

1 (2:00 p.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Thank you and good  
3 afternoon. I trust everybody to the extent possible enjoyed  
4 their unplanned respite from the hearing. Two items, I  
5 guess, that I had indicated late yesterday afternoon that I  
6 would like to see addressed before we begin with the cross-  
7 examination of Mr. Bowman, and I'd like comments on these  
8 from all the parties now if I could. The first issue indeed  
9 was Mr. Bowman's opening remarks, which he presented  
10 while filing his direct evidence yesterday afternoon, and I  
11 think these remarks were indeed filed at the subsequent  
12 break when the Board was considering Hydro's request for  
13 extra time to review the material in advance of their cross-  
14 examination. That was subsequently granted, as you're  
15 aware, and the actual statement by Mr. Bowman and it's  
16 really admissibility into evidence, if anybody has any  
17 remarks on that at this point in time certainly I'd like to hear  
18 them.

19 The second issue is really the proposal by the  
20 Consumer Advocate which was contained in those remarks  
21 concerning the RSP, and I think the proposal itself was  
22 outlined in terms of a specific term of reference and to some  
23 degree fundamentally changes certainly the process  
24 envisaged for dealing with the RSP through the hearing  
25 and certainly impacts on the schedule and indeed possibly  
26 other things contained in the application. I would like to  
27 hear Hydro's reaction and other parties' reaction to that  
28 particular proposal, which will enable us to be able to deal  
29 with that.

30 So those are the two items and I would ask at this  
31 point in time Hydro to, for its comments, please.

32 MS. GREENE, Q.C.: Thank you, Mr. Chair. The first point  
33 that you raise was with respect to the admissibility of the  
34 evidence, and as Hydro explained yesterday, we are not  
35 objecting to the admission of the evidence. The issue that  
36 we had was the timing of the filing of the evidence. In our  
37 view, as we stated yesterday, it would have been preferable  
38 to have received it in advance of Mr. Bowman being sworn  
39 so that we would have had time to review it, to confer with  
40 our client and the appropriate people at Hydro and to have  
41 been in a position to proceed yesterday afternoon. So it is  
42 regrettable it didn't happen that way but we are not  
43 objecting to the admission of the evidence. We thank the  
44 panel for having granted us that time to have reviewed the  
45 evidence and we are in a position to proceed with cross-  
46 examination today and to, in fact, to comment on the  
47 proposal that was outlined yesterday. So I don't know, Mr.  
48 Chair, if you want to go to all the parties on this point but  
49 we are not objecting to the admissibility of the evidence at  
50 this point.

51 MR. NOSEWORTHY, CHAIRMAN: I would just as soon

52 deal with both issues, if I could, please.

53 MS. GREENE, Q.C.: Okay. Then with respect to the  
54 second issue, which I guess is the merit of the proposal  
55 yesterday put forward by Mr. Bowman, which was a  
56 proposal to pursue a type of a negotiated settlement with  
57 respect to the Rate Stabilization Plan, our position is that  
58 we have reviewed that proposal. While we generally  
59 believe that there is merit in pursuing what can be referred  
60 to as alternative dispute resolution mechanisms here in the  
61 regulatory process in Newfoundland, we don't believe that  
62 this is the appropriate time or the appropriate issue to start  
63 that process. We believe that these types of mechanisms  
64 can be helpful, they can shorten what can be a long hearing  
65 process, but in order for them to be effective the rules of  
66 the game have to be agreed upon in advance by all of the  
67 parties and they have to be understood by all of the parties  
68 and the issue has to be appropriate to be submitted to the  
69 alternative dispute resolution mechanism. So while we  
70 generally agree that this is something the Board should  
71 pursue in the future, we have difficulty with accepting it in  
72 the way in which it was proposed in this hearing.

73 Turning to a specific proposal, as I've already  
74 indicated, it is our position that it would not be meaningful  
75 to pursue it at this point in time, and I can, if you like,  
76 outline the reasons for that but I'm not sure if the other  
77 parties are in a contrary position to that, but some of the  
78 reasons, and there are three main reasons why we don't  
79 believe it will be helpful to pursue it at this time, there are  
80 three that I'd like to speak to. One is timing, one is the  
81 position of the parties and the issue that has been raised,  
82 which is the RSP, and the third is a sufficiency of the  
83 evidence on the record. So I believe those are the three  
84 considerations that I would like to comment on so the  
85 Board will understand our position on the proposal that  
86 was put forward by the Consumer Advocate's expert.

87 The first issue was the issue of timing. We're now  
88 in our eleventh week of evidence and it does appear that  
89 the end of this hearing is in sight and we don't want to  
90 jeopardize that schedule. There have been numerous,  
91 dozens if not hundreds of information requests on the Rate  
92 Stabilization Plan, there has been a significant number of  
93 hours, if not days, already spent in presenting evidence on  
94 the Rate Stabilization Plan, and we believe that there is  
95 sufficient evidence on the record so that the panel will be  
96 in a position at the conclusion of the hearing following  
97 legal argument which will focus the panel on what are the  
98 true issues in dispute between the parties on the RSP to  
99 allow the Board to make an informed decision. We believe  
100 that that type of proposal might have been more helpful if  
101 it had been fully addressed at the commencement of the  
102 hearing, before the amount of time and effort has now been  
103 expended in the process.

1 With respect to the position of the parties on the  
2 Rate Stabilization Plan, I wanted to just briefly outline the  
3 position of the parties as Hydro understands it at this  
4 point. First Hydro's position on the Rate Stabilization Plan.  
5 Hydro believes that the Rate Stabilization Plan has  
6 functioned very well since it was introduced in 1985. We  
7 believe it meets the needs of the customers who were  
8 concerned about the volatility of prices in the winter  
9 months.

10 MR. BROWNE, Q.C.: Mr. Chairman, I have to object to  
11 that. That is entirely inappropriate. She was asked to  
12 comment on two specific issues. Now she's giving further  
13 evidence on the Rate Stabilization Plan. I think those  
14 comments are inappropriate and I object to them. I ask for  
15 a ruling on them.

16 MS. GREENE, Q.C.: Why I'm saying this, I'm saying what  
17 the position of the parties on the record is. I'm not saying  
18 whether the panel accept it or not. I'm saying Hydro's  
19 position, as I will say Newfoundland Power's position,  
20 which is evident from the record, as well as Industrial  
21 Customers, as well as the Consumer Advocate. The point  
22 I'm making is that the position of the parties is before the  
23 Board, the issues are very clear, there's evidence on them  
24 and the Board can make a decision at the end of the day as  
25 to who's right, who's wrong, what will happen to the RSP.  
26 So I'm not giving these points with respect to the truth of  
27 them, I'm giving them as to what Hydro's position is, to  
28 support our view that the issue of the RSP is very well  
29 understood by the parties and these issues are clearly  
30 before the Board.

31 MR. NOSEWORTHY, CHAIRMAN: I would ... I think the  
32 position of the parties, Ms. Greene, are on the record and  
33 certainly the Board is aware of those. If you could  
34 probably get to the third matter, just to expedite this. I'd  
35 like, in all due haste, if possible, depending on what  
36 happens here, to begin our cross of Mr. Bowman as quickly  
37 as possible.

38 MS. GREENE, Q.C.: Okay. The point is that the position of  
39 the parties is clear on the record. We've had hours of  
40 evidence on it and I think there's enough evidence that the  
41 panel, when the issues are put to them by counsel, to make  
42 that decision. I also wanted to point out that there was  
43 only one party who is recommending the elimination of the  
44 RSP and that is the Consumer Advocate. The other three  
45 parties have not. So we believe that there is sufficient  
46 evidence for the Board to make a decision on the issues  
47 that are before them, that this proposal, to summarize, is too  
48 late in the process. I don't think it would be a meaningful  
49 process at this time. We need to keep to the schedule to  
50 finish the hearing where, as I said, the end is in sight. I  
51 don't think the proposal was particularly well thought out  
52 and that while we may be, Hydro would certainly be

53 interested in the future at an appropriate time in  
54 undertaking such a type of process. It's the wrong issue,  
55 it's the wrong time, and let's finish this hearing and we will  
56 leave it to the panel to make the decision based on the  
57 evidence and the arguments before them. Thank you.

58 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
59 Greene. Ms. Butler.

60 MS. BUTLER, Q.C.: Thank you, Mr. Chairman.  
61 Newfoundland Power's position has been committed to  
62 writing and I ask Mr. Alteen to pass that to the parties.  
63 Thank you, Mr. Chairman. The Board's procedural rules for  
64 all hearings are, as we all know, established in **Regulation**  
65 **3996** I highlight two provisions, **Section 3(2)** first, and of  
66 course I'm abbreviating slightly. The regulations are set  
67 out in Appendix A. "In any application the Board may  
68 dispense with, vary or supplement any provision of the  
69 regulations it considers necessary." I raise that, Mr.  
70 Chairman, because you may have a question as to your  
71 jurisdiction at this point in relation to the ADR process  
72 being raised by Mr. Browne's expert, and Section 9, "An  
73 intervenor's submission shall be signed and contain a  
74 concise statement of facts, the reasons why the intervenor  
75 believes the Board should decide the matter in the manner  
76 advocated, and a list of information may be useful in  
77 explaining the intervenor's representation." And again, Mr.  
78 Chairman, I give you that section because of the question  
79 which potentially (phonetic) I raised yesterday and I know  
80 at least one commissioner put their mind to in terms of  
81 whether in fact the filing yesterday was in fact in  
82 accordance with the rules.

83 Specifically to this hearing we have Board orders,  
84 **PU-7, 8, 22 and 23**, which set out the specifics of the  
85 procedure to be followed in this hearing. To its credit the  
86 Board has conducted a controlled and orderly hearing of a  
87 very complex application, Ms. Greene describes as being 11  
88 weeks long, and for the most part, and I think we're all in  
89 agreement, the parties have been cooperative and  
90 courteous and the rules have been followed, which is  
91 required in an (inaudible) process of this nature. Hydro's  
92 evidence on the record is that it will cost Hydro alone  
93 between 3 1/2 and \$4 million. One purpose, Mr. Chairman,  
94 of the rules and procedural orders is to minimize these  
95 costs through control of the administrative process. The  
96 overriding legal doctrine is procedural fairness and that  
97 calls into play many rules. Two of the most obvious and  
98 well known, and in fact alluded to yesterday, by myself and  
99 Ms. Andrews at least, are that justice must not only be  
100 done but seen to be done and the parties are not taken by  
101 surprise. This is, after all, not trial by ambush, and until  
102 yesterday, frankly, I thought that this was being achieved  
103 in a very complex manner, matter, sorry.

104 Now, Mr. Browne's expert, Mr. Bowman, filed

1 testimony August 17th, 2001.

2 MR. BROWNE, Q.C.: By the way, Mr. Chairman, I should  
3 point out I've asked Mr. Bowman to leave the room so he's  
4 not subject to this barrage. Thank you.

