALL:  
 25

Page 59

1 A. We agreed with doing that (phonetic). We  
 2 tried to do everything we can. It's worth  
 3 the effort, but as I said, if Santa Clause  
 4 would come and operate it for nothing, it's  
 5 still not going to change the big picture.  
 6 MR. O'BRIEN:  
 7 Q. No.  
 8 MR. MARSHALL:  
 9 A. So, you know, we've got to be mindful of all  
 10 of these things. You know, so we all agree  
 11 that we should focus on the costs savings  
 12 wherever we can, but don't disrupt it right  
 13 now. When you're at a critical juncture,  
 14 trying to get this thing operating, up and  
 15 operating, keep that focus.  
 16 MR. O'BRIEN:  
 17 Q. Yes, and once it's operating though then,  
 18 would that be a –  
 19 MR. MARSHALL:  
 20 A. Well, once it's operating, you're going to  
 21 change anyway, because like I say, unless  
 22 something else happens, this whole power  
 23 development part disappears, so you're going  
 24 to have to change.  
 25

Page 60

1 MR. O'BRIEN:  
 2 Q. Yes.  
 3 MR. MARSHALL:  
 4 A. And it changes as you go along. I mean, if  
 5 you look at--you know, Mike Roberts with  
 6 show you some numbers here. And we have  
 7 projections showing how we plan these things  
 8 to bring numbers down if nothing else  
 9 changes.  
 10 MR. O'BRIEN:  
 11 Q. Yes.  
 12 MR. MARSHALL:  
 13 A. So, you know, we're of the same mindset as  
 14 Liberty for the most part.  
 15 MR. O'BRIEN:  
 16 Q. Okay.  
 17 MR. MARSHALL:  
 18 A. I think the big difference is Liberty is  
 19 focusing on changing the mandate and we say  
 20 no, we're going to keep the mandate we've  
 21 got.  
 22 MR. O'BRIEN:  
 23 Q. Okay. I have no further questions for Mr.  
 24 Marshall. Thank you, Mr. Marshall.  
 25



Page 61

1 CHAIR:  
 2 Q. Thank you, Mr. O'Brien. Consumer Advocate?  
 3 BROWNE, Q.C.:  
 4 Q. Thank you, Chair. Good morning, Mr.  
 5 Marshall.  
 6 MR. MARSHALL:  
 7 A. Good morning.  
 8 BROWNE, Q.C.:  
 9 Q. The last project update for Muskrat Falls  
 10 and we're looking to mitigate against rates  
 11 and see. It would be interesting to see how  
 12 much we're mitigating against. It was 12.7  
 13 billion, I think. Is that where we are now  
 14 or are we beyond that?  
 15 MR. MARSHALL:  
 16 A. No, that where we are now.  
 17 BROWNE, Q.C.:  
 18 Q. The fact that the LIL is not operating, and  
 19 certainly your last comment is correct,  
 20 there was talk during the GRA that  
 21 electricity would be brought down from the  
 22 LIL. In fact, there was great discussion  
 23 about what to do with the money when it came  
 24 down. Should we put it in a pot to mitigate  
 25

Page 62

1 against rates? And then, very little or  
 2 nothing came down. Where are we with that?  
 3 And because I asked the same of Liberty if  
 4 they had confidence that this is an easy fix  
 5 or are we into a long-term fix? Is that  
 6 particular part of the project under  
 7 warrantee? Is that why we're dealing with  
 8 General Electric?  
 9 MR. MARSHALL:  
 10 A. Sorry, is it under warranty?  
 11 BROWNE, Q.C.:  
 12 Q. Yes. Is the work warrantied? It's not  
 13 working, the software is not working. Who  
 14 is responsible because it's not working or –  
 15 MR. MARSHALL:  
 16 A. It's not that it's not working; it hasn't  
 17 been developed, fully developed, and –  
 18 BROWNE, Q.C.:  
 19 Q. What's that? Can you –  
 20 MR. MARSHALL:  
 21 A. This is new. This is software that is being  
 22 developed; it's unique to our circumstances.  
 23 So, it's not the situation that it's  
 24 developed and not working. It's that they  
 25

Page 63

1 haven't finished the job and that wholly  
 2 within GE's responsibility. Now, they would  
 3 claim that the fact that we asked to operate  
 4 the LIL last winter somewhat delayed them,  
 5 but it also gave the opportunity to test a  
 6 lot of the hardware and some of the software  
 7 logic which, you know, escalates the  
 8 delivery in the phase. From April of this  
 9 year, onward, we said, "Look, we're going to  
 10 do everything in our power to give you a  
 11 clear field to finish this job." We're not  
 12 going to try to operate the LIL using the  
 13 other software. We made a conscious  
 14 decision; we'll do everything we can to help  
 15 GE deliver. Now, GE is a company that's, if  
 16 you're following the news, is in trouble.  
 17 They're losing money on this project. That  
 18 makes a very difficult situation. Now, they  
 19 are progressing. They've already developed  
 20 the software. We've modelled them and I  
 21 said, "I'll be going to New York in a few  
 22 days to get a first-hand view of where we  
 23 are." So, it is progressing. And when they  
 24 appeared at the Commission Inquiry, they  
 25

Page 64

1 said that they'd have certain things by  
 2 August. I said, "I hope so, but have no  
 3 confidence that they will." So, again,  
 4 Liberty is just taking what we say and they  
 5 have no confidence and I can understand  
 6 fully that. That doesn't help me. I've got  
 7 to get it done and we'll get it done. And  
 8 by late this year or early next year, we'll  
 9 have some version to operate again and we'll  
 10 start bringing power in again, but it's  
 11 going to take two or three years. This is a  
 12 very complex system. It's going to take two  
 13 or three years to get all the bugs out of  
 14 this. So, but it'll bring in substantial  
 15 amounts of power. Like you say, even last  
 16 winter, we brought in power. I think in  
 17 economic savings you save a little bit,  
 18 yeah. It's up 35 million, but again, I said  
 19 right at the get-go it was going to be like,  
 20 when you're starting up a major facility  
 21 like this, the savings could have been  
 22 hundreds of millions, it could be nothing  
 23 because it's wildly uncertain. And that's  
 24 why we didn't want to include it in the rate  
 25

Page 65

1 freeze. Put it in the pot there. If  
 2 there's any savings, put it in the pot and  
 3 we'll use it. So, but right now, the  
 4 priority has to be to get this thing  
 5 operating.  
 6 BROWNE, Q.C.:  
 7 Q. So, you're telling us the software hasn't  
 8 been developed or in the process of being  
 9 developed?  
 10 MR. MARSHALL:  
 11 A. The software is unique. It's being  
 12 developed, yeah. It's not like there was  
 13 some software off the shelf that you came in  
 14 and tried to get it to work. This software  
 15 that is unique to these circumstances and it  
 16 hasn't—last winter, we said, "Look, let's  
 17 shortcut this a bit. Let's get a version of  
 18 software we can use to operate one pole and  
 19 bring the power," and we did. We operated  
 20 for, at one stretch, a month without  
 21 interruption to test it, test the hardware,  
 22 test some of the software functionality. We  
 23 discovered things there are now  
 24 incorporating it on x-ray vision. So, the  
 25

Page 66

1 whole focus now is on getting this software  
 2 finished.  
 3 (10:00 a.m.)  
 4 BROWNE, Q.C.:  
 5 Q. Is there a date certain for that or can you  
 6 ballpark it?  
 7 MR. MARSHALL:  
 8 A. No, there's a date set for nothing. This is  
 9 a world that if you're not comfortable with  
 10 uncertainty, you shouldn't be there. So, we  
 11 are putting out the stops and it is my  
 12 principal focus right now as opposed to  
 13 appearing here today. It's getting the  
 14 software done.  
 15 BROWNE, Q.C.:  
 16 Q. In reference to the LIL, can electricity be  
 17 brought down there without that software now  
 18 using –  
 19 MR. MARSHALL:  
 20 A. Theoretically you can go back to the older  
 21 versions, but then that would just delay the  
 22 other versions. So, right now we're—the  
 23 progress of far enough along, it's clear to  
 24 me that are best alternative clearly is to  
 25

Page 67

1 finish this up by year end, get a version  
 2 that we can go back and operate again and  
 3 start sorting out the bugs. So, that's our  
 4 priority now; by year end, have another  
 5 version of the software that we can start to  
 6 operate in a fashion. Starting up is  
 7 complex. The software is new. Our  
 8 situation is unique and very complex. We're  
 9 trying to get our—it's so many different  
 10 systems. It's a very complex system.  
 11 BROWNE, Q.C.:  
 12 Q. And I can appreciate that and I understand  
 13 that you are using every effort you can to  
 14 get it on the go. From a public perspective  
 15 and a rate payer's perspective is there a  
 16 date certain for--like you were saying, the  
 17 project should be online for 2020. Are we  
 18 still into that timeframe? Do you think it  
 19 will be done or we'll be getting something  
 20 down in 2020 or are we beyond that?  
 21 MR. MARSHALL:  
 22 A. First of all, I'll have a better sense when  
 23 I get over to Europe next week, but I felt  
 24 throughout this year, and still feel, that  
 25

Page 68

1 the deadline, the timelines, that GE were  
 2 giving were not realistic. And they're  
 3 pretty well coming to my expectations.  
 4 Look, this is not the first one GE has done.  
 5 They have delivered other systems. So, it's  
 6 not like it will never get done. I will get  
 7 done. They've delivered multiple other  
 8 systems. The pattern is clear; they tend to  
 9 be late. They tend to have bugs that takes  
 10 time to work out. So, my best estimate  
 11 right now, this might change next week, is  
 12 that, you know, by the end of the year we'll  
 13 have a version that we can start to operate  
 14 with.  
 15 BROWNE, Q.C.:  
 16 Q. The end of this year?  
 17 MR. MARSHALL:  
 18 A. End of this year or early next year. I'm  
 19 not –  
 20 BROWNE, Q.C.:  
 21 Q. Yes.  
 22 MR. MARSHALL:  
 23 A. Not that fine a line, obviously, but that—  
 24 you know, this coming winter, we'll have—  
 25

Page 69

1 we'll be bringing power in on that, the same  
 2 as like we were last year, on the basis that  
 3 we're testing the system, bringing it up.  
 4 Some days we're up; some days we're down.  
 5 Testing functionality, correcting bugs,  
 6 correcting hardware problems. The fact that  
 7 we tested it last year has helped us a lot,  
 8 but like you say, we found out some bugs in  
 9 the system which are now being corrected in  
 10 this new version. We found hardware issues  
 11 that have been resolved. So, while we're  
 12 shut down in this period, things have been  
 13 happening. Crunch list have been taken care  
 14 of, things have been solved and progress has  
 15 been made. We hired consultants to monitor  
 16 development early in the year and trying to  
 17 rely on their reports up until now. Now,  
 18 going forward, I'm going to be there myself,  
 19 but I'm still going to rely these  
 20 consultants. They're experts in software  
 21 development and controls of electrical  
 22 systems.  
 23 BROWNE, Q.C.:  
 24 Q. Now, looking at the other end of the  
 25

Page 70

1 project, the Maritime Link, there's been  
 2 evidence that electricity has been brought  
 3 in through the Maritime Link onto the  
 4 Island. And there was talk that some of  
 5 that electricity could be used to ultimately  
 6 displace fuel at Holyrood. Is that still  
 7 the plan or where are we with that?  
 8 MR. MARSHALL:  
 9 A. Yes, in fact, I think a few days ago were  
 10 bringing power in from the—on the Maritime  
 11 Link. Again, you're looking at your  
 12 reservoirs, how full they are, at Bay  
 13 D'Espoir primarily, and saying, "Okay, to  
 14 the degree we can purchase power in the  
 15 Maritimes right now, it's cheaper than  
 16 generating at Holyrood. Let's bring it in,  
 17 put it in storage and we use it as to  
 18 displace fuel at Holyrood. That's being  
 19 done.  
 20 BROWNE, Q.C.:  
 21 Q. Is there a contract in place to do that for  
 22 a set amount of power that we can get  
 23 through the Maritime Link given the  
 24 circumstances?  
 25

Page 71

1 MR. MARSHALL:  
 2 A. Not a set amount. Most of it is just an as-  
 3 available basis. The contract covers the  
 4 overall relationship, but it's not like  
 5 we've got an agreement in place and we're  
 6 going to buy X number of megawatts. And I'm  
 7 sure that Jennifer will give you the details  
 8 of that when she's on the stand.  
 9 BROWNE, Q.C.:  
 10 Q. And of course, we've been looking at  
 11 bringing electricity in in the winter months  
 12 when we're using Holyrood? Is that the plan  
 13 or—through the Maritime Link?  
 14 MR. MARSHALL:  
 15 A. If power is available cheaper in American  
 16 (unintelligible)--the last purchase was  
 17 actually from New Brunswick, I think, not  
 18 from Nova Scotia. If power is available,  
 19 we're going to import it, space hold it  
 20 (phonetic).  
 21 BROWNE, Q.C.:  
 22 Q. Yes. So, it seems to be a glut of power  
 23 according—but I guess that's seasonal. And  
 24 so, is everyone looking for power at the  
 25

Page 72

1 same time, in the winter months?  
 2 MR. MARSHALL:  
 3 A. Yes, right.  
 4 BROWNE, Q.C.:  
 5 Q. So, that's a difficulty?  
 6 MR. MARSHALL:  
 7 A. Yeah. There's been a lot of power  
 8 available, hydro power available in the  
 9 Northeast, from Quebec because of all the  
 10 rain they've had. They've been spilling.  
 11 We've been spilling at the Upper Churchill.  
 12 We stopped spilling there, I think, a week  
 13 ago, but we've been spilling at the Upper  
 14 Churchill. Really the amounts we haven't  
 15 seen in 40 years like that. Again, that's  
 16 why these things are so hard to predict.  
 17 They're seasonal. It depends on the  
 18 weather, not only here, but in the rest of  
 19 the parts of the Northeast, to a degree that  
 20 there's an advantage to bringing it in,  
 21 we'll bring it in.  
 22 BROWNE, Q.C.:  
 23 Q. In terms of considerations going forward--  
 24 and your slide 10, under "Immediate  
 25

Page 73

1 Pressures,” if we can put that up there,  
 2 Madam Clerk, slide 10, “Considerations going  
 3 Forward.” You have control of that. Okay,  
 4 we’re good. Immediate Pressures. The  
 5 Muskrat Falls completion. Okay, you spoke  
 6 to that, and the integration, you spoke to  
 7 that. But negotiations with Hydro Quebec  
 8 concerning Quebec Court decisions, in  
 9 reference to that, you’ve made some  
 10 statements that there’s negotiations going  
 11 on with Hydro Quebec because there was  
 12 something in that Court decision in terms of  
 13 excess energy capacity that we can get out  
 14 of the Upper Churchill. You mentioned a  
 15 figure of 100 megawatts. Is that where we  
 16 are with that?  
 17 MR. MARSHALL:  
 18 A. No, no. I think the hundred megawatts was  
 19 in reference to our term to replace the  
 20 runners at the Upper Churchill to increase  
 21 capacity.  
 22 BROWNE, Q.C.:  
 23 Q. Okay. Okay.  
 24 MR. MARSHALL:  
 25

Page 74

1 A. This is about the court decision which  
 2 basically really--Quebec Court, it was a  
 3 split-decision in a sense. It was a  
 4 unanimous decision of the judges, but  
 5 they’re basically saying, “Here’s our  
 6 principal use. You guys sort it out.” And  
 7 so, we’re trying to sort it out.  
 8 BROWNE, Q.C.:  
 9 Q. And the decision was that the Quebec  
 10 contracts have priority in terms of the  
 11 necessity for electricity as Quebec sees fit  
 12 in—consistent with their integrated system?  
 13 I think that’s correct, isn’t it, that that  
 14 takes first priority?  
 15 MR. MARSHALL:  
 16 A. Well, no, it’s not incorrect, but there’s a  
 17 better way to express it because -  
 18 BROWNE, Q.C.:  
 19 Q. I read it, too.  
 20 MR. MARSHALL:  
 21 A. Quebec is entitled to its capacity, period,  
 22 and the energy associated with that. If  
 23 there’s anything left over, it belongs to  
 24 Newfoundland.  
 25

Page 75

1 BROWNE, Q.C.:  
 2 Q. In terms of water management and the so-  
 3 called Water Management Agreement, how does  
 4 that enter into that picture and that  
 5 decision? Is there still discussions  
 6 concerning water and how water will be  
 7 available through the Upper Churchill  
 8 reservoir as needed? Is that part of the  
 9 discussions we’re having now with Hydro  
 10 Quebec?  
 11 MR. MARSHALL:  
 12 A. They both deal with the same issues. It’s  
 13 not a perfect overlap. If you’ve got two  
 14 circles, an area of overlap between those  
 15 two principles and the reality is you’re  
 16 trying to sit—two of us were trying to sit  
 17 down and find a practical solution to all of  
 18 this.  
 19 BROWNE, Q.C.:  
 20 Q. So, you have a lot on your plate?  
 21 MR. MARSHALL:  
 22 A. I have enough on my plate.  
 23 BROWNE, Q.C.:  
 24 Q. In the mid-to-long-term considerations you  
 25

Page 76

1 have as a bullet, the Gull Island  
 2 Development. And you speak in terms of that  
 3 could be long-term provincial policy over  
 4 the next ten years, but Gull Island would  
 5 not be built on spec, would it?  
 6 MR. MARSHALL:  
 7 A. No, it would not be built for Newfoundland  
 8 to consumer. The Newfoundland consumer has  
 9 enough power to last until the next century.  
 10 This would be built purely for export and  
 11 should be only undertaken if the costumers  
 12 assume the risk.  
 13 BROWNE, Q.C.:  
 14 Q. Sure, if there’s a contract?  
 15 MR. MARSHALL:  
 16 A. Right.  
 17 BROWNE, Q.C.:  
 18 Q. So, if there’s no contract, it wouldn’t be  
 19 built?  
 20 MR. MARSHALL:  
 21 A. Correct and not only a contract, but that  
 22 others bear the risk.  
 23 BROWNE, Q.C.:  
 24 Q. Yes. I think rate payers out there, having  
 25

Page 77

1 heard those comments from you, will probably  
 2 have a sigh of relief because the public  
 3 appetite right now for building and for  
 4 Nalcor building anything, you can perhaps  
 5 appreciate would not be that great.  
 6 MR. MARSHALL:  
 7 A. Absolutely, and I understand that, but on  
 8 the other hand, if you just are afraid to go  
 9 forward and miss the opportunity, that's a  
 10 tragedy, too.  
 11 BROWNE, Q.C.:  
 12 Q. You stated that in terms of the contract  
 13 exploration for 2041, by the end of 2030, we  
 14 should into those discussions. Is that  
 15 correct or –  
 16 MR. MARSHALL:  
 17 A. No. I think we should--by that time, it  
 18 should be all finalized.  
 19 BROWNE, Q.C.:  
 20 Q. We should have them finalized.  
 21 MR. MARSHALL:  
 22 A. Right. You know, can't go into details, but  
 23 I mean, we're doing work on it now.  
 24 BROWNE, Q.C.:  
 25

Page 78

1 Q. In terms of that contract and transmission  
 2 capacity and so on, we are still in a  
 3 position that we would have to use the  
 4 Quebec transmission system for the Upper  
 5 Churchill power?  
 6 MR. MARSHALL:  
 7 A. For Gull Island? Yeah, you have to—  
 8 transmission has to be incorporated with  
 9 that.  
 10 BROWNE, Q.C.:  
 11 Q. Sure. So, we would still need general  
 12 agreement between the two parties, the two  
 13 partners, so to speak, or a different form -  
 14 MR. MARSHALL:  
 15 A. There'll be more than two involved.  
 16 BROWNE, Q.C.:  
 17 Q. Or a different form of partnership?  
 18 MR. MARSHALL:  
 19 A. At a minimum two. At a minimum two.  
 20 BROWNE, Q.C.:  
 21 Q. Or a different form of partnership?  
 22 MR. MARSHALL:  
 23 A. Right.  
 24 BROWNE, Q.C.:  
 25

Page 79

1 Q. In terms of Muskrat Falls itself, you've  
 2 been consistent in that, in that a utility  
 3 would not have built Muskrat Falls?  
 4 MR. MARSHALL:  
 5 A. In my view, it's not a utility decision. It  
 6 was a public policy decision and that's—it  
 7 reflects all of the characteristics of that.  
 8 BROWNE, Q.C.:  
 9 Q. In terms of the Muskrat Falls project  
 10 itself, and the fact that it was rate payers  
 11 who are left on the hook to pay for it, in  
 12 an overcapacity, it's not something that  
 13 this regulator would have ever allowed if  
 14 this regulator had been consulted. Is that  
 15 a fair comment?  
 16 MR. MARSHALL:  
 17 A. You're asking me to judge, but I can't see  
 18 how they would. So, I would say it is a  
 19 fair comment, generally speaking.  
 20 BROWNE, Q.C.:  
 21 Q. In terms of future projects that would  
 22 affect rates, is there a policy at Nalcor  
 23 now, or Hydro, that any such matter should  
 24 be put before the Public Utilities Board?  
 25

Page 80

1 MR. MARSHALL:  
 2 A. We have to deal in the first instance with  
 3 our owner. I mean, we have to consult with  
 4 the province, and then the province has to  
 5 decide what they want to do. I don't report  
 6 or speak for the province.  
 7 BROWNE, Q.C.:  
 8 Q. You mentioned the Atlantic Provinces and  
 9 transmission issues. There are transmission  
 10 issues there. Can you take us through the  
 11 situation in which we find ourselves there  
 12 where each jurisdiction that assists with  
 13 the transmission of Muskrat Falls power into  
 14 the United States, that each particular  
 15 province would be entitled to a  
 16 transmission's charge for moving that power?  
 17 Is that the way the system works right now,  
 18 the so-called pancaking system?  
 19 MR. MARSHALL:  
 20 A. Or postage stamp, yeah. Pancaking, yeah.  
 21 No, that's the way it has been. That's not  
 22 necessarily the way it would be because  
 23 we're not looking at transmission systems  
 24 that's going in the States. We're looking  
 25

Page 81

1 at a transmission system to supply the  
 2 Maritimes themselves.  
 3 BROWNE, Q.C.:  
 4 Q. So, there's talk of a regional transmission  
 5 agreement among provinces? Is that  
 6 something that's been pursued or looked at?  
 7 MR. MARSHALL:  
 8 A. I wouldn't go that far and I can't—I've got  
 9 to be careful I don't go any further.  
 10 BROWNE, Q.C.:  
 11 Q. But it would be to our advantage if the  
 12 system was similar to the system in the  
 13 United States where the end-user pays the  
 14 transmission charge only? Is that correct?  
 15 MR. MARSHALL:  
 16 A. It doesn't depend on that. I think it's  
 17 going to be very specific to the  
 18 circumstances. You've got, you know, you've  
 19 got Nova Scotia and New Brunswick requiring  
 20 new generation. You've got the federal  
 21 government making clear that any—that all  
 22 coal has to come off, that new generation  
 23 has to be clean. You have a situation where  
 24 the only real big source of clean energy is  
 25

Page 82

1 Gull Island. Now there's other things,  
 2 factors, here. I mean, Quebec has energy  
 3 available, but not a set capacity. So,  
 4 there are going to be a lot of players  
 5 involved in here and again it'll be a one-of  
 6 design for the particular circumstances as  
 7 opposed to trying to mirror any of the  
 8 States. Different jurisdictions have  
 9 different models. There's no one solution  
 10 and this will require unique solutions  
 11 involving a minimum of four provinces.  
 12 BROWNE, Q.C.:  
 13 Q. So, there's not –  
 14 MR. MARSHALL:  
 15 A. Probably the federal government as well.  
 16 BROWNE, Q.C.:  
 17 Q. Okay, yes. So, these are objectives to see  
 18 if there could be a regional transmission  
 19 system? That would be an ideal objective  
 20 for our purposes?  
 21 (10:15 a.m.)  
 22 MR. MARSHALL:  
 23 A. It's not a regional transmission system,  
 24 it's to solve a problem for New Brunswick  
 25

Page 83

1 and Nova Scotia, consistent with the  
 2 directives of the federal government.  
 3 Transmission is not the ultimate objective;  
 4 the ultimate objective is let's get energy  
 5 in those jurisdictions, clean.  
 6 BROWNE, Q.C.:  
 7 Q. Liberty has recommended that Hydro matters  
 8 be moved into Hydro, I think that's not an  
 9 unfair characterization what they're  
 10 stating, and that it be moved out of Hydro  
 11 entirely, do you take exception to that?  
 12 MR. MARSHALL:  
 13 A. To the degree we can we've already moved  
 14 them out of Nalcor.  
 15 BROWNE, Q.C.:  
 16 Q. Say what?  
 17 MR. MARSHALL:  
 18 A. We've already moved Hydro things out of—do  
 19 you mean Newfoundland and Labrador Hydro,  
 20 the entity?  
 21 BROWNE, Q.C.:  
 22 Q. Newfoundland and Labrador Hydro, the entity.  
 23 Right now during Muskrat Falls and the  
 24 construction of Muskrat Falls most of that  
 25 was done through Nalcor and Hydro seemed to

Page 84

1 be a side player in it all, is that what you  
 2 found when you went in there? There's  
 3 certainly evidence before the Commission  
 4 that that's a matter –  
 5 MR. MARSHALL:  
 6 A. When I went in there, Nalcor had lost its  
 7 utility culture, so utility, non-utility,  
 8 regulated, unrelated was blended in together  
 9 and that's why I separated them out, tried  
 10 to get Hydro regulated, clean, focus on  
 11 their job, not be bothered by the other  
 12 functions. We didn't go, I mean, it's not  
 13 completely separated, as I said earlier, to  
 14 the degree that there's reasons to save  
 15 money but sharing services, we do that. But  
 16 for the most part, Hydro people don't get  
 17 involved in Nalcor; Nalcor doesn't get  
 18 involved in Hydro.  
 19 BROWNE, Q.C.:  
 20 Q. That seemed to be the problem really or one  
 21 of the problems that's come forward and it  
 22 was found, the Commission had a lot of  
 23 discussion with that, that oil and gas  
 24 people at Nalcor were project managers for  
 25 the Hydro project and to most observers that

Page 85

1 was a surprise, that the oil and gas project  
 2 managers would be doing the project. I  
 3 think there was one person they mentioned  
 4 had Hydro experience from the project  
 5 management team. I remember a list read out  
 6 at the Commission. Would that be—and  
 7 certainly I’m sure the Commissioner will  
 8 address that and other issues in his  
 9 decision and we await that, but it seemed to  
 10 be on the surface that within Nalcor and  
 11 Hydro there seemed to be a two-tier system.  
 12 It was the crowd at Nalcor seemed to be  
 13 supervising the crowd at Hydro or not  
 14 supervising them, but there was some  
 15 evidence that Hydro was effectively shut out  
 16 from giving information in reference to the  
 17 project and were overlooked, if I could use  
 18 that phrase. Did you hear any of that  
 19 evidence?  
 20 MR. MARSHALL:  
 21 A. Well we’re going over what we talked about  
 22 in the Commission of Inquiry now.  
 23 BROWNE, Q.C.:  
 24 Q. Yes.  
 25 MR. MARSHALL:

Page 86

1 A. So I’m very pleased to answer your questions  
 2 and go over it again if it’s what the –  
 3 BROWNE, Q.C.:  
 4 Q. Because I’m leading into, you know –  
 5 MR. MARSHALL:  
 6 A. Okay. As I said, I made it quite clear at  
 7 the time that Nalcor had changed its  
 8 culture, that the Hydro people were  
 9 intermingled to start with. The fact that  
 10 the project team was drawn from other  
 11 businesses is no surprise at all. I mean,  
 12 people who build things, that’s a speciality  
 13 in its own right. That’s not necessarily  
 14 related to Hydro or to oil and gas. Project  
 15 management skills are management skills and  
 16 that came out during the inquiry, so I don’t  
 17 know if that helps you or—if you get direct  
 18 with your question, maybe I can try to  
 19 answer it.  
 20 BROWNE, Q.C.:  
 21 Q. Well, the direct question, I guess, is this:  
 22 a problem emerged with Muskrat Falls in that  
 23 the oil and gas people at Nalcor seemed to  
 24 be driving the truck, as opposed to Hydro  
 25 electric people and they gave that same

Page 87

1 evidence that people who are involved and  
 2 are expert in building energy projects,  
 3 period, could import these skills into  
 4 building Muskrat Falls. However, some  
 5 people said it would be very doubtful if  
 6 Hydro electric people would be doing an  
 7 offshore project in oil and gas, that they  
 8 would have oil and gas people doing that, so  
 9 there was people who didn’t take that these  
 10 set of skills could necessarily be imported  
 11 from the oil and gas sector to build that  
 12 project and there was all kinds of evidence,  
 13 SNC Lavalin, the replacement of them and  
 14 putting someone in oil and gas over the SNC  
 15 crowd, all which will be dealt with by the  
 16 Commissioner. I’m wondering if it was not a  
 17 mistake, an inherent mistake from the get-go  
 18 to have Nalcor structured in such a way that  
 19 that could happen?  
 20 MR. MARSHALL:  
 21 A. I don’t think’s the problem at all. I think  
 22 that’s just a red herring. You know, once  
 23 you decide you’re going to do it, then  
 24 you’re going to be done by outside people  
 25 anyway, so it’s not the actual construction

Page 88

1 that’s the issue. I think if there had of  
 2 been more regulatory or utility input at the  
 3 beginning when you’re making the decision,  
 4 it would have had a much different outcome.  
 5 In terms of actual construction, I don’t  
 6 think, you know, I don’t follow you there at  
 7 all. I mean, once you make the decision  
 8 you’re going to build it, you go out and you  
 9 get these people who build things and SNC  
 10 Lavalin would have people who built Hydro,  
 11 you know, when you’re building, pouring  
 12 concrete, it doesn’t make much difference if  
 13 you’re pouring concrete on a Hydro project,  
 14 if you’re pouring concrete on a big building  
 15 or something else, so I don’t agree with you  
 16 in that sense, that’s the issue. The issue  
 17 would have been if there had been more  
 18 utility culture when they’re making the  
 19 decision, it would have made a big  
 20 difference. At that point in time, you  
 21 know, Nalcor was focussed on oil and gas and  
 22 the big—everyone was going to be a Jack  
 23 Ewing.  
 24 BROWNE, Q.C.:  
 25 Q. Yeah, the giant energy warehouse and all

Page 89

1 that world class experts and all that.

2 MR. MARSHALL:

3 A. Nalcor lost the focus on hydro electric and

4 utility; that was the problem.

5 BROWNE, Q.C.:

6 Q. SNC gave evidence at the Commission that

7 they wouldn't have had anyone with less than

8 25 years in hydro electric experience

9 working on that project and when we looked

10 at the project management team, no one had

11 that.

12 MR. MARSHALL:

13 A. Yeah, I think there's people there had more

14 than 25 years experience on the thing. I

15 don't think that's correct. No, no, it's

16 not, see where all the focus has been on,

17 you know, cross overruns at Muskrat Falls

18 and now we're going back in this inquiry

19 again. In my mind, that is not the problem,

20 I've said it so many times. The big problem

21 was in making the decision to build it,

22 people didn't look at it the right way.

23 They didn't look at it the utility way, they

24 looked at it as something entirely

25 different. The actual execution, I mean, I

Page 90

1 made this point as well, if you look at

2 Muskrat Falls itself, as opposed to the

3 overall project, Muskrat Falls is going to

4 be built at about seven million dollars a

5 megawatt hour which is as cheap as you're

6 going to build it this day and age. So even

7 with the cost overruns, you're going to get

8 it and that's because a lot of the

9 contractors took hits on this thing. Yes,

10 it was not what was estimate, but the

11 estimates were way too low, but you're still

12 getting a hydro plant that's probably as

13 cheap as you're going to build the thing.

14 It's cheaper than Site C, which is still

15 under construction, a hell of a lot cheaper

16 than the one in Manitoba, you know. So the

17 problem is you build something three times

18 as big as you needed and now you got

19 nothing, you got two thirds or not nothing,

20 you're getting very little rate for your two

21 thirds, so the construct is wrong. I said

22 it so many times to the media, so many

23 times, you get people talk about the cost

24 overruns at Muskrat Falls. Yeah, cost

25 overruns, primarily you seen at the

Page 91

1 Commission that estimates were way too low.

2 The actual execution, in my view, is not

3 bad.

4 BROWNE, Q.C.:

5 Q. Save for the dome and a few other issues.

6 MR. MARSHALL:

7 A. The done, but yeah, but Astaldi, we, in our

8 dealings with Astaldi, we forced them to eat

9 that.

10 BROWNE, Q.C.:

11 Q. In terms of Nalcor Energy Marketing, the

12 evidence is that Nalcor Energy Marketing was

13 devised when it was the policy and plan of

14 the government to build Gull Island and

15 there would be actual energy to sell if they

16 had to get a route through Quebec, which

17 didn't happen, so they pivoted then to

18 Muskrat Falls which doesn't have a heck of a

19 lot of energy to sell. Why is Nalcor Energy

20 Marketing necessary now?

21 MR. MARSHALL:

22 A. Well first of all your statement is

23 incorrect. Muskrat Falls had a lot of

24 excess energy to sell. Two thirds of the

25 energy at Muskrat Falls had to be sold to an

Page 92

1 external market. As I said, if you look at

2 what the power that's generated in Nalcor,

3 and you can't only look at Muskrat Falls,

4 there's excess energy at CF(L)Co., one of

5 the things we were going to do there,

6 there's a lot of energy to be sold.

7 BROWNE, Q.C.:

8 Q. What exactly are they selling? I mean,

9 we've been told by experts that there's no

10 market, there are no contracts to be had,

11 Hydro Quebec was having difficulty entering

12 into contracts and the market price today is

13 2.4 cents US a kilowatt on spot markets. Do

14 we need Nalcor Energy Marketing to sell into

15 a spot market?

16 MR. MARSHALL:

17 A. Yes.

18 BROWNE, Q.C.:

19 Q. You're saying "yes", but have you contracted

20 out or attempt to contract out or saw

21 request for proposals to see if there is a

22 cheaper and less expensive way to do that

23 than have a department, such as Nalcor

24 Energy Marketing?

25 MR. MARSHALL:



Page 93

1 A. That was done before they set it up.  
 2 BROWNE, Q.C.:  
 3 Q. But it was done before when they were  
 4 dealing with Gull Island, in that case?  
 5 MR. MARSHALL:  
 6 A. No, it was done, not for any particular  
 7 reason, it was done. Now the other  
 8 witnesses, Nalcor witnesses will bring  
 9 evidence on that, so I'll leave the details  
 10 to them.  
 11 BROWNE, Q.C.:  
 12 Q. Nalcor Energy Marketing is marketing what  
 13 today? The recall?  
 14 MR. MARSHALL:  
 15 A. The recall.  
 16 BROWNE, Q.C.:  
 17 Q. And what else?  
 18 MR. MARSHALL:  
 19 A. That's essentially it.  
 20 BROWNE, Q.C.:  
 21 Q. So we got this department up here –  
 22 MR. MARSHALL:  
 23 A. It can also trade, it can buy and sell.  
 24 It's facilitating the purchases, for  
 25 example, on the Maritime Link. It requires

Page 94

1 a knowledge of the markets outside of  
 2 Newfoundland.  
 3 BROWNE, Q.C.:  
 4 Q. Would Nalcor Energy Marketing be moved into  
 5 Hydro or should it be moved into Hydro as  
 6 opposed to being with Nalcor itself or as a  
 7 separate entity?  
 8 MR. MARSHALL:  
 9 A. No, it should not be moved in.  
 10 BROWNE, Q.C.:  
 11 Q. Why not?  
 12 MR. MARSHALL:  
 13 A. Well first of all, if you look at the amount  
 14 of energy total and I recognize a lot of it  
 15 is sold to Hydro Quebec, but energy  
 16 marketing is focussed on selling to  
 17 customers outside of the province.  
 18 BROWNE, Q.C.:  
 19 Q. You came from a private system, private  
 20 energy, contracting out is probably, you  
 21 know, the mantra of the private sector. The  
 22 fact that we're dealing with a public sector  
 23 and a public utility which is not as  
 24 efficient in many ways as a private one  
 25 would be, would a private company, such as

Page 95

1 Fortis, have a marketing energy division?  
 2 MR. MARSHALL:  
 3 A. I'm not sure where it is right now, quite  
 4 frankly, but again, they're a land—we used  
 5 to have regulated and unregulated. They  
 6 sold private unregulated businesses in BC,  
 7 made half a billion dollars, half a billion  
 8 dollar investment which is not bad. Bill  
 9 Barry should thank me that that.  
 10 BROWNE, Q.C.:  
 11 Q. So you did have a marketing division or you  
 12 didn't?  
 13 MR. MARSHALL:  
 14 A. Well division are not the same, each one of  
 15 the utilities are different, the  
 16 jurisdiction is different. We had, you  
 17 know, jurisdictions are totally different,  
 18 like Alberta is totally different than  
 19 Newfoundland, right. There's nothing to  
 20 sell. In Alberta we didn't—totally  
 21 distribution company, there's no generation  
 22 at all. I can't remember now what the  
 23 different jurisdictions have.  
 24 BROWNE, Q.C.:  
 25 Q. Nalcor Energy Marketing has caught our

Page 96

1 attention because of Liberty, it caught the  
 2 attention of Liberty and Liberty has made  
 3 some recommendations as to what should be  
 4 there and what should be done there.  
 5 MR. MARSHALL:  
 6 A. And Power Advisory got some details on this,  
 7 for you, you know, the facts, that I don't  
 8 have (unintelligible).  
 9 BROWNE, Q.C.:  
 10 Q. Sure, okay, so we'll go there with it. In  
 11 terms of the financial rearrangements, the  
 12 covenants and the guarantee with the federal  
 13 government and what can be done there, what  
 14 would the government be looking at in terms  
 15 of what covenants should be changed in order  
 16 to find what has been referred to as two  
 17 hundred million dollars in refinancing or  
 18 re-covenanting the guarantee?  
 19 MR. MARSHALL:  
 20 A. I haven't been directly involved. I have  
 21 been asked to be going forward, but haven't  
 22 in the past. Our people have done their own  
 23 analysis, it was always done—those people  
 24 involved have signed confidentiality  
 25 agreements with the Province. In fact, they

Page 97

1 weren't even allowed to talk to me, so I  
 2 think we are going in an area that I can't  
 3 really speak about.  
 4 BROWNE, Q.C.:  
 5 Q. There's some talk of sinking funds, of the  
 6 covenants related to the sinking funds, are  
 7 you familiar with that one?  
 8 MR. MARSHALL:  
 9 A. We've done a lot of analysis on every  
 10 possible probability that we could think of.  
 11 BROWNE, Q.C.:  
 12 Q. Do you see possibilities there, generally?  
 13 MR. MARSHALL:  
 14 A. Ultimately, like I say, if the government  
 15 decides to subsidize, you can find a vehicle  
 16 to do it.  
 17 BROWNE, Q.C.:  
 18 Q. So it would be pushing out certain  
 19 guarantees into the future over, so for the  
 20 next ten years we'll –  
 21 MR. MARSHALL:  
 22 A. Like I said, I haven't been involved in it  
 23 personally.  
 24 BROWNE, Q.C.:  
 25 Q. So you don't want to speak to it, yeah,

Page 98

1 that's fair enough. Nalcor, Hydro in their  
 2 evidence sent an admonition to Liberty that  
 3 they didn't look at the oil and gas and the  
 4 amount of money they have for oil and gas,  
 5 the 2.4 billion dollars which could go to  
 6 assist rates. This is not something the  
 7 Board saw within its jurisdiction and I'm  
 8 not going there from a jurisdictional  
 9 perspective but from a public interest  
 10 perspective, is there that amount of money  
 11 there to be had to mitigate against rates?  
 12 (10:30 a.m.)  
 13 MR. MARSHALL:  
 14 A. I think earnings from oil and gas for this  
 15 year, we run 125 million and as I spoke to,  
 16 just by way of example in my initial  
 17 presentation, initially I think when the  
 18 reference was made here it was thought that  
 19 that be outside and now because of the  
 20 constraints I talked about earlier about,  
 21 you know, self-supporting debt hasn't  
 22 reigned in (phonetic) and from a pure  
 23 economic point of view it doesn't make any  
 24 difference. Look, there's no difference in  
 25 a dollar that comes from oil and gas than a

Page 99

1 dollar that comes from Hydro from the  
 2 Province's perspective. A dollar is a  
 3 dollar. Every dollar you get from revenue,  
 4 you've got to decide where you're going to  
 5 put it and so, that's a bit of a red herring  
 6 in terms of how much is in Hydro, how much  
 7 is out, but from the Province's perspective  
 8 they have decided how much the rate payer is  
 9 going to pay and how much the taxpayer is  
 10 going to pay and only they can do that. And  
 11 so, it's there. The reason for it changed  
 12 is because of, you know, the constraints I  
 13 talked about earlier, self supporting debt  
 14 and you, you know, you got to worry about  
 15 too internally to Nalcor about whether  
 16 there's an impairment of assets. So there  
 17 are other constraints, but in economic  
 18 terms, simple economic terms there's no  
 19 difference. A subsidy is a subsidy.  
 20 BROWNE, Q.C.:  
 21 Q. Is there any obligation on Nalcor generally,  
 22 Nalcor sold this project to the Province,  
 23 the Muskrat Falls Project. The government  
 24 of the day was also pushing it. We were  
 25 told there was world-class experts there,

Page 100

1 that they knew what they were doing and  
 2 anyone who suggested it should be before the  
 3 PUB from a regulatory perspective because  
 4 they were setting rates for rate payers were  
 5 sort of told, we were all told to mind our  
 6 own business. We are where we are today  
 7 because the project has ballooned and we are  
 8 in a dilemma. We have had one inquiry that  
 9 we're waiting on a report on from Justice  
 10 LeBlanc. We're here striving to find ways  
 11 to meet rates. What is the obligation on  
 12 Nalcor to correct the situation or to assist  
 13 in every way because we are here because of  
 14 that Nalcor decision to proceed with Muskrat  
 15 Falls?  
 16 MR. MARSHALL:  
 17 A. Whether or not we're responsible, we have an  
 18 obligation to do everything we reasonably  
 19 can for the consumer. It doesn't depend  
 20 upon what we did initially. People have  
 21 changed, times have changed. It doesn't  
 22 matter whether it was public policy decision  
 23 or utility decision; it doesn't matter.  
 24 Responsibility of Nalcor today is to do what  
 25 it reasonably can to mitigate those rates.

Page 101

1 BROWNE, Q.C.:

2 Q. Liberty has recommended that Hydro’s equity

3 be reduced, the target for it from 25

4 percent to 20 percent. Do you have any

5 comment on that?

6 MR. MARSHALL:

7 A. Yeah, their analysis is correct. I mean,

8 it’s almost a zero sum game, you’re just

9 moving some of the—because you’re not

10 increasing the equity and your cashflow is

11 reduced in the first few years, you know, if

12 cashflow, the analysis is right, whether you

13 do or you don’t. My concern about Hydro and

14 I have to tell you earlier on I recommended

15 to government the reverse, that we should,

16 you know, try to get Hydro as self

17 supporting as possible because, you know,

18 there shouldn’t be hidden subsidies, not

19 almost seven years ago, and just reflected

20 the fact that, you know, if Hydro earns

21 more, then there’s more money available to

22 the Province for subsidies. It’s in some

23 ways a zero sum game, but then I would focus

24 on getting things right in Hydro. But I

25 don’t disagree with Liberty’s report, I

Page 102

1 mean, it does move money upfront, so as a

2 short-term benefit, sure. But you have to

3 be very careful here, like I say, we are on

4 the limits of some of the self sustaining

5 debt thing and impairment of assets, so you

6 can only go so far with these things before

7 unintended consequences creep in. The last

8 thing you want is all this debt associated

9 with Nalcor, which is now being treated as a

10 credit rating agency in self supporting, be

11 treated as not self supporting and then

12 billions of dollars goes on to the

13 Province’s bond rating balance sheet, if you

14 want to put it that way, so they downgraded

15 it. So yeah, you know, I don’t disagree

16 with the analysis that Liberty has done.

