

1 (9:30 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Good morning.  
3 Welcome to the last day of evidence. I trust everybody is  
4 as excited as I am over that prospect. We have a bit of an  
5 eclectic schedule today, I guess, as we reviewed yesterday,  
6 in the first instance, the Industrial Customers' witnesses,  
7 Mr. Backus and Mr. Dean, from Abitibi, and following that  
8 would be Mr. Mifflin from North Atlantic Refining. After  
9 that we'll deal with the capital budget application from  
10 Hydro, which is dated December the 28th, and I think after  
11 that we'll deal with the issue that would have been raised  
12 by Ms. Henley Andrews yesterday concerning counsels'  
13 participation in final argument, and I understand, Mr.  
14 Kennedy, you have something for us either verbally or in  
15 writing a little bit later on, is that correct?

16 MR. KENNEDY: Correct, Chair. In any event, we can  
17 address that at that point in ...

18 MR. NOSEWORTHY, CHAIRMAN: Great, and I think that  
19 will be it for today. Are there any preliminary matters, Mr.  
20 Kennedy, before we begin?

21 MR. KENNEDY: Chair, there's some filings. There's two  
22 filings made by Mr. Brushett on behalf of Grant Thornton  
23 in replies to requests for undertakings that arose during his  
24 cross-examination yesterday. The first one is the  
25 calculation of the retail mill rate using a 5, 10 and 15-year  
26 recovery period, and that would be U-PUB-1.

27 **EXHIBIT U-PUB-1 ENTERED IN EVIDENCE**

28 And the second filing is entitled, "The RSP Recovery  
29 Calculation of the Dollar Impact Over 12 Months for the  
30 Retail Customer," and that would be U-PUB-2.

31 **EXHIBIT U-PUB-2 ENTERED IN EVIDENCE**

32 MS. HENLEY ANDREWS, Q.C.: I'm sorry, which was  
33 which?

34 MR. KENNEDY: Sorry, the calculation of the retail mill rate  
35 using a 5, 10 and 15-year recovery period is number one,  
36 the calculation of the dollar impact over 12 months for the  
37 retail customer on the RSP recovery would be number two.

38 MS. BUTLER, Q.C.: I'm sorry, I didn't get number two.

39 MR. KENNEDY: That's the one you have right there.  
40 Chair, there are some additional documentations which I  
41 believe Hydro wishes to file at this time as well, and I'll let  
42 counsel for Hydro speak to those.

43 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
44 Kennedy. Good morning, Ms. Greene.

45 MS. GREENE, Q.C.: Good morning. Just before the  
46 commencement of the hearing, two documents were  
47 circulated by Hydro. The first deals with the undertaking

48 PUB-1 that was circulated and just marked this morning,  
49 dealing with the calculation of the retail mill rate using 5, 10  
50 and 15-year recovery period for the balance in the RSP, and  
51 what the first document does, it adds to the undertaking  
52 that was filed by Mr. Brushett. Mr. Brushett in his  
53 assumption stated that no interest had been used in doing  
54 the calculation, and in reviewing this yesterday we thought  
55 it would be helpful for the parties and for the Board if we  
56 demonstrated what the impact of interest would be over  
57 those timeframes because interest is a significant  
58 component for those periods of time, so that has been  
59 circulated and copies just given to the other parties. It's  
60 the same type of calculation but the only assumption being  
61 added is an interest rate of eight percent, and that's to  
62 illustrate what the impact of interest would be on the  
63 recovery rates. We are asking that that would be marked  
64 with the consent of the other parties to illustrate the impact  
65 of interest at that rate.

66 MR. KENNEDY: Yes, Chair, I understand that all counsel  
67 have consented to the documentation itself for ...

68 MR. FITZGERALD: Mr. Chair, we do consent just with the  
69 rider that for illustrative purposes that if it's, it might be  
70 helpful if Hydro could also run the same figure at an  
71 average annual interest rate of five percent, just so we  
72 could have that in black and white as well.

73 MS. GREENE, Q.C.: Okay, that's fine. It is just to illustrate  
74 the impact of interest. Who knows what interest will be in  
75 15 years' time, but, yes, we'll undertake to do that as well.

76 MR. KENNEDY: Do you want to file this one and then file  
77 another one, counsel, or ...

78 MS. GREENE, Q.C.: Yes.

79 MR. KENNEDY: Yes, okay. So we'll call this Consent No.  
80 13, Chair.

81 **EXHIBIT CONSENT-13 ENTERED IN EVIDENCE**

82 MR. NOSEWORTHY, CHAIRMAN: Thank you.

83 MR. BROWNE, Q.C.: We'd also note that Mr. Brushett  
84 filed it for \$50 million and \$60 million and Hydro has only  
85 filed information for \$50 million. It might be helpful if they  
86 put it for \$60 million because I think it's \$60 million deficit in  
87 the Plan now.

88 MS. GREENE, Q.C.: Mr. Brushett also did it for only \$50  
89 million but we can undertake to do it for \$60 million as well.

90 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you.

91 MS. GREENE, Q.C.: The second document that was  
92 circulated, the cover letter is a letter dated January 9th from  
93 Geoff Young as counsel for Hydro. Mr. Young is now  
94 providing copies to Ms. Blundon. You will recall that in  
95 December, just before we broke, we had advised the Board

1 and the other parties that there had been ongoing  
2 negotiations with the industrial customers and that had led  
3 to a number of revisions in the proposed industrial  
4 contracts which had been filed with the original application,  
5 and on December 20th revised industrial contract was filed  
6 or contracts were filed. Since that period of time we've  
7 again had discussions with industrial customers and we are  
8 filing today a further revision to the industrial contracts. In  
9 comparison to what was filed on December 20th, I would  
10 advise that the vast majority are minor changes for typos,  
11 that sort of thing. The only substantive change in what  
12 you would have reviewed in December is a change with  
13 respect to the section on wheeling. So these revised  
14 contracts dated January 9th are ... Ms. Henley Andrews can  
15 speak to this as well. To our understanding they are  
16 acceptable to the parties, the industrial customers, with the  
17 one issue on the liability clause for one of the customers,  
18 North Atlantic Refining Limited, which we will be dealing  
19 with today. Thank you. Those are my only comments.

20 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
21 Greene. Ms. Henley Andrews, are there any comments on  
22 this particular document that you would wish to make?

23 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, two. One  
24 is that you will see that the name of Abitibi has changed  
25 from what you're used to seeing, and that is a very recent  
26 development, and the name that's reflected in the contract  
27 is the name of the company that is operating both of the  
28 mills in Newfoundland as of now, and the second thing is  
29 that, as indicated by Ms. Greene, with the exception of the  
30 issue raised by North Atlantic Refining on the cap and the  
31 liability, in (phonetic) the liability clause, all the other  
32 clauses of the contracts, the language of the clauses are  
33 acceptable. We still have issues on some things but not on  
34 the language of the contract.

35 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.  
36 Can I ask you now, Ms. Henley Andrews or Mr. Hutchings,  
37 to bring forward your next witnesses, please?

38 MS. HENLEY ANDREWS, Q.C.: It is me, Mr. Chairman.  
39 Mr. Backus and Mr. Dean can perhaps ...

40 MR. KENNEDY: Chair, just while the witnesses are taking  
41 the stand, these contracts are revisions to the ones  
42 originally filed in the application, so we wouldn't need to  
43 label these as such. They would just be included as  
44 supplementary or Revision 1 or ...

45 MS. GREENE, Q.C.: They're actually Revision 2. As I  
46 mentioned, on December 20th we filed a, what I will call the  
47 first revision, and this would be the second revision to the  
48 contracts filed with the original application.

49 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, on sort of  
50 a just a minor matter, in this hearing it has certainly been

51 the practice that witnesses remain in the back of the room  
52 while other witnesses for the same party testify, which is  
53 quite different than in a courtroom. I would point out that  
54 Mr. Mifflin, who will testify later this morning, is in the  
55 room and I assume that it is fine for him to be here while the  
56 Abitibi witnesses testify.

57 MR. NOSEWORTHY, CHAIRMAN: Absolutely. Good  
58 morning, gentlemen. Good morning, Mr. Dean. I wonder  
59 could I swear you in first?

60 MR. DEAN: Yes, sir.

61 MR. NOSEWORTHY, CHAIRMAN: I'd like to say you've  
62 been a most patient witness, enduring throughout the  
63 proceeding. Do you swear on this Bible that the evidence  
64 to be given by you shall be the truth, the whole truth and  
65 nothing but the truth, so help you God?

66 MR. DEAN: I do.

67 MR. NOSEWORTHY, CHAIRMAN: Thank you, sir, very  
68 much.

69 **MR. MELVIN DEAN, SWORN**

70 MR. NOSEWORTHY, CHAIRMAN: Good morning, Mr.  
71 Backus. I'd like to apologize to you as well and your  
72 colleagues for the unavoidable delay just prior to  
73 Christmas. I know I'm sure you travelled to St. John's  
74 particularly for the hearing and my apologies, but it was  
75 unavoidable. Do you swear on this Bible that the evidence  
76 to be given by you shall be the truth, the whole truth and  
77 nothing but the truth, so help you God?

78 MR. BACKUS: I do.

79 MR. NOSEWORTHY, CHAIRMAN: Thank you, sir.

80 **MR. JAY BACKUS, SWORN**

81 MS. HENLEY ANDREWS, Q.C.: And, Mr. Chairman, in  
82 terms of the delay, it's really quite remarkable that that's the  
83 only delay that we've had, given the length of the hearing.  
84 I don't think anybody was particularly perturbed by that.

85 MR. NOSEWORTHY, CHAIRMAN: I would agree.

86 (9:45 a.m.)

87 MS. HENLEY ANDREWS, Q.C.: I'll deal first with Mr.  
88 Backus. Mr. Backus, you have pre-filed testimony with  
89 respect to this matter?

90 MR. BACKUS: Yes.

91 MS. HENLEY ANDREWS, Q.C.: Do you adopt your  
92 testimony as presently filed?

93 MR. BACKUS: Yes.

94 MS. HENLEY ANDREWS, Q.C.: Mr. Dean, you have ...  
95 you originally pre-filed testimony before the

1 commencement of the hearing and then filed updated  
2 testimony in December. Are there any changes that you  
3 would like to note with respect to your testimony?

4 MR. DEAN: Yes. There are two changes to the December  
5 13th evidence. That's as a result of the new contracts being  
6 submitted. There's two issues now which are no longer a  
7 problem for Abitibi Consolidated, and those are on **page**  
8 **eight of the December 13th evidence**. The first is on page  
9 eight. The whole issue there on non-firm rates, with the  
10 new wording in the contracts that is no longer a problem,  
11 so I'd like to delete that evidence. That's page eight  
12 starting on line 17 and going through to the first four lines  
13 on page nine. And also if you flip over two pages, the  
14 page 11, the article on force majeure and strikes, with the  
15 new wording on the contracts, that is no longer a problem  
16 for Abitibi Consolidated.

17 MS. HENLEY ANDREWS, Q.C.: Do you adopt the  
18 remainder of your evidence as filed?

19 MR. DEAN: Yes, I do.

20 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, before I  
21 make Mr. Backus and Mr. Dean available for cross-  
22 examination, I would point out that there is before the  
23 Board pre-filed evidence from Pierre Cote and there is also  
24 pre-filed evidence with respect to Denis Jean As we noted  
25 before, Mr. Cote (phonetic) is no longer with Abitibi and  
26 we would seek leave to withdraw his evidence since he will  
27 not be testifying and therefore his evidence will not have  
28 been tested on cross-examination, and similarly since Mr.  
29 Backus is testifying in the place of Mr. Jean, we would like  
30 to seek leave to withdraw Mr. Jean's testimony as well.  
31 Subject to that, I'd like to make my witnesses available.

32 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
33 Henley Andrews. Move to Ms. Greene for the cross-  
34 examination, please, Ms. Greene.

35 MS. GREENE, Q.C.: Good morning.

36 MR. BACKUS: Good morning.

37 MS. GREENE, Q.C.: The first few questions I have are for  
38 Mr. Dean. Mr. Dean, in your pre-filed evidence you've  
39 stated that you have been involved in electrical issues  
40 since 1987, I believe it was.

41 MR. DEAN: That is correct.

42 MS. GREENE, Q.C.: And in what way have you been  
43 involved in electrical issues?

44 MR. DEAN: The first few years at Stephenville I was  
45 Electrical Superintendent, so I was in charge of the  
46 operation, and as part of that, starting in and around 1990,  
47 became involved in rate hearings and the cost of electricity.

48 MS. GREENE, Q.C.: You just mentioned that you were

49 involved in rate hearings. In fact I think on page 14 of your  
50 pre-filed evidence you said that you participated fully in  
51 hearings since 1990. I'd like to review that with you now,  
52 please. I wonder, Mr. O'Rielly, if you could bring up first  
53 the **1990 report of the Board with respect to rate referral**  
54 **by Hydro**, and that's the cover page, the 1990 report. I  
55 wonder if we could look first, please, at page six of this  
56 Board's report on Hydro's 1990 rate referral, page six? And  
57 there, Mr. Dean, I don't believe you personally were  
58 involved in that particular hearing but is it correct that  
59 counsel appeared on behalf of industrial customers? And  
60 I wonder if you could read in the paragraphs that begin  
61 with "Joseph," and the paragraph that begins with  
62 "Michael"?

63 MR. DEAN: Okay. Joseph S. Hutchings, LLB, appeared on  
64 behalf of Corner Brook Pulp and Paper and Deer Lake  
65 Power Company Limited. Michael Harrington, Q.C., that's  
66 page one, and Janet Henley Andrews, LLB, appeared on  
67 behalf of Abitibi Price Incorporated.

68 MS. GREENE, Q.C.: And that's for the 1990 hearing. Now  
69 if you could turn to page eight, actually perhaps page  
70 seven first, Mr. O'Rielly, because it indicates who gave  
71 evidence. So you'll see beginning on page seven that, who  
72 presented evidence. You'll see for Hydro, for  
73 Newfoundland Power, and then if you could go, please, to  
74 the top of page eight. Do you recognize the name that's  
75 there for Abitibi, Mr. Dean?

76 MR. DEAN: Yes.

77 MS. GREENE, Q.C.: And who is the party that gave  
78 evidence on behalf of Abitibi at the 1990 hearing?

79 MR. DEAN: At the 1990 hearing it was the Controller, Mr.  
80 Stephen McIsaac.

81 MS. GREENE, Q.C.: The next hearing that Hydro had the  
82 **report of the Board is 1992**, and I wonder if we can look at  
83 that report, please? And I think this was the first hearing  
84 which you were personally involved, is that correct, Mr.  
85 Dean?

86 MR. DEAN: I was at the hearing in 1990; I did not give  
87 evidence.

88 MS. GREENE, Q.C.: Okay.

89 MR. DEAN: I was here for one day and I had  
90 conversations with the Controller and with our counsel at  
91 that time.

92 MS. GREENE, Q.C.: And the first time then that you gave  
93 evidence would have been 1992.

94 MR. DEAN: That is correct.

95 MS. GREENE, Q.C.: Okay. So again if we could look, who  
96 has appeared as counsel, please? That would be page six

1 of this report. And we see same names as in 1990, even as  
2 today, for example, for Hydro, and if ... could you identify  
3 there, please, who appeared on behalf of Abitibi?

4 MR. DEAN: That was Keith J. Mercer, Q.C.

5 MS. GREENE, Q.C.: And would you turn to page eight,  
6 please, to see who gave evidence on behalf of Abitibi in  
7 this hearing? Could you identify who the witnesses were  
8 in '92, please?

9 MR. DEAN: Yes. For Abitibi Price it was Jackford Hogan,  
10 Manager of the Abitibi Price Pulp and Paper Mill in  
11 Stephenville, and myself.

12 MS. GREENE, Q.C.: The next hearing that Hydro had was  
13 the cost of service methodology hearing and the report that  
14 was issued was 1993. Mr. O'Rielly is ahead of me. There's  
15 the cover page from the '93 report. I wonder if we could  
16 look at page three of this report to see if Abitibi intervened  
17 in the cost of service methodology hearing? And could  
18 you read into the record beginning on the paragraph that,  
19 where counsel is listed, who appeared on behalf of Abitibi  
20 and other industrial customers?

21 MR. DEAN: Starting there, "The Board received  
22 intervention"?

23 MS. GREENE, Q.C.: No, I don't think it's necessary.

24 MR. DEAN: Oh, okay.

25 MS. GREENE, Q.C.: Just the ones for Abitibi ...

26 MR. DEAN: I see.

27 MS. GREENE, Q.C.: ... or industrial customers.

28 MR. DEAN: Janet M. Henley Andrews appeared on behalf  
29 of Abitibi, Deer Lake Power Company Limited, Corner  
30 Brook Pulp and Paper Company Limited and Newfoundland  
31 Processing Limited, the industrial customers.

32 MS. GREENE, Q.C.: And if we could turn to page four of  
33 that report, and we can see that again evidence was given  
34 at the cost of service methodology hearing on behalf of  
35 Abitibi, is that correct?

36 MR. DEAN: Yes.

37 MS. GREENE, Q.C.: And who were the witnesses at that  
38 time?

39 MR. DEAN: The witnesses was Jackford Hogan, Mill  
40 Manager at the time, and also an expert we had, Dr. Roger  
41 Olsen.

42 MS. GREENE, Q.C.: Who appeared at the '93 cost of  
43 service methodology hearing.

44 MR. DEAN: Correct.

45 MS. GREENE, Q.C.: The next hearing that was of a general

46 public hearing nature was the rural rate inquiry, and that  
47 was in 1995. I wonder if we could turn to page three of this  
48 report to see if Abitibi was represented at this hearing, and  
49 all industrial customers actually? And I wonder if you  
50 could indicate who appeared on behalf of the industrial  
51 customers as counsel at that hearing?

52 MR. DEAN: That was Ms. Henley Andrews.

53 MS. GREENE, Q.C.: And if we could turn to page seven  
54 we'll see who the witnesses were for the industrial  
55 customers. I'm sorry, it should ... I believe you appeared as  
56 a witness, is that correct? I think I have the wrong page  
57 number reference. There we go, thank you.

58 MR. DEAN: Yes, again Jackford Hogan, the Mill Manager,  
59 and myself, appeared as witnesses.

60 MS. GREENE, Q.C.: And through those hearings then, you  
61 have been personally involved in all of those hearings, did  
62 the industrial customers, certainly Abitibi has been present  
63 at all of those hearings, did the industrial customers  
64 through counsel cross-examine witnesses and present final  
65 submissions?

66 MR. DEAN: Yes, all of them, they cross-examined and  
67 presented final submissions, that's correct.

68 MS. GREENE, Q.C.: So even though the industrial rates  
69 were not regulated by the Board prior to 1996, Abitibi  
70 determined that it was obviously necessary for you to  
71 intervene at these hearings, is that correct?

72 MR. DEAN: That is correct.

73 MS. GREENE, Q.C.: And why would that have been so,  
74 Mr. Dean?

75 MR. DEAN: If we take the cost of service methodology  
76 one, for example, there's a lot of issues where costs could  
77 fall either in the industrial customers' basket or in  
78 Newfoundland Power's basket, and so we felt very strongly  
79 we should be there. The other ones, there was issues that  
80 would affect our rates and we determined that it was in our  
81 best interest to take an active part in these hearings.

82 MS. GREENE, Q.C.: So you believe these hearings gave  
83 you the opportunity to actually directly influence industrial  
84 rates then I take it, from what you've just said.

85 MR. DEAN: Even though we weren't regulated, we were at  
86 least hoping that there would be an influence there, yes.

87 MS. GREENE, Q.C.: And I believe from the evidence of Mr.  
88 Backus that you believe that Abitibi was somewhat  
89 successful as a result of your attendance at these hearings,  
90 is that correct? Mr. Backus, I guess, in your pre-filed  
91 evidence you refer to success at these hearings, as one of  
92 the contributing factors to keeping electricity rates low for  
93 Abitibi.

1 MR. BACKUS: Yeah, I think that's accurate.  
2 MS. GREENE, Q.C.: The next line of questioning that I  
3 have relates to the Interruptible B Power Contract, and I'm  
4 not sure who would (inaudible) Mr. Dean, if Mr. Backus  
5 would feel more comfortable replying to these ... Mr. Dean,  
6 I take it, is ...

7 MR. DEAN: I was involved in the original negotiations, so.

8 MS. GREENE, Q.C.: And at this time I have copies of  
9 Section 3 of this contract to distribute. In reviewing the  
10 record I determined that the Interruptible B Contract has  
11 not been filed as part of the record, and what I would like to  
12 explore with Mr. Dean are the conditions around, the  
13 conditions under which Hydro may interrupt the supply of  
14 power, so I thought it would be helpful for all the parties if  
15 we actually had the section of the contract before us as I  
16 take Mr. Dean through those conditions.

17 MR. NOSEWORTHY, CHAIRMAN: Mark this, Mr.  
18 Kennedy? It's not filed in ...

19 MR. KENNEDY: Yes, Chair. I understand it will be Hydro-  
20 3.

21 **EXHIBIT HYDRO-3 ENTERED IN EVIDENCE**

22 MS. GREENE, Q.C.: I'm sorry, I didn't catch that.

23 MR. KENNEDY: Hydro-3.

24 MR. NOSEWORTHY, CHAIRMAN: Thank you.

25 MS. GREENE, Q.C.: Mr. Dean, I'll give you an opportunity  
26 to review a couple of pages. Do you recognize that that,  
27 what has been circulated is the **extract of Section 3 from**  
28 **the Interruptible B Contract between Hydro and Abitibi?**

29 MR. DEAN: Yes, I do, yes.

30 MS. GREENE, Q.C.: And I wanted to review with you the  
31 conditions under which Hydro has the right to interrupt the  
32 power at Abitibi's mill, and there are a number of sections  
33 here so I'll refer to the conditions. The first is in the very  
34 first sentence of Section 3.01, and you'll see, "Abitibi  
35 agrees to interrupt the firm power supplied under the power  
36 contract during each winter period." I wonder if you could  
37 advise the Board what is the winter period? How is it  
38 defined in the power contract?

39 (10:00 a.m.)

40 MR. DEAN: The winter period is the months of December,  
41 January, February and March.

42 MS. GREENE, Q.C.: The next sentence contains a second  
43 condition, and I wonder if you could read that into the  
44 record, please?

45 MR. DEAN: "The number of days during a winter period  
46 by which Abitibi shall be required to interrupt its firm

47 power shall not exceed 25."

48 MS. GREENE, Q.C.: So there is a limit on the maximum  
49 number of days there can be an interruption.

50 MR. DEAN: Agreed.

51 MS. GREENE, Q.C.: If we turn the page to Section 3.02, we  
52 find in Section 3.02 that there are three additional  
53 conditions on the right to interrupt, and I wonder, please,  
54 Mr. Dean, if you could read that first sentence into the  
55 record?

56 MR. DEAN: "Hydro may only request an interruption of  
57 Abitibi's firm power once per day and only between 0800  
58 and 2200 hours for a maximum of ten consecutive hours."

59 MS. GREENE, Q.C.: So we see from that sentence it can  
60 only be once a day between certain hours and for a  
61 maximum period, is that correct?

62 MR. DEAN: Yes, that is correct.

63 MS. GREENE, Q.C.: The next condition you'll find down in  
64 Section 3.04. I wonder if you could read the first sentence  
65 in Section 3.04 into the record, please?

66 MR. DEAN: Okay. "Hydro shall not request that an  
67 interruption start until all but one of Hydro's gas turbine  
68 generators," and in brackets, "which for this purpose shall  
69 include only those presently located at Hardwoods,  
70 Stephenville and Holyrood, which are operable and have  
71 been started and loaded."

72 MS. GREENE, Q.C.: So the sixth condition is that Hydro  
73 must have gas turbines on running before it can make its  
74 request.

75 MR. DEAN: All but one.

76 MS. GREENE, Q.C.: The next condition is found in Section  
77 3.05, and I wonder if you could read that, please, starting at  
78 the bottom of that page?

79 MR. DEAN: Okay. "Hydro may make an interruption  
80 request on consecutive days provided that interruptions  
81 on the second and subsequent days do not cause the total  
82 energy interrupted over a three-day period to exceed 690  
83 megawatt hours and the total energy interrupted over a  
84 five-day period does not exceed 920 megawatt hours."

85 MS. GREENE, Q.C.: So there's a limit on the amount of  
86 (inaudible) consecutive period.

87 MR. DEAN: That is correct.

88 MS. GREENE, Q.C.: And the last, or the eighth condition,  
89 is found in Section 3.06, and I wonder if you could read  
90 that, please, into the record?

91 MR. DEAN: "Hydro shall make an interruption request at  
92 least one hour in advance of the commencement of each

1 interruption period."

2 MS. GREENE, Q.C.: In preparation for this hearing, have  
3 you reviewed the arrangement between Hydro and  
4 Newfoundland Power for the circumstances in which  
5 Newfoundland Power, or Newfoundland Hydro may  
6 request Newfoundland Power to run its generation?

7 MR. DEAN: I believe there is an information request of  
8 that which I did read but I wouldn't want to quote it right  
9 now.

10 MS. GREENE, Q.C.: But you are aware that there are no  
11 similar eight types of conditions in that type of  
12 arrangement, are you?

13 MR. DEAN: Yes, I would agree with that, yes.

14 MS. GREENE, Q.C.: I wanted to look at the number of  
15 interruptions Abitibi has experienced since the contract  
16 was signed. When was the contract signed, Mr. Dean?

17 MR. DEAN: It came into effect December 1st, 1993, and I  
18 believe the actual signatures was just a couple of days  
19 before that.

20 MS. GREENE, Q.C.: Okay. And here I wonder, Mr.  
21 O'Rielly, if we could look at **NP-133**, please, and it's page  
22 four of four, and it's just to refresh your memory. Mr. Dean,  
23 do you know the number of interruptions Hydro, Abitibi  
24 has experienced as a result of Hydro requesting it to  
25 interrupt its power supply?

26 MR. DEAN: Which it's shown there, there's been eight  
27 interruptions.

28 MS. GREENE, Q.C.: Right.

29 MR. DEAN: Yeah.

30 MS. GREENE, Q.C.: And when was the last time there was  
31 an interruption?

32 MR. DEAN: In the winter of 1994/1995.

33 MS. GREENE, Q.C.: And the amount that's paid to Abitibi  
34 annually for that right to interrupt is indicated on page four  
35 as well. Can you indicate what it is, please?

36 MR. DEAN: Yes. It's a number in the right-hand column,  
37 \$1,297,000, almost \$1.3 million.

38 MS. GREENE, Q.C.: In turning now to another topic, which  
39 is your experience with your energy costs, I believe it's  
40 mentioned in your pre-filed evidence that energy  
41 contributes about 20 percent of the production of cost for  
42 your mill, is that correct?

43 MR. DEAN: That is correct.

44 MS. GREENE, Q.C.: And I believe you also mention in your  
45 pre-filed evidence that your electricity rates have decreased

46 over the past period of time, and I wanted to look at that  
47 with you, and first I wanted to look at a schedule to Mr.  
48 Brockman's evidence, and, Mr. O'Rielly, if you could,  
49 please, get **LBB Schedule 5**?

50 MR. O'RIELLY: Is that in his supplementary ...

51 MS. GREENE, Q.C.: It was in his supplementary evidence,  
52 yes. And if we could just scroll up to look at the heading,  
53 first, please? I want Mr. Dean to ... I'm sure you've already  
54 looked at this previously. What Mr. Brockman attempted  
55 to demonstrate was the change in rates in '92 to the  
56 proposed rates at the time he filed this, which was, I think,  
57 November, to indicate how industrial rates have changed  
58 in comparison to the rate that was set in '92, and it shows  
59 that, for example, as of 2001, the 2001 rate for the industry  
60 was 82 percent of the rate that had been set in 1992, and I  
61 wanted you to comment on that schedule. Are you  
62 satisfied that accurately represents the history of the rates  
63 as in comparison to the 1992 rate?

64 MR. DEAN: I believe it does. That is a rate ... I also believe  
65 that's a rate without the Rate Stabilization Plan in it.

66 MS. GREENE, Q.C.: The base rate changes.

67 MR. DEAN: The base rate changes. I believe that's  
68 correct.

69 MS. GREENE, Q.C.: In your pre-filed evidence you've  
70 indicated that electricity rates have decreased over the past  
71 ten years by, I believe it was approximately five percent, is  
72 that correct?

73 MR. DEAN: That is the cost per tonne, yes.

74 MS. GREENE, Q.C.: You haven't had the same success  
75 with your other costs, your other 80 percent of your costs,  
76 is that correct?

77 MR. DEAN: The rest of the costs have increased slightly  
78 over the same period. They've increased about five  
79 percent.