5 MR. NOSEWORTHY, CHAIRMAN: That's fine.

6 MS. BUTLER, Q.C.: The barrage, Mr. Chairman?

7 MR. NOSEWORTHY, CHAIRMAN: No, it's ...

8 MR. BROWNE, Q.C.: I'll stick with my word. Anyway,  
9 thank you, Mr. Chairman. I just want to point out,  
10 (inaudible) commissioners wondering why he wasn't in the  
11 seat or looking around, just to protect his integrity,  
12 integrity of his testimony, so he's not subject to what's  
13 transpiring here right now.

14 MR. NOSEWORTHY, CHAIRMAN: I can certainly  
15 understand that but I hardly claim this to be a barrage, Mr.  
16 Browne. Anyway, if you could proceed.

17 MS. BUTLER, Q.C.: Thank you, Mr. Chairman. The  
18 testimony filed on August 17th, 2001. In the three and a  
19 half months since that time, Mr. Chairman, other cost of  
20 service witnesses have filed supplementary evidence  
21 responding to other experts. The purpose of the pre-filed  
22 evidence, including supplementary evidence of course, is  
23 in keeping with Regulation 3996, Section 9, to provide the  
24 facts and information the intervenor relies upon to the  
25 Board. In accordance with administrative law principles,  
26 this prevents surprise and ultimately avoids undue delay,  
27 which until yesterday was successfully avoided. Mr.  
28 Browne should have followed supplementary evidence on  
29 behalf of Mr. Bowman. The document he provided  
30 yesterday, only after Mr. Bowman had read it into the  
31 record, should have been in all parties' possession in  
32 advance and should have been in the same format as the  
33 other cost of service experts' testimony. The contents of  
34 Mr. Bowman's opening remarks contain hearsay and often  
35 amount to little more than argument, and that is perhaps  
36 what's so troubling about this. Recommendations on the  
37 RSP touch issues at the very heart of this application and  
38 are being provided at a time when Mr. Brickhill, Mr. Osler  
39 and Mr. Brockman have already testified and one of them,  
40 Mr. Brickhill, has gone home. This is unfair and that  
41 inequity has to be addressed. The practical solution to this  
42 is to require Mr. Bowman to file his new recommendation  
43 and give the parties who may wish time to respond, time to  
44 do so. Parties who wish to file supplementary evidence in  
45 reply are entitled to that right. The difficulty is that this  
46 involves delay, the responsibility for which would lie  
47 directly and solely at the Consumer Advocate's feet. If this  
48 problem was presented by another party to this hearing, I'd  
49 be recommending an order of costs, but the Consumer  
50 Advocate is protected by Section 117(3) of *The Public*

51 *Utilities Act*, so that's not a practical solution to you.

52 As a result of Mr. Browne's actions yesterday, the  
53 proceeding has been delayed by at least a half a day. The  
54 Board has indicated that it wishes to hear us on, in fact I  
55 thought it was three matters, admissibility, how it should  
56 deal with the matters raised in Mr. Bowman's 17-page  
57 opening remarks and how the matter affects scheduling and  
58 I will address each.

59 The evidence of Mr. Bowman yesterday,  
60 containing hearsay, unqualified (phonetic) opinions and  
61 argument which nevertheless relates to issues arising in  
62 this hearing, particularly the RSP, while not being strictly  
63 speaking inadmissible in the strict legal sense, as this  
64 Board has exercised judgement in such matters in the past,  
65 contains questionable portions which Newfoundland  
66 Power feels the Board must address at the end of the day.  
67 One way for the Board to address the matter is as follows:  
68 allow the evidence on the record, allow the evidence to be  
69 tested through cross-examination, and if necessary or  
70 requested, allow reply evidence; two, give such weight to  
71 the evidence as the Board thinks it's worth based upon the  
72 experience of the witness and quality of the evidence after  
73 it's been tested through cross-examination; three, disallow  
74 any argument in the testimony; and, four, allow counsel for  
75 all parties to address matters of weight in final argument.  
76 This course of action is not new to this board and it was in  
77 fact adopted by the Board in a 1998 ruling in Newfoundland  
78 Power's cost of capital hearing. A copy of the transcript of  
79 the May 29th, 1998, hearing containing those arguments  
80 and the Board's ruling is attached for you at Appendix B,  
81 and I don't think I need to refer to it, Mr. Chairman.

82 The second issue was how the Board should deal  
83 with the matters raised in Mr. Bowman's opening remarks.  
84 In determining how to deal with the specific proposal for  
85 negotiation contained in Mr. Bowman's evidence at pages  
86 16 and 17, must first examine the proposal itself. The  
87 essential elements are, one, that one member from each  
88 party with rate design expertise be proposed; two, that they  
89 meet for a negotiation session today for a duration of two  
90 hours and a second negotiation session tomorrow, if  
91 necessary, with an agreement to be presented by December  
92 11th if the majority can agree.

93 The proposal presented by Doug Bowman on  
94 behalf of the Consumer Advocate yesterday is impossible  
95 to reconcile with the position expressed by Mr. Bowman on  
96 behalf of the Consumer Advocate on August 17th. Up  
97 until yesterday, Mr. Bowman and the Consumer Advocate  
98 advocated the elimination of the RSP. Yesterday they  
99 changed their minds.

100 MR. BROWNE, Q.C.: That is not correct. I must say I think  
101 we're getting far beyond what the Chairman asked you to

1 do. We're getting into matters of argument which should  
2 be left for the conclusion of the hearing. We're getting into  
3 very dangerous territory. We're about to have a witness  
4 come to the stand and Newfoundland Power and its  
5 counsel are very cleverly attempting to impeach the  
6 integrity of that witness before he testifies. I've sent the  
7 witness from the room so that he wouldn't be aware of  
8 what's transpired, but it can be done in his absence, and  
9 this is entirely inappropriate given the fact that that witness  
10 is about to testify. I'm seeking the input of other counsel  
11 here because the lawyers in the room will know exactly  
12 what I'm referring to. This is a form of ambush before the  
13 witness testifies. I'd like to know Mr. Bowman's crime.  
14 Now, they're attempting to impeach him. That is the  
15 purpose of this particular exercise, and I'm looking for input  
16 from other counsel to act fairly in reference to this  
17 particular matter to let us know what they think of  
18 attempting to get at the integrity of a witness before the  
19 witness testifies and the integrity of his evidence and rule  
20 accordingly. In a court it would not be allowed, I can safely  
21 say that, and I'm looking for a ruling on that. Now, Mr.  
22 Chairman, I want to hear from other counsel on that  
23 because that would be a matter of very serious  
24 consequence if that were allowed.

25 MR. NOSEWORTHY, CHAIRMAN: I have a formal  
26 objection which would indeed, if I could deal with that  
27 matter, I guess, before we move back into the, back into  
28 your comments, Ms. Butler. I'll ask for comments from  
29 other counsel.

30 MS. GREENE, Q.C.: Actually, Mr. Chair, I believe counsel  
31 for Newfoundland Power should be offered the first  
32 opportunity to respond to the objection.

33 MR. NOSEWORTHY, CHAIRMAN: Exactly, sorry.

34 MS. BUTLER, Q.C.: Mr. Chairman, I'm surprised at the  
35 Consumer Advocate's objection and the Appendix B which  
36 set out the transcript from the May 29th, 1998, raises similar  
37 issues. Perhaps what I'll do, Mr. Chairman, is allow Mr.  
38 Alteen to speak to what exactly happened on that date  
39 since he was present.

40 MR. NOSEWORTHY, CHAIRMAN: Sure.

41 *(2:15 p.m.)*

42 MR. ALTEEN: Mr. Chairman, on that date the issue was  
43 the competence of the CEO and CFO of Newfoundland  
44 Power to comment on certain matters that were raised in the  
45 cost of capital hearing and their qualifications and ability to  
46 speak to those matters was thoroughly canvassed, and the  
47 arguments are there in the appendix before the Board, and  
48 the Board made a common sense ruling which we are  
49 advocating it make similarly in this case. For the Consumer  
50 Advocate to raise these issues in an objection now seems

51 a little bit contrary to the position taken by the Consumer  
52 Advocate at that time when he was seeking to impeach the  
53 very CEO and CFO of Newfoundland Power, so it seems  
54 that it was appropriate then, it is appropriate now.

55 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
56 Alteen. Ms. Greene, (inaudible) comment on this matter,  
57 please?

58 MS. GREENE, Q.C.: Thank you, Mr. Chair. Ms. Butler is  
59 dealing with the issue of the admissibility of the evidence,  
60 which I did not address in detail. I agree with Ms. Butler  
61 that the issue is the weight to be given to it by the panel  
62 and I do not see anything inappropriate in her comments  
63 with respect to the types of consideration the Board should  
64 take into account.

65 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
66 Greene. Ms. Henley Andrews, would you be commenting  
67 on this?

68 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, obviously  
69 we have only just received the written submission and I'm  
70 following it through as Ms. Butler reads through it, as I  
71 think most of us are, so in terms of having a particular  
72 position with respect to the issues that have been raised,  
73 it's a little bit difficult to respond. Obviously a witness  
74 shouldn't be impeached before he testifies and the question  
75 is whether or not this is an attempt to do that and we don't  
76 have a position on that. I think the most important thing  
77 for us to get to right now though is that it's quite clear from  
78 the positions that are being, have already been enunciated,  
79 at least to the extent that they have been, that the proposal  
80 with respect to attempting to negotiate a settlement on the  
81 RSP is not tenable. We were open to that process. We  
82 preferred to do it in an evening rather than interrupt the  
83 flow of the hearing so that the evidence could continue,  
84 but the other parties, or a number of the other parties don't  
85 seem to be, given the point in the hearing and that's their  
86 right, would prefer not to pursue it at this time. So given  
87 where we are, we don't object to the admissibility of the  
88 evidence. We understand that, yes, there are issues  
89 between the various parties, but let's get on with it, let's get  
90 the evidence done.

91 MR. NOSEWORTHY, CHAIRMAN: The specific issue  
92 right now is this information here.

93 MS. HENLEY ANDREWS, Q.C.: That's right.

94 MR. NOSEWORTHY, CHAIRMAN: And from what I'm  
95 understanding you'd be saying on this you haven't had an  
96 opportunity to review it yet so you don't take a position on  
97 it. Is that ...