17 It’s a judgment call and if you’re feeling

18 you want your cash that way as opposed to

19 another way, you can do it. I think the

20 long term we should try to make, we

21 shouldn’t have hidden subsidies and that

22 Newfoundland Hydro should be structured

23 similar to Newfoundland Power so that we see

24 the full cost of these things. But now is

25 not the time to do it because we’re in a

Page 103

1 crisis.

2 BROWNE, Q.C.:

3 Q. You’re talking about 45 percent equity for

4 Newfoundland Power.

5 MR. MARSHALL:

6 A. Like I say, all it does, yeah, it increases

7 earnings of Hydro, goes to the government

8 and then the government got more money to

9 subsidize. It’s zero sum games as Liberty

10 rightly corrected.

11 BROWNE, Q.C.:

12 Q. Debt is cheaper than equity sometimes

13 though, isn’t it.

14 MR. MARSHALL:

15 A. That it is unless you start, you got to pay

16 two of us in a game and you get the

17 unintended consequences I’ve talked about.

18 BROWNE, Q.C.:

19 Q. In under “Results” on page 9, you talk about

20 Hydro refocused efforts on core businesses

21 such as increased reliability, to what does

22 that refer?

23 MR. MARSHALL:

24 A. Reliability number received from Hydro, they

25 have improved. I mean, you had Blackout

Page 104

1 Newfoundland and Labrador, don’t forget,

2 just before all this, so again, if you want

3 to take up the details, Jennifer I’m sure

4 has them.

5 BROWNE, Q.C.:

6 Q. There’s always a concern for rate payers if

7 we see an increase in capital budgets and

8 capital spending and grant it, it’s not

9 dollar for dollar, but in the long term

10 there was some, there was an issue that I

11 raised with Liberty and I asked should there

12 be a cap put on an annual cap on capital

13 spending so that we can get that under

14 control in the short term to see exactly

15 what the lay of the land will be. Do you

16 have any comment on that?

17 MR. MARSHALL:

18 A. I don’t disagree with the principle; I

19 disagree with the cap because it is

20 regulated and they have to justify the

21 capital program, why worry about a cap. If

22 you got a valid project, you come in, you

23 got a hearing process, let the Commission

24 decide. There is a trade off between, as

25 you like to say, a trade off between capital

Page 105

1 expenditures and reliability, going to save  
 2 dollar for dollar in the short term, but  
 3 generally speaking if you want increased  
 4 reliability, you pay more.  
 5 BROWNE, Q.C.:  
 6 Q. In terms of performance based rate baking  
 7 and performance based systems, there's some  
 8 Fortis companies that are out there across  
 9 the country that are subject to that  
 10 particular regime?  
 11 MR. MARSHALL:  
 12 A. There were in my time; I don't know if they  
 13 are now.  
 14 BROWNE, Q.C.:  
 15 Q. Is it in Ontario and Alberta, do you recall?  
 16 MR. MARSHALL:  
 17 A. B.C. I think. I think down in the US as  
 18 well, but as I say, again I've lost track of  
 19 Fortis.  
 20 BROWNE, Q.C.:  
 21 Q. What is the advantage of that and the  
 22 disadvantage, can you give us some comments  
 23 on it, just from within your experience?  
 24 MR. MARSHALL:  
 25 A. In theory, in theory you were given an

Page 106

1 incentive for better performance; in  
 2 practice, you know, it's a real debate  
 3 whether it's any benefit at all, you got  
 4 game playing going on, so I'm not hung up  
 5 one way or the other. You know, once you  
 6 put it in place, you play by the rules, so  
 7 I'm not committed one way or the other.  
 8 BROWNE, Q.C.:  
 9 Q. So you didn't feel—was it a hinderance to  
 10 the company and its ability to make a return  
 11 when it was put in place in Alberta and  
 12 B.C.?  
 13 MR. MARSHALL:  
 14 A. I wouldn't say it was a hinderance, but  
 15 you'd certainly be careful to what you want  
 16 because then the other things might get  
 17 forgotten.  
 18 BROWNE, Q.C.:  
 19 Q. What do you mean?  
 20 MR. MARSHALL:  
 21 A. If you got a target and as you're going to  
 22 pay for that target, everything else can  
 23 slip, all the effort goes to that target.  
 24 It's not a panacea. It can be beneficial in  
 25 the right circumstances and that's not hung

Page 107

1 up one way or the other. It hasn't been,  
 2 you know, some people like it; some people  
 3 don't.  
 4 BROWNE, Q.C.:  
 5 Q. Thank you, Mr. Marshall and every good wish  
 6 in everything you're trying to do in the  
 7 next year or so. You have a lot on your  
 8 plate and some really large files.  
 9 MR. MARSHALL:  
 10 A. Thank you very much.  
 11 BROWNE, Q.C.:  
 12 Q. Thank you.  
 13 CHAIR:  
 14 Q. Thank you, Mr. Browne. Mr. Coxworthy.  
 15 MR. COXWORTHY:  
 16 Q. Yes, thank you, Madam Chair, Commissioners.  
 17 Good morning Mr. Marshall. My name is Paul  
 18 Coxworthy, I'm legal counsel for the Island  
 19 Industrial Customer group and I wanted to,  
 20 if we could turn to slide 15 of your  
 21 presentation? I was wanting to ask you a  
 22 few questions about the extent to which  
 23 Nalcor and Hydro diverge from Liberty's  
 24 views regarding the expanding the scope of  
 25 the regulatory framework in Newfoundland,

Page 108

1 the focus on that area. And if you'll  
 2 indulge me, I'm sure I'll be saying things  
 3 to you that you already know, but I want to  
 4 set the context for the question, for the  
 5 people that I represent or the organizations  
 6 that I represent. Island Industrial  
 7 Customers, as I'm sure you're aware by the  
 8 Electrical Power Control Act, that purports  
 9 to restrict their ability to even self  
 10 supply electricity, so they're even more in  
 11 a bind, I would argue, then your average or  
 12 retail customer in terms of the options that  
 13 are open to them if rates reach a level that  
 14 are uneconomic for their businesses. And so  
 15 that's the situation in which they find in  
 16 and I guess the other principle that I think  
 17 our client subscribed to and again, it's al  
 18 elementary one and again indulge me if I'm  
 19 stating the obvious, but if the customer has  
 20 to pay the cost in a monopoly situation, I  
 21 think it's widely understood in the utility  
 22 world that those costs should be regulated  
 23 and I think that's underlying Liberty's  
 24 recommendations here. And it's certainly  
 25 the position of the Industrial customers on

Page 109

1 the island are very much that they are in a  
 2 situation of pure monopoly in terms of costs  
 3 that are being, that they are being asked to  
 4 pay without having any opportunity to even  
 5 self help in terms of reducing those costs.  
 6 So in that context, I understand and correct  
 7 me if I'm generalizing, but your concerns  
 8 about introducing a regulatory framework  
 9 administered by this Board to power supply,  
 10 whether that's within Nalcor or if it's  
 11 moved into Hydro, even if it's left in  
 12 Nalcor, let's use that example, that the  
 13 introduction of a regulatory framework into  
 14 that, your concerns are two-fold, that that  
 15 would be contrary to the current Nalcor  
 16 mandate and secondly, the financial  
 17 agreements that financed Muskrat Falls, that  
 18 there are legal constraints on that. Are  
 19 those your two concerns about extending the  
 20 regulatory framework, the power supply,  
 21 regardless of whether it's left in Nalcor or  
 22 brought into Hydro?  
 23 MR. MARSHALL:  
 24 A. They're not my concerns. Muskrat Falls is  
 25 hardwired, I can't change that. You can't

Page 110

1 make it regulated.  
 2 MR. COXWORTHY:  
 3 Q. In terms of the fixed costs that have been  
 4 incurred –  
 5 MR. MARSHALL:  
 6 A. It's got nothing to do with whether you want  
 7 to regulate or not, you got a hardwired  
 8 cost, the regulator can't do anything about  
 9 that, I can't do anything about that. The  
 10 Provincial Government can't do anything  
 11 about that.  
 12 MR. COXWORTHY:  
 13 Q. There are some cost –  
 14 MR. MARSHALL:  
 15 A. So what I'm saying is you have to recognize  
 16 a reality, it doesn't go into a decision  
 17 whether it's, you know, should be regulated  
 18 or non regulated, it's unregulated, period.  
 19 MR. COXWORTHY:  
 20 Q. In terms of the cost, I certainly understand  
 21 we're restricted to that, it's costs that  
 22 have already been incurred, I'll even allow  
 23 with respect to the costs that are going to  
 24 be necessary to bring Muskrat Falls and the  
 25 whole system to a steady state of operation

Page 111

1 over the next two and three years. It's too  
 2 late to even think about regulating those  
 3 costs, even if someone thought it made  
 4 sense. But once you achieve that steady  
 5 state of operation two or three years,  
 6 hopefully, hopefully sooner, once you've  
 7 reached that steady state, there will be  
 8 ongoing costs, operation and maintenance  
 9 costs for the LIL, for the LTA. There'll be  
 10 sustaining, what's called sustaining capital  
 11 investment that will have to be incurred and  
 12 what is the concern about introducing  
 13 regulation in the sense of scrutiny and I  
 14 guess I want to make that distinction,  
 15 perhaps the legal agreements, the financing  
 16 agreements do not allow for the disallowance  
 17 of those costs, you know, that's a matter  
 18 for the lawyers to argue and perhaps a  
 19 renegotiation if that's correct. But let's  
 20 say that there is room or there could be  
 21 room made for scrutiny of those ongoing O&M  
 22 costs, those ongoing capital investments,  
 23 would that be contrary to Nalcor's mandate  
 24 to allow the Board to exercise that  
 25 scrutiny?

Page 112

1 MR. MARSHALL:  
 2 A. They're all hardwired costs, period, you  
 3 accept that. Ongoing O&M, ongoing capital  
 4 end, all hardwired. All the Board can do is  
 5 look at it and the same with the Auditor  
 6 General, we're not saying you can't have  
 7 access to them, you have to distinguish  
 8 between what's regulated and what's  
 9 possible. What's possible is that, you  
 10 know, you want to look at those costs and  
 11 see if they're unfair, look at them, we'll  
 12 provide them to the Auditor General, we'll  
 13 provide them to Hydro, we'll provide them to  
 14 the Board, we'll provide them to the public,  
 15 the press.  
 16 (10:45 a.m.)  
 17 MR. COXWORTHY:  
 18 Q. Certainly under this current CEO I have  
 19 confidence that if the Board asks for the  
 20 information, through Hydro or otherwise,  
 21 it's going to be provided, but in the  
 22 future, it's my understanding that –  
 23 MR. MARSHALL:  
 24 A. We can't change it. What I want to get at,  
 25 it's hardwired, what is, it is. Now, that's

Page 113

1 all I can say, it's hardwired. Whatever the  
 2 costs are can be borne. If you want to look  
 3 at what the costs are and say they're  
 4 outrageous, you know, the Auditor General  
 5 does that every year with every costs. It's  
 6 got nothing to do with the regulation.  
 7 They're two different issues.  
 8 MR. COXWORTHY:  
 9 Q. I think I understand, but if legislative  
 10 change is made so that the Board is allowed  
 11 to scrutinize, for instance, the ongoing  
 12 O&M, LIL and LTA, OEM and sustaining capital  
 13 costs, the future costs that will be  
 14 incurred, would it be contrary to Nalcor's  
 15 mandate to make that legislative change?  
 16 MR. MARSHALL:  
 17 A. Make all the legislation you want; it won't  
 18 change anything.  
 19 MR. COXWORTHY:  
 20 Q. It won't change anything.  
 21 MR. MARSHALL:  
 22 A. No.  
 23 MR. COXWORTHY:  
 24 Q. So you don't think introducing some daylight  
 25 into future costs that will be incurred with

Page 114

1 respect to O&M and future costs with respect  
 2 to sustaining capital investment, that there  
 3 is no benefit to that, there's no benefit to  
 4 the people of the Province, no benefit to  
 5 the rate payers?  
 6 MR. MARSHALL:  
 7 A. There's always benefit to transparency, some  
 8 benefit, but you know, ATIPPA exists, if you  
 9 want them, you got them. What do you do  
 10 about them is the issue.  
 11 MR. COXWORTHY:  
 12 Q. I agree that that's a dilemma, you know,  
 13 once you have the information what do you do  
 14 with it, but it would be better to have the  
 15 information.  
 16 MR. MARSHALL:  
 17 A. You can get it anyway, like I say, you don't  
 18 have to change anything to get it. It's  
 19 ATIPPA, it's, you know, cost of hydro built  
 20 into it. It not necessarily to change the  
 21 legislation to do anything, you got it.  
 22 MR. COXWORTHY:  
 23 Q. Thank you, Mr. Marshall, I have no further  
 24 questions.  
 25 CHAIR:

Page 115

1 Q. Thank you, Mr. Coxworthy. Ms. Greene, do  
 2 you have any questions for –  
 3 GREENE, Q.C.:  
 4 Q. Yes, I do and they will extend beyond the  
 5 break, so –  
 6 CHAIR:  
 7 Q. Well we'll try ten minutes and see where we  
 8 go.  
 9 GREENE, Q.C.:  
 10 Q. Okay. Good morning, Mr. Marshall.  
 11 MR. MARSHALL:  
 12 A. Good morning.  
 13 GREENE, Q.C.:  
 14 Q. I'd like to go to slide 1, please? Sorry,  
 15 slide 2. You indicated that one of your  
 16 earlier recommendations to the government  
 17 was to establish a rate mitigation  
 18 committee?  
 19 MR. MARSHALL:  
 20 A. That's correct.  
 21 GREENE, Q.C.:  
 22 Q. And as I understand that committee, that was  
 23 composed of representatives of the  
 24 government and of Nalcor, is that correct?  
 25 MR. MARSHALL:

Page 116

1 A. That's correct.  
 2 GREENE, Q.C.:  
 3 Q. At any time did you consider recommending  
 4 that there would be further involvement of  
 5 the stakeholders in the process that we, for  
 6 example, we have now engaged, stakeholders  
 7 in the process of reviewing rate mitigation,  
 8 early on did you consider that as a  
 9 potential recommendation to government?  
 10 MR. MARSHALL:  
 11 A. My recommendation was to establish the  
 12 committee and see what came out of it, so I  
 13 left that entirely up to the Province, what  
 14 they wanted to do with it.  
 15 GREENE, Q.C.:  
 16 Q. So at that time you didn't, did you see any  
 17 value in soliciting input from the  
 18 stakeholders who are familiar with the  
 19 industry?  
 20 MR. MARSHALL:  
 21 A. Well at the beginning, no. At the beginning  
 22 we had to do all of our analysis and see  
 23 where it lead.  
 24 GREENE, Q.C.:  
 25 Q. Did you agree or support the recommendation

Page 117

1 that there would be a reference to the Board  
 2 at this point in time?  
 3 MR. MARSHALL:  
 4 A. No, I did not support it.  
 5 GREENE, Q.C.:  
 6 Q. And would you like to explain why not?  
 7 MR. MARSHALL:  
 8 A. Because of loss of focus. I mean, we  
 9 already had a Commission of Inquiry, you  
 10 know, we have—what’s at stake here, I mean,  
 11 I’ve got only so many people to work on  
 12 things. My priority was get the Muskrat  
 13 Falls project finished. I was not going to  
 14 recommend anything that diverted away from  
 15 that. Even in the Commission of Inquiry, I  
 16 said look, you know, I understand why’d you  
 17 have it, have it when you’re finished. It’s  
 18 been a horrendous exercise going through  
 19 Commissions of Inquiry, forensic audits,  
 20 regulatory reviews. I mean you all take  
 21 resources away from what we’re trying to do.  
 22 It’s been very, very difficult.  
 23 GREENE, Q.C.:  
 24 Q. Yes, and you’ve indicated that, we might  
 25 talk a little bit about that further.

Page 118

1 MR. MARSHALL:  
 2 A. I mean, you would like to go to all of these  
 3 things if you had the time and resources,  
 4 but with limited time and resources—at the  
 5 same time I’ve been told I can’t hire  
 6 people, I can’t pay people.  
 7 GREENE, Q.C.:  
 8 Q. And we understand your frustration and we  
 9 may come back to it; you have already  
 10 mentioned some of that frustration in  
 11 managing some of the issues that you had.  
 12 MR. MARSHALL:  
 13 A. There were times when I just felt like  
 14 saying “A plague on all your houses, I’m out  
 15 of here.”  
 16 GREENE, Q.C.:  
 17 Q. We’ve all had those days, Mr. Marshall, but  
 18 I’m sure you probably had more than most of  
 19 us in the last few years. So coming back  
 20 then, your original position was that it  
 21 would be best left to Nalcor and to the  
 22 government to sort out how to approach the  
 23 issue of the significant increase in rates?  
 24 MR. MARSHALL:  
 25 A. By the end of the day, like I said, the big

Page 119

1 picture anyway is that you’re going to  
 2 subsidize and that this Board can’t decide  
 3 how it’s going to subsidize, that has to be  
 4 the Province, and so once we got further  
 5 along, I have no objection. I mean, I’m a  
 6 great fan of regulation, my whole career was  
 7 built around it. Certain things regulation  
 8 can solve, but it can’t solve my cold or  
 9 every other problems of humanity, so it’s  
 10 important that we get focussed and focus on  
 11 things that the regulator can do and do  
 12 well, I have great respect for that. But  
 13 also you have to have priorities, you can’t  
 14 do everything at once.  
 15 GREENE, Q.C.:  
 16 Q. Okay, so your concern was not on the ability  
 17 of the Board and the stakeholders to have  
 18 input, but of the constraints that were  
 19 placed on your Nalcor staff.  
 20 MR. MARSHALL:  
 21 A. That was my primary one. The second one was  
 22 that also you’re being unfair to the Board  
 23 in a sense that you’re trying to ask them to  
 24 do things which only they can do, the  
 25 government can do. Only the government can

Page 120

1 determine the balance between rate payers  
 2 and taxpayers. The Board can’t do that, so  
 3 I’m also trying to be fair to the Board, you  
 4 know, if you get a question that the Board  
 5 can deal with in a proper manner, I mean, we  
 6 all benefit.  
 7 GREENE, Q.C.:  
 8 Q. Okay, so let’s turn to slide 4 where you say  
 9 “There are no regulatory principles”, if we  
 10 could go to slide 4? “There are no  
 11 regulatory principles to determine tax  
 12 subsidization of rates.” And you just, I  
 13 think, alluded to that. What do you mean by  
 14 that?  
 15 MR. MARSHALL:  
 16 A. Just what I just said, if you go and  
 17 subsidize rates from a taxpayer, can this  
 18 Board tell the government how much money  
 19 they should put into the subsidization? I  
 20 mean, that’s a public policy decision at the  
 21 highest level which only government can deal  
 22 with.  
 23 GREENE, Q.C.:  
 24 Q. Okay, and while it may be a government  
 25 policy decision, are there certain factors

Page 121

1 that could influence the outcome of that  
 2 decision? For example, if I just to review  
 3 a couple of regulator principles with you,  
 4 one that both Liberty and Power Advisory  
 5 appeared to agree on is that if the  
 6 customers pay for an asset, such as Muskrat  
 7 Falls, the benefit that can be obtained from  
 8 that asset, such as the export of revenues,  
 9 should be applied to the benefit of the rate  
 10 payer. Would you agree that that is an  
 11 accepted regulatory principle?  
 12 MR. MARSHALL:  
 13 A. That would be a principle, but one that you  
 14 can't apply here because the Muskrat Falls  
 15 thing is hardwired the other way.  
 16 GREENE, Q.C.:  
 17 Q. And I'm going to come to you about what you  
 18 mean by "hardwired", but the normal  
 19 regulatory principle would be and we assume  
 20 that the government did want the Board to  
 21 provide some advice as to what sources of  
 22 funds that could be applied. One normal  
 23 regulator principle that has been accepted  
 24 by your consultant, Power Advisory, as well  
 25 as identified by Liberty is what I just

Page 122

1 said, if the customer pays for the cost of  
 2 the asset, it should be credited with the  
 3 benefit of revenues flowing from it. Would  
 4 you agree that that is an accepted –  
 5 MR. MARSHALL:  
 6 A. If they pay for it, yes.  
 7 GREENE, Q.C.:  
 8 Q. Okay, so that in this case the Board could  
 9 identify the one area that should be taken  
 10 into, what you call subsidization, would be  
 11 to apply the export revenues to offset the  
 12 rate increases.  
 13 MR. MARSHALL:  
 14 A. Yes, and I would agree with that.  
 15 GREENE, Q.C.:  
 16 Q. Okay. Another regulatory principle that is  
 17 always accepted is that the customer must  
 18 only pay for those costs that are reasonable  
 19 and prudently incurred in providing service  
 20 to customers, do you agree that that's an  
 21 accepted regulatory principle?  
 22 MR. MARSHALL:  
 23 A. Yes.  
 24 GREENE, Q.C.:  
 25 Q. In this particular case, Liberty has

Page 123

1 identified where they believe that there are  
 2 inefficiencies and excess costs that are  
 3 being paid by rate payers because of the  
 4 duplication in staffing. If the Board were  
 5 to agree and identify that as another  
 6 potential way of identifying an amount to  
 7 offset against a rate increase, would that  
 8 be another regulatory principle that could  
 9 be taken into account by the Board?  
 10 MR. MARSHALL:  
 11 A. If there were duplication of costs and costs  
 12 not affiliated with Muskrat Falls, it  
 13 shouldn't be included.  
 14 GREENE, Q.C.:  
 15 Q. Okay, so that again is another regulatory  
 16 principle –  
 17 MR. MARSHALL:  
 18 A. Yeah, but not one of subsidization. I'm not  
 19 saying there aren't regulatory principles,  
 20 I'm just saying there's no regulatory  
 21 principle to say how much a taxpayer should  
 22 subsidize rates.  
 23 GREENE, Q.C.:  
 24 Q. So at the high level, all you're saying is  
 25 it's a government policy decision, the

Page 124

1 government has asked the Board for their  
 2 input into how they can make that decision,  
 3 you accept that?  
 4 MR. MARSHALL:  
 5 A. Yes. I'm here to cooperate fully.  
 6 GREENE, Q.C.:  
 7 Q. And you do accept that the Board has the  
 8 expertise to apply their background and  
 9 their knowledge to assist in answering the  
 10 question using certain regulatory principles  
 11 that have been accepted?  
 12 MR. MARSHALL:  
 13 A. Yes.  
 14 GREENE, Q.C.:  
 15 Q. Okay, so is that part of the reason why you  
 16 didn't want to get the Board and  
 17 stakeholders involved with respect to –  
 18 MR. MARSHALL:  
 19 A. No, in my thinking I've always tried to  
 20 incorporate these regulatory principles, but  
 21 again, they're not principles for  
 22 subsidization, they're principles to try to  
 23 do whatever we can to minimize rates.  
 24 GREENE, Q.C.:  
 25 Q. So it is a government policy decision, but I



Page 125

1           was just pointing out there are certain  
 2           principles the Board can take into account  
 3           in making its recommendations, that would be  
 4           normal and that can be applied to address  
 5           this significant rate increase that's being  
 6           faced here?  
 7       MR. MARSHALL:  
 8       A.     I never said that the Board has another  
 9           function here at all, I'm just saying that,  
 10          you know, on this one here, which we talked  
 11          discussion about, the principle for  
 12          determining the subsidization by the  
 13          taxpayer, they're two different things.  
 14       GREENE, Q.C.:  
 15       Q.     And I guess I was taking you to they point  
 16           that the government has asked the Board to  
 17           provide some insight into what you're  
 18           calling a taxpayer subsidization issue.  
 19       MR. MARSHALL:  
 20       A.     Yes, and I'm fully cooperating with that to  
 21           the degree I can.  
 22       GREENE, Q.C.:  
 23       Q.     I wanted to turn now to the structure of  
 24           Nalcor. The structure that now exists was  
 25           created when you first jointed Nalcor, is

Page 126

1           that correct?  
 2       MR. MARSHALL:  
 3       A.     Sorry, are we on a slide here?  
 4       GREENE, Q.C.:  
 5       Q.     No, I'm gone to a new area which is the  
 6           current structure of Nalcor.  
 7       MR. MARSHALL:  
 8       A.     Okay, topic. All right.  
 9       GREENE, Q.C.:  
 10       Q.     So that structure is a new structure that  
 11           you created when you joined Nalcor, is that  
 12           correct?  
 13       MR. MARSHALL:  
 14       A.     Yes.  
 15       GREENE, Q.C.:  
 16       Q.     And is it fair to describe it as "your  
 17           baby"?  
 18       MR. MARSHALL:  
 19       A.     I wouldn't say it's a baby. It's a  
 20           structure.  
 21       GREENE, Q.C.:  
 22       Q.     And it was your vision, it's what you  
 23           believe is the best structure for Nalcor?  
 24       MR. MARSHALL:  
 25       A.     Absolutely, with support of the Board. I

Page 127

1           mean, that's the norm, the norm that the CEO  
 2           suggests to its structure to see the Board,  
 3           the Board of Directors that is.  
 4       GREENE, Q.C.:  
 5       Q.     Now when you talked about the Quebec Court  
 6           of Appeal splitting the baby, for some  
 7           reason it reminded me that this structure  
 8           was your baby and perhaps you don't want  
 9           your baby split.  
 10       MR. MARSHALL:  
 11       A.     No, the baby will change. I'm going to be  
 12           gone in six months, I don't care personally.  
 13           I have no personal interest in this.  
 14       GREENE, Q.C.:  
 15       Q.     And when you came to set up the new  
 16           structure, you went through what your  
 17           primary focusses were at that time.  
 18       MR. MARSHALL:  
 19       A.     Yes.  
 20       GREENE, Q.C.:  
 21       Q.     One was to focus on the completion of this  
 22           huge hydro electric project, was that your  
 23           primary overriding concern when you joined  
 24           Nalcor?  
 25       MR. MARSHALL:

Page 128

1       A.     Yes.  
 2       GREENE, Q.C.:  
 3       Q.     And in coming up with the structure, how  
 4           important was it that certain assets were  
 5           classified as unregulated by legislation?  
 6       MR. MARSHALL:  
 7       A.     Well, look at the structure that that wasn't  
 8           a factor at all in a sense. What I want to  
 9           do in terms of regulation is try to bring  
 10          focus to regulation to be helpful to the  
 11          Board to improve the process because I felt  
 12          that it hadn't been done well. In terms of  
 13          going forward, I didn't care—I didn't  
 14          consider it at all really at the time, but  
 15          what I wanted to do at the time was, say,  
 16          let's get Hydro here, regulated Hydro, clean  
 17          it up, get it working properly so that the  
 18          Board can do its job and I don't have to  
 19          worry about it.  
 20       GREENE, Q.C.:  
 21       Q.     Okay, and what was left was unregulated?  
 22       MR. MARSHALL:  
 23       A.     Yes.  
 24       GREENE, Q.C.:  
 25       Q.     And in coming to what was left, what was

Page 129

1 your guiding principle?  
 2 MR. MARSHALL:  
 3 A. What works best to get the job done.  
 4 GREENE, Q.C.:  
 5 Q. And in coming to what works best, what did  
 6 you look at, how did you make that  
 7 determination? Were you guided by what is  
 8 normally unregulated in the industry? Were  
 9 you guided by what is unregulated here in  
 10 Newfoundland by virtue of legislation, how  
 11 did you make the decision of that split what  
 12 should be in Hydro?  
 13 MR. MARSHALL:  
 14 A. I put the regulated over in Hydro, declared  
 15 the regulated for Hydro, the ongoing  
 16 function of those assets. I looked at the  
 17 project and said, there's two aspects here,  
 18 one is to finish the project, transmission  
 19 and generation, they are two big parts of  
 20 this thing. I had to get both of them  
 21 there. I also have to worry about a  
 22 transition to operations. What are we doing  
 23 to prepare for transition of these assets?  
 24 I looked at the people I had, I didn't have  
 25 enough people to start with, that's why I

Page 130

1 ended up bringing Jim into, to run Hydro and  
 2 took John and put him on Power Supply, got  
 3 do deal with the people you've got available  
 4 to you, but here are the other two big  
 5 components and how do I organize those to  
 6 get the job done in the most cost-effective  
 7 manner and timely manner and prepare  
 8 ourselves for a transition of operations.  
 9 (11:00 a.m.)  
 10 GREENE, Q.C.:  
 11 Q. So your focus, as you've said, is getting  
 12 that project completed.  
 13 MR. MARSHALL:  
 14 A. Yes.  
 15 GREENE, Q.C.:  
 16 Q. And maybe it's a good time to break, but  
 17 when we come back I do want to go further  
 18 with you as to how you made the  
 19 determination in your mind as to what was  
 20 unregulated, what was to go into Hydro and  
 21 what was to stay outside of Hydro.  
 22 MR. MARSHALL:  
 23 A. Okay.  
 24 CHAIR:  
 25 Q. We'll take a break and we'll convene at

Page 131

1 11:30.  
 2 (RECESS – 11:00 A.M.)  
 3 (RECONVEND – 11:30 A.M.)  
 4 CHAIR:  
 5 Q. Thank you, are you ready, to carry on Ms.  
 6 Greene?  
 7 GREENE, Q.C.:  
 8 Q. Yes, thank you, Madam Chair. When we broke,  
 9 Mr. Marshall, we were chatting about what is  
 10 regulated and non regulated and what  
 11 influenced you when you created the  
 12 structure in 2016 to make certain parts of  
 13 Nalcor unregulated. So what were the key  
 14 factors you took into account in deciding  
 15 what should be going to the regulated Hydro  
 16 and what should remain unregulated?  
 17 MR. MARTIN:  
 18 A. I didn't decide what was going to regulated  
 19 and non regulated. Everything, I thought  
 20 everything I understood was regulated went  
 21 over to Hydro and everything that wasn't  
 22 regulated stayed in Nalcor. I wasn't trying  
 23 to decide what should be regulated and what  
 24 shouldn't be regulated, I was just trying to  
 25 separate the two as it was.

Page 132

1 GREENE, Q.C.:  
 2 Q. Okay, and in coming to decide what was to be  
 3 considered unregulated, what was the guiding  
 4 factor for you? Was it the current  
 5 legislative framework in the Province or was  
 6 it your view of overall what gets regulated  
 7 generally in the industry?  
 8 MR. MARSHALL:  
 9 A. When I did the partition it was what is.  
 10 GREENE, Q.C.:  
 11 Q. And what is, is set by legislation, is that  
 12 correct, or the fact that Muskrat Falls was  
 13 exempt from regulation or from regulatory  
 14 oversight by government legislation, was  
 15 that the underlying principle?  
 16 MR. MARSHALL:  
 17 A. No, what was—I didn't really focus on that  
 18 at all. What I focused on, look, I got to  
 19 get Muskrat Falls finished, put that over  
 20 here. We've got a regulated utility, let's  
 21 put that over there. I'm not worrying about  
 22 what the future holds, I'm just looking at  
 23 what is and, you know, like Muskrat Falls is  
 24 not even finished yet. Until we get  
 25 finished, I got to deal with what is and

Page 133

1 like I say, I'll be long gone before this  
 2 plays out, so –  
 3 GREENE, Q.C.:  
 4 Q. So your primary focus was getting the  
 5 project finished?  
 6 MR. MARSHALL:  
 7 A. My primary focus was getting the project  
 8 finished in the least risk possible and see  
 9 if we can save some money along the way,  
 10 that was it.  
 11 GREENE, Q.C.:  
 12 Q. And you weren't influenced by what would be  
 13 normal regulatory assets in other  
 14 jurisdictions or what normally by regulatory  
 15 principles would be considered to be  
 16 regulated?  
 17 MR. MARTIN:  
 18 A. Well, I'm sure, I mean, I grew up in a  
 19 regulated environment, so I'm sure that in  
 20 the back of my mind was making assumption  
 21 about things and whatnot, but like I say, it  
 22 is a very simple thing. What do I need and  
 23 with the people I got available to me right  
 24 now and what needs to be done and how do I  
 25 organize the best way possible.

Page 134

1 GREENE, Q.C.:  
 2 Q. And certainly it was understandable when you  
 3 walked in with the issue of Muskrat Falls  
 4 and where it was with construction, that  
 5 would have been a primary focus.  
 6 MR. MARSHALL:  
 7 A. Yeah, and that's a good point because you  
 8 have to realize that when I went in there, I  
 9 mean this wasn't a normal situation. This  
 10 was a crisis situation and during the  
 11 Inquiry somebody referred to it as taking  
 12 command of the Titanic after she hit the  
 13 iceberg. I mean, you weren't worried about  
 14 the menu on the next voyage.  
 15 GREENE, Q.C.:  
 16 Q. Well hopefully it was just before the  
 17 iceberg.  
 18 MR. MARSHALL:  
 19 A. You were worried about survival and  
 20 literally that's the way we were. The first  
 21 year was just a simple matter of can we  
 22 stabilize the situation? It wasn't worrying  
 23 about, you know, where are we going to be in  
 24 three or four years because quite frankly, I  
 25 didn't know whether we had to shut the whole

Page 135

1 thing down.  
 2 GREENE, Q.C.:  
 3 Q. Okay, so that's how you approached it in  
 4 2016 and that's the pretty much the existing  
 5 structure we're talking about today.  
 6 MR. MARSHALL:  
 7 A. That's correct.  
 8 GREENE, Q.C.:  
 9 Q. Okay. You've referred, Nalcor did in its  
 10 evidence as well when it filed it on  
 11 September 20th, to the generation resource  
 12 development mandate that the Province has  
 13 given to you. How do you see that fitting  
 14 into that structure that you established?  
 15 MR. MARSHALL:  
 16 A. Well right now, as I say, a lot of it is  
 17 driven by the government itself, asking us  
 18 to do things. Again, my focus is on getting  
 19 Muskrat Falls finished and so when we're  
 20 asked to do other things, we do it and  
 21 there's a lot of opportunity there. We  
 22 don't know—there's a lot of uncertainty  
 23 associated with that, but we're laying the  
 24 groundwork for years ahead, but it's nothing  
 25 immediate, other than just dealing with the

Page 136

1 situation we got on the ground.  
 2 GREENE, Q.C.:  
 3 Q. You referred earlier this morning to the  
 4 fact that Liberty was trying to change  
 5 Nalcor's mandate and I don't think it's  
 6 necessary to go to the transcript, but in  
 7 fact, Liberty didn't say change the mandate,  
 8 they said change the structure to reflect  
 9 the mandate in a different way, so change  
 10 the structure in a different way, but still  
 11 recognize the generation resource  
 12 development mandate, would you accept that  
 13 that was part of Liberty's evidence?  
 14 MR. MARSHALL:  
 15 A. No. Now I didn't hear it all, I wasn't  
 16 here.  
 17 GREENE, Q.C.:  
 18 Q. Did you read the transcript?  
 19 MR. MARSHALL:  
 20 A. I'm going by what I saw in their evidence  
 21 where they said if you want to focus, deal  
 22 with 2041, you want to deal with Gull  
 23 Island, set up a different corporation, a  
 24 separate corporation.  
 25 GREENE, Q.C.:

Page 137

1 Q. And in their evidence and again if you take  
 2 this as a given or I can take you to where  
 3 it is, it was that it could be accommodated  
 4 in a different way than mixing it in with  
 5 the operating utility. So for example,  
 6 Nalcor Power Supply, part of their  
 7 responsibility is to actually operate and  
 8 maintain, when it comes into operation, the  
 9 Muskrat Falls generation plant and  
 10 transmission assets, is that correct?  
 11 MR. MARSHALL:  
 12 A. Yes.  
 13 GREENE, Q.C.:  
 14 Q. Okay, if I put to you as I understand  
 15 Liberty to say that that could be separated,  
 16 the generation development mandate Nalcor  
 17 has could be dealt with by keeping alive,  
 18 for example, they didn't say this but I'm  
 19 saying it, the Nalcor power development as a  
 20 part of Nalcor, but separate out the people  
 21 who are responsible for the operation and  
 22 maintenance of assets that are critical to  
 23 providing reliability to the rate payers who  
 24 are paying for those assets. So my question  
 25 to you is, did you consider doing that,

Page 138

1 separating out the operating part of the  
 2 utility from a generation development part?  
 3 MR. MARSHALL:  
 4 A. When I finished, if I ever finish, I'll have  
 5 a look at it. I've got other priorities. I  
 6 didn't look at it, it's in the future.  
 7 GREENE, Q.C.:  
 8 Q. Okay, so it wasn't something that you had  
 9 contemplated to this point in time?  
 10 MR. MARSHALL:  
 11 A. No, my issues was let's get this thing  
 12 organized right now the best way possible,  
 13 to be fair to a regulator, regulated Hydro,  
 14 and put that off to one side so they're  
 15 dealt with, simplify it, get cleared in the  
 16 regulatory side. Let's go over here and  
 17 finish the Muskrat Falls project and see  
 18 what we can do to minimize rates.  
 19 GREENE, Q.C.:  
 20 Q. Okay, well do you see that as an option  
 21 going forward that Nalcor, like other  
 22 utilities, could have a separate thing  
 23 called power development or generation  
 24 mandate or –  
 25 MR. MARSHALL:

Page 139

1 A. There's no one structure. I mean, it  
 2 depends on the CEO, it depends upon the  
 3 people available, it depends upon the  
 4 circumstances at the time. I'm not hung up  
 5 on these things. You deal with what you  
 6 find.  
 7 GREENE, Q.C.:  
 8 Q. In your view, who is it appropriate to make  
 9 the decision about the structure going  
 10 forward?  
 11 MR. MARSHALL:  
 12 A. It's for the CEO to recommend to the Board  
 13 of Directors for them to approve.  
 14 GREENE, Q.C.:  
 15 Q. So you've already indicated this morning  
 16 that you may be leaving us or leaving Nalcor  
 17 in the near future, is that correct?  
 18 MR. MARSHALL:  
 19 A. I'm hoping to.  
 20 GREENE, Q.C.:  
 21 Q. And what does that depend on?  
 22 MR. MARSHALL:  
 23 A. I also made a commitment to the premier that  
 24 I wouldn't leave him in the lurch, you know,  
 25 I made a commitment to get this thing done

Page 140

1 and if there's delays, I'll do that, but  
 2 it's my hope, my target, my wish, my  
 3 aspiration to finish up sometime early next  
 4 year or mid year.  
 5 GREENE, Q.C.:  
 6 Q. And probably that of your wife as well, is  
 7 it?  
 8 MR. MARSHALL:  
 9 A. Absolutely.  
 10 GREENE, Q.C.:  
 11 Q. So really on a go-forward basis with a new  
 12 chief executive officer and chairman coming  
 13 in and with Muskrat Falls hopefully in  
 14 operation and in steady state, do you see  
 15 that as a challenge and a task for the new  
 16 CEO?  
 17 MR. MARSHALL:  
 18 A. Oh yes, the new CEO to put his mark on it—he  
 19 or her would have to put their mark on it.  
 20 GREENE, Q.C.:  
 21 Q. I wanted to move now then to another topic,  
 22 I wanted to understand when you were talking  
 23 with Mr. Coxworthy about the future  
 24 operating and maintenance and even possibly  
 25 capital costs for the Lower Churchill, you

Page 141

1 kept saying that they were “hardwired”.

2 What does “hardwired” mean to you?

3 MR. MARSHALL:

4 A. It means if the costs are incurred, they

5 have to be paid.

6 GREENE, Q.C.:

7 Q. And when you say that yes, we understand

8 that and in fact there’s legislation passed

9 that says the people of Newfoundland have to

10 pay for those costs, who makes the decision

11 about the costs? Who makes the decision

12 what’s a reasonable operating forecast, what

13 would be incurred in 2024?

14 MR. MARSHALL:

15 A. Don’t know, I suppose if someone wants to

16 challenge it, but as far as I know if

17 they’re the costs, they have to be paid.

18 GREENE, Q.C.:

19 Q. No, but who makes the decision—who will look

20 at it and say what are these costs that we

21 need to operate it, who makes the forecast

22 and who approves it?

23 MR. MARSHALL:

24 A. At this point in time I guess first instance

25 is it’s the Board and the executive.

Page 142

1 GREENE, Q.C.:

2 Q. The Board of Nalcor?

3 MR. MARSHALL:

4 A. Yes.

5 GREENE, Q.C.:

6 Q. So they would make the decision as to what’s

7 a reasonable cost to incur to keep Lower

8 Churchill operating efficiently and

9 reliability?

10 MR. MARSHALL:

11 A. Right, and the auditors as well, you have to

12 see the size of the appropriate function,

13 appropriate entity. Don’t forget, there’s

14 several entities in Muskrat Falls, not just

15 one. Several boards, several different

16 organizations.

17 GREENE, Q.C.:

18 Q. So it’s Nalcor executive and the appropriate

19 Board of Directors that will review those

20 costs and determine whether they’re

21 reasonable, is that what I understood from

22 your answer?

23 MR. MARSHALL:

24 A. That they can be reasonably assigned I think

25 is a different task, you know, are they

Page 143

1 related to that function? If they are, they

2 got to be paid. Different argument to say,

3 well, you know, it shouldn’t have been

4 incurred. If they were incurred, they have

5 to be paid.

6 GREENE, Q.C.:

7 Q. Who makes the—but before they are incurred,

8 the reasonableness of the cost is set by

9 Nalcor and the Board, is that correct? The

10 Board of Directors of Nalcor of the

11 subsidiary –

12 MR. MARSHALL:

13 A. Different subsidiaries and the auditor has

14 to say that they’re properly assigned as

15 well.

16 GREENE, Q.C.:

17 Q. So what the agreements provide is that those

18 reasonable operating and maintenance costs

19 that are incurred, those are the ones that

20 get paid on to rate payers, so that’s what

21 you meant by it being hardwired, is it?

22 MR. MARSHALL:

23 A. Right, right.

24 GREENE, Q.C.:

25 Q. But is there a step before they become

Page 144

1 hardwired where there is a roll for an

2 independent oversight, presumably that –

3 MR. MARSHALL:

4 A. I’m not sure, not that I’m aware of. There

5 may be, I’m not an expert on those

6 contracts, there may be, I’m not aware of

7 it.

8 GREENE, Q.C.:

9 Q. Presumably Nalcor executive and the Board

10 and the bond holders and the federal

11 government that you referred to would only

12 want reasonable operating and maintenance

13 costs incurred, to be passed on to the rate

14 payers of Newfoundland?

15 MR. MARSHALL:

16 A. As far as I know that you can’t challenge

17 them, that’s the whole thing, those bond

18 holders will want to be protected.

19 GREENE, Q.C.:

20 Q. Yes, and they want to be protected

21 presumably from what is required to

22 reasonably and prudently operate and

23 maintain the plant, they don’t want

24 imprudent costs to be passed on to –

25 MR. MARSHALL:

Page 145

1 A. Like I say, I'm not familiar with the  
 2 details of the contract. I'm not sure there  
 3 is any requirement for independent review,  
 4 that's all I can say.  
 5 GREENE, Q.C.:  
 6 Q. But Nalcor has the discretion, Nalcor is the  
 7 one who makes the decision as to the  
 8 operating and maintenance costs that would  
 9 be incurred?  
 10 MR. MARSHALL:  
 11 A. Like I say, I'm not an expert on those  
 12 contracts at all. I'm just assuming that—  
 13 it's almost like an assumption on my part  
 14 that, you know, as you would with any  
 15 corporation, you sit down, you allocate the  
 16 costs. In this case you had a number of  
 17 different Lower Churchill companies.  
 18 They're viewed by different boards and the  
 19 auditors. As far as I know that's as far as  
 20 it goes.  
 21 GREENE, Q.C.:  
 22 Q. So in your sense, it only became hardwired  
 23 after they are incurred and they must be  
 24 passed on, that's what you meant by  
 25 "hardwired", is it?

