

1 (9:30 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Thank you and good  
3 morning. My step was a little lighter coming up over those  
4 steps there this morning. I can only imagine how some of  
5 you might feel out there today, given this is the last day,  
6 last scheduled day, in any event, of this proceeding.  
7 Before we get started I'll ask Mr. Kennedy to review our  
8 schedule for today and if there are any other preliminary  
9 matters, Mr. Kennedy.

10 MR. KENNEDY: Yes, Chair, Commissioners. As far as I'm  
11 aware, no preliminary matters to be raised by any of the  
12 counsel nor any motions, and so the schedule then is as  
13 per yesterday. We're leading off with the submission by  
14 counsel for Labrador City and following which will be the  
15 submission by the Consumer Advocate, comments by  
16 myself, and then we have Hydro scheduled for rebuttal  
17 following that, and then that would be the conclusion of  
18 the submissions.

19 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
20 Kennedy. So on that basis, good morning, Mr. Hearn.  
21 How are you this morning?

22 MR. HEARN, Q.C.: Good morning, Mr. Commissioners, Mr.  
23 Chairman, members of the Board.

24 MR. NOSEWORTHY, CHAIRMAN: Before you get  
25 started, Mr. Hearn, would you have any notion of how long  
26 you might be just for everybody's information ...

27 MR. HEARN, Q.C.: I hope to be ...

28 MR. NOSEWORTHY, CHAIRMAN: ... and the remainder  
29 of the schedule?

30 MR. HEARN, Q.C.: I hope to be well within the hour and a  
31 half allotted and I don't expect to go over an hour.

32 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you  
33 very much.

34 MR. HEARN, Q.C.: Mr. Chairman, members of the Board,  
35 I appear on behalf of the Towns of Labrador City and  
36 Wabush. Our participation in these proceedings has been  
37 focused on issues that concern the Labrador  
38 interconnected system. We thank both the Board and  
39 other counsel involved for accommodating our intermittent  
40 and occasional appearances and for advising us from time  
41 to time when an issue involving the Labrador  
42 interconnected system was likely to come up for discussion  
43 or involve being engaged in evidence, and at the same time  
44 we would be remiss if we didn't express our concerns about  
45 the process. I sense actually when talking to various  
46 people participating, the length of the process, there's  
47 almost a collective sigh about there must be a better way,  
48 and I think we in Labrador especially share that concern as  
49 to whether or not there is a better way to address these

50 issues.

51 We have peripheral interest in this hearing but  
52 vital interest in the hearing, yet a large part of the hearing  
53 involves issues involving island costs, fuel costs, Rate  
54 Stabilization Plan, that really are of no relevance to the  
55 Labrador interconnected system. It's contemplated by  
56 Hydro that in any event in dealing with the issues for the  
57 Labrador interconnected system that there will be a further  
58 rate hearing to deal with those issues and I'd raise for the  
59 Board's consideration for the future that perhaps a hearing  
60 dealing with Labrador issues ought to be a segregated  
61 hearing for that point rather than involving ourselves in the  
62 general rate hearing as has occurred in this proceeding.

63 Nevertheless, we've tried to confine our focus to  
64 the issues relevant to the Labrador interconnected system  
65 and to participate to that extent so that we don't unduly  
66 waste either our time or the time of the other parties to  
67 these proceedings or the time of the Board. We have filed  
68 a written argument addressing three main issues and also  
69 addressing the issue of costs.

70 We submit for the Board's consideration the  
71 following. Firstly, the cash working capital requirements of  
72 Hydro should be adjusted to reflect revenues received in  
73 advance of payment; secondly, that there is no evidence to  
74 warrant an increase in rates or an increase in revenues from  
75 Labrador West at present and rate issues in relation to the  
76 Labrador interconnected system should be left to a future  
77 hearing focused on that issue, and that's required in any  
78 event. We would point out and we will address in greater  
79 detail in our argument that there has been no evidence  
80 presented to warrant any conclusion that either the policy  
81 of the same rates across the Labrador interconnected  
82 system should be adopted or to address any so-called  
83 phase-in period of five years or any such period.

84 Thirdly, the proposed allocation of the rural deficit  
85 is in our view inappropriate, unfair and discriminatory in  
86 that it places an undue burden on the consumer of the  
87 Labrador interconnected system. It's our view that the rural  
88 deficit should be collected as a tax on the entire electrical  
89 production base of the province, including electrical energy  
90 exported from Churchill Falls, and we'll address that in  
91 greater detail in our argument on that point. And lastly we  
92 feel that all participation in this proceeding has been  
93 necessary, we have vital interests involved and that we  
94 ought to be entitled to the costs of our intervention and  
95 that our issues are really, cannot properly be addressed by  
96 any of the other parties, including the Consumer Advocate,  
97 and we'll address that in greater detail as well.

98 The first point that we would make, Mr. Chairman,  
99 is dealing with the cash working capital requirements of  
100 Hydro and the view that these requirements should be

1 adjusted to reflect revenues received in advance of  
2 payment. Hydro's working capital requirements are based  
3 on the reality that generally there's a lag in the recovery of  
4 operating expenses, yet this is not always the case.

5 In some cases there's a recovery of expenses  
6 before these expenses have in fact been incurred. Some  
7 expenses are paid after the corresponding revenue has  
8 been received from customers, thereby providing a positive  
9 working capital or negative net working capital as is often  
10 referred to. These early payments, we view (phonetic),  
11 should be taken into account in determining the cash flow  
12 requirements of Hydro. This issue has been addressed in  
13 our evidence by our expert, Mr. Drazen, and the logic of his  
14 position has been supported by Mr. Brushett, the Board's  
15 financial consultant. The evidence of Mr. Drazen is that a  
16 similar concept has in fact been accepted and adopted in  
17 the Province of Alberta.

18 As we understand the response of Hydro, it's to  
19 say that there is little regulatory precedent for this concept  
20 but not really to engage the logic of the position. We note  
21 that this wouldn't be the first time that we have adopted  
22 something that hasn't been uniform across other  
23 jurisdictions if we felt it made sense for this jurisdiction.  
24 Case in point would be the Rate Stabilization Plan which, as  
25 I understand, in Canadian experience is unique to  
26 Newfoundland.

27 (9:45 a.m.)

28 The point is, is that there's a logic for saying that  
29 if one should recognize the net lag in recovery of expenses,  
30 then that there should be a negative net lag for, in other  
31 words, expenses are paid in advance of these being  
32 incurred, but that should be taken into account as well and  
33 that in the context of this hearing this is not an insignificant  
34 amount in that, as calculated by some of my learned  
35 friends, it amounts to approximately \$1 million reduction in  
36 the cash working capital requirements of Hydro in the test  
37 year, so it's a significant issue and an issue that was really  
38 not addressed by the other parties and we take comfort and  
39 solace in the fact that our position in that regard has been  
40 adopted by the industrial customers, and we commend that  
41 position to the Board.

42 The second point that we would make and the  
43 second argument is that there is no evidence in these  
44 proceedings to warrant an increase in rates or an increase  
45 in revenues from Labrador West at the present time. We  
46 would, in assessing Hydro's position in this regard where  
47 they're asking for an approximately 6.4 percent increase, we  
48 would first of all address the characteristics of the Labrador  
49 interconnected system and the costs inherent in that  
50 system, the evidence in relation to revenues as compared  
51 to costs arising from Labrador West.

52 My learned friends from Hydro have made the  
53 comment in their argument and oral presentation that we  
54 are treating the Labrador interconnected system as in fact  
55 two systems, and I would submit to the Board that if there  
56 should be an administrative jurisdiction that combined  
57 Prince Edward Island and the Island of Newfoundland, it  
58 wouldn't alter the geographic reality that there were two  
59 islands and that if for administrative convenience they're  
60 referred to as one administrative jurisdiction, that we would  
61 expect that policies put in place would reflect the reality  
62 that they are two islands and that when one is dealing with  
63 the issue of costs that if there are inherent differences in  
64 costs that flow from that that the general policy in  
65 regulatory boards is that rate differences follow cost  
66 differences, and that's the principle to be applied and that  
67 is the situation here.

68 Applying that analysis to the Labrador  
69 interconnected system, let's look at the system. There is a  
70 common generation source at Churchill Falls and there's a  
71 modest amount of back-up generation for peak purposes in  
72 the Happy Valley-Goose Bay system, but generally  
73 speaking it's, we're served by more than 5,000 megawatts of  
74 (inaudible) capacity at Churchill Falls and both Happy  
75 Valley-Goose Bay receives its energy from that system as  
76 does Labrador West.

77 The Happy Valley-Goose Bay system is served by  
78 a 138 kV transmission line that is really dedicated to the  
79 Happy Valley-Goose Bay system, but it has no practical  
80 relevance to Labrador West. There's been some mention  
81 that it might in some remote emergency provide some way  
82 for this peak back-up power on the turbine in Happy  
83 Valley-Goose Bay to somehow flow to Labrador West. I  
84 don't think anybody in these proceedings sees that as a  
85 serious consideration. It's never historically happened. It  
86 wasn't what the back-up generation is for and it's really not  
87 designed for that purpose, and, as Mr. Drazen has pointed  
88 out in his evidence, it's clear that there's sufficient reliability  
89 in the more than 5,000 megawatts of installed (phonetic)  
90 capacity at Churchill Falls, that there's no requirement for  
91 back-up generation in Happy Valley-Goose Bay and that's  
92 not what's intended. So you have a transmission system  
93 that is, for Happy Valley-Goose Bay, is completely different  
94 from that for Labrador West.

95 In contrast, our energy is wheeled at no cost by  
96 Twin Falls Power Corporation and delivered to the terminal  
97 station at Wabush, so you don't have common  
98 transmission characteristics. There's a completely different  
99 cost base, the maintenance and transmission costs for  
100 Happy Valley-Goose Bay are really for that area alone and  
101 have no relevance to Labrador West.

102 When we get to distribution costs we're dealing  
103 with two discreet systems, more than 400 kilometers apart,

1 further apart than Trepassey is from St. Anthony, further  
2 apart than St. John's is from Port aux Basques, with no  
3 intervening system in between. We're not dealing with a  
4 geographic reality where, while St. John's and Port aux  
5 Basques may be considerable distance apart, that they're  
6 linked by population so that there can be a continuous line  
7 that will flow throughout the island and you've got an  
8 interconnected system. These are two discreet, distinct  
9 systems, operating in two different economies.

10 We hear my learned friend for the Federal  
11 Government or Wing, as they call themselves in these  
12 proceedings, talking about the governmental economy of  
13 Happy Valley-Goose Bay. That has nothing to do with the  
14 resource-based economy that operates in the international  
15 market in Labrador West. There's different histories, there's  
16 been no synergies between the two areas. For  
17 administrative convenience, if Hydro wants to call the  
18 Labrador interconnected system, it doesn't alter the reality  
19 that you're dealing with two discreet entities.

20 That's brought home by the situation of the  
21 distribution costs. We see actually that, from the historical  
22 analysis, that Hydro has had to track its costs in, for  
23 distribution in Wabush, and this is based on Hydro's  
24 submission to this very board in the late 1980s. They were  
25 required to track their costs for recovery, and as I  
26 understand it that the notion of costs was a notion put  
27 forward by Hydro as to its costs, including certain  
28 corporate overheads, so the ... and that the operation of a  
29 Wabush system was based on a cost recovery basis.