98 MS. HENLEY ANDREWS, Q.C.: Not entirely. Let me ... the  
99 comments that Newfoundland Power is making with respect  
100 to the weight to be given to evidence, it goes without

1 saying. The ruling of the Board which is attached, and I  
2 briefly glanced at it, which is at the bottom of page 21 in the  
3 Appendix B, I mean, these are ordinary every-day rules  
4 with respect to dealing with evidence, you know, that the  
5 Board gives appropriate weight to each piece of evidence.  
6 Well that occurs anyway. I mean, sometimes evidence gets  
7 weight, sometimes it doesn't, but it would normally be done  
8 after the evidence is heard, yes, obviously. That the Board  
9 won't allow argument by witnesses in their oral testimony  
10 is also true, and the issue that Ms. Butler seems to be  
11 raising at this point is that there's argument as far as  
12 Newfoundland Power is concerned in the oral testimony  
13 given yesterday by Mr. Bowman and that counsel is free at  
14 the end of the hearing to address the issues of weight and  
15 credibility. Well, that's really true. On the other hand, the  
16 position that is taken by the Consumer Advocate, which is  
17 that issues of credibility of any individual witness are  
18 normally dealt with after the witness has testified and not  
19 before the witness has testified is also true. So I'm in your  
20 hands.

21 MR. NOSEWORTHY, CHAIRMAN: Thank you for your  
22 comments. Mr. Kennedy?

23 MS. HENLEY ANDREWS, Q.C.: And I guess what I was  
24 trying to say at the beginning is that while I understand  
25 Mr. Browne's concern and I understand Newfoundland  
26 Power's concern, perhaps given that Hydro has expressed  
27 that it's not interested at this point in time for the reasons  
28 it's outlined in taking advantage of the proposal, maybe  
29 we're wasting our time talking about it.

30 MR. NOSEWORTHY, CHAIRMAN: And I would like to  
31 get there as quickly as possible. Mr. Kennedy, please.

32 MR. KENNEDY: Chair, I'm assuming that both Hydro's  
33 comments and elaborations on its position and similarly  
34 Newfoundland Power's response are fairly detailed and  
35 elaboration on its position is in response to a sensitivity to  
36 the issue of having a proposal put forward and not wanting  
37 to appear to be unreasonable or unduly dismiss the  
38 proposal without showing to the panel that they've  
39 contemplated the proposal, thought through the  
40 ramifications of it and ultimately decided what they've  
41 decided, which is to not take up that proposal. Clearly then  
42 that renders the issue moot that the proposal, as I  
43 understood it, would have certainly required Hydro's  
44 participation and would have required Newfoundland  
45 Power's participation and it's clear they're not about to  
46 receive either party's participation, and so from that  
47 perspective there will be no negotiated settlement unless  
48 the panel now orders one to take place. So, yes, I think that  
49 it's perhaps a point where we can move on and that it may  
50 be inappropriate to comment about the credibility of a  
51 witness at this juncture, that while clearly Newfoundland  
52 Power can provide its position regarding what they think of

53 the proposal, to then go the next step and indicate that that  
54 then somehow or other taints the position of the witness,  
55 I think that that might be something that they could reserve  
56 for a later point in time, and perhaps they could move on to  
57 the scheduling process itself. That would be, I think,  
58 reasonable in the circumstances.

59 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
60 Kennedy. Mr. Browne, please.

61 MR. BROWNE, Q.C.: I think the law is clear in the pages of  
62 this document we have here in front of us. There's a line  
63 there that the proposal submitted yesterday by Mr.  
64 Bowman lacks credibility. I think they're attempting to  
65 impeach his credibility and I know the reason for that, and  
66 we'll get to that in final argument. They have their own  
67 problems over there. But I think the law is clear. It cannot  
68 impeach the credibility of a witness before that witness  
69 gets on the stand. That witness is going to be put on the  
70 stand and he is going to be tested. He is going to be  
71 subject to examination and cross-examination. He's already  
72 been subject to a fair amount of ignorance, in my view, but  
73 in any case he ...

74 COMMISSIONER SAUNDERS: Where is the ignorance  
75 from, Mr. Browne?

76 MR. BROWNE, Q.C.: He was subject ...

77 COMMISSIONER SAUNDERS: Where is the ignorance  
78 from?

79 MR. BROWNE, Q.C.: Mr. Chairman, I ask ...

80 COMMISSIONER SAUNDERS: Why do you keep  
81 dropping these remarks?

82 MR. BROWNE, Q.C.: Mr. Chairman, I ask for some order.  
83 Can you get order within your panel, please?

84 MR. NOSEWORTHY, CHAIRMAN: Continue ...

85 COMMISSIONER SAUNDERS: I'll speak to you if I wish  
86 to speak to you, Mr. Browne.

87 MR. BROWNE, Q.C.: Mr. Chairman, I ask that ...

88 COMMISSIONER SAUNDERS: You dropped the word  
89 "ignorance." I want to know where it came from.

90 MR. BROWNE, Q.C.: Mr. Chairman, I ask that you get  
91 order within your panel. Chairman, you're Chairman of this  
92 proceeding. I ask you to get order within your panel. I'm  
93 not here to answer questions by any particular member.  
94 That's not my role, that's the role of witnesses here, and I  
95 will speak to these issues when I have an opportunity.

96 MR. NOSEWORTHY, CHAIRMAN: I'll have order within  
97 my panel, Mr. Browne, but I'd like you to keep your  
98 language to the facts and not certainly incite, and I don't  
99 think ...

1 COMMISSIONER SAUNDERS: Keep a civil tongue in  
2 your head, Mr. Browne.

3 MR. NOSEWORTHY, CHAIRMAN: ... (inaudible) here, so  
4 please proceed.

5 MR. BROWNE, Q.C.: Thank you. Mr. Bowman has already  
6 been subject to a lot of scrutiny here already yesterday, I'll  
7 remove the word "ignorance," and unnecessarily so in my  
8 view, and now they're trying to do a bit of more damage, if  
9 they can do it because it's all a game. We're all lawyers  
10 here. If we can do damage to someone else's witness, we're  
11 going to do it. That's the name of the game. And Ms.  
12 Butler knows the rules and she's coming at the other side  
13 of them. She knows the rules, she knows what's required  
14 of her in this particular situation and I ask her to uphold her  
15 professional standard in dealing with a particular board  
16 which, as a board of lay people.

17 (2:30 p.m.)

18 MR. NOSEWORTHY, CHAIRMAN: Thank you. I have  
19 one of two choices, I guess. Ms. Butler, I could ask you to  
20 ... I would like to get beyond this, deal with the issues that  
21 we're dealing with, and certainly proceed on with the  
22 process that we're here to deal with and with the hearing,  
23 and ...

24 MS. BUTLER, Q.C.: Thank you, Mr. Chairman.

25 MR. NOSEWORTHY, CHAIRMAN: ... if I could ask you to  
26 move to the conclusions of this, certainly in relation to the  
27 two items that I talked about, I would like you to do that.  
28 If you're not prepared to do that, I will recess for a while  
29 and discuss the legal matters with my panel.

30 MS. BUTLER, Q.C.: I don't think that's necessary, Mr.  
31 Chairman. There's no intention on Newfoundland Power's  
32 part at this stage to impeach the credibility of Mr. Bowman.  
33 My arguments are presented in strict compliance with what  
34 I understood you wanted from us yesterday, and in relation  
35 to the point on the document itself and the evidence that is  
36 given, that is outlined for you on page three, I've already  
37 read it, and I'm just suggesting that this is one manner in  
38 which the Board can deal with it later and specifically allow  
39 counsel for the parties to address matters of weight in final  
40 argument.

41 Returning, if I might, to the issue of scheduling,  
42 given Newfoundland Power's position on how the Board  
43 should deal with the matter, that is, take it from Mr.  
44 Bowman as it was filed yesterday, potentially have it in the  
45 form of a document as all other supplementary evidence  
46 was received from Mr. Bowman, then we're not requesting  
47 any additional time to get ready for the cross-examination  
48 of the witness, and we feel that the schedule should roll as  
49 the schedule was planned, to continue from now to  
50 December 21st subject, of course, to other parties' views on

51 whether they need additional time, and I think, in addition,  
52 that if another party in the room has reply evidence that  
53 they want to file in response to the position from Mr.  
54 Bowman yesterday, that they should have that right.

55 Concluding, Mr. Chairman, I'm on page five,  
56 Newfoundland Power is in favour of alternative dispute  
57 resolution mechanisms of any kind and if the Board  
58 concludes that it has the power to order such, then we  
59 would be interested in any form of process that's short and  
60 simplifies or eliminates an otherwise expensive or time-  
61 consuming process, but they have to be assessed against  
62 the role of improved regulatory efficiency, and at this point  
63 I don't think that the specific proposal of Mr. Bowman can  
64 be expected to achieve the goal because it came late in the  
65 process and clearly at this point already had the opposite  
66 effect, but in the future, you know, if in fact at the end of  
67 this hearing or any future hearing that means is found by  
68 the Board to be an appropriate means of resolving a portion  
69 of an application or the whole of the application,  
70 Newfoundland Power remains willing to consider that  
71 option, but not at this time in this hearing, so I guess the  
72 long and the short of it is, Mr. Chairman, that perhaps for  
73 different reasons we support the same position being  
74 expressed by Newfoundland Hydro. The evidence can be  
75 taken, if any parties want time to respond, they should  
76 have it, the schedule should continue. Thank you.

77 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
78 Butler. Ms. Henley Andrews, are there any additional  
79 comments that you would like to make?

80 MS. HENLEY ANDREWS, Q.C.: No, Mr. Chairman.

81 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy?

82 MR. KENNEDY: Chair, just for edification purposes for the  
83 panel, I thought that clearly that the procedural order as is  
84 currently drafted says that a party is to adopt their pre-filed  
85 testimony upon taking the stand. There is no actual  
86 prohibition in the procedural order nor in your rules that  
87 would prevent someone from providing further  
88 supplementary evidence once they take the stand. I think  
89 from custom and convention though the intention of that  
90 is to allow in some instances, particularly for applicant  
91 witnesses and for some of the experts, to update their  
92 evidence to take into account the passage of time from the  
93 original filing, but this issue that's arisen is perhaps in part  
94 a result of the fact that your rule on this point is not  
95 entirely clear and so that's something that I think that could  
96 be addressed at a procedural level and further refinements  
97 of the process, which, as I understand it, is something that  
98 the Board itself, Board of Commissioners, Public Utilities,  
99 has undertaken, and that may help you in the future.

100 And I think that the proposal request of  
101 Newfoundland Power that there be leave given to the

1 parties to file supplementary evidence to reply to any new  
2 issues raised by Mr. Bowman in his opening remarks is a  
3 reasonable one and I think that the panel should give that  
4 serious consideration as well, and that's all the comments  
5 I have. Thank you, Chair.

6 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
7 Kennedy. Mr. Browne, are there any final comments,  
8 please?

9 MR. BROWNE, Q.C.: Thank you, Mr. Chairman. I guess  
10 this matter is a, reminds me of a tempest in a teapot. Doug  
11 Bowman took the stand at the Public Utilities Board  
12 approximately 3:45 yesterday and he proceeded to read into  
13 the record his opening remarks. His remarks covered a  
14 number of areas, we all heard them, cost of service, rate  
15 design, industry and regulatory structure, Rate Stabilization  
16 Plan and option for replacing the Rate Stabilization Plan.  
17 After these remarks and in keeping with comments posed  
18 last week by Commissioner Powell regarding an alternative  
19 dispute resolution, Mr. Bowman suggested that the parties  
20 meet off the record in an effort to negotiate a consensus  
21 resolution, the issue of the Rate Stabilization Plan. Mr.  
22 Bowman then presented his proposed terms of reference for  
23 such a plan and he concluded his opening remarks at 4:30.