Page 146

1 MR. MARSHALL:  
 2 A. If they're actually incurred, if the costs  
 3 are actually incurred, I mean clearly if  
 4 they're fraud or anything like that, you  
 5 don't have to pay them, but if they're  
 6 actually incurred, some could be challenged,  
 7 I suppose, different boards would challenge,  
 8 you know, they should be on that board or  
 9 should be this company or that company, but  
 10 if they're, you know, if everybody agrees  
 11 that they're incurred, actually incurred,  
 12 you pay them.  
 13 GREENE, Q.C.:  
 14 Q. And I guess part of the questioning by Mr.  
 15 Coxworthy was with respect to before they  
 16 are incurred and before they're actually  
 17 improved, is there an appropriate role for  
 18 oversight? Yes, under the current  
 19 legislation it is now exempt, but presumably  
 20 this review will also look at whether there  
 21 would be any recommendations for changes in  
 22 the current legislative regime.  
 23 MR. MARSHALL:  
 24 A. Well, you know, in any independent  
 25 corporation, you have a Fortis, you got a

Page 147

1 Board of Directors who are appointed by the  
 2 owners, they provide the oversight, it's  
 3 checked by the auditors to make sure there's  
 4 no fraudulent or any misallocation, but in a  
 5 normal business environment that is the  
 6 norm.  
 7 GREENE, Q.C.:  
 8 Q. And in a regulated environment, again we go  
 9 back to one of the principles, it's only  
 10 costs that are reasonably imprudently  
 11 incurred that rate payers should pay for.  
 12 MR. MARSHALL:  
 13 A. In a regulatory environment, the Board can  
 14 look at all their expenses after the fact  
 15 and say they're just and reasonably  
 16 incurred, if not, they can disallow them.  
 17 But you can't disallow them here, that's all  
 18 I'm saying, there's no –  
 19 GREENE, Q.C.:  
 20 Q. And I guess I'm asking you to consider if  
 21 before they're incurred, is there another  
 22 step in the process that could be helpful  
 23 with respect to this?  
 24 MR. MARSHALL:  
 25 A. That is the function of the Board of

Page 148

1 Directors. I mean, I go in with my budgets  
 2 to the different companies, the Board of  
 3 Directors, they look at them, they approve  
 4 the budgets, they check the expenditures  
 5 after the fact, they're audited and that's  
 6 as far as it goes. That's the normal  
 7 practice in an unregulated environment.  
 8 GREENE, Q.C.:  
 9 Q. But not in a regulated environment, we won't  
 10 talk again about what the future may hold  
 11 for what gets regulated.  
 12 (11:45 a.m.)  
 13 MR. MARSHALL:  
 14 A. That's what I'm saying, in a regulatory  
 15 environment things are different. That's  
 16 why I wanted to separate Hydro in the first  
 17 place so we can focus on that and get it  
 18 done right.  
 19 GREENE, Q.C.:  
 20 Q. And again, we won't go back to what should  
 21 be unregulated and what influenced you.  
 22 MR. MARSHALL:  
 23 A. Feel free to take that up with my successor  
 24 in three years.  
 25 GREENE, Q.C.:

Page 149

1 Q. Well hopefully there will be some (sic.)  
 2 around before that. So I want to talk to you  
 3 about where your recommendations leave us.  
 4 As I understand what you're recommending and  
 5 the structure you set up in place and what  
 6 you see going forward, is that we would have  
 7 Nalcor carrying on in the same way that it  
 8 has to date, that anything to do with  
 9 generation development and Muskrat Falls  
 10 would be exempt from reviewer oversight by  
 11 an independent third party, is that correct  
 12 so far?  
 13 MR. MARSHALL:  
 14 A. If you're dealing with something which is  
 15 not a future project, would not be borne by  
 16 the customers, rate payers of Newfoundland,  
 17 you treat it as any other corporation. The  
 18 government is the mandate, they represent  
 19 the interest of the taxpayer. If they want  
 20 it done, do it.  
 21 GREENE, Q.C.:  
 22 Q. Okay, so where we are would be for Nalcor,  
 23 as I said the Nalcor as it exists now with  
 24 the unregulated side for generation  
 25 development and with even responsibility for

Page 150

1 operating and maintenance cost for the  
 2 existing Muskrat Falls paid by customers, so  
 3 if we carry on that's really a continuation  
 4 of what I'll call it the status quo or the  
 5 current situation, is that what you're  
 6 recommending as I understand—that's what I  
 7 understand from your evidence.  
 8 MR. MARSHALL:  
 9 A. My recommendation is until we get Muskrat  
 10 Falls finished, don't rock the boat. Don't  
 11 go changing the organization, moving things  
 12 around. It's been difficult enough to get  
 13 where we are. It's been a hell of a task.  
 14 Don't make it more complicated in the next  
 15 year or two. When we got it finished and we  
 16 know where we are and the Province looks at  
 17 what it wants to do, by all means, review it  
 18 again. Nothing is set forever. There's no  
 19 one answer here. Circumstances change. My  
 20 only recommendation is right now.  
 21 GREENE, Q.C.:  
 22 Q. And what do you mean by "right now"?  
 23 MR. MARSHALL:  
 24 A. Until we get Muskrat Falls finished and we  
 25 get a good sense of where all this is going

Page 151

1 to leave us.  
 2 GREENE, Q.C.:  
 3 Q. You believe that that would be in a year or  
 4 so?  
 5 MR. MARSHALL:  
 6 A. My belief, my opinion is that we will get  
 7 the LIL operating early in the next year,  
 8 not in a fully functional manner, sort out  
 9 the bugs through 2020 and we'll have a  
 10 reasonable, good reliable system by 2021.  
 11 GREENE, Q.C.:  
 12 Q. But do you see after what I will call and  
 13 Liberty called the steady state, do you see  
 14 the opportunity for making significant  
 15 changes in what gets regulated and how the  
 16 structure at Nalcor is done?  
 17 MR. MARSHALL:  
 18 A. I don't see, look, there's no one  
 19 organization is the same, right, they change  
 20 circumstances. Do I see Liberty's  
 21 recommendations at saving us a lot of money?  
 22 No. I think it's just going to confuse the  
 23 regulated, unregulated again. Having gone  
 24 through the exercise of taking out the  
 25 regulated and giving it, you know,

Page 152

1 simplicity, a transparency, so the Board can  
 2 look at it, focus on its task, I wouldn't  
 3 intermingle the operations again. When  
 4 you're intermingling, you just confuse  
 5 everybody. But look, that's for others to  
 6 decide, not me. My opinion is worth a cup  
 7 of coffee right now.  
 8 GREENE, Q.C.:  
 9 Q. Okay, so I go back then to my original  
 10 question. Your view would be that the  
 11 existing Nalcor structure is probably the  
 12 most appropriate to carry forward even past  
 13 steady state, your own personal opinion.  
 14 MR. MARSHALL:  
 15 A. Right now, but look, I mean, what's going to  
 16 happen? Are we going to develop Gull  
 17 Island? I don't know. Are we going to do  
 18 something with Hydro Quebec to optimize this  
 19 and get more money from Newfoundland  
 20 consumers? I don't know. Are we going to  
 21 develop something with Nova Scotia and New  
 22 Brunswick and Quebec and the federal  
 23 government about the Maritimes? I don't  
 24 know. I'm just working on these things and  
 25 trying to position us to make sure we have

Page 153

1 the options. All I'm saying is right now  
 2 with everything on the go and what we've  
 3 been dealing with in the last 12 months, you  
 4 know, regulatory reviews, forensic audits,  
 5 commissions of inquiry, I mean, we're lucky  
 6 we got any management team left.  
 7 GREENE, Q.C.:  
 8 Q. And again, you have mentioned your  
 9 frustrations, I guess I'm trying to see from  
 10 moving forward and what is the right  
 11 structure for going forward.  
 12 MR. MARSHALL:  
 13 A. I sympathize with you, I do.  
 14 GREENE, Q.C.:  
 15 Q. And I sympathize with you, but we're trying  
 16 to see what's the best structure.  
 17 MR. MARSHALL:  
 18 A. All I am saying is the future is uncertain.  
 19 Why decide now when you don't have to  
 20 decide. Just recognize that there's  
 21 uncertainty, that when Muskrat Falls is  
 22 finished, you might want the government to  
 23 review this and the mandate and you instruct  
 24 it appropriately, that's all I'm saying.  
 25 Don't tie anybody's hands right now when

Page 154

1 you're trying to get the thing resolved.  
 2  
 3  
 4 GREENE, Q.C.:  
 5 Q. Well, I guess one of the problems with that  
 6 is the significant rate increases start  
 7 coming in 2021. There's not a whole lot of  
 8 time to wait, and, I guess, I go back to the  
 9 original one, you would leave us with the  
 10 same structure that is there now, which  
 11 would be unregulated with respect to some of  
 12 these major decisions, and I have to ask  
 13 from a –  
 14 MR. MARSHALL:  
 15 A. All I say is keep the regulated and  
 16 unregulated separate.  
 17 GREENE, Q.C.:  
 18 Q. But I must say, Mr. Marshall, I'm not  
 19 totally sure how you make that distinction,  
 20 what becomes unregulated and to me it's very  
 21 fuzzy as to is it legislation, is it  
 22 principles, is it looking after the  
 23 protection of the rate payer, did you  
 24 consider what is normally the discipline of  
 25 the market versus the monopoly. So, yes –

Page 155

1 MR. MARSHALL:  
 2 A. I think it's a matter of law whether  
 3 something is regulated or not.  
 4 GREENE, Q.C.:  
 5 Q. So it was the legislation in Newfoundland  
 6 that said because Muskrat Falls was  
 7 unregulated, okay.  
 8 MR. MARSHALL:  
 9 A. So whatever it is, the law is the law. I  
 10 observe it.  
 11 GREENE, Q.C.:  
 12 Q. And presumably the legislation can change in  
 13 the future if it's determined not to be the  
 14 most appropriate framework to protect rate  
 15 payers?  
 16 MR. MARSHALL:  
 17 A. Absolutely. I mean, the province owns  
 18 Nalcor. They can do what they want with it.  
 19 GREENE, Q.C.:  
 20 Q. Okay. So from your perspective, the  
 21 structure at Nalcor will organically change  
 22 with the next CEO in terms of once the  
 23 project is in, and you do see an opportunity  
 24 for change?  
 25 MR. MARSHALL:

Page 156

1 A. It will change, absolutely, and it should  
 2 change because the circumstances will  
 3 change.  
 4 GREENE, Q.C.:  
 5 Q. Okay. One last area was the capital  
 6 structure of Hydro. You indicated that you  
 7 agreed with Liberty. I was going to ask,  
 8 has Nalcor or Hydro done any analysis with  
 9 respect to the implications of changing its  
 10 capital structure, and have they made any  
 11 recommendations to government with respect  
 12 to that?  
 13 MR. MARSHALL:  
 14 A. Not that I can recall, but, you know, the  
 15 people who are doing a lot of this analysis  
 16 may have done something. Again we were  
 17 providing a lot of information to the  
 18 Oversight Committee. A lot of it, I  
 19 wouldn't be aware of. You know, we gave the  
 20 government direct access to our people and  
 21 whatever they want done, we do. In some  
 22 cases, you know, they were doing things on a  
 23 confidential basis that they wouldn't have  
 24 told me, so I can never be certain.  
 25 GREENE, Q.C.:



Page 157

1 Q. But from your perspective, the possibility  
 2 of changing the equity in the capital  
 3 structure is a viable alternative to  
 4 consider to advance funds for the early  
 5 days?  
 6 MR. MARSHALL:  
 7 A. I think Liberty did an analysis on the  
 8 thing. They said that really overall it's a  
 9 wash long term, but it reduces the  
 10 requirement in the first few years because  
 11 you're not trying to increase the capital  
 12 structure.  
 13 GREENE, Q.C.:  
 14 Q. Okay, but you have no firm position with  
 15 respect to what that should be?  
 16 MR. MARSHALL:  
 17 A. No.  
 18 GREENE, Q.C.:  
 19 Q. Okay, thank you. Thank you, Mr. Marshall.  
 20 CHAIR:  
 21 Q. Thank you, Ms. Greene. Thank you, Mr.  
 22 Marshall. Mr. Eaton, do you have any follow  
 23 up?  
 24 EATON, Q.C.:  
 25 Q. There was just one question that I just want

Page 158

1 to clarify. Mr. Marshall, when Mr. Browne  
 2 was asking you some questions, he asked you  
 3 about the GE issue and the software  
 4 development, and you made the comment that  
 5 the software is not developed for this.  
 6 MR. MARSHALL:  
 7 A. Not fully developed.  
 8 EATON, Q.C.:  
 9 Q. Okay, I just wanted to make sure. You have  
 10 versions of it, but there's different  
 11 versions to come, is that –  
 12 MR. MARSHALL:  
 13 A. Well, yeah, of course, we had versions last  
 14 year that we actually used to operate the  
 15 system, so, you know, you're aiming for  
 16 functionality, a lot of which didn't exist  
 17 last year, and so this thing is developed in  
 18 modules and, of course, they're probably  
 19 taking pieces from the last project they  
 20 did. So this is one of the reasons I'm going  
 21 to Europe next week. I want to talk to them  
 22 directly and see where we are. In fact, you  
 23 know, you're putting the puzzle together and  
 24 the different parts are there, and different  
 25 pieces over here, but we don't have a

Page 159

1 package that's fully functional to put in  
 2 right now. We know there's certain  
 3 deficiencies, certain things that have been  
 4 developed. They test as they go along. So  
 5 you're testing in, like, a lab, different  
 6 elements of the overall system. So develop  
 7 it, go in and test it and you find it's not  
 8 working properly, and you change that. So  
 9 it's a big package. Different parts of it  
 10 are done. Some things are functional, some  
 11 things are not, but we're getting close.  
 12 Like I say, they are making progress, steady  
 13 every time, and my best estimate is that  
 14 we'll have a package around year end that we  
 15 can load and actually start to operate  
 16 again. I'm pretty sure that we'll start to  
 17 operate and find that there's a bug, you'll  
 18 shut down again, and that's the mode you go  
 19 through in these things when you're trying  
 20 to implement them.  
 21 EATON, Q.C.:  
 22 Q. That was all. I just wanted to clarify that  
 23 point.  
 24 CHAIR:  
 25 Q. Thank you. I have no questions. Thank you,

Page 160

1 Mr. Marshall, for your openness and  
 2 frankness.  
 3 MR. MARSHALL:  
 4 A. Thank you.  
 5 CHAIR:  
 6 Q. I understand we have the Power Advisory  
 7 Panel. Would you like to take a few  
 8 minutes?  
 9 EATON, Q.C.:  
 10 Q. If we could take a few minutes to get them  
 11 set up.  
 12 (RECESS – 11:55 a.m.)  
 13 (RESUME – 12:04 p.m.)  
 14 CHAIR:  
 15 Q. Over to you, Mr. Eaton, you can introduce  
 16 your panel.  
 17 EATON, Q.C.:  
 18 Q. Thank you. We have from Power Advisory, Mr.  
 19 John Dalton, and Mr. Michael Killeavy. I'm  
 20 going to ask you, Mr. Dalton, if you would  
 21 start off in terms of introducing yourself  
 22 and your background and a little bit about  
 23 Power Advisory.  
 24 MR. DALTON:  
 25 Q. Certainly. Good afternoon. As indicated,

Page 161	<p>1 my name is John Dalton. I'm President of                  2 Power Advisory. We're a management                  3 consulting firm focused on the electricity                  4 sector. I have over 30 years experience in                  5 the electricity sector. I've testified in                  6 over 25 proceedings across North America. I                  7 have extensive experience in restructured                  8 electricity markets, and when I'm talking                  9 about restructured electricity markets, I'm                  10 talking about those markets that have opened                  11 their wholesale and retail markets to                  12 competition, as well as with regulated                  13 utilities. My professional career has been                  14 split between the US and Canada. I moved to                  15 Toronto in 1998 to open up an office for                  16 Navigant Consulting as Ontario planned to                  17 move to competitive wholesale and retail                  18 electricity markets. In the six years I                  19 lived in Canada, I advised governments in                  20 New Brunswick, Nova Scotia, and Ontario on                  21 the structure of their electricity markets,                  22 and advised on the appropriate design of                  23 Saskatchewan's electricity market. I've had                  24 multiple major assignments in each of the                  25 Canadian provinces. Many of these projects</p>	Page 163	<p>1 wholesale bulk system planning. We've been                  2 engaged by Natural Resources Canada, the                  3 Atlantic Canada Opportunities Agency,                  4 Nalcor, and Newfoundland and Labrador Hydro,                  5 NB Power, and Canadian Wind Energy                  6 Association, to assess opportunities for the                  7 sale of energy from Atlantic Canada to the                  8 US North East, as well as clean energy sales                  9 opportunities within Atlantic Canada. Of                  10 direct relevance to this project, in 2015 we                  11 were engaged by Newfoundland and Labrador                  12 Department of Natural Resources to conduct                  13 an independent review of the Newfoundland                  14 and Labrador electricity sector in each of                  15 the other Canadian provinces to identify                  16 best practices with respect to oversight,                  17 governance, planning, and regulatory                  18 oversight of the electricity sector. One of                  19 the themes in this report was the complexity                  20 associated with regulating a Crown utility                  21 such as Hydro. Given that, and I quote from                  22 the report, "The utility can be an agent for                  23 social, economic, and environmental                  24 objectives in the broader public interest".                  25 This differs from the Board's focus on the</p>
Page 162	<p>1 focusing on the appropriate structure of the                  2 electricity market, regulatory oversight for                  3 electric utilities, electricity export                  4 market opportunities, electricity                  5 procurement issues, electricity policy                  6 analysis and procurement. In 2007, I started                  7 Power Advisory with offices in Boston,                  8 Toronto, and Calgary. We specialize in                  9 electricity market analysis and strategy,                  10 power procurement support, policy                  11 development, regulatory and mitigation                  12 support, market design, and project                  13 feasibility assessment. We regularly work                  14 across North America for all electricity                  15 market participants, including system                  16 operators, governments, and regulators, as                  17 well as utilities. We've regularly been                  18 called upon by clients to perform                  19 jurisdictional scans similar to we provided                  20 Nalcor for this project. Last year we                  21 performed, for example, a jurisdictional                  22 scan for Ontario's independent electricity                  23 system operator, looking at best practices                  24 for electricity system planning, focusing on                  25 six different areas associated with</p>	Page 164	<p>1 lowest possible cost consistent with                  2 reliable service. These differences are an                  3 issue in this inquiry, and help explain the                  4 perspectives of different parties. Thank                  5 you.                  6 EATON, Q.C.:                  7 Q. Mr. Killeavy.                  8 MR. KILLEAVY:                  9 A. My name is Michael Killeavy, and I'm the                  10 Executive Advisor with Power Advisory. I've                  11 been with Power Advisory for about a year                  12 and a half now. Prior to that, I worked for                  13 the Ontario Power Authority, an independent                  14 electricity system operator as a Director                  15 and took them through a couple of major                  16 reorganizations and a merger between the                  17 Ontario Power Authority and the IESO in                  18 2015. Prior to that, I was Vice-President                  19 of a UK based consultant called Knowles PLC,                  20 that had about 2,000 people, and I was                  21 responsible for the Canadian operation, and                  22 while I was with the Canadian operation of                  23 Knowles, I provided organizational design                  24 advice to both private and public sector                  25 entities. As you can see from my</p>

Page 165

1 credentials, I couldn't make up my mind what  
 2 I wanted to be when I grew up. I've got  
 3 degrees in Engineering, Business, and Law.  
 4 EATON, Q.C.:  
 5 Q. Mr. Dalton, perhaps you would begin by  
 6 outlining the scope of what it was you were  
 7 asked to do by Nalcor for this matter.  
 8 MR. DALTON:  
 9 A. Certainly. We were engaged by Nalcor to  
 10 review electricity organizational structures  
 11 and the corresponding electricity market  
 12 structures and regulatory frameworks that  
 13 influence these organizational structures in  
 14 Canada and the United States. Specifically,  
 15 asked Power Advisory to review these  
 16 electricity markets, including the  
 17 historical context, key drivers, and policy  
 18 shaping the electricity sector and the  
 19 resulting various electric utility  
 20 organizational structures employed, and  
 21 based on this research, to assess Nalcor's  
 22 existing organizational structure,  
 23 recognizing its strategic priorities. Based  
 24 on this research and these findings, Nalcor  
 25 then asked us to comment on the Liberty

Page 166

1 Report, the final report. I think it's  
 2 helpful to just highlight some of the  
 3 differences between Power Advisory and  
 4 Liberty, but before I do that, I think that,  
 5 as already has been pointed out, there's one  
 6 area of agreement, significant agreement,  
 7 and this is the notion that it is  
 8 appropriate to consider the profits from  
 9 energy trading operations when those profits  
 10 are derived from electricity assets that are  
 11 paid for by customers. This is one of the  
 12 fundamental findings. We offered five  
 13 findings in our report, and this is one of  
 14 the fundamental findings that we made, and  
 15 it's in accord with Liberty with respect to  
 16 that. I think that some of the other  
 17 differences, from my perspective, can be  
 18 explained by (unintelligible) differing  
 19 perspective. I reference here the language  
 20 which Mr. Marshall has already cited from  
 21 Peter Drucker, which is "Mission defines  
 22 strategy, and strategy defines structure".  
 23 That's very much the perspective that we  
 24 took. We took a top down perspective, and  
 25 as indicated, we were engaged by Nalcor to

Page 167

1 provide strategic advice in terms of the  
 2 organizational structure, and what  
 3 organizational structure would be necessary  
 4 to allow Nalcor to achieve its strategic  
 5 objectives. So this is very much a top down  
 6 view, recognizing Nalcor's strategic focus,  
 7 its mandate, and its important role in terms  
 8 of value creation for the province. Liberty  
 9 was engaged by the Board to assist it with  
 10 examining options to mitigate electricity  
 11 rates in the province. They perform very  
 12 much a bottom up review and focus on cost  
 13 minimization. So I think that those are  
 14 pretty fundamental differences in terms of  
 15 our perspective, and I think that they drive  
 16 some of the differences in terms of our  
 17 recommendations and areas of finding.  
 18 Moving on, in terms of the scope of our  
 19 review, Nalcor asked us to answer two  
 20 fundamental questions; a structure and  
 21 relationship between regulated and non-  
 22 regulated utility operations, and the degree  
 23 of regulatory oversight of energy trading  
 24 operations and where they typically reside  
 25 within the organization. So we focused on

Page 168

1 identifying utilities that could offer some  
 2 insights on these fundamental organizational  
 3 design questions. Given the prevalence of  
 4 similar ownership structures in Canada, many  
 5 Crown corporations with mandates that often  
 6 include broad policy objectives, we reviewed  
 7 virtually all the major utilities in  
 8 Canadian jurisdictions. In the US, our  
 9 review of US electric utilities was more  
 10 limited. From our perspective, there's a  
 11 fundamentally different landscape in the US  
 12 compared to Canada, and this effectively  
 13 limited our review of Canadian utilities.  
 14 One of the major differences is that  
 15 publicly owned electric utilities in the US,  
 16 and when I'm referring to publicly owned,  
 17 I'm talking about non-investor owned  
 18 utilities, sometimes referred to as consumer  
 19 owned utilities. In the US, are typically  
 20 not subject to regulation by the State  
 21 Public Utility Commissions, so from our  
 22 perspective we weren't able to gain any  
 23 insights on some of these questions that we  
 24 were asked to answer because there wasn't  
 25 regulation that was typically applied to

<p style="text-align: right;">Page 169</p> <p>1 these electric utilities. We had proposed  2 reviewing eight utilities, but ultimately  3 elected to review less than that just  4 because there weren't meaningful insights on  5 the questions we were asked to answer from  6 our review of these utilities. One  7 surprising thing was that virtually all the  8 US utilities that offered potential insights  9 on the two questions that we were asked to  10 focus on were investor owned utilities, and  11 I guess, when thinking about it, that's not  12 that surprising because essentially those  13 are the ones that are subject to regulation,  14 but these are fundamentally different  15 entities than Nalcor as a Crown utility,  16 which is imbued with the public interest,  17 and has a resource development mandate that  18 has significant bearing on its operations  19 and ultimately its organization. Now I'm  20 going to jump into the three findings that I  21 focused on in terms of this presentation.  22 (12:15 p.m.)  23 The first is that regulated and non-  24 regulated operations are typically  25 separated. We found that the rationale for</p>	<p style="text-align: right;">Page 171</p> <p>1 opportunities in a few more slides and share  2 our perspective on that. One of our other  3 findings was energy trading operations are  4 largely unregulated, and one of the sources  5 that we reference was essentially an  6 independent review of BC Hydro conducted by  7 the BC Government, and the report once again  8 authored by the government simply found that  9 falling under BCUC, this is the regulator in  10 BC, oversight would hamper Powerex's ability  11 to compete and earn income in fast moving  12 and rapidly evolving competitive markets.  13 So Powerex is essentially the unregulated  14 trading affiliate of BC Hydro, very similar  15 to Nalcor Energy Marketing. So we saw that  16 the rationale put forward here was  17 appropriate and ran true. From our  18 perspective, we believe this rationale  19 applies universally, and limits regulatory  20 oversight over energy trading operations,  21 and I think that – and I'll get to this  22 point in a bit. One needs to be careful  23 when we're talking about energy trading  24 operations because there's a wide range of  25 perspectives in terms of what these can</p>
<p style="text-align: right;">Page 170</p> <p>1 this is this simplifies the oversight of the  2 regulated operation and avoids the risk of  3 cross subsidization of competitive  4 operations by regulated operations. We also  5 found that essentially that there are  6 typically distinct capabilities required for  7 regulated and non-regulated operations where  8 these businesses are disaggregated. More  9 typically, their regulated operations are  10 what's often referred to as wires companies  11 focused on transmission and distribution  12 where there is no regulation in the  13 generation aspects of the business subject  14 to competitive market forces. One area of  15 difference in terms of Liberty has asserted  16 that its found significant potential cost  17 savings from combining the power supply and  18 Newfoundland and Labrador Hydro. From our  19 perspective, we feel like Liberty hasn't  20 adequately and appropriately valued the  21 importance of maintaining the organizational  22 capacity to deliver on Nalcor's resource  23 development mandate, and the essential role  24 of an unregulated development organization  25 to do so, and I'll talk about these</p>	<p style="text-align: right;">Page 172</p> <p>1 encompass. We're focusing on energy trading  2 operations such as Nalcor Energy Marketing  3 would conduct. I think the other important  4 point is that one needs to recognize the  5 significant role that Nalcor Energy  6 Marketing is going to have as a critical  7 contributor to financial performance based  8 on the volumes that it's going to be  9 marketing. I know that there's some  10 evidence that's been put forward by Synapse  11 on this, and their numbers are in line with  12 our expectations in terms of what this value  13 can be. This is basically the world we have  14 today once the energy volumes from Muskrat  15 Falls become available. The final point  16 here is across Canada, we found that there's  17 relative limited regulatory oversight over  18 energy trading operations. The one  19 exception would be in Nova Scotia, and I'll  20 basically talk about that in the next slide.  21 I think one of the points of difference in  22 perspective between Liberty and Power  23 Advisory was that Liberty asserts that Board  24 oversight of energy trading organization has  25 proven valuable. I think the language that</p>

<p style="text-align: right;">Page 173</p> <p>1 was used might have been “offers tremendous  2 value”. Let me see. I want to make sure  3 I’ve got that right. I think that the  4 important point of difference is that there  5 can be tremendous value when you’re focused  6 on a fossil fuel utility where the cost of  7 its fuel purchases are a significant portion  8 of the cost that customers pay. So  9 typically we find, and this is what happens  10 in Nova Scotia, to essentially de-risk fuel  11 procurement, recognizing the uncertainty of  12 commodity markets, they decide that there  13 will be a fuel adjustment mechanism that  14 will be employed, and that effectively the  15 utility is able to pass through its  16 procurement cost to customers. If they’re  17 going to pass through those cost to  18 customers, it’s appropriate to have some  19 oversight in terms of their procurement  20 practices. We want to make sure that  21 they’re employing best practices with  22 respect to procuring fuel and that they’re  23 doing a good job in terms of forecasting  24 future requirements. There I can see that  25 oversight could offer tremendous value. I</p>	<p style="text-align: right;">Page 175</p> <p>1 that’s the fundamental difference that I  2 have in terms of between where we ended up  3 and where Liberty appears to be. The third  4 area is most energy trading operations are  5 in stand-alone entities. This rationale for  6 separation in Canada is the same as we heard  7 from Nalcor. There’s a very real risk in  8 terms of being subjected to taxation in the  9 US to the degree that they’re trading in US  10 markets. So we see virtually all of the  11 Canadian utilities that have major presence  12 in US markets establishing separate  13 affiliates to conduct these trading  14 activities to shield them from this  15 taxation. The broader organization, they  16 don’t want the other operations to be  17 subject to US taxation. The other point is  18 essentially risk. There is risk that can  19 affect the underlying cost of capital of  20 these entities, and shielding it from the  21 broader organization, the regulated utility,  22 is prudent, and it’s often common practice.  23 Liberty has proposed that Nalcor consider  24 tracking out its energy trading operation.  25 From our perspective, we believe</p>
<p style="text-align: right;">Page 174</p> <p>1 think the point that I want to make is this  2 is fundamentally different than the type of  3 trading and the scope of operations that  4 Nalcor Energy Marketing is going to be  5 involved in. Nalcor Energy Marketing is  6 going to be participating in real time  7 energy markets, markets where prices change  8 from hour to hour, and where it’s important  9 that they be nimble, and I understand that  10 Liberty is suggesting that the oversight be  11 retrospective, and not necessarily involved  12 in terms of, you know, the real time trading  13 operations of utilities, but one word of  14 caution I would offer is that Nalcor Energy  15 Marketing should be focused in terms of  16 maximizing profit from the portfolio that  17 they have to trade, and I think it’s not  18 appropriate for them to be concerned with  19 what’s the regulator going to think about  20 this specific transaction. They have a  21 portfolio that they’ll be trading around.  22 There can be times when a loss is incurred  23 in terms of a specific trade, but the focus  24 should be what are they doing to maximize  25 the value of this portfolio. I think that</p>	<p style="text-align: right;">Page 176</p> <p>1 Liberty has underestimated NEM’s position as  2 an exporter and I think you’ll be hearing  3 tomorrow or possibly on Thursday from Mr.  4 Jones. He basically did some benchmarking  5 in terms of how Nalcor Energy Marketing,  6 when it has the volumes that it will have to  7 trade from Muskrat Falls, how it would rank  8 relative to other exporters in Canada, and I  9 think it brings it into the top decile. It  10 would be fifth out of 50.  11 So, there are going to be significant  12 volumes, and I think the other thing that I  13 would like to emphasize was that there are  14 volumes and then there’s value and one needs  15 to consider the margins that are going to be  16 earned from this trade, and I think that  17 trading a hydroelectric resource where the  18 marginal operating costs are very close to  19 zero suggests that the margins are going to  20 be much larger than from a falsehood based  21 utility. So, I think that that’s a critical  22 issue.  23 The other thing I think is that this  24 really from our perspective is a kind of  25 core competency for hydroelectric utilities</p>

Page 177

1 to be able to actively participate in these  
 2 markets and to realize value for the benefit  
 3 of customers, and we're in agree here that  
 4 to the degree that there are additional  
 5 values created, it should be shared.  
 6 Obviously it's ultimately up to the  
 7 Government in terms of what that sharing  
 8 looks like, but I think that from a  
 9 regulatory perspective, we're on the same  
 10 page there.  
 11 One area of difference is Liberty had  
 12 argued for – or argues for expanded  
 13 oversight of Nalcor's investment decision  
 14 and we saw it in terms of the fact that  
 15 there was this apparent departure from  
 16 industry practice of allocating export  
 17 margins to the cost of the facilities that  
 18 they suggested that it was appropriate to  
 19 expand the scope of regulatory oversight  
 20 over Nalcor. And from our perspective, the  
 21 net effect of this was going to cause Nalcor  
 22 and Newfoundland and Labrador Hydro to be  
 23 among the most highly regulated entities in  
 24 Canada. And the other entity I think that  
 25 would be peer and may be subject to

Page 178

1 comparable legislation would be Nova Scotia  
 2 Power who's very much an invest around  
 3 utility. So, from our perspective, that  
 4 kind of raised a red flag in terms of  
 5 recognizing that we do have a Crown here who  
 6 isn't viewed with a public interest and who  
 7 has a broad mandate, and I will get to that.  
 8 EATON, Q.C.:  
 9 Q. Before you move on, I just – and maybe  
 10 you're going to come to it later, but just  
 11 to ask you now in terms of the trading  
 12 mandate and the markets that might be  
 13 available for Nalcor in Atlantic Canada and  
 14 northeastern US. Do you have any comment on  
 15 that?  
 16 MR. DALTON:  
 17 A. So, the question is provide a perspective in  
 18 terms of these opportunities in those  
 19 markets?  
 20 EATON, Q.C.:  
 21 Q. Yes.  
 22 MR. DALTON:  
 23 A. I was going to close on that.  
 24 EATON, Q.C.:  
 25 Q. Okay.

Page 179

1 MR. DALTON:  
 2 A. Not quite close on it.  
 3 EATON, Q.C.:  
 4 Q. You remember that then and make sure you  
 5 close on that.  
 6 MR. DALTON:  
 7 A. So, turning now to kind of after we did this  
 8 jurisdictional review, Nalcor asked us to  
 9 basically, okay, take these insights and  
 10 apply them to kind of evaluating Nalcor's  
 11 existing organizational structure, and I've  
 12 identified here essentially the current  
 13 organizational priorities that Mr. Marshall  
 14 discussed this morning. I won't dwell on  
 15 them.  
 16 The other thing that is pretty striking  
 17 is the mandate letter from the Minister of  
 18 Natural Resources, and I would like to point  
 19 out that this was – you know, this was  
 20 issued in January of this year. So, it's  
 21 relatively recent. It appears to continue  
 22 to reflect, you know, the Government's  
 23 priorities. And I'm not going to review the  
 24 language here, but it very much ties to what  
 25 we see would be Power Supply's mission, once

Page 180

1 Muskrat Falls is complete. There are – they  
 2 mentioned, you know, seeking opportunities  
 3 to develop the Gull Island hydro project.  
 4 You know, this is a major potential source  
 5 of value for the Province.  
 6 There's questions in terms of how best  
 7 to develop that in a way that doesn't expose  
 8 the Province to undue or unreasonable risk.  
 9 I think there's strategies that can be  
 10 employed to do that.  
 11 So, based on our review and looking at  
 12 Nalcor's current organizational design, we  
 13 found that it was, you know, well suited to  
 14 achieving the priorities that had been  
 15 identified. We see this as evident in terms  
 16 of the split between the regulated and non-  
 17 regulated operations and this is in full  
 18 accord with findings that regulated and non-  
 19 regulated operations typically are separated  
 20 for the reasons that I discussed earlier.  
 21 (12:30 p.m.)  
 22 Hydro, on a stand-alone basis, provides  
 23 a dedicated focus on its regulated  
 24 operations. That was a point obviously that  
 25 Mr. Marshall made strongly this morning.

<p style="text-align: right;">Page 181</p> <p>1 Establishing Power Development Supply as a                  2 separate non-regulated business segment best                  3 positions, from our perspective, Nalcor to                  4 pursue the development of generation                  5 projects, and this is consistent with the                  6 Minister’s guidance.                  7 From our view, the next generation of                  8 projects are likely to be export focused.                  9 It’s our understanding that there’s not an                  10 immediate demand, not an immediate need for                  11 additional energy here in the Province. So,                  12 these are going to be export focused                  13 projects and they won’t be used to supply                  14 customers. Therefore, it wouldn’t be                  15 appropriate for customers to bear the cost                  16 of these projects. These costs from these                  17 projects should be borne by the shareholder                  18 or in partnership, and I think that that’s a                  19 very, you know, viable way to develop these                  20 projects and to de-risk it from the                  21 Province’s perspective.                  22 This model, the Power Supply and Power                  23 Development model, follows the successful                  24 model employed by Hydro Quebec and I think                  25 everyone’s aware in terms of Hydro Quebec’s</p>	<p style="text-align: right;">Page 183</p> <p>1 terms of, you know, what is the value here.                  2 We’ve heard reference in terms of prices to                  3 a glut of natural gas. Natural gas prices                  4 are very cheap and that is adversely                  5 affecting wholesale prices in these markets.                  6 I think that it’s appropriate though to step                  7 back and recognize that – and when I’m                  8 talking about markets, I’m focused on New                  9 England and New York. These are markets                  10 that are – the US markets that are most                  11 proximate. Ontario, which Mr. Killeavy can                  12 talk about better than I, is right next                  13 door.                  14 MR. KILLEAVY:                  15 A. That’s right.                  16 MR. DALTON:                  17 A. But I’ll be focusing in terms of the US                  18 markets. Both these markets have very                  19 ambitious, and the states within those                  20 markets have very ambitious greenhouse gas                  21 reduction goals. The largest New England                  22 states, Massachusetts, Connecticut, Rhode                  23 Island have goals of reducing their                  24 greenhouse gas emissions by 80 percent by                  25 2050. The electricity sector is going to</p>
<p style="text-align: right;">Page 182</p> <p>1 success in terms of developing projects and                  2 taking them to market.                  3 Liberty makes the point that                  4 integration of Newfoundland and Labrador                  5 Hydro and Power Supply would reduce costs.                  6 From our perspective, and it – I imagine it                  7 would. I’m not sure in terms of what’s the                  8 magnitude. I think I’ll allow others from                  9 Nalcor to comment in terms of the                  10 reasonableness of those numbers. But I                  11 think that when evaluating these cost                  12 savings, one needs to give appropriate                  13 consideration to forgone opportunities from                  14 lost capabilities and this is essentially                  15 the development capabilities associated with                  16 developing new generation projects in the                  17 Province and how do these forgone                  18 opportunities compare with the estimated                  19 savings.                  20 Based on our perspective, it’s really                  21 important, and this is where I want to talk                  22 a little bit in terms of provide a                  23 contrasting view in terms of opportunities                  24 associated with export markets because I                  25 realize that there is some skepticism in</p>	<p style="text-align: right;">Page 184</p> <p>1 play a critical role in terms of delivering                  2 on these goals. We, similarly, are talking                  3 about electrification as a strategy in terms                  4 of how to reduce greenhouse gas emissions.                  5 So, we see that these markets are going to                  6 have a need for additional clean energy                  7 resources.                  8 Now, these markets are aggressively                  9 pursuing wind, solar, offshore wind, but we                  10 saw in Massachusetts, they had a procurement                  11 for ten terawatt hours of a range of                  12 resources. The resource that was selected                  13 was hydroelectric because essentially they                  14 were looking for a baseload supply. You                  15 can’t get, you know, baseload supplies of                  16 clean energy in that volume from solar and                  17 wind alone. You need essentially a resource                  18 like hydro to essentially potentially                  19 integrate these resources. So, the other                  20 thing – so that’s what happened in New                  21 England.                  22 There’s some development issues                  23 associated with that project, some                  24 challenges, but you know, I can talk to                  25 those if people have questions.</p>

Page 185

1 Looking at New York, New York recently  
 2 passed legislation where they called for 70  
 3 percent renewables by 2030 and within the  
 4 definition of renewables is hydro. Beyond  
 5 that, they talk about being 100 percent  
 6 carbon free by 2050. New England and New  
 7 York's total energy requirements are 280  
 8 terawatt hours. So, we're talking about a  
 9 large demand for clean energy.  
 10 There's been some talk in terms of  
 11 Mayor de Blasio's objectives for the  
 12 procurement of clean energy and his desire  
 13 to strike a contract with Canadian entities.  
 14 I think there's very real – other very real  
 15 evidence of New York's desire for a similar  
 16 type of project structure such as  
 17 Massachusetts proposed.  
 18 MR. KILLEAVY:  
 19 A. And is it worthwhile saying that the need in  
 20 the US is for incremental clean energy.  
 21 What they've already got from Quebec, Hydro  
 22 Quebec already exists. They're looking for  
 23 more clean energy on top of that which give  
 24 you folks a significant advantage, I think.  
 25 MR. DALTON:

Page 186

1 A. Yeah. So, to amplify that point, one of the  
 2 criticisms that has been raised with respect  
 3 to the Hydro Quebec contract with the  
 4 Massachusetts distribution companies,  
 5 electric distribution companies, is that  
 6 it's not truly incremental, and by  
 7 incremental, the point here was that  
 8 project developed to serve our need. Are we  
 9 in fact increasing the volume of clean  
 10 energy that's available by our purchase  
 11 commitment? That project doesn't – the  
 12 Hydro Quebec project doesn't satisfy that  
 13 test.  
 14 New York is very much looking at this  
 15 and some people are suggesting that these  
 16 procurement decisions are only going to help  
 17 us address greenhouse gas emissions if in  
 18 fact they result in additional development  
 19 of hydroelectric resources. So, if that's  
 20 the standard, then you have to look at what  
 21 can Quebec develop and what can Newfoundland  
 22 and Labrador develop. And I share the  
 23 opinions of many that, you know, Gull Island  
 24 is probably among the lowest cost resource  
 25 in eastern Canada and would be well served

Page 187

1 in terms of – would be well positioned to  
 2 serve these markets.  
 3 Finally, I'd be remiss if I didn't  
 4 touch on the Maritimes, New Brunswick and  
 5 Nova Scotia. Mr. Marshall mentioned that  
 6 they have 2,000 megawatts of coal-fired  
 7 generation. The Belledune Project is  
 8 scheduled to retire, you know, in a  
 9 timeframe which might very well need to be  
 10 accelerated to adjust clean energy targets,  
 11 and there's even more coal in the Province  
 12 of Nova Scotia.  
 13 Final point, and then I'll turn it over  
 14 to Mr. Killeavy, is NEM as a separate  
 15 corporation is also consistent with our  
 16 findings. Emera, NB Power, SaskPower,  
 17 Ontario Power and Generation, BC Hydro all  
 18 have wholly-owned energy trading  
 19 subsidiaries similar to Nalcor Energy  
 20 Marketing, and from our perspective, you  
 21 know, NEM's effectiveness as a trader is  
 22 critical to the returns realized from the  
 23 Muskrat Falls project, as well as Churchill  
 24 Falls.  
 25 And I think another point I'd like –

Page 188

1 final point I'll make before turning it over  
 2 is it's important that there be strong  
 3 coordination between the energy marketer and  
 4 how the system is operated, and I think that  
 5 that to me is one reason that explains  
 6 having Power Supply as a separate entity  
 7 that's responsible for operating this  
 8 portfolio of hydroelectric generation assets  
 9 on the Churchill River and having NEM be  
 10 within – you know, within that orbit as a  
 11 separate affiliate.  
 12 MR. KILLEAVY:  
 13 A. I'll just talk briefly. I was the person  
 14 responsible for doing the extended review of  
 15 the Liberty Executive Organization analysis.  
 16 I'll be brief. Just to reinforce what Stan  
 17 Marshall said this morning and what John  
 18 Dalton said a few minutes ago, an  
 19 organization's mandate dictates its strategy  
 20 which dictates its structure. The number of  
 21 executives isn't necessarily a function of  
 22 the size of the company, in terms of  
 23 employees, its products and services, in  
 24 terms of the breadth, the revenues,  
 25 expenses, that type of thing. And it's also



Page 189	<p>1 going to reflect the organizational mandate.</p> <p>2 I mean, benchmarking is a good tool.</p> <p>3 I've used it in the past, but I think you</p> <p>4 really need to start from the mandate and</p> <p>5 work that way.</p> <p>6 As I see it, the number of executives</p> <p>7 at Nalcor is a function of its</p> <p>8 organizational mandate which we think is</p> <p>9 quite broad, and when it comes to</p> <p>10 considering the executive function in an</p> <p>11 organization like Nalcor, I mean that's – an</p> <p>12 organization's executive really matters.</p> <p>13 It's what internal stakeholders and external</p> <p>14 stakeholders will pay attention to and</p> <p>15 various factors in addition to mandate will</p> <p>16 also come into play in things like span of</p> <p>17 control, how centralized or decentralized</p> <p>18 decision making is going to be, and</p> <p>19 benchmarking may not be able to illicit</p> <p>20 these kinds of nuances when you look at an</p> <p>21 organization and try to do analysis of it.</p> <p>22 So that concludes our presentation, and</p> <p>23 we can open it for questions.</p> <p>24 EATON, Q.C.:</p> <p>25 Q. I have one question. Don't panic. Just in</p>	Page 191	<p>1 their trading aren't all that different than</p> <p>2 the forecasts that we're seeing for Nalcor</p> <p>3 Energy Marketing, they have a separate</p> <p>4 entity to do that. Hydro Quebec obviously</p> <p>5 is in its own world. So, we see utilities</p> <p>6 that have much smaller energy trading</p> <p>7 operations which derive less value for</p> <p>8 customers that have them as separate</p> <p>9 entities.</p> <p>10 So, contracting this out, we think you</p> <p>11 would lose a core capability, core</p> <p>12 competency, and I think as well, there's</p> <p>13 insights and value that the organization was</p> <p>14 going to get, once again from this synergy</p> <p>15 between how they're going to operate on</p> <p>16 these river systems. And when you contract</p> <p>17 out, you put that synergy at risk.</p> <p>18 Another point is I think there are</p> <p>19 potential issues with conflicts of interest.</p> <p>20 Who's going to provide this service? You</p> <p>21 know, do they already have a position in</p> <p>22 this market? If they don't have a position</p> <p>23 in this market, what insights can they bring</p> <p>24 to trading in this market? If they have a</p> <p>25 position in the market, there's a conflict</p>
Page 190	<p>1 terms of the contracting out function, the</p> <p>2 need to optimize, for a contractor to</p> <p>3 optimize the portfolio, do you have any</p> <p>4 comment on that?</p> <p>5 MR. KILLEAVY:</p> <p>6 A. So, I think the thing is, when you contract</p> <p>7 out, I mean, Nalcor's projects will be part</p> <p>8 of their overall portfolio and they'll be</p> <p>9 optimizing their overall portfolio and that</p> <p>10 optimization may not necessarily be the best</p> <p>11 thing for Nalcor. Might be, but may not be.</p> <p>12 So there's a risk involved in doing that, I</p> <p>13 think. John, did you have anything to add</p> <p>14 to that?</p> <p>15 MR. DALTON:</p> <p>16 A. Yeah. I think the other thing is I probably</p> <p>17 didn't – I obviously didn't make forcefully</p> <p>18 enough is we see this as a core competency.</p> <p>19 It's critical in terms of the success. You</p> <p>20 know, there's been many billion dollars</p> <p>21 spent in terms of Muskrat Falls and the</p> <p>22 Province should be as focused as possible in</p> <p>23 terms of maximizing the margins that it</p> <p>24 gets, and this is a critical skill and, you</p> <p>25 know, for the power exes whose profits from</p>	Page 192	<p>1 that has to be managed and I don't think you</p> <p>2 want someone who's going to be – have this</p> <p>3 critical role for the organization with a</p> <p>4 potential conflict. I think, you know, that</p> <p>5 would be very difficult to oversee and would</p> <p>6 present all kinds of challenges.</p> <p>7 EATON, Q.C.:</p> <p>8 Q. Okay. Thank you.</p> <p>9 CHAIR:</p> <p>10 Q. Mr. O'Brien.</p> <p>11 MR. O'BRIEN:</p> <p>12 Q. Yes, thank you, Madame Chair. Good morning</p> <p>13 – no, good afternoon, gentlemen. Liam</p> <p>14 O'Brien for Newfoundland Power. I don't</p> <p>15 have too many questions for you, but a</p> <p>16 couple of areas I wanted to canvas with you.</p> <p>17 The first I wanted to touch on was the scope</p> <p>18 of your review, I guess, and maybe before I</p> <p>19 get to that, can you tell me when you were</p> <p>20 retained? I saw in one of your slides 2015</p> <p>21 you were retained by Provincial Government.</p> <p>22 MR. DALTON:</p> <p>23 A. Yes, by the Provincial Government. We were</p> <p>24 retained here in May timeframe.</p> <p>25 MR. O'BRIEN:</p>

Page 193

1 Q. Okay.

2 MR. DALTON:

3 A. I want to say May 21st, May 23rd, something

4 like that.