30 What's been the experience? The experience in  
31 Wabush has been that from about, approximately 1989 to  
32 present, there's been an accumulated surplus or  
33 overpayment by the consumers of Wabush to the extent of  
34 approximately \$3 million, and at present, on an annual  
35 basis, the electrical consumers in Wabush are paying in  
36 excess of costs some \$300,000 annually and that includes,  
37 as I mentioned, certain corporate overheads. So the ...  
38 Hydro's response to that is to say, well, those figures might  
39 vary if additional costs were included, and that's the  
40 comment, as I understand it, from Mr. Osmond, and in  
41 effect the comments that came from some of the questions  
42 from my learned friends who, Hydro acting as counsel and  
43 questioning some of the witnesses, and it's been to that  
44 flavour. These costs might vary if other costs were  
45 included. It's ... and I think that's not an unfair  
46 characterization. That's not evidence, that's not the  
47 presentation of evidence, and I would ask when  
48 considering that position to look at page eight of Hydro's  
49 submission where it says that it has the distinct ability to  
50 segregate costs, and they emphasize their abilities in that  
51 area, yet when discussing the Labrador interconnected  
52 system they have chosen not to identify or segregate costs

53 where they clearly, they take pride in their ability to do so.

54 Our expert, looking at the Labrador City system  
55 and taking the information provided by Hydro, has  
56 presented evidence to this board that not only is there a  
57 surplus of some \$300,000 generated in Wabush at present  
58 rates, but that there's also a surplus of some \$500,000 being  
59 generated annually in Labrador City at present rates. So  
60 you have a situation in a very, very small system, in two  
61 towns that are linked, that there a surplus being generated  
62 over costs to a tune of \$800,000 annually. That's not  
63 refuted by Hydro nor has Hydro presented an analysis to  
64 show that where the adding of reasonable additional costs  
65 would more than absorb that surplus, so that's the  
66 uncontradicted evidence, and the actual request in this  
67 proceeding is not for an equalization of rates at the present  
68 time in Happy Valley-Goose Bay, but for a net increase of  
69 some 6.4 percent in rates and revenues from Labrador  
70 West, looking at the two towns together, and to equalize  
71 the rates between the two towns.

72 Now, the two towns themselves in principle don't  
73 object to an equalization of the rates between Labrador City  
74 and Wabush, but they say that the clear uncontradicted  
75 evidence in this proceeding is that that does not require an  
76 increase in rates to do so and that Hydro, if it wants to  
77 come back with a proposal to equalize the rates between  
78 Labrador City and Wabush, it should come back with a  
79 proposal that identifies applicable costs, allows us to  
80 discuss that and then the correct regime is put in place, but  
81 there's been nothing presented before this board to show  
82 that an increase in rates or revenues is presently required  
83 from Labrador West. In fact, the evidence presented is to  
84 the contrary, and I'd emphasize Hydro's ability to segregate  
85 costs which they have chosen not to do so in this regard.

86 Now I note that the Town of Happy Valley-Goose  
87 Bay and the Federal Government, represented by the  
88 Department of National Defence, takes the position that  
89 somehow or that the, our area ought to be subsidizing the  
90 economy, the governmental economy of Happy Valley-  
91 Goose Bay, and we would point out that there's a cruel  
92 irony in the request, certainly at the present time, in that we  
93 deal in a resource-based economy which is presently  
94 experiencing severe difficulties, our area, the main  
95 employers are experiencing or have experiencing (*sic*) or  
96 about to experience down time. Wabush Mines was closed  
97 for an extended period of time this fall, the Iron Ore  
98 Company of Canada is projecting that it will be shutting  
99 down for some minimum of five to ten weeks, has  
100 announced that shutdown for this spring, so we say that  
101 our resource-based economy should not be required to  
102 subsidize that of Happy Valley-Goose Bay or the activities  
103 of the Federal Government at the Wing. In any event,  
104 certainly not in the throes of an economic downturn.

1 We say, Mr. Chairman, that the principles guiding  
2 public utilities boards is that rates ought to reflect  
3 differences in costs and that clearly the evidence is that the  
4 present rates being charged in Labrador West are more  
5 than adequate to cover costs and that there's been no  
6 contrary analysis presented, and that in fact the surplus  
7 that is generated at the present levels is more than  
8 sufficient for any additional costs that might be tacked  
9 onto the system if those costs are relevant.

10 Moving onto consideration of the rural deficit, in  
11 the test year, as I understand it, the proposal of Hydro is  
12 that the rural deficit of approximately \$31.7 million is to be  
13 allocated to certain consumers of electricity in the province,  
14 namely the customers of Newfoundland Power and also the  
15 customers in the Labrador interconnected system with  
16 approximately \$4 million of that deficit to be imposed upon  
17 the consumer of electricity in the Labrador interconnected  
18 system. We say, as Mr. Bowman, an expert for the  
19 Consumer Advocate, says that this rural deficit is really a  
20 social tax that's been added to certain ratepayers in the  
21 province and that it's unduly unfair and discriminatory and  
22 especially unfair and discriminatory against the consumers  
23 of electricity in the Labrador interconnected system.

24 The total population of the Labrador  
25 interconnected system would be somewhere between three  
26 and four percent of the population of this province,  
27 probably about 3.5 percent of the population of the  
28 province. Our burden of the, to be imposed on the rural  
29 deficit would be somewhere in the range of 12 to 13  
30 percent. On the face of it, to place such a burden on such  
31 a small population, such an inproportionate,  
32 disproportionate burden, is to, on the face of it, to impose  
33 rates that would in effect be unduly unfair and  
34 discriminatory.

35 We say that Section 3 of *The Electrical Power*  
36 *Control Act*, which declares the policy of the province, that  
37 the rates to be charged either generally or under specific  
38 contracts for the supply of power should be reasonable  
39 and not unjustly discriminatory is the guiding principle  
40 before this board and that that guiding principle should be  
41 reflected in the eventual decisions of this board.

42 (10:00 a.m.)

43 Much has been made in this proceeding about the  
44 greater role of the Public Utilities Board now that Hydro  
45 has become virtually a fully-regulated utility, and the, and  
46 I think that's, that role is embodied in the legislation,  
47 especially Sections 82 and 83 of *The Public Utility Act*, where  
48 a more proactive role for the Board is envisaged. The  
49 proactive role includes the authority to investigate charges  
50 of things being unreasonable and unduly discriminatory,  
51 and indeed the authority, I'd suggest the duty in the

52 appropriate circumstances, to recommend legislation if  
53 there's a better way of doing things. So if you have ... if  
54 you're faced with the option of how do you recover the  
55 social costs engaged in the rural deficit, in recovering the  
56 deficit incurred in supplying the rural areas of the province,  
57 and there's a proposal that's on its face unduly  
58 discriminatory, perhaps against the consumers of  
59 Newfoundland Power and also the consumers of the  
60 Labrador interconnected system, it's fair to ask, you know,  
61 is there another option.

62 We submit that there is a clear option that has not  
63 been utilized and ought to be utilized in this province, and  
64 it's an option that's clear in constitutional terms, and I was  
65 making this point in some of my questions with Mr.  
66 Osmond and it's, sometimes there was some lighthearted  
67 discussion because I have certainly a great regard for the  
68 people at Hydro and especially Mr. Osmond, but in that  
69 lighthearted discussion is not to be lost a very serious  
70 point, that for the last 20 years we've had the authority in  
71 this province, since Section 92(a) was added to the  
72 Constitution, to engage in policies such as taxation where  
73 you spread social costs over the complete electrical system  
74 of this province, and the recovery of the rural deficit seems  
75 to me to be an appropriate focus for this discussion.

76 Section 92(a), which was added to the  
77 Constitution when it was patriated in 1982, provides the  
78 clear unequivocal authority, especially Section 92(a)(iv),  
79 which is addressed at page 18 in my argument, paragraph  
80 41, 92(a)(iv) reads, "In each province the legislature may  
81 make laws in relation to the raising of money by any mode  
82 or system of taxation in respect of," and (a) deals with other  
83 natural resources, but (b) deals with, "Sites and facilities in  
84 the province for the generation of electrical energy and the  
85 production therefrom, whether or not such production is  
86 exported in whole or in part from the province, but such  
87 laws may not authorize or provide for taxation that  
88 differentiates between production exported to another part  
89 of Canada and production not exported from the province."

90 So the section of the Constitution is quite clear.  
91 It was designed for that purpose, it was designed to allow  
92 indirect taxation of resources which was previously  
93 constitutionally forbidden outside the authority of the  
94 Province. The section has received academic content (*sic*).  
95 There is a very well-written article entitled "Newfoundland  
96 Resources, The Supreme Court Strikes Again," by  
97 Professor Moul (phonetic) of Osgoode (phonetic) Hall Law  
98 School who, at page 435 of that article, makes the following  
99 pertinent comment. "Section 92(a)(iv) now authorizes the  
100 province to impose indirect taxation on sites and facilities  
101 in the province for the generation of electrical energy and  
102 the production therefrom and this indirect taxation may be  
103 imposed whether or not such production is exported in

1 whole or in part from the province so long as the tax regime  
2 adopted does not differentiate between production  
3 exported to another part of Canada and production not  
4 exported from the province."

5 So it's, the academic comment reinforces the clear  
6 words of the section, and it's clear what the intent of the  
7 section was, and it's clear what it does, and it's clearly  
8 authority.

9 In fact as well the authority of the province to  
10 enact such a tax has been the subject of discussion in the  
11 Supreme Court of Canada. The Ontario Hydro case that  
12 I've cited deals with the historical genesis of Section 92(a),  
13 and I'd refer this board to the comments of Mr. Justice  
14 Laforet at page 25 of that decision, and it's, they're worthy  
15 of being read into the record here. Page 25, paragraphs 80  
16 and 81, "To understand the situation it is useful to examine  
17 the backdrop against which Section 92(a) was passed. In  
18 a general sense the interventions (phonetic) policies of the  
19 federal authorities in the 1970s in relation to natural  
20 resources, particularly oil and other petroleum products,  
21 were a source of major concern to the provinces. These  
22 concerns were by no means minimized by cases such as  
23 *Sygaul (phonetic) versus Government of Saskatchewan and*  
24 *Central Canada Potash versus Government of Saskatchewan,*  
25 which underlines the severe limits of provincial power over  
26 resources that are mainly exported out of the province, as  
27 well as on the provincial power to tax these resources."

28 And moving on to paragraph 81, "It was to  
29 respond to this insecurity of provincial jurisdiction over  
30 resources, one of the mainstays of provincial power, that  
31 Section 92(a) was enacted. Section 92(a)(i) reassures by re-  
32 stating this jurisdiction in contemporary terms and the  
33 following provisions go on for the first time to authorize the  
34 provinces to legislate for the export of resources to other  
35 provinces, subject to parliament's paramount legislative  
36 power in the area, as well as to permit indirect taxation in  
37 respect of resources so long as such taxes do not  
38 discriminate against other provinces." The authority is  
39 clear, it's confirmed by academic comment, it's confirmed by  
40 judicial comment from the Supreme Court of Canada itself.