24 Hydro's solicitor, Mr. Young, took the position  
25 that Mr. Bowman's opening statement contained new  
26 evidence and sought an adjournment of the hearing to  
27 consider the statement, and that was fine. Now, did Mr.  
28 Bowman's statement contain new evidence? We contend  
29 there is absolutely no new evidence whatsoever contained  
30 in Mr. Bowman's opening remarks. Each of the above-  
31 referenced topics have been alluded to in Mr. Bowman's  
32 pre-filed evidence. As regards Mr. Bowman's remarks  
33 regarding the proposal for off the record negotiations in an  
34 attempt to reach a consensus agreement, we take the  
35 position these remarks do not amount to evidence and are  
36 rather akin to the opening statement proffered by William  
37 Wells, CEO of Hydro, on the 24th of September 2001, and  
38 it will be remembered that Mr. Wells encouraged all parties  
39 at **page 21, transcript of September 24th, 2001, line 38**,  
40 where it stated as follows, "Hydro has answered all the  
41 requests for information and stands ready to facilitate the  
42 process in any way it can, to better enable an  
43 understanding by all of the concerned parties of the facts  
44 underlying the provision of electrical services in the  
45 province and Hydro's role in that endeavour. It is  
46 recognized that the intervenors, customers and the people  
47 have a right to a hearing, however, there is a challenge for  
48 everyone involved to do the right thing, to assist the Board  
49 in bringing these proceedings to a timely conclusion."

50 Mr. Bowman's proposal was made in that spirit, in  
51 the spirit of cooperation, economy and expediency. It was  
52 not meant to usurp the Board's role but rather to assist the

53 Board. If a negotiated consensus could be struck by the  
54 parties and presented to the Board, that would be the depth  
55 of that assistance for the Board's consideration. Obviously  
56 parties can't tell the Board what to do. So it is obvious to  
57 us Mr. Bowman's comments was not proffered as evidence  
58 and we regret that some parties present here misunderstood  
59 the nature and quality of his words.

60 Alternatively, if Mr. Bowman's opening remarks  
61 did contain new evidence, to what extent has that breached  
62 the previous practice or protocol of the Board in this  
63 hearing? In the **transcript of December 4, 2001, at page**  
64 **50, line six**, Commissioner Saunders made the following  
65 comment, "This is the first witness where any new  
66 evidence has come out and I wonder why Mr. Browne  
67 could not have circulated the additional evidence in  
68 advance of today." Further at the **transcript of December**  
69 **5, (sic) 2001, at page 50 line 43**, Commissioner, the  
70 Commissioner made this further remark, "Why don't you  
71 please answer the question, Mr. Browne? Why don't you  
72 file this when you knew it?" It appears that Commissioner  
73 Saunders has called into question the propriety of having  
74 a witness present opening remarks that could be interpreted  
75 to contain new evidence, and the Board has singled out  
76 the, through Commissioner Saunders, the Consumer  
77 Advocate, myself, as possibly offending the previous  
78 protocols and procedures (inaudible).

79 Let's examine the record. On the 24th of  
80 September, Mr. William Wells, CEO of Hydro, took the  
81 stand and proceeded to embark upon an opening statement  
82 that none of the parties had previously seen or heard.  
83 While the statement is very general in nature, there are two  
84 aspects of it that are clearly evidentiary. Two examples of  
85 such evidence, **at page 20, line 28**, Mr. Wells makes the  
86 following statement, "The Rate Stabilization Plan has  
87 worked effectively since its inception in stabilizing  
88 (inaudible) and reducing the admitted impact of variations  
89 in fuel prices." This is an evidentiary conclusion. Further  
90 **at page 20 of the transcript** Mr. Wells makes the following  
91 evidentiary statement, "Hydro has no control over fuel  
92 prices but it can justifiably be proud of the management of  
93 the system which has ensured that generation requirements  
94 were met with the least amount of fuel consumption." The  
95 statement of Mr. Wells is made for the purpose of telling  
96 the Board that there has been no oil wastage by Hydro  
97 whatsoever, quite a broad evidentiary statement.

98 Turning to the opening statement by Mr. Osler **on**  
99 **November 29, 2001, page 40 of the transcript, line 42**, in  
100 his opening statement Mr. Osler gave the following  
101 evidence, as far as we can tell was not part of his pre-filed  
102 evidence, "So I know that in the jurisdiction of the Yukon,  
103 where the Yukon Energy Corporation was established by  
104 the Yukon Government by purchasing the assets and

1 undertakings of the Northern Canada Power Commission at  
2 the outset, it was established and funded with 60/40 debt-  
3 equity ratio when it first appeared before the Yukon Utility  
4 Board. There was a directive from the Government as a  
5 matter of policy pursuant to that legislation, but it wanted  
6 for the sake of not being precise a commercial return on  
7 equity." This portion of Mr. Osler's opening statement was  
8 without doubt evidence, so there's no circulation of Mr.  
9 Osler's opening statement comments, either before or  
10 indeed after they were made. We didn't see them, same as  
11 Mr. Wells. Now Industrial Customers were not taken to  
12 task for failing to circulate the opening statement  
13 containing evidence.

14 Now, when we go back and examine Commissioner  
15 Saunders' comments of December 4th at **page 50, line six of**  
16 **the December 4th transcript**, we recall he stated as follows,  
17 "This is the first witness where any new evidence has come  
18 out and I wonder why Mr. Browne could not have  
19 circulated the additional evidence in advance of today."  
20 This statement with respect, with all due respect to Mr.  
21 Saunders, it's incorrect. Categorical statements should be  
22 avoided.

23 I should point this out to the Board, that when we  
24 were meeting with Mr. Bowman the night before his  
25 evidence I had two choices here. I could have put Mr.  
26 Bowman on the stand and asked him six questions  
27 concerning these particular matters and he would have  
28 given evidence on those particular matters. Don't know if  
29 he would have given the same evidence, but he would  
30 probably have given similar evidence because he is  
31 consistent. But we talked about it. Now if we had to do  
32 that, if I had to do what Mr. Hutchings did, there'd be no  
33 talk of any of this. I asked ... I would have asked the  
34 witness six questions about his evidence and got him to  
35 expand upon it and there would have been none, no  
36 hullabaloo about any of it. What I instead asked Mr.  
37 Bowman to do, I said maybe it's best in saving time if you  
38 just read it as a, or offered it as a statement and that's the  
39 way we agreed to go. Now, statements are not new for this  
40 board, the filing of statements by witnesses prior to them  
41 testifying. A lot of witnesses have opening statements.  
42 We heard from Dr. Kalymon here, Dr. Kalymon made an  
43 opening statement, and Mr. Alteen would have to agree  
44 with me, as well as Ms. Henley Andrews and Mr.  
45 Hutchings, that more often than not, witnesses have come  
46 before this board and made opening statements which we  
47 weren't privy to beforehand. I remember vividly in 1998,  
48 into the hearing which Mr. Alteen just alluded to, that we  
49 had Dr. Moran on the stand, we all know who he is, who  
50 embarked by way of his opening statement on a lecture on  
51 the components of capital costing together with charts.  
52 We had none of that beforehand. All of a sudden he seized  
53 the moment and we were into a theatre, a lecture theatre.

54 Those who were there know well of what I'm talking. So  
55 there's every precedent for the Board for a witness to come  
56 on and make an opening statement. If the offensive part  
57 here is that he made a proposal public, there is evidence  
58 surrounding that as well, which is probably best left unsaid  
59 at this point because it involves other witnesses and their  
60 possible collusion in the process, so I think that's best left  
61 alone. I would advise it be left alone.

62 Finally, allow me to address ...

63 COMMISSIONER SAUNDERS: (inaudible) be left alone ...

64 MR. BROWNE, Q.C.: Finally, allow me ...

65 (2:45 p.m.)

66 COMMISSIONER SAUNDERS: What are you advising to  
67 be left alone, Mr. Browne? What is it you're ... I missed  
68 something there, I guess.

69 MR. BROWNE, Q.C.: Negotiations, there have been  
70 negotiations between the parties, would be my suggestion,  
71 or talks between the parties. I don't think that that ought to  
72 come out in evidence. That's why I'm suggesting it should  
73 be left alone. I think most lawyers in the room would agree  
74 with me on that.

75 Finally, I'm going to address this particular issue  
76 because it has raised its head and it needs a resolution. I  
77 find it difficult to do but having chaired a panel myself I am  
78 not, I don't like the way this hearing is proceeding in many  
79 respects. It's my understanding that the Chairperson of the  
80 Board is Chair of the panel. Unless he has delegated a  
81 particular role to a panel member to interfere with cross-  
82 examination or subject counsel to untimely questions, it's  
83 my understanding the way an administrative tribunal works  
84 is that all requests to speak in the forum from both inside  
85 the panel and from the floor have to go to the Chairperson.  
86 That is the only way we can have an orderly process, that  
87 is the Chairperson who controls the hearing. I'm concerned  
88 about the tone of the questions and the, of Commissioner  
89 Saunders, and I must say it has caused me serious  
90 concerns as to what my options are here, and I would ask  
91 the Chairman, as a way to deal with this so we can deal with  
92 each other in a proper manner, if he's not already done so,  
93 I press the Chairperson to caucus with the panel and to  
94 ensure that all the panel members will respect the role of  
95 counsel and this process. I do not believe any panel  
96 member has a right to interfere with the cross-examination  
97 of a witness with the possible exception of the Chair who  
98 I'm sure would do it most reluctantly. We have here nine  
99 lawyers in the room. If have nine lawyers aren't objecting,  
100 you know, take a hint, so I think that's important. I know  
101 we were particularly aggrieved sometime ago when my  
102 colleague, Mr. Fitzgerald, was examining and he didn't get  
103 the due respect from the panel because of the interference



1 of a panel member during the examination, and with all due  
2 respect the panel member, a panel member who interferes,  
3 interferes for us all. It may have been the answer or where  
4 Mr. Fitzgerald was headed in that particular, (*sic*) might  
5 have been beneficial to the industrial customers, to  
6 Newfoundland Power, to Hydro, it might have been  
7 beneficial to other members of the panel. I don't believe  
8 one panel member can try to close down a cross-  
9 examination. I feel secure in saying that.