5 MR. O'BRIEN:

6 Q. Yeah. And I guess my question is really

7 around the present organizational structure

8 that Nalcor has, you weren't retained to

9 consult on setting that organizational

10 structure up, were you?

11 MR. DALTON:

12 A. We were not.

13 MR. O'BRIEN:

14 Q. Okay. And in terms of your scope right now,

15 have you been asked to look at that

16 organizational structure from a cost-cutting

17 perspective at all?

18 MR. DALTON:

19 A. We have not.

20 MR. O'BRIEN:

21 Q. You have not.

22 MR. DALTON:

23 A. We haven't waded into those issues. Once

24 again, our perspective is more strategic,

25 does it appear to be well suited to the

Page 194

1 organization's mandate.

2 MR. O'BRIEN:

3 Q. And that's what I gathered from your report,

4 so I just wanted to confirm that. So, it's

5 a little bit of a different scope than what

6 Liberty Consulting would have had in terms

7 of this rate mitigation approach of looking

8 at are there areas where the structures can

9 maybe be fiddled with to see if there's some

10 rate mitigation opportunities? Is that

11 fair?

12 MR. DALTON:

13 A. That's true. I mean, obviously I'll make

14 the point that I made earlier is that I

15 think if you are going to fundamentally

16 change the organization, you need to step

17 back and strategically compare what's the

18 value of savings versus what's the value of

19 forgone opportunities.

20 MR. O'BRIEN:

21 Q. Okay.

22 MR. DALTON:

23 A. And if I haven't made it forcefully enough,

24 I'll say it again. I feel like there are

25 significant potential opportunities out here

Page 195

1 that the Province would miss if they don't

2 have the capabilities that would reside

3 within Power Supply.

4 MR. O'BRIEN:

5 Q. Okay. When you looked at the organizational

6 structures and one of your slides sort of

7 talks about in the context of Nalcor's

8 strategic objectives and you talked about

9 that here this morning. Did you see any

10 difference between Nalcor's broad strategic

11 priorities and Hydro's priorities as a

12 regulated entity?

13 (12:45 p.m.)

14 MR. DALTON:

15 A. Very definitely.

16 MR. O'BRIEN:

17 Q. Okay. Because I would see Hydro as having a

18 mandate for least cost reliable power versus

19 the broader mandate of Nalcor being an

20 energy development mandate. Is that fair?

21 MR. DALTON:

22 A. Yes, I think that is fair.

23 MR. O'BRIEN:

24 Q. And is there a conflict there or a concern

25 there from a structural perspective?

Page 196

1 MR. DALTON:

2 A. Well, I think that's one of the things that

3 drove the existing organizational structure

4 is the desire to, you know, separate out

5 Newfoundland and Labrador Hydro so that it

6 could focus on its core mission.

7 MR. O'BRIEN:

8 Q. Okay.

9 MR. DALTON:

10 A. Which is, you know, lowest cost and

11 reliability.

12 MR. O'BRIEN:

13 Q. And did you consider that in your analysis,

14 those two, that I guess opposing kind of -

15 not necessarily polar, but different

16 mandates in your analysis?

17 MR. DALTON:

18 A. Well, I think that was one of the things

19 that gave us comfort in the existing

20 structure.

21 MR. O'BRIEN:

22 Q. All right. Well, let's talk about, just

23 briefly, that aspect of your role and

24 looking at the structure and relationship

25 between regulated and unregulated sides of

Page 197

1 Nalcor. You would agree with me that when  
 2 you were retained, there was already a  
 3 distinction made as to what was regulated  
 4 and unregulated, at least partially by  
 5 Government policy certain assets were  
 6 determined to be unregulated. Is that fair?  
 7 MR. DALTON:  
 8 A. Yes.  
 9 MR. O'BRIEN:  
 10 Q. Okay. And were you asked to give an opinion  
 11 on that as to whether or not you would  
 12 normally see those types of assets as  
 13 regulated versus unregulated?  
 14 MR. DALTON:  
 15 A. No.  
 16 MR. O'BRIEN:  
 17 Q. No, okay. So, when you look at what you saw  
 18 in your review across different  
 19 jurisdictions, did you see differences  
 20 between what's in the regulated camp and  
 21 unregulated camp in each jurisdiction or is  
 22 there generally some similarities?  
 23 MR. DALTON:  
 24 A. Well, there's generally similarities in  
 25 terms of, you know, there are areas – and it

Page 198

1 depends in terms of the drivers are the  
 2 what's the underlying market structure. I  
 3 think that's a point of agreement with us  
 4 and Liberty. If there's a competitive  
 5 market, then we'd expect to see the  
 6 generation operations probably be  
 7 competitive.  
 8 MR. O'BRIEN:  
 9 Q. Right.  
 10 MR. DALTON:  
 11 A. Across all jurisdictions, we'd expect that  
 12 once again, the wires business, the  
 13 transmission and distribution will be  
 14 regulated.  
 15 MR. O'BRIEN:  
 16 Q. Okay. And that's generally sort of where  
 17 you'd see it. Would you normally see  
 18 transmission in the unregulated boat?  
 19 MR. DALTON:  
 20 A. Well, it depends in terms of what's the  
 21 focus of that transmission.  
 22 MR. O'BRIEN:  
 23 Q. Okay.  
 24 MR. DALTON:  
 25 A. If that transmission is effectively to serve

Page 199

1 an asset that is unregulated and its primary  
 2 purpose is essentially as a generator lead  
 3 line, then I think that that could support  
 4 it being in the unregulated business.  
 5 MR. O'BRIEN:  
 6 Q. Liberty had given some evidence to the  
 7 extent that they've seen kind of generation  
 8 on a local sort of – and I think it was  
 9 municipal utility kind of situation where  
 10 transmission may not be regulated, but it's  
 11 in a competitive market. Is that normally  
 12 what you would see? You'd see that  
 13 discipline of a competitive market if  
 14 transmission wasn't regulated?  
 15 MR. DALTON:  
 16 A. I think that discipline in a competitive  
 17 market for transmission is more typically  
 18 what we refer to as merchant transmission  
 19 where essentially a party acquires the right  
 20 to develop a transmission asset and does  
 21 that on a competitive basis, and we're  
 22 seeing this in the US in different markets.  
 23 MR. O'BRIEN:  
 24 Q. Does that provide kind of – like that market  
 25 that competition provides a proxy for

Page 200

1 regulation if it's unregulated?  
 2 MR. DALTON:  
 3 A. Yeah, I think the determination has been  
 4 made that you can rely on market forces to  
 5 ensure that the proposal that's put forward  
 6 is the lowest cost.  
 7 MR. O'BRIEN:  
 8 Q. And you don't have that here? Is that fair?  
 9 MR. DALTON:  
 10 A. No, but I think I would like to point out  
 11 that the distinction between, you know, the  
 12 transmission here which could be viewed as –  
 13 I guess is viewed as in the unregulated  
 14 business, from our perspective really is,  
 15 you know, a generator lead line. It's part  
 16 and parcel of the generation project and was  
 17 built to deliver the output of that  
 18 generation project to customers.  
 19 MR. O'BRIEN:  
 20 Q. Okay.  
 21 MR. DALTON:  
 22 A. So including it as a generation asset or as  
 23 an unregulated transmission asset is not  
 24 extreme, from our perspective.  
 25 MR. O'BRIEN:

Page 201

1 Q. And how about with respect to generation?  
 2 You've indicated you'd often see generation  
 3 in an unregulated sort of scenario and would  
 4 you agree with me that's largely because  
 5 there's some competitive forces showing some  
 6 discipline around that as well?  
 7 MR. DALTON:  
 8 A. That's right. I mean, I think that when  
 9 we're talking on a forward looking basis  
 10 prospectively, it's our expectation that  
 11 this would be competitive. Essentially,  
 12 these projects would have to be developed  
 13 based on export revenues that they would  
 14 realize, either through a contract or  
 15 participation in competitive wholesale  
 16 energy markets.  
 17 MR. O'BRIEN:  
 18 Q. And do you consider right now are there any  
 19 scenarios or any jurisdictions where you  
 20 saw, similar to Newfoundland, where you'd  
 21 have that generation, say the Muskrat Falls  
 22 generation facility, which is unregulated  
 23 but also has guaranteed cost capture from  
 24 customers? Do you see that anywhere?  
 25 MR. DALTON:

Page 202

1 A. I'm trying to think specifically in terms of  
 2 the situation in Manitoba and the situation  
 3 in BC, and effectively there, you know,  
 4 there's a similar arrangement. It's not  
 5 locked up as tightly as the Muskrat Falls  
 6 commercial arrangements, but -  
 7 MR. O'BRIEN:  
 8 Q. Can you explain that to me just a little bit  
 9 more?  
 10 MR. DALTON:  
 11 A. Sure. The notion here is that the cost of  
 12 these projects are largely going to be  
 13 recovered from customers. But they are -  
 14 you know, they are subject - in BC, it's  
 15 subject to oversight by the BCUC. The  
 16 sanctioning of that project was not an  
 17 element of oversight of the Utilities  
 18 Commission, the BC Utilities Commission.  
 19 MR. O'BRIEN:  
 20 Q. I guess my concern here is more when you  
 21 have a scenario where you've got essentially  
 22 captive customers and there doesn't appear  
 23 to be a competitive market, at least at this  
 24 point in time. You've indicated that you're  
 25 concerned about overregulating Hydro or

Page 203

1 overregulating Nalcor. Can you square that  
 2 circle?  
 3 MR. DALTON:  
 4 A. I feel like the issue is you're asking me to  
 5 look back in terms of the commercial  
 6 arrangements around Muskrat Falls and I feel  
 7 like -  
 8 MR. O'BRIEN:  
 9 Q. Well, maybe you're right. Maybe I am asking  
 10 that and in the context of where looking  
 11 forward if we have an opportunity for  
 12 legislative change or opportunity to look at  
 13 costs into the future on Muskrat Falls and  
 14 the LIL and the LTA as O&M costs and  
 15 construction costs or maintenance costs,  
 16 that kind of thing, occur in the future.  
 17 MR. DALTON:  
 18 A. It's my -  
 19 MR. O'BRIEN:  
 20 Q. Where we've got a captive cost base or  
 21 customer base, isn't there room for  
 22 regulation in that scenario?  
 23 MR. DALTON:  
 24 A. I'm not sure that there are, based on my  
 25 understanding of the legislative

Page 204

1 requirements in place and the funding  
 2 agreement with the Federal Government, and  
 3 I'm not an expert.  
 4 MR. O'BRIEN:  
 5 Q. If they're changed would you expect  
 6 regulation without competition?  
 7 MR. DALTON:  
 8 A. So, you're asking me if the legislation were  
 9 to change -  
 10 MR. O'BRIEN:  
 11 Q. In that hypothetical scenario.  
 12 MR. DALTON:  
 13 A. - if the financing arrangements were to  
 14 change -  
 15 MR. O'BRIEN:  
 16 Q. Yeah.  
 17 MR. DALTON:  
 18 A. - would it be appropriate to regulate?  
 19 MR. O'BRIEN:  
 20 Q. Yeah.  
 21 MR. DALTON:  
 22 A. Yeah, I think that, you know, in terms of  
 23 generally if customers are paying the cost,  
 24 it's appropriate to give it some form or  
 25 regulatory oversight.

Page 205

1 MR. O'BRIEN:  
 2 Q. Sure, and that's fair.  
 3 MR. DALTON:  
 4 A. It's a question of what is the appropriate  
 5 form of that regulatory oversight.  
 6 MR. O'BRIEN:  
 7 Q. Okay, all right. Well, I guess on that  
 8 point, just in terms of I'll skip to Nalcor  
 9 Energy Marketing because one of the issues  
 10 that has arisen is whether or not there  
 11 should be some regulatory oversight in that  
 12 context, and you raise that Nova Scotia  
 13 Power was really the only area where you saw  
 14 some regulatory oversight and that was with  
 15 respect to a rate mechanism that was  
 16 involved there to provide some oversight.  
 17 Is that fair?  
 18 MR. DALTON:  
 19 A. That's fair, and I should probably expand  
 20 upon it a little bit.  
 21 MR. O'BRIEN:  
 22 Q. Yeah, go ahead.  
 23 MR. DALTON:  
 24 A. So, in New Brunswick, they also have an  
 25 energy marketing affiliate. NB Power has an

Page 206

1 energy marketing affiliate and the regulator  
 2 in New Brunswick has reviewed the policies  
 3 in place, the risk management policies that  
 4 are in place.  
 5 MR. O'BRIEN:  
 6 Q. So, there's an audit process there after the  
 7 fact, is it?  
 8 MR. DALTON:  
 9 A. So, it is an audit, you know, very un-  
 10 intrusive form of oversight.  
 11 MR. O'BRIEN:  
 12 Q. Is that a fair thing to consider here, do  
 13 you think?  
 14 MR. DALTON:  
 15 A. I guess you'd want to consider to what  
 16 degree do we feel like those policies and  
 17 procedures that are already in place. One  
 18 thing that I get nervous about is regulatory  
 19 scope creep. I think if it were just  
 20 focused in terms of are there appropriate  
 21 risk management practices in place, we're  
 22 going to look at it once. Let's give –  
 23 let's have some transparency here. That's,  
 24 you know, something that is more acceptable  
 25 than kind of a broader scope of regulatory

Page 207

1 oversight.  
 2 MR. O'BRIEN:  
 3 Q. And is that – when you say more acceptable,  
 4 is that – and you've mentioned transparency.  
 5 Are you still – are you talking about  
 6 oversight beyond transparency, but short of  
 7 a full regulatory review? Is that kind of  
 8 where you see that?  
 9 MR. DALTON:  
 10 A. I guess I'm really just focused – my thought  
 11 would be that my understanding is there's a  
 12 regulatory policy framework, a manual that's  
 13 in place.  
 14 MR. O'BRIEN:  
 15 Q. Yeah.  
 16 MR. DALTON:  
 17 A. My understanding is that's been reviewed by  
 18 the Board.  
 19 MR. O'BRIEN:  
 20 Q. Yeah.  
 21 MR. DALTON:  
 22 A. And that there's a risk management committee  
 23 in Nalcor. I think frankly that's probably  
 24 sufficient oversight. That's what you would  
 25 probably see in BC.

Page 208

1 MR. O'BRIEN:  
 2 Q. In New Brunswick, is there something more  
 3 than that though? Can you -  
 4 MR. DALTON:  
 5 A. Yeah. In New Brunswick, the -  
 6 MR. O'BRIEN:  
 7 Q. Is the regulator more involved there?  
 8 MR. DALTON:  
 9 A. - the regulator basically asked for an  
 10 audit.  
 11 MR. O'BRIEN:  
 12 Q. Right.  
 13 MR. DALTON:  
 14 A. Which the utility did and shared with the  
 15 regulator.  
 16 MR. O'BRIEN:  
 17 Q. Okay. And would that be something that you  
 18 see as being a practical approach?  
 19 MR. DALTON:  
 20 A. As I said, I feel like there are  
 21 appropriate, if I can use the term,  
 22 safeguards in place. You know, the fact  
 23 that there is – you know, there is a manual.  
 24 There is – Nalcor has, my understanding, a  
 25 risk management committee and I think that

Page 209

1 the Board gave this oversight. I think that  
 2 from – you know, that’s pretty typical  
 3 practice in terms of – so, I feel like that  
 4 that’s probably adequate.  
 5 MR. O'BRIEN:  
 6 Q. I guess I’m kind of struggling with the fact  
 7 that the assets that are being used are  
 8 being paid by customers and that ultimately  
 9 I don’t get the impression that you have an  
 10 issue with any margins being – or any  
 11 benefits being returned to customers on kind  
 12 of reciprocity principle there. But if that  
 13 were the case, shouldn’t it be appropriate  
 14 for some oversight to make sure those  
 15 benefits are there and that they’re  
 16 appropriate?  
 17 MR. DALTON:  
 18 A. Well, I guess how you’ve just framed the  
 19 question, you’ve expanded the scope of what  
 20 I would view as the regulatory oversight.  
 21 We’re no longer just looking in terms of  
 22 appropriate risk management practices. So,  
 23 I think I’m more likely – you were more  
 24 likely to get me to agree in terms of a  
 25 review of appropriate risk management

Page 210

1 practices.  
 2 MR. O'BRIEN:  
 3 Q. Okay.  
 4 MR. DALTON:  
 5 A. But broader review of trading, I, you know-  
 6 MR. O'BRIEN:  
 7 Q. That’s your concern?  
 8 MR. DALTON:  
 9 A. I am concerned in terms of that you want  
 10 those marketers focused in terms of  
 11 maximizing the margins from their trades.  
 12 They don’t want to have say “well, we can’t  
 13 do these types of trades because the  
 14 regulator might not understand them or they  
 15 might view them as somehow being unduly  
 16 risky” when they fully understand that those  
 17 risks have been adequately managed.  
 18 MR. O'BRIEN:  
 19 Q. So is there then a conflict there between  
 20 protecting customers against rates and  
 21 maximizing benefits there for the Province?  
 22 That’s something we have to grapple with or  
 23 the Province has to grapple with?  
 24 MR. DALTON:  
 25 A. I’m sorry, can you -

Page 211

1 MR. KILLEAVY:  
 2 A. Can you just repeat it?  
 3 MR. DALTON:  
 4 A. - can you rephrase?  
 5 MR. O'BRIEN:  
 6 Q. I guess in terms – it seems to me to be a  
 7 bit of a conflict where you’ve got the –  
 8 that you have to deal with, I guess, where  
 9 you have customers paying for the assets and  
 10 you don’t see an issue with the customers  
 11 getting the benefit of the asset, but not  
 12 having the regulatory oversight to make sure  
 13 that that benefit is there and it’s not  
 14 overly risky; that the Province isn’t  
 15 engaging in risky trade, that kind of thing?  
 16 (1:00 p.m.)  
 17 MR. DALTON:  
 18 A. Well, I guess, my view is coloured by the  
 19 perspective of you need to balance the cost  
 20 of regulation with the value that it’s going  
 21 to bring and I don’t think it’s – you know,  
 22 so I think that’s one thing that’s causing  
 23 me to suggest that regulation might not be  
 24 needed here.  
 25 MR. O'BRIEN:

Page 212

1 Q. Okay. The last topic I wanted to cover was  
 2 just with respect to the Hydro Power Supply  
 3 integration and you did mention that earlier  
 4 in your presentation. I got the impression  
 5 from your report that you didn’t actually  
 6 delve into the analysis done by Liberty in a  
 7 full analysis type of approach yourself, did  
 8 you?  
 9 MR. DALTON:  
 10 A. You mean looking in terms of FTEs?  
 11 MR. O'BRIEN:  
 12 Q. Yeah, that sort of thing.  
 13 MR. DALTON:  
 14 A. We did not.  
 15 MR. O'BRIEN:  
 16 Q. And so, your opinion that Liberty’s proposal  
 17 could say undercut Nalcor’s ability to  
 18 deliver on its resource development mandate,  
 19 is that based on what you’re – on what  
 20 you’ve been told by Nalcor or is it based on  
 21 your own opinion?  
 22 MR. DALTON:  
 23 A. I think that from an organizational  
 24 perspective, it’s appropriate to have a  
 25 separate entity that’s, you know, focused in

Page 213

1 terms of resource development and that might  
 2 not be appropriate in PEI, but I think it is  
 3 appropriate in Newfoundland and Labrador,  
 4 based on, you know, the magnitude of the  
 5 resources that are here and available and  
 6 the opportunities in export market. So,  
 7 that's really what kind of drove that  
 8 perspective.  
 9 MR. O'BRIEN:  
 10 Q. So, it's not necessarily on the focus of the  
 11 FTEs or the numbers or savings that could be  
 12 there? That could probably be looked at  
 13 from an internal perspective from Nalcor.  
 14 It's just a matter of having it separate  
 15 from the regulated entity? Is that fair?  
 16 MR. DALTON:  
 17 A. That's fair.  
 18 MR. O'BRIEN:  
 19 Q. Yeah, okay. And in terms of your last point  
 20 on the contracted solution, whether or not  
 21 there's an opportunity to outsource here,  
 22 you mentioned in your report and you  
 23 mentioned here earlier as well about there's  
 24 a bit of a difference between looking at  
 25 Nalcor's volumes of – volumes and I guess

Page 214

1 value. Can you expand on that for me a  
 2 little bit?  
 3 MR. DALTON:  
 4 A. Sure. I guess I was just concerned that  
 5 Liberty was looking at the volume of energy  
 6 that would be available to sell in the  
 7 export markets and not giving appropriate  
 8 consideration to the value, essentially the  
 9 margins that would be earned. So, you know,  
 10 we're talking about, I think, in the  
 11 neighbourhood of three and a half terawatt  
 12 hours of energy.  
 13 MR. O'BRIEN:  
 14 Q. Okay.  
 15 MR. DALTON:  
 16 A. And you have to then apply to that what's  
 17 going to be the profit that's realized from  
 18 these trades and when you have a resource  
 19 like a hydroelectric resource where there's  
 20 virtually no marginal operating costs that  
 21 profit is pretty close to whatever revenue  
 22 you're realizing from those trades. The  
 23 other thing is the complexity associated  
 24 with operating a hydroelectric system,  
 25 making decisions in terms of do we store

Page 215

1 today or do we trade today, and what's our  
 2 view in terms of what's going to be  
 3 happening in these other markets. Should we  
 4 be buying power and essentially storing  
 5 energy for resale later? These are complex  
 6 questions which require an understanding in  
 7 terms of the river system and I feel like if  
 8 you have a third party who might not have  
 9 that understanding, you're going to  
 10 potentially be in a situation where you're  
 11 losing a lot of value.  
 12 MR. O'BRIEN:  
 13 Q. Are there third parties like that that deal  
 14 with those types of volumes versus—like is  
 15 that something that –  
 16 MR. DALTON:  
 17 A. Not to my knowledge in terms of -  
 18 MR. O'BRIEN:  
 19 Q. Okay, that's what I was wondering.  
 20 MR. DALTON:  
 21 A. Well, I wouldn't say "volumes." I would say  
 22 more in terms of these capabilities.  
 23 MR. O'BRIEN:  
 24 Q. Yes.  
 25 MR. DALTON:

Page 216

1 A. There might be parties out there that would  
 2 take on this. Is it going to provide the  
 3 best value for Newfoundland and Labrador?  
 4 MR. O'BRIEN:  
 5 Q. Okay.  
 6 MR. DALTON:  
 7 A. From my perspective, no.  
 8 MR. O'BRIEN:  
 9 Q. Okay. Those are all my questions. Thank  
 10 you, gentleman.  
 11 CHAIR:  
 12 Q. Thank you, Mr. O'Brien. Mr. Fitzgerald it  
 13 looks like, is it?  
 14 MR. FITZGERALD:  
 15 Q. Thank you, Madam Chair. Sorry, I'm Steve  
 16 Fitzgerald. I'm representing the Consumer  
 17 Advocate. Just a couple of questions. If  
 18 we can go to your executive summary--I  
 19 should say, Ms. Chairman, are we stopping at  
 20 1:30 or –  
 21 CHAIR:  
 22 Q. Yes.  
 23 MR. FITZGERALD:  
 24 Q. Yes, okay.  
 25

Page 217

1 CHAIR:  
 2 Q. Yes, I don't think we'll push it. It's been  
 3 a long morning.  
 4 MR. FITZGERALD:  
 5 Q. Okay.  
 6 CHAIR:  
 7 Q. Okay.  
 8 MR. FITZGERALD:  
 9 Q. If we can go to page 7 of your summary.  
 10 MR. KILLEAVY:  
 11 A. Are you talking about the report?  
 12 MR. FITZGERALD:  
 13 Q. Yes.  
 14 MR. KILLEAVY:  
 15 A. The report?  
 16 MR. FITZGERALD:  
 17 Q. The original one that's dated, sorry, it's  
 18 dated—it's Appendix 1 to the evidence of  
 19 Nalcor and Hydro that was filed September  
 20 19th. Do you have that with you?  
 21 MR. KILLEAVY:  
 22 A. What page, sir? What page? Are you talking  
 23 about page 7 of the –  
 24 MR. FITZGERALD:  
 25

Page 218

1 Q. We're looking at page 7.  
 2 MR. DALTON:  
 3 A. Of the report or the Executive Summary?  
 4 MR. FITZGERALD:  
 5 Q. Of the actual report. Not the -  
 6 MR. DALTON:  
 7 A. Okay.  
 8 MR. FITZGERALD:  
 9 Q. I'm sorry, of the –  
 10 MR. DALTON:  
 11 A. No, I think that's right there, yeah.  
 12 MR. FITZGERALD:  
 13 Q. The September 19th document.  
 14 MR. DALTON:  
 15 A. Yes, yeah, yeah.  
 16 MR. FITZGERALD:  
 17 Q. Not the PowerPoint.  
 18 MR. DALTON:  
 19 A. Yeah. Yeah, yeah, got it.  
 20 MR. FITZGERALD:  
 21 Q. Okay. And I think you briefly referred to  
 22 this this morning, but I just want to get  
 23 some clarity here. In the second paragraph  
 24 you quote Druker's aphorism and then you  
 25

Page 219

1 indicate that, "Liberty's mission from the  
 2 Board under the reference question was to  
 3 identify options to mitigate electricity  
 4 rates within the province and this is an  
 5 important objective, but Nalcor's current  
 6 mandate is clearly broader than this with a  
 7 core focus being to support resource  
 8 development in our province." So, when I  
 9 read that and I think that's the theme, it  
 10 seems like a touchstone and you come back to  
 11 that several times. Is it your position  
 12 that the rate mitigation reference is  
 13 subordinate to this mandate?  
 14 MR. DALTON:  
 15 A. I don't think it's subordinate. I think it  
 16 needs to be weighed in light of it and that  
 17 this is a decision that's ultimately going  
 18 to be made by the shareholder. And I'm  
 19 trying to make the case that there are very  
 20 meaningful resource development  
 21 opportunities and that the—you know, if you  
 22 can do the math and figure out what's the  
 23 net present value of these resource  
 24 development opportunities versus the net  
 25

Page 220

1 present value of the savings, my gut tells  
 2 me that you need to be very careful in terms  
 3 of how you cut this organization, otherwise,  
 4 you're going to not be able to realize, you  
 5 know, the opportunity associated with  
 6 developing these additional projects and  
 7 expanding your participation in export  
 8 markets.  
 9 MR. FITZGERALD:  
 10 Q. Yes, but that seems to be a perspective view  
 11 of things as if there is some development  
 12 that's pending, but there are no  
 13 developments pending that we're aware of,  
 14 are there?  
 15 MR. DALTON:  
 16 A. No, but I am obviously just talking about  
 17 the opportunities out there as I see them,  
 18 and that was I felt like one of my charges,  
 19 was to provide some perspective on that.  
 20 And that's one thing that coloured my vision  
 21 in terms of what's the appropriate  
 22 organization to have in place?  
 23 MR. FITZGERALD:  
 24 Q. Right, but our focus for this reference is  
 25



Page 221

1 rate mitigation, of course?  
 2 MR. DALTON:  
 3 A. It is and the decision that the shareholder  
 4 ultimately has to make is what's the  
 5 appropriate rate mitigation, recognizing  
 6 from my perspective as someone who advises  
 7 government, what are these other potential  
 8 opportunities out there?  
 9 MR. FITZGERALD:  
 10 Q. Just turning to your point again in the  
 11 Executive Summary at page 26—in your  
 12 September 19th document, down at 4.4. And  
 13 this is—if you're with me there, you have  
 14 some comparators there. You have, "Emera,  
 15 NB Power, BC Hydro, SaskPower and Hydro  
 16 Quebec, all have wholly-owned energy trading  
 17 subsidiaries similar to NEM." In any of  
 18 those circumstances or those particular  
 19 utilities, are any of those facing the  
 20 challenges that this particular—or Nalcor is  
 21 currently facing? I think Mr. Marshall  
 22 referred to it this morning as "crisis."  
 23 MR. DALTON:  
 24 A. I would say not. They're not in the same  
 25

Page 222

1 situation, but I mean my point remains the  
 2 same, is that you need to weigh the value  
 3 that an organization brings versus its  
 4 underlying costs. And for Nalcor Energy  
 5 Marketing, once again I'm going to repeat  
 6 myself, it's a core capability and it's  
 7 essential in terms of realizing the value of  
 8 the investment that the province has made.  
 9 We can, you know, question the  
 10 reasonableness of that investment, but we're  
 11 effectively stuck with that investment.  
 12 Let's do our best job in terms of enhancing  
 13 its value in the future by trading around it  
 14 efficiently and profitably.  
 15 MR. FITZGERALD:  
 16 Q. Right, but again, that's a perspective view  
 17 of things of course. We're dealing with the  
 18 present as to where Nalcor finds itself  
 19 today; not with its future opportunities or  
 20 potential opportunities that haven't been  
 21 defined yet.  
 22 MR. DALTON:  
 23 A. No, but I guess I'm talking about 2020 and  
 24 the volumes that are going to be available  
 25

Page 223

1 to—for Nalcor Energy Marketing to trade at  
 2 that point.  
 3 MR. FITZGERALD:  
 4 Q. Yes, and we have the same concern. 2020 is  
 5 when, if it all comes up, that's when the—we  
 6 have to pay the piper. That is the rate  
 7 payer has to start paying and that's why  
 8 we're concerned with the present, but it  
 9 seems to be that your focus is that, well,  
 10 we have to develop an expertise in NEM that  
 11 will benefit us long term at some point in  
 12 time?  
 13 MR. DALTON:  
 14 A. No, I think it makes—NEM makes economic  
 15 sense in is it a good investment for the  
 16 province as a separate entity today, in 2020  
 17 with the volumes that it will have to trade,  
 18 the 3.5 terawatt-hours that—which represents  
 19 the surplus from Muskrat Falls as well as  
 20 the recall block. I think that it  
 21 represents good value for Newfoundland and  
 22 Labrador customers.  
 23 MR. FITZGERALD:  
 24 Q. And could you repeat what you expect the—  
 25

Page 224

1 we're talking export sales now in '20 or  
 2 2021. Do you have a handle on what they're  
 3 going to be? You said three terawatt-hours,  
 4 I think?  
 5 MR. JONES:  
 6 A. Three and a half.  
 7 MR. DALTON:  
 8 A. That's my understanding, is three and a half  
 9 terawatt-hours. Mr. Jones would be able to  
 10 give you a more definitive estimate. I  
 11 looked briefly in terms of some of the  
 12 information that's Synapse put together, but  
 13 that's my understanding as a ballpark  
 14 number.  
 15 MR. FITZGERALD:  
 16 Q. Do you have a ballpark number of the number  
 17 of megawatts that will be available just  
 18 from Muskrat Falls in 2021?  
 19 MR. DALTON:  
 20 A. Megawatts are harder to—I think the real—the  
 21 value is in energy and I would focus on  
 22 energy. In terms of megawatts, there's the—  
 23 you have to recognize that there's the Nova  
 24 Scotia block. One needs to subtract that  
 25

Page 225

1 out.

2 MR. FITZGERALD:

3 Q. Right.

4 MR. DALTON:

5 A. How would you value that from a megawatt

6 basis? So, I know what the rate of capacity

7 of Muskrat Falls is. You know, it's—I feel

8 like megawatts is not the appropriate metric

9 to be looking at the revenue potential that

10 Nalcor Energy Marketing offers.

11 MR. FITZGERALD:

12 Q. And again, the potential, you're talking as

13 soon as it comes on, that is Muskrat Falls

14 comes on line? As soon as?

15 MR. DALTON:

16 A. As soon as, yes, exactly.

17 MR. FITZGERALD:

18 Q. Okay.

19 MR. DALTON:

20 A. Exactly.

21 MR. FITZGERALD:

22 Q. All right, and Synapse was here yesterday

23 and they were of the view that it wasn't an

24 astounding amount. I think we went through

25

Page 226

1 the—it was measured in gigawatts. That was

2 their measure. We get the impression that

3 it's not a ton of energy to sell in 2021 in

4 any event and that perhaps what you're

5 speaking about is the availability of power

6 in the future. But you believe that

7 there's—have you measured in any way the—

8 what you expect the revenues would be from

9 export sales in 2021?

10 MR. DALTON:

11 A. I've seen estimates out there and the

12 estimates--I'm not, as I stand here today,

13 in a position to kind of say it's going to

14 be 98 million dollars, but it's somewhere in

15 that ballpark, but it's—so, I'm surprised

16 that Synapse doesn't see that as, you know,

17 the volumes as significant. I feel like

18 it's significant and I feel like, once

19 again, we're talking about volumes and we

20 need to go beyond volumes and talk about

21 value, and recognize what could be, if we're

22 making a strategic decision regarding should

23 we contract out this function, what's the

24 risk in terms of losing some of the value

25

Page 227

1 because we have a party that can't

2 coordinate as well as Nalcor Energy

3 Marketing? Might have a conflict of

4 interest and you know it's—frankly, it

5 doesn't have the same incentive in terms of,

6 you know, maximizing the profitability of

7 every transaction.

8 MR. FITZGERALD:

9 Q. If we go that far and agree with you, what

10 would be the harm in regulating that arm?

11 MR. DALTON:

12 A. I think as I said, I am concerned with

13 having an entity like that focused on

14 regulatory oversight as opposed to profit

15 maximization. Based on my experience that

16 in regulated entities oversight causes

17 people to respond to the form of oversight.

18 And I feel like the objective here should

19 be, you know, profit maximization; not how

20 will this trade be, potentially be?

21 MR. FITZGERALD:

22 Q. So, I understand your position, but do you

23 have any particular examples of that where

24 you've seen some interference that you can

25

Page 228

1 actually—there's some metric that would

2 measure that effect of overregulation?

3 (1:15 p.m.)

4 MR. DALTON:

5 A. No, because I don't see that any form of

6 regulation like that for similar-situated

7 entities. I've talked about the oversight

8 that we see from fuel procurement. That's

9 very prudent; that very appropriate. It's

10 very different than what we're talking about

11 for Nalcor Energy Marketing. I think that

12 when you've got a fuel cost pass-through,

13 you should be looking in terms of what

14 they're doing, and that's appropriate and

15 you can realize significant value for

16 customers. That's very different than the

17 type of trading that Nalcor Energy Marketing

18 is going to be conducting.