41 Now perhaps a word about constitutional  
42 interpretation generally is apropos at this stage, and that's  
43 to say that a constitution, really a constitution is not like  
44 trying to read the works of James Joyce or Samuel Beckett  
45 or to do the New York Times crossword puzzle. They're not  
46 intended to be such a complicated endeavour that they're  
47 not to be read by the ordinary man, except with extreme  
48 powers of concentration. Rather they're intended to confer,  
49 not to lawyers or to boards like this, but to the population  
50 generally, the allocation of powers and the aspirations of  
51 the people that it governs, and Section 92(a) was designed  
52 to correct an imbalance in the Canadian Constitution, to

53 correct an archaic system where a province could not  
54 properly utilize the benefits of resources via the method of  
55 indirect taxation, and that in fact has been cured by 92(a).  
56 Unfortunately the message doesn't seem to have gotten to  
57 us in terms of how we apply it to the Hydro policy of the  
58 province, and it's germane to this particular discussion  
59 when we have a rural deficit, a social cost, a social tax, and  
60 we're wondering how to apply it in a fair fashion. My  
61 suggestion is that you apply that by way of taxation that's  
62 imposed upon all of the electrical production of the  
63 province.

64 By way of illustration, if a one mil per kilowatt  
65 hour tax were imposed on the total electrical production for  
66 the province, and bear in mind that in the test year we're  
67 looking at a rural deficit of approximately 31.7 million, you  
68 have approximately 30 billion kilowatt hours of production  
69 annually from Churchill Falls and some eight to nine billion  
70 kilowatt hours of production in the rest of the province,  
71 through my understanding of the calculations, and I stand  
72 to be corrected, but I believe they're in that magnitude, a  
73 one mil, one tenth of a cent tax would recover  
74 approximately 38 to \$39 million annually, so the total rural  
75 deficit would be spread, it would be borne by consumers in  
76 this province, the customers of Newfoundland Power, the  
77 customers of the Labrador interconnected system, and  
78 borne proportionately by the extent of the energy that's  
79 exported, and isn't that a fair way of doing it rather than the  
80 imbalance of loading some \$4 million, some 12 to 13 percent  
81 onto just over three percent of the population  
82 (unintelligible) Labrador interconnected system, and it's a  
83 proper way to rationalize the Hydro policy of the province,  
84 and I believe that as part of the proactive investigative  
85 authority, authority to recommend legislation, that this  
86 board has an obligation to address this particular issue.

87 I'm somewhat disappointed that none of the other  
88 counsel here has chosen to comment on the issue which,  
89 you know, I've addressed in writing in our written argument  
90 that we filed, and I think that when we have the collective  
91 experience and wisdom of, and abilities of the people  
92 who've addressed this board and addressed this board so  
93 well, that they would be remiss in not commenting on this  
94 very, very important issue, and I think that, you know,  
95 we're in effect discriminating against ourselves. We're  
96 creating a stick for our backs, we're loading an undue load  
97 onto the domestic consumers and excluding the proper  
98 burden that should go to the resource that's exported as  
99 well, and there's clear, clear, unequivocal legislative  
100 authority to do so.

101 So I submit that that's something that the Board  
102 ought to give fair consideration to and address and that  
103 when one is considering the package that's being  
104 presented here from Hydro, that we should look at what

1 costs go in the package that are really costs of a rate base  
2 and when we're looking at the question of imposing further  
3 social costs onto the rate base, it's unduly discriminatory  
4 to place too much of a burden on the Labrador  
5 interconnected system, especially in the face of a clear, fair  
6 option to tax, as I suggest, and I might point out that the  
7 one mil per kilowatt hour which is used as an illustration  
8 leaves some seven, eight million in surplus which might  
9 address the legacy of the 65, 50 or \$65 million left in the  
10 Rate Stabilization Plan, but that's just an example of the fact  
11 that at a very, very modest tax burden, that there can be  
12 much needed rationalization of the proper rates to be  
13 charged and the proper burdens to be borne by electrical  
14 consumers in the province.

15 Those are the points to be raised in argument. As  
16 I mentioned at the start, Mr. Chairman, our intervention is  
17 to reflect our vital interest in Labrador West in the electrical  
18 rates that are being charged. It's been pointed out that the  
19 Consumer Advocate has a statutory mandate to represent  
20 consumers, but we would point out first of all that the  
21 Consumer Advocate does not in its submission address  
22 issues on the Labrador interconnected system, and that's  
23 perhaps understandable because what has been suggested  
24 by Hydro in relation to the Labrador interconnected system  
25 is an immediate plan to raise rates in Labrador West and a  
26 long-term plan to have the Labrador West area subsidizing  
27 the Happy Valley-Goose Bay area. The interests of the  
28 consumers in Labrador West and the interests of the  
29 consumers in Happy Valley-Goose Bay are diametrically  
30 opposed. There is no possible way the Consumer  
31 Advocate could represent both those interests.

32 Our participation is, we submit, necessary. We  
33 submit that it has been focused on the issues that are  
34 required to be addressed, that are relevant to the customers  
35 in Labrador West and touched on other issues only to the  
36 extent that it was necessary, so we submit that our  
37 intervention in these proceedings has been to the extent  
38 required and that it would be completely unfair for us not  
39 to be given our costs of the intervention, and I thank the  
40 Board for its accommodation throughout, I thank, as I said  
41 earlier, the other counsel in these proceedings for their  
42 courtesy from time to time and throughout the proceedings,  
43 and, as I mentioned, even to the point of advising when  
44 there are issues that either had been addressed or were  
45 about to be addressed that dealt with the Labrador City,  
46 Wabush issues and dealt with the Labrador interconnected  
47 system. So those are my comments, Mr. Chairman, subject  
48 to any questions that the Board may have. Thank you.

49 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
50 Hearn. Any questions? Thank you once again, Mr. Hearn.  
51 We'll move now to the Consumer Advocate, Mr. Browne or  
52 Mr. Fitzgerald.

53 MR. FITZGERALD: Thank you, Mr. Chairman. I'll start  
54 and Mr. Browne will be submitting as well. I guess from  
55 Mr. Hearn's last comments he's let us off the hook to wade  
56 (phonetic) into any constitutionality arguments. I'm  
57 grateful for that.

58 Mr. Chairman and Commissioners, I will first be  
59 commenting on the area of Hydro's cost of capital, in  
60 particular its return on equity. Firstly, as filed, Hydro  
61 requested the following in its application of May 31st, 2001,  
62 at paragraph 14(9). "The Applicant proposes that the  
63 following financial targets, based on current market  
64 conditions, be set by the Board as appropriate: long-term  
65 return on equity, 11 to 11.5 percent; debt-equity ratio of  
66 60/40; return on rate base of 9.5 percent; and that for the  
67 interim, for this application, the Board allow an ROE of  
68 three percent which results in a return on rate base of 7.4  
69 percent."

70 Now, despite this, as we understand it, this  
71 application has been amended somewhat by Hydro's  
72 submission on this issue in its written argument dated  
73 January 2002.

74 (10:15 a.m.)

75 Hydro is now saying that, and this is from page 36  
76 of their final submission, "That the Board need not in this  
77 proceeding determine the precise level of return for Hydro.  
78 That decision can be made at the time of Hydro's request  
79 for a full return on rate base in light of economic and capital  
80 market conditions prevailing at the time."

81 With respect, we don't agree with that submission.  
82 Hydro has admitted that it is now, with the relatively recent  
83 amendments to the EPCA, to be fully subject to the  
84 jurisdiction of this board and thus to Section 80 of *The*  
85 *Public Utilities Act*.

86 At page 34 of its final submission, Hydro takes the  
87 position that Section 3(a)(iii) of the EPCA now requires that  
88 Hydro be regulated on the basis of a return on rate base  
89 and not on the basis of appropriate interest coverage,  
90 which it had been previously, and this, of course, is correct.

91 What comes with Section 80 of *The Public Utilities*  
92 *Act* is some scrutiny by this Board of a just and reasonable  
93 return on rate base as fixed and determined by the Board,  
94 and in turn with that exercise, i.e. determining a just and  
95 reasonable return on rate base, comes an analysis of the  
96 appropriate rate of return on common equity. Now,  
97 authority for this statement can be found in the stated case,  
98 a decision of the Newfoundland Court of Appeal,  
99 appended to our materials at Tab B.

100 Mr. Justice Green, speaking for the Court, said  
101 this, and this is at paragraph 61, "I therefore conclude that  
102 the power to determine a just and reasonable return on rate

1 base, as contained in Subsection 81, does not include  
2 within it a power to set and fix the rate of return on common  
3 equity, but it obviously does contemplate that the analysis  
4 of an appropriate rate of return on common equity will be  
5 undertaken and factored into the conclusion as to what is  
6 a just and reasonable return on rate base," thus it is not for  
7 Hydro to say to this board, don't bother yourselves with  
8 determining what an appropriate ROE is since we are only  
9 asking for three percent anyway. We don't accept that  
10 logic. For example, if Hydro came forward and they asked  
11 for a zero percent return on equity, where would that leave  
12 the Board? Would it leave the Board with no ability to  
13 inquire into the reasonableness of return on equity at all?  
14 We submit that Hydro can't avoid an examination of a  
15 range of a fair and reasonable return or examination of a  
16 range of a fair and reasonable return on equity by this  
17 board simply by requesting an inordinately low ROE.

18 Why is this important? We believe, and we would  
19 urge the Board to consider carefully the evidence of Dr.  
20 Kalymon on this point, and his examination of this point or  
21 his comments on this point can be found in the transcript  
22 of November 13th, 2001, at page 27, and I believe it's  
23 worthwhile to have regard to this excerpt right now, Mr.  
24 O'Rielly, if I could. The electronic version here, Ms. Greene  
25 has asked a question at line 19. My question to you,  
26 examining Mr. Kalymon, Dr. Kalymon, "Would you also  
27 agree that in light of that it is not necessary for the Board  
28 to determine a specific rate of return that would only apply  
29 in any event at this time in this current market when Hydro  
30 is not asking for that normal commercial rate of return?" Dr.  
31 Kalymon's comments, "Well, I disagree with that and the  
32 reason I disagree with that, well, for several reasons, the  
33 first reason is being I think I already tried to put on the  
34 record earlier that three percent return is there in order to  
35 set target rates. If Hydro does not come back to this Board  
36 for an extended period of time, the actual achieved could be  
37 substantially different from the requested, so I think it is  
38 important that at least a reasonable limit is set that would  
39 establish when a boundary is being crossed, and I would  
40 suggest that 7.945 is my recommendation for where that  
41 boundary should be."

42 Further at line 41 Ms. Greene asked the question,  
43 "So your concern is with respect to a cap on earnings."  
44 And Dr. Kalymon said this, "The rates are maintained and  
45 if circumstances change with regards to cost structures or  
46 demand or other factors that could result in different levels  
47 of earnings, I (unintelligible) in reviewing their performance,  
48 it's quite volatile and it can vary and swing quite a lot from  
49 forecast. I think that this was also supported in cross-  
50 examination and therefore one should have some  
51 safeguards in that respect, so I disagree strongly with Ms.  
52 McShane's testimony that says that the sky is the limit, let  
53 it roll. I think it should have bounds and in that respect I

54 think the number is meaningful."