80 MS. GREENE, Q.C.: If we could look to **page seven of your**  
81 **supplementary evidence**, and it's where you in your  
82 supplementary evidence on the costs, the lines aren't  
83 numbered but it was an additional change where you  
84 indicated that it was 4.2 percent ... you'll have to go on, Mr.  
85 O'Rielly. It was page seven in mine.

86 MS. BUTLER, Q.C.: Page six, Maureen.

87 MS. GREENE, Q.C.: It's page six. It must be the way I  
88 printed it off the printer. There you say that ... can you  
89 please read the line which you've underlined?

90 MR. DEAN: Okay. "Excluding energy costs, the overall  
91 increase in our cost per tonne of newsprint in the period  
92 1992 to 2000 has been contained to 4.2 percent."

1 MS. GREENE, Q.C.: Now I wonder if we could look at **NLH-**  
2 **5**, because there's a little discrepancy in the numbers  
3 between the information in NLH-5, and it's 5(B), Mr. Dean.  
4 Oh, it's 5(A), right there. I wonder if you could read that?

5 MR. DEAN: "The" ...

6 MS. GREENE, Q.C.: Yes, okay, thank you.

7 MR. DEAN: Starting, "The total newsprint" ...

8 MS. GREENE, Q.C.: Yes, yes.

9 MR. DEAN: "The total newsprint manufacturing cost,  
10 excluding power, increased 5.4 percent during the period  
11 1992 to 2002. Total power cost decreased by 4.2 percent  
12 during the same period."

13 MS. GREENE, Q.C.: And in your pre-filed it was 4.2, and I  
14 didn't know if you had changed the numbers, because 4.2  
15 is shown in this one as power cost decreasing.

16 MR. DEAN: In the pre-filed evidence the time period is  
17 1992 to 2000 whereas in this one it's 1992 to 2002. That's  
18 where the difference has come from.

19 MS. GREENE, Q.C.: So it just worked out that it was the  
20 same number. I thought you may have transposed the  
21 numbers.

22 MR. DEAN: No. Actually it worked out the same. It's  
23 coincidental, yes.

24 MS. GREENE, Q.C.: Are you familiar with the frequency  
25 converter that's located at the Grand Falls, with the Grand  
26 Falls mill?

27 MR. DEAN: Yes, I am familiar with it, yes.

28 MS. GREENE, Q.C.: Could you update the Board on  
29 Abitibi's plans with respect to conversion at that mill and  
30 its requirements of the frequency converter?

31 MR. DEAN: Yes. As late as this week I have had  
32 telephone conversations with Grand Falls, and as of April  
33 30th, 2002, we will not require the frequency converter.

34 MS. GREENE, Q.C.: And that is a change from what the  
35 original application indicated, is it, Mr. Dean? Hydro had  
36 indicated that the cost of the frequency converter would be  
37 solely assigned to Abitibi, is that correct?

38 MR. DEAN: Yes, that's correct, and the assigned charges  
39 in the application were for the full year, yes.

40 MS. GREENE, Q.C.: So that would have to be changed as  
41 Abitibi will no longer require it after the end of April.

42 MR. DEAN: Yes.

43 MS. GREENE, Q.C.: Thank you. That concludes the  
44 questions that I had for you.

45 MR. DEAN: Thank you.

46 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
47 Greene. We'll proceed to Newfoundland Power's cross,  
48 Ms. Butler, please?

49 MS. BUTLER, Q.C.: Thank you, Mr. Chairman. Good  
50 morning. My only questions are for Mr. Dean. Just  
51 following up, if I might, Mr. Dean, relative to the issue  
52 pursued by Ms. Greene on the 20 percent and 80 percent of  
53 your costs, 20 percent representing energy and 80 percent  
54 representing the category of "Other."

55 MR. DEAN: Yes.

56 MS. BUTLER, Q.C.: And relative to the statement on **page**  
57 **six of your pre-filed**, which perhaps Mr. O'Rielly could  
58 assist us in putting on the screen, paragraph three, and it  
59 was the section underlined, I believe. Thank you. So  
60 excluding the energy costs which represented 20 percent of  
61 your total costs, the overall increase in Abitibi's cost per  
62 tonne of newsprint in that period were contained to 4.2  
63 percent, correct?

64 MR. DEAN: That's correct, yes.

65 MS. BUTLER, Q.C.: And would you agree then that given  
66 Mr. Brockman's schedule which showed that your rates had  
67 decreased relative to 1992, such that if this Board approved  
68 the full rate base increase for Abitibi, your rate would only  
69 be 90 percent of your 1992 rates?

70 *(10:15 a.m.)*

71 MR. DEAN: My recollection is that it would be almost the  
72 same as the 1992 rate, subject to looking at the exact  
73 numbers.

74 MS. BUTLER, Q.C.: Okay. I'll come back to that in one  
75 moment then and put the exhibit on the screen for you.  
76 Let's just follow up, if I might, with respect to the document  
77 which is currently on the screen. Would it be fair to say  
78 that it is Abitibi's other costs which pose a greater threat to  
79 Abitibi's competitiveness and not your energy costs?

80 MR. DEAN: No, I would not say that, with the exception  
81 being wood. Wood and power are the two that are the  
82 biggest threats.

83 MS. BUTLER, Q.C.: Right. Of the 80 percent other cost  
84 category, that would capture your labour?

85 MR. DEAN: Correct.

86 MS. BUTLER, Q.C.: And your wood, as you say ...

87 MR. DEAN: Yes.

88 MS. BUTLER, Q.C.: ... which is your raw material. Taxes?

89 MR. DEAN: Yes, taxes would be in there, yes.

1 MS. BUTLER, Q.C.: Have I missed any other significant  
2 component of your other costs?

3 MR. DEAN: It'd be the raw material cost, chemical cost,  
4 (inaudible), cost of the machine, maintenance cost.  
5 (inaudible)

6 MR. BACKUS: That's about all the manufacturing.  
7 Shipping costs ...

8 MS. BUTLER, Q.C.: And in terms of economic downturn,  
9 would you agree that that poses a significant threat to  
10 Abitibi?

11 MR. DEAN: Can you re-word that please?

12 MS. BUTLER, Q.C.: I'll repeat it. Would you agree that  
13 economic downturn, the economy generally, represents a  
14 significant threat to Abitibi?

15 MR. DEAN: Yes, it does and I'm sure that Mr. Backus  
16 could comment more on that if you wished to ...

17 MS. BUTLER, Q.C.: Relative to the issue of the energy  
18 costs then, I wonder if we might go back to **LBB-5**, and  
19 relative to the energy costs which your testimony indicates  
20 make up 20 percent of Abitibi's total costs, correct me if I'm  
21 wrong, but I had understood this exhibit from Mr.  
22 Brockman to reflect at the bottom of the page that if the  
23 Board were to grant Hydro its full requested base rate  
24 increase, your 2002 rates would be roughly ten percent less  
25 than in 1992.

26 MR. DEAN: If you add the word "base rates" in there, I  
27 would agree with that. I don't recall offhand what the Rate  
28 Stabilization Plan was in 1992 but I am sure it's significantly  
29 higher now. I think that's where the difference in my  
30 recollection and the 90 percent is.

31 MS. BUTLER, Q.C.: The only other issue I wish to address  
32 with you, Mr. Dean, relates to transformer losses, and this  
33 is addressed at **pages nine and ten of your pre-filed  
34 supplementary**. I wonder, Mr. O'Rielly, could we look at  
35 the last paragraph of page nine? Under the heading of  
36 "Transformer Losses," would you be kind enough to read  
37 into the record the first sentence, please?

38 MR. DEAN: "In the new draft of the Industrial Power  
39 Contract, Hydro is proposing that the transformer losses  
40 for ACI Stephenville for 230 kV transformers be added to  
41 our power bill."

42 MS. BUTLER, Q.C.: Okay. Now, my understanding of the  
43 evidence of Mr. Budgell was that this proposal from Hydro  
44 was described by him as an attempt to correct what Hydro  
45 considered to be an error. Do you agree with my  
46 categorization of Mr. Budgell's evidence?

47 MR. DEAN: I agree that's what Mr. Budgell said, yes.

48 MS. BUTLER, Q.C.: Okay. Can we look specifically to **his**  
49 **testimony on November 8th, please, at page 12?** The actual  
50 transcript, Mr. O'Rielly, November 8th, page 12. Thank  
51 you. In my hard copy it was lines 69 to 72, and it appears  
52 to be the same on the electronic version. So your counsel  
53 had asked the witness, "Under the current arrangement, the  
54 one that exists today in 2001, those losses are paid for by  
55 all of the customers of Hydro," and he had indicated that  
56 that was so through an omission of Hydro. And the details  
57 of this issue were then discussed between Mr. Budgell and  
58 Ms. Henley Andrews on pages 13 and 14. I wonder if I  
59 might attempt to summarize that and ask you in the details  
60 I had understood that transformer losses resulting from  
61 going from 238 kV to 13.8 kV have mistakenly been paid for  
62 by all of Hyd8+8'3tomers and not solely by Abitibi. Is that  
63 correct?

64 MR. DEAN: I believe that that's what Mr. Budgell was  
65 saying but I do not agree that it was a mistake or omission.

66 MS. BUTLER, Q.C.: Okay. But do you agree that  
67 transformer losses going from 238 kV to 13.8 kV had been  
68 paid for by all of Hydro's customers?

69 MR. DEAN: That is my understanding, yes.

70 MS. BUTLER, Q.C.: And back, if I might, to your  
71 **supplementary pre-filed, and I think on pages nine and ten**  
72 you cite examples from other jurisdictions.

73 MR. DEAN: Yes.

74 MS. BUTLER, Q.C.: Specifically page ten at the bottom.  
75 Yeah, under the table you indicated that your research had  
76 indicated that other jurisdictions treat transformer losses  
77 quite differently, and you've given some examples. I want  
78 to ask you, if I might, in Newfoundland is it correct that  
79 Abitibi owns the transformers?

80 MR. DEAN: At Abitibi Stephenville we do and at Grand  
81 Falls one of the three transformers is owned by Abitibi.

82 MS. BUTLER, Q.C.: And in relation to the meters, Hydro  
83 owns the meters?

84 MR. DEAN: Yes, they do.

85 MS. BUTLER, Q.C.: And the meters in Newfoundland are  
86 metering at the lower voltage, in other words, not the 238  
87 kV voltage?

88 MR. DEAN: That is correct.

89 MS. BUTLER, Q.C.: And the other jurisdictions that you  
90 cite on this page, does the Utility meter at the higher  
91 voltage, 238 kV or whatever the higher voltage would be?

92 MR. DEAN: You'd have to look at the detail for each of the  
93 jurisdictions to see exactly where they'd be metered and in  
94 fact one of the information requests that Hydro asked, we



1 supplied some more detail on that, and some of the  
2 jurisdictions make allowances if it's on the low side or the  
3 high side.

4 MS. BUTLER, Q.C.: Uh hum. Do you agree that whether  
5 the jurisdiction is metering at the higher voltage versus the  
6 lower voltage may justify a different treatment for  
7 transformer losses?

8 MR. DEAN: In general, yes, yes. The point that we're  
9 getting to here was that at least two of the jurisdictions, at  
10 different voltage levels there are different demand rates.  
11 That was the main point that we're getting at.

12 MS. BUTLER, Q.C.: And in those jurisdictions do you  
13 know who owns the transformer?

14 MR. DEAN: No, I don't.

15 MS. BUTLER, Q.C.: Thank you very much, Mr. Dean, and,  
16 Mr. Chairman, those are my questions for the industrial  
17 customers.

18 MR. NOSEWORTHY, CHAIRMAN: Thank you very much,  
19 Ms. Butler. We'll move now to the Consumer Advocate's  
20 cross-examination. Good morning, Mr. Browne. Will you  
21 be conducting this cross?

22 MR. BROWNE, Q.C.: Good morning, Mr. Chairman. Good  
23 morning, Mr. Dean, Mr. Backus.

24 MR. DEAN: Good morning.

25 MR. BACKUS: Good morning.

26 MR. BROWNE, Q.C.: Do any of your mills use Bunker C  
27 fuel?

28 MR. BACKUS: Yes.

29 MR. BROWNE, Q.C.: Which?

30 MR. BACKUS: I don't know if I can break that down as to  
31 which ones.

32 MR. BROWNE, Q.C.: In Newfoundland, sorry,  
33 Newfoundland and Labrador.

34 MR. BACKUS: Oh, both in Newfoundland use Bunker C.

35 MR. BROWNE, Q.C.: Both use Bunker C. How is Bunker  
36 C acquired for your mill in Stephenville?

37 MR. BACKUS: Mel, do you want to answer as you're more  
38 familiar with that?

39 MR. DEAN: We buy Bunker C ... generally it comes in by  
40 the boatload. We have on occasion trucked it in.

41 MR. BROWNE, Q.C.: Trucked it in from where?

42 MR. DEAN: From Come By Chance.

43 MR. BROWNE, Q.C.: So Come By Chance produces some  
44 Bunker C?

45 MR. DEAN: Yes, the North Atlantic Refinery.

46 MR. BROWNE, Q.C.: Are there any other sources of  
47 Bunker C fuel other than the Come By Chance Refinery and  
48 what you're purchasing on the, internationally?

49 MR. DEAN: No, that would be it for Bunker C. We do use  
50 some alternate fuels there but for the Bunker C, most of it at  
51 Stephenville, all of it at Stephenville is bought on the open  
52 market.

53 MR. BROWNE, Q.C.: In terms of the open market, can you  
54 give us some description as to how you go about a  
55 purchase?

56 MR. DEAN: I was responsible for this in 1995, 1997. I'm  
57 not now but let me think for a second here. We of course  
58 monitor the tank levels, we take a look at the prices,  
59 whether the prices are going up, going down. We do have  
60 a lot of storage the mill, like about nine months' storage  
61 capability, and then we take a look, as I say, at the prices,  
62 go out on the open market and take a look at the best price  
63 that we can get for it and bring it in. The payment for it, the  
64 cost is actually as the date we place the order. I think that's  
65 important.

66 MR. BROWNE, Q.C.: The date you ... how does that  
67 compare with what you heard Hydro is doing?

68 MR. DEAN: Well, what I heard, first I had heard that it was  
69 when they receive the shipment, but I believe that was  
70 revised to an average, if you have more than one shipment  
71 a month. I think there were some differences there.

72 MR. BROWNE, Q.C.: But you pay for it as you buy it on  
73 the open market.

74 MR. DEAN: The price is booked at that date.

75 MR. BROWNE, Q.C.: The price is booked at that date.  
76 Would you have difficulty doing it the other way, doing it,  
77 paying the price, buying the fuel but paying whatever price  
78 it is when it arrives at your dock in Stephenville?

79 MR. DEAN: If there hasn't been a price change we  
80 wouldn't have a problem, but I guess that's a risk that we're  
81 avoiding by doing it that way.

82 MR. BROWNE, Q.C.: In terms of monitoring the pricing, is  
83 that done internally at your mill in Stephenville?

84 MR. DEAN: It's really done at two levels. It's looked at  
85 internally and we also have somebody in the head office  
86 that looks at the pricing and has overall responsibility for  
87 Bunker C, but we also have a person within the mill  
88 responsible.

89 MR. BROWNE, Q.C.: Are you familiar with the so-called  
90 spot market?

- 1 MR. DEAN: Yes, I am, yes.
- 2 MR. BROWNE, Q.C.: Have you ever ... how does that  
3 work? Can you ... generally?
- 4 MR. DEAN: I think I used the term the open market. Spot  
5 market, that's where we look at what's available, we keep a  
6 running tab on what it is out there in terms of Bunker C  
7 purchases, and if they're shipped some place that have a  
8 good price, we'll take it. It's ...
- 9 MR. BROWNE, Q.C.: Have you gotten bargains that way  
10 in the past?
- 11 MR. DEAN: In the past we have found that that's better  
12 than, for us than having a firm contract. Tied into that is  
13 the fact that we do have a lot of storage capability.
- 14 MR. BROWNE, Q.C.: How does your storage capability  
15 compare with Hydro's, from what you've heard in this  
16 hearing?
- 17 MR. DEAN: It's significantly higher. We actually have  
18 about nine months' supply that we can put in storage. I  
19 don't recall exactly what Hydro's is but ours is considerably  
20 higher.
- 21 MR. BROWNE, Q.C.: And what advantage is there in that,  
22 in having a greater storage capacity?
- 23 MR. DEAN: The advantage is the advantage of pre-  
24 buying. If the price is low you can buy extra. That only  
25 works if you are reasonably sure that the price of oil is  
26 going to go up but that's what we attempt to do.
- 27 MR. BROWNE, Q.C.: The mill in Grand Falls, Grand Falls-  
28 Windsor, do you purchase at Stephenville for that mill as  
29 well, for Bunker C?
- 30 MR. DEAN: No, we don't.
- 31 MR. BROWNE, Q.C.: They purchase separately.
- 32 MR. DEAN: They purchase separately and they bring  
33 theirs in, all of it by truck, and as far as I know it's all from  
34 North Atlantic Refinery, but I am not 100 percent sure. I'm  
35 not totally familiar with what they do at Grand Falls.
- 36 MR. BROWNE, Q.C.: You mentioned alternate fuels as a  
37 source of energy. Can you tell us about that?
- 38 MR. DEAN: We need steam to make paper and generally  
39 we use Bunker C, but we also burn our bark, our wood  
40 refuse. We also look at other forms and we have got into  
41 in the last couple of years using used oil, burning that,  
42 because in terms of dollars per BTU (phonetic) it is cheaper  
43 than Bunker C.
- 44 MR. BROWNE, Q.C.: And what's used oil? Can you  
45 expand upon that, please?
- 46 MR. DEAN: Okay. Used oil, this would be what comes out  
47 of your car as the oil changes and some of the heavy, some  
48 of the material is removed from it and so it's okay to burn.
- 49 MR. BROWNE, Q.C.: And is there a source for that on the  
50 island?
- 51 MR. DEAN: Yes. Ours is coming from the island, yes.
- 52 MR. BROWNE, Q.C.: And what is the source, can you tell  
53 us a little about how you purchase that and what  
54 quantities?
- 55 MR. DEAN: I'm really not familiar with that in that kind of  
56 detail. I know it comes from the island. The quantities, I  
57 don't recall.
- 58 *(10:30 a.m.)*
- 59 MR. BACKUS: Yeah. We buy it from ... there's at least two  
60 companies on the island that collect it. One of them  
61 exclusively sells it to us and we had budgeted  
62 approximately 3,000 barrels a month this year and  
63 unfortunately we weren't able to get all that. It's averaged  
64 more like 1,000.
- 65 MR. DEAN: This is kind of a test project in Newfoundland  
66 and we're working our way through environmentally the  
67 correct way to do it.
- 68 MR. BROWNE, Q.C.: And when did you start the test  
69 project, Mr. Backus?
- 70 MR. BACKUS: I believe it was the start of 2000, so we  
71 burned it off and on last year and pretty much  
72 continuously this year, or 2001.
- 73 MR. BROWNE, Q.C.: And has there been cost savings for  
74 you by acquiring those purchases in fuel?
- 75 MR. BACKUS: There has.
- 76 MR. BROWNE, Q.C.: Have you ever been consulted, to  
77 your knowledge, by Hydro re the methods you use to  
78 acquire your Bunker C fuel?
- 79 MR. DEAN: To my knowledge, no.
- 80 MR. BACKUS: Nor to mine.
- 81 MR. BROWNE, Q.C.: In terms of the amount of money that  
82 you would budget annually for the purchase of fuel, how  
83 is that done where fuel is a variable commodity from price  
84 perspective?
- 85 MR. DEAN: We get a price from our head office to use in  
86 our budget and I don't recall where they get their price from  
87 but that's what we use.
- 88 MR. BACKUS: I don't know where they get it. It's  
89 probably (inaudible) or one of those organizations.
- 90 MR. BROWNE, Q.C.: You use that for booking in purposes  
91 for your budget area ...

1 MR. DEAN: That's correct.

2 MR. BROWNE, Q.C.: In reference to savings that you've  
3 gotten from Hydro over the last number of years, can the  
4 witness be shown **CA-26** for a moment, please? It's a  
5 question we posed, "Why does the price of industry trail  
6 the price of electricity to NP about 89 percent for industry  
7 and 105 percent for NP and 113 percent for CPI, provided  
8 the (inaudible) and include the average price of electricity  
9 to consumers in Canada?" And the main reason for the  
10 lower price to industry in comparison to Newfoundland  
11 Power is the three separate rate reductions industrial  
12 customers have experienced in base rate since 1991.  
13 Hydro's Board of Directors approved rate decreases for  
14 industrial customers in each of 1993 and 1994, totalling  
15 approximately eight percent. How did that come about?  
16 Can one of you address that?

17 MR. DEAN: Just checking my notes here. If we go back to  
18 when I started getting involved in hearings, which was  
19 1990 and more deeply in 1992, at that point we realized that  
20 the interest coverage rate or the profit that was being  
21 obtained from the industrial customers was higher than  
22 from the retail customers. In 1990 the Board ruled for the  
23 retail customers the interest coverage rate would be 1.03  
24 percent and in 1992 it was increased to 1.08 percent. That's  
25 where I need my notes. If you look at **NP-24** you'll see that  
26 during the same period in 1992 the interest coverage rate for  
27 industrial customers was 1.18 percent and in 1993 1.15  
28 percent. That was budgeted. So it was significantly  
29 higher, and at that point we did a lot of lobbying,  
30 approached Hydro, talked to Hydro about this, about what  
31 we considered the inequity, we wrote letters, and during  
32 the early '90s there were some decreases for us that brought  
33 us closer in line but we still were higher in interest coverage  
34 rate than Newfoundland Power, i.e. the profits from us were  
35 still higher.

36 MR. BROWNE, Q.C.: But this is accurate that in fact you  
37 did get an eight percent reduction in each of 1993, 1994,  
38 totalling approximately eight percent. That's accurate.

39 MR. DEAN: In 1994 the decrease there was in base rates  
40 but the RSP went up. **IC-191**, for instance, shows that we  
41 have had four decreases since 1993. 1994 our rates actually  
42 remained constant, the overall rate for energy, not a  
43 decrease.

44 MR. BROWNE, Q.C.: So is **CA-26** accurate or inaccurate?  
45 The witness ... Mr. O'Rielly, if you can go back to **CA-26**  
46 when you have an opportunity there, sir?

47 MR. DEAN: Okay. I see at line nine they have specified  
48 base rates, so looking at the base rate, I don't have the  
49 percentage in front of me but looking at the base rate that  
50 is most likely accurate.

51 MR. BROWNE, Q.C.: And in 1999 there was an approval  
52 by this Board of the 11 percent reduction because of your  
53 non-participation in the rural deficit, is that accurate?

54 MR. DEAN: Almost 11 percent, yes. If I could just expand  
55 on **IC-191**, and this is consistent with what's shown on the  
56 chart that Mr. Wells had in his evidence, we had a decrease  
57 in 1993 in energy for the reason I just described. In 1995  
58 and 2001 there were decreases because the RSP went down  
59 and in 2000 that was the removal of the subsidy. Those are  
60 the four times since 1992 that we've had decreases.

61 MR. BROWNE, Q.C.: In your evidence you make reference  
62 to conservation methods that you've had in place at the  
63 paper mill in Stephenville, I presume, over the last number  
64 of years, and I think you make reference to it actually in  
65 your revised evidence as well, and Mr. Backus makes  
66 reference to page three of his evidence. Mr. Backus, if you  
67 want to go to that for a moment. And it's not lined but in  
68 the second last paragraph, "In Stephenville's case," can  
69 you read that into the record, please?

70 MR. BACKUS: "In Stephenville's case the cost of energy  
71 represents 20 percent of the cost of manufacturing a tonne  
72 of newsprint. As a result of significant efforts over the  
73 years, rate hearings before this Board, ACI has been  
74 successful in controlling and in fact reducing its energy  
75 costs at Stephenville and Grand Falls."

76 MR. BROWNE, Q.C.: And on page six, Mr. Dean, of your  
77 evidence of August 15, 2001, you make reference to some  
78 of the methods that you've used in an effort to bring down  
79 your energy costs. Can you go to that for a moment,  
80 please? The first one you say you use premium efficiency  
81 motors. "This is part of our motor specification when  
82 purchasing motors." Can you expand upon that?

83 MR. DEAN: There are different ... when you're buying  
84 motors there's different efficiencies that you can get. Our  
85 standard used to be a high efficiency motor, now it's a  
86 premium efficiency motor. It's a little bit more efficient than  
87 the high efficiency ones.

88 MR. BROWNE, Q.C.: And number two, you say you use  
89 high energy, high intensity discharge lighting. What  
90 would that be?

91 MR. DEAN: It's things like, well, instead of using  
92 incandescent lamps it's high intensity mercury vapour  
93 lights, things like that.

94 MR. BROWNE, Q.C.: And in the office areas there's a  
95 program to replace the existing fluorescent light with high  
96 efficiency electronic ballast lighting.

97 MR. DEAN: That is correct. I'm not too familiar with this  
98 one. Our electrical engineering are doing that. I know it's  
99 happening and it's cost effective but I don't have a lot of

1 details on that.

2 MR. BROWNE, Q.C.: Number four, can you read that for  
3 us and tell us your view on that?

4 MR. DEAN: "In the last ten years Stephenville has  
5 replaced all anti (phonetic) current coupling drives with  
6 more efficient variable speed drives."

7 MR. BROWNE, Q.C.: Can you expand upon that, what that  
8 means, sir? Maybe Mr. Backus can.

9 MR. BACKUS: Mel would be better at that. (*laughter*)

10 MR. BROWNE, Q.C.: You're going to defer, okay. Trying  
11 to get you into the picture there.

12 MR. DEAN: It's really a different type of drive. Anti  
13 (phonetic) current couplings are quite inefficient and over  
14 the last decade we have replaced all of them in the mill with  
15 a variable speed drive. Each of them has saved some  
16 energy. Instead of trying to quantify each one of these,  
17 down below where we've got the energy per tonne, that  
18 really summarizes it.

19 MR. BROWNE, Q.C.: And number five, can you read that  
20 for us and tell us what you did there?

21 MR. DEAN: "Made modification and changed operational  
22 procedures in order to allow us to shut down equipment  
23 rather than to leave it idle." In particular that was our  
24 refiners. We used to leave them idling a lot and now we  
25 shut them down. We had to make some modifications,  
26 maintenance type modifications and operational ones, to  
27 make sure that when we needed them to start they would  
28 start, and that had been, previously had been a problem.

29 MR. BROWNE, Q.C.: And number six?

30 MR. DEAN: "Modified and simplified (inaudible) electrical  
31 distribution and eliminated three power transformers which  
32 reduced energy losses."

33 MR. BROWNE, Q.C.: What does that mean?

34 MR. DEAN: Our mill started out as a much bigger mill back  
35 in, with the previous owners, and we don't have the amount  
36 of equipment that we did back in the '70s, and we found  
37 that by doing some minor electrical work we were able to  
38 take three power transformers out of service, so the  
39 transformer losses associated with those transformers  
40 have, the losses are no longer there because we're not  
41 running them.

42 MR. BROWNE, Q.C.: Number seven, "Reduced water  
43 usage and subsequent energy requirement on our paper  
44 machine drive cooling unit"?

45 MR. DEAN: Yes. We're using air to air exchanger there  
46 rather than a water cooling unit, so we have reduced the  
47 water usage, therefore the amount of energy needed to

48 pump the water, etc.

49 (*10:45 a.m.*)

50 MR. BROWNE, Q.C.: Now how did you come up with  
51 these conservation methods? Did you get someone in from  
52 industry to assist you?

53 MR. DEAN: There's two or three things involved here.  
54 One, a lot of people, engineers (inaudible) these items.  
55 There always has been at our mill line responsibility, the  
56 Maintenance Superintendent, Operating Superintendents,  
57 to reduce cost. The other one I should mention is that back  
58 in the early '90s there was an energy audit that Hydro  
59 participated in. We cost shared the audit and they  
60 identified many of these items. A lot of those items were  
61 not effective by themselves. For example, replacing anti  
62 (phonetic) current couplings, the energy savings alone was  
63 not enough to change out through a new drive, but as the  
64 anti (phonetic) current couplings required extensive repairs,  
65 then it became justifiable, instead of replacing to move on  
66 to a more energy-efficient version.

67 MR. BROWNE, Q.C.: What about the mill in Grand Falls,  
68 did they participate in the energy audit as well with Hydro,  
69 do you have any knowledge of that?