19 MR. FITZGERALD:

20 Q. Just if I can ask you to look at your

21 September 19th report again, please, at page

22 31. In the second paragraph, the second-

23 full paragraph there about the fifth line,

24 you say that—or before that, you say,

25

Page 229

1 “Liberty appears to have unbridled optimism  
 2 regarding the capabilities as regulators to  
 3 exercise oversight. Liberty fails to  
 4 acknowledge in Canada where Crown  
 5 corporations are the predominant suppliers  
 6 of electricity, the degree of regulatory  
 7 oversight varies. With provincial ownership  
 8 there is reduced rationale for regulatory  
 9 oversight.” So, I take it then, obviously,  
 10 that you’re suggesting that government, in  
 11 this case, is the sole shareholder and so we  
 12 shouldn’t worry about lack of regulation  
 13 because the province will be able to control  
 14 the cost. Is that the layman’s version of  
 15 what you were saying?  
 16 MR. DALTON:  
 17 A. No, I think I’m not talking about lack of  
 18 regulatory. I’m not suggesting no  
 19 regulatory oversight. I’m suggesting,  
 20 what’s the appropriate form of regulatory  
 21 oversight? And as I say here, I feel like  
 22 it varies, recognizing that with the Crown,  
 23 there’s a public interest element to it. In  
 24 some jurisdictions, you know, they have, you  
 25

Page 230

1 know, considerable regulatory oversight. In  
 2 others, they don’t. It varies and that’s  
 3 really what I was referring to here.  
 4 MR. FITZGERALD:  
 5 Q. Because in our recent experience, it doesn’t  
 6 seem like the reduced rationale would  
 7 actually apply. We had a situation where  
 8 there was no regulation of Nalcor and  
 9 provincial ownership was the shareholder, if  
 10 you will, but now where you and I are  
 11 talking about, we’re talking about rate  
 12 mitigation. So, there was a big problem  
 13 with the lack of oversight. So, you know,  
 14 for you to say that provincial—with  
 15 provincial ownership, there is reduced  
 16 rationale for regulatory oversight, it’s  
 17 cold comfort to us. Do you really believe  
 18 that, you know, that provincial ownership is  
 19 some kind of surrogate, some kind of  
 20 substitute for regulatory oversight?  
 21 MR. DALTON:  
 22 A. I’m not suggesting it’s a substitute. I’m  
 23 suggesting that when you have it, it’s--the  
 24 language is there. That when you have it,  
 25

Page 231

1 it can affect the degree of regulatory  
 2 oversight.  
 3 MR. FITZGERALD:  
 4 Q. Again, referring to Mr. Marshall’s  
 5 characterization of the Muskrat Falls  
 6 project or the state it is right now, I  
 7 understood him to say it’s in crisis. In  
 8 your experience, and I know you’ve only been  
 9 retained in your current sort of format,  
 10 that is as power advisory, recently, but is-  
 11 -in your experience have you—would you be  
 12 able to say globally whether Nalcor has done  
 13 a good job on the Muskrat Falls Project?  
 14 MR. DALTON:  
 15 A. And there’s a significant cost overrun.  
 16 There’s—we see this in terms of Site C. We  
 17 see this in terms of Keeyask in terms of  
 18 Manitoba. These projects are difficult to  
 19 build. I think that one thing that, you  
 20 know, can potentially contribute to, you  
 21 know, the challenges that the province has  
 22 had was, you know, the lack of capability  
 23 within the organization starting out. And  
 24 that’s one of the things that cause me to  
 25

Page 232

1 think why it’s appropriate to have an entity  
 2 like Power Supply that’s there, that has the  
 3 capability to kind of manage projects of  
 4 this magnitude.  
 5 MR. FITZGERALD:  
 6 Q. You mentioned that you were with Navigant at  
 7 one point in time? Did you -  
 8 MR. DALTON:  
 9 A. That’s correct.  
 10 MR. FITZGERALD:  
 11 Q. So, were you early in the game providing any  
 12 advice to Nalcor in that version of your -  
 13 MR. DALTON:  
 14 A. I don’t know what you mean by “early in the  
 15 game.”  
 16 MR. FITZGERALD:  
 17 Q. All right. So, the 2012--I guess the  
 18 project is around—that was around when it  
 19 started.  
 20 MR. DALTON:  
 21 A. So, I started Power Advisory in 2007.  
 22 MR. FITZGERALD:  
 23 Q. Okay, all right.  
 24 MR. DALTON:  
 25

Page 233

1 A. So, I was not with (unintelligible).  
 2 MR. FITZGERALD:  
 3 Q. Thank you, I misunderstood. Okay. Just to  
 4 look at your—go to your PowerPoint  
 5 presentation now. There’s a comment at  
 6 Slide 5. In the second bullet or the second  
 7 bullet within the second bullet, you refer  
 8 to, you’ve done a “top down review  
 9 recognizing Nalcor’s strategic focus and  
 10 role in value creation for the Province.”  
 11 So can you perhaps expand on what your view  
 12 of what value Nalcor has created for the  
 13 Province?  
 14 MR. DALTON:  
 15 A. So I’m talking about, you know, this is  
 16 prospectively, we’re talking about a  
 17 decision to be made in terms of do we  
 18 maintain the Nalcor organization as it  
 19 exists today, and so I was taking a  
 20 prospective view and I was looking at the  
 21 development opportunities that exist in the  
 22 Province and Nalcor’s potential role in  
 23 terms of unlocking that value by essentially  
 24 developing those resources potentially with  
 25

Page 235

1 A. I’m talking about the role that it can play  
 2 in terms of promoting the development of  
 3 projects and as I said just a minute ago, it  
 4 can be done in a way that’s effectively zero  
 5 risk to the Province through kind of a  
 6 royalty arrangement. That’s one possible  
 7 arrangement where you can create meaningful  
 8 value for the Province in essentially a very  
 9 low or no risk way.  
 10 MR. FITZGERALD:  
 11 Q. I wonder, Madam Chair, I’m going to be  
 12 heading on to a different topic, I wonder if  
 13 it’s –  
 14 CHAIR:  
 15 Q. I think we can entertain an early recess  
 16 today. We’ll see you in the morning.  
 17 MR. FITZGERALD:  
 18 Q. Thank you.  
 19 Upon conclusion at 1:23 p.m.  
 20  
 21  
 22  
 23  
 24  
 25

Page 234

1 a partner in a manner that the development  
 2 can be done in a de-risk fashion that  
 3 doesn’t put the Province under risk.  
 4 MR. FITZGERALD:  
 5 Q. Okay, so again I guess you’re reading this,  
 6 it says “Nalcor’s strategic focus”—this goes  
 7 back to the mandate that we spoke about  
 8 earlier, I guess.  
 9 MR. DALTON:  
 10 A. Yes.  
 11 MR. FITZGERALD:  
 12 Q. Yes, okay, so obviously if the mandate  
 13 changes, well we’ll be talking about  
 14 something else, but when in fact you say  
 15 that there’s a role in the value created for  
 16 the Province, right now we have a 12.7  
 17 billion dollar project, cost overruns,  
 18 everybody knows that, that’s not really  
 19 current value, is it? There’s no value  
 20 there currently per se.  
 21 MR. DALTON:  
 22 A. As I said, I’m talking prospectively.  
 23 MR. FITZGERALD:  
 24 Q. Right.  
 25 MR. DALTON:

Page 236

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of Reference to the Board, Rate Mitigation Options and Impacts, Muskrat Falls Project, heard on the 8th day of October, 2019 before the Newfoundland and Labrador Board of Commissioners of Public Utilities, 120 Torbay Road, St. John’s, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John’s, Newfoundland and Labrador this 8th day of October, 2019

Judy Moss

<b>A</b>				
<p><b>Ability</b> - 7:25, 20:2, 106:10, 108:9, 119:16, 171:10, 212:17</p> <p><b>Able</b> - 8:10, 9:14, 12:12, 36:14, 168:22, 173:15, 177:1, 189:19, 220:4, 224:9, 229:13, 231:12</p> <p><b>Absolute</b> - 57:18</p> <p><b>Accelerate</b> - 19:11</p> <p><b>Accelerated</b> - 187:10</p> <p><b>Accept</b> - 112:3, 124:3, 124:7, 136:12</p> <p><b>Acceptable</b> - 206:24, 207:3</p> <p><b>Accepted</b> - 121:11, 121:23, 122:4, 122:17, 122:21, 124:11</p> <p><b>Access</b> - 49:11, 112:7, 156:20</p> <p><b>Accommodated</b> - 137:3</p> <p><b>Accord</b> - 166:15, 180:18</p> <p><b>According</b> - 71:23</p> <p><b>Account</b> - 123:9, 125:2, 131:14</p> <p><b>Achieve</b> - 47:14, 111:4, 167:4</p> <p><b>Achieving</b> - 180:14</p> <p><b>Acknowledge</b> - 21:8, 229:4</p> <p><b>Acquires</b> - 199:19</p> <p><b>Acquisition</b> - 4:8</p> <p><b>Across</b> - 105:8, 161:6, 162:14, 172:16, 197:18, 198:11</p> <p><b>Act</b> - 12:16, 108:8</p> <p><b>Actively</b> - 177:1</p> <p><b>Activities</b> - 175:14</p> <p><b>Actual</b> - 33:8, 87:25, 88:5, 89:25, 91:2, 91:15, 218:5</p> <p><b>Add</b> - 26:24, 31:21, 41:24, 190:13</p> <p><b>Addition</b> - 32:23, 189:15</p> <p><b>Address</b> - 85:8, 125:4, 186:17</p> <p><b>Adequate</b> - 209:4</p>	<p><b>Adequately</b> - 170:20, 210:17</p> <p><b>Adjust</b> - 187:10</p> <p><b>Adjustment</b> - 173:13</p> <p><b>Adjustments</b> - 13:10</p> <p><b>Administered</b> - 10:9:9</p> <p><b>Admonition</b> - 98:2</p> <p><b>Adopted</b> - 44:9</p> <p><b>Advance</b> - 157:4</p> <p><b>Advantage</b> - 72:20, 81:11, 105:21, 185:24</p> <p><b>Advantages</b> - 52:19, 52:22</p> <p><b>Adversely</b> - 183:4</p> <p><b>Advice</b> - 121:21, 164:24, 167:1, 232:12</p> <p><b>Advised</b> - 161:19, 161:22</p> <p><b>Advises</b> - 221:6</p> <p><b>Advisor</b> - 164:10</p> <p><b>Advisory</b> - 12:4, 44:11, 96:6, 121:4, 121:24, 160:6, 160:18, 160:23, 161:2, 162:7, 164:10, 164:11, 165:15, 166:3, 172:23, 231:10, 232:21</p> <p><b>Advisory's</b> - 44:8</p> <p><b>Advocate</b> - 10:12, 10:13, 61:2, 216:17</p> <p><b>Affairs</b> - 2:13, 13:19</p> <p><b>Affect</b> - 10:19, 10:20, 20:2, 79:22, 175:19, 231:1</p> <p><b>Affected</b> - 10:17</p> <p><b>Affecting</b> - 183:5</p> <p><b>Affiliate</b> - 171:14, 188:11, 205:25, 206:1</p> <p><b>Affiliated</b> - 123:12</p> <p><b>Affiliates</b> - 175:13</p> <p><b>Afraid</b> - 77:8</p> <p><b>Afternoon</b> - 6:12, 160:25, 192:13</p> <p><b>Against</b> - 61:10, 61:12, 62:1, 98:11, 123:7, 210:20</p> <p><b>Age</b> - 90:6</p> <p><b>Agencies</b> - 8:12</p>	<p><b>Agency</b> - 102:10, 163:3</p> <p><b>Agent</b> - 163:22</p> <p><b>Aggressively</b> - 184:8</p> <p><b>Agree</b> - 13:7, 23:14, 27:7, 27:20, 33:23, 33:24, 34:2, 34:3, 35:16, 35:18, 48:23, 59:10, 88:15, 114:12, 116:25, 121:5, 121:10, 122:4, 122:14, 122:20, 123:5, 177:3, 197:1, 201:4, 209:24, 227:9</p> <p><b>Agreed</b> - 34:9, 59:1, 156:7</p> <p><b>Agreement</b> - 71:5, 75:3, 78:12, 81:5, 166:6, 198:3, 204:2</p> <p><b>Agreements</b> - 96:25, 109:17, 111:15, 111:16, 143:17</p> <p><b>Agrees</b> - 146:10</p> <p><b>Ahead</b> - 29:1, 135:24, 205:22</p> <p><b>Aiming</b> - 158:15</p> <p><b>AI</b> - 108:17</p> <p><b>Alberta</b> - 3:14, 95:18, 95:20, 105:15, 106:11</p> <p><b>Alive</b> - 137:17</p> <p><b>Allocate</b> - 47:25, 145:15</p> <p><b>Allocating</b> - 177:16</p> <p><b>Allow</b> - 110:22, 111:16, 111:24, 167:4, 182:8</p> <p><b>Allowed</b> - 29:19, 79:13, 97:1, 113:10</p> <p><b>Alluded</b> - 120:13</p> <p><b>Alone</b> - 13:17, 34:3, 52:1, 175:5, 180:22, 184:17</p> <p><b>Alternative</b> - 66:24, 157:3</p> <p><b>Ambitious</b> - 183:19, 183:20</p> <p><b>America</b> - 25:14, 161:6, 162:14</p> <p><b>American</b> - 12:4, 71:15</p> <p><b>Among</b> - 81:5, 177:23, 186:24</p> <p><b>Amount</b> - 70:22,</p>	<p>71:2, 94:13, 98:4, 98:10, 123:6, 225:24</p> <p><b>Amounts</b> - 64:15, 72:14</p> <p><b>Amplify</b> - 186:1</p> <p><b>Analysis</b> - 5:21, 9:21, 33:22, 57:6, 96:23, 97:9, 101:7, 101:12, 102:16, 116:22, 156:8, 156:15, 157:7, 162:6, 162:9, 188:15, 189:21, 196:13, 196:16, 212:6, 212:7</p> <p><b>Annual</b> - 104:12</p> <p><b>Antonuk</b> - 6:10</p> <p><b>Anybody's</b> - 153:25</p> <p><b>Anyway</b> - 29:1, 36:13, 59:21, 87:25, 114:17, 119:1</p> <p><b>Anywhere</b> - 201:24</p> <p><b>Aphorism</b> - 218:24</p> <p><b>Apparent</b> - 177:15</p> <p><b>Appeal</b> - 127:6</p> <p><b>Appear</b> - 193:25, 202:22</p> <p><b>Appeared</b> - 4:15, 4:17, 63:24, 121:5</p> <p><b>Appearing</b> - 66:13</p> <p><b>Appears</b> - 175:3, 179:21, 229:1</p> <p><b>Appendix</b> - 217:18</p> <p><b>Appetite</b> - 77:3</p> <p><b>Applied</b> - 121:9, 121:22, 125:4, 168:25</p> <p><b>Applies</b> - 171:19</p> <p><b>Apply</b> - 121:14, 122:11, 124:8, 179:10, 214:16, 230:7</p> <p><b>Appointed</b> - 147:1</p> <p><b>Appreciate</b> - 24:2, 67:12, 77:5</p> <p><b>Approach</b> - 11:22, 32:21, 118:22, 194:7, 208:18, 212:7</p> <p><b>Approached</b> - 135:3</p> <p><b>Approaching</b> - 31:7</p> <p><b>Appropriate</b> - 139:</p>	<p>8, 142:12, 142:13, 142:18, 146:17, 152:12, 155:14, 161:22, 162:1, 166:8, 171:17, 173:18, 174:18, 177:18, 181:15, 182:12, 183:6, 204:18, 204:24, 205:4, 206:20, 208:21, 209:13, 209:16, 209:22, 209:25, 212:24, 213:2, 213:3, 214:7, 220:21, 221:5, 225:8, 228:9, 228:14, 229:20, 232:1</p> <p><b>Appropriately</b> - 153:24, 170:20</p> <p><b>Approve</b> - 139:13, 148:3</p> <p><b>Approves</b> - 141:22</p> <p><b>Approximately</b> - 34:14</p> <p><b>April</b> - 1:22, 63:8</p> <p><b>Area</b> - 26:13, 75:14, 97:2, 108:1, 122:9, 126:5, 156:5, 166:6, 170:14, 175:4, 177:11, 205:13</p> <p><b>Areas</b> - 33:10, 162:25, 167:17, 192:16, 194:8, 197:25</p> <p><b>Aren't</b> - 123:19, 191:1</p> <p><b>Argue</b> - 21:18, 108:11, 111:18</p> <p><b>Argued</b> - 177:12</p> <p><b>Argues</b> - 177:12</p> <p><b>Argument</b> - 143:2</p> <p><b>Arisen</b> - 205:10</p> <p><b>Arizona</b> - 3:18</p> <p><b>Arm</b> - 43:19, 227:10</p> <p><b>Arrangement</b> - 202:4, 235:6, 235:7</p> <p><b>Arrangements</b> - 9:4, 202:6, 203:6, 204:13</p> <p><b>Aspect</b> - 48:8, 48:11, 196:23</p> <p><b>Aspects</b> - 18:16, 19:22, 33:12, 129:17, 170:13</p>

<p><b>Aspiration</b> - 140:3  <b>Asserted</b> - 170:15  <b>Asserts</b> - 172:23  <b>Assess</b> - 163:6, 165:21  <b>Assessment</b> - 162:13  <b>Asset</b> - 121:6, 121:8, 122:2, 199:1, 199:20, 200:22, 200:23, 211:11  <b>Assets</b> - 6:25, 7:16, 7:18, 8:17, 8:18, 18:18, 19:20, 21:15, 26:6, 26:7, 26:8, 38:21, 41:10, 41:18, 42:8, 50:22, 53:24, 99:16, 102:5, 128:4, 129:16, 129:23, 133:13, 137:10, 137:22, 137:24, 166:10, 188:8, 197:5, 197:12, 209:7, 211:9  <b>Assigned</b> - 13:19, 142:24, 143:14  <b>Assignments</b> - 161:24  <b>Assist</b> - 98:6, 100:12, 124:9, 167:9  <b>Assists</b> - 80:12  <b>Associated</b> - 2:25, 74:22, 102:8, 135:23, 162:25, 163:20, 182:15, 182:24, 184:23, 214:23, 220:5  <b>Association</b> - 163:6  <b>Assumed</b> - 7:15  <b>Assumption</b> - 133:20, 145:13  <b>Astaldi</b> - 91:7, 91:8  <b>Astounding</b> - 225:24  <b>ATIPPA</b> - 114:8, 114:19  <b>Atlantic</b> - 23:16, 23:17, 23:19, 29:14, 80:8, 163:3, 163:7, 163:9, 178:13  <b>Attempt</b> - 92:20  <b>Attempting</b> - 12:23</p>	<p><b>Attention</b> - 96:1, 96:2, 189:14  <b>Attitude</b> - 29:23  <b>Audit</b> - 206:6, 206:9, 208:10  <b>Audited</b> - 148:5  <b>Auditor</b> - 27:23, 49:6, 49:22, 112:5, 112:12, 113:4, 143:13  <b>Auditors</b> - 142:11, 145:19, 147:3  <b>Audits</b> - 117:19, 153:4  <b>August</b> - 64:2  <b>Authored</b> - 171:8  <b>Authority</b> - 164:13, 164:17  <b>AV/DC</b> - 26:16  <b>Availability</b> - 226:5  <b>Available</b> - 15:7, 54:6, 71:3, 71:15, 71:18, 72:8, 75:7, 82:3, 101:21, 130:3, 133:23, 139:3, 172:15, 178:13, 186:10, 213:5, 214:6, 222:24, 224:17  <b>Average</b> - 25:21, 108:11  <b>Avoids</b> - 170:2  <b>Await</b> - 85:9  <b>Aware</b> - 108:7, 144:4, 144:6, 156:19, 181:25, 220:13  <b>Awful</b> - 57:6</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <p><b>B</b></p> </div> <p><b>Baby</b> - 21:22, 126:17, 126:19, 127:6, 127:8, 127:9, 127:11  <b>Back</b> - 2:7, 4:18, 11:2, 13:2, 15:17, 15:24, 37:1, 43:5, 45:5, 45:15, 47:4, 66:20, 67:2, 89:18, 118:9, 118:19, 130:17, 133:20, 147:9, 148:20, 152:9, 154:8, 183:7, 194:17, 203:5, 219:10, 234:7  <b>Background</b> - 1:15</p>	<p>, 24:6, 124:8, 160:22  <b>Baking</b> - 105:6  <b>Balance</b> - 102:13, 120:1, 211:19  <b>Ball</b> - 31:8  <b>Ballooned</b> - 100:7  <b>Ballpark</b> - 66:6, 224:13, 224:16, 226:15  <b>Barry</b> - 95:9  <b>Base</b> - 43:24, 203:20, 203:21  <b>Based</b> - 11:16, 105:6, 105:7, 164:19, 165:21, 165:23, 172:7, 176:20, 180:11, 182:20, 201:13, 203:24, 212:19, 212:20, 213:4, 227:15  <b>Baseload</b> - 184:14, 184:15  <b>Basis</b> - 69:2, 71:3, 140:11, 156:23, 180:22, 199:21, 201:9, 225:6  <b>Bay</b> - 43:19, 70:12  <b>BC</b> - 3:14, 95:6, 171:6, 171:7, 171:10, 171:14, 187:17, 202:3, 202:14, 202:18, 207:25, 221:15  <b>BCUC</b> - 171:9, 202:15  <b>Bear</b> - 49:1, 76:22, 181:15  <b>Bearing</b> - 11:4, 169:18  <b>Became</b> - 2:12, 2:14, 2:16, 13:14, 145:22  <b>Become</b> - 10:12, 13:2, 143:25, 172:15  <b>Becomes</b> - 12:24, 154:20  <b>Belief</b> - 151:6  <b>Belize</b> - 3:11, 3:22, 3:24  <b>Belledune</b> - 187:7  <b>Belong</b> - 12:8  <b>Belongs</b> - 74:23  <b>Benchmarking</b> - 176:4, 189:2, 189:19</p>	<p><b>Beneficial</b> - 106:24  <b>Benefit</b> - 29:4, 102:2, 106:3, 114:3, 114:4, 114:7, 114:8, 120:6, 121:7, 121:9, 122:3, 177:2, 211:11, 211:13, 223:11  <b>Benefits</b> - 209:11, 209:15, 210:21  <b>Big</b> - 16:17, 25:11, 28:14, 33:20, 33:23, 34:4, 34:10, 34:15, 35:5, 35:18, 36:11, 41:21, 43:17, 44:1, 56:23, 57:7, 59:5, 60:18, 81:24, 88:14, 88:19, 88:22, 89:20, 90:18, 118:25, 129:19, 130:4, 159:9, 230:12  <b>Biggest</b> - 25:15, 57:4  <b>Bill</b> - 95:8  <b>Billion</b> - 26:7, 52:2, 61:13, 95:7, 98:5, 190:20, 234:17  <b>Billions</b> - 22:1, 102:12  <b>Bind</b> - 108:11  <b>Bit</b> - 7:5, 37:13, 64:17, 65:17, 99:5, 117:25, 160:22, 171:22, 182:22, 194:5, 202:8, 205:20, 211:7, 213:24, 214:2  <b>Blackout</b> - 103:25  <b>Blasio's</b> - 185:11  <b>Blended</b> - 84:8  <b>Block</b> - 223:20, 224:24  <b>Bloody</b> - 56:9  <b>Boards</b> - 142:15, 145:18, 146:7  <b>Board's</b> - 14:4, 27:4, 163:25  <b>Boat</b> - 150:10, 198:18  <b>Bond</b> - 8:11, 27:19, 50:1, 102:13, 144:10, 144:17  <b>Books</b> - 8:20  <b>Borne</b> - 27:7, 27:10, 48:12, 48:13, 48:18,</p>	<p>49:16, 113:2, 149:15, 181:17  <b>Borrowed</b> - 8:7, 8:14  <b>Boston</b> - 30:12, 162:7  <b>Both</b> - 26:11, 26:18, 26:24, 75:12, 121:4, 129:20, 164:24, 183:18  <b>Bother</b> - 26:15  <b>Bothered</b> - 84:11  <b>Bottom</b> - 167:12  <b>Breadth</b> - 188:24  <b>Break</b> - 115:5, 130:16, 130:25  <b>Brief</b> - 188:16  <b>Brings</b> - 176:9, 222:3  <b>Broad</b> - 15:8, 168:6, 178:7, 189:9, 195:10  <b>Broader</b> - 163:24, 175:15, 175:21, 195:19, 206:25, 210:5, 219:6  <b>Broke</b> - 131:8  <b>Brought</b> - 13:13, 36:16, 46:25, 58:4, 61:21, 64:16, 66:17, 70:2, 109:22  <b>Brunswick</b> - 23:21, 29:15, 71:17, 81:19, 82:24, 152:22, 161:20, 187:4, 205:24, 206:2, 208:2, 208:5  <b>Budgets</b> - 104:7, 148:1, 148:4  <b>Bug</b> - 159:17  <b>Bugs</b> - 18:7, 21:13, 64:13, 67:3, 68:9, 69:5, 69:8, 151:9  <b>Build</b> - 16:14, 30:24, 86:12, 87:11, 88:8, 88:9, 89:21, 90:6, 90:13, 90:17, 91:14, 231:19  <b>Building</b> - 14:21, 77:3, 77:4, 87:2, 87:4, 88:11, 88:14  <b>Built</b> - 34:7, 34:23, 35:5, 76:5, 76:7, 76:10, 76:19, 79:3, 88:10, 90:4, 114:19, 119:7, 200:17</p>
--	--	--	--	---

<p><b>Bulk</b> - 163:1  <b>Bullet</b> - 76:1, 233:6, 233:7  <b>Bunch</b> - 23:8, 24:23  <b>Business</b> - 3:3, 19:13, 24:23, 26:19, 31:4, 47:1, 100:6, 147:5, 165:3, 170:13, 181:2, 198:12, 199:4, 200:14  <b>Businesses</b> - 26:10, 26:20, 42:3, 43:14, 86:11, 95:6, 103:20, 108:14, 170:8  <b>Buy</b> - 71:6, 93:23  <b>Buying</b> - 215:4</p> <p style="text-align: center;"><b>C</b></p> <p><b>Cake</b> - 47:7  <b>Calculations</b> - 35:17  <b>Calgary</b> - 162:8  <b>Call</b> - 102:17, 122:10, 150:4, 151:12  <b>Called</b> - 7:7, 75:3, 80:18, 111:10, 138:23, 151:13, 162:18, 164:19, 185:2  <b>Calling</b> - 125:18  <b>Camp</b> - 197:20, 197:21  <b>Canada</b> - 23:19, 29:14, 30:8, 30:25, 161:14, 161:19, 163:2, 163:3, 163:7, 163:9, 165:14, 168:4, 168:12, 172:16, 175:6, 176:8, 177:24, 178:13, 186:25, 229:4  <b>Canadian</b> - 24:9, 30:16, 161:25, 163:5, 163:15, 164:21, 164:22, 168:8, 168:13, 175:11, 185:13  <b>Can't</b> - 15:9, 17:21, 20:24, 27:24, 31:7, 31:11, 32:22, 33:7, 77:22, 79:17, 81:8, 92:3, 95:22, 97:2,</p>	<p>109:25, 110:8, 110:9, 110:10, 112:6, 112:24, 118:5, 118:6, 119:2, 119:8, 119:13, 120:2, 121:14, 144:16, 147:17, 184:15, 210:12, 227:1  <b>Canvas</b> - 192:16  <b>Cap</b> - 104:12, 104:19, 104:21  <b>Capabilities</b> - 170:6, 182:14, 182:15, 195:2, 215:22, 229:2  <b>Capability</b> - 191:11, 222:6, 231:22, 232:3  <b>Capable</b> - 54:11  <b>Capacity</b> - 28:15, 28:16, 73:13, 73:21, 74:21, 78:2, 82:3, 170:22, 225:6  <b>Capital</b> - 22:20, 34:5, 34:15, 34:23, 49:14, 51:3, 104:7, 104:8, 104:12, 104:21, 104:25, 111:10, 111:22, 112:3, 113:12, 114:2, 140:25, 156:5, 156:10, 157:2, 157:11, 175:19  <b>Captive</b> - 202:22, 203:20  <b>Capture</b> - 201:23  <b>Carbon</b> - 29:20, 29:22, 29:24, 30:13, 185:6  <b>Care</b> - 69:13, 127:12, 128:13  <b>Career</b> - 4:1, 119:6, 161:13  <b>Careful</b> - 81:9, 102:3, 106:15, 171:22, 220:2  <b>Carried</b> - 18:2  <b>Carry</b> - 18:13, 18:15, 35:14, 131:5, 150:3, 152:12  <b>Carrying</b> - 149:7  <b>Case</b> - 4:20, 10:9, 21:21, 93:4, 122:8, 122:25, 145:16,</p>	<p>209:13, 219:19, 229:11  <b>Cases</b> - 11:14, 156:22  <b>Cash</b> - 7:1, 7:6, 7:8, 7:24, 102:18  <b>Cashflow</b> - 101:10, 101:12  <b>Cat</b> - 43:19  <b>Category</b> - 8:25  <b>Caught</b> - 95:25, 96:1  <b>Cause</b> - 177:21, 231:24  <b>Causes</b> - 227:16  <b>Causing</b> - 211:22  <b>Caution</b> - 174:14  <b>Cent</b> - 34:14  <b>Central</b> - 3:18  <b>Centralized</b> - 189:17  <b>Cents</b> - 92:13  <b>Century</b> - 76:9  <b>CEO</b> - 1:17, 2:3, 2:4, 2:16, 2:19, 3:7, 3:9, 3:13, 4:3, 4:10, 5:6, 112:18, 127:1, 139:2, 139:12, 140:16, 140:18, 155:22  <b>Certain</b> - 48:8, 48:11, 64:1, 66:5, 67:16, 97:18, 119:7, 120:25, 124:10, 125:1, 128:4, 131:12, 156:24, 159:2, 159:3, 197:5  <b>Certainly</b> - 3:16, 9:16, 14:6, 21:19, 61:19, 84:3, 85:7, 106:15, 108:24, 110:20, 112:18, 134:2, 160:25, 165:9  <b>Certainty</b> - 42:19  <b>CF</b> - 36:3, 36:4, 42:11, 42:12, 92:4  <b>CHAIR</b> - 1:2, 1:7, 1:12, 3:11, 3:24, 4:21, 36:21, 36:25, 61:1, 61:4, 107:13, 107:16, 114:25, 115:6, 130:24, 131:4, 131:8, 157:20, 159:24, 160:5, 160:14, 192:9, 192:12,</p>	<p>216:11, 216:15, 216:21, 217:1, 217:6, 235:11, 235:14  <b>Chairman</b> - 2:19, 3:10, 3:13, 3:15, 4:10, 140:12, 216:19  <b>Challenge</b> - 140:15, 141:16, 144:16, 146:7  <b>Challenged</b> - 146:6  <b>Challenges</b> - 184:24, 192:6, 221:20, 231:21  <b>Challenging</b> - 32:11  <b>Chance</b> - 6:7  <b>Changed</b> - 86:7, 96:15, 99:11, 100:21, 204:5  <b>Changes</b> - 15:19, 56:14, 56:20, 60:4, 60:9, 146:21, 151:15, 234:13  <b>Changing</b> - 15:4, 16:5, 39:2, 39:5, 49:13, 57:10, 60:19, 150:11, 156:9, 157:2  <b>Characteristics</b> - 79:7  <b>Characterization</b> - 83:9, 231:5  <b>Charge</b> - 80:16, 81:14  <b>Charges</b> - 220:18  <b>Chatting</b> - 131:9  <b>Cheap</b> - 90:5, 90:13, 183:4  <b>Cheaper</b> - 70:15, 71:15, 90:14, 90:15, 92:22, 103:12  <b>Cheat</b> - 53:22  <b>Check</b> - 148:4  <b>Checked</b> - 147:3  <b>Chief</b> - 15:23, 140:12  <b>Churchill</b> - 17:9, 17:10, 22:17, 22:18, 22:23, 24:16, 25:20, 27:12, 28:13, 28:16, 28:22, 41:25, 43:17, 72:11, 72:14, 73:14,</p>	<p>73:20, 75:7, 78:5, 140:25, 142:8, 145:17, 187:23, 188:9  <b>Circle</b> - 203:2  <b>Circles</b> - 75:14  <b>Circumstances</b> - 15:5, 16:6, 39:2, 62:22, 65:15, 70:24, 81:18, 82:6, 106:25, 139:4, 150:19, 151:20, 156:2, 221:18  <b>Cited</b> - 166:20  <b>City</b> - 24:8  <b>Claim</b> - 63:3  <b>Clarify</b> - 158:1, 159:22  <b>Clarity</b> - 19:17, 218:23  <b>Class</b> - 89:1, 99:25  <b>Classified</b> - 128:5  <b>Claus</b> - 34:8  <b>Clause</b> - 59:3  <b>Clean</b> - 23:16, 23:23, 24:9, 25:12, 29:16, 30:15, 81:23, 81:24, 83:5, 84:10, 128:16, 163:8, 184:6, 185:12, 185:20, 185:23, 186:9, 187:10  <b>Cleared</b> - 138:15  <b>Clerk</b> - 73:2  <b>Clicker</b> - 5:1  <b>Clients</b> - 162:18  <b>Close</b> - 13:17, 15:13, 159:11, 176:18, 178:23, 179:2, 179:5, 214:21  <b>Co</b> - 36:3, 36:4, 42:11, 42:12, 92:4  <b>Coal</b> - 23:21, 23:25, 29:18, 81:22, 187:6, 187:11  <b>Coffee</b> - 152:7  <b>Coffers</b> - 50:21  <b>Cold</b> - 119:8, 230:17  <b>Coloured</b> - 211:18, 220:20  <b>Combined</b> - 46:2  <b>Combining</b> - 170:1</p>
---	---	---	---	---

<p>7  <b>Come</b> - 23:24, 30:3, 59:4, 81:22, 84:21, 104:22, 118:9, 121:17, 130:17, 158:11, 178:10, 189:16, 219:10  <b>Comes</b> - 48:8, 56:13, 98:25, 99:1, 137:8, 189:9, 223:5, 225:13, 225:14  <b>Comfort</b> - 33:8, 196:19, 230:17  <b>Comfortable</b> - 32:3, 66:9  <b>Coming</b> - 16:7, 36:11, 68:3, 68:24, 118:19, 128:3, 128:25, 129:5, 132:2, 140:12, 154:7  <b>Command</b> - 134:12  <b>Comment</b> - 29:8, 55:7, 61:19, 79:15, 79:19, 101:5, 104:16, 158:4, 165:25, 178:14, 182:9, 190:4, 233:5  <b>Comments</b> - 77:1, 105:22  <b>Commercial</b> - 202:6, 203:5  <b>Commission</b> - 10:9, 19:6, 19:16, 24:19, 35:13, 48:20, 49:5, 49:11, 49:21, 63:24, 84:3, 84:22, 85:6, 85:22, 89:6, 91:1, 104:23, 117:9, 117:15, 202:18  <b>Commissioner</b> - 8, 5:7, 87:16  <b>Commissioners</b> - 107:16  <b>Commissioning</b> - 40:17, 41:1, 43:4, 46:5  <b>Commissions</b> - 11, 7:19, 153:5, 168:21  <b>Commitment</b> - 139:23, 139:25, 186:11  <b>Committed</b> - 106:7  <b>Committee</b> - 5:18, 5:19, 5:23, 6:17,</p>	<p>115:18, 115:22, 116:12, 156:18, 207:22, 208:25  <b>Commodity</b> - 173:12  <b>Common</b> - 175:22  <b>Companies</b> - 3:1, 105:8, 145:17, 148:2, 170:10, 186:4, 186:5  <b>Company</b> - 17:2, 63:15, 94:25, 95:21, 106:10, 146:9, 188:22  <b>Comparable</b> - 43:1, 6, 178:1  <b>Comparators</b> - 221:14  <b>Compare</b> - 182:18, 194:17  <b>Compared</b> - 168:1, 2  <b>Compete</b> - 171:11  <b>Competency</b> - 176:25, 190:18, 191:12  <b>Competition</b> - 161:12, 199:25, 204:6  <b>Competitive</b> - 15:1, 2, 15:13, 41:23, 161:17, 170:3, 170:14, 171:12, 198:4, 198:7, 199:11, 199:13, 199:16, 199:21, 201:5, 201:11, 201:15, 202:23  <b>Complete</b> - 18:4, 19:2, 39:9, 40:1, 180:1  <b>Completed</b> - 56:9, 130:12  <b>Completely</b> - 15:21, 84:13  <b>Completion</b> - 16:1, 5, 21:7, 31:7, 32:24, 40:4, 73:5, 127:21  <b>Complex</b> - 14:14, 18:10, 64:12, 67:7, 67:8, 67:10, 215:5  <b>Complexity</b> - 18:7, 163:19, 214:23  <b>Complicated</b> - 22:1, 9, 150:14  <b>Components</b> - 7:4, 130:5  <b>Composed</b> - 115:2,</p>	<p>3  <b>Concern</b> - 8:15, 14:24, 24:20, 101:13, 104:6, 111:12, 119:16, 127:23, 195:24, 202:20, 210:7, 223:4  <b>Concerned</b> - 8:7, 8:16, 23:8, 174:18, 202:25, 210:9, 214:4, 223:8, 227:12  <b>Concerning</b> - 73:8, 75:6  <b>Concerns</b> - 109:7, 109:14, 109:19, 109:24  <b>Concludes</b> - 189:2, 2  <b>Conclusion</b> - 36:17, 235:19  <b>Conclusions</b> - 35:1, 8  <b>Concrete</b> - 88:12, 88:13, 88:14  <b>Conduct</b> - 163:12, 172:3, 175:13  <b>Conducted</b> - 171:6  <b>Conducting</b> - 228:18  <b>Conference</b> - 5:9  <b>Confidence</b> - 62:4, 64:3, 64:5, 112:19  <b>Confidential</b> - 156:23  <b>Confidentiality</b> - 9, 6:24  <b>Confirm</b> - 194:4  <b>Conflict</b> - 191:25, 192:4, 195:24, 210:19, 211:7, 227:3  <b>Conflicts</b> - 191:19  <b>Confuse</b> - 47:5, 47:21, 151:22, 152:4  <b>Conjunction</b> - 9:15  <b>Connecticut</b> - 183:22  <b>Conscious</b> - 63:13  <b>Consequences</b> - 8:24, 102:7, 103:17  <b>Consider</b> - 28:23, 116:3, 116:8, 128:14, 137:25, 147:20, 154:24,</p>	<p>157:4, 166:8, 175:23, 176:15, 196:13, 201:18, 206:12, 206:15  <b>Considerable</b> - 23, 0:1  <b>Consideration</b> - 18, 2:13, 214:8  <b>Considerations</b> - 8, :22, 72:23, 73:2, 75:24  <b>Considered</b> - 132:3, 133:15  <b>Considering</b> - 189:10  <b>Consistent</b> - 33:15, 56:12, 57:9, 74:12, 79:2, 83:1, 164:1, 181:5, 187:15  <b>Constraints</b> - 30:1, 1, 30:22, 31:1, 98:20, 99:12, 99:17, 109:18, 119:18  <b>Construct</b> - 27:16, 90:21  <b>Construction</b> - 14:13, 18:3, 18:5, 19:2, 31:6, 83:24, 87:25, 88:5, 90:15, 134:4, 203:15  <b>Consult</b> - 80:3, 193:9  <b>Consultant</b> - 13:4, 121:24, 164:19  <b>Consultants</b> - 6:4, 12:1, 12:3, 69:15, 69:20  <b>Consulted</b> - 79:14  <b>Consulting</b> - 6:8, 161:3, 161:16, 194:6  <b>Consumer</b> - 9:8, 10:8, 10:11, 10:16, 11:4, 27:7, 27:11, 35:10, 48:19, 49:1, 49:17, 61:2, 76:8, 100:19, 168:18, 216:16  <b>Consumers</b> - 11:12, , 152:20  <b>Contemplated</b> - 13, 8:9  <b>Context</b> - 24:15, 108:4, 109:6, 165:17, 195:7, 203:10, 205:12</p>	<p><b>Continually</b> - 53:7  <b>Continuation</b> - 150:3  <b>Continue</b> - 53:3, 179:21  <b>Continuous</b> - 21:2, 0  <b>Contract</b> - 11:3, 24:16, 27:9, 27:13, 70:21, 71:3, 76:14, 76:18, 76:21, 77:12, 78:1, 92:20, 145:2, 185:13, 186:3, 190:6, 191:16, 201:14, 226:23  <b>Contracted</b> - 92:19, , 213:20  <b>Contracting</b> - 94:2, 0, 190:1, 191:10  <b>Contractor</b> - 190:2  <b>Contractors</b> - 90:9  <b>Contracts</b> - 74:10, 92:10, 92:12, 144:6, 145:12  <b>Contractual</b> - 9:3  <b>Contrary</b> - 109:15, 111:23, 113:14  <b>Contrasting</b> - 182:23  <b>Contribute</b> - 231:2, 0  <b>Contributor</b> - 172:7  <b>Control</b> - 5:11, 9:1, 32:7, 73:3, 104:14, 108:8, 189:17, 229:13  <b>Controls</b> - 69:21  <b>Convene</b> - 130:25  <b>Conversations</b> - 9:17  <b>Cooperate</b> - 6:3, 124:5  <b>Cooperating</b> - 125:20  <b>Coordinate</b> - 227:2  <b>Coordination</b> - 188:3  <b>Core</b> - 19:13, 32:21, 103:20, 176:25, 190:18, 191:11, 196:6, 219:7, 222:6  <b>Corner</b> - 37:1  <b>Corporate</b> - 37:17, 37:24</p>
--	--	--	---	---



<p><b>Corporation</b> - 7:17, 20:9, 20:12, 21:2, 25:9, 136:23, 136:24, 145:15, 146:25, 149:17, 187:15</p> <p><b>Corporations</b> - 2:2, 2, 12:16, 168:5, 229:5</p> <p><b>Corrected</b> - 69:9, 103:10</p> <p><b>Correcting</b> - 69:5, 69:6</p> <p><b>Corresponding</b> - 1, 65:11</p> <p><b>Costumers</b> - 76:11</p> <p><b>Couldn't</b> - 165:1</p> <p><b>Counsel</b> - 2:12, 107:18</p> <p><b>Country</b> - 29:22, 105:9</p> <p><b>Couple</b> - 5:25, 14:12, 121:3, 164:15, 192:16, 216:17</p> <p><b>Course</b> - 12:19, 71:10, 158:13, 158:18, 221:1, 222:17</p> <p><b>Court</b> - 21:21, 73:8, 73:12, 74:1, 74:2, 127:5</p> <p><b>Covenanting</b> - 96:18</p> <p><b>Covenants</b> - 96:12, 96:15, 97:6</p> <p><b>Cover</b> - 212:1</p> <p><b>Covered</b> - 31:2, 31:18</p> <p><b>Covers</b> - 3:17, 71:3</p> <p><b>Coxworthy</b> - 107:1, 4, 107:15, 107:18, 110:2, 110:12, 110:19, 112:17, 113:8, 113:19, 113:23, 114:11, 114:22, 115:1, 140:23, 146:15</p> <p><b>Create</b> - 45:6, 235:7</p> <p><b>Created</b> - 39:25, 40:1, 41:9, 45:7, 125:25, 126:11, 131:11, 177:5, 233:12, 234:15</p> <p><b>Creation</b> - 167:8, 233:10</p>	<p><b>Credentials</b> - 165:1</p> <p><b>Credit</b> - 8:13, 102:10</p> <p><b>Credited</b> - 122:2</p> <p><b>Creep</b> - 102:7, 206:19</p> <p><b>Crisis</b> - 103:1, 134:10, 221:22, 231:7</p> <p><b>Critical</b> - 19:9, 19:11, 59:13, 137:22, 172:6, 176:21, 184:1, 187:22, 190:19, 190:24, 192:3</p> <p><b>Criticisms</b> - 186:2</p> <p><b>Cross</b> - 89:17, 170:3</p> <p><b>Crowd</b> - 85:12, 85:13, 87:15</p> <p><b>Crown</b> - 163:20, 168:5, 169:15, 178:5, 229:4, 229:22</p> <p><b>Crunch</b> - 69:13</p> <p><b>Culture</b> - 84:7, 86:8, 88:18</p> <p><b>Cup</b> - 152:6</p> <p><b>Current</b> - 13:8, 44:10, 109:15, 112:18, 126:6, 132:4, 146:18, 146:22, 150:5, 179:12, 180:12, 219:5, 231:9, 234:19</p> <p><b>Currently</b> - 1:17, 13:21, 221:21, 234:20</p> <p><b>Customer</b> - 10:19, 11:9, 107:19, 108:12, 108:19, 122:1, 122:17, 203:21</p> <p><b>Customers</b> - 48:12, 48:14, 50:20, 94:17, 108:7, 108:25, 121:6, 122:20, 149:16, 150:2, 166:11, 173:8, 173:16, 173:18, 177:3, 181:14, 181:15, 191:8, 200:18, 201:24, 202:13, 202:22, 204:23, 209:8, 209:11,</p>	<p>210:20, 211:9, 211:10, 223:22, 228:16</p> <p><b>Cut</b> - 220:3</p> <p><b>Cutting</b> - 193:16</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <p><b>D</b></p> </div> <p><b>Data</b> - 5:20, 33:22, 49:18, 57:6</p> <p><b>Date</b> - 66:5, 66:8, 67:16, 149:8</p> <p><b>Dated</b> - 217:17, 217:18</p> <p><b>Day</b> - 22:12, 24:12, 40:22, 53:11, 90:6, 99:24, 118:25</p> <p><b>Daylight</b> - 113:24</p> <p><b>Days</b> - 63:22, 69:4, 70:9, 118:17, 157:5</p> <p><b>De</b> - 173:10, 181:20, 185:11, 234:2</p> <p><b>Deadline</b> - 68:1</p> <p><b>Deal</b> - 15:25, 17:9, 19:21, 31:23, 36:13, 40:7, 50:9, 50:13, 75:12, 80:2, 120:5, 120:21, 130:3, 132:25, 136:21, 136:22, 139:5, 211:8, 215:13</p> <p><b>Dealing</b> - 62:7, 93:4, 94:22, 135:25, 149:14, 153:3, 222:17</p> <p><b>Dealings</b> - 91:8</p> <p><b>Dealt</b> - 87:15, 137:17, 138:15</p> <p><b>Debate</b> - 106:2</p> <p><b>Deborah</b> - 5:21</p> <p><b>Debt</b> - 98:21, 99:13, 102:5, 102:8, 103:12</p> <p><b>Decentralized</b> - 18, 9:17</p> <p><b>Decide</b> - 33:18, 80:5, 87:23, 99:4, 104:24, 119:2, 131:18, 131:23, 132:2, 152:6, 153:19, 153:20, 173:12</p> <p><b>Decided</b> - 99:8</p> <p><b>Decides</b> - 23:12, 97:15</p> <p><b>Deciding</b> - 131:14</p>	<p><b>Decile</b> - 176:9</p> <p><b>Decision</b> - 11:20, 21:20, 49:3, 63:14, 73:12, 74:1, 74:3, 74:4, 74:9, 75:5, 79:5, 79:6, 85:9, 88:3, 88:7, 88:19, 89:21, 100:14, 100:22, 100:23, 110:16, 120:20, 120:25, 121:2, 123:25, 124:2, 124:25, 129:11, 139:9, 141:10, 141:11, 141:19, 142:6, 145:7, 177:13, 189:18, 219:17, 221:3, 226:22, 233:17</p> <p><b>Decisions</b> - 33:13, 73:8, 154:12, 186:16, 214:25</p> <p><b>Declared</b> - 129:14</p> <p><b>Dedicated</b> - 43:23, 44:2, 180:23</p> <p><b>Deficiencies</b> - 159:3</p> <p><b>Defined</b> - 222:21</p> <p><b>Defines</b> - 13:6, 13:7, 166:21, 166:22</p> <p><b>Definitely</b> - 195:15</p> <p><b>Definition</b> - 185:4</p> <p><b>Definitions</b> - 6:17</p> <p><b>Definitive</b> - 224:10</p> <p><b>Degree</b> - 5:13, 13:25, 33:8, 70:14, 72:19, 83:13, 84:14, 125:21, 167:22, 175:9, 177:4, 206:16, 229:6, 231:1</p> <p><b>Degrees</b> - 165:3</p> <p><b>Delay</b> - 66:21</p> <p><b>Delayed</b> - 63:4</p> <p><b>Delays</b> - 140:1</p> <p><b>Deliver</b> - 22:12, 63:15, 170:22, 200:17, 212:18</p> <p><b>Delivered</b> - 25:25, 68:5, 68:7</p> <p><b>Delivering</b> - 184:1</p> <p><b>Delivery</b> - 63:8</p> <p><b>Delve</b> - 212:6</p> <p><b>Demand</b> - 33:10, 181:10, 185:9</p> <p><b>Demonstrable</b> - 47</p>	<p>:13</p> <p><b>Demonstrate</b> - 8:1, 14:1, 19:17</p> <p><b>Department</b> - 92:2, 3, 93:21, 163:12</p> <p><b>Departure</b> - 177:15</p> <p><b>Derive</b> - 191:7</p> <p><b>Derived</b> - 166:10</p> <p><b>Describe</b> - 126:16</p> <p><b>Design</b> - 82:6, 161:22, 162:12, 164:23, 168:3, 180:12</p> <p><b>D'espoir</b> - 43:19, 70:13</p> <p><b>Determination</b> - 12, 9:7, 130:19, 200:3</p> <p><b>Determine</b> - 11:18, 120:1, 120:11, 142:20</p> <p><b>Determined</b> - 155:13, 197:6</p> <p><b>Determines</b> - 11:25</p> <p><b>Determining</b> - 125:12</p> <p><b>Develop</b> - 17:10, 152:16, 152:21, 159:6, 180:3, 180:7, 181:19, 186:21, 186:22, 199:20, 223:10</p> <p><b>Developed</b> - 5:22, 26:5, 46:9, 62:17, 62:22, 62:24, 63:19, 65:8, 65:9, 65:12, 158:5, 158:7, 158:17, 159:4, 186:8, 201:12</p> <p><b>Developing</b> - 17:10, 182:1, 182:16, 220:6, 233:24</p> <p><b>Development</b> - 2:1, 5, 16:12, 25:6, 38:18, 39:14, 39:24, 39:25, 41:7, 46:13, 59:23, 69:16, 69:21, 76:2, 135:12, 136:12, 137:16, 137:19, 138:2, 138:23, 149:9, 149:25, 158:4, 162:11, 169:17, 170:23, 170:24, 181:1, 181:4, 181:23, 182:15, 184:22,</p>
--	--	---	--	--