55 Ms. Greene, next question, "Dr. Kalymon, were  
56 you present when it was determined that Hydro would  
57 have to re-apply to the Board for a rate change in 2004  
58 because of major capital coming on line?" And this excerpt  
59 is relevant as well, I would submit. Dr. Kalymon, "I  
60 understand that something in that nature is being  
61 discussed or proposed. My concern would be in the  
62 interim, number one, and, number two, I do not know how  
63 binding that particular commitment is, so in either regard I  
64 would presume the Board would want to safeguard the  
65 consumers in the interim and for the period until such time  
66 as a re-review does in fact occur."

67 So we submit that unless the Board does make a  
68 ruling on the reasonableness of a return on equity, there is  
69 a danger that there is a certain open-endedness left to  
70 Hydro on this issue, and no determination could be made  
71 whether Hydro has exceeded a reasonable return on equity  
72 in the future. Without such an ability to determine over-  
73 earnings in this regard, the Board would have no ability to  
74 invoke the enforcement mechanisms referred to by the  
75 Court of Appeal in the stated case and to refund possibly  
76 over-earnings to the consumers and other remedies  
77 mentioned in the stated case.

78 In light of this and in light of Hydro's request for  
79 a three percent ROE in the test year, we would submit that  
80 the Board should interpret Hydro's request for a three  
81 percent ROE as representing the upper limit of a range  
82 between, say, 2.5 percent and three percent, and make an  
83 order accordingly setting the midpoint range at 2.75  
84 percent. In any event, we repeat our position that Section  
85 80 of *The Public Utilities Act*, combined with the interpretation  
86 of same by the Newfoundland Court of Appeal, requires  
87 that the Board make a specific finding of Hydro's range of  
88 rate of return, and again for the practical reasons as  
89 outlined by Dr. Kalymon.

90 Turning to the cost, the issue of the cost of No. 6  
91 fuel, the importance of this pillar, if you will, of Hydro's  
92 revenue requirement cannot be overstated. It has been  
93 described by Hydro's CEO as the principal driver behind  
94 this rate application. It is our submission that Hydro may  
95 not be doing enough to mitigate the impact of this item on  
96 its overall revenue requirements.

97 The cost of No. 6 oil has been described as an  
98 uncontrollable expense compared to other controllable  
99 expenses that Hydro faces. This description of the cost of  
100 No. 6 as an uncontrollable expense is no excuse, is our  
101 submission, to not focus energies on it to in fact gain some  
102 control over it.

103 It is our submission that the evidence shows that  
104 there may be some confusion within Hydro itself as to who

1 is ultimately responsible to ensure that Hydro obtains its  
2 oil at its best possible price. Mr. Henderson in his pre-filed  
3 evidence declared that he was responsible for the fuel  
4 budgets for all interconnected system plants, yet really Mr.  
5 Henderson was not responsible for purchasing oil really, he  
6 only identified Hydro's need from time to time. It is  
7 submitted that it never did become clear who at Hydro was  
8 ultimately responsible for Hydro's fuel acquisition from the  
9 perspective of obtaining the lowest and best price.

10 Now we note yesterday during her oral  
11 submissions that Ms. Greene referred to the 1999 Quetta  
12 Report as endorsing Hydro's oil purchasing policies.  
13 However, that was in 1999 when oil was not the principal  
14 driver of a rate application. In 1999 Hydro's oil  
15 consumption was approximately 1.5 million barrels. Hydro's  
16 oil consumption for the test year, 2002, is twice that and  
17 then some, and in future it has been forecast that it may in  
18 fact reach consumption as high as five million barrels a  
19 year. We would suggest, therefore, that the Quetta Report  
20 may have less relevance now than it did in 1999.

21 As regards Hydro's lack of a real oil hedging  
22 policy, we would point out that the Board's cost of service  
23 expert, Dr. Wilson, identified this as an area where Hydro  
24 has not provided enough information to the Board to  
25 determine whether its decision not to do so is reasonable  
26 or not. To quote Dr. Wilson, and this is at page 34 of his  
27 pre-filed evidence, "Although Hydro has rejected the  
28 implementation of a hedging program, both the nature of its  
29 analysis and the conditions under which such a strategy  
30 would be adopted remain unexplained."

31 Again, yesterday in her submissions Ms. Greene  
32 indicated that oil hedging is no magic bullet. Those aren't  
33 her words; those are my words. But her words were more  
34 like, well, with hedging you win some and you lose some.  
35 Well, that would be nice, instead of losing every time. She  
36 has referred to U-Hydro-31, which displayed Hydro's  
37 phantom hedging results. In our view, this document  
38 clearly shows that Hydro should have implemented a  
39 conservative oil hedging program back in 1998. If they had  
40 of, that document shows us that there would have been  
41 savings of \$1.2 million.

42 U-Hydro-31, of course, also displayed the down  
43 side of a hedging program, indicating that if Hydro had  
44 introduced a "liberal" hedging program, they may well have  
45 lost approximately \$200,000. Well, make no mistake, while  
46 we have recommended that Hydro implement oil hedging  
47 programs, we do not advocate embarking on such a  
48 program without due caution and therefore natural  
49 conservatism.

50 The Board heard evidence for Mr. Dean, from Mr.  
51 Dean, on behalf of the industrial customers regarding

52 Abitibi's strategic oil purchasing policies, in particular  
53 evidence regarding how their oil storage capacity allows  
54 Abitibi to take advantage of dips in the oil market. Hydro,  
55 in its oral submission, indicated that their oil consumption  
56 is so vast in comparison with Abitibi's that no comparison  
57 should be made.

58 Well, we say why not compare the two? What  
59 does size have to do with the principle that if Hydro had a  
60 proportionate storage capacity that Abitibi has and had,  
61 say, five to six months or even nine months' storage  
62 capacity, it would not be subject to the vagaries of the oil  
63 markets as it is now with minimal storage capacity. We  
64 believe that the comparison of Abitibi's oil purchasing  
65 strategy to Hydro's is helpful. Abitibi is an investor-owned  
66 enterprise. It too is faced with the uncontrollable cost of  
67 No. 6 fuel and makes some attempt to control it.

68 Throughout the evidence our concern was that  
69 Hydro may not regard itself as compelled to adopt stringent  
70 oil purchasing strategies since, in their view, the RSP  
71 provides all the protection they need to guard against the  
72 volatility of oil prices. It is our submission that this is the  
73 type of thinking on Hydro's part that is wrong and that the  
74 RSP does not address what we believe is Hydro's duty to  
75 take steps to pay the least cost possible for oil in the first  
76 place, prior (phonetic) for it being accounted for in the RSP.

77 One final point we wish, I wish to make, simply in  
78 relation to the issue of the productivity allowance which  
79 Mr. Brushett has provided to the Board through financial  
80 advice in his, and this is contained, of course, in the  
81 supplementary evidence of December 13th. He suggested  
82 that a 1.5 percent productivity allowance be imposed on  
83 Hydro and certainly his reasoning in this regard seems fair  
84 and it balances both Hydro's need to manage itself and the  
85 Board's lawful duty to regulate Hydro expenses. We note  
86 that Mr. Brushett in fact had no particular problem with  
87 increasing this productivity allowance to two percent,  
88 which would reduce Hydro's revenue requirement in the  
89 test year by approximately \$2 million.

90 My final comment really regards the role of Board  
91 counsel, and we have put our position regarding the role of  
92 Board counsel on the record on many occasions, most  
93 recently on January 10th where we indicated that insofar as  
94 any written or oral submissions that Board counsel makes  
95 which advocate any particular position, then the Board  
96 should disregard those submissions as improper, and we  
97 would object to, in particular, to the component of the  
98 Board counsel's submission that refers or takes a position  
99 in regard to the RSP.

100 Mr. Chairman, Commissioners, those are my  
101 comments.

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



1 Fitzgerald. Good morning, Mr. Browne.

2 MR. BROWNE, Q.C.: Good morning, Mr. Chairman and  
3 Commissioners. Hydro early on set the standard for, we  
4 hope, future hearings by producing without objection all  
5 relevant evidence that we asked for in reference to this  
6 hearing, and it's been a pleasure to work with them in this  
7 proceeding and indeed to meet and renew old  
8 acquaintances of people, many of whom testified here, who  
9 have distinguished themselves in their respective  
10 disciplines as they undertook their work for Hydro.

11 (10:30 a.m.)

12 Hydro is doing pretty good. If you look at IC-105  
13 and IC-182, not only did Hydro weather increases in cost of  
14 living since 1992 but in most instances it earned well over  
15 the interest coverage of 1.08 set in its 1992 rates. The only  
16 exceptions appear to be 1999 and 2000, when it, 2000 it  
17 elected to absorb the portion of the deficit previously paid  
18 by the industrial customers. So if anything, the 1992  
19 revenue requirement was clearly excessive.

20 The hearing probably didn't start off right in that  
21 Hydro failed to give notice, particular notice, to its  
22 customers in the rural areas of this province. This is  
23 unacceptable and it is a repeat performance, because Mr.  
24 Hutchings brought to the Board that same complaint in a  
25 previous hearing, and now we request that the Board  
26 would address it and that all utilities should be required to  
27 give individual notices by way of inserts in the bill to  
28 customers of rate increases. Announcements in  
29 newspapers are insufficient and don't cut the test. Please  
30 address that issue.

31 Having failed to give notice, we requested that  
32 faxes be sent to councils in Labrador prior to embarking  
33 upon hearings in Labrador, and from those notices the  
34 councils came forward. We heard their evidence and it is  
35 consistent, and it appears in the coastal communities the  
36 700 lifeline block is not sufficient. Hydro says now, well, if  
37 you do anything with that you have to do something with  
38 the subsidy. These people in our province are entitled to  
39 the same standards to which we all are entitled in law. It's  
40 Hydro's obligation to provide them with electricity and not  
41 by a half measure. It's our recommendation that until this  
42 issue is studied, the lifeline block for rural Labrador, indeed  
43 for the rural customers of Hydro, as I'm sure the people in  
44 Francois and these other communities with whom we did  
45 not make contact are in the same boat, that it be increased  
46 to 900 kilowatts. That would be indeed under the amount  
47 that's found in Hydro's own bill which suggested typical  
48 usage would be 1,156 kilowatts. So they're advertising that  
49 its typical usage, 900, even falls short of that again, but I  
50 notice they have a furnace in there and many people in the  
51 communities with which, from which we heard in Labrador,

52 were heating their homes by wood, so if you take the 125  
53 kilowatts they had for furnace out, 900 may appear  
54 reasonable until the matter can be studied.

55 In reference to the Wabush rebate of \$3 million, it  
56 is our position that the rebate should go to those who paid.  
57 Hydro says it's too much trouble to find out who these  
58 people are. I suggest they put a few people on the case  
59 and make some determinations there. There are records in  
60 existence, and use the same standard as if they were  
61 chasing these people as debtors, even though probably, if  
62 you look at their standard there, that's probably not so  
63 great, so use the same standard as if Newfoundland Power  
64 was chasing them as debtors. (laughter)

65 Other Labrador issues include bill payment  
66 locations. People were having difficulty with the mails in  
67 Labrador. There were disruptions, they weren't getting the  
68 benefit of being able to pay their bills on time, they were  
69 being assessed late fees through apparently no fault of  
70 their own, and that should be looked into. One community  
71 complained of constant power surges which cost the  
72 residents of that community their appliances. It appears  
73 they're not being given satisfactory responses by Hydro.  
74 We agree Hydro can't be providing appliances willy-nilly to  
75 everyone who complains, but there should be a minimal  
76 standard of investigation to determine if the Utility is  
77 responsible and for the Utility to assume its obligations if  
78 it is responsible. It's no good telling someone in some of  
79 these communities to mail the appliance. We all know the  
80 cost of mail. That's there in evidence. That is no answer.