70 MR. DEAN: I know they participated. I can't comment any  
71 further on what they have done with it though.

72 MR. BACKUS: I can add that we also have benchmark  
73 across our other mills ... we have, you know, 17 mills in  
74 North America that make paper and anything that one mills  
75 finds saves a lot of energy or has a good use, we pass that  
76 on through forms and various methods.

77 MR. BROWNE, Q.C.: The energy audit that you undertook  
78 with Hydro, was that particular to your industry or was it  
79 for any other customers of Hydro?

80 MR. DEAN: My recollection, it was available to all  
81 industrial customers.

82 MR. BROWNE, Q.C.: So the three or four industrial  
83 customers as the case may have been at the time.

84 MR. DEAN: That's correct.

85 MR. BROWNE, Q.C.: On **page four, line 13, of your**  
86 **evidence of August 15, 2001, Mr. Dean**, can you read that  
87 paragraph into the record for us and tell us, be more  
88 descriptive in the wheeling provisions you have for the mill  
89 at Grand Falls?

90 MR. DEAN: Excuse me, starting at what line?

91 MR. BROWNE, Q.C.: At line 13, "In 2000."

92 MR. DEAN: Line 13, okay. "In 2000 the Stephenville peak  
93 demand was 70,392 kilowatts and the energy used at the  
94 mill was 552.3 gigawatt hours. In 2000 the Stephenville mill

1 purchased 536,000," pardon me, "536,676,972 kilowatt hours  
2 from Hydro. The other fifteen million six hundred thirty-  
3 nine thousand, six hundred and thirty-nine kilowatt hours  
4 was wheeled from our mill in Grand Falls. The 2000 actual  
5 purchased power cost for Stephenville mill was  
6 \$17,621,734."

7 MR. BROWNE, Q.C.: Now, how is this system you have ...  
8 by the way, for the record, Grand Falls' source of energy is  
9 what?

10 MR. DEAN: They have some of their own generation,  
11 hydraulic generation, and they also purchase from, the  
12 remainder from Hydro.

13 MR. BROWNE, Q.C.: Okay. How is it you're able to wheel  
14 from your, from the mill in Grand Falls? Can you tell us  
15 about that?

16 MR. DEAN: The energy from Grand Falls to Stephenville  
17 is wheeled over Hydro's lines.

18 MR. BROWNE, Q.C.: And is there ... obviously there's  
19 excess there, is it, out of Grand Falls, out of ...

20 MR. DEAN: On a regular operating day there's not an  
21 excess. At the end of the year Grand Falls buys power from  
22 Hydro but when a paper machine is down in Grand Falls or  
23 certain circumstances when some of their equipment is  
24 down, they have an excess and that gets wheeled to  
25 Stephenville.

26 MR. BROWNE, Q.C.: Now, Abitibi and Hydro and a  
27 company called Fortis Energy are building some new  
28 capacity, are they not, in Bishop's Falls? Are you familiar  
29 with that?

30 MR. DEAN: I know it's happening but I'm not familiar with  
31 the details of that. I have not been part of the meetings or  
32 anything on that.

33 MR. BROWNE, Q.C.: So you don't know if that capacity  
34 will provide any supply to your mill?

35 MR. DEAN: That was not the intention of the additional  
36 capacity, no.

37 MR. BROWNE, Q.C.: **Page 12 of your evidence of**  
38 **December 13**, can we go to that, please? Chairman, I've  
39 misdirected you to the page. I want you to tell me anyway  
40 in any case about the Interruptible B rate that you have and  
41 can you describe how that works?

42 MR. DEAN: Okay. There's two parts to that rate. There's  
43 a demand portion that Hydro pays us for the right to  
44 interrupt, as per the conditions we went over earlier with  
45 Ms. Greene, and the second portion is the energy. If there  
46 is an interruption, we also get rebated for 90 percent of the  
47 cost of the fuel that would have been burnt in a gas  
48 turbine. So to sort of put that in context, the option, rather

49 than an interruptible contract for industrial customer, the  
50 other option was to build a combustion turbine, so the  
51 rates, a lot of it were based on that premise.

52 MR. BROWNE, Q.C.: The interruptible rate, that's worked  
53 for you and you've given us a schedule of times in which  
54 you've used it, but I gather someone like North Atlantic  
55 Refinery wouldn't want the interruptible rate for ... they  
56 haven't (phonetic) purchased that.

57 MR. DEAN: I'll let the refinery speak for themselves. I  
58 know it has worked for Stephenville and Grand Falls would  
59 be interested in it and I think it is a benefit for all ratepayers  
60 on the system. It is a cheap form of peaking capacity.

61 MR. BROWNE, Q.C.: When you say all ratepayers on the  
62 system, do you include consumers, Newfoundland Power's  
63 customers?

64 MR. DEAN: Yes, I do.

65 MR. BROWNE, Q.C.: Why do you say that?

66 MR. DEAN: If I go back to when we're talking about this  
67 contract, back in the early 1990s, Hydro were looking at  
68 installing an additional gas turbine, and if that had been  
69 installed, the cost would have been much more than \$1.3  
70 million a year, so therefore every customer benefits.

71 MR. BROWNE, Q.C.: In terms of the Interruptible B rate,  
72 can you tell us the mechanics of it, how it actually works,  
73 what kind of notice do you get or do you get notice at all?

74 MR. DEAN: The conditions we went through this morning,  
75 basically they're set up because that is during Hydro's peak  
76 period when they would need additional peaking capacity.  
77 They only need it during the four winter months and again  
78 they don't really need peaking capacity at night. It's only  
79 during the hours of eight in the morning till ten at night. So  
80 if Hydro sees that they're getting close to their peak, they  
81 will phone us, give us a one-hour notice, and we're  
82 obligated to shut down. If we don't, there's also a penalty  
83 that we have to pay, that's part of the contract.

84 MR. BROWNE, Q.C.: So it's part of your option. You can  
85 shut down or you can't, depending what you're doing at  
86 the time, I guess, is that it?

87 MR. DEAN: I don't look at it as an option.

88 MR. BACKUS: I don't think we have that. I mean, it may  
89 be there but it's not something we consider.

90 MR. BROWNE, Q.C.: Generally you've shut down all the  
91 time when they've given you the notice.

92 MR. DEAN: Every time, yes.

93 MR. BROWNE, Q.C.: And the durations I think you ... if  
94 you go to **CA-40** for a moment, please, and we see the  
95 durations there of the shutdown and they've always been

1 for more than an hour, in most cases, several hours. The  
2 durations in seven and eight seem to be for a lengthy  
3 period of time. Can you tell us about 1994? Do you have  
4 any recollection of that?

5 MR. DEAN: I'm sorry, I'm not familiar with this one. Could  
6 I see the question, please? Okay, thank you.

7 MR. BROWNE, Q.C.: Okay. So it's a list of your  
8 interruptions, and in 1994 it's an interruption of eight hours.  
9 Do you have any recollection of what that interruption was  
10 for?

11 MR. DEAN: No, I don't. I recall a couple of lengthy ones  
12 but the cause of the interruption, I don't recall the details  
13 of, that is the details of why Hydro needed the interruption.  
14 I don't recall.

15 MR. BROWNE, Q.C.: And in 1995, do you have any  
16 recollection of that? That was the longest interruption.

17 MR. DEAN: Again, I don't.

18 MR. BROWNE, Q.C.: And that line, line 12, we have  
19 assurances that the cost associated with these  
20 interruptions have not been passed on to consumers. I  
21 gather that's Newfoundland Power's customers, although  
22 you wouldn't know about that, I guess, would you, how  
23 they pass on their cost?

24 MR. DEAN: I can't comment on that.

25 MR. BROWNE, Q.C.: Okay. It's 11 o'clock. Can we break  
26 for a few, Mr. Chairman?

27 MR. NOSEWORTHY, CHAIRMAN: Sure.

28 MR. BROWNE, Q.C.: Thank you very much.

29 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
30 Browne. We'll break until 11:15.

31 *(break)*

32 *(11:20 a.m.)*

33 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
34 Browne, could I ask you to proceed with your cross-  
35 examination please?

36 MR. BROWNE, Q.C.: Mr. Dean, throughout this hearing  
37 you were exposed to Newfoundland Hydro's capital budget  
38 procedures and we have a lot of Newfoundland Hydro's  
39 capital expenditures, of course, into evidence, some of  
40 which you are objecting to, or at least your counsel is  
41 objecting to it on your behalf. Why, can you give us your  
42 rationale for objecting to some of the capital budget, some  
43 of Hydro's capital budget?

44 MR. DEAN: Okay, we took a look at the capital budget. I  
45 guess there was some difference between what we do at  
46 Abitibi and a number of the areas, a number of items I didn't

47 find the justification to be at such a level that you could  
48 really determine whether it was a project that we could  
49 support or not. Also, the other question is that there didn't  
50 appear to be in the capital budget, the total amount of the  
51 budget did not appear to be tied to anything like it is in our  
52 company, the depreciation or load growth or anything like  
53 that. That was the basic reasons behind the objections.

54 MR. BROWNE, Q.C.: How do you do your capital budget  
55 procedure at your particular mill, at Abitibi Consolidated?

56 MR. DEAN: Do you want to start that Jay?

57 MR. BACKUS: Well I think I'd have to go further back to  
58 the capital process we've got in our company. Pulp and  
59 Paper is a capital intensive industry and we've got fairly  
60 strict controls on it, but we take about 50 percent of our  
61 depreciation costs and say we're going to put that much  
62 back into our mills in order to keep the competitive and ...  
63 well basically to keep them competitive. We divide that  
64 into about half. About half of it goes into projects that  
65 basically keep the mills in their existing condition, things  
66 like replacing roofs and buildings and beams and the things  
67 that are falling down, to keep the roof from falling down in  
68 the mills. The other half is divided between major strategic  
69 projects which would be, for instance, our Beauport mill was  
70 changed from a newsprint mill to a value added type of  
71 paper mill, and the rest goes into what we call value added  
72 products, and those are the ones that we go through a high  
73 level of looking at the justification on a project by project  
74 basis, and those ... we have a specified return they have to  
75 meet in order to even be considered, and last year that was  
76 at about a 50 percent return rate and because of the  
77 economy and the way it is right now, I'm not submitting  
78 any that are under 100 percent return. So beyond that there  
79 are audits to see if these things actually met what we said  
80 the justification was, and the benefits that we claim on  
81 these when we put in these capital projects actually comes  
82 out of our budgets the next year. So if I say I'm going to  
83 save nine dollars a ton by putting in this project, my  
84 budget goes down by nine dollars a ton the next year.

85 MR. BROWNE, Q.C.: So you better be right.

86 MR. BACKUS: I better be right or better find something  
87 else to save money on.

88 MR. BROWNE, Q.C.: How do you compare that with what  
89 you see during this process, the presentation of  
90 Newfoundland Hydro's capital budget?

91 MR. BACKUS: Do you want to answer that. I didn't look  
92 at theirs.

93 MR. DEAN: Okay, I guess I've looked at it in more detail.  
94 What Mr. Backus just said about limiting of total capital  
95 expenditure to 50 percent of depreciation, that is something  
96 that is quite different from what I've seen. The justification,

1 even for a, say a \$30,000 project, we have to put in a pretty  
2 detailed justification, including the scope of the project,  
3 other alternatives, the key financial indicators, benefits, all  
4 this sort of stuff in for the small ones. Those are ...

5 MR. BROWNE, Q.C.: Maybe if we took a look at some of  
6 Newfoundland Hydro's capital projects, the ones over  
7 \$50,000 and just, if you can comment on some of them, and  
8 these are in the prefiled evidence, if we can go to Schedule  
9 B-59, we'll take a look at that one. Okay, B-59 makes  
10 reference to the purchase of meters and equipment in TRO  
11 system, \$172,000, and they give one, two, three, four, five  
12 lines to justify the expenditure of \$172,000. How would that  
13 compare in the private industry, in your private industry if  
14 you were looking for that expenditure?

15 MR. BACKUS: Well, I couldn't submit a project without a  
16 cost benefit study, unless it involved something like the  
17 roof falling down, and you know, unless their customer  
18 impact is at that level of importance to them as my roof  
19 falling down, then this would fit this category.

20 MR. BROWNE, Q.C.: So you would require a cost benefit  
21 study. Where it says a formal cost benefit study is not  
22 required here, you would require, your industry would  
23 require one?

24 MR. BACKUS: Oh yeah. I mean I'm not saying that none  
25 of our projects have a cost benefit that makes it an  
26 attractive project, but those would be ones that would be  
27 if the roof was going to fall down.

28 MR. BROWNE, Q.C.: So in, they're looking for approval of  
29 \$172,000 for this, if you were to submit that as part of your  
30 procedure with those six or seven lines, what would the  
31 result be?

32 MR. BACKUS: Oh, it would be sent back for a further  
33 analysis. I couldn't get away with putting that in.

34 MR. BROWNE, Q.C.: So you see a lesser standard here  
35 than what you're used to?

36 MR. BACKUS: Yes, for our mill it would be a lesser  
37 standard than what I'm used to.

38 MR. BROWNE, Q.C.: Have you had experience in other  
39 mills within the Abitibi group or other private industry  
40 experience?

41 MR. BACKUS: Yeah, with Boisey Cascade (*phonetic*) and  
42 Rainy River, and Stone Consolidated and Abitibi  
43 Consolidated. Our systems have all been similar. They  
44 don't work like this. I have no experience in utilities.

45 MR. BROWNE, Q.C.: But in the paper industry they  
46 require the study and the justification for an expenditure of  
47 \$172,000.

48 MR. BACKUS: Yes.

49 MR. BROWNE, Q.C.: We see similar in B-60 if you can go  
50 to that for a second, acquire a document management and  
51 imaging system, \$104,000, and down below it says this is  
52 the first phase of implementation and requests for the  
53 approval of additional phases will be in future submissions  
54 to the PUB, so I guess this is the tip of the iceberg. Can  
55 you comment on that where there's a promise to come back  
56 for more? How would that be dealt with in private industry,  
57 in your industry?

58 (*11:30 a.m.*)

59 MR. BACKUS: Well, I guess I have a couple of comments  
60 on this. One is, if it was intended to be something that was  
61 the start, you'd also have to know what the finish was, or  
62 at least be able to predict it.

63 MR. BROWNE, Q.C.: So you wouldn't start it unless we  
64 knew where it was going, what the cost was to begin with,  
65 from beginning to end we would want to know what the  
66 cost is, is your principle.

67 MR. BACKUS: At least an estimate of it.

68 MR. BROWNE, Q.C.: So do you see that there? Do you  
69 see ... what else do you see lacking in this particular  
70 proposal?

71 MR. BACKUS: Well, on the other one, you know, if there  
72 was a customer impact there, I couldn't evaluate how  
73 important that was to their business. This one, it doesn't  
74 have that, so I guess I don't see a lot of justification that  
75 would cause me to be able to get this project approved.

76 MR. BROWNE, Q.C.: So this one has no direct customer  
77 impact and there's no formal study required and yet there  
78 is an amount there put in of \$104,000.

79 MR. BACKUS: Yes.

80 MR. BROWNE, Q.C.: Now that contrast with B-61, if you  
81 go to B-61 for a moment, purchase additional corporate  
82 applications of \$517,000, there it says a formal cost benefit  
83 study was required. Can you comment on that particular  
84 expenditure, is that one of the ones you're objecting to?

85 MR. DEAN: Yes, it is. On that one, I think we've heard  
86 evidence on that one also over the course of the last 15  
87 weeks or whatever. That's over half a million dollars and  
88 there is no detail there as to what corporate software is  
89 going to be purchased and it's more like an allotment, a half  
90 a million dollar allotment to buy software as the need arises  
91 in the year 2002.

92 MR. BROWNE, Q.C.: So in your industry once again,  
93 you'd have go back and provide more information.

94 MR. DEAN: That is correct.

95 MR. BROWNE, Q.C.: Well you wouldn't make the proposal

1 to begin with, I guess, would you, because you'd know  
2 better in your industry.

3 MR. DEAN: Yes, yeah, I wouldn't because it wouldn't go  
4 beyond Mr. Backus, I'm sure.

5 MR. BROWNE, Q.C.: B-63, if we can just go to that for a  
6 minute. It says replacement of printers, \$130,000. Once  
7 again, we have no direct customer impact, cost benefit not  
8 required, but they're telling us there's no future  
9 commitments and this project involves the replacement of  
10 obsolete printers throughout Hydro offices. Now they  
11 don't tell us how many printers, do they?

12 MR. DEAN: Not there but I think there was, I think that  
13 came out in the information request or some place else, but  
14 I think it did.

15 MR. BROWNE, Q.C.: In terms of printers, we're all in  
16 business. I know I don't have my own printer in my office  
17 but we do some kind of networking. How does it work in  
18 your particular business? Does everyone have their own  
19 printer in their office or do you do some form of  
20 networking?

21 MR. DEAN: It's all on network, yeah, I don't have one in  
22 my office either.

23 MR. BROWNE, Q.C.: You don't have one in your office?

24 MR. DEAN: No.

25 MR. BROWNE, Q.C.: And how many people would share  
26 the printer in reference to the network? Do you have it  
27 down to that science?

28 MR. DEAN: My printer is used by five people. I use one  
29 that's shared with four others, I know that.

30 MR. BROWNE, Q.C.: And Mr. Backus, do you know how  
31 many printers you would have like in Stephenville at the ...

32 MR. BACKUS: No, I don't know the answer to that.

33 MR. DEAN: Just to comment on that, in general they're  
34 shared. There would be some exceptions, like one person  
35 in payroll, she has a printer of her own because it's  
36 confidential information, but in general they're shared by  
37 about four different people.

38 MR. BROWNE, Q.C.: And is that common with what  
39 you've seen in other facilities, Mr. Backus, in which you  
40 worked?

41 MR. BACKUS: Yes.

42 MR. BROWNE, Q.C.: You mentioned that there was an  
43 information request in reference to that, Mr. Dean. I can't  
44 put my hand on that, but was it your information request?

45 MR. DEAN: No, but I believe Newfoundland Power asked  
46 about that. I can't find the reference, but I believe there

47 were 66 printers involved is the number I remember. I don't  
48 know the reference, I'm going on memory here.

49 MR. BROWNE, Q.C.: So we don't know how many people  
50 are sharing these printers, if it's networked, if it's one printer  
51 for three people, four people, five people, six people, or if  
52 these are going in individual offices. Do we know that?

53 MR. DEAN: From reading the material and listening here,  
54 I don't believe that's come out in the evidence at least.

55 MR. BROWNE, Q.C.: All this equipment, like printers and  
56 imaging and screens, and I know in a previous hearing we  
57 had some difficulty with it from a consumers' perspective,  
58 it seems to be never ending, the upgrading of computers  
59 and the updating of computers. Do you have a standard  
60 within your particular industry as to how often you replace  
61 your computers?

62 MR. BACKUS: We don't have a standard that I'm aware of.  
63 We manage that system to avoid costs, but we don't have  
64 a standard.

65 MR. BROWNE, Q.C.: So it's not every time everyone  
66 comes knocking on your door.

67 MR. BACKUS: Oh no.

68 MR. BROWNE, Q.C.: They're always knocking on your  
69 door I find to try to sell you something better or something  
70 more.

71 MR. BACKUS: No, what we tend to do is we buy the  
72 newer computers for two or three people in the mill that  
73 really need the higher, faster applications and then they get  
74 handed down to people that don't need the faster ones.

75 MR. BROWNE, Q.C.: And when do you retire them, is it  
76 when they become of no further use or is there a  
77 depreciation factor or how do you decide that?

78 MR. DEAN: It doesn't happen very often, I think we retired  
79 only three last year, but they went to some program for  
80 schools.

81 MR. BROWNE, Q.C.: And you gave them all to schools  
82 then.

83 MR. DEAN: Yeah, it was a donation where somebody  
84 refurbishes them and gives them to schools.

85 MR. BROWNE, Q.C.: There's another project there, B-23,  
86 replace two air compressors at Buchans for \$65,000, and if  
87 we can go to that for a second, B-23 please, and we see  
88 here two air compressors being replaced at the Buchans  
89 terminal station at the same time. It says the existing  
90 compressors will be 29 years old in 2002 and the  
91 compressors have deteriorated to the point where excessive  
92 leaks, etcetera, so they want to replace the two of them at  
93 the same time. In your industry, how would that work?



1 Would you try to take the two and put them together to  
2 make one ... to buy a new one and use the other two as  
3 back-ups, or how would you do it?

4 MR. DEAN: Yes, that was one that we did object to too, I  
5 recall discussion on that. There's not a lot of detail there so  
6 we're assuming here that the two compressors, one is a  
7 back-up for the other, and if that is, in fact, correct, which  
8 is standard in our industry, you tend to replace one and  
9 then run that new one as your main, keep the other one as  
10 a back-up and probably get several more years service out  
11 of the second one. That's what we had in mind when we  
12 objected to that one.

13 MR. BROWNE, Q.C.: During the, through the hearing,  
14 issues of duplication were raised where we saw the  
15 committee between Newfoundland Power and  
16 Newfoundland Hydro had met and for the most part had  
17 failed to address issues of duplication and we have the  
18 eight and a half million dollar radio system that  
19 Newfoundland Hydro is now proposing to purchase  
20 despite the fact that was discussed during the committee  
21 and there seemed to be a resolution to that. In reference to  
22 that duplication issue, do you have any concerns there that  
23 duplication can be costing you, or can be costing you more  
24 money in terms of your own electricity rates?

25 MR. DEAN: Yes, it's a concern. I'm reluctant to get into  
26 specifics on that because that is really details beyond what  
27 I'd like to testify on but I guess having said that I remember  
28 the evidence talking about duplication on the Burin  
29 Peninsula where Hydro has something like 159 customers  
30 and Newfoundland Power has many more. Yes, it is a  
31 concern that there may be some efficiencies gained in some  
32 areas by avoiding a duplication.

33 MR. BROWNE, Q.C.: Your evidence is, sir, that you  
34 participated in these hearings previously and Ms. Greene  
35 brought you through that this morning. You've been  
36 attending hearings in one capacity or another since 1990,  
37 what is your view on these type procedures? This must be  
38 costly from an industrial customer's perspective. Do you  
39 have anything that you can offer the panel and the rest of  
40 us in reference to that, and how you see it could work?

41 MR. DEAN: Indeed it's costly and time consuming. Under  
42 the present set up I don't see any other way of avoiding  
43 getting into the kind of detail we did. It has been an awful  
44 lot of time since the last general rate increase, more frequent  
45 ones probably would speed the process up but I'd sooner  
46 let some of the people who are experts on performance  
47 based regulation and whatever ... I don't have expertise in  
48 that area.

49 MR. BROWNE, Q.C.: Would you see any merit in exploring  
50 the possibility of the move to a performance based system  
51 where the consumers and the industrials would share in

52 any savings with the utilities should there be an advantage  
53 in moving to that system?

54 MR. DEAN: I would sure like to discuss it and learn more  
55 about it but I don't know, from an industry point of view I  
56 can't really relate to that. We have to perform or we don't  
57 stay in business, but performance based regulation is  
58 something different. I'd talk to the expert on it.

59 MR. BROWNE, Q.C.: These are the questions. I'd like to  
60 thank you again, and for the tour you gave us of your  
61 facility which was worthwhile and thank you very, very  
62 much.

63 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
64 Browne. Mr. Kennedy, your questions please?

65 MR. KENNEDY: Thank you, Chair. My first question is for  
66 Mr. Dean. Mr. Dean, in your prefiled testimony of your  
67 revision of December 13th, at I believe it's page 7, towards  
68 the bottom, Mr. O'Rielly. Yes, and the question is are you  
69 familiar with energy issues affecting the cost of purchased  
70 power at ACI's Grand Falls mill, and your answer is, yes, I  
71 am part of a committee which includes representatives of  
72 both mills which has been studying the impacts not only of  
73 proposed rate increases but also of proposed changes in  
74 contract language which will likely affect our costs. I'm  
75 wondering if you could tell me of what, if any, involvement  
76 does Abitibi, whether yourself or other representatives of  
77 the company that you're aware of, have in drafting  
78 language or negotiating the supply agreements with  
79 Newfoundland and Labrador Hydro?

80  
81 *(11:45 a.m.)*

82 MR. DEAN: We met together, Abitibi in Grand Falls and  
83 ourselves, and the four industrial customers have met  
84 together to discuss this. Virtually all of the negotiations  
85 and contract language has been done through our legal  
86 counsel in conjunction with Hydro's legal counsel.

87 MR. KENNEDY: So is there actually a negotiating session  
88 that takes place between Hydro and the representatives of  
89 the industrial customers concerning the supply  
90 agreements?

91 MR. DEAN: Such as the contract that we have, yes, there  
92 is. Hydro started with a proposal and we've had many  
93 discussions actually over the last several years since it  
94 started.

95 MR. KENNEDY: And from the perspective of the industrial  
96 customers are you satisfied with that process of the  
97 negotiation of the supply agreements with Hydro?

98 MR. DEAN: In general, yes. We didn't get everything that  
99 we'd like, but it was a negotiating process and it did work.

1 MR. KENNEDY: Okay, my second question is also for you,  
2 Mr. Dean. It's just a quick question. It's a curiosity I've  
3 been asked to ask, and it's ... could you provide us with an  
4 estimate of the amount of Bunker C that you actually burn  
5 in your plants? It was indicated in testimony that you do  
6 burn Bunker C to supply some of your energy. Can you  
7 give me an estimate of the volume?

8 MR. DEAN: At Stephenville it's around 180,000 barrels a  
9 year. I don't have the number for Grand Falls.

10 MR. KENNEDY: Okay, thank you. My last question is for  
11 Mr. Backus. Mr. Backus, in your prefiled testimony, and  
12 it's on the last page of that testimony, it's in response to the  
13 question, how are the proposed rate increases for the  
14 industrial customers viewed by ACI, and it's the last two  
15 paragraphs. Well first you indicate that ACI is disturbed  
16 by the magnitude of the proposed increases for 2002 and  
17 by the implications of Hydro's rate of return and capital  
18 structure proposals for the future, and the last to  
19 paragraphs it says, as noted above, increases of these  
20 magnitudes have significant negative impacts on the cost  
21 per ton of each mill and this could affect the future viability  
22 of the mills and/or the amount of downtime which one or  
23 both of them may experience in the future. And then you  
24 say, a freeze on the industrial rates would be in the best  
25 interests of ACI's Newfoundland mills, particularly  
26 Stephenville's. So is it fair to say that, you know, based on  
27 your prefiled that you're indicating that if the increases as  
28 being sought by Hydro are passed on that it could threaten  
29 the competitive or the commercial viability of these plants  
30 and result in shutdowns that might not otherwise occur if  
31 the increase wasn't passed through?

32 MR. BACKUS: Potentially, yes.

33 MR. KENNEDY: And I take it that this, of course, impacts  
34 ACI directly in having a plant shut down, I'm sure there's  
35 costs associated with the same, correct?

36 MR. BACKUS: Yes, but in this case it's probably a matter  
37 of which mill gets shut down, whether it's one here or one  
38 in Quebec, or one in Alabama.

39 MR. KENNEDY: Okay, and if, for instance, the  
40 Stephenville plant was shut down as a result of an electric  
41 increase and the corresponding increase in the cost per ton  
42 to produce your product, this would have an impact on the  
43 Stephenville community itself, correct?

44 MR. BACKUS: Yes.

45 MR. KENNEDY: And I believe we've heard a public  
46 presentation by the Mayor of Stephenville to that effect  
47 that it would have a dramatic impact on the local economy  
48 of Stephenville and that area, and you're in agreement with  
49 that, I take it?

50 MR. BACKUS: Oh, I'm in agreement and all that is on the  
51 record because I was listening to it in Stephenville. I agree  
52 with everything they said there.

53 MR. KENNEDY: Now would you agree with me that that  
54 impact, the impact that a shutdown of the mill may have on  
55 the community of Stephenville could be characterized, if  
56 you will, as a secondary impact of the increase? The direct  
57 impact on the increase is the, of an increase in electric rates  
58 would be the increase in cost per ton of newsprint which  
59 could result in the shutdown of the mill ...

60 MR. BACKUS: Shutdown or increased downtime, yes.

61 MR. KENNEDY: Increased downtime, and that the  
62 secondary impact is the impact it may have on the  
63 community of Stephenville and the surrounding area.

64 MR. BACKUS: Yes.

65 MR. KENNEDY: Through layoffs and reduced capital  
66 expenditures by the plant.

67 MR. BACKUS: That's right.

68 MR. KENNEDY: Okay, and will you agree with me that,  
69 that the Board is entrusted with setting rates which are fair  
70 and equitable in accordance with the *Public Utilities Act*,  
71 and the finances of Hydro?