<p>186:18, 195:20, 212:18, 213:1, 219:8, 219:20, 219:24, 220:11, 233:21, 234:1, 235:2  <b>Developments</b> - 41 :22, 220:13  <b>Devised</b> - 91:13  <b>Dictates</b> - 188:19, 188:20  <b>Didn't</b> - 9:6, 20:17, 20:20, 35:5, 45:6, 45:11, 45:12, 47:9, 58:8, 64:24, 84:12, 87:9, 89:22, 89:23, 91:17, 95:12, 95:20, 98:3, 106:9, 116:16, 124:16, 128:13, 129:24, 131:18, 132:17, 134:25, 136:7, 136:15, 137:18, 138:6, 158:16, 187:3, 190:17, 212:5  <b>Difference</b> - 7:12, 8:21, 28:14, 60:18, 88:12, 88:20, 98:24, 99:19, 170:15, 172:21, 173:4, 175:1, 177:11, 195:10, 213:24  <b>Differences</b> - 8:4, 164:2, 166:3, 166:17, 167:14, 167:16, 168:14, 197:19  <b>Differing</b> - 166:18  <b>Differs</b> - 163:25  <b>Difficult</b> - 15:10, 18:20, 18:23, 30:23, 30:25, 51:16, 55:19, 56:7, 63:18, 117:22, 150:12, 192:5, 231:18  <b>Difficulties</b> - 31:20  <b>Difficulty</b> - 27:8, 51:11, 72:5, 92:11  <b>Dilemma</b> - 100:8, 114:12  <b>Dime</b> - 52:2  <b>Directives</b> - 12:20, 83:2  <b>Directly</b> - 9:18,</p>	<p>50:19, 96:20, 158:22  <b>Director</b> - 2:20, 2:21, 3:8, 3:10, 3:12, 3:13, 3:16, 3:20, 4:10, 164:14  <b>Directors</b> - 5:24, 127:3, 139:13, 142:19, 143:10, 147:1, 148:1, 148:3  <b>Disadvantage</b> - 10 5:22  <b>Disaggregated</b> - 1 70:8  <b>Disagree</b> - 24:19, 35:21, 101:25, 102:15, 104:18, 104:19  <b>Disallow</b> - 27:24, 48:21, 147:16, 147:17  <b>Disallowance</b> - 111 :16  <b>Disappear</b> - 16:15, 16:20, 46:13  <b>Disappears</b> - 59:23  <b>Discipline</b> - 154:24 , 199:13, 199:16, 201:6  <b>Discovered</b> - 65:23  <b>Discretion</b> - 145:6  <b>Discussions</b> - 24:4 , 30:7, 75:5, 75:9, 77:14  <b>Dismissed</b> - 25:7  <b>Displace</b> - 70:6, 70:18  <b>Disrupt</b> - 59:12  <b>Distinct</b> - 170:6  <b>Distinction</b> - 17:4, 111:14, 154:19, 197:3, 200:11  <b>Distinguish</b> - 112:7  <b>Distribution</b> - 44:5, 95:21, 170:11, 186:4, 186:5, 198:13  <b>Diverge</b> - 107:23  <b>Diverted</b> - 117:14  <b>Division</b> - 20:10, 20:13, 20:14, 21:1, 95:1, 95:11, 95:14  <b>Divisions</b> - 16:22  <b>Document</b> - 218:13 , 221:12  <b>Doesn't</b> - 7:21, 18:5, 21:13, 26:17,</p>	<p>64:6, 81:16, 84:17, 88:12, 91:18, 98:23, 100:19, 100:21, 100:23, 110:16, 180:7, 186:11, 186:12, 202:22, 226:16, 227:5, 230:5, 234:3  <b>Dog</b> - 26:3  <b>Dollar</b> - 8:14, 95:8, 98:25, 99:1, 99:2, 99:3, 104:9, 105:2, 234:17  <b>Dollars</b> - 13:18, 22:1, 22:5, 22:6, 22:8, 22:9, 23:5, 26:8, 34:12, 34:13, 36:6, 46:21, 50:17, 52:2, 57:23, 58:2, 90:4, 95:7, 96:17, 98:5, 102:12, 190:20, 226:14  <b>Dome</b> - 91:5  <b>Door</b> - 183:13  <b>Doubt</b> - 15:24, 25:16  <b>Doubtful</b> - 87:5  <b>Downgrade</b> - 8:12  <b>Downgraded</b> - 102 :14  <b>Downsizing</b> - 32:2 5  <b>Dozens</b> - 20:21  <b>Drawn</b> - 86:10  <b>Drive</b> - 167:15  <b>Driven</b> - 29:17, 135:17  <b>Drivers</b> - 165:17, 198:1  <b>Driving</b> - 86:24  <b>Drove</b> - 196:3, 213:7  <b>Drucker</b> - 13:3, 166:21  <b>Druker's</b> - 218:24  <b>Due</b> - 46:23  <b>Duplication</b> - 123:4 , 123:11  <b>Dwarfs</b> - 34:8  <b>Dwell</b> - 179:14</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <b>E</b> </div> <p><b>Each</b> - 80:12, 80:14, 95:14, 161:24, 163:14, 197:21  <b>Earlier</b> - 18:15,</p>	<p>39:1, 54:6, 54:21, 84:13, 98:20, 99:13, 101:14, 115:16, 136:3, 180:20, 194:14, 212:3, 213:23, 234:8  <b>Early</b> - 19:8, 64:8, 68:18, 69:16, 116:8, 140:3, 151:7, 157:4, 232:11, 232:14, 235:15  <b>Earn</b> - 171:11  <b>Earned</b> - 36:7, 51:15, 176:16, 214:9  <b>Earning</b> - 51:14  <b>Earnings</b> - 8:17, 36:3, 36:5, 98:14, 103:7  <b>Earns</b> - 36:7, 101:20  <b>East</b> - 18:22, 163:8  <b>Eastern</b> - 25:13, 186:25  <b>Easy</b> - 62:4  <b>Eat</b> - 91:8  <b>EATON</b> - 1:11, 1:21, 1:25, 2:6, 2:24, 3:21, 3:25, 4:5, 4:11, 4:19, 4:23, 6:5, 6:13, 9:23, 16:3, 16:24, 17:15, 17:22, 19:24, 21:3, 28:5, 29:6, 36:19, 43:2, 157:22, 157:24, 158:8, 159:21, 160:9, 160:15, 160:17, 164:6, 165:4, 178:8, 178:20, 178:24, 179:3, 189:24, 192:7  <b>Economic</b> - 7:13, 64:17, 98:23, 99:17, 99:18, 163:23, 223:14  <b>Economics</b> - 7:21, 8:22  <b>Education</b> - 8:2  <b>Effect</b> - 177:21, 228:2  <b>Effective</b> - 20:12, 44:22, 54:3, 130:6  <b>Effectively</b> - 85:15, 168:12, 173:14,</p>	<p>198:25, 202:3, 222:11, 235:4  <b>Effectiveness</b> - 18 7:21  <b>Efficiencies</b> - 46:1  <b>Efficiency</b> - 46:4  <b>Efficient</b> - 51:1, 94:24  <b>Efficiently</b> - 142:8, 222:14  <b>Effort</b> - 19:10, 59:3, 67:13, 106:23  <b>Efforts</b> - 19:4, 21:10, 103:20  <b>Eight</b> - 169:2  <b>Elaborate</b> - 43:10  <b>Elected</b> - 11:21, 169:3  <b>Electric</b> - 3:7, 3:11, 3:22, 3:24, 12:5, 12:15, 62:8, 86:25, 87:6, 89:3, 89:8, 127:22, 162:3, 165:19, 168:9, 168:15, 169:1, 186:5  <b>Electrical</b> - 69:21, 108:8  <b>Electricity</b> - 5:13, 25:21, 25:22, 25:23, 26:18, 61:21, 66:16, 70:2, 70:5, 71:11, 74:11, 108:10, 161:3, 161:5, 161:8, 161:9, 161:18, 161:21, 161:23, 162:2, 162:3, 162:4, 162:5, 162:9, 162:14, 162:22, 162:24, 163:14, 163:18, 164:14, 165:10, 165:11, 165:16, 165:18, 166:10, 167:10, 183:25, 219:3, 229:6  <b>Electrification</b> - 18 4:3  <b>Element</b> - 202:17, 229:23  <b>Elementary</b> - 108:1 8  <b>Elements</b> - 159:6  <b>Emera</b> - 24:10, 187:16, 221:14  <b>Emerged</b> - 86:22</p>
---	---	--	--	---

<p><b>Emerging</b> - 50:9  <b>Emissions</b> - 29:20, 29:22, 29:24, 30:14, 183:24, 184:4, 186:17  <b>Emphasis</b> - 19:8  <b>Emphasize</b> - 176:13  <b>Employed</b> - 165:20, 173:14, 180:10, 181:24  <b>Employees</b> - 188:23  <b>Employing</b> - 173:21  <b>Encompass</b> - 172:1  <b>Ends</b> - 21:23  <b>Engaged</b> - 116:6, 163:2, 163:11, 165:9, 166:25, 167:9  <b>Engaging</b> - 211:15  <b>Engineering</b> - 165:3  <b>England</b> - 183:9, 183:21, 184:21, 185:6  <b>Enhancing</b> - 222:12  <b>Ensure</b> - 13:11, 200:5  <b>Enter</b> - 75:4  <b>Entering</b> - 92:11  <b>Entertain</b> - 235:15  <b>Entirely</b> - 83:11, 89:24, 116:13  <b>Entities</b> - 41:9, 42:18, 142:14, 164:25, 169:15, 175:5, 175:20, 177:23, 185:13, 191:9, 227:16, 228:7  <b>Entitled</b> - 74:21, 80:15  <b>Entity</b> - 26:1, 44:1, 83:20, 83:22, 94:7, 142:13, 177:24, 188:6, 191:4, 195:12, 212:25, 213:15, 223:16, 227:13, 232:1  <b>Environment</b> - 133:19, 147:5, 147:8, 147:13, 148:7, 148:9, 148:15</p>	<p><b>Environmental</b> - 163:23  <b>Equity</b> - 8:8, 101:2, 101:10, 103:3, 103:12, 157:2  <b>Equivalent</b> - 4:16  <b>Era</b> - 52:24  <b>Escalates</b> - 63:7  <b>Essential</b> - 170:23, 222:7  <b>Essentially</b> - 18:3, 19:2, 93:19, 169:12, 170:5, 171:5, 171:13, 173:10, 175:18, 179:12, 182:14, 184:13, 184:17, 184:18, 199:2, 199:19, 201:11, 202:21, 214:8, 215:4, 233:23, 235:8  <b>Establish</b> - 17:14, 28:18, 115:17, 116:11  <b>Established</b> - 7:15, 12:22, 13:10, 17:3, 135:14  <b>Establishing</b> - 175:12, 181:1  <b>Establishment</b> - 6:2, 17:11  <b>Estimate</b> - 33:2, 68:10, 90:10, 159:13, 224:10  <b>Estimated</b> - 182:18  <b>Estimates</b> - 34:12, 90:11, 91:1, 226:11, 226:12  <b>Europe</b> - 31:13, 67:23, 158:21  <b>Evaluating</b> - 179:10, 182:11  <b>Everybody</b> - 1:3, 23:22, 31:9, 35:2, 146:10, 152:5, 234:18  <b>Everyone</b> - 21:8, 71:24, 88:22  <b>Everyone's</b> - 181:25  <b>Everything</b> - 9:9, 47:4, 57:7, 58:12, 59:2, 63:10, 63:14, 100:18, 106:22, 107:6, 119:14, 131:19, 131:20,</p>	<p>131:21, 153:2  <b>Evidence</b> - 29:10, 44:8, 70:2, 84:3, 85:15, 85:19, 87:1, 87:12, 89:6, 91:12, 93:9, 98:2, 135:10, 136:13, 136:20, 137:1, 150:7, 172:10, 185:15, 199:6, 217:18  <b>Evident</b> - 180:15  <b>Evolving</b> - 171:12  <b>Ewing</b> - 88:23  <b>Examining</b> - 167:10  <b>Example</b> - 7:14, 8:6, 10:5, 10:6, 21:17, 22:22, 23:16, 30:12, 31:22, 39:9, 47:11, 51:20, 93:25, 98:16, 109:12, 116:6, 121:2, 137:5, 137:18, 162:21  <b>Examples</b> - 11:6, 227:23  <b>Exception</b> - 83:11, 172:19  <b>Excess</b> - 27:3, 58:3, 73:13, 91:24, 92:4, 123:2  <b>Execution</b> - 89:25, 91:2  <b>Executive</b> - 15:20, 51:23, 140:12, 141:25, 142:18, 144:9, 164:10, 188:15, 189:10, 189:12, 216:18, 218:3, 221:11  <b>Executives</b> - 188:21, 189:6  <b>Exempt</b> - 132:13, 146:19, 149:10  <b>Exercise</b> - 57:5, 111:24, 117:18, 151:24, 229:3  <b>Exes</b> - 190:25  <b>Exists</b> - 16:19, 114:8, 125:24, 149:23, 185:22, 233:19  <b>Expand</b> - 28:15, 50:6, 177:19, 205:19, 214:1, 233:11  <b>Expanded</b> - 177:12</p>	<p>, 209:19  <b>Expanding</b> - 28:20, 107:24, 220:7  <b>Expect</b> - 198:5, 198:11, 204:5, 223:24, 226:8  <b>Expectation</b> - 201:10  <b>Expectations</b> - 68:3, 172:12  <b>Expects</b> - 12:21  <b>Expenditures</b> - 105:1, 148:4  <b>Expenses</b> - 147:14, 188:25  <b>Expensive</b> - 92:22  <b>Experience</b> - 13:22, 85:4, 89:8, 89:14, 105:23, 161:4, 161:7, 227:15, 230:5, 231:8, 231:11  <b>Expert</b> - 87:2, 144:5, 145:11, 204:3  <b>Expertise</b> - 124:8, 223:10  <b>Experts</b> - 69:20, 89:1, 92:9, 99:25  <b>Explain</b> - 117:6, 164:3, 202:8  <b>Explained</b> - 166:18  <b>Explains</b> - 188:5  <b>Exploration</b> - 77:13  <b>Export</b> - 42:16, 44:2, 76:10, 121:8, 122:11, 162:3, 177:16, 181:8, 181:12, 182:24, 201:13, 213:6, 214:7, 220:7, 224:1, 226:9  <b>Exporter</b> - 176:2  <b>Exporters</b> - 176:8  <b>Expose</b> - 180:7  <b>Express</b> - 74:17  <b>Expressed</b> - 43:4  <b>Extended</b> - 188:14  <b>Extending</b> - 109:19  <b>Extensive</b> - 161:7  <b>Extent</b> - 107:22, 199:7  <b>External</b> - 92:1, 189:13  <b>Extravagant</b> - 49:8  <b>Extreme</b> - 200:24</p>	<p><b>Eyes</b> - 31:8</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 0 auto; padding: 2px;"> <p><b>F</b></p> </div> <p><b>Faced</b> - 55:18, 125:6  <b>Facilitating</b> - 93:24  <b>Facilities</b> - 43:14, 177:17  <b>Facility</b> - 64:20, 201:22  <b>Facing</b> - 31:21, 221:19, 221:21  <b>Factors</b> - 22:16, 82:2, 120:25, 131:14, 189:15  <b>Fails</b> - 229:3  <b>Failure</b> - 14:17  <b>Fair</b> - 7:5, 37:13, 38:1, 38:7, 38:19, 40:5, 41:13, 42:9, 44:17, 50:11, 57:7, 79:15, 79:19, 98:1, 120:3, 126:16, 138:13, 194:11, 195:20, 195:22, 197:6, 200:8, 205:2, 205:17, 205:19, 206:12, 213:15, 213:17  <b>Falling</b> - 171:9  <b>Falsehood</b> - 176:20  <b>Fan</b> - 119:6  <b>Far</b> - 22:25, 23:7, 24:17, 51:24, 58:12, 66:23, 81:8, 102:6, 141:16, 144:16, 145:19, 148:6, 149:12, 227:9  <b>Fashion</b> - 67:6, 234:2  <b>Fast</b> - 171:11  <b>Feasibility</b> - 162:13  <b>Federal</b> - 9:15, 81:20, 82:15, 83:2, 96:12, 144:10, 152:22, 204:2  <b>Feel</b> - 44:10, 45:23, 57:15, 67:24, 106:9, 148:23, 170:19, 194:24, 203:4, 203:6, 206:16, 208:20, 209:3, 215:7, 225:7, 226:17, 226:18, 227:18,</p>
---	---	--	--	---

<p>229:21  <b>Feeling</b> - 102:17  <b>Felt</b> - 67:23, 118:13, 128:11, 220:18  <b>Fiddled</b> - 194:9  <b>Field</b> - 63:11  <b>Fifth</b> - 176:10, 228:23  <b>Figure</b> - 73:15, 219:22  <b>Filed</b> - 44:8, 135:10, 217:19  <b>Files</b> - 107:8  <b>Fill</b> - 15:18, 16:1  <b>Final</b> - 166:1, 172:15, 187:13, 188:1  <b>Finalized</b> - 77:18, 77:20  <b>Finally</b> - 28:6, 30:7, 187:3  <b>Finance</b> - 8:8, 12:11, 42:17, 48:2  <b>Financed</b> - 109:17  <b>Financial</b> - 15:23, 42:17, 96:11, 109:16, 172:7  <b>Financing</b> - 9:5, 27:18, 111:15, 204:13  <b>Find</b> - 5:16, 9:14, 22:2, 29:16, 38:21, 75:17, 80:11, 96:16, 97:15, 100:10, 108:15, 139:6, 159:7, 159:17, 173:9  <b>Finding</b> - 30:1, 167:17  <b>Findings</b> - 165:24, 166:12, 166:13, 166:14, 169:20, 171:3, 180:18, 187:16  <b>Finds</b> - 222:18  <b>Fine</b> - 20:15, 68:23  <b>Fired</b> - 30:13, 187:6  <b>Firm</b> - 157:14, 161:3  <b>First</b> - 4:15, 5:2, 5:4, 5:9, 5:10, 20:5, 30:9, 31:14, 33:24, 38:5, 43:13, 55:23, 63:22, 67:22, 68:4, 74:14, 80:2, 91:22,</p>	<p>94:13, 101:11, 125:25, 134:20, 141:24, 148:16, 157:10, 169:23, 192:17  <b>Fitting</b> - 135:13  <b>Fitzgerald</b> - 216:12, 216:14, 216:16, 216:23, 217:4, 217:8, 217:12, 217:16, 217:24, 218:4, 218:8, 218:12, 218:16, 218:20, 220:9, 220:23, 221:9, 222:15, 223:3, 223:23, 224:15, 225:2, 225:11, 225:17, 225:21, 227:8, 227:21, 228:19, 230:4, 231:3, 232:5, 232:10, 232:16, 232:22, 233:2, 234:4, 234:11, 234:23, 235:10, 235:17  <b>Five</b> - 25:22, 26:1, 51:14, 166:12  <b>Fix</b> - 62:4, 62:5  <b>Fixed</b> - 10:8, 10:11, 10:23, 11:2, 110:3  <b>Flag</b> - 178:4  <b>Flexibility</b> - 33:17  <b>Flowing</b> - 16:25, 122:3  <b>Flows</b> - 7:1, 7:6, 7:8, 7:24  <b>Focused</b> - 20:22, 21:15, 35:2, 40:19, 47:1, 132:18, 161:3, 167:25, 169:21, 170:11, 173:5, 174:15, 181:8, 181:12, 183:8, 190:22, 206:20, 207:10, 210:10, 212:25, 227:13  <b>Focusses</b> - 13:11, 40:25  <b>Focusing</b> - 19:5, 60:19, 162:1, 162:24, 172:1, 183:17  <b>Focussed</b> - 88:21, 94:16, 119:10</p>	<p><b>Focusses</b> - 127:17  <b>Fold</b> - 109:14  <b>Folks</b> - 20:19, 185:24  <b>Follow</b> - 88:6, 157:22  <b>Followed</b> - 19:6  <b>Following</b> - 63:16  <b>Follows</b> - 181:23  <b>Foolish</b> - 14:3, 29:2  <b>Fools</b> - 24:23  <b>Forced</b> - 91:8  <b>Forcefully</b> - 190:17, 194:23  <b>Forces</b> - 170:14, 200:4, 201:5  <b>Forecast</b> - 141:12, 141:21  <b>Forecasting</b> - 173:23  <b>Forecasts</b> - 191:2  <b>Forensic</b> - 117:19, 153:4  <b>Forever</b> - 150:18  <b>Forget</b> - 35:25, 36:1, 46:18, 58:20, 104:1, 142:13  <b>Forgone</b> - 182:13, 182:17, 194:19  <b>Forgotten</b> - 106:17  <b>Form</b> - 78:13, 78:17, 78:21, 204:24, 205:5, 206:10, 227:17, 228:5, 229:20  <b>Format</b> - 231:9  <b>Fortis</b> - 2:1, 2:8, 2:9, 2:13, 2:15, 2:17, 2:25, 3:9, 3:12, 3:14, 4:3, 4:9, 15:16, 47:22, 48:3, 51:13, 51:16, 95:1, 105:8, 105:19, 146:25  <b>Forward</b> - 9:20, 21:6, 49:12, 69:18, 72:23, 73:3, 77:9, 84:21, 96:21, 128:13, 138:21, 139:10, 140:11, 149:6, 152:12, 153:10, 153:11, 171:16, 172:10, 200:5, 201:9, 203:11  <b>Fossil</b> - 173:6</p>	<p><b>Found</b> - 69:8, 69:10, 84:2, 84:22, 169:25, 170:5, 170:16, 171:8, 172:16, 180:13  <b>Four</b> - 37:22, 40:15, 82:11, 134:24  <b>Fourth</b> - 8:25  <b>Fraction</b> - 51:13  <b>Framed</b> - 209:18  <b>Framework</b> - 107:25, 109:8, 109:13, 109:20, 132:5, 155:14, 207:12  <b>Frameworks</b> - 165:12  <b>Frankly</b> - 15:3, 23:15, 95:4, 134:24, 207:23, 227:4  <b>Frankness</b> - 160:2  <b>Fraud</b> - 146:4  <b>Fraudulent</b> - 147:4  <b>Free</b> - 148:23, 185:6  <b>Freeze</b> - 65:1  <b>Fresh</b> - 43:20  <b>Frustrating</b> - 22:3  <b>Frustration</b> - 118:8, 118:10  <b>Frustrations</b> - 153:9  <b>Ftes</b> - 44:19, 212:10, 213:11  <b>Fuel</b> - 70:6, 70:18, 173:6, 173:7, 173:10, 173:13, 173:22, 228:8, 228:12  <b>Full</b> - 70:12, 102:24, 180:17, 207:7, 212:7, 228:23  <b>Fully</b> - 6:3, 6:19, 7:11, 32:4, 62:17, 64:6, 124:5, 125:20, 151:8, 158:7, 159:1, 210:16  <b>Function</b> - 13:24, 16:15, 17:12, 125:9, 129:16, 142:12, 143:1, 147:25, 188:21, 189:7, 189:10, 190:1, 226:23</p>	<p><b>Functional</b> - 151:8, 159:1, 159:10  <b>Functionality</b> - 32:5, 46:12, 65:22, 69:5, 158:16  <b>Functions</b> - 5:7, 14:1, 45:19, 45:25, 84:12  <b>Fundamental</b> - 166:12, 166:14, 167:14, 167:20, 168:2, 175:1  <b>Fundamentally</b> - 168:11, 169:14, 174:2, 194:15  <b>Funding</b> - 204:1  <b>Funds</b> - 97:5, 97:6, 121:22, 157:4  <b>Further</b> - 34:25, 60:23, 81:9, 114:23, 116:4, 117:25, 119:4, 130:17  <b>Future</b> - 16:7, 17:3, 33:16, 39:4, 50:10, 55:24, 56:13, 79:21, 97:19, 112:22, 113:13, 113:25, 114:1, 132:22, 138:6, 139:17, 140:23, 148:10, 149:15, 153:18, 155:13, 173:24, 203:13, 203:16, 222:13, 222:19, 226:6  <b>Fuzzy</b> - 154:21</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <p><b>G</b></p> </div> <p><b>Gain</b> - 5:11, 168:22  <b>Game</b> - 101:8, 101:23, 103:16, 106:4, 232:11, 232:15  <b>Games</b> - 103:9  <b>Gap</b> - 15:18  <b>Gaps</b> - 16:1  <b>Gas</b> - 7:16, 7:18, 8:5, 15:22, 29:18, 29:19, 29:20, 30:11, 30:13, 30:19, 30:23, 84:23, 85:1, 86:14, 86:23, 87:7, 87:8, 87:11, 87:14, 88:21, 98:3, 98:4, 98:14, 98:25, 183:3, 183:20, 183:24, 184:4,</p>
--	---	---	--	---

<p>186:17  <b>Gathered</b> - 194:3  <b>Gave</b> - 2:5, 6:17, 17:8, 20:22, 45:20, 56:24, 63:5, 86:25, 89:6, 156:19, 196:19, 209:1  <b>GE</b> - 21:9, 31:10, 31:13, 63:15, 68:1, 68:4, 158:3  <b>General</b> - 27:23, 49:6, 49:23, 62:8, 78:11, 112:6, 112:12, 113:4  <b>Generalizing</b> - 109:7  <b>Generally</b> - 25:14, 79:19, 97:12, 99:21, 105:3, 132:7, 197:22, 197:24, 198:16, 204:23  <b>Generate</b> - 6:25  <b>Generated</b> - 92:2  <b>Generating</b> - 40:2, 70:16  <b>Generation</b> - 26:12, 81:20, 81:22, 95:21, 129:19, 135:11, 136:11, 137:9, 137:16, 138:2, 138:23, 149:9, 149:24, 170:13, 181:4, 181:7, 182:16, 187:7, 187:17, 188:8, 198:6, 199:7, 200:16, 200:18, 200:22, 201:1, 201:2, 201:21, 201:22  <b>Generator</b> - 199:2, 200:15  <b>Gentleman</b> - 216:10  <b>Gentlemen</b> - 192:13  <b>GE's</b> - 63:2  <b>Gets</b> - 16:16, 22:17, 132:6, 148:11, 151:15, 190:24  <b>Giant</b> - 88:25  <b>Gigawatts</b> - 226:1  <b>Give</b> - 2:7, 3:2, 33:7, 63:10, 71:7, 105:22, 182:12,</p>	<p>185:23, 197:10, 204:24, 206:22, 224:10  <b>Given</b> - 12:17, 18:16, 37:13, 70:23, 105:25, 135:13, 137:2, 163:21, 168:3, 199:6  <b>Globally</b> - 231:12  <b>Glut</b> - 71:22, 183:3  <b>Goals</b> - 183:21, 183:23, 184:2  <b>Gone</b> - 15:20, 15:21, 31:2, 35:23, 126:5, 127:12, 133:1, 151:23  <b>Good</b> - 1:3, 1:6, 13:20, 15:2, 22:3, 22:5, 35:8, 35:11, 36:25, 61:4, 61:7, 73:4, 107:5, 107:17, 115:10, 115:12, 130:16, 134:7, 150:25, 151:10, 160:25, 173:23, 189:2, 192:12, 192:13, 223:15, 223:21, 231:13  <b>Goodness</b> - 27:3  <b>Governance</b> - 163:17  <b>Governments</b> - 161:19, 162:16  <b>Government's</b> - 179:22  <b>GRA</b> - 61:20  <b>Grant</b> - 104:8  <b>Grapple</b> - 210:22, 210:23  <b>Greenhouse</b> - 183:20, 183:24, 184:4, 186:17  <b>Grew</b> - 133:18, 165:2  <b>Grid</b> - 18:11  <b>Ground</b> - 136:1  <b>Groundwork</b> - 135:24  <b>Group</b> - 107:19  <b>Guarantee</b> - 96:12, 96:18  <b>Guaranteed</b> - 201:23  <b>Guarantees</b> - 97:19</p>	<p><b>Guidance</b> - 181:6  <b>Guided</b> - 129:7, 129:9  <b>Guiding</b> - 129:1, 132:3  <b>Gull</b> - 25:6, 25:10, 25:15, 26:5, 28:7, 28:11, 36:1, 76:1, 76:4, 78:7, 82:1, 91:14, 93:4, 136:22, 152:16, 180:3, 186:23  <b>Guru</b> - 13:5  <b>Gut</b> - 220:1  <b>Guys</b> - 49:8, 74:6</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <b>H</b> </div> <p><b>Hadn't</b> - 128:12  <b>Half</b> - 22:4, 29:21, 46:22, 95:7, 164:12, 214:11, 224:6, 224:8  <b>Hamper</b> - 171:10  <b>Hand</b> - 10:22, 31:14, 63:22, 77:8  <b>Handle</b> - 15:8, 224:2  <b>Hands</b> - 153:25  <b>Happening</b> - 69:13, 215:3  <b>Hard</b> - 72:16  <b>Harder</b> - 224:20  <b>Hardware</b> - 63:6, 65:21, 69:6, 69:10  <b>Hardwired</b> - 109:25, 110:7, 112:2, 112:4, 112:25, 113:1, 121:15, 121:18, 141:1, 141:2, 143:21, 144:1, 145:22, 145:25  <b>Harm</b> - 227:10  <b>Hasn't</b> - 62:16, 65:7, 65:16, 98:21, 107:1, 170:19  <b>Haven't</b> - 9:18, 30:1, 55:24, 56:8, 56:9, 57:10, 63:1, 72:14, 96:20, 96:21, 97:22, 193:23, 194:23, 222:20  <b>Hayes</b> - 51:22  <b>Haynes</b> - 15:17  <b>Head</b> - 48:16  <b>Heading</b> - 31:13,</p>	<p>235:12  <b>Hear</b> - 85:18, 136:15  <b>Heard</b> - 77:1, 175:6, 183:2  <b>Hearing</b> - 35:20, 104:23, 176:2  <b>Heck</b> - 91:18  <b>He'd</b> - 15:22  <b>Hell</b> - 90:15, 150:13  <b>He'll</b> - 1:16  <b>Help</b> - 6:19, 7:2, 35:5, 46:24, 63:14, 64:6, 109:5, 164:3, 186:16  <b>Helped</b> - 69:7  <b>Helpful</b> - 128:10, 147:22, 166:2  <b>Helps</b> - 86:17  <b>Here's</b> - 74:5  <b>Herring</b> - 87:22, 99:5  <b>Hidden</b> - 101:18, 102:21  <b>High</b> - 26:16, 123:24  <b>Highest</b> - 120:21  <b>Highlight</b> - 166:2  <b>Highly</b> - 177:23  <b>Hinderance</b> - 106:9, 106:14  <b>Hire</b> - 20:17, 20:20, 45:11, 45:12, 47:18, 118:5  <b>Hired</b> - 69:15  <b>Historic</b> - 26:12  <b>Historical</b> - 165:17  <b>Hit</b> - 134:12  <b>Hits</b> - 90:9  <b>Hold</b> - 71:19, 148:10  <b> HOLDERS</b> - 27:19, 50:2, 144:10, 144:18  <b>Holds</b> - 132:22  <b>Holyrood</b> - 19:14, 31:25, 33:6, 33:7, 34:18, 56:11, 70:6, 70:16, 70:18, 71:12  <b>Hook</b> - 9:8, 79:11  <b>Hope</b> - 4:20, 6:4, 19:15, 64:2, 140:2  <b>Hopefully</b> - 12:11, 111:6, 134:16, 140:13, 149:1  <b>Hoping</b> - 139:19  <b>Horrendous</b> - 117:</p>	<p>18  <b>Hospitals</b> - 8:1  <b>Hour</b> - 6:12, 90:5, 174:8  <b>Hours</b> - 25:20, 25:22, 42:1, 184:11, 185:8, 214:12, 223:18, 224:3, 224:9  <b>Houses</b> - 118:14  <b>Hudson</b> - 3:19  <b>Huge</b> - 41:21, 127:22  <b>Humanity</b> - 119:9  <b>Hundred</b> - 73:18, 96:17  <b>Hundreds</b> - 20:21, 22:8, 50:17, 64:22  <b>Hung</b> - 106:4, 106:25, 139:4  <b>HVDC</b> - 43:15  <b>Hydroelectric</b> - 176:17, 176:25, 184:13, 186:19, 188:8, 214:19, 214:24  <b>Hydroelectricity</b> - 24:9  <b>Hydro's</b> - 26:12, 27:5, 49:18, 101:2, 195:11  <b>Hypothetical</b> - 204:11</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <b>I</b> </div> <p><b>Iceberg</b> - 134:13, 134:17  <b>I'd</b> - 115:14, 187:3, 187:25  <b>Ideal</b> - 13:16, 82:19  <b>Identical</b> - 11:10  <b>Identified</b> - 52:19, 121:25, 123:1, 179:12, 180:15  <b>Identifying</b> - 123:6, 168:1  <b>Idiots</b> - 23:8  <b>IESO</b> - 164:17  <b>I'll</b> - 4:17, 31:12, 51:20, 53:12, 63:21, 67:22, 93:9, 108:2, 110:22, 133:1, 138:4, 140:1, 150:4, 170:25, 171:21, 172:19, 182:8, 183:17, 187:13,</p>
--	---	---	---	--

<p>188:1, 188:13, 188:16, 194:13, 194:24, 205:8 <b>Illicit</b> - 189:19 <b>Imagine</b> - 182:6 <b>Imbued</b> - 169:16 <b>Immediate</b> - 23:9, 72:24, 73:4, 135:25, 181:10 <b>Immediately</b> - 22:1 4 <b>Impact</b> - 7:20, 7:24, 10:14, 11:7, 32:9 <b>Impaired</b> - 8:18 <b>Impairment</b> - 99:16 , 102:5 <b>Implement</b> - 159:2 0 <b>Implications</b> - 10:1 , 10:4, 156:9 <b>Import</b> - 71:19, 87:3 <b>Importance</b> - 170:2 1 <b>Important</b> - 119:10, 128:4, 167:7, 172:3, 173:4, 174:8, 182:21, 188:2, 219:5 <b>Imported</b> - 87:10 <b>Impression</b> - 209:9 , 212:4, 226:2 <b>Improve</b> - 10:18, 36:3, 128:11 <b>Improved</b> - 14:6, 103:25, 146:17 <b>Improvement</b> - 51: 7 <b>Imprudent</b> - 144:24 <b>Imprudently</b> - 147: 10 <b>Inc</b> - 2:1 <b>Incentive</b> - 106:1, 227:5 <b>Income</b> - 171:11 <b>Incorporate</b> - 124: 20 <b>Incorporated</b> - 78: 8 <b>Incorporating</b> - 65: 24 <b>Incorrect</b> - 74:16, 91:23 <b>Increase</b> - 23:2, 28:16, 35:3, 73:20, 104:7, 118:23, 123:7, 125:5,</p>	<p>157:11 <b>Increased</b> - 19:4, 19:14, 19:16, 103:21, 105:3 <b>Increases</b> - 35:2, 103:6, 122:12, 154:6 <b>Increasing</b> - 28:19, 101:10, 186:9 <b>Incremental</b> - 185: 20, 186:6, 186:7 <b>Incur</b> - 142:7 <b>Incurred</b> - 110:4, 110:22, 111:11, 113:14, 113:25, 122:19, 141:4, 141:13, 143:4, 143:7, 143:19, 144:13, 145:9, 145:23, 146:2, 146:3, 146:6, 146:11, 146:16, 147:11, 147:16, 147:21, 174:22 <b>Indicated</b> - 5:10, 24:8, 39:8, 41:24, 42:8, 43:6, 44:19, 115:15, 117:24, 139:15, 156:6, 160:25, 166:25, 201:2, 202:24 <b>Indication</b> - 55:11 <b>Indicator</b> - 56:19 <b>Indulge</b> - 108:2, 108:18 <b>Industrial</b> - 107:19, 108:6, 108:25 <b>Industry</b> - 116:19, 129:8, 132:7, 177:16 <b>Inefficiencies</b> - 12 3:2 <b>Influence</b> - 9:2, 22:15, 32:8, 32:18, 121:1, 165:13 <b>Influenced</b> - 131:1 1, 133:12, 148:21 <b>Inherent</b> - 87:17 <b>Initial</b> - 98:16 <b>Initially</b> - 7:11, 98:17, 100:20 <b>Initiative</b> - 23:17 <b>Input</b> - 88:2, 116:17, 119:18, 124:2 <b>Inquire</b> - 10:10 <b>Inquiry</b> - 19:6,</p>	<p>24:19, 63:24, 85:22, 86:16, 89:18, 100:8, 117:9, 117:15, 117:19, 134:11, 153:5, 164:3 <b>Insight</b> - 125:17 <b>Insights</b> - 168:2, 168:23, 169:4, 169:8, 179:9, 191:13, 191:23 <b>Instruct</b> - 153:23 <b>Integrate</b> - 184:19 <b>Integrated</b> - 74:12 <b>Integrating</b> - 21:15 <b>Integration</b> - 4:8, 19:4, 20:1, 73:6, 182:4, 212:3 <b>Intellectual</b> - 51:3 <b>Intensive</b> - 34:24 <b>Interest</b> - 11:9, 11:10, 98:9, 127:13, 149:19, 163:24, 169:16, 178:6, 191:19, 227:4, 229:23 <b>Interesting</b> - 61:11 <b>Interference</b> - 227: 24 <b>Interflex</b> - 2:23 <b>Intermingle</b> - 152:3 <b>Intermingled</b> - 86:9 <b>Intermingling</b> - 15 2:4 <b>Internal</b> - 189:13, 213:13 <b>Internally</b> - 99:15 <b>Interruption</b> - 65:2 1 <b>Intervenors</b> - 36:15 <b>Intricate</b> - 14:15 <b>Introduce</b> - 1:10, 160:15 <b>Introducing</b> - 109: 8, 111:12, 113:24, 160:21 <b>Introduction</b> - 109: 13 <b>Introductory</b> - 1:15 <b>Intrusive</b> - 206:10 <b>Invest</b> - 178:2 <b>Invested</b> - 22:21 <b>Investing</b> - 52:1 <b>Investment</b> - 34:5, 34:15, 95:8, 111:11, 114:2, 177:13, 222:8, 222:10,</p>	<p>222:11, 223:15 <b>Investments</b> - 111: 22 <b>Investor</b> - 168:17, 169:10 <b>Involvement</b> - 116: 4 <b>Ironic</b> - 17:7 <b>Island</b> - 25:6, 25:10, 25:15, 26:5, 28:8, 28:12, 36:1, 70:4, 76:1, 76:4, 78:7, 82:1, 91:14, 93:4, 107:18, 108:6, 109:1, 136:23, 152:17, 180:3, 183:23, 186:23 <b>Isn't</b> - 7:14, 74:13, 103:13, 178:6, 188:21, 203:21, 211:14 <b>Isolate</b> - 47:9 <b>Isolated</b> - 14:20 <b>Issue</b> - 13:2, 88:1, 88:16, 104:10, 114:10, 118:23, 125:18, 134:3, 158:3, 164:3, 176:22, 203:4, 209:10, 211:10 <b>Issued</b> - 179:20 <b>Issues</b> - 18:12, 22:14, 69:10, 75:12, 80:9, 80:10, 85:8, 91:5, 113:7, 118:11, 138:11, 162:5, 184:22, 191:19, 193:23, 205:9 <b>It'll</b> - 10:20, 18:8, 50:20, 64:14, 82:5 <b>I've</b> - 23:10, 24:3, 31:2, 31:17, 35:22, 36:16, 39:8, 51:22, 64:6, 81:8, 89:20, 103:17, 105:18, 117:11, 118:5, 124:19, 138:5, 161:5, 161:23, 164:10, 165:2, 173:3, 179:11, 189:3, 226:11, 228:7</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;">J</div> <p><b>Jack</b> - 88:22</p>	<p><b>January</b> - 179:20 <b>Jennifer</b> - 71:7, 104:3 <b>Jim</b> - 15:17, 15:21, 51:22, 130:1 <b>Job</b> - 13:20, 27:5, 63:1, 63:11, 84:11, 128:18, 129:3, 130:6, 173:23, 222:12, 231:13 <b>Jobs</b> - 20:19, 48:5 <b>John</b> - 6:10, 130:2, 160:19, 161:1, 188:17, 190:13 <b>Joined</b> - 2:11, 126:11, 127:23 <b>Joining</b> - 2:9 <b>Jointed</b> - 125:25 <b>Joke</b> - 23:7 <b>Jones</b> - 176:4, 224:5, 224:9 <b>Judge</b> - 79:17 <b>Judges</b> - 74:4 <b>Judgment</b> - 14:5, 102:17 <b>Jump</b> - 169:20 <b>Juncture</b> - 59:13 <b>Jurisdiction</b> - 10:2 4, 80:12, 95:16, 98:7, 197:21 <b>Jurisdictional</b> - 98: 8, 162:19, 162:21, 179:8 <b>Jurisdictions</b> - 82: 8, 83:5, 95:17, 95:23, 133:14, 168:8, 197:19, 198:11, 201:19, 229:24 <b>Justice</b> - 100:9 <b>Justify</b> - 104:20</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;">K</div> <p><b>Keating</b> - 15:21 <b>Keeyask</b> - 231:17 <b>Key</b> - 57:18, 58:14, 131:13, 165:17 <b>Killeavy</b> - 160:19, 164:7, 164:8, 164:9, 183:11, 183:14, 185:18, 187:14, 188:12, 190:5, 211:1, 217:10, 217:14, 217:21 <b>Kilowatt</b> - 92:13 <b>Kinds</b> - 10:17,</p>
---	---	---	--	--