81 I wish to address the issue of hydrology, and we  
82 favour the 30-year moving average. Hydro states they  
83 have data going back to pre-Confederation, but it appears  
84 to be suspect and unreliable. If you look at the evidence,  
85 in particular the evidence where I asked Mr. Henderson  
86 about this and he was forthright, I asked him on October 10  
87 concerning where their figures were coming from and the  
88 years for these figures, and he was relying upon  
89 engineering reports which he hadn't reviewed himself, yet  
90 he was testifying to these issues, and he mentioned a  
91 number of years (phonetic) as sources for gaging,  
92 including the Salmon River. He says on October 10, line  
93 one in the hard copy, "These are sources, the Salmon River  
94 starting in 1949, Grey River in 1958, White Bear in '64,  
95 Exploits in 1928, the Upper Humber in 1929, Torrent  
96 (phonetic) in 1959, Cat Arm in 1968," and they mention that  
97 they change their systems for gaging in 1967.

98 After reviewing the issue, I don't believe that  
99 there's sufficient evidence put forward on which this board  
100 can rely to use all the data, as all the data is not in front of  
101 us, and it appears that 30 years is reasonable. I don't see  
102 what the down side is. If you find or if Hydro finds that  
103 they're going into inordinate dry spells, then come before

1 the Board and explain themselves. So we would request a  
2 30-year hydrology be adopted by the Board as the  
3 standard as recommended by Newfoundland Power. It's  
4 not objected to by the industrial customers and there was  
5 recently evidence put in there by Newfoundland Power in  
6 reference to that.

7 We believe that there should be transparency and  
8 disclosure to consumers in all aspects of their bills.  
9 Newfoundland Power has a newsletter, Power Connection.  
10 Both are able to put inserts into their bills from time to time.  
11 These are helpful. But on the bill itself we believe that  
12 there should be disclosure as to the exact cost of  
13 electricity. This is not being done. You're stating what the  
14 kilowatt hour is but they are not stating that consumers still  
15 owe in reference to the bill and the Rate Stabilization Plan,  
16 they're not told that there's interest accumulating in the  
17 Rate Stabilization Plan for which they are responsible. How  
18 is an informed ... how is a consumer to be informed of these  
19 matters when they go and apply for electricity at  
20 Newfoundland Power, they go up and make their  
21 application to try to get their hook-up, if they're not being  
22 told all this information, if they're trying to decide between  
23 oil and electricity and they can't balance it, they can't say,  
24 ... well, they go to the oil companies, the oil companies say  
25 here's the price of oil and here it'll probably fluctuate and so  
26 much we can give you. But in electricity they are actually  
27 not being informed at all. There's no information to  
28 suggest that people are being told what their liability is in  
29 reference to that plan and that future bills will be coming to  
30 them for their consumption based upon the Rate  
31 Stabilization Plan. And I would suggest that it's contrary  
32 to law. I think consumers have protections under *The*  
33 *Consumer Protection Act* and under *The Federal Competition*  
34 *Act*.

35 I think the exact price is required to be stated, and  
36 it's no good to put in an application, oh, yes, and you're  
37 also responsible for the RSP. Tell consumers what the RSP  
38 is, tell them what the amount is owing at the time and tell  
39 them what their liability would be. This day and age of  
40 computers, there's no reason that can't be done, and it  
41 should be stated on the monthly bill. Then people can  
42 make informed decisions.

43 It would be very interesting if an industrial coming  
44 into the province and the government had done all the  
45 bargaining for the new industrial coming in and they went  
46 to Newfoundland Hydro and said, okay, we're going to do  
47 business with you, and Hydro then informed them, well,  
48 you know, you'll do business with us but you also have to  
49 assume what is now \$25 million that is owing by industrials  
50 in the plan. That's hardly an incentive to get an industrial  
51 to come to the province. The whole thing is ill-conceived,  
52 and I think the plan will become crashing down the day that

53 that happened. New industries coming into this province  
54 are liable for what is owing by industrials into the Rate  
55 Stabilization Plan if they want to do their business with  
56 Hydro. We have governments doing everything possible  
57 to try to bring industry into the province. Surely this will  
58 be a major deterrent if indeed they (inaudible) informed, if  
59 no one is informed. It is a mystery. You heard the  
60 comments of Mr. Mifflin who was very concerned that his  
61 company should be liable for the electricity purchased by  
62 someone else under the industrial rate.

63 I want to speak to conservation and I am pleased  
64 that Sarah Peckford is here today from the Conservation  
65 Corps and she has someone there from the Board with her,  
66 and I want to speak to conservation as no one else has. In  
67 what can only be considered a major oversight, Hydro  
68 doesn't mention the word "conservation" in its brief. It's  
69 not there. They didn't mention it in their oral argument.  
70 Newfoundland Power was one step better, as perhaps they  
71 always are. They mentioned the word "conservation" once  
72 in their brief and they made two lines or three lines in their  
73 oral presentation dealing with the evidence of Ms.  
74 Mullally-Pauly.

75 The evidence of the Conservation Corps and Ms.  
76 Mallolly-Pauley is important evidence to this proceeding.  
77 This is the first time to my knowledge that someone  
78 nationally, with the reputation of Ms. Mallolly-Pauley, has  
79 testified in a proceeding of this nature, and she had a  
80 wealth of knowledge that she fed us all, and it's no good at  
81 the end of the day for the utilities to pat her on the back  
82 and pat the Conservation Corps on the back and say good  
83 job, well done, when they fail to address these very issues  
84 in their submissions, because isn't it all part of the same  
85 processes? If we were to conserve and if conservation and  
86 efforts at conservation were renewed, we wouldn't have to  
87 burn so much oil at Holyrood, if everyone was encouraged  
88 to bring down their usage and if the utilities were to employ  
89 an active group such as the Conservation Corps to assist  
90 them in that process. Those of us who have had them into  
91 their homes know they do a good job. They gave evidence  
92 here showing the money that can be saved. They showed  
93 how many kilowatts they've saved just by entering 380  
94 homes.

95 (10:45 a.m.)

96 But unless the utilities come on side, unless this  
97 Board gives firm instructions because conservation,  
98 according to Dr. Wilson, is one of the hallmarks and  
99 guiding principles in setting rates, then it's all for naught,  
100 and it's not that they don't know the utilities, because they  
101 do. They experiment with conservation from time to time,  
102 and we saw in the evidence along the coast of Labrador  
103 where in the Town of Charlottetown, Newfoundland Hydro  
104 went in and did a lot of good work in conservation there

1 over a period of time, had experts hired and they were  
2 getting results, because they wanted to bring down the  
3 diesel fuel that was being consumed in that particular  
4 community, but when I asked concerning that during the  
5 hearing in Labrador, it's all gone now. The witness stated,  
6 yeah, that was years ago, haven't heard anything back  
7 since.

8 See, conservation cannot be sporadic, it has to be  
9 constant, it has to be persistent, and it's no good to just  
10 put it in a letter. Certainly Ms. Mallolly-Pauley has  
11 addressed that in spades. We have it in our brief, her  
12 comments on that. You have to be an activist, you have to  
13 get out there, work, and work with people and have  
14 objectives, and the utilities should have objectives, and  
15 indeed if both utilities had objectives in trying to bring  
16 conservation measures into this province, we'd have no  
17 objection to them getting bonuses and getting increases at  
18 the executive level if they set that kind of standard. That  
19 would be a standard in, where we would see some real  
20 results rather than the standards, the low thresholds they  
21 are setting for themselves in reference to incentive plans  
22 they now have as is in the evidence.

23 And of course conservation has to be timely. You  
24 can take administrative notice in the fact that we all got our  
25 statements of account from Newfoundland Power in late  
26 December and January and they had some great  
27 conservation news there and they're to be commended, and  
28 they tell people what to do, you know, turn on your  
29 thermostats, all the stuff we all know about, watch out for  
30 drafts and everything, and then they say this, "When  
31 decorating this Christmas, choose five watt outdoor lights  
32 rather than seven watt lights and save 30 percent of the  
33 energy used. For additional savings use a timer to control  
34 when lights go on and off," so use these particular  
35 wattages. I mean, that's great, the only thing is it came in  
36 with my bill that I got in January. So if it had been planned  
37 and if they had to make an effort to try to get people to  
38 reduce that particular portion of their expenditure, that  
39 would help the system. We don't see that happening and  
40 it is inexcusable for these utilities to appear before this  
41 Board when we have made conservation an issue and not  
42 to address it at all.

43 The utilities say, at least Hydro says, there's no  
44 duplication, duplication is not an issue. Well, where have  
45 they been? For days we had on the stand witnesses going  
46 over reports from committees they struck to look at that  
47 very issue, and they got a little spin out there now. You  
48 got to watch when utilities are spinning. They say, well,  
49 we're into generation but they're into transmission,  
50 distribution, we're into certain areas of the province and  
51 they're not there at all, the other crowd are not there at all.  
52 That's patently false. They are in most of the same areas.

53 There's evidence on that. The committees themselves made  
54 reference to the fact that they both are in central  
55 Newfoundland, they're both in western Newfoundland,  
56 they're both in eastern Newfoundland, they both have  
57 something there in Burin. The only place where we don't  
58 see the duplication is up north and into Labrador. So that's  
59 a line that they got out there and it's not a line that is  
60 correct.

61 If you look at any of the working groups, and  
62 many of these seem to have done good work, they've tried  
63 to find ways to deal with duplication, and we've given you  
64 the VHF radios, a case in point, where the two utilities  
65 couldn't come to an agreement, now one is, wants to spend  
66 \$8.7 million to purchase their own and then try to go to the  
67 other one and see if something works out, and the same  
68 with the meter shop. We saw the evidence there. They  
69 were told there would be \$175,000 in savings if the two of  
70 them worked together and all of a sudden Newfoundland  
71 Power is out contracting. They say that's better. Now  
72 Newfoundland Hydro is gone and gotten its own, is  
73 undertaking its own accreditations. Now they're going to  
74 approach Newfoundland Power and see if they can do  
75 something about that. It's always they're going to do  
76 something.