72 MR. BACKUS: Yes.

73 MR. KENNEDY: So the question I have is, would you  
74 consider the decision of whether to provide ACI, or for that  
75 matter any industrial customer, with some sort of special or  
76 sympathetic treatment, that that should be made more  
77 appropriately by government directly, rather than through  
78 the Public Utilities Board?

79 MR. BACKUS: Yes, I think that's more of a political,  
80 socioeconomic decision than the Public Utilities Board is  
81 expected to be able to do.

82 MR. KENNEDY: So if the numbers crunch out the way the  
83 numbers crunch out, and the Board makes a determination  
84 that in accordance with the methodology that's being  
85 employed, that there's a certain increase in electric rates  
86 that needs to be passed on to ACI, the impact that those  
87 rates may have on the viability of a mill in Stephenville for  
88 instance, and then the impact that they may, that a  
89 shutdown of that mill may have on the community of  
90 Stephenville are issues more appropriately dealt with by  
91 government rather than by the Public Utilities Board, would  
92 you agree with that?

93 MR. BACKUS: That seems to be the purpose of the Board,  
94 but it still needs to be pointed out the possibilities that will  
95 occur.

96 MR. KENNEDY: Okay.

1 MR. BACKUS: Should this kind of an increase take effect.

2 MR. KENNEDY: Okay, and has ACI enjoined government  
3 in discussions, if you will, on seeking some sort of relief  
4 from government to lessen any impact that might be  
5 sustained by ACI as a result of an electrical increase?

6 MR. BACKUS: We haven't asked for subsidies but we  
7 have gone to government and explained basically the  
8 consequences of this kind of a power cost decision.

9 MR. KENNEDY: Okay.

10 MR. BACKUS: I guess I'm unfamiliar with the charter of  
11 the Public Utilities board and I'm not sure what line is  
12 drawn there as to fair and equitable versus secondary  
13 impacts.

14 MR. KENNEDY: Okay, thanks very much, Mr. Backus.  
15 That's all the questions I have, Chair, thank you.

16 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
17 Kennedy. Ms. Henley Andrews, redirect please?

18 MS. HENLEY ANDREWS, Q.C.: Thank you, Mr. Chairman.  
19 Mr. Dean, Ms. Greene asked you some questions initially  
20 about Abitibi's participation in hearings and your  
21 participation in particular in hearings, I guess, starting in  
22 1990, and she also asked you some questions about rate  
23 decreases. From your perspective, what did Abitibi get out  
24 of its participation in the hearings in the nineties?

25 MR. DEAN: Basically information, the rates were not being  
26 set by the Board but we received a lot of information such  
27 as interest coverage rates and such like so that we could  
28 then go and talk with Hydro or the government and that's  
29 how we got the decreases, from the information we got  
30 from the hearings.

31 MS. HENLEY ANDREWS, Q.C.: And from your  
32 perspective, what did that information show with respect to  
33 industrial rates?

34 MR. DEAN: That back in 1992 the revenue to cost ratio for  
35 industry was 1.2 percent meaning that we're paying 20  
36 percent more than we should for rates and there is an  
37 information request that we submitted to that effect.

38 MS. HENLEY ANDREWS, Q.C.: So were the industrial  
39 customers getting special treatment in 1993 and 1994 when  
40 their rates were reduced?

41 MR. DEAN: No, not at all. In fact we worked a decade to  
42 attempt to get rates in line with what we believe they  
43 should be. There's been no subsidies or special  
44 consideration.

45 MS. HENLEY ANDREWS, Q.C.: You were also asked some  
46 questions with respect to the Interruptible B contract, and  
47 I'd like you to take a look at the pages that Ms. Greene gave

48 you, which is Article 3, and in particular with respect to 3.01  
49 and the condition that the number of days during a winter  
50 period upon which Abitibi is required to interrupt its firm  
51 power shall not exceed 25. Did Abitibi restrict its  
52 willingness to interrupt to the winter months?

53 MR. DEAN: No, we didn't, no.

54 MS. HENLEY ANDREWS, Q.C.: Would Abitibi have been  
55 prepared to have the right to interrupt on a 12 month basis?

56 MR. DEAN: Yes, we would have, and we would continue  
57 today. We'd be prepared to interrupt on a 12 month basis.

58 MS. HENLEY ANDREWS, Q.C.: So how did the winter  
59 period become a part of the contract?

60 MR. DEAN: That's what was offered by Hydro and my  
61 understanding was the only time that they would require  
62 the extra peaking capacity would be during the winter  
63 months, December to March. It was offered by Hydro.

64 MS. HENLEY ANDREWS, Q.C.: Now, in the same  
65 sentence there's a reference to the number of interruptions  
66 not exceeding 25. Where did the number 25 come from?

67 MR. DEAN: This is back in 1990, '91, '92 era. My  
68 recollection is that Hydro offered that in their first draft of  
69 the contract. That was not a request from Abitibi.

70 MS. HENLEY ANDREWS, Q.C.: And would you have  
71 been prepared to agree to more interruptions than 25?

72 MR. DEAN: We certainly would have discussed it and  
73 based on the knowledge we have now, yes, we would be  
74 prepared.

75 MS. HENLEY ANDREWS, Q.C.: Now, if we look at Article  
76 3.02, and the condition that the interruption can only take  
77 place between 8:00 in the morning and 10:00 at night.  
78 Where did that come from?

79 MR. DEAN: That again was offered by Hydro and the, my  
80 understanding of the rationale for that was that Hydro has  
81 a minor peak around noon and a major peak at around 5:00  
82 or 6:00 in the evening. This interruptible ability was not  
83 required after 10:00 at night.

84 MS. HENLEY ANDREWS, Q.C.: Would you have  
85 considered making it available after 10:00 at night if you  
86 had been asked?

87 MR. DEAN: Yes.

88 MS. HENLEY ANDREWS, Q.C.: Mr. Backus, questions  
89 were asked of both of you this morning with respect to  
90 your energy rates proposed and how they relate to what  
91 your energy rates were in 1992. Who do you compete  
92 with? Who does the Stephenville mill compete with?

93 (12:00 noon)

1 MR. BACKUS: Well we compete in the international  
2 market in our present capacity, but as far as (inaudible),  
3 we're in a totally internationally market where we compete  
4 not only with all our competitors in Europe and North  
5 America, but our own mills as well.

6 MS. HENLEY ANDREWS, Q.C.: And does the energy rate  
7 that you were charged in 1992 carry any weight in that  
8 marketplace?

9 MR. BACKUS: None, just what we're charged in 2002 right  
10 now.

11 MS. HENLEY ANDREWS, Q.C.: Can you give any  
12 examples of where increased energy costs have affected the  
13 fate of a mill?

14 MR. BACKUS: Well, my previous job before I came here  
15 was with Pacific Northwest, and the mill I was in closed  
16 down last year and a major factor in that was the increase  
17 in power costs in that part of the country and several other  
18 mills went down in that same area over the last two years  
19 and energy costs were cited as factors in those as well.

20 MS. HENLEY ANDREWS, Q.C.: Thank you, those are all  
21 my questions.

22 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
23 Henley Andrews. We'll move now to Board questions,  
24 Commissioner Powell please?

25 COMMISSIONER POWELL: Thank you, Chair. Good  
26 morning, Mr. Dean, Mr. Backus.

27 MR. DEAN: Good morning.

28 COMMISSIONER POWELL: I only have a couple of  
29 questions this morning. The Interruptible B contract, I  
30 notice that it hasn't been used for a number of years. Mr.  
31 Dean, do you have any reason for that, or have you had  
32 any discussions with Hydro why the necessity for it to be  
33 implemented?

34 MR. BACKUS: I haven't had any discussions per se but I  
35 think if we looked at the peak load of Hydro we would see  
36 that it wasn't required. There hasn't been a lot of load  
37 growth. I think it has to do with that more than anything  
38 else.

39 COMMISSIONER POWELL: Does that have anything to  
40 do with their better managing the peak or is that beyond  
41 their control?

42 MR. BACKUS: I think that it would be beyond their  
43 control. I guess their control would be is all their units  
44 available, that would be part of their control, but I really  
45 don't have the answers. It's more of a question to Hydro.  
46 If they request, we interrupt.

47 COMMISSIONER POWELL: Okay, so it's more fate the last

48 eight years from your perspective that they haven't asked  
49 because while the economy of the province hasn't grown  
50 a lot since probably '94, it hasn't really dropped that much,  
51 because I think there's more customers on the system now  
52 than there was in '94.

53 MR. DEAN: There has been some generation added in that  
54 period of time in terms of purchased power, that probably  
55 had an impact.

56 COMMISSIONER POWELL: Okay.

57 MR. DEAN: But again, that's an area that Mr. Budgell  
58 would probably be able to give detailed answers on.

59 COMMISSIONER POWELL: I notice on page 4 of your  
60 prefiled evidence, in 2000 the Stephenville mill purchased  
61 536 million kilowatts of energy from Hydro. Yesterday one  
62 of the schedules that Mr. Brushett had showed, the year  
63 2000, that Hydro sold or used 6.7 million, which puts the  
64 Stephenville mill at about, just slightly less than 8 percent  
65 of their total sales for that year, 2000. Do you have, or in all  
66 the information that's been filed, is there any figures that  
67 show how many kilowatts that the Stephenville mill used in  
68 1992?

69 MR. DEAN: Just one second. No, I have ... the dollar  
70 amounts are here but not the kilowatt hours.

71 COMMISSIONER POWELL: Wouldn't the true test of the  
72 initiatives on energy saving be expressed in the amount of  
73 kilowatt hours you used in one period versus another,  
74 assuming that the same amount of production arose, the  
75 same amount of production or would that not be?

76 MR. DEAN: I would prefer to use, and it is in my evidence,  
77 the kilowatt hours per ton of newsprint. I think that is a  
78 better measurement actually of the conversation measures,  
79 and it is in my evidence, it has gone down.

80 COMMISSIONER POWELL: Do we have a table showing  
81 what it was in '92 versus ...

82 MR. DEAN: On page 5 of the December 13th evidence, the  
83 last two lines. It's not a table, it's in text form there. It's on  
84 the screen now. In 1992 we used 3,003 kilowatt hours per  
85 wrapped ton (*phonetic*), and year to date, 2001, and I  
86 should clarify, that was in, to October 31st, we had used  
87 2,970 kilowatt hours per wrapped ton (*phonetic*). On the  
88 next page it goes on to explain that in 1992 we were also  
89 using some purchased pulp, which is low energy, so the  
90 savings are really more significant than that shows, so I  
91 think that actually explains the conservation in terms of  
92 energy because it also includes the change in the tonnage  
93 produced.

94 COMMISSIONER POWELL: So how many tons do we  
95 produce in Stephenville in a year?

1 MR. DEAN: On a good year running full out, 185,000 tons.  
2 COMMISSIONER POWELL: So that's almost 600,000  
3 kilowatts less that you would have to purchase from Hydro  
4 based on 33 kilowatts per ton wrapped up.  
5 MR. DEAN: Yeah, 6,105,000 actually.  
6 COMMISSIONER POWELL: No, it wouldn't be six million.  
7 I'm just thinking about the kilowatts that you wouldn't have  
8 to purchase from ...  
9 MR. BACKUS: You're taking that difference there and  
10 multiplying times the tons.  
11 COMMISSIONER POWELL: Yeah.  
12 MR. BACKUS: Yeah.  
13 COMMISSIONER POWELL: So it would be five hundred  
14 ... something less than 600,000 kilowatts.  
15 MR. DEAN: 185,000 tons and the difference in the kilowatt  
16 hours is 33.  
17 COMMISSIONER POWELL: Yeah, so if you round that off  
18 to 200 tons and multiply it ... thousands of tons and  
19 multiply it by three you get six hundred and ...  
20 MR. BACKUS: By 30 it's 6 million.  
21 MR. DEAN: I think it's 6 million.  
22 MS. HENLEY ANDREWS, Q.C.: 6,105,000.  
23 COMMISSIONER POWELL: Kilowatts?  
24 MS. HENLEY ANDREWS, Q.C.: Kilowatt hours.  
25 COMMISSIONER POWELL: Kilowatt hours.  
26 MS. HENLEY ANDREWS, Q.C.: Based on 185,000 tons.  
27 COMMISSIONER POWELL: Okay, I can do the  
28 calculation. These decimal points always get me confused.  
29 Bunker C, you mentioned, the Consumer Advocate asked  
30 how you arrived at your price and you mentioned that for  
31 budgeting purposes, head office sends you a price that  
32 you factor into your budget and then you described the  
33 method in which you attempt to acquire it. Within the  
34 system are there any reward incentives to those involved  
35 in the purchasing of Bunker C if they come in at less than  
36 the posted budgeted price for Bunker C?  
37 MR. BACKUS: No directly for the price of Bunker C.  
38 There is incentives for reduced costs in the mill and all  
39 salary folks basically are paid on higher or lower costs  
40 overall for manufacturing costs.  
41 COMMISSIONER POWELL: So that's one component.  
42 MR. BACKUS: That's one component.  
43 COMMISSIONER POWELL: In an incentive plan for  
44 management.  
45 MR. BACKUS: Yes.  
46 COMMISSIONER POWELL: Have you reviewed the pilot  
47 incentive plan that Hydro has in place for their senior  
48 management?  
49 MR. BACKUS: No.  
50 MR. DEAN: I have read the information that came out, yes.  
51 COMMISSIONER POWELL: Does that seem reasonable  
52 from the industrials' perspective, that type of a plan?  
53 MR. DEAN: There's a lot of similarities. Ours covers  
54 everybody in management, but there's a lot of similarities in  
55 it, yes.  
56 COMMISSIONER POWELL: So as a pilot, it's a first step  
57 in what you may consider the right direction?  
58 MR. DEAN: Yes, generally I would say so, yes.  
59 COMMISSIONER POWELL: There were some questions  
60 about transformer losses and the change ... prior to the new  
61 rate proposed by Hydro would yourself or anybody within  
62 Abitibi be aware that there would be another method of  
63 costing for the transformer losses, to bill for them?  
64 MR. DEAN: Yes, having worked in other companies I'm  
65 generally aware that there are different methods, yes.  
66 COMMISSIONER POWELL: So were you totally surprised  
67 when Hydro said we're going to change the method of  
68 billing for these losses?  
69 MR. DEAN: Yes, I was surprised because it was in the  
70 previous contract that the medium (*phonetic*) on the low  
71 side of a transformer and there would be no compensation  
72 for the losses, so I was surprised to see the change.  
73 COMMISSIONER POWELL: So their statement that they're  
74 changing it because they've been making a mistake all  
75 these years, does that really make, from a business  
76 perspective, does that make much sense? I'm probably  
77 putting words in somebody's mouth here, so ...  
78 MR. DEAN: It doesn't make Abitibi any happier that's for  
79 sure.  
80 COMMISSIONER POWELL: No, but from a business  
81 perspective, for an institution like Hydro for all these years  
82 to be billing it this way and then come and say, oops, you  
83 know, we've been doing this wrong for all these years, that  
84 it's not an insignificant cost.  
85 MR. DEAN: No, it's not insignificant, no.  
86 COMMISSIONER POWELL: So from their perspective,  
87 they should, you would have thought that they would  
88 have been aware that if they were doing it wrong, that they

1 were doing it wrong?

2 MR. DEAN: In my reading of the existing contract, I  
3 thought it was quite clear in there actually.

4 COMMISSIONER POWELL: So we can blame it on the  
5 lawyers in writing the contract, I suppose, and management  
6 ...

7 MR. DEAN: I really don't want to go there, Commissioner  
8 (*laughter*).

9 COMMISSIONER POWELL: Well it just strikes me as odd  
10 that you could be doing it for so long that all of a sudden  
11 saying ... that's a significant change. One other question I  
12 have, the Consumer Advocate touched on it a little bit.  
13 We've heard evidence that Newfoundland Power and  
14 Hydro had a committee that were looking at ways in which  
15 they were, possibly could share costs, and possibility,  
16 some efficiencies by working together. Has there been, or  
17 do you think there would be any benefit of the industrial  
18 customers and Hydro participating in some sort of joint  
19 usage study to help eliminate some duplication and sharing  
20 of costs?

21 MR. DEAN: Just for clarification, you mean duplication  
22 between industry and the utility?

23 COMMISSIONER POWELL: Yeah, sitting down and  
24 saying here is what we do, what is our business, and what  
25 do you do, and what's overlap, and are there any ways in  
26 which ...

27 MR. DEAN: The sharing of better practices, I think there  
28 are some possibilities there as we've heard, we both use the  
29 JD Edwards system and there may be some possibilities  
30 there. The maintenance system, the ... I have to think of the  
31 term used now, reliability ... whatever the ... the  
32 maintenance system that was described by Mr. Reeves,  
33 there may be some possibilities there. I think it's a good  
34 idea.

35 COMMISSIONER POWELL: Thank you very much. That's  
36 all the questions I have.

37 MR. NOSEWORTHY, CHAIRMAN: Thank you,  
38 Commissioner Powell. Commissioner Saunders?

39 COMMISSIONER SAUNDERS: Yes, thank you, Mr. Chair.  
40 Good morning, gentlemen.

41 MR. DEAN: Good morning.

42 MR. BACKUS: Good morning.

43 COMMISSIONER SAUNDERS: Just a couple of questions  
44 I think I have for each of you. First, Mr. Dean, on page  
45 three of your evidence which is the December 13th  
46 revision, and this is where I made my note so I don't know  
47 if ... and I've had trouble following Mr. O'Rielly's screen this

48 morning because my pages are different, but anyway, I'm  
49 sure we can find it here. On page 3 there is a paragraph  
50 there beginning with Stephenville and Grand Falls,  
51 newsprint is primarily sold in Europe and South America?

52 MR. DEAN: Yes.

53 COMMISSIONER SAUNDERS: Okay, and the second  
54 sentence there says this adds additional shipping costs  
55 that can't be passed on to customers. Can you explain that  
56 to me please?

57 MR. DEAN: I know it's in my evidence but probably Mr.  
58 Backus could explain that in more detail.

59 MR. BACKUS: Basically what it means is that we ship our  
60 paper overseas, which most of North American mills don't,  
61 so it gives us a bit of a cost disadvantage there as  
62 compared to our other mills, but when we ship into  
63 overseas markets, they don't care whether it's coming from  
64 Canada or whether it's coming from Norway or whether it's  
65 coming from France. They're paying the same price for  
66 paper, so the paper that I ship to my biggest customer in  
67 Germany, it costs me almost an extra \$100 a ton to get it  
68 there than my competitor who is selling it out of a plant in  
69 Amsterdam or nearby somewhere in Holland and shipping  
70 it across the border into Germany, so it's just another one  
71 of those competitive things that I have a bit of a  
72 disadvantage on.

73 COMMISSIONER SAUNDERS: Okay.

74 MR. DEAN: A big disadvantage on.

75 COMMISSIONER SAUNDERS: Okay, I assume the  
76 Stephenville mill is profitable, so if that be the case, then  
77 the costs that you say that you can't pass on here to the  
78 customers has to be passed on to somebody.

79 MR. DEAN: Well, it comes out of my pocket. My mill net  
80 is lower because of that.

81 COMMISSIONER SAUNDERS: Okay, alright.

82 MR. DEAN: If you look at my company as a whole, does  
83 it make sense to ship it to Germany from Stephenville,  
84 Newfoundland, or does it make sense to ship it from  
85 somewhere in Ontario, it makes more sense to ship it out of  
86 Newfoundland because it's closer and then that's why we  
87 end up taking that initial shipping cost.

88 COMMISSIONER SAUNDERS: Okay, it's a cost of doing  
89 business.

90 MR. DEAN: Yes, but it cuts our margins.

91 (*12:15 p.m.*)

92 COMMISSIONER SAUNDERS: Page six, and it's the  
93 paragraph beginning with the energy per wrapped ton, the  
94 middle of the page, Mr. Dean, do you see that, four lines

1 down and you're talking about putting more energy into  
2 pulp, do you have that?

3 MR. DEAN: I'm not sure that's the right one.

4 COMMISSIONER SAUNDERS: I'm showing it as page six.  
5 It's after the list of seven efficiency, energy efficiency items  
6 that you have.

7 MR. DEAN: Okay, yes, yeah, the energy per wrapped ton  
8 of newsprint has decreased.

9 COMMISSIONER SAUNDERS: Yes.

10 MR. BACKUS: But I think he's talking about down here,  
11 more energy ...

12 COMMISSIONER SAUNDERS: Putting more energy in ...

13 MR. DEAN: Oh, okay, yes.

14 COMMISSIONER SAUNDERS: Yeah, putting more energy  
15 into the pulp, what do you mean by that?

16 MR. BACKUS: I'll take that if you want.

17 MR. DEAN: Yeah, I can answer it but Jay is much more  
18 experienced in production than I am.

19 COMMISSIONER SAUNDERS: Okay.

20 MR. BACKUS: There is actually, I think there is two things  
21 that were meant here, and in 1992 we used a fair amount of  
22 purchased craft (inaudible) which is strength additive to  
23 newsprint, and when we use that, it's an expensive pulp,  
24 and we've managed to get rid of it, but because it came  
25 already pre-manufactured we didn't have to put the energy  
26 in it to make that pulp, so we made less TNB pulp. Now  
27 that we make 100 percent of our pulp onsite, there is a fair  
28 amount more energy that we have to expend in order to  
29 make the same amount of tons out the door.

30 COMMISSIONER SAUNDERS: Okay.

31 MR. BACKUS: And the second part of that is that it's well  
32 known in our industry that if you put more refiner energy  
33 in you get a better quality pulp. You get better bonding on  
34 the fibres and it's a stronger sheath, and so if there is an  
35 issue with quality, the first thing that you do is you put  
36 more power in your refiners and make stronger pulp and  
37 stronger paper, so there's always a balance there, again, in  
38 your costs, do I put more energy in or do I try to save  
39 money and spend less energy in making pulp.

40 COMMISSIONER SAUNDERS: Uh hum, okay.

41 MR. BACKUS: I can go a lot more into detail if you ...

42 COMMISSIONER SAUNDERS: Yes, I'm sure you can, but  
43 I think I understand what you're saying basically, which is  
44 what I wanted to get some understanding of what you  
45 meant by that statement, putting more energy in. Page 14,

46 and it's the paragraph beginning with ACI Stephenville is  
47 frustrated by the magnitude of the proposed increases,  
48 etcetera. Do you have that, Mr. Dean? I think we're still in,  
49 yes, we're still on your evidence.

50 MR. DEAN: Yes.

51 COMMISSIONER SAUNDERS: It's the last sentence in  
52 this paragraph. This rate increase will put Stephenville mill  
53 in the high cost per ton category within ACI.

54 MR. DEAN: Yes.

55 COMMISSIONER SAUNDERS: I think I know what that  
56 means but are you making an assumption there that  
57 providing no other mills experience increases in their  
58 electricity rates?

59 MR. DEAN: Yes, that is true. Jay would like to jump in ...

60 MR. BACKUS: Yeah, I guess, you know, the way our mills  
61 are situated right now cost wise, there are several very low  
62 cost mills. There are a bunch of mills that are in the mid  
63 cost area, and that's where I consider Stephenville to be.  
64 We're at the higher end of the mid cost mills, and then there  
65 are a few mills that are much higher cost than the others  
66 and when I say much higher it's about \$20.00 more, it's not  
67 \$100 more, and what we're trying to avoid here is becoming  
68 one of those mills because they take significantly more  
69 downtime every year than those that are in the mid cost  
70 area and, yes, that assumes that the other mills aren't taking  
71 a 16 or 17 percent increase in energy costs next year, and as  
72 far as I know they're not. They're probably all taking  
73 increases but nowhere near that level, and I'm referring to  
74 the Canadian mills when I say mid, low and high cost.

75 COMMISSIONER SAUNDERS: Yes, I understand. Now  
76 Mr. Backus, I guess there's one question only that I had  
77 that's in your evidence and that is on page three, and that  
78 is that first paragraph, the last sentence begins with, "The  
79 proposed increase for 2002 puts Stephenville in the high  
80 cost category with those mills. The projected increase for  
81 2004 would make Stephenville the highest cost ACI mill in  
82 Canada". And again, the same question, I guess, I have.  
83 That's providing no other increases for the other mills, or  
84 no increases in electricity rates for the other mills.

85 MR. BACKUS: That's assuming that it stayed the same.

86 COMMISSIONER SAUNDERS: Assuming that it stayed  
87 the same.

88 MR. BACKUS: Yes.

89 COMMISSIONER SAUNDERS: As today

90 MR. BACKUS: Yeah.

91 COMMISSIONER SAUNDERS: Your 16 percent ...

92 MR. BACKUS: Basically I took the 2000 costs for each of

1 those mills and added on this increase and it brought us up  
2 to a level of the high cost mills.

3 COMMISSIONER SAUNDERS: Okay.

4 MR. BACKUS: And then if you add ... the more it goes up  
5 ... that assumes the other mills didn't get an increase.

6 COMMISSIONER SAUNDERS: Gotcha. Thank you, Mr.  
7 Chair. Thank you Mr. Backus and Mr. Dean.

8 MR. NOSEWORTHY, CHAIRMAN: Thank you,  
9 Commissioner Saunders. Commissioner Whalen?

10 COMMISSIONER WHALEN: Yes, good afternoon. I just  
11 have one question, I think, as a follow-up from  
12 Commissioner Saunders' question. In terms of the energy  
13 cost per ton for your mill, what is the actual energy cost per  
14 ton of newsprint for the Stephenville mill?

15 MR. BACKUS: \$100.

16 COMMISSIONER WHALEN: It is \$100 per ton, and I think  
17 that the increase that's been noted is, it will add \$16.50 this  
18 year. Do you have any information on the energy cost per  
19 ton for other mills in Canada that we can compare that \$100  
20 per ton to?

21 MR. DEAN: Now as we have said in answer to some of the  
22 questions, we are not at liberty to give out exact figures of  
23 costs per ton in other mills, but we can talk about it in  
24 generalities, and to put it right on the same level playing  
25 field we have to talk about those that purchase their power,  
26 all of it, if you generate your own power, that's a different  
27 field altogether, and also those with thermo-mechanical  
28 pulping process that we have, so assuming the same basis,  
29 if we compare to Ontario and Quebec mills, our cost of  
30 power is slightly lower, on the basic rates they are lower.  
31 In Ontario they have the opportunity of time of use rates,  
32 so some mills can actually end up with lower rates, like our  
33 mill in Iroquois Falls end up to be lower on their purchased  
34 portion. If you look to Manitoba, their power rates are less  
35 than ours. BC is about the same, so we're not at the high  
36 end, we're some place in the middle. Other Atlantic Canada  
37 ... the other end of the spectrum, the rest of Atlantic  
38 Canada, in Nova Scotia is more expensive than  
39 Newfoundland.

40 COMMISSIONER WHALEN: Where Abitibi has mills in  
41 other provinces in Canada, are you aware of whether or not  
42 the electrical rates are actually set by regulatory boards?

43 MR. DEAN: I heard a comment about our process here  
44 actually that in Quebec they apparently put a board like  
45 this in place and then it didn't work out, and they went back  
46 to the old method or something like that, and I know the  
47 people in Montreal would have preferred that it stayed in  
48 place. I don't know why it changed and why they had one,  
49 and politically it was not used the next time the rate

changes occurred.

51 COMMISSIONER WHALEN: So I guess my question is  
52 you're not aware of whether or not the industrial rates for  
53 your other mills are actually set by regulator or if they're set  
54 through negotiations in contracts with the supplier.

55 MR. DEAN: We have mills in BC, Ontario, Quebec and  
56 here. BC I'm not too familiar with. Ontario is in a state of  
57 flux actually, and Quebec, I just talked about, I do happen  
58 to know that Manitoba is set by a regulator, and Nova  
59 Scotia was but that's about all the information I have.

60 COMMISSIONER WHALEN: In terms of comparing the  
61 costs, you just went through a number of distinctions that  
62 we'd have to look at, the TNP process and whether or not  
63 you have any of your own generation, etcetera. I think this  
64 question came up before but has the Stephenville mill,  
65 when you're looking at your increasing, the increasing  
66 prospect, I guess, of higher energy costs, are there any  
67 options for self-generation on site at Stephenville?

68 MR. DEAN: Well we have, in the past we've looked at co-  
69 generation and we'd still like to consider that. You know,  
70 I guess when we did talk to the government about energy  
71 costs, that's one of the things they encouraged us to look  
72 into, but it's three or four years down the road if it was  
73 allowed to be happened, and there's a fairly long process to  
74 make that happen, and a lot of capital investment.  
75 Naturally that's something we would like to do. If it would  
76 save us costs, the cost of co-generation, I think, is more  
77 expensive than Hydro right now, so we'll look into it, but  
78 we don't have any plans right now of doing anything.