10 COMMISSIONER SAUNDERS: Now, Mr. Browne ...

11 MR. BROWNE, Q.C.: If ...

12 COMMISSIONER SAUNDERS: ... I have to interrupt you,  
13 Mr. Browne, because what you're doing now is you're  
14 bringing into play my action with respect to Mr. Fitzgerald's  
15 questioning, and I'm surprised that you haven't brought  
16 into play his action with respect to that. He sat on his  
17 backside for almost a whole week after refusing to stand  
18 when the Board entered and left the room. He's your  
19 counsel, Mr. Browne. Now I think that is something that  
20 should be put on the record of this hearing, that your  
21 counsel took that action, which I think is rather childish in  
22 the circumstances. The last time I recall doing it was in  
23 kindergarten when the teacher disallowed me from doing  
24 something.

25 MR. NOSEWORTHY, CHAIRMAN: Can I have some ...

26 MR. FITZGERALD: Chairman ...

27 MR. NOSEWORTHY, CHAIRMAN: Can I have some order  
28 here, please?

29 MR. FITZGERALD: ... I take ... I'm taking that as a personal  
30 attack and ...

31 COMMISSIONER SAUNDERS: You can take that any way  
32 you wish, Mr. Fitzgerald ...

33 MR. NOSEWORTHY, CHAIRMAN: Can I have some  
34 order, please, order?

35 COMMISSIONER SAUNDERS: ... I tell you, because it was  
36 a very, I think, childish action on your part. You certainly  
37 have been cut off before.

38 MR. NOSEWORTHY, CHAIRMAN: Some order, please,  
39 order.

40 MR. FITZGERALD: Thank you, Mr. Chairman.

41 MR. NOSEWORTHY, CHAIRMAN: Could you ...

42 MR. BROWNE, Q.C.: To sum up the remarks ...

43 MR. NOSEWORTHY, CHAIRMAN: ... bring your remarks  
44 ...

45 MR. BROWNE, Q.C.: ... given ...

46 MR. NOSEWORTHY, CHAIRMAN: ... to a conclusion ...

47 MR. BROWNE, Q.C.: ... given these remarks ...

48 MR. NOSEWORTHY, CHAIRMAN: ... Mr. Browne,  
49 please?

50 MR. BROWNE, Q.C.: ... and where they're headed, I will  
51 ask the Chairman to caucus with the panel members to make  
52 sure all the panel members have an open mind in order to  
53 complete this process, that they have not, that they are not,  
54 have not pre-judged any of the issues, and given the fact  
55 that a lot of the heat has come in this direction, that they  
56 are open to the arguments that we have. I think it will be  
57 incumbent upon the Chair to do that, to satisfy himself and  
58 to satisfy us all that there's no apprehension of bias within  
59 the panel ...

60 MR. NOSEWORTHY, CHAIRMAN: I can assure you, Mr.  
61 Browne, I don't need ...

62 COMMISSIONER SAUNDERS: There isn't, Mr. Browne.

63 MR. NOSEWORTHY, CHAIRMAN: ... I don't need to  
64 caucus to do that, I can assure you. I know the people who  
65 are here and aside from this to and froing that's going on  
66 here, I can assure you, I can assure you as the Chair of this  
67 panel the independence of every member of this panel, and  
68 in no way is this prejudicial to any party that's in this room  
69 including the Consumer Advocate, sir.

70 MR. BROWNE, Q.C.: If you give me that insurance that,  
71 that assurance that you have polled your panel and you  
72 know that, I accept that, I accept the integrity with which  
73 you made that statement, Mr. Chairman. We have no  
74 further remarks in reference to this matter. It was a tempest  
75 in a teapot. Lawyers will always try to get advantage over  
76 each other. We saw that happening previously earlier  
77 today and we're quite capable of proceeding with the  
78 examination of Mr. Bowman if the, when the panel is ready  
79 for Mr. Bowman, and I do feel Mr. Bowman has been  
80 maligned in reference to this. He is a gentleman, he has  
81 testified before this panel before, and he is to be tested on  
82 his credibility, and I hope that ... I know you all will act  
83 accordingly. Thank you very much.

84 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
85 Browne. We're going to break now for 15 or 20 minutes and  
86 then we'll return with some comments and hopefully be in  
87 a position to resume our cross-examination. Thank you.

88 (break)

89 (3:20)

90 MR. NOSEWORTHY, CHAIRMAN: Thank you. Just  
91 briefly, I will be brief. Having heard from the parties we've  
92 concluded to allow the opening remarks by Mr. Bowman as  
93 part of the record and they will be, indeed, tested in cross-

1 examination and will be weighed by the Board in our final  
2 deliberations as other information is. On the RSP, the  
3 proposal that we have to deal with the RSP, we feel as a  
4 practical matter, I don't think the timing in the schedule can  
5 be accommodated at this particular time. The concept for  
6 the proposal itself can be dealt with as other proposals  
7 have been that have been presented before the Board and  
8 again we will address those ... that proposal along with  
9 others, based on the evidence that is presented in cross-  
10 examination and we will deliberate on that along with other  
11 proposals before us, so that's the extent of our  
12 considerations and our decisions on these matters, and I'd  
13 like to now call upon Mr. Bowman to, if he could Mr.  
14 Browne, to take the seat so we can continue the cross-  
15 examination, please? Good afternoon, Mr. Bowman, and  
16 welcome back.

17 MR. BOWMAN: It's great to be back.

18 MR. NOSEWORTHY, CHAIRMAN: Great to have you  
19 back. I'd ask now Hydro to begin their cross-examination,  
20 Mr. Young, please?

21 MR. YOUNG: Thank you.

22 MR. KENNEDY: Chair, if I could just step in, sorry? His  
23 opening statement wasn't put in or labelled as an exhibit  
24 yet. **CA No. 6.**

25 **EXHIBIT CA-6 ENTERED**

26 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
27 Kennedy.

28 MR. KENNEDY: Sorry for the interruption.

29 MR. NOSEWORTHY, CHAIRMAN: Are you ready to  
30 begin, Mr. Young?

31 MR. YOUNG: Certainly. Good afternoon, Mr. Bowman.

32 MR. BOWMAN: Good afternoon.

33 MR. YOUNG: The first thing I'd like to ask you is really just  
34 a fairly minor point of clarification. On page 2 yesterday in  
35 your evidence, the evidence you filed yesterday, you  
36 indicated that, among others, Mr. Brickhill is in favour of 1-  
37 CP, and that may be generally true and he may have given  
38 some testimony to that extent but I'm not sure that's exactly  
39 what his evidence is and I wonder if I could refer you to the  
40 transcript of November the 27th, page 16, please? And it's  
41 near the bottom of the page on the left-hand side it starts,  
42 line 38, and the question is from Ms. Henley Andrews, and  
43 I understood from your testimony yesterday while Hydro  
44 is now (inaudible) 2-CP allocator you do not consider the  
45 use of a 1-CP allocator to be wrong. He said "That's  
46 correct." And the next question is, and we'll get to the  
47 question, Mr. Chair, "So what's the basis of the proposed  
48 change from 1-CP allocator, 2-CP allocator?" Top of the

49 page. I wonder if you could read the answer there starting  
50 at line 45, Mr. Brickhill (sic.)?

51 MR. BOWMAN: "I was influenced by the language used  
52 by the Board in 1993 that a study should be undertaken  
53 and used in determining a 1-CP or a multiple CP. In the  
54 absence of that directive I think I would have stayed with  
55 1-CP, but it seems to me the Board said do a study and  
56 base your CP on that study and the study indicated 2-CP."

57 MR. YOUNG: And Ms. Henley Andrews said that "It's also  
58 indicated that 1-CP was not wrong?" And Mr. Brickhill  
59 said ... I wonder if you could just read in lines 53 to 56?

60 MR. BOWMAN: "That's correct. That is a matter of  
61 judgment when you get down to it. I mean there is one day  
62 of 60 percent. We went with the two days. The study, I  
63 think, would have supported one day, as well."

64 MR. YOUNG: I said it was a small point. On page 3 of your  
65 evidence filed yesterday you referred to a study done in  
66 Rhode Island as to time of use rates, and it says about  
67 production costs being one of the ... make sure I find the  
68 right reference here. I'm not sure I do have the right  
69 reference but perhaps I don't need the reference for this  
70 question, it's very general. You did refer to a study being  
71 done in Rhode Island as to time of use rates and the  
72 production costs being one of the keys to bringing  
73 competition to the electricity market there. I'm just  
74 wondering if you can clarify whether the production costs  
75 in Rhode Island and the competition in that market have  
76 any real relevance here with the production costs in this  
77 jurisdiction on the island or Labrador and the rate design  
78 here?

79 MR. BOWMAN: I think that time of day rates should  
80 reflect production costs, whether you're in Rhode Island or  
81 Newfoundland.

82 MR. YOUNG: So I gather though the production costs that  
83 may have been considered in Rhode Island could very well  
84 have been very different? They may have been the same,  
85 I'm not sure, but ...

86 MR. BOWMAN: They certainly could be different, yes.

87 MR. YOUNG: On page ... I think it is correct ... you talked  
88 about, on page 5 of your evidence, and that would have  
89 been the right reference for the last point, at the bottom of  
90 the page. You're talking about perhaps a study that was  
91 done by Hydro in 1990 as being no longer of relevance or  
92 words to that effect and perhaps should be updated. I'm  
93 just wondering what elements of Hydro's cost structures  
94 have changed since 1990 that you think would justify a  
95 new study?

96 MR. BOWMAN: Sorry, could you tell me what the  
97 reference is?

1 MR. YOUNG: The reference is page 5 and the lines are not  
2 numbered, but it's near the top of the page, and I'll just read  
3 it out. It says "Hydro has not performed an analysis of  
4 time of day and season rates since 1990 and refers to a  
5 marginal cost study in 1984 when it designed the rate for  
6 '92 with generators." I'm just wondering what you think  
7 may have changed since 1990 that would justify a new  
8 study?

9 (3:30 p.m.)

10 MR. BOWMAN: I don't know what has changed.

11 MR. YOUNG: So you don't know if there's been  
12 fundamental shifts or changes in customer loads or plant ...

13 MR. BOWMAN: I don't know.

14 MR. YOUNG: I wonder if I could refer you to **NP-157**,  
15 please? There's tables attached there, if you look at those,  
16 briefly. These are the tables we've all had a crack at the  
17 visual affect on and I won't go into that again, but just  
18 looking at these, and you can take some time if you feel  
19 you need to to do this, and I know this is not the whole  
20 picture but what this does show is the peak demands over  
21 the months, over this period of time in these years, and I  
22 would suggest to you, and perhaps you can comment to  
23 me on this, that this shows a very stable circumstance as to  
24 what our peak loads are at least. Would you agree. You're  
25 not seeing a lot of growth and you're not seeing big  
26 variations between the years? There's another set of days  
27 ...