<p>30:21, 58:2, 87:12, 189:20, 192:6  <b>Knowledge</b> - 94:1, 124:9, 215:17  <b>Knowles</b> - 164:19, 164:23  <b>Knows</b> - 23:23, 33:9, 234:18</p> <div style="border: 1px solid black; text-align: center; width: 100px; margin: 10px auto;">L</div> <p><b>Lab</b> - 159:5  <b>Labrador</b> - 28:7, 83:19, 83:22, 104:1, 163:4, 163:11, 163:14, 170:18, 177:22, 182:4, 186:22, 196:5, 213:3, 216:3, 223:22  <b>Lack</b> - 13:21, 229:12, 229:17, 230:13, 231:22  <b>Land</b> - 95:4, 104:15  <b>Landscape</b> - 168:1  1  <b>Language</b> - 166:19, 172:25, 179:24, 230:24  <b>Large</b> - 11:11, 107:8, 185:9  <b>Largely</b> - 171:4, 201:4, 202:12  <b>Larger</b> - 41:2, 176:20  <b>Largest</b> - 14:13, 183:21  <b>Late</b> - 64:8, 68:9, 111:2  <b>Later</b> - 178:10, 215:5  <b>Lavalin</b> - 87:13, 88:10  <b>Lawyers</b> - 111:18  <b>Laying</b> - 135:23  <b>Layman's</b> - 229:14  <b>Lead</b> - 24:24, 116:23, 199:2, 200:15  <b>Leading</b> - 13:4, 86:4  <b>Leads</b> - 12:25  <b>Leave</b> - 13:9, 14:4, 15:24, 27:20, 93:9, 139:24, 149:3, 151:1, 154:9  <b>Leaving</b> - 139:16  <b>Leblanc</b> - 100:10</p>	<p><b>Left</b> - 21:22, 25:12, 74:23, 79:11, 109:11, 109:21, 116:13, 118:21, 128:21, 128:25, 153:6  <b>Legacy</b> - 26:13, 43:18  <b>Legal</b> - 2:12, 107:18, 109:18, 111:15  <b>Legislation</b> - 113:4, 7, 114:21, 128:5, 129:10, 132:11, 132:14, 141:8, 146:19, 154:21, 155:5, 155:12, 178:1, 185:2, 204:8  <b>Legislative</b> - 113:9, 113:15, 132:5, 146:22, 203:12, 203:25  <b>Let's</b> - 28:1, 65:16, 65:17, 70:16, 83:4, 109:12, 111:19, 120:8, 128:16, 132:20, 138:11, 138:16, 196:22, 206:22, 206:23, 222:12  <b>Letter</b> - 179:17  <b>Letters</b> - 12:17  <b>Level</b> - 15:8, 15:12, 15:14, 54:13, 108:13, 120:21, 123:24  <b>Levels</b> - 33:3  <b>Liam</b> - 37:2, 37:4, 192:13  <b>Liberty's</b> - 20:7, 43:3, 101:25, 107:23, 108:23, 136:13, 151:20, 212:16, 219:1  <b>Light</b> - 219:16  <b>LIL</b> - 32:4, 40:4, 43:15, 57:24, 61:18, 61:22, 63:4, 63:12, 66:16, 111:9, 113:12, 151:7, 203:14  <b>Limited</b> - 118:4, 168:10, 168:13, 172:17  <b>Limits</b> - 102:4, 171:19  <b>Line</b> - 43:15, 68:23,</p>	<p>172:11, 199:3, 200:15, 225:14, 228:23  <b>Lines</b> - 3:3  <b>Link</b> - 70:1, 70:3, 70:11, 70:23, 71:13, 93:25  <b>List</b> - 69:13, 85:5  <b>Listened</b> - 23:22  <b>Literally</b> - 134:20  <b>Lived</b> - 161:19  <b>Load</b> - 159:15  <b>Local</b> - 199:8  <b>Locked</b> - 202:5  <b>Logic</b> - 63:7  <b>Long</b> - 11:24, 24:24, 31:4, 31:5, 38:16, 56:21, 62:5, 75:24, 76:3, 102:20, 104:9, 133:1, 157:9, 217:3, 223:11  <b>Longer</b> - 10:10, 24:13, 51:22, 209:21  <b>Looked</b> - 33:21, 40:15, 46:8, 56:10, 81:6, 89:9, 89:24, 129:16, 129:24, 195:5, 213:12, 224:11  <b>Looking</b> - 7:11, 8:24, 23:18, 24:7, 24:21, 24:22, 26:2, 30:6, 30:8, 34:11, 41:8, 49:19, 53:7, 55:23, 56:6, 61:10, 69:24, 70:11, 71:10, 71:24, 80:23, 80:24, 96:14, 132:22, 154:22, 162:23, 180:11, 184:14, 185:1, 185:22, 186:14, 194:7, 196:24, 201:9, 203:10, 209:21, 212:10, 213:24, 214:5, 218:1, 225:9, 228:13, 233:20  <b>Loose</b> - 21:23  <b>Lose</b> - 23:6, 31:8, 32:22, 36:9, 191:11  <b>Losing</b> - 63:17, 215:11, 226:24  <b>Loss</b> - 117:8, 174:22</p>	<p><b>Lost</b> - 51:23, 84:6, 89:3, 105:18, 182:14  <b>Lots</b> - 14:9, 28:10  <b>Low</b> - 90:11, 235:9  <b>Lower</b> - 28:22, 34:24, 140:25, 142:7, 145:17  <b>Lowest</b> - 164:1, 186:24, 196:10, 200:6  <b>LTA</b> - 40:4, 111:9, 113:12, 203:14  <b>Lucky</b> - 153:5  <b>Lurch</b> - 139:24</p> <div style="border: 1px solid black; text-align: center; width: 100px; margin: 10px auto;">M</div> <p><b>Madam</b> - 1:12, 73:2, 107:16, 131:8, 216:15, 235:11  <b>Madame</b> - 36:25, 192:12  <b>Magnitude</b> - 50:18, 182:8, 213:4, 232:4  <b>Main</b> - 37:21  <b>Maintain</b> - 13:9, 33:16, 57:19, 137:8, 144:23, 233:18  <b>Maintaining</b> - 19:2, 0, 170:21  <b>Maintenance</b> - 40:3, 43:25, 111:8, 137:22, 140:24, 143:18, 144:12, 145:8, 150:1, 203:15  <b>Major</b> - 16:14, 22:25, 35:19, 64:20, 154:12, 161:24, 164:15, 168:7, 168:14, 175:11, 180:4  <b>Make</b> - 5:5, 16:21, 21:25, 24:20, 27:14, 27:17, 27:18, 29:7, 33:13, 43:7, 48:15, 49:19, 56:14, 56:19, 88:7, 88:12, 98:23, 102:20, 106:10, 110:1, 111:14, 113:15, 113:17, 124:2, 129:6, 129:11, 131:12, 139:8, 142:6,</p>	<p>147:3, 150:14, 152:25, 154:19, 158:9, 165:1, 173:2, 173:20, 174:1, 179:4, 188:1, 190:17, 194:13, 209:14, 211:12, 219:19, 221:4  <b>Making</b> - 27:13, 81:21, 88:3, 88:18, 89:21, 125:3, 133:20, 151:14, 159:12, 189:18, 214:25, 226:22  <b>Manage</b> - 232:3  <b>Managed</b> - 192:1, 210:17  <b>Management</b> - 13:4, 75:2, 75:3, 85:5, 86:15, 89:10, 153:6, 161:2, 206:3, 206:21, 207:22, 208:25, 209:22, 209:25  <b>Managers</b> - 84:24, 85:2  <b>Managing</b> - 118:11  <b>Mandated</b> - 23:11  <b>Mandates</b> - 26:23, 168:5, 196:16  <b>Manitoba</b> - 90:16, 202:2, 231:18  <b>Manpower</b> - 44:20  <b>Mantra</b> - 94:21  <b>Manual</b> - 207:12, 208:23  <b>Many</b> - 2:19, 3:13, 3:16, 11:14, 29:13, 57:23, 67:9, 89:20, 90:22, 94:24, 117:11, 161:25, 168:4, 186:23, 190:20, 192:15  <b>Marginal</b> - 176:18, 214:20  <b>Margins</b> - 176:15, 176:19, 177:17, 190:23, 209:10, 210:11, 214:9  <b>Maritime</b> - 3:7, 14:20, 70:1, 70:3, 70:10, 70:23, 71:13, 93:25  <b>Maritimes</b> - 70:15, 81:2, 152:23, 187:4  <b>Mark</b> - 140:18,</p>
---	--	---	--	---

<p>140:19  <b>Market</b> - 12:5, 29:11, 30:5, 30:21, 35:8, 41:23, 50:11, 92:1, 92:10, 92:12, 92:15, 154:25, 161:23, 162:2, 162:4, 162:9, 162:12, 162:15, 165:11, 170:14, 182:2, 191:22, 191:23, 191:24, 191:25, 198:2, 198:5, 199:11, 199:13, 199:17, 199:24, 200:4, 202:23, 213:6  <b>Marketer</b> - 188:3  <b>Marketers</b> - 210:10  <b>Marketing</b> - 91:11, 91:12, 91:20, 92:14, 92:24, 93:12, 94:4, 94:16, 95:1, 95:11, 95:25, 171:15, 172:2, 172:6, 172:9, 174:4, 174:5, 174:15, 176:5, 187:20, 191:3, 205:9, 205:25, 206:1, 222:5, 223:1, 225:10, 227:3, 228:11, 228:17  <b>Markets</b> - 29:13, 42:16, 44:2, 92:13, 94:1, 161:8, 161:9, 161:10, 161:11, 161:18, 161:21, 165:16, 171:12, 173:12, 174:7, 175:10, 175:12, 177:2, 178:12, 178:19, 182:24, 183:5, 183:8, 183:9, 183:10, 183:18, 183:20, 184:5, 184:8, 187:2, 199:22, 201:16, 214:7, 215:3, 220:8  <b>Marshall's</b> - 231:4  <b>MARTIN</b> - 131:17, 133:17  <b>Massachusetts</b> - 1 83:22, 184:10, 185:17, 186:4</p>	<p><b>Massive</b> - 34:5, 36:12  <b>Math</b> - 219:22  <b>Matters</b> - 1:8, 83:7, 189:12  <b>Maureen</b> - 6:10  <b>Maximization</b> - 227 :15, 227:19  <b>Maximize</b> - 29:4, 50:23, 174:24  <b>Maximizing</b> - 174:1 6, 190:23, 210:11, 210:21, 227:6  <b>Mayor</b> - 30:14, 185:11  <b>Meaningful</b> - 169:4 , 219:20, 235:7  <b>Means</b> - 10:17, 17:20, 18:8, 20:12, 21:14, 141:4, 150:17  <b>Meant</b> - 143:21, 145:24  <b>Meantime</b> - 33:9  <b>Measure</b> - 226:2, 228:2  <b>Measured</b> - 226:1, 226:7  <b>Mechanism</b> - 173:1 3, 205:15  <b>Media</b> - 90:22  <b>Meet</b> - 6:7, 21:6, 100:11  <b>Meets</b> - 44:12  <b>Mega</b> - 14:13  <b>Megawatt</b> - 34:18, 90:5, 225:5  <b>Megawatts</b> - 23:3, 23:4, 23:20, 23:25, 25:23, 29:16, 30:2, 71:6, 73:15, 73:18, 187:6, 224:17, 224:20, 224:22, 225:8  <b>Menu</b> - 134:14  <b>Merchant</b> - 199:18  <b>Merge</b> - 17:13, 39:19  <b>Merger</b> - 20:1, 52:20, 164:16  <b>Merging</b> - 47:16  <b>Met</b> - 6:10  <b>Metric</b> - 225:8, 228:1  <b>Michael</b> - 160:19, 164:9  <b>Mike</b> - 60:5</p>	<p><b>Million</b> - 13:18, 22:5, 34:12, 34:13, 36:6, 36:8, 46:21, 58:2, 64:18, 90:4, 96:17, 98:15, 226:14  <b>Millions</b> - 22:6, 22:8, 22:9, 23:5, 50:17, 64:22  <b>Mindful</b> - 59:9  <b>Mindset</b> - 60:13  <b>Minimization</b> - 167 :13  <b>Minimize</b> - 34:2, 124:23, 138:18  <b>Minimizing</b> - 6:24  <b>Minimum</b> - 78:19, 82:11  <b>Minister</b> - 12:17, 12:20, 179:17  <b>Minister's</b> - 181:6  <b>Mirror</b> - 82:7  <b>Misallocation</b> - 14 7:4  <b>Miss</b> - 77:9, 195:1  <b>Mission</b> - 12:24, 12:25, 13:6, 166:21, 179:25, 196:6, 219:1  <b>Mistake</b> - 87:17  <b>Misunderstood</b> - 2 33:3  <b>Mitigate</b> - 5:8, 5:16, 7:2, 38:22, 61:10, 61:24, 98:11, 100:25, 167:10, 219:3  <b>Mitigating</b> - 61:12  <b>Mitigation</b> - 5:18, 5:23, 6:16, 6:22, 7:4, 40:18, 40:21, 55:5, 115:17, 116:7, 162:11, 194:7, 194:10, 219:12, 221:1, 221:5, 230:12  <b>Mixed</b> - 47:24  <b>Mixing</b> - 137:4  <b>Mode</b> - 159:18  <b>Model</b> - 181:22, 181:23, 181:24  <b>Modelled</b> - 63:20  <b>Models</b> - 82:9  <b>Modules</b> - 158:18  <b>Money</b> - 9:6, 9:12, 10:18, 20:9, 49:9, 53:24, 58:10,</p>	<p>61:23, 63:17, 84:15, 98:4, 98:10, 101:21, 102:1, 103:8, 120:18, 133:9, 151:21, 152:19  <b>Monies</b> - 8:7  <b>Monitor</b> - 69:15  <b>Monopoly</b> - 108:20 , 109:2, 154:25  <b>Month</b> - 65:20  <b>Months</b> - 58:1, 71:11, 72:1, 127:12, 153:3  <b>Morning</b> - 1:3, 1:6, 1:13, 37:1, 37:11, 61:4, 61:7, 107:17, 115:10, 115:12, 136:3, 139:15, 179:14, 180:25, 188:17, 192:12, 195:9, 217:3, 218:22, 221:22, 235:16  <b>Move</b> - 6:6, 9:24, 16:4, 29:7, 48:15, 102:1, 140:21, 161:17, 178:9  <b>Moved</b> - 83:8, 83:10, 83:13, 83:18, 94:4, 94:5, 94:9, 109:11, 161:14  <b>Moving</b> - 21:4, 80:16, 101:9, 150:11, 153:10, 167:18, 171:11  <b>Much</b> - 9:1, 9:21, 11:18, 18:21, 21:14, 22:18, 35:7, 51:21, 61:12, 88:4, 88:12, 99:6, 99:8, 99:9, 107:10, 109:1, 120:18, 123:21, 135:4, 166:23, 167:5, 167:12, 176:20, 178:2, 179:24, 186:14, 191:6  <b>Multiple</b> - 35:11, 68:7, 161:24  <b>Municipal</b> - 199:9  <div style="border: 1px solid black; width: 100px; height: 15px; margin: 5px auto; text-align: center;">N</div> <b>Nalcor's</b> - 12:14, 50:7, 111:23, 113:14, 136:5,</p>	<p>165:21, 167:6, 170:22, 177:13, 179:10, 180:12, 190:7, 195:7, 195:10, 212:17, 213:25, 219:5, 233:9, 233:22, 234:6  <b>Narrow</b> - 54:11  <b>Natural</b> - 12:17, 29:18, 29:19, 163:2, 163:12, 179:18, 183:3  <b>Navigant</b> - 161:16, 232:6  <b>NB</b> - 163:5, 187:16, 205:25, 221:15  <b>Near</b> - 16:7, 139:17  <b>Necessary</b> - 91:20, 110:24, 136:6, 167:3  <b>Necessity</b> - 42:24, 74:11  <b>Needed</b> - 75:8, 90:18, 211:24  <b>Negotiations</b> - 21: 24, 22:9, 73:7, 73:10  <b>Neighbourhood</b> - 214:11  <b>Neither</b> - 8:25  <b>NEM</b> - 187:14, 188:9, 221:17, 223:10, 223:14  <b>NEM's</b> - 176:1, 187:21  <b>Nervous</b> - 206:18  <b>Net</b> - 177:21, 219:23, 219:24  <b>New</b> - 3:19, 14:22, 23:21, 24:7, 24:8, 29:8, 29:11, 29:15, 30:12, 30:14, 34:19, 34:22, 45:7, 62:21, 63:21, 67:7, 69:10, 71:17, 81:19, 81:20, 81:22, 82:24, 126:5, 126:10, 127:15, 140:11, 140:15, 140:18, 152:21, 161:20, 182:16, 183:8, 183:9, 183:21, 184:20, 185:1, 185:6, 185:15, 186:14, 187:4,</p>
---	---	--	---	---



<p>205:24, 206:2, 208:2, 208:5  <b>Newfie</b> - 23:7  <b>Newfoundlanders</b> - 23:6  <b>News</b> - 23:22, 63:16  <b>Nickel</b> - 52:2  <b>Nimble</b> - 174:9  <b>Non</b> - 84:7, 110:18, 131:10, 131:19, 167:21, 168:17, 169:23, 170:7, 180:16, 180:18, 181:2  <b>Nor</b> - 9:1  <b>Norm</b> - 26:15, 127:1, 147:6  <b>Normal</b> - 121:18, 121:22, 125:4, 133:13, 134:9, 147:5, 148:6  <b>Normally</b> - 129:8, 133:14, 154:24, 197:12, 198:17, 199:11  <b>North</b> - 12:4, 18:22, 25:13, 25:14, 161:6, 162:14, 163:8  <b>Northeast</b> - 30:9, 72:9, 72:19  <b>Northeastern</b> - 178:14  <b>Note</b> - 11:15  <b>Notion</b> - 166:7, 202:11  <b>Nova</b> - 23:21, 29:9, 29:15, 71:18, 81:19, 83:1, 152:21, 161:20, 172:19, 173:10, 178:1, 187:5, 187:12, 205:12, 224:23  <b>Nuances</b> - 189:20  <b>Numbers</b> - 33:8, 51:2, 51:5, 56:24, 60:6, 60:8, 172:11, 182:10, 213:11</p> <p style="text-align: center;"><b>O</b></p> <p><b>O&amp;M</b> - 34:3, 34:6, 34:13, 58:16, 58:21, 111:21, 112:3, 113:12, 114:1, 203:14</p>	<p><b>Objection</b> - 119:5  <b>Objective</b> - 82:19, 83:3, 83:4, 219:5, 227:18  <b>Objectives</b> - 82:17, 163:24, 167:5, 168:6, 185:11, 195:8  <b>Obligation</b> - 99:21, 100:11, 100:18  <b>Observation</b> - 42:7  <b>Observe</b> - 155:10  <b>Observers</b> - 84:25  <b>Obtain</b> - 52:21  <b>Obtained</b> - 121:7  <b>Occur</b> - 203:16  <b>Occurred</b> - 46:5  <b>Occurs</b> - 40:17  <b>Odd</b> - 34:20  <b>OEM</b> - 113:12  <b>Offer</b> - 168:1, 173:25, 174:14  <b>Offered</b> - 166:12, 169:8  <b>Offers</b> - 173:1, 225:10  <b>Office</b> - 161:15  <b>Officer</b> - 15:23, 140:12  <b>Offices</b> - 162:7  <b>Offline</b> - 23:24  <b>Offset</b> - 122:11, 123:7  <b>Offshore</b> - 87:7, 184:9  <b>Often</b> - 168:5, 170:10, 175:22, 201:2  <b>Oil</b> - 7:15, 7:18, 8:5, 15:22, 84:23, 85:1, 86:14, 86:23, 87:7, 87:8, 87:11, 87:14, 88:21, 98:3, 98:4, 98:14, 98:25  <b>Old</b> - 34:17, 34:20, 34:22, 51:20  <b>Older</b> - 22:20, 66:20  <b>Ones</b> - 24:14, 143:19, 169:13  <b>One's</b> - 24:24  <b>Ongoing</b> - 53:21, 111:8, 111:21, 111:22, 112:3, 113:11, 129:15  <b>Online</b> - 67:17  <b>Ontario</b> - 3:9,</p>	<p>105:15, 161:16, 161:20, 164:13, 164:17, 183:11, 187:17  <b>Ontario's</b> - 162:22  <b>Onward</b> - 63:9  <b>Open</b> - 49:15, 108:13, 161:15, 189:23  <b>Opened</b> - 161:10  <b>Openness</b> - 160:1  <b>Operate</b> - 21:13, 34:9, 43:14, 47:22, 52:3, 54:2, 59:4, 63:3, 63:12, 64:9, 65:18, 67:2, 67:6, 68:13, 137:7, 141:21, 144:22, 158:14, 159:15, 159:17, 191:15  <b>Operated</b> - 65:19, 188:4  <b>Operating</b> - 32:3, 34:24, 57:24, 59:14, 59:15, 59:17, 59:20, 61:18, 65:5, 137:5, 138:1, 140:24, 141:12, 142:8, 143:18, 144:12, 145:8, 150:1, 151:7, 176:18, 188:7, 214:20, 214:24  <b>Operation</b> - 40:3, 110:25, 111:5, 111:8, 137:8, 137:21, 140:14, 164:21, 164:22, 170:2, 175:24  <b>Operational</b> - 32:4, 43:8, 52:19, 52:22  <b>Operations</b> - 33:25, 129:22, 130:8, 152:3, 166:9, 167:22, 167:24, 169:18, 169:24, 170:4, 170:7, 170:9, 171:3, 171:20, 171:24, 172:2, 172:18, 174:3, 174:13, 175:4, 175:16, 180:17, 180:19, 180:24, 191:7, 198:6  <b>Operator</b> - 162:23,</p>	<p>164:14  <b>Operators</b> - 162:16  <b>Opinion</b> - 18:10, 43:3, 151:6, 152:6, 152:13, 197:10, 212:16, 212:21  <b>Opinions</b> - 186:23  <b>Opportunities</b> - 19:23, 28:7, 36:2, 46:4, 46:10, 47:10, 50:10, 162:4, 163:3, 163:6, 163:9, 171:1, 178:18, 180:2, 182:13, 182:18, 182:23, 194:10, 194:19, 194:25, 213:6, 219:21, 219:24, 220:17, 221:8, 222:19, 222:20, 233:21  <b>Opposed</b> - 66:12, 82:7, 86:24, 90:2, 94:6, 102:18, 227:14  <b>Opposing</b> - 196:14  <b>Optimism</b> - 229:1  <b>Optimization</b> - 190:10  <b>Optimize</b> - 152:18, 190:2, 190:3  <b>Optimizing</b> - 190:9  <b>Option</b> - 138:20  <b>Options</b> - 108:12, 153:1, 167:10, 219:3  <b>Orbit</b> - 188:10  <b>Order</b> - 17:18, 36:22, 42:16, 96:15  <b>Organically</b> - 155:21  <b>Organization</b> - 15:11, 26:22, 39:1, 54:3, 54:4, 54:20, 150:11, 151:19, 167:25, 169:19, 170:24, 172:24, 175:15, 175:21, 188:15, 189:11, 189:21, 191:13, 192:3, 194:16, 220:3, 220:22, 222:3, 231:23, 233:18  <b>Organizational</b> - 12:10, 13:1, 15:3, 15:6, 32:14, 37:12,</p>	<p>37:18, 39:4, 55:5, 164:23, 165:10, 165:13, 165:20, 165:22, 167:2, 167:3, 168:2, 170:21, 179:11, 179:13, 180:12, 189:1, 189:8, 193:7, 193:9, 193:16, 195:5, 196:3, 212:23  <b>Organizations</b> - 12:5, 108:5, 142:16  <b>Organization's</b> - 188:19, 189:12, 194:1  <b>Organize</b> - 130:5, 133:25  <b>Organized</b> - 138:12  <b>Original</b> - 118:20, 152:9, 154:9, 217:17  <b>Originally</b> - 5:22  <b>Otherwise</b> - 8:11, 27:4, 112:20, 220:3  <b>Ourselves</b> - 21:24, 80:11, 130:8  <b>Outcome</b> - 88:4, 121:1  <b>Outlining</b> - 165:6  <b>Output</b> - 200:17  <b>Outrageous</b> - 113:4  <b>Outsource</b> - 213:21  <b>Overcapacity</b> - 79:12  <b>Overlap</b> - 45:24, 75:13, 75:14  <b>Overlooked</b> - 85:17  <b>Overly</b> - 211:14  <b>Overregulating</b> - 202:25, 203:1  <b>Overregulation</b> - 228:2  <b>Overriding</b> - 127:23  <b>Overrun</b> - 231:15  <b>Overruns</b> - 89:17, 90:7, 90:24, 90:25, 234:17  <b>Oversee</b> - 17:3, 192:5  <b>Oversight</b> - 132:14, 144:2, 146:18, 147:2, 149:10,</p>
--	--	---	--	--

<p>156:18, 162:2, 163:16, 163:18, 167:23, 170:1, 171:10, 171:20, 172:17, 172:24, 173:19, 173:25, 174:10, 177:13, 177:19, 202:15, 202:17, 204:25, 205:5, 205:11, 205:14, 205:16, 206:10, 207:1, 207:6, 207:24, 209:1, 209:14, 209:20, 211:12, 227:14, 227:16, 227:17, 228:7, 229:3, 229:7, 229:9, 229:19, 229:21, 230:1, 230:13, 230:16, 230:20, 231:2 <b>Overview</b> - 2:8 <b>Overwhelms</b> - 58:1 2 <b>Own</b> - 5:24, 6:23, 12:3, 36:4, 86:13, 96:22, 100:6, 152:13, 191:5, 212:21 <b>Owned</b> - 168:15, 168:16, 168:17, 168:19, 169:10, 187:18, 221:16 <b>Owner</b> - 80:3 <b>Owners</b> - 147:2 <b>Ownership</b> - 168:4, 229:7, 230:9, 230:15, 230:18 <b>Owens</b> - 7:10, 155:17</p> <div style="border: 1px solid black; width: fit-content; margin: 10px auto; padding: 2px 10px;"> <p style="text-align: center; margin: 0;"><b>P</b></p> </div> <p><b>Package</b> - 159:1, 159:9, 159:14 <b>Paid</b> - 123:3, 141:5, 141:17, 143:2, 143:5, 143:20, 150:2, 166:11, 209:8 <b>Panacea</b> - 106:24 <b>Pancaking</b> - 80:18, 80:20 <b>Panel</b> - 12:11, 160:7, 160:16 <b>Panels</b> - 12:9 <b>Panic</b> - 189:25</p>	<p><b>Parallel</b> - 20:23 <b>Paraphrasing</b> - 50: 5 <b>Parcel</b> - 200:16 <b>Partially</b> - 197:4 <b>Participants</b> - 162: 15 <b>Participate</b> - 177:1 <b>Participated</b> - 24:1 0 <b>Participating</b> - 174 :6 <b>Participation</b> - 5:1 7, 201:15, 220:7 <b>Particularly</b> - 33:5 <b>Parties</b> - 78:12, 164:4, 215:13, 216:1 <b>Partition</b> - 132:9 <b>Partner</b> - 234:1 <b>Partners</b> - 78:13 <b>Partnership</b> - 78:1 7, 78:21, 181:18 <b>Parts</b> - 72:19, 129:19, 131:12, 158:24, 159:9 <b>Party</b> - 149:11, 199:19, 215:8, 227:1 <b>Pass</b> - 173:15, 173:17, 228:12 <b>Passed</b> - 28:1, 141:8, 144:13, 144:24, 145:24, 185:2 <b>Passionate</b> - 37:14 <b>Past</b> - 96:22, 152:12, 189:3 <b>Path</b> - 19:10, 19:12, 32:19 <b>Pattern</b> - 68:8 <b>Paul</b> - 107:17 <b>Pay</b> - 22:4, 30:17, 79:11, 99:9, 99:10, 103:15, 105:4, 106:22, 108:20, 109:4, 118:6, 121:6, 122:6, 122:18, 141:10, 146:5, 146:12, 147:11, 173:8, 189:14, 223:6 <b>Payer</b> - 99:8, 121:10, 154:23, 223:7 <b>Payers</b> - 76:24, 79:10, 100:4,</p>	<p>104:6, 114:5, 120:1, 123:3, 137:23, 143:20, 144:14, 147:11, 149:16, 155:15 <b>Payer's</b> - 67:15 <b>Paying</b> - 10:12, 35:10, 49:20, 137:24, 204:23, 211:9, 223:7 <b>Pays</b> - 81:13, 122:1 <b>PCI</b> - 3:12 <b>Peer</b> - 177:25 <b>PEI</b> - 213:2 <b>Pending</b> - 220:12, 220:13 <b>Percent</b> - 13:8, 23:3, 26:1, 34:6, 51:15, 101:4, 103:3, 183:24, 185:3, 185:5 <b>Perfect</b> - 75:13 <b>Perform</b> - 162:18, 167:11 <b>Performance</b> - 4:9, 105:6, 105:7, 106:1, 172:7 <b>Performed</b> - 162:2 1 <b>Perhaps</b> - 77:4, 111:15, 111:18, 127:8, 165:5, 226:4, 233:11 <b>Period</b> - 3:10, 69:12, 74:21, 87:3, 110:18, 112:2 <b>Person</b> - 22:4, 22:5, 85:3, 188:13 <b>Personal</b> - 4:25, 127:13, 152:13 <b>Personally</b> - 97:23, 127:12 <b>Perspectives</b> - 164 :4, 171:25 <b>Peter</b> - 13:3, 166:21 <b>Phase</b> - 63:8 <b>Phased</b> - 32:21 <b>Phrase</b> - 85:18 <b>Physical</b> - 18:5, 31:7 <b>Picture</b> - 33:23, 34:4, 34:11, 57:8, 59:5, 75:4, 119:1 <b>Pieces</b> - 158:19, 158:25 <b>Piper</b> - 223:6</p>	<p><b>Pivoted</b> - 91:17 <b>Place</b> - 9:5, 15:1, 27:18, 27:21, 37:19, 70:21, 71:5, 106:6, 106:11, 148:17, 149:5, 204:1, 206:3, 206:4, 206:17, 206:21, 207:13, 208:22, 220:22 <b>Placed</b> - 119:19 <b>Plague</b> - 118:14 <b>Plan</b> - 32:25, 60:7, 70:7, 71:12, 91:13 <b>Planned</b> - 161:16 <b>Planning</b> - 51:19, 162:24, 163:1, 163:17 <b>Plant</b> - 14:15, 14:22, 22:20, 34:17, 34:22, 34:23, 35:6, 43:17, 90:12, 137:9, 144:23 <b>Plate</b> - 75:20, 75:22, 107:8 <b>Play</b> - 22:7, 106:6, 184:1, 189:16, 235:1 <b>Player</b> - 84:1 <b>Players</b> - 82:4 <b>Playing</b> - 106:4 <b>Plays</b> - 133:2 <b>PLC</b> - 164:19 <b>Pleased</b> - 86:1 <b>Pocket</b> - 58:9 <b>Pointed</b> - 166:5 <b>Pointing</b> - 125:1 <b>Points</b> - 172:21 <b>Polar</b> - 196:15 <b>Pole</b> - 65:18 <b>Policies</b> - 206:2, 206:3, 206:16 <b>Policy</b> - 11:20, 41:17, 41:18, 42:24, 49:3, 76:3, 79:6, 79:22, 91:13, 100:22, 120:20, 120:25, 123:25, 124:25, 162:5, 162:10, 165:17, 168:6, 197:5, 207:12 <b>Portfolio</b> - 174:16, 174:21, 174:25, 188:8, 190:3, 190:8, 190:9</p>	<p><b>Portion</b> - 173:7 <b>Position</b> - 16:20, 78:3, 108:25, 118:20, 152:25, 157:14, 176:1, 191:21, 191:22, 191:25, 219:11, 226:13, 227:22 <b>Positioned</b> - 20:2, 187:1 <b>Positions</b> - 16:10, 45:5, 45:7, 47:8, 47:16, 181:3 <b>Possibilities</b> - 97:1 2 <b>Possibility</b> - 16:18, 39:4, 53:1, 157:1 <b>Postage</b> - 80:20 <b>Pot</b> - 61:24, 65:1, 65:2 <b>Potential</b> - 52:20, 116:9, 123:6, 169:8, 170:16, 180:4, 191:19, 192:4, 194:25, 221:7, 222:20, 225:9, 225:12, 233:22 <b>Potentially</b> - 184:1 8, 215:10, 227:20, 231:20, 233:24 <b>Pouring</b> - 88:11, 88:13, 88:14 <b>Powerex</b> - 171:13 <b>Powerex's</b> - 171:1 0 <b>Powerpoint</b> - 218:1 7, 233:4 <b>Practical</b> - 21:25, 28:2, 75:17, 208:18 <b>Practice</b> - 106:2, 148:7, 175:22, 177:16, 209:3 <b>Practices</b> - 162:23, 163:16, 173:20, 173:21, 206:21, 209:22, 210:1 <b>Pragmatic</b> - 54:17 <b>Pre</b> - 44:8 <b>Predict</b> - 72:16 <b>Predominant</b> - 229 :5 <b>Preliminary</b> - 1:8, 2:9 <b>Premier</b> - 24:3, 139:23 <b>Prepare</b> - 18:11, 129:23, 130:7</p>
---	--	---	---	--

<p><b>Prepared</b> - 12:7, 19:21, 30:17  <b>Prerogative</b> - 57:13  <b>Presence</b> - 175:11  <b>Present</b> - 192:6, 193:7, 219:23, 220:1, 222:18, 223:8  <b>Presentation</b> - 1:10, 1:16, 5:1, 11:23, 54:21, 98:17, 107:21, 169:21, 189:22, 212:4, 233:5  <b>Presented</b> - 5:23, 12:2  <b>Presidency</b> - 2:5  <b>President</b> - 2:3, 2:14, 2:16, 2:18, 3:7, 5:6, 20:14, 20:15, 48:1, 161:1, 164:18  <b>Presidents</b> - 15:20, 51:23  <b>Press</b> - 112:15  <b>Pressures</b> - 23:10, 73:1, 73:4  <b>Presumably</b> - 144:2, 144:9, 144:21, 146:19, 155:12  <b>Prevalence</b> - 168:3  <b>Previous</b> - 38:24  <b>Price</b> - 29:19, 92:12  <b>Prices</b> - 174:7, 183:2, 183:3, 183:5  <b>Principal</b> - 5:7, 66:12, 74:6  <b>Principle</b> - 104:18, 108:16, 121:11, 121:13, 121:19, 121:23, 122:16, 122:21, 123:8, 123:16, 123:21, 125:11, 129:1, 132:15, 209:12  <b>Principles</b> - 11:17, 75:15, 120:9, 120:11, 121:3, 123:19, 124:10, 124:20, 124:21, 124:22, 125:2, 133:15, 147:9, 154:22  <b>Prior</b> - 2:9, 164:12, 164:18</p>	<p><b>Priorities</b> - 15:5, 18:1, 37:17, 37:21, 37:22, 37:24, 38:6, 38:7, 39:3, 39:5, 40:14, 40:16, 44:12, 119:13, 138:5, 165:23, 179:13, 179:23, 180:14, 195:11  <b>Priority</b> - 5:10, 21:16, 40:19, 40:21, 65:4, 67:4, 74:10, 74:14, 117:12  <b>Private</b> - 94:19, 94:21, 94:24, 94:25, 95:6, 164:24  <b>Pro</b> - 30:1  <b>Probability</b> - 97:10  <b>Problem</b> - 14:18, 37:6, 82:24, 84:20, 86:22, 87:21, 89:4, 89:19, 89:20, 90:17, 230:12  <b>Problems</b> - 23:20, 31:9, 69:6, 84:21, 119:9, 154:5  <b>Procedures</b> - 206:17  <b>Proceed</b> - 100:14  <b>Proceedings</b> - 161:6  <b>Procurement</b> - 47:11, 162:5, 162:6, 162:10, 173:11, 173:16, 173:19, 184:10, 185:12, 186:16, 228:8  <b>Procuring</b> - 173:22  <b>Produce</b> - 25:22  <b>Produced</b> - 25:24  <b>Produces</b> - 25:20  <b>Producing</b> - 35:6  <b>Production</b> - 16:11, 18:22, 28:20  <b>Productivity</b> - 23:2  <b>Products</b> - 188:23  <b>Professional</b> - 161:13  <b>Profit</b> - 174:16, 214:17, 214:21, 227:14, 227:19  <b>Profitability</b> - 227:6  <b>Profitably</b> - 222:14  <b>Profits</b> - 166:8, 166:9, 190:25</p>	<p><b>Program</b> - 104:21  <b>Progress</b> - 66:23, 69:14, 159:12  <b>Progressing</b> - 63:19, 63:23  <b>Projections</b> - 60:7  <b>Projects</b> - 14:13, 17:3, 79:21, 87:2, 161:25, 181:5, 181:8, 181:13, 181:16, 181:17, 181:20, 182:1, 182:16, 190:7, 201:12, 202:12, 220:6, 231:18, 232:3, 235:3  <b>Promoting</b> - 235:2  <b>Proper</b> - 120:5  <b>Properly</b> - 128:17, 143:14, 159:8  <b>Properties</b> - 4:10  <b>Proposal</b> - 200:5, 212:16  <b>Proposals</b> - 24:11, 92:21  <b>Proposed</b> - 17:18, 20:17, 169:1, 175:23, 185:17  <b>Proposing</b> - 10:5  <b>Prospective</b> - 233:20  <b>Prospectively</b> - 20:1:10, 233:16, 234:22  <b>Protect</b> - 50:1, 155:14  <b>Protected</b> - 144:18, 144:20  <b>Protecting</b> - 210:20  <b>Protection</b> - 154:23  <b>Proven</b> - 172:25  <b>Provide</b> - 112:12, 112:13, 112:14, 121:21, 125:17, 143:17, 147:2, 167:1, 178:17, 182:22, 191:20, 199:24, 205:16, 216:2, 220:19  <b>Provided</b> - 112:21, 162:19, 164:23  <b>Provides</b> - 180:22, 199:25  <b>Providing</b> - 122:19, 137:23, 156:17,</p>	<p>232:11  <b>Provinces</b> - 23:17, 80:8, 81:5, 82:11, 161:25, 163:15  <b>Province's</b> - 5:17, 7:25, 8:3, 8:13, 16:16, 99:2, 99:7, 102:13, 181:21  <b>Provincial</b> - 5:15, 9:22, 54:23, 55:3, 56:17, 76:3, 110:10, 192:21, 192:23, 229:7, 230:9, 230:14, 230:15, 230:18  <b>Proximate</b> - 183:11  <b>Proxy</b> - 199:25  <b>Prudent</b> - 175:22, 228:9  <b>Prudently</b> - 122:19, 144:22  <b>PUB</b> - 6:3, 100:3  <b>Public</b> - 11:20, 12:15, 35:14, 43:23, 67:14, 77:2, 79:6, 79:24, 94:22, 94:23, 98:9, 100:22, 112:14, 120:20, 163:24, 164:24, 168:21, 169:16, 178:6, 229:23  <b>Publicly</b> - 168:15, 168:16  <b>Purchase</b> - 70:14, 71:16, 186:10  <b>Purchases</b> - 93:24, 173:7  <b>Pure</b> - 98:22, 109:2  <b>Purely</b> - 76:10  <b>Pursue</b> - 50:13, 50:15, 55:16, 181:4  <b>Pursued</b> - 81:6  <b>Pursuing</b> - 55:17, 184:9  <b>Push</b> - 217:2  <b>Pushing</b> - 97:18, 99:24  <b>Putting</b> - 66:11, 87:14, 158:23  <b>Puzzle</b> - 158:23</p>	<p>73:8, 73:11, 74:2, 74:9, 74:11, 74:21, 75:10, 78:4, 82:2, 91:16, 92:11, 94:15, 127:5, 152:18, 152:22, 181:24, 185:21, 185:22, 186:3, 186:12, 186:21, 191:4, 221:16  <b>Quebec's</b> - 181:25  <b>Questioning</b> - 146:14  <b>Quo</b> - 57:16, 150:4  <b>Quote</b> - 163:21, 218:24</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <p><b>R</b></p> </div> <p><b>Rain</b> - 72:10  <b>Raise</b> - 18:19, 205:12  <b>Raised</b> - 24:20, 104:11, 178:4, 186:2  <b>Ran</b> - 171:17  <b>Range</b> - 171:24, 184:11  <b>Rank</b> - 176:7  <b>Ranveck</b> - 54:11  <b>Rapidly</b> - 171:12  <b>Rate</b> - 5:18, 5:23, 6:16, 10:19, 10:23, 11:2, 35:1, 35:11, 40:18, 40:21, 43:24, 55:5, 64:24, 67:15, 76:24, 79:10, 90:20, 99:8, 100:4, 104:6, 105:6, 114:5, 115:17, 116:7, 120:1, 121:9, 122:12, 123:3, 123:7, 125:5, 137:23, 143:20, 144:13, 147:11, 149:16, 154:6, 154:23, 155:14, 194:7, 194:10, 205:15, 219:12, 221:1, 221:5, 223:6, 225:6, 230:11  <b>Rates</b> - 5:8, 5:13, 5:16, 7:2, 7:6, 7:10, 10:8, 10:16, 11:19, 34:7, 34:14, 34:16, 34:20, 36:10,</p>
---	---	--	---	---

**Q**

**Quebec** - 14:19, 21:18, 21:21, 21:25, 24:25, 28:18, 72:9, 73:7,

<p>38:22, 61:10, 62:1, 79:22, 98:6, 98:11, 100:4, 100:11, 100:25, 108:13, 118:23, 120:12, 120:17, 123:22, 124:23, 138:18, 167:11, 210:20, 219:4</p> <p><b>Rating</b> - 8:12, 102:10, 102:13</p> <p><b>Rationale</b> - 169:25, 171:16, 171:18, 175:5, 229:8, 230:6, 230:16</p> <p><b>Ray</b> - 65:24</p> <p><b>Re</b> - 17:14, 96:18</p> <p><b>Reach</b> - 18:9, 32:15, 33:4, 46:9, 108:13</p> <p><b>Reached</b> - 111:7</p> <p><b>Reaching</b> - 26:7, 45:4</p> <p><b>Ready</b> - 1:13, 36:18, 52:24, 57:24, 131:5</p> <p><b>Realistic</b> - 68:2</p> <p><b>Reality</b> - 4:3, 75:15, 110:16</p> <p><b>Realize</b> - 134:8, 177:2, 182:25, 201:14, 220:4, 228:15</p> <p><b>Realized</b> - 187:22, 214:17</p> <p><b>Realizing</b> - 214:22, 222:7</p> <p><b>Realm</b> - 16:18</p> <p><b>Rearrangements</b> - 96:11</p> <p><b>Reason</b> - 11:1, 39:14, 43:24, 93:7, 99:11, 124:15, 127:7, 188:5</p> <p><b>Reasonable</b> - 122:18, 141:12, 142:7, 142:21, 143:18, 144:12, 151:10</p> <p><b>Reasonableness</b> - 143:8, 182:10, 222:10</p> <p><b>Reasonably</b> - 100:18, 100:25, 142:24, 144:22, 147:10, 147:15</p> <p><b>Reasons</b> - 84:14, 158:20, 180:20</p>	<p><b>Received</b> - 103:24</p> <p><b>Recent</b> - 179:21, 230:5</p> <p><b>Recently</b> - 23:23, 185:1, 231:10</p> <p><b>Reciprocity</b> - 209:1 2</p> <p><b>Recognize</b> - 14:17, 53:23, 58:10, 94:14, 110:15, 136:11, 153:20, 172:4, 183:7, 224:23, 226:21</p> <p><b>Recognized</b> - 26:2 1</p> <p><b>Recognizes</b> - 30:1 3, 31:9</p> <p><b>Recognizing</b> - 12:8 , 165:23, 167:6, 173:11, 178:5, 221:5, 229:22, 233:9</p> <p><b>Recommend</b> - 117:14, 139:12</p> <p><b>Recommendation</b> - 5:19, 116:9, 116:11, 116:25, 150:9, 150:20</p> <p><b>Recommendations</b> - 57:8, 96:3, 108:24, 115:16, 125:3, 146:21, 149:3, 151:21, 156:11, 167:17</p> <p><b>Recommended</b> - 8 3:7, 101:2, 101:14</p> <p><b>Recommending</b> - 116:3, 149:4, 150:6</p> <p><b>RECONVEND</b> - 13 1:3</p> <p><b>Recovered</b> - 202:1 3</p> <p><b>Recruit</b> - 15:10, 15:14</p> <p><b>Recruiting</b> - 51:12</p> <p><b>Red</b> - 87:22, 99:5, 178:4</p> <p><b>Reduce</b> - 29:20, 46:11, 182:5, 184:4</p> <p><b>Reduced</b> - 44:20, 44:21, 101:3, 101:11, 229:8, 230:6, 230:15</p> <p><b>Reduces</b> - 29:21, 157:9</p> <p><b>Reducing</b> - 109:5,</p>	<p>183:23</p> <p><b>Reduction</b> - 44:24, 183:21</p> <p><b>Reductions</b> - 33:5</p> <p><b>Referred</b> - 96:16, 134:11, 135:9, 136:3, 144:11, 168:18, 170:10, 218:21, 221:22</p> <p><b>Refinancing</b> - 96:1 7</p> <p><b>Reflect</b> - 15:4, 16:5, 16:8, 39:2, 136:8, 179:22, 189:1</p> <p><b>Reflected</b> - 101:19</p> <p><b>Reflecting</b> - 16:13</p> <p><b>Reflects</b> - 79:7</p> <p><b>Refocused</b> - 19:13</p> <p><b>Refocussed</b> - 103:20</p> <p><b>Regime</b> - 105:10, 146:22</p> <p><b>Regional</b> - 81:4, 82:18, 82:23</p> <p><b>Regularly</b> - 162:13, 162:17</p> <p><b>Regulate</b> - 11:8, 110:7, 204:18</p> <p><b>Regulating</b> - 111:2, 163:20, 227:10</p> <p><b>Regulation</b> - 10:21, 11:16, 13:17, 42:19, 46:18, 46:20, 47:19, 111:13, 113:6, 119:6, 119:7, 128:9, 128:10, 132:13, 168:20, 168:25, 169:13, 170:12, 200:1, 203:22, 204:6, 211:20, 211:23, 228:6, 229:12, 230:8</p> <p><b>Regulator</b> - 13:16, 79:13, 79:14, 110:8, 119:11, 121:3, 121:23, 138:13, 171:9, 174:19, 206:1, 208:7, 208:9, 208:15, 210:14</p> <p><b>Regulators</b> - 162:1 6, 229:2</p> <p><b>Reigned</b> - 98:22</p> <p><b>Reinforce</b> - 188:16</p> <p><b>Relationship</b> - 13:1</p>	<p>5, 14:5, 28:17, 71:4, 167:21, 196:24</p> <p><b>Relative</b> - 172:17, 176:8</p> <p><b>Relatively</b> - 179:21</p> <p><b>Released</b> - 32:20</p> <p><b>Relevance</b> - 163:1 0</p> <p><b>Reliability</b> - 10:18, 19:14, 19:17, 31:24, 32:2, 103:21, 103:24, 105:1, 105:4, 137:23, 142:9, 196:11</p> <p><b>Reliable</b> - 32:5, 151:10, 164:2, 195:18</p> <p><b>Relief</b> - 9:16, 77:2</p> <p><b>Rely</b> - 69:17, 69:19, 200:4</p> <p><b>Remain</b> - 7:19, 131:16</p> <p><b>Remained</b> - 2:17, 47:11, 47:12</p> <p><b>Remaining</b> - 35:9</p> <p><b>Remains</b> - 10:25, 222:1</p> <p><b>Remarks</b> - 31:18</p> <p><b>Reminded</b> - 127:7</p> <p><b>Remiss</b> - 187:3</p> <p><b>Removed</b> - 42:18</p> <p><b>Renegotiation</b> - 11 1:19</p> <p><b>Renewables</b> - 185:3, 185:4</p> <p><b>Renewed</b> - 30:4</p> <p><b>Reorganization</b> - 4 6:24</p> <p><b>Reorganizations</b> - 164:16</p> <p><b>Reorganized</b> - 20:1 8</p> <p><b>Repeating</b> - 17:25</p> <p><b>Replace</b> - 34:19, 73:19</p> <p><b>Replaced</b> - 34:21</p> <p><b>Replacement</b> - 22:22, 23:1, 87:13</p> <p><b>Replacements</b> - 28 :19</p> <p><b>Replacing</b> - 22:23</p> <p><b>Report</b> - 12:1, 12:18, 43:6, 80:5, 100:9, 101:25, 163:19, 163:22,</p>	<p>166:1, 166:13, 171:7, 194:3, 212:5, 213:22, 217:11, 217:15, 218:3, 218:5, 228:21</p> <p><b>Reporting</b> - 47:2</p> <p><b>Reports</b> - 69:17</p> <p><b>Representatives</b> - 11:21, 115:23</p> <p><b>Request</b> - 92:21</p> <p><b>Require</b> - 82:10, 215:6</p> <p><b>Required</b> - 17:11, 42:18, 47:2, 144:21, 170:6</p> <p><b>Requirement</b> - 145 :3, 157:10</p> <p><b>Requirements</b> - 50 :8, 173:24, 185:7, 204:1</p> <p><b>Requires</b> - 21:10, 93:25</p> <p><b>Requiring</b> - 81:19</p> <p><b>Resale</b> - 215:5</p> <p><b>Research</b> - 165:21, 165:24</p> <p><b>Reservoir</b> - 28:12, 75:8</p> <p><b>Reservoirs</b> - 28:13, 70:12</p> <p><b>Reside</b> - 167:24, 195:2</p> <p><b>Resolve</b> - 22:14</p> <p><b>Resolved</b> - 69:11, 154:1</p> <p><b>Resource</b> - 29:3, 135:11, 136:11, 169:17, 170:22, 176:17, 184:12, 184:17, 186:24, 212:18, 213:1, 214:18, 214:19, 219:7, 219:20, 219:23</p> <p><b>Resources</b> - 12:18, 117:21, 118:3, 118:4, 163:2, 163:12, 179:18, 184:7, 184:12, 184:19, 186:19, 213:5, 233:24</p> <p><b>Respect</b> - 110:23, 114:1, 119:12, 124:17, 146:15, 147:23, 154:11, 156:9, 156:11,</p>
--	--	---	--	---