79 COMMISSIONER WHALEN: Has Abitibi approached  
80 Hydro with respect to exploring the availability of time of  
81 use rates or other kinds of rate design options?

82 MR. BACKUS: We have in the past. I must say it hasn't  
83 been recent. Other than through the contract negotiations,  
84 the subject hasn't come up again. There has not been a lot  
85 of mutual support in going forward on that, but we would  
86 be interested in talking about particularly day and night  
87 rates. As you can see in some of the information requests,  
88 seasonal rates would not help the ... I won't say the paper  
89 industry ... I'm only talking for Abitibi Stephenville and  
90 Grand Falls ... would not help us.

91 COMMISSIONER WHALEN: Okay, thank you very much,  
92 gentlemen. Thanks, that's all I have, Chair.

93 MR. NOSEWORTHY, CHAIRMAN: Thank you,  
94 Commissioner Whalen. Thank you, gentlemen for your  
95 testimony. I had a couple of questions. One has been  
96 already asked by Commissioner Whalen in terms of the  
97 relative cost of the electricity among the mills and the other  
98 one was asked by Commissioner Saunders, but just  
99 probably to clarify something for me in view of your



1 response to both of the questions that I had in mind, I  
2 understood, I think, Mr. Dean to suggest that the power  
3 costs at Stephenville, we're generally speaking in the mid  
4 range of the 17 mills that you own, is that generally  
5 speaking correct?

6 MR. DEAN: The ...

7 MR. NOSEWORTHY, CHAIRMAN: And I'll finish the  
8 question, and I understood Mr. Backus to say, I thought,  
9 that the cost of manufacturing as it relates to the mills was  
10 just sort of below the higher cost vulnerable area, and you  
11 were concerned with the increase in power cost that's being  
12 proposed in the application, that it would be driven into a  
13 higher cost mill. Does that mean, generally speaking, that  
14 your cost of production at Stephenville or cost of  
15 manufacturing excluding electricity would be higher in  
16 relation to the other mills than say the cost of electricity?  
17 Is that something that I can glean from those couple of  
18 comments?

19 MR. DEAN: Let me try to summarize it. I think that over 50  
20 percent of the cost of making newsprint is power and  
21 wood, and our cost of making ... of using the total of power  
22 and wood in our manufacturing process is the highest in  
23 Abitibi Consolidated. In all of the other costs associated  
24 with making paper, salaries, wages, maintenance, steam,  
25 we're below average in the industry and possibly in the top  
26 quartile of best in the business, but those two issues,  
27 power and wood, take us to the top of that mid range  
28 group, and I know that this coming year we've got a full  
29 order book because our paper is in high demand in Europe,  
30 but there are a couple of mills out there that are short as  
31 much as 40,000 tons and they make paper for about \$100 a  
32 ton less than we do, and that's our concern is that I've  
33 already heard the question asked, should we be making  
34 that paper in Stephenville, or should we be moving that to  
35 one of these mills in Quebec that's not full.

36 MR. NOSEWORTHY, CHAIRMAN: So certainly the cost  
37 of electricity is a critical item. The other question that I  
38 have relates, I guess, as a follow-up to Commissioner  
39 Saunders' question where ... I think I have it on page three  
40 of the hard copy, and this is Mr. Backus' testimony or  
41 evidence, that Stephenville, the 2004 projected increase  
42 would make Stephenville the highest cost ACI mill in  
43 Canada, and you had mentioned a 17 percent increase.  
44 Now if I read this correctly, the 2004 ... and this is on page  
45 4 of the 11 to 11 1/2 rate of return on equity would provide  
46 an increase of 30 percent in Stephenville. Is that the figure  
47 you're using or is it 17 percent?

48 MR. BACKUS: I'm going to defer that to you.

49 MR. DEAN: Okay, the 17 percent is the increase that  
50 Hydro has requested coming out of this hearing.

51 MR. NOSEWORTHY, CHAIRMAN: Right.

52 MR. DEAN: The 30 percent or more than 30 percent would  
53 be out of 2004.

54 MR. NOSEWORTHY, CHAIRMAN: Yes.

55 MR. DEAN: And this may be conservative. Some of the  
56 information requests would indicate that it's 35 percent, but  
57 of course Mr. Wells but a rider on that that it was for five  
58 year planning purposes and not for rate setting, so it's at  
59 least 30 percent.

60 MR. NOSEWORTHY, CHAIRMAN: But it's the 30 percent  
61 that would drive this, that would drive Stephenville into the  
62 highest cost category, the 2004 rate, as opposed to the rate  
63 that we're looking at under this application. Is that ...  
64 because this is what I'm reading here. The projected  
65 increase for 2004 would make Stephenville the highest cost  
66 ACI mill in Canada.

67 MR. DEAN: That's correct.

68 MR. NOSEWORTHY, CHAIRMAN: So it's the 30 percent  
69 rate in 2004 that would take you to the highest relative cost  
70 in Canada?

71 MR. DEAN: That is correct.

72 MR. NOSEWORTHY, CHAIRMAN: What about the 17  
73 percent that's being proposed here? Where would that take  
74 you relative to your other mills?

75 MR. BACKUS: The 17 percent would take us into the ...  
76 there's two mills in that highest cost category, and to be ...  
77 we will equal that next year with this increase, but I've also  
78 included an increase in our wood costs which is about  
79 \$10.00 a ton as well. Now the power cost alone will move  
80 us past the highest cost mill in the next increase. The first  
81 increase the power cost is part of what moves us up there.

82 MR. NOSEWORTHY, CHAIRMAN: Okay, that clarifies  
83 that. The other question I have, you did engage in a  
84 discussion with Mr. Kennedy in terms of, in terms of the  
85 impact, I suppose, of the increase in rates and a discussion  
86 surrounding, I believe Mr. Backus you mentioned the word  
87 subsidy. Among the mills and within the industry, is  
88 subsidy an issue at all in terms of public subsidies, when  
89 we're talking about relative costs here ... I'm trying to  
90 establish because you've introduced in your evidence this  
91 notion of relative costs and what impact the electrical rates  
92 will have in terms of Stephenville. Is that something that  
93 within the industry, within other mills, would apply?

94 MR. BACKUS: I don't know if there's any direct reference  
95 to it, but in particular, if you go back and look at some of  
96 the mills that have been closed by Abitibi ...

97 MR. NOSEWORTHY, CHAIRMAN: Right.

1 MR. BACKUS: The government has come in and done  
2 things to get them reopened. One of the mills in Ontario,  
3 they basically gave them wood, and the mill in (inaudible)  
4 that we closed down a year and a half ago, they came in  
5 and basically bought out all the debt so that somebody  
6 could have that mill and start it back up, so ...

7 MR. NOSEWORTHY, CHAIRMAN: So when we're talking  
8 about relative cost here, the impact of subsidy may be  
9 included in certain relationships.

10 MR. BACKUS: Yes.

11 MR. NOSEWORTHY, CHAIRMAN: Okay, and my final  
12 question relates to the relative cost, I suppose, that you're  
13 talking about with this ... the current increase that's being  
14 proposed in this application, I think I may know the answer  
15 to this, but perhaps this is in Mr. Backus' testimony ... Mr.  
16 Backus, you may respond ... the relative cost in Grand Falls  
17 has been indicated as \$4.00 a ton, and the relative cost in  
18 Stephenville is \$16.50 a ton. Why the substantial  
19 difference?

20 MR. BACKUS: It's because most of their energy is  
21 provided by self-generation.

22 MR. NOSEWORTHY, CHAIRMAN: Okay.

23 MR. BACKUS: So the increase doesn't apply to them.

24 MR. NOSEWORTHY, CHAIRMAN: Okay, that's all the  
25 questions I have, thank you very much. We'll proceed now  
26 to questions on matters arising.

27 MS. GREENE, Q.C.: I do have questions arising.

28 MR. NOSEWORTHY, CHAIRMAN: Okay, well if we have  
29 a substantive amount of those ...

30 MS. GREENE, Q.C.: I don't know about substantive, but I  
31 will have three, four, or five, depending on the answers,  
32 and I don't know if ...

33 MR. NOSEWORTHY, CHAIRMAN: Well, it's 12:35, I didn't  
34 realize that going on with my questions, so I'll propose that  
35 we break now until 2:00.

36 *(break)*

37 *(2:05)*

38 MR. NOSEWORTHY, CHAIRMAN: Thank you and good  
39 afternoon. Ms. Greene, I ask you now to begin your  
40 question with matters arising, please?

41 MS. GREENE, Q.C: Thank you, Mr. Chair. Before I do that  
42 I wonder if I could comment on the document that was  
43 circulated just prior to the commencement this afternoon?

44 MR. NOSEWORTHY, CHAIRMAN: Sure.

45 MS. GREENE, Q.C: There was a document circulated which

46 consists of three sheets stapled together, and this is the  
47 response to the undertaking this morning to Consumer  
48 Advocate to provide the calculation for recovery of the  
49 RSP balance of \$50 million at five percent, which is the first  
50 sheet, and then \$60 million at eight percent, the second  
51 sheet, and \$60 million at five percent, and those recoveries  
52 are over the 5, 10 and 15 year timeframe, which is what I've  
53 been provided by Mr. Brushett yesterday, so this is the  
54 response to the undertaking of this morning. The other  
55 thing I would like to point out is that in Mr. Brushett's filing  
56 and in Hydro's we had kept it the same but number 4  
57 assumption, the sales, now, Mr. Brushett has stated in  
58 kilowatt hours per year. It really should have been  
59 megawatt hours per year, and we have corrected it on what  
60 we've just circulated.

61 MR. NOSEWORTHY, CHAIRMAN: Thank you.

62 MR. KENNEDY: Mr. Chair, if it's a response to an  
63 undertaking it thus would have been treated as U-Hydro  
64 No. 36.

65 **EXHIBIT U-HYDRO-36**

66 MR. NOSEWORTHY, CHAIRMAN: Thank you. Prior to  
67 beginning, Ms. Greene, I'm sorry, I usually ask if there are  
68 any preliminary matters, Mr. Kennedy?

69 MR. KENNEDY: No, Chair, just the undertaking that was  
70 filed, as far as I'm aware.

71 MR. NOSEWORTHY, CHAIRMAN: Thank you, very  
72 much. Ms. Greene, if you could proceed, please?

73 MS. GREENE, Q.C.: Thank you. I have just a couple of  
74 areas arising from the questions of the commissioners that  
75 I would like to explore with you, and the first area is the  
76 area of transformer losses that arises from the questions of  
77 Commissioner Powell, and I wanted to ensure that the  
78 record was correct with respect to what the issue is  
79 because, at least in my mind, there was some confusion by  
80 the way the question was asked. First, in terms of the  
81 mistake, was there ever a mistake in calculation of losses by  
82 Hydro?

83 MR. DEAN: No, not to my knowledge, no.

84 MS. GREENE, Q.C.: So it's not an issue of a mistake in  
85 calculation, is it?

86 MR. DEAN: No.

87 MS. GREENE, Q.C.: The existing contract language was  
88 properly applied by Hydro and by Abitibi, is that correct?

89 MR. DEAN: Yes.

90 MS. GREENE, Q.C.: The issue really is is who should bear  
91 the losses arising from Abitibi's purchases from Hydro,  
92 isn't it, and who should pay the losses, is that correct?

- 1 MR. DEAN: Yes, I believe that's the question, yes.
- 2 MS. GREENE, Q.C.: And I believe you acknowledged, in  
3 response to a question from Ms. Butler, that at the present  
4 time it is the other customers of Hydro who pay for those  
5 losses under the current existing contractual language and  
6 how the bills are now sent to Abitibi, is that correct?
- 7 MR. DEAN: That is correct, yes.
- 8 MS. GREENE, Q.C.: Okay, so the real issue is not an issue  
9 of a mistake in calculation, but who should pay for these  
10 loses, is that correct?
- 11 MR. DEAN: I think that's what the issue comes down to,  
12 yes.
- 13 MS. GREENE, Q.C.: And Hydro is proposing to change the  
14 contract language to ensure that Abitibi pays for the loses,  
15 is that correct?
- 16 MR. DEAN: On the proposal Abitibi would be paying for  
17 the loses, yes.
- 18 MS. GREENE, Q.C.: Which are now paid for by other  
19 customers?
- 20 MR. DEAN: Including Abitibi.
- 21 MS. GREENE, Q.C.: Right, but all other customers as well?
- 22 MR. DEAN: Yes.
- 23 MS. GREENE, Q.C.: Okay. The second area arising, again,  
24 from a question of Commissioner Powell is the reduction in  
25 energy requirements that have taken place at the mill in  
26 Stephenville as a result of energy efficiency improvements  
27 made by the mill. Did those translate into a reduction in  
28 purchases by Abitibi from Hydro?
- 29 MR. DEAN: No, they didn't. That was in kilowatt hours  
30 per tonne. Total purchases has increased since 1992. I  
31 don't have the numbers with me, but they have increased  
32 as tonnes of production has increased.
- 33 MS. GREENE, Q.C.: So this would be an example of where  
34 we didn't see an overall reduction in the system  
35 requirement as a result of that?
- 36 MR. DEAN: Yes, that is correct, yes.
- 37 MS. GREENE, Q.C.: And the last area arising, this time from  
38 questions from Commissioner Saunders and Whalen and  
39 the Chair relating to the components of your costs. I  
40 believe I understood you to say, Mr. Backus, that energy  
41 and wood supply together, if you took into account  
42 proposed increases would place Abitibi in one of ... in the  
43 same category as one of your highest cost mills, is that  
44 correct?
- 45 MR. BACKUS: Yes.
- 46 MS. GREENE, Q.C.: So that included wood supply, and I  
47 think also mentioned that energy is your second highest  
48 cost, is that correct?
- 49 MR. BACKUS: It's 20 percent. It depends on how you  
50 group things, but, yeah, I'd consider it second highest.
- 51 MS. GREENE, Q.C.: And is wood supply your first highest  
52 cost?
- 53 MR. BACKUS: Yes.
- 54 MS. GREENE, Q.C.: Okay. Those are all the questions that  
55 I have. Thank you.
- 56 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
57 Greene. Ms. Butler, if you could proceed, please, with your  
58 questions?
- 59 MS. BUTLER, Q.C.: Mr. Chairman, we have no questions  
60 for the panel.
- 61 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.  
62 Browne, do you have any questions?
- 63 MR. BROWNE, Q.C.: Yes, I just have two questions. The  
64 first question, you mentioned, Mr. Backus, that the paper  
65 mill in Stephenville was in the mid range in costs, there are  
66 high cost mills, low cost mills and you're in the mid cost?
- 67 MR. BACKUS: Yes.
- 68 MR. BROWNE, Q.C.: In what range is the mill in Grand  
69 Falls?
- 70 MR. BACKUS: It's at the higher end of the low cost mills.
- 71 MR. BROWNE, Q.C.: The higher end?
- 72 MR. BACKUS: Of the low cost mills.
- 73 MR. BROWNE, Q.C.: Of the low cost mills.
- 74 MR. BACKUS: It's lower than ours.
- 75 MR. BROWNE, Q.C.: Okay, so that's my only question.  
76 Thank you, very much.
- 77 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
78 Browne. Mr. Kennedy?
- 79 MR. KENNEDY: No questions, Chair.
- 80 MR. NOSEWORTHY, CHAIRMAN: Thank you. Ms.  
81 Henley Andrews, redirect?
- 82 MS. HENLEY ANDREWS: I have a couple of questions,  
83 Mr. Chairman. Mr. Dean, with respect to the issue of  
84 transformer losses, which I think was raised by Mr. Powell  
85 and has just been put to you by Ms. Greene, Abitibi is  
86 currently contributing to the cost of transformer losses, not  
87 only its own transformer losses or the ones for the energy  
88 serving it, but also for other customers, is that right?

- 1 MR. DEAN: Yes, that is correct.
- 2 MS. HENLEY ANDREWS: And with respect to Hydro's  
3 proposal what is your objection to it?
- 4 MR. DEAN: We still don't feel that the proposal leaves a  
5 fair and equitable treatment on the losses. As explained in  
6 my evidence, other jurisdictions there is a difference,  
7 depending on the voltage level that you purchase a power  
8 at, and this means where there may be an advantage for  
9 some industrial customers now in the future we'd be at the  
10 other end of the spectrum.
- 11 MS. HENLEY ANDREWS: Okay, so can you give me an  
12 example of how the current proposal would disadvantage  
13 Abitibi in Stephenville vis-a-vis some other customer of  
14 Hydro's?
- 15 MR. DEAN: Well, I guess the example that comes to mind  
16 first is we would then be purchasing the power at 230 kV,  
17 whereas our competitor in Corner Brook purchase it at 66,  
18 and I believe there are some other examples in ... just a  
19 second here. Okay. If we take other areas like going from  
20 Bottom Brook to Doyle's to Grand Bay Port aux Basques  
21 area there are transformers there at 66 kV. In the Buchans  
22 area, according to Mr. Budgell's schedule, there are 66 kV  
23 and 12.5 kV levels that power is purchased in the Buchans  
24 area.
- 25 (2:15)
- 26 MS. HENLEY ANDREWS: And if you take the Buchans  
27 area as an example, under Hydro's current proposal who  
28 would pay the losses from 230 kV to 66.
- 29 MR. DEAN: Their comments, they'd be spread throughout  
30 all the customers.
- 31 MS. HENLEY ANDREWS: And in your case in  
32 Stephenville who would pay the loss from 230 kV to 66?
- 33 MR. DEAN: Stephenville would pay 100 percent of them.
- 34 MS. HENLEY ANDREWS: So is that why you object?
- 35 MR. DEAN: That's the basis of our objection, yes.
- 36 MS. HENLEY ANDREWS: And what is it about the  
37 examples that you've used from other jurisdictions in terms  
38 of how they structure your rates, what is it about that that  
39 you consider makes it more fair?
- 40 MR. DEAN: If you purchase power in Quebec, for  
41 instance, at 230 kV, there is a significant discount on the  
42 demand rate. Manitoba has a similar discount.
- 43 MS. HENLEY ANDREWS: Mr. Backus, the chairman asked  
44 you some questions relating to the effect of the increase  
45 proposed for 2002 versus the effect of the increase  
46 anticipated for 2004 with respect to Abitibi's position ...  
47 Stephenville's position within the Abitibi group of
- 48 companies, and I wasn't sure if there was a little bit of  
49 confusion left so I want to sort of go back to that a little bit.  
50 Where is it that the Stephenville mill falls right now?
- 51 MR. BACKUS: Right now we're at the higher end of the  
52 mid cost mills.
- 53 MS. HENLEY ANDREWS: Okay.
- 54 MR. BACKUS: With the addition of the power increase  
55 alone it moves us out of that group of mid cost mills. It  
56 moves us much closer to this small group of very high cost  
57 mills that I said was about \$20 or \$30 a tonne more than  
58 where we are, so we're essentially one of the high cost  
59 mills, although we're not the highest cost at that point.
- 60 MS. HENLEY ANDREWS: And what is the ... from a  
61 practical perspective within Abitibi, is there any  
62 significance from moving from the middle cost group to the  
63 high cost group?
- 64 MR. BACKUS: Yeah. As I mentioned before, the  
65 philosophy of our company, as well as every paper  
66 company I've been associated with, is when the market is  
67 in a downturn the high cost mills take the bulk of the down  
68 time. Before Labour Day of this year none of the mills in  
69 the low or mid cost range had taken more than two weeks  
70 of down time whereas the two mills in the high cost range  
71 had taken six to 15 weeks of down time, significant  
72 difference.
- 73 MS. HENLEY ANDREWS: Now, which rate increase would  
74 move Stephenville from the mid range to the high cost?
- 75 MR. BACKUS: The power increase alone would move us  
76 out of that mid cost range.
- 77 MS. HENLEY ANDREWS: The one proposed ...
- 78 MR. BACKUS: If you put the power and the wood  
79 together we're actually up there as high as the highest of  
80 the high cost mills, from the first ...
- 81 MS. HENLEY ANDREWS: The first increase.
- 82 MR. BACKUS: The first increase. The second increase  
83 moves us beyond everybody in that group.
- 84 MS. HENLEY ANDREWS: Okay. Are there any other  
85 implications other than down time in terms of being in the  
86 high cost group versus the mid cost?
- 87 MR. BACKUS: Yeah, investment. When I mentioned our  
88 capital program in our company I mentioned the asset  
89 maintenance capital and, we use that on all our mills,  
90 obviously. Value added capital for high return projects, all  
91 mills have an equal shot at that, but when it comes to  
92 strategic capital, the large amount of money to transform a  
93 mill to something significantly more competitive, that  
94 doesn't go to the mills that are high cost mills.

1 MS. HENLEY ANDREWS: Okay. Those are all my  
2 questions. Thank you.

3 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
4 Henley Andrews. Thank you, Mr. Dean and Mr. Backus,  
5 very much. This concludes your testimony, and I'd like to  
6 reiterate Mr. Browne's comments, thank you, once again,  
7 for the (inaudible) of the mill. It certainly added another  
8 dimension to the evidence for me. Thank you.

9 MS. HENLEY ANDREWS: Mr. Chairman, Mr. Mifflin is  
10 prepared to testify now.

11 MR. NOSEWORTHY, CHAIRMAN: When you're ready,  
12 Ms. Henley Andrews. Good afternoon, Mr. Mifflin, good  
13 to see you again.

14 MR. MIFFLIN: Thank you.

15 MR. NOSEWORTHY, CHAIRMAN: I wonder if you could  
16 take the Bible in your right hand, please? Do you swear on  
17 this Bible that the evidence to be given by you shall be the  
18 truth, the whole truth and nothing but the truth, so help  
19 you God?

20 MR. MIFFLIN: I do.

21 MR. NOSEWORTHY, CHAIRMAN: Thank you, sir. Ms.  
22 Henley Andrews, could I ask you to begin, please?

23 MS. HENLEY ANDREWS: Yes, Mr. Chairman. Mr. Mifflin,  
24 you are familiar with the written evidence filed yesterday on  
25 your behalf?

26 MR. MIFFLIN: I am.

27 MS. HENLEY ANDREWS: And are you prepared to adopt  
28 that evidence?

29 MR. MIFFLIN: I am.

30 MS. HENLEY ANDREWS: Mr. Chairman, Mr. Mifflin is  
31 available for cross-examination.

32 MR. NOSEWORTHY, CHAIRMAN: Thank you, very  
33 much. Ms. Greene? No, Mr. Young.

34 MR. YOUNG: Thank you, Mr. Chair.

35 MR. NOSEWORTHY, CHAIRMAN: I'd ask you to begin  
36 your cross.

37 MR. YOUNG: Good afternoon, Mr. Mifflin. Mr. Mifflin, my  
38 questions should be directed fairly closely to the fairly  
39 narrow issue that's left, I think, and you've described it in  
40 your evidence. I'd like to start with the present contract.  
41 When I mean the present contract, not the one that was  
42 filed today, which is the new proposal, but the one that  
43 Newfoundland ... North Atlantic Refinery is operating  
44 under at this time. I take it you're familiar with that  
45 contract?

46 MR. MIFFLIN: I am.

47 MR. YOUNG: And with the liability provision in that  
48 contract, also you would be familiar with that?

49 MR. MIFFLIN: I am.

50 MR. YOUNG: Is it your understanding that that one, that  
51 clause I'm referring to is similar to that which Hydro  
52 proposed in May that was filed in this application?

53 MR. MIFFLIN: Correct.

54 MR. YOUNG: And I also presume that you will agree with  
55 me that the liability provision that was filed in the revised  
56 contract, well, exactly, there was one today and there was  
57 also one in December, the clause hasn't changed here. It  
58 constitutes a fairly large concession in relation to liability  
59 here by Hydro?

60 MR. MIFFLIN: It constitutes a change from the previous  
61 contracts, yes.

62 MR. YOUNG: Well, for example, Hydro is, for the first time,  
63 acknowledging and willing to pay some claims where  
64 Hydro is found to be negligent of a certain character within  
65 a certain limit?

66 MR. MIFFLIN: That's correct.

67 MR. YOUNG: Correct? So I think it's fair to say that the  
68 narrow issue we're here to discuss, is it \$1 million is the  
69 ceiling or \$10 million is the ceiling, which is what we  
70 proposed?

71 MR. MIFFLIN: That's right.

72 MR. YOUNG: The point of power outages caused by  
73 Hydro's negligence, which is really all we need to talk about  
74 here. I just want to get some sense of what happens at the  
75 refinery if there is, say, a five minute outage, one which is  
76 not announced, unplanned outage. Could you give us a  
77 brief description of that?

78 MR. MIFFLIN: Anything, any power disruption, it could  
79 be a dip or it could be an outage ... let me back up a second.  
80 What the refinery is is it's a dynamic process under which  
81 flammable materials are being pushed through tubes in  
82 furnaces, and those furnaces are operated, and the reactors  
83 at the refinery are operated at very high temperatures in  
84 very high pressures. A loss of power stops the flow of that  
85 product through there and it becomes dangerous, so as  
86 part of the safety systems the control room, depending on  
87 the nature of the thing, will wait, I think, up to a maximum of  
88 about three minutes, and sometimes they don't wait that  
89 long, depending on the circumstances. At that point they  
90 go into an emergency shutdown and the entire ... they  
91 close down all the process units. Part of that process  
92 pushes all of the product in the units, the gas, through to  
93 flare and the whole thing gets flared so you have no

1 flammable liquid left to cause us a problem, so inside of  
2 about three minutes they have ... that's the window of  
3 opportunity to not do anything or beyond somewhere in  
4 that time period they will go to an emergency shutdown.  
5 At that point, all of the process units shutdown, the  
6 products go to flare, and all of the units then have to be  
7 inspected to see what sort of damage, if any, has  
8 happened, and then you call back people on overtime and  
9 you go through a restart procedure. The restart procedure  
10 can take anywhere between five to seven days because  
11 you have to, because they're high pressure and high  
12 temperature you have to ratchet up the pressure and the  
13 temperature on each of the units until you get back to a  
14 stable state of operation. The last unit is usually the hydro  
15 cracker unit, which is the extremely high pressure and high  
16 temperature.

17 MR. YOUNG: So am I to understand that for an outage of  
18 less than three minutes they don't have to go through this  
19 process?

20 MR. MIFFLIN: It may happen.

21 MR. YOUNG: It may happen?

22 MR. MIFFLIN: It may happen.

23 MR. YOUNG: So it could be a one minute outage, for  
24 example?

25 MR. MIFFLIN: Depends on the people with their hands on  
26 the switch, the guys in the control room. If they determine  
27 that this is an event that necessitates a shutdown, they will  
28 shut it down if they deem it to be unsafe.

29 MR. YOUNG: Are you aware of any other industrial  
30 customer, or for that matter any other user of electricity in  
31 this province or elsewhere who has that kind of a level of  
32 sensitivity to a short duration power outage of perhaps  
33 less than a minute to less than three minutes?

34 MR. MIFFLIN: I'm not aware.

35 MR. YOUNG: Anyone that comes close? I mean, are you  
36 the only one in this case?

37 MR. MIFFLIN: I really couldn't say anything about it.

38 MR. YOUNG: I'm just wondering if you have any  
39 knowledge of the way refineries may find themselves  
40 dealing with this kind of a problem elsewhere in the North  
41 American continent, for example, in the grid in the middle of  
42 the North American continent where their power supplies  
43 are from various points and it's a more robust system  
44 because it's not essentially a large isolated system as we  
45 have on the island. Do you have an understanding of the  
46 difference which may occur or may arise in that  
47 circumstance?

48 MR. MIFFLIN: I don't have specific knowledge. Certainly,

49 power liability in the North American grid is less of a  
50 concern than it certainly was in 1995, '96 for us. Power  
51 liability is a very important issue for us.

52 MR. YOUNG: I'm just wondering, also you mentioned that  
53 the control room operators have up to three minutes and  
54 then they take steps. I take it there must be some  
55 processes which you've put into place to mitigate any loss  
56 in these circumstances. Do you have any backup power  
57 supply for that?

58 MR. MIFFLIN: There's sufficient backup power supply to  
59 power the control room to allow the refinery to be shut  
60 down on an emergency basis, and I believe there's  
61 sufficient activity to keep the boilers and steam system  
62 running, irrespective of the power outage, but those are the  
63 two main areas which would have some ability to continue.

64 MR. YOUNG: When you say ...

65 MR. MIFFLIN: From functionality.

66 MR. YOUNG: Yeah, sorry. When you say "activity" do  
67 you mean that there is, you know, sufficient energy still  
68 there or that ... I'm not talking about electrical energy, I'm  
69 talking about, you know, heat that must have been in place,  
70 or is it the fact that you have another generation source for  
71 electrical energy to fire those?