28 MR. BOWMAN: I see growth from 1017 megawatts in  
29 January of '96 to ...

30 MR. YOUNG: That's 80 ...

31 MR. BOWMAN: ... 1268 in ... sorry, what am I looking at?

32 MR. YOUNG: Yeah. There's a third page also that we  
33 could also look to and this is in '93.

34 MR. BOWMAN: I'll have to have a hard copy if I'm going  
35 to look at three pages of this.

36 MR. YOUNG: That was the point. Anyway I put it to you  
37 though that ... and you may have already answered my  
38 question because I think you said you weren't aware if  
39 there was any change?

40 MR. BOWMAN: I don't know if there's been change. I  
41 would expect there to be a difference over a ten year period.

42 MR. YOUNG: Okay. Would you be able to describe to the  
43 Board your understanding of changes that may have  
44 occurred in the plant that Hydro uses since that time, new  
45 additions, whether that's been a fundamental change or not  
46 a change at all?

47 MR. BOWMAN: As I said, I don't know if there's been

48 significant changes that would lead to a change in their  
49 time of day costs or seasonal costs. I would expect there  
50 to be information on the record that would indicate whether  
51 or not they had.

52 MR. YOUNG: Yes.

53 MR. BOWMAN: And there isn't.

54 MR. YOUNG: That's a fair assessment. Yesterday on page  
55 6 ... and I'm not going to jump to say this, I know I'm  
56 correct. Yes, I am. Talking about the issue now of cross  
57 subsidization, and on page 6, about two thirds of the way  
58 down the page, you wrote this and I read this out, but just  
59 to repeat this and ask you to comment on a point. "In  
60 summary, an independent consultant could review the  
61 tariffs free of the historical baggage (inaudible) by Hydro.  
62 By having an open review of the consultant's reports all  
63 stakeholders will have the opportunity to provide their  
64 input." I take it what you're talking about primarily here is  
65 the rural subsidy, is that your concern?

66 MR. BOWMAN: I'm talking about rates in general.

67 MR. YOUNG: So all of the rates here? This comment  
68 comes in the heading under cross subsidization, that's why  
69 I assume that.

70 MR. BOWMAN: Well, the heading is rate design point  
71 two and that in summary it relates to rate design in general.

72 MR. YOUNG: Is it your understanding that ... are you  
73 aware of the rural inquiry that happened that was  
74 conducted by this Board in '95? I'm just wondering  
75 whether you think that ... well, are you aware how extensive  
76 that was? It was several weeks, were you aware of that?  
77 You probably read the report, have you?

78 MR. BOWMAN: Yes, I have.

79 MR. YOUNG: Okay. The consultant's report, I take it,  
80 would look at many of the same issues. Is that what you're  
81 suggesting here, we revisit several of these issues?

82 MR. BOWMAN: I'm suggesting that the independent  
83 consultant look at the rate designs in general and  
84 recommend what that consultant thinks they should be.

85 MR. YOUNG: Okay.

86 MR. BOWMAN: Free of previous influences.

87 MR. YOUNG: We've had in '93 a cost of service  
88 methodology hearing. I guess you knew that? At least the  
89 report came out in '93, followed in '95 as I mentioned by the  
90 rural inquiry into all those costs that Hydro faces. Can you  
91 explain why you would think a consultant, a new  
92 consultant, another look would be a magic bullet here and  
93 change the subsidy problem that we seem to have here in  
94 Newfoundland?

1 MR. BOWMAN: Well first of all, I wouldn't suggest that  
2 the independent consultant revisit the cost of service  
3 issue.

4 MR. YOUNG: I see.

5 MR. BOWMAN: I think the cost of service study has come  
6 up with reasonable recommendations and I'm reasonably  
7 happy with what has come out. I would have the rate  
8 design consultant come in and take it from that point  
9 forward, put a proposal before the individual stakeholders  
10 in this hearing, and have a hearing on it and discuss it and  
11 come up with alternative rate designs.

12 MR. YOUNG: I'm trying to draw a distinction between what  
13 you've just said and the job that Mr. Baker did for this  
14 Board back in the rural inquiry. Now, I realize that that  
15 wasn't all of Hydro's rates at the time, but it was all of  
16 Hydro's rural rates, and in relation to this issue of cross  
17 subsidization which you've identified as being a problem is  
18 a fairly indepth one. What would be the change this time?  
19 I'm just wondering the historical baggage, is it just to bring  
20 someone a fresh face or ... I mean I'm not sure if we follow  
21 your point here. Because this is a rather important,  
22 potentially at least, point you're raising here about having  
23 another report or perhaps another inquiry. I'm not sure  
24 exactly what's being recommended.

25 MR. BOWMAN: I would have them look at all the rates  
26 not just the rural rate subsidy.

27 MR. YOUNG: Don't you think that's what we've been  
28 doing here for a number of months, looking at all the rates  
29 of Hydro?

30 MR. BOWMAN: I'd say you've got ... well, you've got rate  
31 design experts from all the stakeholder groups here and not  
32 one of them have proposed an actual rate design, and the  
33 reason they haven't is because they don't have the  
34 information necessary to do that, and I'll point to Dr.  
35 Wilson's evidence. He has suggested that there be a  
36 demand energy charge with seasonal variations on the  
37 wholesale power rate, yet he hasn't actually suggested a  
38 specific rate design. His recommendation is that Hydro be  
39 ... the Board direct Hydro to do such a study. I didn't make  
40 that recommendation because the Board has directed  
41 Hydro to look at that since 1992 and they haven't done it.  
42 I'm suggesting an independent consultant come in here and  
43 actually do it.

44 MR. YOUNG: One of the issues you have referred to, and  
45 I want to bring you back to this cross subsidization point  
46 because you made the point that ... there, I think by most  
47 people's standards and most other jurisdictions, rather  
48 larger here. Now, you say on top of page 6, "Customers are  
49 currently paying between a nine and 334 percent of the  
50 cost of service.", and I won't get into the figures too much

51 but you're probably aware that Hydro has been saying that  
52 typically our isolated customers pay 15, 20 percent, that  
53 range, and it's higher depending on the customer class  
54 you're looking at in the isolated communities. Were you  
55 aware generally of that and is this part of what you're  
56 talking about here?

57 MR. BOWMAN: That's part of it.

58 MR. YOUNG: What do you understand to be the largest  
59 cause of the deficit that Hydro runs serving its rural  
60 customers?

61 MR. BOWMAN: The isolated communities.

62 MR. YOUNG: In the isolated communities?

63 MR. BOWMAN: Yes.

64 MR. YOUNG: We understand ... I mean, for one thing, it's  
65 quite obvious, just to kick this in the right direction, we  
66 understand that rates don't recover costs, so I mean you  
67 could look at it and say either costs are too high or rates  
68 are too low, but I think you'd probably agree with me there  
69 is a mismatch there, but on the cost side. If we could start  
70 there, what do you understand is inherent in providing this  
71 service which drives the cost so high?

72 MR. BOWMAN: Inherent in providing what service?

73 MR. YOUNG: The cost to diesel customers, customers  
74 served on these communities? Have you read the rural  
75 report on this point by ...

76 MR. BOWMAN: Yes.

77 MR. YOUNG: Okay. If I was to suggest to you that they're  
78 inherent in the high costs of running isolated communities,  
79 particularly the economies of scale, you would understand  
80 that, would you?

81 MR. BOWMAN: Yes.

82 MR. YOUNG: To be correct, and the next thing I need to  
83 talk to you about then this is an important issue here, is the  
84 lifeline rate. Mr. Browne has asked some interesting  
85 questions of people, both in this room and on the Labrador  
86 coast about that, and there is evidence as to people's  
87 different responses to it. I'm just wondering what your  
88 views are on this issue?

89 MR. BOWMAN: Well, like I said, I'd like to see an  
90 independent consultant look at it, put something on the  
91 table and then have a hearing on it.

92 MR. YOUNG: So you have no views on this, on the lifeline  
93 rate issue?

94 MR. BOWMAN: I think ... on the lifeline rate issue?

95 MR. YOUNG: Yeah. I'm just wondering what else would  
96 you need to know.

1 MR. BOWMAN: There's nothing in my testimony  
2 addressing lifeline rate tariff.

3 MR. YOUNG: No, there isn't, okay. Just so I can be clear  
4 on that, you don't have a position on the lifeline rate issue,  
5 that's not an issue you covered at all and you don't have a  
6 comment at this point?

7 MR. BOWMAN: I said there's nothing in my testimony  
8 addressing lifeline tariff.

9 MR. YOUNG: Okay. No, fair enough. On page 20, and I  
10 believe this is in your new ... well, it can't be in your new,  
11 must be in your old. You can go to page 20 in your new  
12 testimony. You made a comment about the bidding  
13 process which may be used here in the event that a new  
14 project is on the horizon, towards the top of the page. You  
15 made the comment ... I'll cut right to the point here. It says,  
16 "When public utilities are allowed to bid on competitive  
17 solicitations for new projects potential developers lose  
18 confidence in the system." I'm just wondering where you're  
19 getting the background on that point, what experience you  
20 bring to bear on this issue?

21 MR. BOWMAN: Could you scroll up to the previous page,  
22 please? According to the response to CA-48.

23 MR. YOUNG: Okay. Well, perhaps you misunderstood my  
24 question. I mean you're making what I think is a judgment  
25 on the point that there as a suppression of competition  
26 amongst the bidders due to the fact that a crown utility was  
27 involved in a process or perhaps in the future might be  
28 involved in a process. I'm just wondering, do you have any  
29 specific knowledge from your background that you can  
30 share with us to help us understand your point on this?

31 MR. BOWMAN: Yes. When I worked for Ontario Hydro  
32 we had an independent power program, and I attended a  
33 number of different meetings and conferences with them,  
34 and they were not happy at all about the fact that we could  
35 bid and they were pretty much demanding that we not be  
36 allowed to bid on those projects.

37 MR. YOUNG: If I was to suggest to you that we had also  
38 gone through a project of that sort and our experience was  
39 different would you be surprised?

40 MR. BOWMAN: Very much so.

41 MR. YOUNG: Have you heard of ... and there's another  
42 place, and you're referring to the quality of the bids may  
43 not be the same level. Do you expect that the quality  
44 bidders would stay away if a crown utility was involved in  
45 the process?

46 MR. BOWMAN: I suspect that some of them would, yes.

47 MR. YOUNG: You've heard of Duke Energy?

48 MR. BOWMAN: I've heard of Duke.

49 MR. YOUNG: Sythe?

50 MR. BOWMAN: Yes.

51 MR. YOUNG: Do you have any comment on the nature of  
52 those companies, whether they are real players in the  
53 industry?

54 MR. BOWMAN: They're real players, yes

55 MR. YOUNG: I'm just wondering if you have any  
56 comments about the role that the subsidy plays or, I  
57 suppose, the impediment that the subsidy may be in setting  
58 marginal cost rates? Just to put that in context, I mean we  
59 understand, I think, the evidence is fairly clear here, the  
60 information has certainly been clear that a large, a fairly  
61 large component of the costs Newfoundland Power has in  
62 its base that it has to pass on to its customers relates to the  
63 deficits that Hydro has from serving its rural customers.  
64 Mr. Brickhill has made a comment that that in itself is a  
65 problem with marginal pricing. Do you have any comment  
66 about that?