<p>157:15, 163:16, 166:15, 173:22, 186:2, 201:1, 205:15, 212:2 <b>Respecting</b> - 25:11 <b>Respond</b> - 12:1, 20:3, 227:17 <b>Responsibilities</b> - 15:9 <b>Responsibility</b> - 63 :2, 100:24, 137:7, 149:25 <b>Responsible</b> - 2:15 , 4:4, 62:14, 100:17, 137:21, 164:21, 188:7, 188:14 <b>Restrict</b> - 108:9 <b>Restricted</b> - 110:21 <b>Restructure</b> - 53:1, 53:3 <b>Restructured</b> - 20: 16, 161:7, 161:9 <b>Result</b> - 19:1, 186:18 <b>Resulting</b> - 165:19 <b>Results</b> - 103:19 <b>RESUME</b> - 160:13 <b>Retail</b> - 108:12, 161:11, 161:17 <b>Retained</b> - 192:20, 192:21, 192:24, 193:8, 197:2, 231:9 <b>Retire</b> - 187:8 <b>Retired</b> - 2:18, 15:18 <b>Retirees</b> - 15:15 <b>Retrospective</b> - 17 4:11 <b>Return</b> - 106:10 <b>Returned</b> - 209:11 <b>Returns</b> - 187:22 <b>Revenue</b> - 99:3, 214:21, 225:9 <b>Revenues</b> - 7:1, 8:10, 18:19, 38:22, 121:8, 122:3, 122:11, 188:24, 201:13, 226:8 <b>Reverse</b> - 10:15, 101:15 <b>Reviewed</b> - 168:6, 206:2, 207:17 <b>Reviewer</b> - 149:10 <b>Reviewing</b> - 116:7, 169:2 <b>Reviews</b> - 117:20,</p>	<p>153:4 <b>Rhode</b> - 183:22 <b>Rightly</b> - 103:10 <b>Risk</b> - 76:12, 76:22, 133:8, 170:2, 173:10, 175:7, 175:18, 180:8, 181:20, 190:12, 191:17, 206:3, 206:21, 207:22, 208:25, 209:22, 209:25, 226:24, 234:2, 234:3, 235:5, 235:9 <b>Risks</b> - 210:17 <b>Risky</b> - 210:16, 211:14, 211:15 <b>River</b> - 17:10, 188:9, 191:16, 215:7 <b>Roberts</b> - 60:5 <b>Rock</b> - 150:10 <b>Role</b> - 146:17, 167:7, 170:23, 172:5, 184:1, 192:3, 196:23, 233:10, 233:22, 234:15, 235:1 <b>Roll</b> - 144:1 <b>Room</b> - 4:16, 41:5, 51:7, 111:20, 111:21, 203:21 <b>Route</b> - 91:16 <b>Royalty</b> - 235:6 <b>Rules</b> - 106:6 <b>Run</b> - 9:15, 51:25, 98:15, 130:1 <b>Runner</b> - 22:22, 23:1, 28:19 <b>Runners</b> - 22:23, 73:20</p> <div style="border: 1px solid black; width: 40px; margin: 10px auto; text-align: center;">S</div> <p><b>Safeguards</b> - 208:2 2 <b>Salaries</b> - 15:11, 51:12 <b>Sale</b> - 163:7 <b>Sales</b> - 163:8, 224:1, 226:9 <b>Sanctioning</b> - 202: 16 <b>Santa</b> - 34:8, 59:3 <b>Saskatchewan's</b> - 161:23 <b>Saskpower</b> - 187:1 6, 221:15</p>	<p><b>Satisfy</b> - 186:12 <b>Save</b> - 48:1, 49:9, 64:17, 84:14, 91:5, 105:1, 133:9 <b>Saved</b> - 58:1 <b>Saves</b> - 20:9 <b>Saving</b> - 47:7, 47:14, 151:21 <b>Savings</b> - 32:15, 47:10, 48:4, 53:7, 56:6, 59:11, 64:17, 64:21, 65:2, 170:17, 182:12, 182:19, 194:18, 213:11, 220:1 <b>Saw</b> - 44:7, 92:20, 98:7, 136:20, 171:15, 177:14, 184:10, 192:20, 197:17, 201:20, 205:13 <b>Scan</b> - 162:22 <b>Scans</b> - 162:19 <b>Scenario</b> - 201:3, 202:21, 203:22, 204:11 <b>Scenarios</b> - 201:19 <b>Scheduled</b> - 187:8 <b>Scheme</b> - 49:25 <b>Scope</b> - 107:24, 165:6, 167:18, 174:3, 177:19, 192:17, 193:14, 194:5, 206:19, 206:25, 209:19 <b>Scotia</b> - 23:21, 29:9, 29:15, 71:18, 81:19, 83:1, 152:21, 161:20, 172:19, 173:10, 178:1, 187:5, 187:12, 205:12, 224:24 <b>Scrutinize</b> - 113:11 <b>Scrutiny</b> - 111:13, 111:21, 111:25 <b>Seasonal</b> - 71:23, 72:17 <b>Second</b> - 119:21, 218:23, 228:22, 233:6, 233:7 <b>Secondly</b> - 109:16 <b>Sector</b> - 87:11, 94:21, 94:22, 161:4, 161:5, 163:14, 163:18, 164:24, 165:18,</p>	<p>183:25 <b>Seeing</b> - 23:1, 191:2, 199:22 <b>Seeking</b> - 180:2 <b>Seen</b> - 19:14, 19:16, 72:15, 90:25, 199:7, 226:11, 227:24 <b>Sees</b> - 74:11 <b>Segment</b> - 181:2 <b>Segregate</b> - 47:6 <b>Seizing</b> - 24:2 <b>Selected</b> - 184:12 <b>Self</b> - 8:9, 98:21, 99:13, 101:16, 102:4, 102:10, 102:11, 108:9, 109:5 <b>Sell</b> - 91:15, 91:19, 91:24, 92:14, 93:23, 95:20, 214:6, 226:3 <b>Selling</b> - 41:23, 92:8, 94:16 <b>Senior</b> - 15:12, 15:14 <b>Sent</b> - 98:2 <b>Separate</b> - 7:17, 17:2, 25:9, 27:1, 41:12, 50:9, 94:7, 131:25, 136:24, 137:20, 138:22, 148:16, 154:16, 175:12, 181:2, 187:14, 188:6, 188:11, 191:3, 191:8, 196:4, 212:25, 213:14, 223:16 <b>Separated</b> - 84:9, 84:13, 137:15, 169:25, 180:19 <b>Separating</b> - 138:1 <b>Separation</b> - 18:14, 175:6 <b>September</b> - 135:1 1, 217:19, 218:13, 221:12, 228:21 <b>Serve</b> - 186:8, 187:2, 198:25 <b>Served</b> - 2:21, 186:25 <b>Service</b> - 122:19, 164:2, 191:20 <b>Services</b> - 84:15, 188:23 <b>Serving</b> - 45:19</p>	<p><b>Set</b> - 2:13, 5:19, 66:8, 70:22, 71:2, 82:3, 87:10, 93:1, 108:4, 127:15, 132:11, 136:23, 143:8, 149:5, 150:18, 160:11 <b>Setting</b> - 28:3, 100:4, 193:9 <b>Seven</b> - 90:4, 101:19 <b>Severall</b> - 19:15, 51:23, 58:1, 142:14, 142:15, 219:11 <b>Shaping</b> - 165:18 <b>Share</b> - 171:1, 186:22 <b>Shared</b> - 14:2, 177:5, 208:14 <b>Shareholder</b> - 181: 17, 219:18, 221:3, 229:11, 230:9 <b>Sharing</b> - 84:15, 177:7 <b>Sheet</b> - 102:13 <b>Sheets</b> - 46:9 <b>Shelf</b> - 65:13 <b>She's</b> - 71:8 <b>Shield</b> - 175:14 <b>Shielding</b> - 175:20 <b>Shortcut</b> - 65:17 <b>Shouldn't</b> - 49:21, 66:10, 101:18, 102:21, 123:13, 131:24, 143:3, 209:13, 229:12 <b>Show</b> - 8:20, 11:7, 60:6 <b>Showing</b> - 32:25, 60:7, 201:5 <b>Shut</b> - 56:10, 69:12, 85:15, 134:25, 159:18 <b>Side</b> - 2:21, 25:24, 84:1, 138:14, 138:16, 149:24 <b>Sides</b> - 196:25 <b>Sigh</b> - 77:2 <b>Signed</b> - 96:24 <b>Significant</b> - 118:2 3, 125:5, 151:14, 154:6, 166:6, 169:18, 170:16, 172:5, 173:7, 176:11, 185:24, 194:25, 226:17,</p>
---	--	--	---	---

<p>226:18, 228:15, 231:15  <b>Similar</b> - 11:14, 81:12, 102:23, 162:19, 168:4, 171:14, 185:15, 187:19, 201:20, 202:4, 221:17, 228:6  <b>Similarities</b> - 197:22, 197:24  <b>Similarly</b> - 184:2  <b>Simple</b> - 99:18, 133:22, 134:21  <b>Simplicity</b> - 152:1  <b>Simplifies</b> - 170:1  <b>Simplify</b> - 138:15  <b>Simply</b> - 15:13, 171:8  <b>Sinking</b> - 97:5, 97:6  <b>Sit</b> - 31:11, 75:16, 145:15  <b>Site</b> - 90:14, 231:16  <b>Sites</b> - 25:12  <b>Situated</b> - 228:6  <b>Situation</b> - 19:3, 21:9, 22:1, 22:18, 47:5, 47:21, 48:8, 54:17, 62:23, 63:18, 67:8, 80:11, 81:23, 100:12, 108:15, 108:20, 109:2, 134:9, 134:10, 134:22, 136:1, 150:5, 199:9, 202:2, 215:10, 222:1, 230:7  <b>Six</b> - 127:12, 161:18, 162:25  <b>Size</b> - 142:12, 188:22  <b>Skepticism</b> - 182:25  <b>Skill</b> - 190:24  <b>Skills</b> - 86:15, 87:3, 87:10  <b>Skip</b> - 205:8  <b>Slide</b> - 1:16, 4:25, 5:2, 9:24, 13:1, 17:1, 28:8, 31:20, 32:20, 37:16, 37:20, 37:22, 38:24, 72:24, 73:2, 107:20, 115:14, 115:15, 120:8,</p>	<p>120:10, 126:3, 172:20, 233:6  <b>Slides</b> - 33:1, 171:1, 192:20, 195:6  <b>Slip</b> - 106:23  <b>Small</b> - 11:12  <b>Smaller</b> - 191:6  <b>SNC</b> - 87:13, 87:14, 88:9, 89:6  <b>Social</b> - 163:23  <b>Software</b> - 18:12, 21:11, 31:9, 62:13, 62:21, 63:6, 63:13, 63:20, 65:7, 65:11, 65:13, 65:14, 65:18, 65:22, 66:1, 66:14, 66:17, 67:5, 67:7, 69:20, 158:3, 158:5  <b>Solar</b> - 184:9, 184:16  <b>Sold</b> - 91:25, 92:6, 94:15, 95:6, 99:22  <b>Sole</b> - 229:11  <b>Soliciting</b> - 116:17  <b>Solution</b> - 75:17, 82:9, 213:20  <b>Solutions</b> - 5:16, 82:10  <b>Solve</b> - 23:19, 82:24, 119:8  <b>Solved</b> - 69:14  <b>Somewhat</b> - 63:4  <b>Sooner</b> - 111:6  <b>Sorting</b> - 21:12, 67:3  <b>Source</b> - 81:24, 180:4  <b>Sources</b> - 121:21, 171:4  <b>Space</b> - 71:19  <b>Span</b> - 189:16  <b>Spec</b> - 76:5  <b>Speciality</b> - 86:12  <b>Specialize</b> - 162:8  <b>Specific</b> - 81:17, 174:20, 174:23  <b>Spend</b> - 10:17, 47:5  <b>Spending</b> - 104:8, 104:13  <b>Spent</b> - 4:1, 19:19, 53:24, 190:21  <b>Spilling</b> - 72:10, 72:11, 72:12, 72:13  <b>Split</b> - 21:20,</p>	<p>21:22, 45:6, 45:13, 74:3, 127:9, 129:11, 161:14, 180:16  <b>Splitting</b> - 127:6  <b>Spot</b> - 92:13, 92:15  <b>Square</b> - 203:1  <b>Stabilize</b> - 134:22  <b>Stabilized</b> - 19:3  <b>Staff</b> - 33:5, 119:19  <b>Staffing</b> - 33:3, 123:4  <b>Staged</b> - 22:24  <b>Stake</b> - 50:18, 57:23, 58:11, 117:10  <b>Stakeholders</b> - 116:5, 116:6, 116:18, 119:17, 124:17, 189:13, 189:14  <b>Stamp</b> - 80:20  <b>Stan</b> - 1:12, 23:12, 188:16  <b>Stand</b> - 71:8, 175:5, 180:22, 226:12  <b>Standard</b> - 32:1, 186:20  <b>Standpoint</b> - 43:8  <b>Start</b> - 14:17, 18:6, 25:8, 40:25, 43:20, 64:10, 67:3, 67:5, 68:13, 86:9, 103:15, 129:25, 154:6, 159:15, 159:16, 160:21, 189:4, 223:7  <b>Started</b> - 25:10, 53:11, 162:6, 232:19, 232:21  <b>Starting</b> - 52:23, 64:20, 67:6, 231:23  <b>Starts</b> - 12:13  <b>State</b> - 18:9, 32:12, 32:16, 32:19, 33:4, 45:4, 46:10, 110:25, 111:5, 111:7, 140:14, 151:13, 152:13, 168:20, 231:6  <b>Statement</b> - 11:8, 20:7, 42:6, 91:22  <b>Statements</b> - 73:10  <b>Stating</b> - 83:10, 108:19  <b>Statue</b> - 27:25  <b>Status</b> - 57:16, 150:4</p>	<p><b>Statute</b> - 48:19  <b>Statutory</b> - 9:3  <b>Stay</b> - 130:21  <b>Stayed</b> - 131:22  <b>Steady</b> - 18:9, 32:12, 32:15, 32:19, 32:21, 33:4, 45:4, 46:10, 110:25, 111:4, 111:7, 140:14, 151:13, 152:13, 159:12  <b>Step</b> - 143:25, 147:22, 183:6, 194:16  <b>Steve</b> - 216:15  <b>Stopped</b> - 21:4, 72:12  <b>Stopping</b> - 216:19  <b>Stops</b> - 66:11  <b>Storage</b> - 22:16, 70:17  <b>Store</b> - 214:25  <b>Storing</b> - 215:4  <b>Straight</b> - 1:9  <b>Strategic</b> - 165:23, 167:1, 167:4, 167:6, 193:24, 195:8, 195:10, 226:22, 233:9, 234:6  <b>Strategically</b> - 194:17  <b>Strategies</b> - 180:9  <b>Strategy</b> - 13:6, 44:12, 162:9, 166:22, 184:3, 188:19  <b>Stream</b> - 30:3  <b>Stretch</b> - 65:20  <b>Strictly</b> - 7:2  <b>Strike</b> - 185:13  <b>Striking</b> - 179:16  <b>Striving</b> - 100:10  <b>Strong</b> - 188:2  <b>Strongly</b> - 180:25  <b>Structural</b> - 195:25  <b>Structured</b> - 87:18, 102:22  <b>Structures</b> - 12:6, 13:7, 15:1, 165:10, 165:12, 165:13, 165:20, 168:4, 194:8, 195:6  <b>Structuring</b> - 41:11  <b>Struggle</b> - 52:7, 52:11, 52:15  <b>Struggling</b> - 209:6</p>	<p><b>Stuck</b> - 222:11  <b>Studied</b> - 28:11  <b>Subjected</b> - 175:8  <b>Submission</b> - 50:7  <b>Subordinate</b> - 219:13, 219:15  <b>Subs</b> - 4:4, 4:9  <b>Subscribed</b> - 108:17  <b>Subsidiaries</b> - 2:19, 55:6, 143:13, 187:19, 221:17  <b>Subsidiary</b> - 2:25, 143:11  <b>Subsidies</b> - 101:18, 101:22, 102:21  <b>Subsidization</b> - 7:7, 7:23, 10:3, 120:12, 120:19, 122:10, 123:18, 124:22, 125:12, 125:18, 170:3  <b>Subsidize</b> - 7:6, 7:9, 11:19, 97:15, 103:9, 119:2, 119:3, 120:17, 123:22  <b>Subsidized</b> - 11:5  <b>Subsidy</b> - 99:19  <b>Substantial</b> - 25:13, 29:23, 64:14  <b>Substantially</b> - 26:10, 26:19, 26:23, 34:16, 42:3  <b>Substitute</b> - 230:20, 230:22  <b>Substitution</b> - 29:18  <b>Subtract</b> - 224:24  <b>Success</b> - 24:5, 182:1, 190:19  <b>Successful</b> - 21:18, 21:19, 181:23  <b>Succession</b> - 51:19  <b>Successor</b> - 148:23  <b>Sufficient</b> - 207:24  <b>Suggested</b> - 100:2, 177:18  <b>Suggestion</b> - 17:1  <b>Suggests</b> - 127:2, 176:19  <b>Suited</b> - 180:13, 193:25  <b>Sum</b> - 101:8, 101:23, 103:9  <b>Summary</b> - 216:18,</p>
--	---	--	--	---

<p>217:9, 218:3, 221:11  <b>Supervising</b> - 85:13, 85:14  <b>Suppliers</b> - 229:5  <b>Supplies</b> - 184:15  <b>Supply</b> - 20:1, 31:1, 39:19, 39:24, 40:2, 40:7, 41:8, 41:21, 43:5, 46:2, 46:6, 46:12, 48:9, 50:8, 81:1, 108:10, 109:9, 109:20, 130:2, 137:6, 170:17, 181:1, 181:13, 181:22, 182:5, 184:14, 188:6, 195:3, 212:2, 232:2  <b>Supply's</b> - 179:25  <b>Support</b> - 116:25, 117:4, 126:25, 162:10, 162:12, 199:3, 219:7  <b>Supporting</b> - 8:9, 98:21, 99:13, 101:17, 102:10, 102:11  <b>Suppose</b> - 52:20, 141:15, 146:7  <b>Supposing</b> - 10:6  <b>Surely</b> - 27:2  <b>Surface</b> - 85:10  <b>Surplus</b> - 223:19  <b>Surprise</b> - 14:23, 85:1, 86:11  <b>Surprised</b> - 226:15  <b>Surprising</b> - 169:7, 169:12  <b>Surrogate</b> - 230:19  <b>Survival</b> - 134:19  <b>Sustaining</b> - 102:4, 111:10, 113:12, 114:2  <b>Sympathize</b> - 56:2, 153:13, 153:15  <b>Synapse</b> - 33:21, 172:10, 224:12, 225:22, 226:16  <b>Synergy</b> - 191:14, 191:17  <b>System</b> - 14:16, 14:19, 14:20, 14:21, 14:25, 64:12, 67:10, 69:3, 69:9, 74:12, 78:4, 80:17, 80:18, 81:1,</p>	<p>81:12, 82:19, 82:23, 85:11, 94:19, 110:25, 151:10, 158:15, 159:6, 162:15, 162:23, 162:24, 163:1, 164:14, 188:4, 214:24, 215:7  <b>Systems</b> - 47:12, 67:10, 68:5, 68:8, 69:22, 80:23, 105:7, 191:16</p> <div style="border: 1px solid black; text-align: center; width: fit-content; margin: 10px auto;"> <p><b>T</b></p> </div> <p><b>Tail</b> - 26:3  <b>Takeaway</b> - 33:24, 35:19  <b>Taking</b> - 64:4, 125:15, 134:11, 151:24, 158:19, 182:2, 233:19  <b>Target</b> - 101:3, 106:21, 106:22, 106:23, 140:2  <b>Targets</b> - 187:10  <b>Task</b> - 55:19, 140:15, 142:25, 150:13, 152:2  <b>Tasks</b> - 20:16  <b>Tax</b> - 10:12, 120:11  <b>Taxation</b> - 175:8, 175:15, 175:17  <b>Taxpayer</b> - 10:20, 11:19, 50:21, 99:9, 120:17, 123:21, 125:13, 125:18, 149:19  <b>Taxpayers</b> - 11:10, 11:11, 120:2  <b>Team</b> - 85:5, 86:10, 89:10, 153:6  <b>Telling</b> - 65:7  <b>Tells</b> - 220:1  <b>Ten</b> - 23:24, 25:10, 51:15, 53:13, 76:4, 97:20, 115:7, 184:11  <b>Tens</b> - 22:6, 22:9, 23:5  <b>Terawatt</b> - 25:20, 25:22, 42:1, 184:11, 185:8, 214:11, 223:18, 224:3, 224:9  <b>Term</b> - 5:14, 11:24, 24:13, 38:6, 38:7, 38:9, 38:16, 40:1,</p>	<p>56:20, 56:21, 62:5, 73:19, 75:24, 76:3, 102:2, 102:20, 104:9, 104:14, 105:2, 157:9, 208:21, 223:11  <b>Test</b> - 63:5, 65:21, 65:22, 159:4, 159:7, 186:13  <b>Tested</b> - 69:7  <b>Testimony</b> - 43:7  <b>Testing</b> - 69:3, 69:5, 159:5  <b>Theme</b> - 219:9  <b>Themes</b> - 163:19  <b>Theoretically</b> - 66:20  <b>Theory</b> - 105:25  <b>Therefore</b> - 181:14  <b>There'll</b> - 78:15, 111:9  <b>Thermal</b> - 34:17  <b>They'd</b> - 29:2, 64:1  <b>They'll</b> - 49:22, 49:23, 174:21, 190:8  <b>They've</b> - 63:19, 68:7, 72:10, 185:21, 199:7  <b>Think's</b> - 87:21  <b>Third</b> - 149:11, 175:3, 215:8, 215:13  <b>Thirds</b> - 35:9, 36:4, 90:19, 90:21, 91:24  <b>Thirty</b> - 4:17  <b>Three</b> - 18:9, 21:12, 32:10, 32:17, 33:19, 35:6, 35:11, 38:9, 38:15, 56:8, 64:11, 64:13, 90:17, 111:1, 111:5, 134:24, 148:24, 169:20, 214:11, 224:3, 224:6, 224:8  <b>Throw</b> - 47:4  <b>Thursday</b> - 176:3  <b>Thus</b> - 51:24  <b>Tie</b> - 153:25  <b>Tied</b> - 14:22  <b>Tier</b> - 85:11  <b>Ties</b> - 179:24  <b>Tightly</b> - 202:5  <b>Time</b> - 2:8, 3:11, 5:5, 9:10, 9:19, 12:19, 14:21, 31:4, 32:22, 47:5, 68:10,</p>	<p>72:1, 77:17, 86:7, 88:20, 102:25, 105:12, 116:3, 116:16, 117:2, 118:3, 118:4, 118:5, 127:17, 128:14, 128:15, 130:16, 138:9, 139:4, 141:24, 154:8, 159:13, 174:6, 174:12, 202:24, 223:12, 232:7  <b>Timeframe</b> - 67:18, 187:9, 192:24  <b>Timelines</b> - 68:1  <b>Timely</b> - 130:7  <b>Times</b> - 24:24, 35:6, 89:20, 90:17, 90:22, 90:23, 100:21, 118:13, 174:22, 219:11  <b>Tiny</b> - 51:13  <b>Titanic</b> - 134:12  <b>Titles</b> - 20:6, 20:8, 20:10, 20:23, 20:25, 45:7, 45:20  <b>Today</b> - 11:23, 19:21, 25:19, 28:4, 36:4, 43:20, 53:11, 66:13, 92:12, 93:13, 100:6, 100:24, 135:5, 172:14, 215:1, 222:19, 223:16, 226:12, 233:19, 235:16  <b>Tomorrow</b> - 53:12, 176:3  <b>Ton</b> - 226:3  <b>Took</b> - 5:6, 19:10, 20:21, 90:9, 130:2, 131:14, 164:15, 166:24  <b>Tool</b> - 189:2  <b>Top</b> - 166:24, 167:5, 176:9, 185:23, 233:8  <b>Topic</b> - 126:8, 140:21, 212:1, 235:12  <b>Topics</b> - 49:24  <b>Toromont</b> - 2:22  <b>Toronto</b> - 161:15, 162:8  <b>Total</b> - 34:7, 94:14, 185:7  <b>Touch</b> - 187:4,</p>	<p>192:17  <b>Touchstone</b> - 219:10  <b>Towards</b> - 19:4, 29:24  <b>Track</b> - 36:9, 105:18  <b>Tracking</b> - 175:24  <b>Trade</b> - 93:23, 104:24, 104:25, 174:17, 174:23, 176:7, 176:16, 211:15, 215:1, 223:1, 223:17, 227:20  <b>Trader</b> - 187:21  <b>Trades</b> - 210:11, 210:13, 214:18, 214:22  <b>Trading</b> - 166:9, 167:23, 171:3, 171:14, 171:20, 171:23, 172:1, 172:18, 172:24, 174:3, 174:12, 174:21, 175:4, 175:9, 175:13, 175:24, 176:17, 178:11, 187:18, 191:1, 191:6, 191:24, 210:5, 221:16, 222:13, 228:17  <b>Tragedy</b> - 77:10  <b>Transaction</b> - 174:20, 227:7  <b>Transcript</b> - 136:6, 136:18  <b>Transferred</b> - 7:16  <b>Transition</b> - 129:22, 129:23, 130:8  <b>Transmission</b> - 14:16, 19:5, 19:8, 23:19, 26:16, 44:4, 78:1, 78:4, 78:8, 80:9, 80:13, 80:23, 81:1, 81:4, 81:14, 82:18, 82:23, 83:3, 129:18, 137:10, 170:11, 198:13, 198:18, 198:21, 198:25, 199:10, 199:14, 199:17, 199:18, 199:20, 200:12, 200:23  <b>Transmissions</b> - 14:25</p>
--	---	---	---	--

<p><b>Transmission's</b> - 8 0:16 <b>Transparency</b> - 11 4:7, 152:1, 206:23, 207:4, 207:6 <b>Transparent</b> - 49:1 5 <b>Treat</b> - 149:17 <b>Treated</b> - 102:9, 102:11 <b>Tremendous</b> - 173: 1, 173:5, 173:25 <b>Tributaries</b> - 28:21 <b>Trouble</b> - 63:16 <b>Truck</b> - 86:24 <b>Truly</b> - 186:6 <b>Turn</b> - 17:14, 47:18, 107:20, 120:8, 125:23, 187:13 <b>Turning</b> - 179:7, 188:1, 221:10 <b>Types</b> - 197:12, 210:13, 215:14 <b>Typical</b> - 209:2 <b>Typically</b> - 167:24, 168:19, 168:25, 169:24, 170:6, 170:9, 173:9, 180:19, 199:17</p>	<p>21, 131:20, 142:21, 231:7 <b>Undertaken</b> - 76:11 <b>Undue</b> - 180:8 <b>Unduly</b> - 210:15 <b>Uneconomic</b> - 108: 14 <b>Unfair</b> - 83:9, 112:11, 119:22 <b>Unintelligible</b> - 31: 16, 42:11, 71:16, 96:8, 166:18, 233:1 <b>Unintended</b> - 8:23, 102:7, 103:17 <b>Unique</b> - 62:22, 65:11, 65:15, 67:8, 82:10 <b>United</b> - 3:19, 29:17, 29:25, 30:10, 30:20, 30:24, 80:14, 81:13, 165:14 <b>Universally</b> - 171:1 9 <b>Unless</b> - 16:16, 25:11, 39:15, 59:21, 103:15 <b>Unlocking</b> - 233:23 <b>Unreasonable</b> - 18 0:8 <b>Unregulated</b> - 16:2 3, 18:18, 20:24, 25:18, 25:24, 27:6, 36:12, 39:20, 41:10, 41:12, 41:17, 95:5, 95:6, 110:18, 128:5, 128:21, 129:8, 129:9, 130:20, 131:13, 131:16, 132:3, 148:7, 148:21, 149:24, 151:23, 154:11, 154:16, 154:20, 155:7, 170:24, 171:4, 171:13, 196:25, 197:4, 197:6, 197:13, 197:21, 198:18, 199:1, 199:4, 200:1, 200:13, 200:23, 201:3, 201:22 <b>Unrelated</b> - 84:8 <b>Update</b> - 61:9 <b>Upfront</b> - 102:1 <b>Upper</b> - 22:17,</p>	<p>24:15, 25:19, 28:12, 28:16, 41:24, 72:11, 72:13, 73:14, 73:20, 75:7, 78:4 <b>Used</b> - 5:21, 7:1, 7:9, 70:5, 95:4, 158:14, 173:1, 181:13, 189:3, 209:7 <b>User</b> - 81:13 <b>Using</b> - 6:24, 7:5, 63:12, 66:18, 67:13, 71:12, 124:10 <b>Utilities</b> - 3:6, 79:24, 95:15, 138:22, 161:13, 162:3, 162:17, 168:1, 168:7, 168:9, 168:13, 168:15, 168:18, 168:19, 169:1, 169:2, 169:6, 169:8, 169:10, 174:13, 175:11, 176:25, 191:5, 202:17, 202:18, 221:19 <b>Utility</b> - 3:18, 12:5, 79:2, 79:5, 84:7, 88:2, 88:18, 89:4, 89:23, 94:23, 100:23, 108:21, 132:20, 137:5, 138:2, 163:20, 163:22, 165:19, 167:22, 168:21, 169:15, 173:6, 173:15, 175:21, 176:21, 178:3, 199:9, 208:14</p>	<p>211:20, 214:1, 214:8, 215:11, 216:3, 219:23, 220:1, 222:2, 222:7, 222:13, 223:21, 224:21, 225:5, 226:21, 226:24, 228:15, 233:10, 233:12, 233:23, 234:15, 234:19, 235:8 <b>Valued</b> - 170:20 <b>Values</b> - 177:5 <b>Varies</b> - 11:13, 229:7, 229:22, 230:2 <b>Vehicle</b> - 97:15 <b>Versa</b> - 11:12 <b>Version</b> - 64:9, 65:17, 67:1, 67:5, 68:13, 69:10, 229:14, 232:12 <b>Versions</b> - 66:21, 66:22, 158:10, 158:11, 158:13 <b>Versus</b> - 56:20, 154:25, 194:18, 195:18, 197:13, 215:14, 219:24, 222:3 <b>Viable</b> - 157:3, 181:19 <b>Vice</b> - 2:14, 3:11, 3:24, 11:12, 15:20, 48:1, 51:23, 164:18 <b>View</b> - 6:20, 12:13, 25:9, 31:14, 63:22, 79:5, 91:2, 98:23, 132:6, 139:8, 152:10, 167:6, 181:7, 182:23, 209:20, 210:15, 211:18, 215:2, 220:10, 222:16, 225:23, 233:11, 233:20 <b>Viewed</b> - 145:18, 178:6, 200:12, 200:13 <b>Views</b> - 107:24 <b>Virtue</b> - 129:10 <b>Vision</b> - 16:21, 65:24, 126:22, 220:20 <b>Voltage</b> - 26:16 <b>Volume</b> - 184:16, 186:9, 214:5</p>	<p><b>Volumes</b> - 172:8, 172:14, 176:6, 176:12, 176:14, 213:25, 215:14, 215:21, 222:24, 223:17, 226:17, 226:19, 226:20 <b>Voyage</b> - 134:14 <b>VP</b> - 2:12, 47:18, 54:13</p>
<p style="text-align: center;"><b>U</b></p> <p><b>UK</b> - 164:19 <b>Ultimate</b> - 83:3, 83:4 <b>Un</b> - 206:9 <b>Unanimous</b> - 74:4 <b>Unbake</b> - 47:6 <b>Unbridled</b> - 229:1 <b>Uncertain</b> - 64:23, 153:18 <b>Uncertainty</b> - 25:1 7, 31:10, 32:6, 66:10, 135:22, 153:21, 173:11 <b>Unchanged</b> - 11:1 <b>Undercut</b> - 212:17 <b>Underestimated</b> - 176:1 <b>Underlying</b> - 108:2 3, 132:15, 175:19, 198:2, 222:4 <b>Underpinnings</b> - 3 7:25 <b>Understandable</b> - 134:2 <b>Understood</b> - 108:</p>	<p style="text-align: center;"><b>V</b></p> <p><b>Valid</b> - 104:22 <b>Validate</b> - 56:23 <b>Validated</b> - 57:7 <b>Validating</b> - 35:17 <b>Valuable</b> - 172:25 <b>Value</b> - 50:23, 116:17, 167:8, 172:12, 173:2, 173:5, 173:25, 174:25, 176:14, 177:2, 180:5, 183:1, 191:7, 191:13, 194:18,</p>	<p style="text-align: center;"><b>W</b></p> <p><b>Waded</b> - 193:23 <b>Wag</b> - 26:3 <b>Wait</b> - 24:25, 154:8 <b>Waiting</b> - 100:9 <b>Walked</b> - 134:3 <b>Wanting</b> - 107:21 <b>Wants</b> - 28:25, 35:23, 49:11, 49:15, 49:21, 49:23, 57:12, 141:15, 150:17 <b>Warehouse</b> - 88:25 <b>Warranty</b> - 62:7 <b>Warranted</b> - 62:12 <b>Warranty</b> - 62:10 <b>Wash</b> - 157:9 <b>Wasn't</b> - 9:10, 19:9, 20:20, 20:21, 128:7, 131:21, 131:22, 134:9, 134:22, 136:15, 138:8, 168:24, 199:14, 225:23 <b>Water</b> - 75:2, 75:3, 75:6 <b>Ways</b> - 94:24, 100:10, 101:23 <b>Weather</b> - 18:23, 18:24, 72:18 <b>We'd</b> - 8:18, 24:22, 25:2, 198:5, 198:11 <b>Week</b> - 31:12, 67:23, 68:11, 72:12, 158:21 <b>Weigh</b> - 222:2 <b>Weighed</b> - 219:16 <b>We'll</b> - 1:9, 12:11, 21:12, 21:14, 33:18, 63:14, 64:7, 64:8, 64:9, 65:3, 67:19, 68:12, 68:24, 69:1, 72:21, 96:10, 97:20, 112:11, 112:12, 112:13, 112:14,</p>		



<p>115:7, 130:25, 151:9, 159:14, 159:16, 217:2, 234:13, 235:16 <b>Weren't</b> - 24:22, 97:1, 133:12, 134:13, 168:22, 169:4, 193:8 <b>We've</b> - 5:14, 6:2, 14:6, 19:3, 24:4, 30:7, 32:24, 32:25, 33:22, 46:8, 50:22, 51:23, 55:17, 59:9, 60:20, 63:20, 71:5, 71:10, 72:11, 72:13, 83:13, 83:18, 92:9, 97:9, 118:17, 132:20, 153:2, 162:17, 163:1, 183:2, 203:20 <b>Whatnot</b> - 133:21 <b>What's</b> - 17:18, 25:3, 26:21, 29:8, 31:14, 33:6, 36:9, 62:19, 111:10, 112:8, 112:9, 117:10, 141:12, 142:6, 152:15, 153:16, 170:10, 174:19, 182:7, 194:17, 194:18, 197:20, 198:2, 198:20, 214:16, 215:1, 215:2, 219:22, 220:21, 221:4, 226:23, 229:20 <b>Where's</b> - 29:15 <b>Whole</b> - 59:22, 66:1, 110:25, 119:6, 134:25, 144:17, 154:7 <b>Wholesale</b> - 161:11 , 161:17, 163:1, 183:5, 201:15 <b>Wholly</b> - 63:1, 187:18, 221:16 <b>Who's</b> - 23:22, 178:2, 191:20, 192:2 <b>Why'd</b> - 117:16 <b>Wide</b> - 171:24 <b>Widely</b> - 108:21 <b>Wife</b> - 140:6 <b>Wildly</b> - 64:23 <b>Wind</b> - 163:5, 184:9, 184:17</p>	<p><b>Winter</b> - 63:4, 64:16, 65:16, 68:24, 71:11, 72:1 <b>Wires</b> - 170:10, 198:12 <b>Wish</b> - 107:5, 140:2 <b>Wished</b> - 28:3 <b>Witnesses</b> - 36:13, 93:8 <b>Woe</b> - 31:11 <b>Won't</b> - 4:20, 10:19, 21:13, 22:11, 25:10, 29:1, 50:19, 53:17, 113:17, 113:20, 148:9, 148:20, 179:14, 181:13 <b>Word</b> - 174:13 <b>Work</b> - 5:12, 6:1, 7:5, 15:22, 25:4, 25:16, 62:12, 65:14, 68:10, 77:23, 117:11, 162:13, 189:5 <b>Worked</b> - 164:12 <b>Working</b> - 5:15, 62:13, 62:14, 62:16, 62:24, 89:9, 128:17, 152:24, 159:8 <b>Works</b> - 80:17, 129:3, 129:5 <b>World</b> - 14:14, 28:14, 66:9, 89:1, 99:25, 108:22, 172:13, 191:5 <b>Worlds</b> - 43:15 <b>Worried</b> - 134:13, 134:19 <b>Worry</b> - 24:17, 51:18, 99:14, 104:21, 128:19, 129:21, 229:12 <b>Worrying</b> - 132:21, 134:22 <b>Worse</b> - 26:4 <b>Worth</b> - 59:2, 152:6 <b>Worthwhile</b> - 185:1 9 <b>Wouldn't</b> - 26:14, 34:10, 76:18, 81:8, 89:7, 106:14, 126:19, 139:24, 152:2, 156:19, 156:23, 181:14, 215:21 <b>Write</b> - 8:19</p>	<p style="text-align: center;"><b>Y</b></p> <p><b>Year</b> - 3:8, 18:20, 22:5, 30:8, 34:12, 34:13, 36:6, 42:1, 46:19, 51:15, 51:21, 63:9, 64:8, 67:1, 67:4, 67:24, 68:12, 68:16, 68:18, 69:2, 69:7, 69:16, 98:15, 107:7, 113:5, 134:21, 140:4, 150:15, 151:3, 151:7, 158:14, 158:17, 159:14, 162:20, 164:11, 179:20 <b>Years</b> - 3:13, 3:16, 4:13, 4:15, 4:17, 4:18, 5:25, 13:5, 13:23, 14:12, 18:9, 19:15, 19:19, 21:12, 22:19, 23:25, 25:11, 30:3, 31:4, 32:10, 32:17, 33:1, 33:19, 34:20, 38:9, 38:15, 51:20, 52:23, 53:13, 56:8, 64:11, 64:13, 72:15, 76:4, 89:8, 89:14, 97:20, 101:11, 101:19, 111:1, 111:5, 118:19, 134:24, 135:24, 148:24, 157:10, 161:4, 161:18 <b>Yesterday</b> - 225:22 <b>York</b> - 3:19, 24:8, 29:8, 30:12, 30:15, 63:21, 183:9, 185:1, 186:14 <b>York's</b> - 185:7, 185:15 <b>You'd</b> - 7:11, 11:2, 17:19, 18:13, 20:25, 26:14, 43:20, 47:17, 47:23, 106:15, 198:17, 199:12, 201:2, 201:20, 206:15 <b>You'll</b> - 16:21, 16:22, 27:14, 46:8, 49:24, 53:3, 108:1, 159:17, 176:2 <b>You've</b> - 4:1, 4:12, 13:23, 15:25,</p>	<p>19:13, 28:6, 37:13, 51:24, 52:3, 53:23, 53:24, 54:1, 54:10, 57:5, 73:9, 75:13, 79:1, 81:18, 81:20, 99:4, 111:6, 117:24, 130:3, 130:11, 135:9, 139:15, 201:2, 202:21, 202:24, 207:4, 209:18, 209:19, 211:7, 212:20, 227:24, 228:12, 231:8, 233:8</p> <p style="text-align: center;"><b>Z</b></p> <p><b>Zero</b> - 101:8, 101:23, 103:9, 176:19, 235:4</p>
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