72 MR. MIFFLIN: No, we have no other generation.

73 MR. YOUNG: Okay. Have you looked at or considered  
74 having a backup system to supply your refinery for its  
75 electrical needs in an electrical outage?

76 MR. MIFFLIN: Our demand, I think, is somewhere in the  
77 range of ... now, you're really sticking me here.

78 MR. YOUNG: 30 megawatts?

79 MR. MIFFLIN: Yeah, 30 megawatts, and I know somewhere  
80 back in the early '90s we did look at, you know, putting in  
81 some sort of a co-generation unit, but, there's two issues.  
82 One, what we then have is essentially a redundant system,  
83 and we neither had the capital to do so and the payback on  
84 that was much too long. We had a greater need for capital  
85 to improve the refinery than build a co-generation.

86 MR. YOUNG: I guess the bottom line here is that you're  
87 asking Hydro to stand and Hydro's customers ultimately,  
88 I would suppose, to stand to the amount of \$10 million as  
89 opposed to what's being proposed in the revised filing of  
90 \$1 million, and that's the case even if it's just perhaps a one  
91 minute power outage?

92 (2:30)

93 MR. MIFFLIN: Well, I'm not quite asking that. What I'm  
94 basically saying that a commercial enterprise such as  
95 ourselves, we're responsible for our own negligence, and

1 there's no limit and we don't think Hydro should have a  
2 limit for their own negligence either. It's been suggested by  
3 counsel that the no limit option might be a little  
4 unpalatable, so for any one occurrence an alternate of 10  
5 million was suggested, but what my position really is that  
6 Hydro, if it was in a commercial situation as I am, or the  
7 other industrial customers, they would be responsible for  
8 their own negligence and can't contract out a ceiling to that  
9 negligence.

10 MR. YOUNG: That's an interesting point, because if we  
11 had a choice to supply you or not we might say, well that  
12 \$10 million limit is not on, it's too risky for us and we don't  
13 wish to, you know, take that risk, but, of course, we're a  
14 utility and you're charged as you ought to be, the same  
15 rates as everyone else, and I'm suggesting to you that one  
16 interpretation one could make to the proposal you're  
17 making is that you're asking for a different level of service  
18 than other customers.

19 MR. MIFFLIN: No.

20 MR. YOUNG: Well, just let me propose this hypothesis for  
21 a moment, that if you were to ask one of our rural  
22 customers what extra amounts they would be willing to pay  
23 to avoid one minute outages or to what extent a one minute  
24 outage causes them serious harm, I think they would look  
25 at you askance and say it's an inconvenience and it's a  
26 nuisance and we don't like outages, but I mean, that's that,  
27 isn't it?

28 MR. MIFFLIN: I can't speculate as to what other customers  
29 ... firstly, I don't know what the additional cost you're  
30 suggesting would be. Secondly, I can't anticipate what  
31 they would say, but, what we require, as an enterprise  
32 working in this province is we require reliable power. If the  
33 power is reliable then Hydro shouldn't ... and is competent  
34 in its reliability then through its own negligence ... or  
35 through good clean operation then it shouldn't be worried.  
36 If you cause something through your own negligence, like  
37 any other commercial operation, you should be responsible  
38 for that negligence, and that's really the issue, and the two  
39 things I'm after is reliable power and a (inaudible) to  
40 provide the power through an act of your own negligence  
41 you should be responsible for and pay us for the physical  
42 damage that happens to our plant.

43 MR. YOUNG: The willingness of Hydro to accept  
44 responsibility for their negligence, I think, has been  
45 demonstrated. I mean, we've said that ... and this is a  
46 change, we've acknowledged this. We've gone from a  
47 point that the contract didn't accept liability for negligence  
48 to one where it accepts it up to \$1 million, so I don't think  
49 the issue is that. I think the issue is a matter of price and  
50 risk and what the nature of the service is. I mean, the part  
51 of the deal we've made with the ratepayers is that, you

52 know, we have power available, you can take it at a certain  
53 rate. That assumes a whole lot of things about the system.  
54 Certain reliability standards we're able and willing to  
55 provide, some, you know, going beyond that may be extra  
56 costs and there may be extra costs we can pass on, but at  
57 this point, what we're offering to the customers of  
58 Newfoundland is a utility standard where it is now, but I'm  
59 suggesting from your point, this is the question I have for  
60 you, is don't you see that just asking us to take on all costs  
61 for which we might be liable for, and there's no contract,  
62 under negligence, is asking really for a different standard  
63 altogether?

64 MR. MIFFLIN: No. If I'm a householder in Davis ... or I  
65 don't know where you supply power, on the Northern  
66 Peninsula and you fail ... and I lose the motor in my fridge,  
67 you're going to pay 100 percent of that motor. In our case  
68 you're going to pay ten percent of the physical damage, so  
69 maybe the proper thing is to make it a proportionate  
70 representation in order to be fair so that you will pay the  
71 same proportion of damage to all ratepayers.

72 MR. YOUNG: Well, you don't pay a different rate, though.

73 MR. MIFFLIN: I'm mean, I'm just ... the fact is that if I'm a  
74 home owner, and you're talking about your rural home  
75 owner. I'm in a different class from a rural home owner. I've  
76 got an enterprise out there that have invested well over  
77 \$300 million. I've got 700 families that depend on this, and  
78 you're suggesting that ... you're comparing me to a  
79 householder in, say well, look, I'll pay 100 percent of this  
80 householder's damage, but I know it's going to be less than  
81 \$1000, but in my case, I'm in a very different circumstance  
82 and you're suggesting you pay one tenth of a possible \$10  
83 million occurrence. That's the range of difficulty I run into.  
84 And I think pointed out in my evidence that we did have  
85 one group of incidents where we did significant damage to  
86 catalysts and things like that, and that catalyst is \$7 million,  
87 and so that could be an occurrence, so you're going to be  
88 paying me one tenth or up to a million, one seventh, in that  
89 case, of that catalyst, and yet you're going to pay your  
90 rural home owner the \$200 for his fridge motor and that's  
91 inequitable.

92 MR. YOUNG: But if you look at the pool of ratepayers as  
93 a whole, if they were to look at you, I think you'd probably  
94 agree with me, they would see you as a very atypical  
95 customer of Hydro who's asking for coverage for a risk  
96 which were well out of the order of in the risks that we  
97 would incur if we were found liable for them, yet the rates  
98 are essentially the same and the standards of services as  
99 supposed to be about the same, so I'm suggesting to you  
100 that it's not really a one to one ratio for us to look at the  
101 motor of their fridge and your catalyst, I mean, it's a  
102 different order altogether, and that's why we are proposing  
103 the \$1 million levelling point to restrict risk to that point.

1 Can you understand that?

2 MR. MIFFLIN: I understand it perfectly, and I understand  
3 exactly what you're saying. You're trying to ... I am  
4 atypical. I am a single refinery sitting in this province. I  
5 have a fair bit invested, and you have acknowledged that  
6 you want to recognize liability when you're trying to cap  
7 my physical damage liability to one tenth of the potential  
8 damage that could happen on any one occurrence. I don't  
9 think there should be any ceiling on paying for damage as  
10 a result of Hydro's negligence, and the answer to your  
11 question is, firstly, there was ... you know, A, you have  
12 agreed that there should be recognition of liability for your  
13 own negligence, that's fine, and now you're trying to cap  
14 that liability. There should be no cap. If you're negligent  
15 ... if I'm negligent I have to pay for it. I can't go out to my  
16 customers and say, you know, I'm sorry, I'm going to cap it  
17 at \$150 or \$1 million or \$753.23, I can't do that. I'm  
18 responsible for my negligence.

19 MR. YOUNG: But if you had a delayed delivery of oil to  
20 one of your customers I don't see them coming to you with  
21 a \$10 million claim for ...

22 MR. MIFFLIN: Absolutely.

23 MR. YOUNG: ... a very, very short delay.

24 MR. MIFFLIN: Absolutely, and you don't have the same  
25 problem with one of your rural customers, but with this  
26 customer you do, and if I run ... if I was supplying  
27 Newfoundland Hydro's plant at Holyrood and I ran  
28 Holyrood out of fuel then I would have to be responsible  
29 for my negligence in not delivering, and I'm sure Hydro  
30 would chase me for it, and I would say to Hydro, I'm sorry,  
31 I've got a cap of \$1 million to the fact that you had to close  
32 your hydro plant down. It's ... I am an atypical customer  
33 and that's why the nature of my application and my  
34 evidence is that this \$1 million is inadequate, it's inefficient,  
35 it's insufficient and inequitable with respect to my  
36 operations.

37 MR. YOUNG: So with respect to your very unique  
38 circumstances?

39 MR. MIFFLIN: Absolutely.

40 MR. YOUNG: That's all my questions. Thank you, Mr.  
41 Mifflin.

42 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
43 Young. Thank you, Mr. Mifflin. We'll move now, Ms.  
44 Butler, to your cross-examination, please?

45 MS. BUTLER, Q.C.: Thank you, Mr. Chairman. I wonder if  
46 I might, before I determine whether in fact I have any  
47 questions for Mr. Mifflin, ask for your indulgence for a  
48 moment. The unusual filing of Mr. Mifflin's testimony at  
49 this stage after Hydro has filed its complete case leaves me

50 in a position of not really knowing, on the record, what  
51 Hydro's position is vis-a-vis this issue, and what  
52 Newfoundland Power would like Ms. Greene to state for the  
53 record, she's already communicated it to me verbally, is  
54 whether in fact Hydro does have insurance that covers  
55 these loses, and if not, then if such a loss were incurred, \$1  
56 million or \$10 million, whatever, would that be treated by  
57 Hydro or sought to be treated by Hydro as a regulated  
58 expense?

59 MR. NOSEWORTHY, CHAIRMAN: Ms. Greene?

60 MS. GREENE, Q.C.: Certainly, the nature of the question  
61 certainly is relevant for Ms. Butler. As already have been  
62 indicated, the current contractual arrangements provide for  
63 no liability by Hydro for outages for any reason, and in  
64 looking at this issue we have explored the issue of  
65 insurance and we have been advised that it would be  
66 extremely difficult, if not impossible, to get insurance at an  
67 effective price. I can't say that it's impossible to get, the  
68 issue becomes at what price, but we have been advised by  
69 our risk insurance manager that insurance of this type of  
70 coverage is not readily available to Hydro, and the other  
71 question obviously would be in our minds as to whether ...  
72 how it would be treated as a regulated expense and whether  
73 it would be passed on to other customers. And our first  
74 position would be, yes, that that is the position that we  
75 would take. That would have to be reviewed in the  
76 circumstances if there were an event, so the answer to the  
77 question is my advice or the advice Hydro has received is  
78 we would not be able to get insurance for this type of  
79 liability at a rate that would be cost effective, if at all, and  
80 the issue whether it's a regulated expense, I don't think has  
81 been an issue this Board has dealt with, but our position  
82 would be it should be treated as a regulated expense,  
83 depending on the circumstance of the claim.

84 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
85 Greene. Does that satisfy your inquiry?

86 MS. BUTLER, Q.C.: Thank you, Mr. Chairman, it does, and  
87 that being the case, I have no questions for Mr. Mifflin.  
88 Thank you.

89 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.  
90 Browne, please?

91 MR. BROWNE, Q.C.: Thank you, Mr. Chairman. Mr.  
92 Mifflin, North Atlantic Refining Limited of which you're  
93 vice-president, chief financial officer, how many employees  
94 do you have there?

95 MR. MIFFLIN: About 700.

96 MR. BROWNE, Q.C.: And is that full-time jobs?

97 MR. MIFFLIN: Yes.

98 MR. BROWNE, Q.C.: That's constant?



- 1 MR. MIFFLIN: Yes.
- 2 MR. BROWNE, Q.C.: On that issue of insurance, do you  
3 have insurance in place in the likelihood you can't produce  
4 oil?
- 5 MR. MIFFLIN: Yes, we do. We have several layers of  
6 insurance. We have product liability insurance and we  
7 have business ...
- 8 MR. BROWNE, Q.C.: I'm not sure the microphone is  
9 picking you up.
- 10 MR. MIFFLIN: Oh, sorry. We have, for example ... these  
11 chairs move around. We do have product liability  
12 insurance, we do have business interruption insurance, we  
13 do have insurance against property damage, you know,  
14 and we have several layers, so ... and I don't have the  
15 insurance program in front of me so I can't talk at it in detail,  
16 but the initial layer of insurance which would be the  
17 highest frequency of use would be the most expensive, but  
18 incremental layers of insurance to cover the very low  
19 probability, but high dollar amount risk items, that  
20 incremental insurance is usually, certainly for us, is less  
21 expensive, significantly less expensive.
- 22 MR. BROWNE, Q.C.: Less expensive than what?
- 23 MR. MIFFLIN: If, for example, I paid my insurance premium  
24 is \$1 million for \$100 million worth of property insurance  
25 and I wanted to get another \$1 million worth of property  
26 insurance, then that additional layer of \$1 million would not  
27 cost me \$100,000, it would cost me \$50,000. If I wanted to  
28 get the next million it would cost me 25 and the next million  
29 would cost me, you know, 15 and so on, so each additional  
30 layer for that high dollar amount but lower risk  
31 eventualities, each layer would cost you less per dollar of  
32 risk assumed than the first layer. I don't know if that  
33 answers your question.
- 34 MR. BROWNE, Q.C.: Well, the loses you're describing in  
35 your evidence, are these insurable losses, do you have  
36 insurance for those?
- 37 MR. MIFFLIN: We have insurance for losses, yes, for  
38 physical damage.
- 39 MR. BROWNE, Q.C.: But do you have insurance for  
40 interruption of supply? If you can't produce and you have  
41 a ship, a tanker out there ready to move to market your  
42 product to California somewhere and you can't give supply,  
43 for some reason or another, do you have insurance for that  
44 eventuality?
- 45 (3:00)
- 46 MR. MIFFLIN: Well, certainly. Let me address it two  
47 ways. We do have liability for non-performance, so we  
48 can't cap it at \$1 million, and we do have insurance in  
49 respect of certain non-deliveries, yes, not all circumstances.
- 50 MR. BROWNE, Q.C.: The premium you've paid for  
51 insurance for non-performance, do you have any idea of  
52 what you would be paying there?
- 53 MR. MIFFLIN: I don't.
- 54 MR. BROWNE, Q.C.: Can you ball park it?
- 55 MR. MIFFLIN: I can't even ball park it, not without the  
56 figures in front of me.
- 57 MR. BROWNE, Q.C.: Because wouldn't that be the similar  
58 insurance that Newfoundland Hydro would require if they  
59 can't provide?
- 60 MR. MIFFLIN: You're asking me about the insurance  
61 market, and that's beyond my field.
- 62 MR. BROWNE, Q.C.: Okay.
- 63 MR. MIFFLIN: I really can't answer the question properly.
- 64 MR. BROWNE, Q.C.: Okay, fair enough. These matters  
65 between yourself and Hydro and these allegations of  
66 negligence for past losses, are they the subject of an action  
67 currently before the Supreme Court of Newfoundland?
- 68 MR. MIFFLIN: There are two actions filed with the  
69 Supreme Court from four incidents in 1995, '96, the total of  
70 that one is about 19 million, and another one in 1997, the  
71 total of that is, I think, somewhere in the range of 2 million  
72 US, about 3 million Canadian. Those matters have not, to  
73 my knowledge, gone to trial.
- 74 MR. BROWNE, Q.C.: And who's taking the action on your  
75 behalf, are you taking it in your own right or is an insurance  
76 company involved?
- 77 MR. MIFFLIN: We're taking it in our own right.
- 78 MR. BROWNE, Q.C.: And Hydro is defending these  
79 actions?
- 80 MR. MIFFLIN: They have defended the actions, yes.
- 81 MR. BROWNE, Q.C.: And is Hydro defending it in their  
82 own right or through an insurer?
- 83 MR. MIFFLIN: Their own right, I believe.
- 84 MR. BROWNE, Q.C.: And what is the potential liability  
85 there, what are you claiming?
- 86 MR. MIFFLIN: On the first action comprising the first four  
87 incidents, I think it's something like 19 million ...
- 88 MR. BROWNE, Q.C.: How much?
- 89 MR. MIFFLIN: Nineteen million, Canadian.
- 90 MR. BROWNE, Q.C.: Nineteen.
- 91 MR. MIFFLIN: And the second one in 1997, I think, is

- 1 about 3 million, Canadian.
- 2 MR. BROWNE, Q.C.: And when are these actions to be  
3 concluded?
- 4 MR. MIFFLIN: Again, I wouldn't be able to comment on  
5 that one.
- 6 MR. BROWNE, Q.C.: Not in the test year, not in the 2002  
7 or 2003, you don't know?
- 8 MR. MIFFLIN: That's right.
- 9 MR. BROWNE, Q.C.: Okay. It's my understanding, based  
10 on the evidence we heard this morning, that you sell  
11 Bunker C fuel?
- 12 MR. MIFFLIN: We do.
- 13 MR. BROWNE, Q.C.: And you sell Bunker C fuel to the  
14 Abitibi companies?
- 15 MR. MIFFLIN: Yes.
- 16 MR. BROWNE, Q.C.: Okay. Can you tell us about the  
17 supply, generally, you have any knowledge about the  
18 supply in the market of Bunker C product?
- 19 MR. MIFFLIN: Other than Labrador, on the island there's  
20 the major customers for Bunker C are the hospitals,  
21 Newfoundland and Labrador Hydro and the three paper  
22 mills. Hydro has a bidding process or a tender process  
23 under which they go to the market with respect to their  
24 supply. We do supply certainly the Abitibi mill in Grand  
25 Falls, and I think the one in Stephenville and Corner Brook  
26 have the opportunity and the luxury of some great storage  
27 to, upon occasion, take advantage of the spot market.
- 28 MR. BROWNE, Q.C.: The contract you have with Hydro,  
29 how does that work?
- 30 MR. MIFFLIN: Well, we don't have the contract with  
31 Hydro for the supply of bunkers to Holyrood. I'm just  
32 aware that's the big users of Bunker C. We supply most of  
33 the hospitals. We don't supply Newfoundland Hydro.
- 34 MR. BROWNE, Q.C.: Oh, you don't supply Newfoundland  
35 Hydro?
- 36 MR. MIFFLIN: No.
- 37 MR. BROWNE, Q.C.: Have you the capability, the capacity  
38 of supplying Newfoundland Hydro?
- 39 MR. MIFFLIN: We wouldn't, from our refinery. The  
40 quality of fuel that they use at Holyrood, I think, is 2.2  
41 percent sulphur, which is the fairly good quality Bunker C.  
42 We generally make a higher sulphur content Bunker C,  
43 most of which we export.
- 44 MR. BROWNE, Q.C.: You also have a marketing division  
45 for consumers for home heating products, is that true?
- 46 MR. MIFFLIN: Yes.
- 47 MR. BROWNE, Q.C.: That market, is it all across the island  
48 or is it at specific locations?
- 49 MR. MIFFLIN: It's breadth is through the entire island.  
50 We do not go above, I think Port au Choix. We're not in  
51 Burgeo or Bay d' Espoir and we're not through the  
52 Springdale loop, that area up through Fleur de Lys.
- 53 MR. BROWNE, Q.C.: And is this for home heating fuel?
- 54 MR. MIFFLIN: That's all for home heating fuel, yes.
- 55 MR. BROWNE, Q.C.: Now, when you have increases in  
56 your product in the cost of oil or the cost of production do  
57 you normally pass that on to your consumers?
- 58 MR. MIFFLIN: Only where the market can bear it. If the  
59 price of product increases today and the market doesn't  
60 increase I absorb that increase.
- 61 MR. BROWNE, Q.C.: I guess you can absorb it up to a  
62 point?
- 63 MR. MIFFLIN: Yes.
- 64 MR. BROWNE, Q.C.: In terms of the payment options,  
65 what options, if any, do you have for your customers, your  
66 consumers?
- 67 MR. MIFFLIN: Well, there's a variety of options. The  
68 normal terms are 30 days. Notwithstanding that we do  
69 have equal payment plans for somebody who wants to  
70 budget their payments out, but other than that the normal  
71 terms are 30 days including most commercial ... both  
72 residential and commercial customers. We do have  
73 commercial customers that have significantly tighter credit  
74 terms, but that's a credit decision we would make.
- 75 MR. BROWNE, Q.C.: The equal payment plan, how does  
76 that work?
- 77 MR. MIFFLIN: Fundamentally we would take the estimated  
78 consumption by a consumer and just divide it by 12  
79 months and they would pay it over that 12 month period,  
80 times an average price.
- 81 MR. BROWNE, Q.C.: They pay it over the year?
- 82 MR. MIFFLIN: Yes.
- 83 MR. BROWNE, Q.C.: Be similar, I guess, to Newfoundland  
84 Power's equal payment plan for their electricity?
- 85 MR. MIFFLIN: I believe so, yes.
- 86 MR. BROWNE, Q.C.: Okay. Are you familiar with the Rate  
87 Stabilization Plan?
- 88 MR. MIFFLIN: I am aware of it, yes.
- 89 MR. BROWNE, Q.C.: From an industrial perspective, are

1 you aware of the consequences for your industry within  
2 the Rate Stabilization Plan if one member of your class of  
3 industrial customers exits the system that you as one of the  
4 remaining customers could be responsible for their portion  
5 of the plan, are you aware of that?

6 MR. MIFFLIN: That's correct, yes.

7 MR. BROWNE, Q.C.: You're aware of that liability?

8 MR. MIFFLIN: I am.

9 MR. BROWNE, Q.C.: Does that have any concern for you?

10 MR. MIFFLIN: Well, it does, it has significant concern. It  
11 really ... I get more concern when I hear Mr. Backus talking  
12 about becoming a high cost mill, and you know, my blood  
13 pressure went up a bit after that testimony, but I am aware  
14 of it. It's not a pleasant prospect to think that all the parties  
15 to the current plan may not be there to fund that deficiency.

16 MR. BROWNE, Q.C.: From the consumers' perspective,  
17 your own customers, where consumers of electricity have  
18 the benefit of a Rate Stabilization Plan which effectively  
19 defers cost into the future. How do you see that from a  
20 competitive perspective where you're into the home heating  
21 business, Newfoundland Power is into the home heating  
22 business and indeed Newfoundland Hydro is as well,  
23 where people are not paying for their electricity costs as  
24 they go, there's a deferral there in payment?

25 MR. MIFFLIN: I'll answer it two ways. It depends on what  
26 hat I'm wearing. If I'm wearing my marketing hat and there's  
27 an apparent subsidy of the electricity rates to keep them in  
28 a high oil price period, the electricity lower than it would  
29 otherwise be, I would suggest that even in those  
30 circumstances oil is cheaper, but having said that, the  
31 pendulum swings around again and oil is very cyclical, so  
32 the electricity customers will be paying for that higher  
33 priced oil in their electricity rates, even in the lower oil price  
34 cycle, and that just makes us much more competitive, so  
35 from a ... you know, so although in the short period there  
36 may be some element of subsidization that a strict oil  
37 customer wouldn't have and the strict oil customer would  
38 get all the shocks, it does come around eventually. If I  
39 switch over to my refining side, I'm one of those customers  
40 that's a very big consumer of electricity and I do enjoy the  
41 effect of the smoothing, particularly when you have a large  
42 expensive operation like ours.

43 MR. BROWNE, Q.C.: From the industrial perspective?

44 MR. MIFFLIN: From the industrial perspective. Wide  
45 swings in costs are not good for business. You really want  
46 to have a stable cost structure in order to be able to run  
47 your operation properly. Wide swings, you know, we get  
48 the full impact of the oil price when we're buying the  
49 product, but on the electricity side, again, the pendulum

50 will swing and that smoothing makes those costs a lot more  
51 even for our manufacturing operation over the long term.

52 MR. BROWNE, Q.C.: From the consumers' side, again,  
53 your customers side, do you see the Rate Stabilization Plan  
54 as a form of unfair competition, a subsidization?

55 MR. MIFFLIN: I hadn't looked at it that way. I hadn't  
56 looked at it that way and really hadn't given it any  
57 particular consideration. It may be suggested that in a low  
58 oil price time when the rate subsidization is trying to collect  
59 high oil price periods in a low oil price time that I have a  
60 competitive advantage, so ... but I hadn't given it any  
61 thought, no.

62 MR. BROWNE, Q.C.: You're the chief financial officer of a  
63 large company. Can you tell us a little about your budget  
64 process, your capital budgeting process? On an annual  
65 basis I would imagine you have a capital budget in place  
66 year over year, do you?

67 MR. MIFFLIN: Yes. Excluding capitals it's about \$35  
68 million a year.

69 MR. BROWNE, Q.C.: \$35 million a year?

70 MR. MIFFLIN: Yes.

71 MR. BROWNE, Q.C.: And how do you determine projects  
72 on a go ahead basis?

73 MR. MIFFLIN: The capital process is frankly very  
74 rigorous. Capital dollars are scarce, and there's a very ...  
75 competition for those capital dollars is also very  
76 aggressive. In a general sense, what we're looking for are  
77 we prioritize all of our projects so that the ones that meet  
78 our strategic goals get the higher priority. One of those  
79 strategic goals, of course, is profit, and the sort of floor for  
80 acceptance for any project would be an internal rate of  
81 return of 30 percent or more, which is about a three year  
82 payback. If you're at the 30 percent return you probably  
83 won't get your project approved because there's people,  
84 you know, ahead of you with a 40 percent return or a 50  
85 percent return.

86 MR. BROWNE, Q.C.: Can you tell us about the approval  
87 process? This Board here has the burden of approving  
88 Newfoundland Hydro's capital budget, and just from a  
89 private enterprise perspective can you tell the Board a little  
90 about the approval project (sic.) that you would go  
91 through?

92 MR. MIFFLIN: Each department will go through its capital  
93 requirements and they go through a ...

94 MR. BROWNE, Q.C.: Excuse me, Mr. Mifflin, can you  
95 speak up a little?

96 MR. MIFFLIN: Each department goes through a very  
97 vigorous competition for funds within their own

1 department, and most of the projects get filtered out or  
2 vetted at that point. Any projects that make it through that  
3 screening process get collected and presented to the ... to  
4 essentially the managers, and then there's a competition  
5 among the managers to make sure that the priorities  
6 suggested by another manager with respect to a project  
7 and the return is correct in the circumstances so that, for  
8 example, if you and I are competing for \$100,000 I want to  
9 make sure that I get as much of that 100,000 to get my  
10 projects off the ground before you do, so it's a very  
11 vigorous, competitive process to make sure that projects  
12 are justified, supported, the benefits are properly outlined  
13 and they go through very rigorous screening. At that  
14 point then it goes to our board and they go through a  
15 similar process where they make sure that they meet the  
16 priorities that we need as a company and that any projects  
17 are properly justified and supported with ... and they have  
18 to be justified in a whole bunch of things. You have to not  
19 only look at the financial return, but there are other  
20 benefits. For example, what safety objectives do you want,  
21 what environmental objectives are you trying to achieve,  
22 are you trying to achieve operational savings, and then  
23 similar to Mr. Abitibi, those projected savings on  
24 operations would be deducted from next year's capital  
25 budgets ... operational budgets.

26 MR. BROWNE, Q.C.: In terms of computers and your  
27 purchase, do you purchase or lease your computers?

28 MR. MIFFLIN: We lease them.

29 MR. BROWNE, Q.C.: And just give them up at the ... have  
30 you done an analysis of that which is better, to lease or  
31 purchase?

32 MR. MIFFLIN: We have. We've gone through a very  
33 rigorous process and we lease all of our computers, and  
34 essentially, we turn them over every three to four years.  
35 We have a contract with one of the computer, fairly large  
36 computer companies and we turn them over on a regular  
37 basis. They do all of our maintenance, that sort of thing.

38 MR. BROWNE, Q.C.: Because if we can go to  
39 Newfoundland Hydro's ...

40 MR. NOSEWORTHY, CHAIRMAN: Excuse me, Mr.  
41 Browne.

42 MR. BROWNE, Q.C.: ... capital budget project is over  
43 \$50,000 ...

44 MR. NOSEWORTHY, CHAIRMAN: Excuse me, Mr.  
45 Browne. The absence of any objection here, we gave leave  
46 to Mr. Mifflin here on a very specific piece of evidence. I  
47 wasn't aware that Mr. Mifflin was going to get into any of  
48 these areas or that line of questioning was going to be  
49 brought forward actually. I think we've been ... I've been  
50 fairly tolerant to date. We strayed, I think, from the

51 evidence as before us considerably. I would ask you to  
52 either bring it back on the evidence or to clue up your  
53 questions please in this area.