77 But let's dispel the notion that there's no  
78 duplication in this system. The evidence falls, it flies in the  
79 face of that assertion. Both companies have something to  
80 offer to consumers in reference to this and if they're not  
81 going to do the work themselves, let the Board go do it for  
82 them. Let the Board find a suitable third party, party of  
83 experts, to go in and root in behind these companies, find  
84 the duplications that are there and save consumers some  
85 money. And it's very interesting what they discussed in  
86 the various working groups they had and the  
87 recommendations that weren't followed in reference to  
88 these groups for one reason or another, but what they  
89 didn't discuss is even more striking. They don't know ...  
90 Newfoundland Hydro doesn't know if it's better to lease or  
91 purchase vehicles, they don't know concerning  
92 Newfoundland Power's maintenance programs in reference  
93 to vehicles, they don't know if it's better to purchase or to  
94 lease computers. They haven't even discussed these  
95 things let alone some basic, coming to terms in some basic  
96 agreement in reference to printing materials. If you looked  
97 at that one, there was supposed to be a big saving there  
98 and they couldn't come to an agreement on that for one  
99 reason or another. There's always an excuse given at the  
100 end and these excuses amount to lack of good faith in our  
101 submission and it's time that the Board addressed it, dealt  
102 with the myth, dispelled the myth that they can't do  
103 anything about it, and try to save consumers millions of  
104 dollars by dealing with duplication in a serious fashion.  
105 Newfoundland Hydro wants the business as usual

1 approach. Let's give us our package, we'll go about our  
2 business and they'll all go home, the scrutiny stops and it's  
3 all forgotten about. Well, this is one issue which will  
4 appear from time to time, I have no doubt, in future  
5 hearings, but I would hope that the Board would see fit to  
6 address it now.

7 Mr. Chairman, it's 5 to 11:00. Do you want to take  
8 a break now and ...

9 MR. NOSEWORTHY, CHAIRMAN: Sure.

10 MR. BROWNE, Q.C.: ... we'll take our 15 minutes here?

11 MR. NOSEWORTHY, CHAIRMAN: I appreciate that.  
12 Thank you, Mr. Browne. We'll reconvene at 10 after.

13 (break)

14 (11:15 a.m.)

15 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.  
16 Browne, when you're ready you can continue please.

17 MR. BROWNE, Q.C.: Thank you, Mr. Chairman, I checked  
18 with the time master and he tells me I have 51 minutes. I  
19 don't know if I'll need all that, but for the record ...

20 MR. NOSEWORTHY, CHAIRMAN: You have it in any  
21 event, sir.

22 MR. BROWNE, Q.C.: Both Newfoundland Power and the  
23 Industrial Customers enumerated costs which could be  
24 realized in reference to Hydro's application and savings  
25 which would be the result. Now both these companies  
26 have teams of accountants which we didn't have access to,  
27 but it's interesting to note that if these cost savings  
28 measures were implemented as put forward by both Power  
29 and the Industrial Customers, there would be no rate  
30 increase necessary whatsoever. We urge you to review  
31 these and to implement as suggested by both the Industrial  
32 Customers and Power.

33 I'll move on to the RSP. In this application Hydro  
34 wants to do business as usual. A previous Board directive  
35 had stated that when the RSP reaches \$50 million, an  
36 application would be required to make a determination as to  
37 what to do. Hydro's answer is to give us \$50 million more.  
38 We say no, and we have our reasons, and the reasons can  
39 be traced in the origin of the RSP, and a myth has  
40 developed which has been perpetuated by the utilities that  
41 the consumer activists of the day demanded the RSP. I  
42 hope based on the record that that myth has been  
43 dispelled. Neither Roma Peddle, nor the New Lab Action  
44 Group, who were heading the protest in 1985 demanded the  
45 RSP. In fact, the record shows they opposed the RSP. And  
46 their opposition, we found on page 31 of the transcript of  
47 November 15th, 2001, at lines 73, and they state ... Mr. Joe  
48 Hutchings, consumer counsel, Mr. Joe Hutchings ...

49 though we did not understand everything that was said  
50 and all the data given, we have to say that we are opposed  
51 to what Newfoundland Hydro is proposing because of the  
52 risk that it exposes consumers to and the substantial and  
53 exaggerated charges that could occur in rates if there is  
54 high cost ... and maybe it could work if there was some  
55 guarantees that the fuel and water cost variations could be  
56 restricted to small amounts that would include both  
57 positive and negative entries, but we reject this proposal  
58 insofar as we understand it, and their only position at the  
59 time was that there be a public inquiry set to inquire into all  
60 aspects of electricity in Newfoundland, including the  
61 advantages and disadvantages of nationalization of the  
62 whole complex. They seemed to focus on duplications, as  
63 we have in this hearing.

64 So we know that the plan was implemented over  
65 the objections of the activist consumer groups. It was  
66 implemented as a result of an outcry, but this was not the  
67 remedy that they sought. And what has happened ... and  
68 I should mention that the provincial government of the day,  
69 as is in the evidence, did not advocate such a plan. The  
70 evidence is the government advocated an averaging  
71 system, which appears to be consistent with what other  
72 utilities do in other jurisdictions. And the transcript of  
73 November 15th, 2001, makes reference to that, and  
74 according to CA-216, when the plan was collecting  
75 approximately \$30, there was surpluses. It started off with  
76 large surpluses. In 1986 there was a surplus, 1987, if you  
77 go to CA-216, Mr. O'Rielly, and CA-216 indicates in 1986 a  
78 surplus, in 1987 a deficit, and then we had great surplus  
79 years in '88, '89, '90, '91. Now when there were surpluses,  
80 the Public Utilities Board of the day, and you're not bound  
81 by their decisions, neither are you implicated by their  
82 decisions, you're a board to yourself. But in 1990 the  
83 Public Utilities Board of the day, over the objections of  
84 Hydro, it's all a matter of public record, used part of the  
85 estimated balance of \$19 million in the RSP to offset \$9  
86 million in other costs. Hydro objected. They did it  
87 anyway.

88 In 1992 the Public Utilities Board of the day again  
89 raided the RSP account for \$9 million to assist Hydro with  
90 deferred expenses, so it seems when there were surpluses  
91 in the account, it became an easy money account, and I'm  
92 certain that there are no great explanations given to  
93 consumers of the day that their portion of the RSP had  
94 been used to offset A, B, C, D. It seemed to develop as a  
95 sort of slush fund. And in that same year, in 1992, that the  
96 Public Utilities Board raided the RSP account for \$9 million,  
97 the RSP ... Hydro recommended that the price of Bunker C  
98 oil be set at \$14.00, and the Board for reasons which are not  
99 exactly clear and I've read the decision several times, set the  
100 price at \$12.50 a barrel, and we all know what happened.  
101 From that point onward, and if you just go to 217 for a

1 moment please. We see these large surpluses in 1989, 1990,  
2 and so on. I just want to make sure we've got the ... and  
3 then we come into the deficit years after 1992. I don't think  
4 I have the right exhibit there. Maybe you don't ... 216, 217,  
5 218 ... just try 216 there. Yeah, okay, this the right exhibit.  
6 If you go to 1992, the year that the price of oil was set at  
7 \$12.50, we see the deficit starting, and it continued in 1993.  
8 There was for some inexplicable reason, probably to do  
9 with hydrology in 1994, a balance in the account, but then  
10 it's been downhill from there, year over year over year.

11 Now, it causes me to ask the question where was  
12 Perra then? Where was the forecasting, where were the  
13 hydrology forecasts then? If we were getting into a  
14 downward trend, why did Newfoundland Hydro wait until  
15 we reached the \$50 million cap, and now it's beyond that.  
16 I think collectively it's about \$88 million between the  
17 industrial and the retail customers now. Why did they wait  
18 till now to come. If a crisis was being developed in  
19 reference to the RSP, you think they would have come up  
20 sooner just to deal with that particular issue, and yet,  
21 they're asking us to rely upon Perra now, and rely upon  
22 their hydrology figures. Why were they keeping this  
23 hidden? What miracle were they hoping for? But they  
24 didn't do it, and they waited until now to come, and in  
25 interest alone ... if you go to CA-217, in CA-217 it indicates  
26 the interest in the plan that developed over time, and I think  
27 there was a further revision to that actually. I think the  
28 interest in the plan now totals about \$23 million  
29 approximately, and I think that was revised upward when  
30 we got right into 2001 and 2002 figures.

31 So consumers have not only paid for oil, they've  
32 also paid the interest. Now what gives them, these utilities  
33 the right to borrow money on behalf of consumers and  
34 charge interest when most consumers would sooner pay as  
35 they go, I would think, and not have to pay the interest.  
36 No doubt it was all done with Board authorization, but you  
37 just wonder what options are there for consumers, they've  
38 given them very little by way of option.

39 In reference to 2003 to 2005, I asked what the  
40 interest could be estimated in reference to these years when  
41 the plan appears to be very high, and under CA-222, they  
42 couldn't tell us what the interest is going to be, and neither  
43 can they. This is unpredictable. Neither can they tell us  
44 what the hydrology is going to be, and neither really can  
45 they tell us what the fuel prices are going to be, because it's  
46 all forecasting. We're all aware of the economics, the  
47 economic situation and the way it changes from day to day,  
48 and we're all aware of the price of oil and what could cause  
49 (inaudible) in the price per barrel of oil at any given time.

50 So is it any wonder, when we look at these  
51 unpredictable factors and what has happened in the RSP  
52 over time, that we should be against the plan? And it's no

53 wonder Hydro wants to keep it. It serves their purpose  
54 well. They just continue to pump out the oil, accountable  
55 to no one, and deliver the bill. Newfoundland Power, they  
56 like the plan, they're the perfect middlemen. It doesn't cost  
57 them a cent. They just pass it on, and they're able to  
58 advertise the price of oil, as you see in their circulars from  
59 time to time, as the cheapest in Atlantic Canada. No  
60 reference made to what might be owing in RSP's, or if  
61 there's any computation of RSP's in those, when they make  
62 those acclamations. And is there any wonder that the  
63 financial institutions would love the plan? Who are the  
64 financial institutions? Well, they're the banks. They've  
65 gotten \$23 million of our money in the plan so far, they  
66 should be tickled pink.

67 (11:30 a.m.)

68 So the only ones bearing the burden of this  
69 particular plan are the consumers of the province, and we're  
70 all consumers and we're all paying for it, and the problem  
71 with the plan was in its conception. It was ill-conceived.  
72 It reminds me of that old saying, they tried to make a silk  
73 purse out of a sow's ear. They had no precedent, there is  
74 no precedent for this plan anywhere else. You've heard the  
75 experts one after the other, no, nothing like this anywhere  
76 they've been. Most of them together have been all over the  
77 world, and it's not anywhere else because it defies  
78 regulatory principles.

79 Regulatory principles don't allow for  
80 intergenerational costs, and expenses have to be collected  
81 year by year in any regulatory principle I say. Just look to  
82 Bond Bright and just see what he says ... a utility is entitled  
83 to their expenses year over year and entitled to a rate of  
84 return, and it is an expense. I'm reminded, some years ago  
85 when we were growing up in Grand Falls, the Royal Stores  
86 and the Co-op Store were the only two stores in town, and  
87 everyone worked in the mill for the most part, and some of  
88 my colleagues behind me there will know that, and the  
89 Royal Stores, everyone had a charge account at either the  
90 Royal Stores or the Co-op Store, to buy major items, to buy  
91 their capital expenditures items, I guess, their fridge, or their  
92 stove, or their couches, or their beds or whatever. Then  
93 the Royal Stores got the bright idea to allow people to  
94 charge for their groceries, and to collect interest on this,  
95 and this was back in the 1960's, and of course, a lot of  
96 people fell, and of course, by and by their cheques didn't  
97 cover it. They went and spent their money on other things,  
98 and by and by they couldn't buy the very necessities that  
99 they had, and the charge plan had to be discontinued. Is  
100 that any different than what's gone on here? They're not  
101 paying for their oil, a basic expense, as they're using it.  
102 They're charging it off in the hope that someday interest  
103 rates will continue to be low, the hydrology will be good,  
104 foreign exchange will be great, and as I think Mr. Wells said

1 in his evidence, a bit of luck develops. It's difficult to  
2 operate a business like that. Certainly consumers couldn't  
3 operate their homes like that. You pay as you go, and if  
4 you pay as you go people know what they have to pay for  
5 and you know what your expenses are.