67 MR. BOWMAN: It's a problem, but that was addressed at  
68 the 1996 hearing, Newfoundland Power's hearing, and that  
69 was a point of discussion and I believe Newfoundland  
70 Power has attempted to deal with it. They still try to have,  
71 still try to have a run out block that reflects marginal costs  
72 in spite of the, in spite of the rural rate subsidy.

73 MR. YOUNG: On page 6 of your, I believe this is your pre-  
74 filed testimony, you've made comments, and you've made  
75 some other comments about this yesterday, so I guess it's  
76 also in your testimony from yesterday, about Hydro, and  
77 this is at page 6, line 7, you're talking about the RSP in this  
78 connection, and you were referring to it having a number of  
79 detrimental aspects and you said it removes any incentive  
80 that Hydro might have to better manage its fuel supply  
81 costs and improve it's forecasting techniques. I'm just  
82 wondering if you can point to any specific practices that  
83 Hydro is doing, or ought to be doing in this regard that you  
84 feel is amiss.

85 MR. BOWMAN: One thing they might do is implement  
86 some form of hedging program, and if you had some kind  
87 of performance based measure in there, that might give  
88 them an actual target price, an amount of money you'd be  
89 putting towards that program. I will say that I think if you  
90 give Hydro staff the right incentives, that they can be quite  
91 innovative and come up with things that will allow them to  
92 do a better job.

93 (3:45 p.m.)

94 MR. YOUNG: This is again on your pre-filed testimony on  
95 pages 9 and 10. It starts on the bottom of the page, I think,  
96 and I'll just read it out and ask you the question when I'm  
97 finished here. The criteria (inaudible) providing a sound

1 basis upon which to design rates, however, I believe  
2 stability is of lesser importance than the other criteria. The  
3 fact is that energy prices are volatile. There is a price to  
4 pay to reduce volatility and if confronted with the full cost  
5 of rate stabilization, it is unlikely that consumers would  
6 choose to pay. I'm just wondering where you get specific  
7 information, or do you have specific information about the  
8 consumers' desires in Newfoundland and Labrador?

9 MR. BOWMAN: No, I don't. I asked for that in one of the  
10 information requests, just some indication of what  
11 customers are willing to pay for stability, and I asked for  
12 information related to their demands that if something  
13 similar to an RSP were put in place, and in response I got  
14 that sheaf of papers relating to various newspaper articles  
15 and transcripts that I don't believe address that issue.

16 MR. YOUNG: So you don't have any new information on  
17 that, I take it. You haven't done any surveys or anything  
18 of that nature.

19 MR. BOWMAN: No, I asked for the information from  
20 Hydro, asked them to produce information that would  
21 indicate customers are willing to pay for stability and none  
22 was produced.

23 MR. YOUNG: Do you have information from other  
24 jurisdictions on that, that you know, you think may be  
25 directly importable here, that we can use or ... I'm just  
26 wondering ...

27 MR. BOWMAN: As a measure of what Hydro customers  
28 are willing to pay?

29 MR. YOUNG: As a measure of whether you think  
30 customers prefer stability over volatility or whatever.

31 MR. BOWMAN: I think it depends on the, what's in place  
32 at the time. I can remember gas, a gas representative  
33 approaching my father a couple of years ago, and he had  
34 an option where he would freeze rates for three years if he  
35 paid something in the order of five percent over the current  
36 rate, and in that instance gas rates were very stable and no  
37 one was taking him up on it, he wasn't having a great deal  
38 of success. Now on the other hand, last year rates were  
39 quite unstable and a lot of customers were probably more  
40 willing to take a price cap. My own propane supplier is  
41 now offering propane with a price cap as a means of ...  
42 they're tying that with an equalized billing payment plan  
43 and you can choose that option and come in under a price  
44 cap. Now I haven't chosen that personally, so I don't know  
45 what customers are willing to pay. I think it depends on the  
46 circumstances, and you won't know until you give them the  
47 option.

48 MR. YOUNG: In the middle of page 10, and this is, I think,  
49 in your, in the evidence filed yesterday. I'll check my  
50 reference here because I'm bouncing back between the two.

51 It is right in the middle, and I'm just going to read this  
52 sentence out and make sure I understand. In fact, I'll  
53 probably just read part of the sentence out because there's  
54 a couple of different issues there. It says, NRRI did  
55 indicate that fuel adjustment clauses are common, although  
56 they've been under fire in recent years because fuel prices  
57 have tended to be more stable. It's the sort of thing you  
58 were talking about a moment ago, I think. Is that your  
59 understanding of ... I mean I'm not sure who said this from  
60 NRRI and what the context of it was, and perhaps you can  
61 explain for us exactly what the nature of the conversation  
62 was, or the communication that occurred here.

63 MR. BOWMAN: Yeah, the NRRI, the statement, NRI did  
64 indicate that fuel adjustment clauses are common. The rest  
65 of that is my statement.

66 MR. YOUNG: Oh, I see, so it's your view that fuel prices  
67 have tended to be more stable in recent years.

68 MR. BOWMAN: Prior to last year.

69 MR. YOUNG: And that they've come under fire recently for  
70 that reason, and that is to say fuel adjustment clauses.

71 MR. BOWMAN: Yes.

72 MR. YOUNG: Okay, I wonder if we could look at **IC-22**  
73 please? I'm looking at the recent years, and I think you will  
74 agree with me that these are average prices for these years  
75 and they're not ... and you know the industry so I think you  
76 will confirm with me that within those years there may have  
77 been swings higher and lower, that these are sort of year-  
78 end averages. Looking from '98 to 2000, I mean can you tell  
79 me what's stable about that?

80 MR. BOWMAN: From '92 to '99, I would say is more stable  
81 than oil prices were at the time fuel adjustment clauses  
82 became popular.

83 MR. YOUNG: But in the last few years, I'm wondering, I'm  
84 trying to understand your statement that you've made on  
85 page 10, because you're saying that fuel prices have  
86 become more stable, and I'm just looking, and when you  
87 say recent years, which years are you referring to?

88 MR. BOWMAN: Well let me make it clear. I think in the  
89 years '92 to '99, that those prices are more stable than the  
90 prices were back when fuel adjustment clauses were  
91 initially thought to be a good thing. That's my clarification  
92 of this statement.

93 MR. YOUNG: Over that longer period of time, okay.  
94 Would you hold that true if you were looking just over the  
95 last two or three years? Do you think that they've been  
96 stable lately?

97 MR. BOWMAN: Well, that's what I just said in answer to  
98 your previous question there that was last year certainly

1 prices were unstable. I'd say 14 to 23 is unstable, yes.

2 MR. YOUNG: And 16 to 30 perhaps, or 17 to 30. I'm  
3 looking since '98 to 2000 ... 35, okay. I think I understand  
4 your point insofar as I can.

5 MR. BOWMAN: I'm looking at the US dollar price.

6 MR. YOUNG: Your background indicates you deal with the  
7 energy industry and a whole range of things, power  
8 restructuring, and power sector restructuring, deregulation,  
9 those things are in your background, is that correct?

10 MR. BOWMAN: Yes.

11 MR. YOUNG: So you're no stranger to the whole issue of  
12 energy price volatility. I mean this is sort of your stock and  
13 trade in a sense, is it not? So I'm going to put to you that  
14 you don't seem to put a high value, and I'm looking at your  
15 evidence here, and you don't put a high value on stability  
16 in energy markets coming from that background, and I'm  
17 just wondering, is that a view shared by people who do  
18 your work, or is that a view that people in your work get  
19 from the customers that they serve? Is there any direct  
20 correlation there?

21 MR. BOWMAN: The fact, I think you're referring to my  
22 statement that the fact is energy prices are unstable?

23 MR. YOUNG: Yes.

24 MR. BOWMAN: Yeah, I think that's a generally accepted  
25 concept in the energy industry and gasoline prices move  
26 around quite a lot.

27 MR. YOUNG: I just want to give you a little anecdote, and  
28 ask you to respond to it. I heat my home with oil, a small  
29 modest home, and Mr. Browne knows it well because I  
30 bought it from him several years back.

31 MR. BROWNE, Q.C.: Very modest, yes.

32 MR. YOUNG: That was a couple of moves ago for Mr.  
33 Browne, I suspect.

34 MR. BROWNE, Q.C.: A couple, we enjoyed it too.

35 MR. YOUNG: I signed up for the budget plan with my oil  
36 company and last year ... which means I've been paying  
37 essentially the same for about ten months of the year,  
38 every month is the same. At the end of the year ... they  
39 sent me an \$800 bill in June and I'm trying to get a sense  
40 why I feel, should feel so satisfied from being able to  
41 participate in that sort of rollercoaster ride and end up with  
42 a bang at the end of one heating season. You know, do  
43 you have any comment on that? I mean I, as a consumer,  
44 didn't enjoy that, and this I would suggest to you is one of  
45 the things that the RSP helps to some extent to stabilize  
46 and eliminate those kind of bumps. Do you think that  
47 consumers would enjoy, you know, this kind of a bump

48 occasionally, or do you think they prefer more or less  
49 stable prices?

50 MR. BOWMAN: There's no question in my mind that they  
51 don't like it. On the other hand, I've given seven reasons  
52 here why you shouldn't have the RSP and there's one  
53 reason why you maybe should, and I would say you could  
54 meet that stability issue by offering a stable rate in  
55 competitive markets. You can actually apply for a rate  
56 that's fixed over a five year period.

57 MR. YOUNG: On page 12, I just want to clarify this and I'm  
58 not sure if I understand what your point is exactly. You  
59 say only one rate of return expert testified concerning the  
60 effects of the balancing account, and it was Dr. Kalymon ...  
61 and now this is relation to the RSP, and that, in fact, may be  
62 correct, but I'm just wondering, and I'll just keep reading, I  
63 suppose, to get the full context here. You said he testified  
64 under cross-examination that if the outstanding balance in  
65 the RSP became too large, the financial community may  
66 view this negatively resulting in an increase in the required  
67 rate of return, therefore Hydro and NP by endorsing the  
68 RSP in its present form are promoting higher rates for  
69 consumers. Do you understand that the point you're  
70 making here is directly in contravention, or directly in  
71 contra-position to the point raised by Ms. McShane and  
72 Mr. Hall here, as to the effect of the RSP on Hydro's  
73 financial soundness?

74 MR. BOWMAN: I understand their positions, and I  
75 address their positions in there. I believe their positions  
76 were related to the fuel adjustment component of the RSP,  
77 not the RSP balancing account.