54 MR. BROWNE, Q.C.: Thank you, Mr. Chairman. I guess  
55 that's the lawyer coming out of me. If you see a witness in  
56 front of you you're going to get whatever you can out of  
57 him. Well, there's just one question that I would have for  
58 you which may be of some assistance in, just in that  
59 budgeting process. I'll ask you one last question. If you  
60 can go to **B-74** for a moment, please? It's just in these  
61 hearings there's always some discussion concerning  
62 replacement of vehicles and when they need to be replaced.  
63 Just as one last questions, can you tell us your practice?  
64 You must have a number of vehicles, a fleet there of some  
65 sort. What's your practice?

66 MR. MIFFLIN: With respect to the movement of product  
67 we hire a person who's good on that side, so all of the fleet,  
68 the large bulk delivery trucks, there's independent  
69 contractors who handle those. There's two other sets of  
70 fleet vehicles, one is the sales vehicles. We generally lease  
71 those for the sales people, I think three years, because they  
72 tend to ratchet up the miles fairly quickly, and on the  
73 refinery vehicles we evaluate it every ... we evaluate each  
74 vehicle yearly, but at the end of a lease period, which is  
75 usually four years, we'll then evaluate whether we buy out  
76 the lease and keep the vehicle until it's usefulness is  
77 marginal or we'll return the vehicle back to the rental  
78 company and lease a new one.

79 MR. BROWNE, Q.C.: But you operate on a lease basis for  
80 vehicles, as well?

81 MR. MIFFLIN: We do.

82 MR. BROWNE, Q.C.: Okay. Thank you, Mr. Mifflin.  
83 Thank you, Mr. Chairman.

84 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
85 Browne. Mr. Kennedy?

86 MR. KENNEDY: Thank you, Chair. Mr. Mifflin, you've  
87 raised this one narrow issue in your pre-filed evidence  
88 regarding the amount of the cap that Hydro is proposing  
89 under its contract with the refinery, but I note under the  
90 provision, it's Article 9 of that contract, which I think has  
91 been filed, and it's 9.04 is the relevant provision, and 9.04(2)  
92 is the offensive clause, I guess, the one with the \$1 million  
93 cap for a single occurrence, but I just wanted to ask you  
94 some questions about 9.04(1) first. That initial paragraph  
95 under 9.04 states that Hydro shall be liable for only direct  
96 loss or damage to the physical property of the customer,  
97 and then it says the customers agrees that for the purpose  
98 of this clause that direct loss or damage to the physical  
99 property of customer shall not be construed to include  
100 damages for inconvenience, mental anguish, loss of profits,

1 loss of earnings or any other indirect or consequential  
2 damages or losses. Just before I ask the question, in your  
3 pre-filed testimony, soon as my computer comes alive here,  
4 you've provided a listing of the quantification of the two  
5 damage claims that you speak of specifically, and if I can  
6 just find the charts on ... one of them is on the bottom of  
7 page 4. Stretching over to page 5, that's the roughly \$2  
8 million claim, and I notice in that compilation there's, for  
9 instance, loss of profit, \$130,000 US, and production losses  
10 of 1.29 million, and in the other claim which I believe is  
11 above that, yes, just at the bottom of page 3 beginning of  
12 page 4, Mr. O'Rielly, you have loss of profit, 68,500 and  
13 then there's a production loss, including yield loss and  
14 lower feed rates of 11,000,124. Now, I'm not going to ask  
15 you for your legal opinion, but it's, I'd suggest, possible  
16 that some of these claims that you're currently listing here  
17 in this agreement would, regardless about the \$10 million or  
18 \$1 million cap, be potentially excluded from being claimable  
19 against Hydro under the proposed language under 9.04(1)?

20 MR. MIFFLIN: That's possible, yes.

21 MR. KENNEDY: Okay, and I guess can you provide us  
22 with some information about what, if any, participation  
23 Newfoundland Refinery had in negotiating or working out  
24 the language of this provision and in turn the entire  
25 contract that's bring proposed?

26 MR. MIFFLIN: You mean the current working of Clause 9?

27 MR. KENNEDY: Yeah. Well, I guess we could start from  
28 the general and move down to that specific, and I'm not  
29 looking for actually the specific, I'm looking more for the  
30 general about whether Newfoundland Refinery through its  
31 representatives entered into some process of negotiation or  
32 discussions with Newfoundland Hydro concerning the  
33 terms of this contract?

34 MR. MIFFLIN: Yes.

35 MR. KENNEDY: Okay, and so would Newfoundland  
36 Refinery through its representatives have negotiated the  
37 language of some of these provisions that are included in  
38 the contract?

39 MR. MIFFLIN: Yes, they would have.

40 MR. KENNEDY: Okay.

41 MR. MIFFLIN: As part of the negotiation process, yes.

42 MR. KENNEDY: Okay, and for instance I notice under  
43 Article 12 of the contract there's what you would refer to as  
44 the cross indemnity provision. The customer, being  
45 Newfoundland Refinery, indemnifies and holds Hydro  
46 harmless from any claims that it may sustain as a result of  
47 something you do wrong, and vice versa, Hydro  
48 indemnifies you against any claims you may sustain by  
49 third party as a result of something Hydro does wrong?

50 MR. MIFFLIN: Okay. I don't have it in front of me.

51 MR. KENNEDY: Okay. No, fair enough, but the language  
52 that I spoke of in 9.04, for instance, the excluding from the  
53 definition of direct loss or damage, damages for  
54 inconvenience or mental anguish, would this have been  
55 terminology language that was subject to discussions or  
56 negotiations that took place between Hydro and ...

57 MR. MIFFLIN: Our legal counsel, yes, it would have been.

58 MR. KENNEDY: Okay, so I guess it sort of begs the  
59 question then if this contract is as a result of a process of  
60 negotiation between Newfoundland Refinery and  
61 Newfoundland and Labrador Hydro and how is it that the  
62 Board knows where to step in and make a decision about a  
63 specific provision in that contract?

64 MR. MIFFLIN: The Board becomes aware of where to step  
65 in as a result of the process to get me at this table today.  
66 The negotiation process finished when Hydro said that's as  
67 far as we're going to go with respect to that clause, and  
68 we're not finished negotiating because we're saying you've  
69 got a ceiling in there and there should be no ceiling, should  
70 be no ceiling on Hydro's negligence, and Hydro's ... you  
71 know, and I want to continue to talk about that no ceiling,  
72 \$1 million ceiling, and Hydro is saying, well, I don't want to  
73 talk about it any more, so at that point ...

74 MR. KENNEDY: Okay.

75 MR. MIFFLIN: ... the Board understands that there is an  
76 impasse and that specifically and particularly my  
77 circumstance, that's a very important issue.

78 MR. KENNEDY: So I can appreciate that the clause, as it's  
79 being proposed under 9.04(2) is offensive to Newfoundland  
80 Refinery. I guess the question I have though is how is it ...  
81 how does the Board not know whether that was being put  
82 in by Hydro as the quid pro quo for a concession that they  
83 made on another provision of the contract? You know, if  
84 the contract is treated on a global perspective, some sort of  
85 global negotiation or global settlement of all the issues  
86 within the contract, isn't it difficult then to isolate a  
87 particular issue and then ask the Board to wade in on that  
88 particular issue without being conscious or having  
89 knowledge of the overall negotiations that took place  
90 between the parties?

91 MR. MIFFLIN: I'm not sure how to answer your questions.  
92 I mean, it's speculative. The ...

93 MS. HENLEY ANDREWS: I don't think ... Mr. Chairman,  
94 I've been going to interrupt, in any event, but I mean Mr.  
95 Kennedy is asking questions with respect to potential legal  
96 consequences which is outside the area of expertise of Mr.  
97 Mifflin. If he wants to ask Mr. Mifflin what he knows or to  
98 what extent he participated in the negotiations, then Mr.

1 Mifflin can answer with respect to what he knows, but you  
2 know, the question really is quite speculative, and I  
3 presume that at the end of the day the parties will present  
4 their positions to the Board on how the Board should  
5 consider that issue.

6 MR. KENNEDY: I respect the statement of counsel for the  
7 industrial customers. Maybe I can ask the question,  
8 rephrase the question slightly and get the desired effect, if  
9 you will. Do you have any knowledge, Mr. Mifflin, of  
10 whether this issue of the cap on liability was a new issue  
11 that was raised at the end of the negotiations that took  
12 place between Newfoundland Refinery and Newfoundland  
13 and Labrador Hydro, or was it an issue that was in play  
14 during the entire set of the negotiations over this contract?

15 MR. MIFFLIN: That question is more properly directed at  
16 our legal counsel, Janet Andrews, but it was certainly  
17 during Hydro's cross-examination they did point out that it  
18 was not on the table at the beginning of the negotiations  
19 and it did get entered into the contract laterally. Certainly  
20 from the refinery's point of view, one of our objectives from  
21 the beginning was the insertion of and the recognition that  
22 reliability is a very key component of our relationship with  
23 Hydro, A, and B, that we, I guess, asserted from our initial  
24 discussions going into the contract negotiations that this  
25 whole matter of Hydro's liability with respect to their own  
26 negligence was high on our list of, you know, objectives  
27 that we needed to achieve. The point at which the  
28 negotiators actually tabled and strategized about tactically  
29 when to put things in or out and Hydro used to tactically  
30 move things in and out of the negotiation process, I was  
31 not part of that and I can't comment on it, but I will say that  
32 the issue of liability and that cap on liability is important  
33 and it causes us considerable concern. It puts more risk on  
34 us than we need with respect to that issue, and it was  
35 something that we had felt very strongly about before we  
36 went into the negotiations. I don't know if that helps or  
37 answers your question.

38 MR. KENNEDY: That helps. Thank you, Mr. Mifflin.  
39 That's all the questions that I have, Chair. Thank you.

40 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
41 Kennedy. Ms. Henley Andrews, redirect, please?

42 (3:15)

43 MS. HENLEY ANDREWS: I just have a couple of  
44 questions. Mr. Mifflin, in terms of North Atlantic's position  
45 on a cap on Hydro's liability for negligence, if a power  
46 outage occurs of longer than whatever the minimum  
47 amount of time is, occurs in spite of Hydro's best proper  
48 treatment of its system, let's assume a tornado goes  
49 through, you're not asking Hydro to bear your losses in  
50 that circumstance, correct?

51 MR. MIFFLIN: That's correct.

52 MS. HENLEY ANDREWS: You're not asking Hydro to bear  
53 your loses in that circumstance, correct?

54 MR. MIFFLIN: That's correct.

55 MS. HENLEY ANDREWS: So you're only asking Hydro to  
56 cover those headings of damage if Hydro is negligent?

57 MR. MIFFLIN: Correct.

58 MS. HENLEY ANDREWS: And you heard Ms. Greene  
59 suggest in answer to a question from counsel for  
60 Newfoundland Power that if Hydro had to pay a damage  
61 award resulting from its own negligence out of its own  
62 pocket, then it would be seeking to recover that amount  
63 from its ratepayers. As a ratepayer of Newfoundland and  
64 Labrador Hydro's how would North Atlantic feel about an  
65 amount included in its rates resulting from Hydro's  
66 negligence?

67 MR. MIFFLIN: You're asking that if Hydro were negligent  
68 and paid us that we would then fund out own negligent  
69 claim through the rate in the future?

70 MS. HENLEY ANDREWS: That's right.

71 MR. MIFFLIN: Yeah, and the answer is that that's  
72 improper. Hydro should be taking that out against their  
73 own bottom line and it's not a matter of something that  
74 should be passed on to any ratepayer.

75 MS. HENLEY ANDREWS: Okay. At ...

76 MR. MIFFLIN: That's my view, sorry.

77 MS. HENLEY ANDREWS: One other question, and, Mr.  
78 Chairman, it has to do with Mr. Browne's questions on the  
79 RSP, and I think it's important for clarification since the  
80 questions were asked and answered. It's only one  
81 question, and that is, do you agree ... wearing your  
82 industrial customer hat, do you agree with the RSP as it  
83 now stands?

84 MR. MIFFLIN: I can't speak to the real detailed specifics of  
85 the plan. It's very ... it's an unusual, complicated plan.  
86 There's three elements to it, as I understand. There's load,  
87 water and oil, and they don't mix, and the issue of the load,  
88 I'm not sure why ... I mean, that's a keep hold provision for  
89 Hydro in all circumstances, and I don't see how that crept  
90 into the ... this is, again ... I don't see how that crept into the  
91 plan in the first place and it should be expunged. The  
92 matter of water and oil are now so combined that you really  
93 can't determine the impact of one as against the other, so if  
94 you have a high oil price offset by high water they really ...  
95 you really can't tell the impact of the plan of the water  
96 versus the oil. The second thing is that water seems to me  
97 to be a longer term event that should probably be amortized  
98 over a longer period of time and oil is much more faster,

1 more cyclical and it should be, you know, down to maybe  
2 two years, but really, the elements of the plan should now  
3 be ... you know, am I happy with the plan? The answer is  
4 no. The concept is fine, but the way it's constructed is not  
5 appropriate in my view. I don't know if that answers your  
6 question.

7 MS. HENLEY ANDREWS: That answers my question.  
8 Those are my questions. Thank you, Mr. Chairman.

9 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
10 Henley Andrews. We'll move now to Board questions.  
11 Commissioner Powell?

12 COMMISSIONER POWELL: Thank you, Chair. I only  
13 have a couple of points on the insurance. Mr. Mifflin,  
14 you're a chief financial officer of a fairly large corporation.  
15 Would you think it's prudent that a company such as  
16 yourself or Hydro that it was going to expose itself to an  
17 unlimited liability should have some sort of an insurance  
18 provision to cover it?

19 MR. MIFFLIN: If you have a risk in terms of your  
20 operations then you have to figure out, as your company,  
21 how you want to deal with that risk and what the frequency  
22 and the magnitude of the risk is. In our case, we insure  
23 against most of the risks that we have, so we do have  
24 business interruption, we do have property damage, we do  
25 have liability, we have theft, we have, you know, product  
26 loss insurance, we have product failure, you know,  
27 negligence insurance, so even though we have procedures  
28 in place to manage and to mitigate the possibility that an  
29 event can happen through controls and procedures and  
30 policies and other things, there is still an element of risk  
31 and we feel it prudent to ensure against that risk. Now,  
32 other enterprises may deal with that risk in a different way  
33 by self-insuring or determining another way to deal with ...  
34 you know, adding even more procedures, but we have  
35 done both.

36 COMMISSIONER POWELL: But it would be prudent?

37 MR. MIFFLIN: Absolutely.

38 COMMISSIONER POWELL: To have some form of  
39 insurance, whether it's internal or external that's a costing  
40 exercise that you would go through using experts to give  
41 you the parameters in which you should measure those  
42 risks?

43 MR. MIFFLIN: Correct.

44 COMMISSIONER POWELL: Okay. You, as you said, that  
45 Come By Chance is a unique customer of Hydro in the  
46 sense that there is only one refinery, and you have  
47 probably some unique demands on Hydro because of the  
48 way you operate, so if Hydro were to let the revision in a  
49 contract to have a higher limit or an unlimited liability for

50 damages they would have to go and either to ... prudence  
51 would dictate they would either put a mechanism of self-  
52 insuring within their system or purchasing the insurance.  
53 Would that not, from a regulatory point of view, be a  
54 specifically assigned cost to your operation because it  
55 would be put in specifically for you because of your  
56 uniqueness?

57 MR. MIFFLIN: I don't think so. What the issue ... there's  
58 two issues. One is are they accepting responsibility for  
59 paying damages in respect of their own negligence, and the  
60 answer is yes. Most of the customers ... and what they've  
61 done is they've covered, by placing in the \$1 million cap,  
62 they've essentially taken in 90 percent or 99 percent of the  
63 customers and they're paying them 100 percent of loss in  
64 respect of a potential claim. What they've done to us is  
65 specifically excluded us and said we understand your  
66 operations are unique, we understand that you ... if we were  
67 a normal commercial enterprise we could not put in a cap.  
68 For example, if they're an oil refinery we can't impose a cap  
69 on our customers. What they've said is that instead of  
70 treating us like other ratepayers they're excluding us, and  
71 we're saying even though the potential for a single  
72 occurrence event is greater than \$1 million we're going to  
73 limit you as against your losses or your losses as a result  
74 of our own negligence, and so it's discriminatory in its  
75 application.

76 COMMISSIONER POWELL: But if they said we're going  
77 to erase the discrimination if they were to allow unlimited ...  
78 and they acquired a mechanism to ensure that specifically  
79 for North Atlantic, my question is from a regulation point  
80 of view that should be a specifically assigned cost to North  
81 Atlantic because of the cost incurred specifically for your  
82 potential liability?

83 MR. MIFFLIN: I don't agree with that. I think the treatment  
84 of particular damages for me, my damages may well be less  
85 than \$1 million, and in fact I don't think with respect to  
86 Hydro's operation we've had an incident since 1987 or '88  
87 ... sorry, wrong year. '97 or '98, so we've had a long period  
88 now of very clean reliable operations from Hydro.

89 COMMISSIONER POWELL: So therefore the insurance  
90 costs based on that should be relatively low?

91 MR. MIFFLIN: Absolutely, yes.

92 COMMISSIONER POWELL: One other question. You  
93 personally have a contract with Hydro?

94 MR. MIFFLIN: Yes.

95 COMMISSIONER POWELL: I noticed in the draft contract  
96 it has an arbitration clause for disagreements and disputes  
97 within the contract. Is there anything in the present  
98 contract under the arbitration section that would allow for  
99 some sort of an arbitration process to come into play where

1 there's a condition, difference between the old contract and  
2 new contract to resolve this issue rather than us?

3 MR. MIFFLIN: No. There's no bridging, there's no  
4 bridging provision.

5 COMMISSIONER POWELL: Okay. Just a thought. That's  
6 all my questions, Chair.

7 MR. NOSEWORTHY, CHAIRMAN: Thank you,  
8 Commissioner Powell. Commissioner Sanders?

9 COMMISSIONER SAUNDERS: Just one, I think, Mr.  
10 Chair. Mr. Mifflin, good afternoon, and it may be  
11 something that Mr. Powell mentioned, because I didn't  
12 have any questions before he asked his last one, but Hydro  
13 has proposed a contract to your company which, amongst  
14 other things, includes a price for the energy that they have  
15 said they will supply you. One of the other provisions is  
16 that they propose as well that \$1 million cap that's dealt  
17 with in the insurance ... or liability provision. Have you  
18 offered or has Hydro proposed a higher rate for what it is  
19 you want to achieve in respect of the liability?

20 MR. MIFFLIN: No.

21 COMMISSIONER SAUNDERS: There hasn't been any  
22 discussion in respect of?

23 MR. MIFFLIN: No.

24 COMMISSIONER SAUNDERS: You're not prepared, I  
25 gather then to pay a higher rate for what you want in terms  
26 of their liability coverage?

27 MR. MIFFLIN: I don't think that it is a specifically  
28 assigned charge, no.

29 COMMISSIONER SAUNDERS: Okay, I see. Okay, Chair.

30 MR. NOSEWORTHY, CHAIRMAN: Thank you,  
31 Commissioner Saunders. Commissioner Whalen?

32 COMMISSIONER WHALEN: Yes, I, like Commissioner  
33 Saunders, thought I didn't have any questions but now I  
34 do. I find this is a very difficult issue, I think, for me as a  
35 commissioner, I think, to deal with now, and I echo Ms.  
36 Butler's comments that it's so late in the process that I think  
37 had this come up earlier I think I would have had a lot more  
38 questions throughout the entire process about this and  
39 perhaps would have asked some questions of other  
40 witnesses, but having said that, I'm intrigued by Mr.  
41 Young's observation at the beginning of his cross-  
42 examination that you're a unique customer and Hydro is the  
43 only supplier of electricity, and under legislation they have  
44 no choice but to supply you and you have nowhere else to  
45 go to get your electricity, so here we are. I guess I'm ... the  
46 whole issue of the liability and the cap, I'm not sure that I  
47 appreciate what the concern is. I mean, I appreciate the  
48 concern that, you know, the cap in terms of \$1 million

49 versus ... and you've got a \$19 million ... one claim alone  
50 that's \$19 million, but in terms of what portion of the  
51 responsibility for the liability, I guess, rests in North  
52 Atlantic Refining in the sense of I heard a three minute  
53 window is what we're dealing with, is three minutes where  
54 it turns from a zero dollar cost to potentially a 19 or 20  
55 million dollar liability. Is that really what I heard, that that's  
56 what we're dealing with, that's your window?

57 MR. MIFFLIN: That's our window. If we have a power  
58 loss at that point, at that point the refinery will go into an  
59 emergency shutdown. I mean, this is an unusual situation  
60 as a refiner, as an industry coming to this province. This is  
61 not something that another refinery in anywhere else in  
62 North America has to ... it doesn't even come on the table.  
63 It's not an issue that if I was a refinery going into New  
64 Jersey, going into Sarnia, I wouldn't even think of it, and in  
65 fact when our current shareholders came here it's not  
66 something that they would ... it's something that didn't  
67 even enter their minds because it's not an issue anywhere  
68 else in North America. We've come here, we've invested  
69 our money and the Crown corporation that's responsible  
70 for providing that power was found not to be reliable.  
71 Now, we went into a very ... we've met numerous times, a  
72 very good relationship with Hydro with respect to their  
73 reliability issue and in the last few years with reliabilities  
74 has been absolutely marvellous, but the consequence of  
75 that window of opportunity, once that ... it's very ... it's a  
76 dangerous situation. They have three minutes in order to  
77 make that decision. At that point they have to go to  
78 emergency shutdown. I can't recall other refineries in North  
79 America going through that process and being subjected  
80 to those operating circumstances and those losses  
81 anywhere else in North America.

82 COMMISSIONER WHALEN: Why isn't it an issue with  
83 other refineries, is it because of the utility or is it because  
84 of the processes that those refineries use or ...

85 MR. MIFFLIN: Our refinery is probably one of the ... it was  
86 built in 1976 using, you know, using modern codes that are  
87 used today. There's been no refinery, I don't think, in  
88 North America built since our refinery, so it's not an ... you  
89 know, we're not an old, crepitant refinery, but it does ... and  
90 the circumstances under which we operate our refinery and  
91 the circumstances of a loss of power in our refinery is no  
92 different from any other refinery. It comes down to a matter  
93 of reliability, and certainly I'd have to let Hydro offer as to  
94 what those circumstances are, but one of the issues may be  
95 the fact that the North American grid is a little more  
96 interconnected, so if one area declines another grid section  
97 can make it up, but that's beyond my expertise. My  
98 concern here is that there is a possibility that I would have  
99 damages greater than one million, and if it results from a  
100 tornado or a hurricane or something that's beyond Hydro's



1 control, that's not what I'm asking for, but if Hydro are  
2 negligent should I suffer damage or be limited in my  
3 damage as against any other ratepayer, and the answer is  
4 no.

5 COMMISSIONER WHALEN: Yeah, I think it isn't ... I don't  
6 have ... I don't think I have as much an issue with that  
7 aspect of it. It's more the ... it's probably the magnitude that  
8 comes out at you that I have a question about, and I guess  
9 my only other question deals with because the impact on  
10 your operations is so severe and so time sensitive, have  
11 you explored, recently, the idea of putting in your own  
12 generation source, has that come up?

13 MR. MIFFLIN: The last time we looked at co-generation  
14 was the period, I'm not sure what time period, when Voisey  
15 Bay were ... when Hydro put out tenders to look for  
16 additional ...

17 COMMISSIONER WHALEN: That's a couple of years ago.

18 MR. MIFFLIN: And we looked at it very ... in fact, we  
19 invested, you know, a million or so dollars in a proposal to  
20 do a co-generation using a gasification process, but again,  
21 the requirement for that load or that generation is not there,  
22 and so the proposal is dormant. In the meantime, we've  
23 used capital to improve the refinery itself, and so we  
24 haven't explored it since that time, and sorry, and then to  
25 add to that I will say that reliability in the last several years,  
26 we've not had any issues with ... in fact, we were meeting  
27 with Hydro, I think, every single month for a period of time,  
28 and now we've ... because of the reliability issues and to  
29 make sure that we were talking to each other. We're now  
30 down to meeting every semiannually, so Hydro has been  
31 very responsive and that.

32 COMMISSIONER WHALEN: And there's nothing that  
33 North Atlantic Refining can do in terms of its processes or  
34 its system or plant itself to widen that three minute window  
35 of going into emergency shutdown to five or ten so that  
36 you actually have more time to assess what's actually  
37 happening?

38 MR. MIFFLIN: No. It would be several hundreds of  
39 millions of dollars to do that.

40 COMMISSIONER WHALEN: Okay. That's all the  
41 questions I have. Thank you, Mr. Mifflin.

42 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
43 Whalen. I had a couple of questions but I think both of  
44 them have been answered. Mr. Mifflin, I think you said  
45 earlier, as I recall, you did say there were no incidents since  
46 '97 of this nature, is that correct?

47 MR. MIFFLIN: I would say 199- ... either seven or 1998,  
48 and since that time we've had no ... I believe that to be the  
49 correct time period.

50 MR. NOSEWORTHY, CHAIRMAN: The other question I  
51 had related to precedents elsewhere and I think you've  
52 answered that just a little while ago. This is a question that  
53 I didn't have but Mr. Saunders was good enough to pass  
54 it on to me so I'll ask it in any event. Is there a rate that, I  
55 guess that North Atlantic Refinery is willing to pay and  
56 Hydro is willing to accept that provides this coverage and  
57 gives Hydro a satisfactory rate? I think I know the answer  
58 from what you've said, you're at an impasse and you're not,  
59 there doesn't seem to be any middle ground, but I'll let you  
60 respond to that.

61 MR. MIFFLIN: I don't think my, I don't think my response  
62 will change. I just want to go back and say that I don't  
63 think there should be any ... fundamentally there should be  
64 no cap, there's no cap on my, the liability in respect to my  
65 own negligence, and there shouldn't be any here, and if the  
66 system is reliable and if there's proper processes and  
67 procedures in place, then that mitigates a good, significant  
68 portion of the risk. It may be that some other portion of the  
69 risk could be insured against. One of the other measures  
70 that can be put in to mitigate the risk is to put a ceiling on  
71 it, and the ceiling in our view should be a minimum of \$10  
72 million, and not \$1 million, and that makes it easier to  
73 manage that risk in any event. The price that we're paying  
74 is the price that is similar to all ratepayers, and I would  
75 argue that if a ratepayer, the issue of negligence has been  
76 accepted by Hydro, what we're talking about there is  
77 should one ratepayer be excluded from getting, or  
78 discriminated against in respect of recovering their  
79 damages, so if 99.9 percent or 99.5 percent of their  
80 ratepayers are getting 100 percent of their damages, and  
81 you come to a significant enterprise like ourselves where  
82 we can't, where our business risk is significantly greater  
83 than that of Hydro, then Hydro is asking us to assume a  
84 greater portion of the business risk that Hydro should have  
85 in respect of their own negligence. Now I have enough  
86 business risk now in the oil industry without assuming that  
87 additional business risk by a regulated enterprise which  
88 can apply for and get approved for its rates. I can't do that.

89 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
90 Mifflin. It's 20 to 4:00 now. We normally break well before  
91 this but I was hoping to conclude. I suspect there are some  
92 questions on matters arising, so I think we'll ...

93 MR. YOUNG: Just a couple, that's all as regards to ...

94 MR. NOSEWORTHY, CHAIRMAN: Okay, well we'll try to  
95 push it through if there's only a couple.

96 MS. GREENE, Q.C.: That's only from Hydro's perspective  
97 now. I don't know about the other counsel.

98 MR. NOSEWORTHY, CHAIRMAN: No, okay, we'll try it  
99 and give Mr. Mifflin the benefit of leaving if he so chooses.  
100 Mr. Young.

1 MR. YOUNG: Thank you, Mr. Chair. Mr. Mifflin, just a  
2 couple of questions. The first one relates to a question  
3 that you were asked by the panel, and I believe it referred  
4 to the experiences of refineries in other provinces or other  
5 places in North America, and then there was a follow-up  
6 question by the panel which seemed to refer to the  
7 contractual circumstances that refineries face in other  
8 jurisdictions, and I'm not sure if you ever intended to  
9 answer the second one because of the way the question  
10 was posed.

11 MR. MIFFLIN: Correct, I cannot comment on the  
12 contractual circumstances of refineries in other  
13 jurisdictions, you're correct.

14 MR. YOUNG: Okay, and may have misheard the question  
15 because I was confused on that one. My only other  
16 question relates to your use of the word discrimination  
17 because Hydro is charging the same rates and is applying  
18 the same clauses with the same cap. It strikes me that  
19 you're using the word discrimination from the point of view  
20 of it having a different magnitude when you pass it on to  
21 you as a customer from a risk point of view, not terribly  
22 different, I would suggest to you than one customer saying  
23 well it's all very well for you to charge me that many mills,  
24 but with my load that will cost me more money, and it's the  
25 same kind of thing, is it not?