6 I saw yesterday in the evidence of our colleague,  
7 Ms. Butler, that she took some consolation in the fact that  
8 Dr. Kalymon supported the Rate Stabilization Plan and Mr.  
9 Bowman did not. It's true, Dr. Kalymon is a financial expert.  
10 He favours banks, he favours rates of return, he's a  
11 financial analyst, he's one of them. Mr. Bowman, on the  
12 other hand, is a rate design expert. He couldn't possibly  
13 favour something like the Rate Stabilization Plan because  
14 it defies regulatory principles. And even Dr. Kalymon  
15 admonished that as the size becomes excessive it actually  
16 creates financial risk rather than lowering financial risk, and  
17 he wondered what would be the replacement for the plan if  
18 the plan goes, because there has to be a replacement. But  
19 Ms. Butler didn't tell you these things.

20 And he also quoted from our position as given by  
21 Mr. Bowman, and a consistent position, which says the  
22 elimination of the RSP should be gradual in order to spread  
23 the rate impact over time. That's our position, and our  
24 position is not too much different really than the position  
25 of the Industrial Customers, because Mr. Osler stated in his  
26 submission on page 23 of the pre-filed, August 15th, 2001,  
27 line 18, in contrast the current application proposes to set  
28 rates below the level required for cost recovery under  
29 current forecasts to defer certain costs from today into the  
30 RSP to be collected from future ratepayers. This appears to  
31 be a marked departure from the RSP as it had been used  
32 earlier in Newfoundland and Labrador, and a practice not  
33 typically encountered in similar regulated rate stabilization  
34 systems. And I asked Mr. Osler concerning how much  
35 money should be booked into the cost, the base price of  
36 oil, and despite the fact we have both Hydro and  
37 Newfoundland Power saying everyone advocated \$20.00,  
38 that certainly wasn't Mr. Osler's evidence. He says \$28.00,  
39 according to the transcript from December 3, 2001, maybe  
40 a moving target, and I think their forecast ... when they said  
41 it was at \$28.00, would tend to come down, so my position  
42 is to take an example, if I could, if you set three, a  
43 reasonable phase-in time period, so what you do is  
44 (inaudible) what the price is going to be in three years and  
45 we think the price of oil is going to be in three years and  
46 deal with it from that perspective. So he was saying do it  
47 with time. He said the same thing as Mr. Bowman says, do  
48 it with time. Mr. Bowman certainly didn't agree to a \$20  
49 price for a barrel of oil because you're falling into the same  
50 trap that the Board fell into in 1992. The price was forecast  
51 at \$14.00, set it at \$12.50, and we were in trouble  
52 immediately.

53 Consumers are realists. Consumers know the price  
54 of oil as it fluctuates. They all fill up their cars, those that  
55 don't have oil furnaces, and those who have oil furnaces  
56 have paid as they went. They're very familiar with the  
57 process because most oil companies have monthly billing  
58 plans to assist with that. And of course, there's nothing to  
59 prevent Hydro from initiating a monthly billing plan for its  
60 customers, something that was talked about in 1985 and it's  
61 taken them 17 years to get around to it, but now they say  
62 they're prepared to do it in 2002. Newfoundland Power had  
63 a monthly billing plan. It's my understanding that most of  
64 their customers reacted favourably to it. I think the last  
65 stats I saw, I think the majority of their customers were in  
66 the Rate Stabilization ... their monthly billing plan. So  
67 consumers can plan that way, so the variations aren't there.  
68 And the plan that could be used by the Board is those that  
69 are acceptable in other jurisdictions. Plan the price of oil  
70 over six or twelve months, look at the evidence, it's all  
71 there.

72 I am reminded of the evidence of Mr. Brickhill. He  
73 said the Rate Stabilization Plan is (inaudible) to proper rate  
74 design. That was their own expert told us that. Mr. Wilson,  
75 Dr. Wilson certainly didn't advocate the Rate Stabilization  
76 Plan. Mr. Osler was very guarded with it. We're left with  
77 Mr. Brockman who told us one thing in one hearing and  
78 tells us another in this hearing. So I think the vast majority  
79 of experts ... and you can tell, when a witness is on that  
80 stand, you not only hear what they say, you pick up the  
81 body language, and when we were asking about the Rate  
82 Stabilization Plan, they were really striving to say  
83 something good about it. You just picked it up, it was  
84 there. The body language sometimes tells a lot because  
85 they know it is an anomaly.

86 Proper conservation measures, and a proper  
87 conservation program with the monthly billing, with the  
88 gradual ease-in, consumers can deal with it, and particularly  
89 if you take into account the costs that both Newfoundland  
90 Power and the Industrials have stated appear to be  
91 exaggerated in this application. So view it all as one  
92 package, it's a package deal, and let's put us on the same  
93 plane as other jurisdictions.

94 We do not view a study, that any further study is  
95 necessary in reference to the Rate Stabilization Plan. We've  
96 been here for 50 days. We've had experts from all over the  
97 country.

98 MR. NOSEWORTHY, CHAIRMAN: 61.

99 MR. BROWNE, Q.C.: 61, sorry, better again. We've had  
100 experts from all over the country testify, and into the  
101 United States, in reference to this plan. There is nothing  
102 further to be garnered. There's no magic to it. In reference  
103 to the ongoing balance in the plan, and Dr. Bowman, or Mr.

1 Bowman spoke to this, as did Dr. Kalymon ... amortization  
2 was suggested, and Commissioner Saunders requested  
3 some figures, what about costs, and we requested others.  
4 And we view a long period for planning out or for paying  
5 back that amount of money, and the reason we do that is  
6 because it's already an intergenerational nightmare. We're  
7 paying for people long departed from this province, and it  
8 is consistent with what the Board did for the foreign  
9 exchange loss, what the government did ... they gave them  
10 40 years to pay that. So it's not without precedent. Give it  
11 the longest period of time. I noted that Hydro was very  
12 generous when I asked if an industrial customer should  
13 leave, or all the industrial customers fold their tent ... Mr.  
14 Osmond said they'd have to absorb what was left in the  
15 plan at that point. No questions asked about how much  
16 money, he said the consumers won't have to pay for it,  
17 they'd have to absorb that, so shouldn't they be equally  
18 generous in providing a plan to the ratepayers, a plan for  
19 which they were responsible for coming forward to alert as  
20 to the exigent (phonetic) circumstances which were  
21 developing, but failed to do so until we reached the crisis.  
22 They have responsibility. Also, I note that the Board took  
23 money out of the plan in two different years, given all the  
24 scenarios, I don't think it is unrealistic for the Board to set  
25 a long period of time for paying that back.

26 There are other issues which we've mentioned in  
27 our brief. We want some ... the information according to  
28 Barbara Mullally-Pauly, given on Newfoundland Hydro's  
29 bill, its very worthwhile. On the back of the bill they  
30 provide, give consumers some idea of what it costs to burn  
31 electricity in terms of various appliances. What's wrong  
32 with Power giving us that too. That would be worthy  
33 information. People could govern themselves accordingly.  
34 We note now, there is evidence that Hydro is quite capable  
35 of doing monthly meter readings in the worst conditions in  
36 rural Newfoundland, and with few exceptions according to  
37 the evidence, but we see time and again that Power doesn't  
38 seem to be able to do that. Right now they have a  
39 binocular program on the go, I saw most recently,  
40 binoculars trained on people's houses to read their meters  
41 when they can't get in. I thought this issue was addressed.  
42 It was certainly much debated in 1996. I get calls from  
43 consumers, they're not reading my bill monthly. I said if  
44 there are exigent circumstances they don't have to ... well it  
45 seems to me they should be able to do it. It seems to vary  
46 all the time. I thought the issue was addressed. I urge the  
47 Board to go back and see if that was indeed addressed in  
48 1996. They agreed that it should be monthly, monthly  
49 billing plans. You have an overall responsibility as the  
50 regulator to deal with Power if they're not following the law.

51 Dr. Bowman, or Doug Bowman and Dr. Wilson  
52 have been consistent in terms of cost of service and rate  
53 design. We heard from the Industrial Customers that they

54 would be very much interested in some kind of daily rate,  
55 and there's no reason it can't be done, it just disturbs the  
56 pattern for Power and Hydro. They say it would disrupt  
57 their earnings, there would be volatility. Well surely that's  
58 something businesses can be deal with. Every business  
59 has volatility in its earnings. Commissioner Powell is a  
60 chartered accountant. He would know that. It's not going  
61 to put them under, so we would request that the study be  
62 done, conducted, completed, presented at a public hearing,  
63 and finally we would have other than energy only rates  
64 here in this province. It would serve the industrials well, it  
65 would serve consumers well, it would give people their  
66 options, it would highlight what is possible, and it would  
67 take away from business as usual. It's timely.

68 I noted as well that in terms of demand side energy  
69 program, both utilities were ordered to present a common  
70 report on their demand side management by a previous  
71 Board order going back to 1990 or 1992. That was never  
72 done. They applied, or they filed but they filed by  
73 themselves. There's a purpose in having them file together  
74 because they have to work together on demand side and  
75 on conservation. We all have to get at the oil problem  
76 that's out there, and it's no good for Newfoundland Hydro  
77 to whisper in corners that the problem is electric heat. The  
78 problem is the expansion into electric heat, and to whisper  
79 that in my ear ... unless they're prepared to deal with it, and  
80 to state we have an awful problem here in this province  
81 with the explanation in electric heat because that burns  
82 more oil. Isn't it far better off to call a spade a spade and to  
83 deal with that explanation and to tell consumers we find  
84 this very difficult, and to tell Newfoundland Power, look,  
85 we can't go at it anymore by this electric baseboard  
86 radiation, push your other items, push your heat pumps,  
87 push convect-air, but stay away from baseboard radiation,  
88 we can't do it anymore. What's wrong with honesty here,  
89 what's wrong with standing up and saying this is the  
90 problem, and that's why we're burning so much oil, and it  
91 can't continue because we don't have the storage capacity  
92 out there.

93 *(11:45 a.m.)*

94 I've covered all the major points, our submission  
95 was made. We've enjoyed this hearing and participating in  
96 it, and representing the consumers of the province. We  
97 enjoyed particularly the trip to Labrador, and getting a first  
98 hand view as to what people have to put up with there in  
99 terms of their lifestyle, and while the interconnected system  
100 in Labrador has the lowest rates, it's a passing irony that  
101 those people that first inhabited this province are paying  
102 through the nose. Thank you very much.

103 MR. NOSEWORTHY, CHAIRMAN: Thank you very much,  
104 Mr. Browne. It's 10 to 12:00, I think we'll move now to Mr.  
105 Kennedy for his presentation please.

1 MR. KENNEDY: Thank you, Chair, Commissioners, I  
2 suspect that I'll have no difficulty in finishing before our  
3 scheduled lunch hour, so ... and that would give Hydro an  
4 opportunity to be able to look over all the notes for their  
5 rebuttal this afternoon.