78 MR. YOUNG: Well, the RSP balancing account is a  
79 component of the RSP as it is now.

80 MR. BOWMAN: And what I've done in my testimony  
81 here, is I've split those out and indicated that the cost of  
82 service experts, I think if you were to go back ... sorry, the  
83 cost of capital experts, if you were to go back and ask them,  
84 and I think the testimony actually indicates that what  
85 actually reduces the risk is the fuel adjustment component.  
86 It related to the fuel adjustment costs, not the balancing  
87 account.

88 MR. YOUNG: You make a point on page 14 of your new  
89 evidence, and this is about the fuel price risk management,  
90 and you're, I think, proposing a way that this could work in  
91 your evidence here, and I just want to explore this with you  
92 a little bit. I'm just going to start reading about halfway  
93 through that paragraph and ask you to comment about it.  
94 It says the conversion deficiency is typically set at an  
95 industry standard consistent with the type of generator in  
96 order to encourage the owner to continue to adequately  
97 maintain the unit. Using Holyrood as an example, you might  
98 pay the conversion for the efficiency level reflecting recent

1 plant experience or the level reflecting the industry  
2 standard for this type of facility. By pegging it at industry  
3 standard, Hydro would keep any revenues gained from  
4 improvements to the conversion efficiency that places it  
5 ahead of the industry standard, but would absorb any  
6 losses arising if the efficiency of the unit falls below the  
7 industry standard. The risk gets transferred to Hydro as  
8 Hydro is clearly best able to manage the risk. Now I  
9 thought it might be useful to read all of that out. Is it your  
10 understanding that that concept which is very different  
11 than the one that Hydro operates under?

12 MR. BOWMAN: I don't think it's different to any great  
13 degree. I do, I'm not sure what they're using to peg that  
14 efficiency factor in the RSP. I would like to see it compared  
15 to an industry standard.

16 MR. YOUNG: Okay, I wonder if we could look at **NP-262**  
17 please. It might be worthwhile to ... well I'll read the  
18 question and perhaps you can read the answer. Obviously  
19 this is Hydro's testimony and not yours. Further to NP-163,  
20 the question reads, quantify the impact in the test year with  
21 the fuel efficiency factor at Holyrood being two percent  
22 less than as forecast. Could you read the answer please?

23 MR. BOWMAN: A two percent reduction in the forecast  
24 Holyrood fuel efficiency factor would result in a conversion  
25 factor of 597.8 kilowatt hours per barrel. This will result in  
26 approximately 72,000 more barrels of No. 6 fuel being  
27 consumed, assuming the cost of service is established as  
28 per Hydro's application at \$20.00 per barrel using a 610 per  
29 kilowatt hour per barrel conversion factor. The impact on  
30 2002 results would be an increase to the RSP balance of  
31 approximately \$500,000 and a reduction in Hydro's net  
32 income of approximately \$1.5 million.

33 MR. YOUNG: I'm just wondering, does this satisfy the kind  
34 of concern you have here? I think your point raised here,  
35 which I think is a sound one, and this response here, they  
36 go essentially in the same direction, do they not? Would  
37 you agree that this is a good thing that we have this  
38 situation as it is now in our rate structure, and that  
39 essentially it marries with the point you're raising here?

40 MR. BOWMAN: I give the same answer that I gave to  
41 your previous question, that I would like to see it compared  
42 to an industry standard.

43 MR. YOUNG: But you would agree, I take it you would  
44 agree at least, that the change in efficiency in Holyrood, the  
45 fuel efficiency factor does have a real effect on Hydro's  
46 bottom line so there is an incentive there.

47 MR. BOWMAN: It does, like I said, I'm just not sure how  
48 it compares to an industry standard.

49 (4:00 p.m.)

50 MR. YOUNG: Okay, which I suppose brings up another  
51 point. The industry standard and using that for Holyrood,  
52 perhaps under a broad range of issues may work, but  
53 would you have any comment as to whether using an  
54 industry standard, for example, if you took one that, you  
55 know, from the midwest states, all interconnected states,  
56 and you compared it with Holyrood which has to provide  
57 this service as it does in the wintertime in particular, over  
58 day and night, in an isolated, electrically isolated area, do  
59 you think there would be fair comparisons there?

60 MR. BOWMAN: You would have to take those  
61 considerations into account.

62 MR. YOUNG: Yeah, I'm just thinking, for example, you  
63 know, you can't, at Holyrood, I put it to you, the operators  
64 can't shut down all the units in the wintertime, because in  
65 the daytime they may need them, but they may run them at  
66 lower loads, and I think we know at Holyrood, lower loads  
67 means less efficiency, so ... and we're not adverse to your  
68 point here in principle, but I'm just wondering how easy it  
69 would be to apply industry standards to a situation like  
70 this. I mean I think you're suggesting perhaps an  
71 adjustment would be required or would you look for ...

72 MR. BOWMAN: I'm saying compare it to an industry  
73 standard.

74 MR. YOUNG: Would you look to a similar system  
75 perhaps?

76 MR. BOWMAN: It would be appropriate to choose an  
77 appropriate peer group, yes.

78 MR. YOUNG: On page 8, now this is of your new evidence,  
79 you've given some information about the experience since  
80 1990 of the National Grid Company, which you indicated is  
81 the transmission provider in the UK, and there's a whole  
82 bunch of numbers here, 30 percent down here, and 20  
83 percent increase in capacity and stuff. I'm just trying to get  
84 some sense of relatively and what the value is of this  
85 evidence in relation to us. Do you have any sense of what  
86 the rates are in the UK and the costs and can you give me  
87 an idea, for example, what a residential rate would there?

88 MR. BOWMAN: This testimony relates only to the  
89 transmission company and it's used as an example of the  
90 benefits that might be gained under a performance based  
91 rate making plan.

92 MR. YOUNG: Would the information that's provided, you  
93 said, reduce the cost of transmission by 37 percent, is that  
94 the rates by 37 percent or the costs?

95 MR. BOWMAN: The cost of transmission, like it says.

96 MR. YOUNG: So you don't have any information you can  
97 provide to us, and you also give information here about  
98 Norway and some of the goals they've set there. Do you



1 have any, likewise, can you provide any information to us  
2 as to the rates and the comparable systems there? Or are  
3 these just broad information you're bringing?

4 MR. BOWMAN: This is broad information to indicate that  
5 there may be benefits there for Newfoundland.

6 MR. YOUNG: That's as far as we take that. Let me ask you  
7 a question I guess I'm going to have to ask Mr. Wilson  
8 also, and I think you're both good targets for the question  
9 though because you both talk about marginal cost pricing,  
10 and you've answered part of this question already, but I'm  
11 going to ask you the other side of it in relation to marginal  
12 cost pricing. Dr. Brickhill ... or Dr. Brickhill ... Mr. Brickhill,  
13 I'm just giving him a degree he didn't deserve, I guess ...  
14 Mr. Brickhill has indicated that the RSP which delays  
15 pricing signals, and I think there is really no dispute about  
16 that, and the subsidy which I think you said you may get  
17 around, but that these two together make marginal cost  
18 pricing a difficult exercise in this jurisdiction. Do you have  
19 any comment on that or ...

20 MR. BOWMAN: They complicate the issue.

21 MR. YOUNG: Is that all the RSP does is complicate the  
22 issue? I'm just wondering, you know, if an RSP is retained  
23 by this Board in its order, similar to the one it has now, is it  
24 just a complication that you shrug off, or is it something  
25 that is a, you know, sort of a systemic problem that you  
26 have to work through?

27 MR. BOWMAN: It's a problem that you'd have to work  
28 through.

29 MR. YOUNG: Because as I understand, and I'm not going  
30 to get into the pizza analogy as instructive as they were,  
31 but as I understand marginal cost pricing, I mean it's one of  
32 the ways it was put before the Board was that it's important  
33 to send the right signal at the right time, and the RSP is sort  
34 of diametrically opposed to that if you're looking at fine  
35 time distinctions. Is that correct?

36 MR. BOWMAN: In it's present design.

37 MR. YOUNG: So an RSP that you would propose, should  
38 you propose one, would be one that wouldn't interfere with  
39 marginal cost prices, is that right?

40 MR. BOWMAN: My testimony is very clear. I think the  
41 RSP should be abandoned.

42 MR. YOUNG: So it's just a matter of getting rid of it so that  
43 marginal cost pricing can be the proper way of doing it?

44 MR. BOWMAN: I've given seven reasons here in my  
45 testimony from yesterday, why you should abandon the  
46 RSP.

47 MR. YOUNG: I'm a little troubled by, and I'm not going to  
48 pursue this too much further, but I'm a little troubled by the

49 fact that you don't have any evidence or an opinion on the  
50 lifeline rate issue and the rural rate subsidy and I'm not  
51 saying that just because I have pages of questions to ask  
52 you. I'm just curious that I personally participated in the  
53 rural rate inquiry and it was a very large issue, and I would  
54 have thought that having made the comments about the  
55 high level of cross-subsidization, you would have come to  
56 some conclusions about it, other than just the observation  
57 that it occurs, but I mean if you're not willing to offer any  
58 thoughts on the matter, I'm just going to ask you whether  
59 or not, for example, the lifeline rate was ... and I'll start here,  
60 a good idea in concept, or one that needs to be fixed or  
61 changed or adjusted. I'll just get some impact from you, or  
62 some feedback from you on that.

63 MR. BOWMAN: Once again, I think the elimination of  
64 these cross-subsidies is painfully slow. I think that was  
65 Mr. Brockman's words, and I do believe that an  
66 independent consultant should come in here and help you  
67 eliminate or put you on a path towards eliminating those  
68 large cross-subsidies, and I don't, I haven't expressed an  
69 opinion specific to the lifeline component of that tariff.

70 MR. YOUNG: So you're deferring on that issue, I guess, to  
71 the next report, or the next consultant, or ...

72 MR. BOWMAN: I haven't made any real recommendations  
73 here with regard to rate design. It's that I haven't had  
74 enough information put in front of my on which to design  
75 actual rates.

76 MR. YOUNG: Okay, Mr. Chair, that's all the questions I  
77 have, thank you, Mr. Bowman.

78 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
79 Young. I'll move now to cross-examination by  
80 Newfoundland Power, Ms. Butler please?

81 MS. BUTLER, Q.C.: Thank you, Mr. Chairman. I'd like to  
82 request that I start my cross-examination tomorrow morning  
83 if that's agreeable to the panel?

84 MR. YOUNG: If I could make a point here. I was asked  
85 how long I would take a while ago and I thought it would  
86 be longer because I did anticipate a longer conversation  
87 with Mr. Bowman about the issue of lifeline rates and rural  
88 subsidies, so I threw Mrs. Butler off her path.

89 MR. NOSEWORTHY, CHAIRMAN: That's fine, we'll  
90 reconvene at 9:30 tomorrow morning.

91 MS. BUTLER, Q.C.: Thank you, Mr. Chairman.

92 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.  
93 Thank you, Mr. Bowman.

94 *(hearing adjourned to December 6, 2001)*