26 MR. MIFFLIN: It's completely different. I'm paying ...

27 MR. YOUNG: You really think that this is a discriminatory  
28 approach that we're taking?

29 MR. MIFFLIN: I'm not arguing about the fact that I have  
30 more consumption than you do in your household and I'm  
31 paying for that and that's built into the contract. I'm saying  
32 as a result of your negligence, if I suffer a loss, not only do  
33 I bear all of my own risks but I'm also bearing the portion of  
34 your negligence, the damage to my property as a result of  
35 your negligence that you are going to not cover because of  
36 the ceiling and I think that's discriminatory. Now maybe I'm  
37 using a wrong word. I could probably find a stronger word  
38 but I'm ...

39 MR. YOUNG: Yeah, I mean it occurs to me that we provide  
40 the power and the energy at the rate and it has different  
41 effects on different people, but I mean to call that  
42 discriminatory in effect, well it stretches that word, at least,  
43 beyond what we understand the word to mean in this  
44 setting, a regulatory setting. That's really all the questions  
45 I had, thank you, Mr. Mifflin.

46 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
47 Young. Ms. Butler please?

48 MS. BUTLER, Q.C.: Mr. Chairman, I have no questions.

49 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.

50 Browne?

51 MR. BROWNE, Q.C.: Yeah, that discrimination that you're  
52 referring to has caught my attention. Are you claiming  
53 you're being discriminated against because I think you  
54 used the example in reference to one of your answers there,  
55 that if there's a power surge and someone gets their  
56 refrigerator knocked out, they make a claim and Hydro  
57 gives them another refrigerator, whereas they won't give  
58 you your value, is that what you're stating?

59 MR. MIFFLIN: Yes, that's the essence of it. Maybe  
60 discriminatory might be strong. The concern ...

61 MR. BROWNE, Q.C.: That's the nature.

62 MR. MIFFLIN: The nature of it is that we potentially have,  
63 the consequence of something like that, it will expose us to  
64 damages that may exceed the \$1 million. The probability  
65 that it will exceed the \$10 million on any one occurrence is  
66 less probable, but it's highly probable that it's going to be  
67 more than \$1 million. For most of Hydro's customers, I  
68 would argue that the \$1 million will fully fund 100 percent  
69 in all probability all the losses with respect to their other  
70 customers, but the reason for our application is that we're  
71 caught in a circumstance that physical damage to the plant,  
72 to the refinery is much more probable to be greater than \$1  
73 million and less probable to be more than \$10 million.

74 MR. BROWNE, Q.C.: Yeah, I understand that but where  
75 are you getting your evidence to suggest that Hydro is  
76 paying out 100 percent of their other smaller claims to  
77 ordinary consumers?

78 MR. MIFFLIN: There is no evidence, I'm speculating that  
79 most ... and I sort of gleaned it from the discussion from  
80 Hydro. I can't state what the damages that all Hydro  
81 customers could be potentially exposed to. I'm really here  
82 representing my case that the \$1 million is inadequate.

83 MR. BROWNE, Q.C.: Because there was evidence when we  
84 were in Labrador, and some people came forward to say  
85 they weren't paying out claims in reference to the  
86 destruction of appliances because of power surges and  
87 blips and the like, so I don't know if that gives you any  
88 consolation, but they mightn't be paying out any claims.  
89 Thank you.

90 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
91 Browne. Mr. Kennedy?

92 MR. KENNEDY: No questions, Chair.

93 MR. NOSEWORTHY, CHAIRMAN: Thank you, re-direct,  
94 Ms. Henley Andrews?

95 MS. HENLEY ANDREWS, Q.C.: One question.  
96 Commissioner Saunders may have mentioned, and then the  
97 Chairman also mentioned this concept of a premium or a

1 rate or an extra payment in order to get a higher cap, and  
2 there was a suggestion I think, or perhaps an assumption  
3 that that might have been discussed, that concept might  
4 have been discussed between the parties. To your  
5 knowledge, has the issue of any payment for a higher cap  
6 ever been discussed?

7 MR. MIFFLIN: To my knowledge it's never been  
8 discussed.

9 MS. HENLEY ANDREWS, Q.C.: Thank you.

10 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
11 Henley Andrews. Thank you very much for your  
12 testimony, Mr. Mifflin. It's now 10 to. We'll take a 15  
13 minute break and return with the capital budget please.

14 *(break)*

15 *(4:15 p.m.)*

16 MR. NOSEWORTHY, CHAIRMAN: Ms. Greene, I wonder  
17 could I ask you to speak to the December 28th application  
18 please?

19 MS. GREENE, Q.C.: Thank you, Mr. Chair. This is Hydro's  
20 third application with respect to its capital budget for 2002.  
21 Hydro filed the original, of course, as part of the May 31st  
22 filing, and that submission was made in accordance with  
23 Hydro's past practice since its first budget was approved in  
24 1997, and when it became clear to us that we would not  
25 finish the rate hearing in sufficient time to allow the Board  
26 to consider all matters including the capital budget prior to  
27 year end, we filed the second application with respect to  
28 the capital budget on November 20th, and at that time  
29 Hydro had sought an order approving all parts of the 2002  
30 capital budget which were not objected to by the other  
31 parties. The other parties did file replies in response to the  
32 application of November 20th setting out their position on  
33 projects over \$50,000, projects under \$50,000, and leases as  
34 well. When the Board issued the order on December 20th,  
35 and that's order number PU-30, the order dealt specifically  
36 with projects over \$50,000, and I guess in light of Hydro's  
37 past practice before the Board and in the way in which the  
38 original application was framed, as well as as the November  
39 the 20th application, that created uncertainty, at least in  
40 Hydro's mind with respect to the directions of the Board.  
41 It is our submission that in light of the fact that the other  
42 parties have set out objections to only certain projects  
43 under \$50,000 listed in Section A and have not objected to  
44 any of the leases in Section D, that we are asking the Board  
45 to consider approving those as well and that is those  
46 projects under \$50,000 which have not been objected to by  
47 any party and all of the leases in Section D.

48 I would point out that this is consistent with how  
49 Hydro has treated its past capital budgets and it has not  
50 proceeded with even projects under \$50,000 without the

51 prior approval of the Board. It is my understanding that the  
52 other parties are consenting to this application as well, so  
53 at this time I will make no further comments, but I think I've  
54 outlined what our position is at this time.

55 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
56 Greene. Mr. Alteen?

57 MR. ALTEEN: We don't have any issue if the Board  
58 chooses to grant the order requested in the application, Mr.  
59 Chairman, I would just point out two things. One is there  
60 is no prohibition in the Public Utilities Act, and particularly  
61 under Section 41, which would in any way restrain Hydro  
62 from commencing capital projects that are listed in the 2002  
63 budget but not objected to, which are less than \$50,000.  
64 That is our view of the effect of ... I think it's 41(3)(A). With  
65 respect to the second part of the application, which is the  
66 approval of leases, it is my understanding that each and  
67 every one of the leases set out in, I believe it's Schedule D  
68 to the capital budget, has been previously approved by the  
69 Board. Now I understand Hydro's practice is to bring those  
70 forward each year for reapproval. It is Newfoundland  
71 Power's position on this that once approved, it's approved.  
72 It doesn't have to be reapproved. However, given our  
73 interpretation of the Act, it may not be shared by the  
74 Board, we would not stand in the way of the order  
75 requested by Hydro, but we would not see it as necessary.

76 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
77 Alteen. Ms. Henley Andrews?

78 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, we would  
79 consent to the order requested by Hydro given that all of  
80 the parties had indicated that they had no objection to  
81 those particular projects. I don't see any difficulty with it,  
82 and although I do appreciate and agree with what Mr.  
83 Alteen has said, I suppose there would ... I also understand  
84 Hydro's caution because there would always be the  
85 possibility that a party might object that Hydro had broken  
86 down one project into three in order to get it under the  
87 \$50,000, and that would raise a problem for them if it was  
88 objected to later, so I do think that they're not being over-  
89 careful in asking for the order.

90 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
91 Henley Andrews. Mr. Browne?

92 MR. FITZGERALD: Mr. Chairman, we consent to the  
93 application of Hydro.

94 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.  
95 Kennedy?

96 MR. KENNEDY: Chair, it seems the application raises an  
97 issue which seems to turn on the interpretation of Section  
98 41 of the Public Utilities Act and what specifically requires  
99 Board approval and what doesn't and also, I guess, in  
100 relation specifically to the leases. When a utility receives

1 approval in one year for a lease, whether it requires  
2 subsequent approvals in each year, or whether once a lease  
3 is approved it's approved, I think that the Board may be  
4 able to assist Hydro and in turn other parties if it rendered  
5 an order or decision that provided its interpretation of  
6 those provisions specifically, so that that would provide  
7 comfort to Hydro. I'm assuming that that's based on the  
8 submission of Hydro, what the purpose of this application,  
9 that it hasn't taken that comfort in interpreting the sections  
10 themselves and so is seeking confirmation from the panel  
11 about how it interprets the provisions so that it can go  
12 forward from that point. That's all the comments I have,  
13 Chair.

14 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.  
15 Any comments on anything, Ms. Greene?

16 MS. GREENE, Q.C.: Yes, Mr. Chair. I just wanted to read  
17 Section 41.1 of the Act. It says that a public utility shall  
18 submit an annual capital budget of proposed improvements  
19 or additions to its property to the Board for its approval not  
20 later than December 15th. I don't think there's any doubt  
21 that at some stage the Board has to approve all of the  
22 capital budget for Hydro or for any utility. I know there is  
23 a difference in Section 41.3 which says that a public utility  
24 shall not proceed with the construction, purchase, or lease  
25 for those over \$50,000 without prior approval and there may  
26 be a distinction between Section 41.1 and Section 41.3 as to  
27 what the meaning of prior would mean. However, as I said,  
28 our past practice has always been to get prior approval and  
29 in view of this hearing with the arguments that have been  
30 raised about our projects and where the issue had not been  
31 dealt with in the Board order, we thought it would be  
32 prudent. And also where it had hadn't been argued before  
33 the Board at the application that as there's no doubt the  
34 projects under \$50,000 must also be approved, and where  
35 the parties had clearly indicated their approval for a number  
36 of those projects, with only limited exceptions, that it would  
37 be prudent for Hydro to seek the specific approval of the  
38 Board before it started construction of any of those  
39 projects, so I just wanted to point out there is no doubt  
40 that the Board must approve all projects, even those under  
41 \$50,000, the question is does it have to be prior to  
42 commencement of the work, or can we start the work and  
43 run the risk of it not being subsequently approved, and we  
44 did not want to incur that risk in the context of a contested  
45 hearing. So as the parties have all consented to the order  
46 as requested in the light of the circumstances, and as Mr.  
47 Kennedy has pointed out, it might be helpful if, not to hold  
48 up this order, but if the Board did give direction to both  
49 utilities how they would expect the utilities to approach the  
50 capital budget with respect to both projects over \$50,000  
51 and those under \$50,000 would be very helpful.

52 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.

53 Greene. Are there any particular questions or issues that  
54 you want to ...

55 COMMISSIONER WHALEN: I just wanted to point, Ms.  
56 Greene, that in the application, Item No. 4, where it refers to  
57 Section A ...

58 MS. GREENE, Q.C.: And this is the December 28th ...

59 COMMISSIONER WHALEN: The December 28th  
60 application, that the projects less than \$50,000, the last  
61 sentence, that the total there actually should be \$1,090,000  
62 ... that your projects less than \$50,000 I don't think total  
63 \$14,740,000.

64 MS. GREENE, Q.C.: I would have to confirm that,  
65 Commissioner Whalen. When I had talked about the 60  
66 percent of the budget, and actually if we could bring it up  
67 on the screen, I think you will see it is a significant portion.  
68 Mr. O'Rielly, if we could look at the capital budget, and I  
69 just want to show you the sections. Of course, I also did  
70 this by myself on the 28th without anyone checking my  
71 math, so ... if you look at the first page of the budget you'll  
72 see that the total budget is \$48,000,000, and then if we go  
73 to the Section B projects, which are over \$50,000, which  
74 were 33, I subtracted the 33.3 from the 48.

75 COMMISSIONER WHALEN: I think you also have to  
76 subtract your Section C projects which are \$13,650,000.

77 MS. GREENE, Q.C.: Oh the ... can I just see Section C, Mr.  
78 O'Rielly, and that may be, I'm sorry, Commissioner Whalen.

79 COMMISSIONER WHALEN: Just in terms of looking at  
80 the application and what we're actually looking, what you're  
81 actually seeking approval of. I think by my calculations it  
82 looks to be about \$730,000 of uncontested under \$50,000  
83 capital projects.

84 MS. GREENE, Q.C.: It would be those ... if we could go  
85 back to Section A, Mr. O'Rielly, and we subtract the ... they  
86 are actually listed, and the difficulty with these is they're  
87 not in a specific section. You have to go through Section  
88 A and take them out.

89 COMMISSIONER WHALEN: Actually it took me about an  
90 hour to come up with that \$730,000.

91 MS. GREENE, Q.C.: I trust your math, because as I said,  
92 when I did it I was alone on the 28th and ...

93 COMMISSIONER WHALEN: But just to point out that the  
94 Section C projects have been approved, and \$13.5 million  
95 approximately under Section B projects have been  
96 approved, so you are seeking specifically approval of the  
97 under \$50,000 ...

98 MS. GREENE, Q.C.: Section A projects and the ... and at  
99 this point to be consistent with past practice, the leases  
100 that were listed in Section D, because any prior year the

1 Board specifically approved the leases in the same manner  
2 in which we are proposing for this hearing.

3 MR. NOSEWORTHY, CHAIRMAN: Okay, is there  
4 anything else further? Any other comments that any other  
5 parties would wish to make on this? No, okay, Ms. Greene,  
6 what I'd ask you to do, if you could try and reconcile the  
7 figures here overnight and we'll certainly consider the  
8 matter and we'll see if we can deal with it tomorrow.

9 MS. GREENE, Q.C.: The other thing we can do is to offer  
10 to draft the order which would list the projects. I know the  
11 last time we had electronically sent it over. We can do that  
12 again as well.

13 COMMISSIONER WHALEN: I think we've basically got  
14 that ready if that's of any assistance.

15 MR. NOSEWORTHY, CHAIRMAN: Yeah, I think we have  
16 it hear, so if you could undertake to do that.

17 MS. GREENE, Q.C.: Yes, I will. Actually I may be able to ...

18 MR. NOSEWORTHY, CHAIRMAN: And we'll deal with  
19 this tomorrow.

20 MS. GREENE, Q.C.: I may be able to by turning around.  
21 No. *(laughter)*

22 MR. NOSEWORTHY, CHAIRMAN: I guess not. Okay, is  
23 that ...

24 MS. GREENE, Q.C.: That's fine, thank you.

25 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.  
26 The final item, I guess, would deal with Mr. Kennedy's,  
27 counsel to the Board's participation in the final argument,  
28 and I believe, although we don't have it, I think Mr.  
29 Kennedy, you have something which is to be circulated.

30 MR. KENNEDY: And I'll ask the Clerk to pass that out, Mr.  
31 Chair. This is the statement of the counsel for, listed as  
32 number two, it's the second such statement. The other  
33 counsel for the intervenors have been provided with a  
34 copy of this earlier today just before we commenced this  
35 afternoon, and as such have had an opportunity to read  
36 through it. In a nutshell, if you will, the intention of myself  
37 as Board counsel, is to make a final written submission and  
38 as well to participate in the oral presentations that are  
39 scheduled for later this month, and I tried to provide some  
40 background of what the role of the Board counsel is and as  
41 well the Board's staff and experts, and you'll see at the  
42 bottom of page two, I provide a summary of the three main  
43 areas which at this point it's my intention to focus on in  
44 drafting the written submission, and they are as stated  
45 there, number one, providing commentary on  
46 recommendations concerning matters of process that would  
47 be, or could be employed when conducting a general rate  
48 application. Number two, providing legal advice on issues

49 involving the admissibility and weight of evidence and  
50 procedural matters, and number three, commentary on  
51 issues arising from the hearing which may impact on the  
52 ability and the effectiveness of the Board staff and experts  
53 when undertaking the ongoing supervision of the activities  
54 of regulated utilities.

55 I can, I suppose, elaborate on number two slightly  
56 in anticipation of there being an issue regarding my use of  
57 the word "weight", and this arises from discussions that I  
58 had with some of the counsel, and I can confirm that it's my  
59 intention under number two to provide just advice on  
60 matters of law relating to the treatment of evidence, and to  
61 give you a specific example at this point, that there is, I  
62 would suggest, law that I could provide advice to the panel  
63 on regarding, for instance, the use by an expert of hearsay  
64 evidence, and when that can be done, and how the use by  
65 an expert of hearsay evidence can affect the weight that a  
66 trier of fact provides to the expert evidence, so it's not my  
67 intention to comment specifically about any particular  
68 expert per se, but just to provide a general statement of the  
69 law regarding that point so that the panel can take that into  
70 account when it's writing its decision.

71 I don't know how, I guess, I could provide any  
72 further measure of comfort other than what I've provided in  
73 this written statement in light of the fact that the written  
74 submission is not written, and so we're dealing with stuff  
75 somewhat in a vacuum, a factual vacuum, and I don't know  
76 how any counsel can take a realistic exception to the  
77 contents of the written submission in light of the fact that  
78 it doesn't exist yet, but this was meant to provide some  
79 comfort to counsel regarding what my intention is, but  
80 certainly it would be appropriate to still canvass the  
81 comments of counsel.

82 I would note though that if there is a formal  
83 objection that's going to be taken by a counsel regarding  
84 my intention to file a written submission, that in keeping  
85 with what we've done in the past, consistent with the past  
86 practice during this hearing, I would recommend that it be  
87 made or conducted through a formal objection so that  
88 everyone can deal with it in that manner. For instance, the  
89 filing of authorities and the opportunity to provide a  
90 measured and reasoned response by providing time  
91 between the filing of the motion and the time for replies and  
92 so on, so ... but at this point certainly if parties want to  
93 comment that would be appropriate.

94 MR. NOSEWORTHY, CHAIRMAN: Yes, I would like to  
95 entertain comment. I'll begin with Hydro, Ms. Greene  
96 please?

97 *(4:30 p.m.)*

98 MS. GREENE, Q.C.: Since Ms. Andrews raised the issue  
99 yesterday we've had some time to do some research and to

1 consider the issue. I think the point made by Ms. Andrews  
2 is a very valid point to the extent, and points out an issue  
3 that has only recently arisen, which is the appropriate role  
4 of Board counsel. There is not a lot of case law on it  
5 particularly with respect to this particular point, and we  
6 could find no particular or specific case dealing with the  
7 submission of final argument by Board counsel. However,  
8 there is commentary in the text that, and in fact in the  
9 article, or I believe it's a chapter from a book that the  
10 Consumer Advocate filed in October which is found under  
11 ... it was Exhibit No. 6, I-6, I believe it was, where there is  
12 commentary on page 223 about a final address to the  
13 tribunal where it is recognized that Board counsel can in  
14 certain circumstances submit final argument within certain  
15 parameters, and clearly the difficulty or the concern would  
16 be Board counsel getting into adversarial positions when  
17 there are parties before the Board and it would not be  
18 appropriate in my view for Board counsel to enter into the  
19 fray, as I would put it, but it's certainly within the role of  
20 Board counsel to advise the Board on legal issues or to  
21 advise on such things as process, so ... and I think Mr.  
22 Kennedy in providing this short memo has attempted to  
23 outline, and as I understand the memo and the discussion  
24 with him, he does intend to keep, confine his legal  
25 argument to that type of an approach, and as he said, until  
26 we actually see it it's very difficult for us to object, but on  
27 the basis that it will be within the confines of advising on  
28 legal issues and on the process before the Board, and that  
29 it would not be advocating a particular position on a  
30 particular issue, I don't have a difficulty with the type of  
31 argument that I understand Mr. Kennedy is proposing to  
32 file.

33 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
34 Greene. I apologize, Ms. Henley Andrews, I think I should  
35 have probably gone to you first. Ms. Henley Andrews,  
36 your comments on this matter ...

37 MS. HENLEY ANDREWS, Q.C.: If I had a strong position  
38 on that I would have raised it, but Mr. Chairman, I'm  
39 satisfied actually to go last. I did have something to say  
40 and given the discussions that have taken place, I think it's  
41 a little less difficult than it might have been.

42 MR. NOSEWORTHY, CHAIRMAN: Okay, in that case I'll  
43 go to Mr. Alteen.

44 MR. ALTEEN: There is nothing that is being proposed by  
45 Board's counsel that Newfoundland Power finds  
46 inappropriate, Mr. Chairman.

47 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.  
48 Browne or Mr. Fitzgerald?

49 MR. FITZGERALD: Yeah, Mr. Chairman, no, we don't have  
50 any great objection to Mr. Kennedy filing a written  
51 submission, we expected that he would. It's the content, of

52 course, is what is at issue. Mr. Kennedy has declared  
53 several times what his role is and I'm looking now at the  
54 transcript from September 26th, and if I can see that. It's  
55 really a simple point. Mr. Kennedy has indicated prior to  
56 cross-examine Mr. Wells, he said I wanted to explain that  
57 I'm not here to advocate a particular position. My role is to  
58 ensure that all the relevant evidence that the Board needs  
59 in order to make a properly informed decision on the issues  
60 is brought out. So that's what we expect his final  
61 submission to contain. If he deviates from that then we'll  
62 object but, you know, it's a very simple point.

63 MR. NOSEWORTHY, CHAIRMAN: Thank you. Ms.  
64 Henley Andrews?

65 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, with the  
66 explanation that Mr. Kennedy has given with respect to  
67 what he means by weight of evidence, in point two on page  
68 two of his statement of counsel, we have no objection to  
69 what he has indicated he would propose to include in his  
70 written submission or his oral submission. Our main  
71 concern ... now he indicates in the second paragraph that  
72 all counsel were given prior notice of his intention to  
73 participate in this part of the process, and I think there was  
74 a misunderstanding. Certainly that was not our  
75 understanding, and of course, that's why we raised the  
76 issue when we did yesterday. Sometimes the use of one  
77 word like parties can cause people to interpret a statement  
78 one way or another and there was some confusion. What  
79 I'd like to do though is I did refer yesterday to two specific  
80 cases, one by name and one by reference, and the first one  
81 is that Giles case, and I don't want to discuss it, I just want  
82 to table it, which deals with the fact that if the Board seeks  
83 opinions after the close of the hearing and that type of  
84 thing, then everybody's got to have an opportunity to  
85 respond to those, and the second ... so that's Giles and  
86 Royal Newfoundland Constabulary Public Complaints  
87 Commission, which is a decision of the Supreme Court in  
88 1996, and the second case that I want to table is the  
89 Workers' Compensation case that I mentioned which is in  
90 fact called Re. Bambrick, and that's a 1992 decision of the  
91 Newfoundland Supreme Court, and that one doesn't really  
92 deal specifically with the role of counsel, it deals more with  
93 the role of an adjudicative body in terms of, I guess,  
94 arguing before itself or arguing its own decision, and I'd  
95 just like to put those on the record since I now have 17  
96 copies of each one.

97 MR. KENNEDY: Chair, the only comment I would make  
98 regarding the request by counsel to file written argument is  
99 that's the very purpose of having parties make formal  
100 objections by way of motions to set a process in place so  
101 that there's a balance between the positions of the parties  
102 and so that it ensures that the panel receives a balanced  
103 view of the law as well, that if one party researches the law

1 to, if you will, support their position that there is in the  
2 adversarial process the assumption that another party is  
3 researching the law to support their position and through  
4 that process the trier of fact receives the more balanced  
5 approach to the law. I won't object to the filing of these  
6 authorities but that's the caution I put out there that you're  
7 receiving authorities from just one counsel and therefore  
8 that may or may not be a complete balanced approach to  
9 what the law says on a particular issue.

10 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
11 Kennedy, are there any questions that any of the panel  
12 would have? Okay, any final comments from anybody on  
13 this?

14 MS. HENLEY ANDREWS, Q.C.: Mr. Chairman, can I file  
15 these?

16 MR. NOSEWORTHY, CHAIRMAN: Sure, yeah, no, no, I  
17 was ... having heard no other comments I think there  
18 doesn't appear to be any substantive issues. I don't detect  
19 any particular objection here. I'm sure that if Mr. Kennedy  
20 upon oral argument strays from these terms of reference  
21 that he's outlined here, I'm sure he'll, you'll hear about it in  
22 due course.

23 MS. GREENE, Q.C.: Well even his written argument, I  
24 would suggest.

25 MR. NOSEWORTHY, CHAIRMAN: Pardon?

26 MS. GREENE, Q.C.: You said oral, I'm sure even his written  
27 argument we'll asked to be expunged ...

28 MR. NOSEWORTHY, CHAIRMAN: I'm sure ...

29 MS. HENLEY ANDREWS, Q.C.: It's always better to know  
30 the rules in advance, Mr. Chairman.

31 MR. NOSEWORTHY, CHAIRMAN: Thank you for the  
32 information, probably it will be useful for us to peruse that  
33 certainly over the next few days.

34 MS. GREENE, Q.C.: Although, Mr. Chair, I said to Mr.  
35 Kennedy, I don't know why he would like to file written  
36 argument. If I had an opportunity right now I don't ...  
37 *(laughter)* ... Counsel, in Hydro's previous rate cases,  
38 Board counsel did not file written argument, our practice  
39 (inaudible) written argument only and Board counsel did  
40 not in our previous applications but I understand they did  
41 in Newfoundland Power's.

42 MR. KENNEDY: What can I say, I'm a glutin for  
43 punishment, Chair.

44 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy is  
45 famous for saying that his father kept him out, because he  
46 was so small, of contact sports when he was young and  
47 put him in things like debating and things of that nature, so  
48 maybe it's just a natural extension of what his father

49 prepared him for.

50 MS. HENLEY ANDREWS, Q.C.: Well, Mr. Chairman, you  
51 will note that on the first page of that I-6 that Ms. Greene  
52 referred to, and Mr. Dean has just pointed this out to me, it  
53 says perhaps one reason for the recent litigation is that  
54 independent counsel are unusual legal creatures ...  
55 *(laughter)*.

56 MR. NOSEWORTHY, CHAIRMAN: Ms. Henley Andrews,  
57 I wouldn't touch that with a ten foot pole. Thank you. Do  
58 we need to mark these?

59 MR. KENNEDY: No Chair, they're authorities so they  
60 would just be filed.

61 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you very  
62 much. That concludes any further discussion on that  
63 particular matter, and just to review, we will be expecting  
64 the final written argument by 4:00 p.m. on January the 21st,  
65 and we would look forward to the 28th and 29th for two  
66 days set aside on oral argument. Thank you very much.  
67 Ms. Whalen, Commissioner Whalen just indicated that not  
68 knowing whether Mr. O'Rielly will be back or not for the  
69 oral argument, I would think he might, but in the event that  
70 you're not, Mr. O'Rielly, from the bottom of my heart to the  
71 soles in my feet, sir, I thank you for your contribution to  
72 this hearing and I would hope to see you again on the 28th  
73 and 29th because I'm sure there'll be references that will be  
74 made to some of this at that point in time, but in the event  
75 that we don't, on behalf of everybody here, thank you very,  
76 very much.

77 MR. O'RIELLY: It's been my pleasure. *(laughter)*

78 MR. NOSEWORTHY, CHAIRMAN: I'm sure, at times.  
79 Commissioner Saunders had a quick be of trivia when we  
80 were just coming in there then, and he said, do you know  
81 we've been through this door 200 times in ... anyway, I  
82 don't know where that puts us in the scheme of things.  
83 Anyway, thank you very much and we look forward to  
84 seeing you on the 28th at 9:30.

85 MS. GREENE, Q.C.: Mr. Chair, perhaps if I might. I meant  
86 to say it earlier. There is one outstanding undertaking from  
87 Hydro's part and that's the Information Technology  
88 Architectural report. That still isn't completed, it's being  
89 prepared by an external consultant, X-wave. I do hope ...  
90 but it will not be ready before the end of the month, and  
91 that is, to my knowledge that's the only thing that's  
92 outstanding on the part of Hydro. Our undertaking was to  
93 file it when it was completed. It is being done by a third  
94 party and it unfortunately is delayed beyond the original  
95 schedule we had indicated to the Board, so I just wanted to  
96 mention that before the close of the hearing.

97 MR. NOSEWORTHY, CHAIRMAN: Thank you very much  
98 again, Ms. Greene. We'll see you on the 28th.

1            *(hearing adjourned to January 28, 2002)*