6 I want to just speak to, just a couple of legal  
7 issues, Chair and Commissioners, that have arisen. The  
8 first one relates to the rate of return of Hydro. Hydro  
9 counsel in her submission referenced the fact that the  
10 issues surrounding the rate of return for Hydro and the fact  
11 that they were seeking a three percent rate of return on their  
12 equity was different, or at least opposed to, and I believe  
13 her words were, if a normal profit had been asked for.  
14 Similarly, the Industrial Customers, Mr. Joe Hutchings  
15 indicated that everyone agrees that three percent is not a  
16 commercial return. Now relatedly, Hydro has asked for the  
17 Board to treat it as a commercial entity and an investor  
18 owned utility, and using these terms synonymously in the  
19 evidence and in her argument. The Board, however, must  
20 look to the Acts, as I've indicated in my submission, and  
21 specifically Section 80 of the Public Utilities Board (sic),  
22 *Public Utilities Act*, sorry, and Section 3 of the *EPCA*, and  
23 those acts when read in conjunction and in accordance  
24 with Section 3(a)(3) of the *EPCA* indicates that Hydro is  
25 entitled to earn sufficient revenue to earn the Section 80  
26 just and reasonable rate of return so that it can achieve and  
27 maintain a sound credit rating in the financial markets of the  
28 world, so I suggest that the first instance is that the panel  
29 needs to make a determination of what that provision  
30 mandates insofar as how it treats Hydro for that purpose.  
31 In fashioning what is a just and reasonable rate of return it  
32 will need to decide how it perceives Hydro, how the  
33 regulated utility needs to be treated. Does it need to be  
34 treated as an investor owned utility? Does it need to be  
35 treated as a commercial entity? Does it need to be treated  
36 as Crown corporation, a Crown corporation moving to an  
37 investor owned utility, or an entity unique and to itself  
38 because of the circumstances? Once it fashions a  
39 definition of what is a just and reasonable rate of return in  
40 this particular instance, it needs to make a finding of fact of  
41 whether Hydro meets that definition and then apply, in  
42 other words, the finding of fact to the definition.

43 The next legal issue was a new legal issue that  
44 wasn't addressed in my submission, but several of the  
45 counsel have raised it, and it's in effect an estoppel  
46 argument, and it arises from several of the parties indicating  
47 in both directions that they have relied on the past practice  
48 of another party and it would be unfair to have them now  
49 being called upon to do something contrary to that past  
50 practice. I'll give you two specific instances that come to  
51 my mind from the submissions and from the hearing itself.  
52 The first one was relating to the Industrial Customers  
53 alleging that Hydro has misapplied, if you will, the RSP in

54 that Hydro has made variations to the cost allocations  
55 between its customers based on load factors ... when in  
56 accordance with, as I understand it in the Industrial  
57 Customers' argument, that this wasn't supposed to be the  
58 case, and the Industrial Customers have asked for a  
59 retroactive change to address this error on Hydro's part, as  
60 has been alleged.

61 Hydro, in turn, as I understand it, is saying that it  
62 was a proper application of the RSP but that in any event  
63 the Industrial Customers were given notice of the practice  
64 of Hydro in the way it applied the RSP calculation and  
65 specifically the load factors. The second example I can  
66 give you is that Hydro has indicated that it was relying on  
67 past practice when determining the nature and the level of  
68 the documentation that it filed in support of its capital  
69 budget applications, because of the fact that they have  
70 been criticized for the lack of documentation, and that, and  
71 that, therefore, if there is going to be a change in the level  
72 of documentation that's required, then they should be  
73 provided notice that there is a change before it's actually  
74 implemented so that they're not prejudiced by that change.

75 Now, there has been numerous legal treaties  
76 written on the law of estoppel, books upon books, and  
77 cases upon cases, and so I'm going to attempt to provide  
78 a very brief and succinct statement of estoppel in the  
79 hopes that it provides the Board with some guidance on  
80 this legal principle. In it's simplest state, I would suggest  
81 that estoppel is initially where a past practice demonstrates  
82 of not enforcing a legal right of requirement. The innocent  
83 party needs to show that they relied on the non-  
84 enforcement, or the past practice to their detriment. The  
85 parties seeking to enforce the legal right or to change its  
86 practice then must provide reasonable notice of its  
87 intention to do so, so in other words, a part may have a  
88 legal right, they haven't enforced that legal right, the  
89 innocent parties relied on the practice of that party not  
90 enforcing the legal right to their detriment. When the party  
91 who now claims to be able to have a legal right to enforce  
92 goes to do so, the innocent party can claim or attempt to  
93 invoke an equitable remedy of estoppel to say that prior to  
94 them doing so they have to provide reasonable notice.  
95 Now the length of reasonable notice, the amount of time  
96 before the parties seeking to enforce the legal right is able  
97 to do so, is dependent on the nature of the right and the  
98 circumstances surrounding the issue and the parties  
99 themselves, so it's not a hard and fast rule but it's an  
100 equitable remedy addressed, meant to address what would  
101 otherwise possibly be an unfair invoking of the legal right  
102 in circumstances where the party hasn't enforced it in the  
103 past.

104 The next issue is on the silence by parties on an  
105 issue. It's been suggested on numerous occasions by,



1 during submissions by counsel that the silence by a  
 2 counsel on a particular issue may constitute some tacit  
 3 approval of that other party's position, or at the very least  
 4 may mean that the other parties don't have an answer as  
 5 has been suggested by one counsel. Similarly, it was also  
 6 suggested that what is not said or not asked of a witness  
 7 can be deemed by this Board to be evidence. First, I would  
 8 suggest to you that silence by a party, by counsel on a  
 9 particular issue may not mean anything more than just that,  
 10 silence. They may have missed the issue, they may have  
 11 ignored the issue, they may have thought the issue was so  
 12 clear that they need not address it, or as suggested, they  
 13 didn't know what to say about it and therefore retreated  
 14 from the issue.

15 Secondly, I do not believe the law would support  
 16 the contention that what is not asked is evidence.  
 17 However, I do believe the law would support the  
 18 contention that if not challenged, the direct evidence of a  
 19 witness stands uncontroverted, and can be taken by the  
 20 panel as such.

21 I'd like to turn now to the role of counsel. The  
 22 Industrial Customers have asked that portions of the  
 23 written submission by Board Counsel, myself, be struck on  
 24 the basis that I have taken a position on certain issues. I  
 25 believe the Consumer Advocate has made a similar  
 26 submission, and there's no authorities provided to support  
 27 that, and it is a bit of a dilemma because it raises the white  
 28 horse element that once read it's difficult to ignore  
 29 something, and if you tell someone to think of nothing,  
 30 anything but a white horse, of course, all they can think  
 31 about is the white horse. So I thought that in light of the  
 32 fairly straightforward, you know, request of ... that a  
 33 portion of my submission be struck, that I need to address  
 34 that. And there were, as I understand it from the Industrial  
 35 Customers, four issues in particular that they had a problem  
 36 with, and they were in my comments concerning the  
 37 marginal cost study. The capital budget, I believe they  
 38 indicated my comments concerning the industrial customer  
 39 contracts and my comments concerning Hydro being  
 40 treated as an investor owned utility. I believe Hydro only  
 41 had difficulty with one of those, which was the marginal  
 42 cost study in particular, that's the only one they  
 43 specifically raised anyways, and again, that silence on the  
 44 other ones doesn't mean tacit approval of them.

45 Perhaps we can just look at the marginal cost issue  
 46 again, and my comments that I make in that regard. As I  
 47 understand my submission (*laughter*), in effect all I was  
 48 doing was recommending that the Board consider ordering  
 49 Hydro to conduct a marginal cost study. Now I'm  
 50 perplexed as to how recommending that a study be  
 51 undertaken can be viewed as adversarial, other than the  
 52 fact that Hydro doesn't feel that one is warranted.

53 However, a study just simply seeks information and  
 54 provides the panel with more options, which was the  
 55 purpose behind the submission. If you're questioning the  
 56 reason why I make that recommendation, one need only  
 57 turn to the testimony of Dr. Wilson, the cost of service  
 58 expert that was retained by the Board's staff, and his very  
 59 straightforward recommendation that a marginal cost study  
 60 should be undertaken, and I see this, therefore, as an  
 61 appropriate role of Board Counsel to bring to the panel's  
 62 attention issues that were not raised by any other parties,  
 63 or raised specifically by the staff or the staff's experts, the  
 64 staff's retained experts.

65 As to the issue concerning Hydro being treated as  
 66 an investor owned utility, I do not believe I took a position  
 67 on the matter. In fact, quite the opposite. I believe I just  
 68 specifically provided the panel with an if than, else  
 69 scenario. My comments on this issue, similar to the ones  
 70 at the beginning of my oral argument here this morning,  
 71 were to point out to the Board that the phrase, investor  
 72 owned utility, has no statutory basis under either Section  
 73 80 of the *Public Utilities Act*, or Section 3 of the *Electrical*  
 74 *Power Control Act*, and therefore requires an interpretation  
 75 by this Board, those provisions, of whether it applies to an  
 76 investor owned utility and whether Hydro is entitled to be  
 77 regulated as such. And again, I see this as an appropriate  
 78 role of the Board Counsel, pointing out to the panel the  
 79 provisions of the acts that it's required to implement and  
 80 interpret and apply to Hydro's general rate application.

81 Similarly in my submissions on both the capital  
 82 budget application and the industrial customers' contracts,  
 83 I took no position per se, but simply provided to the Board  
 84 that it must decide the issue and provide it some guidance  
 85 about what factors it may wish to consider, and that I  
 86 would suggest that in both instances, and particularly in  
 87 my comments regarding the capital budget application,  
 88 they were process oriented comments, particularly for the  
 89 capital budget, and that there was no taking of a side, if  
 90 you will, and again, I would see that as an appropriate role  
 91 for Board Counsel.

92 (*12:00 noon*)

93 Finally, because there was, again, specifically  
 94 raised by counsel for the Consumer Advocate, the RSP,  
 95 and my comments concerning the RSP. I state in my  
 96 position, in my written argument in the RSP that I  
 97 recommend that the RSP be simplified. I don't know of  
 98 anyone here who is advocating a more complicated RSP,  
 99 and therefore I fail to see how it could be suggested that I  
 100 was being adversarial in my approach on the RSP. But  
 101 again, my comments are aimed specifically at the issue of  
 102 the ongoing monitoring, supervisory monitoring that is  
 103 expected to be carried out by Board staff subsequent to the  
 104 completion of this general rate application, and that the

1 RSP is an example where Board staff will be required to  
2 monitor Hydro to ensure that the RSP is being implemented  
3 properly and therefore the simpler you can make the RSP,  
4 the easier it will be for those staff to monitor the situation  
5 and that again is clearly a role for your Board Counsel to  
6 point out, that the orders and decisions that the panel make  
7 have a direct impact on the ability of staff to be able to  
8 carry out their function.

9 So clearly there's a difference among counsel as to  
10 what the appropriate role should be for Board Counsel to  
11 play in a general rate application, and all I can say is I think  
12 that we may have to agree to disagree on what that  
13 appropriate role is, but as I indicated in my submission  
14 itself, the final determination of that point is to be made by  
15 the panel itself and the directions provided to its Board  
16 Counsel.

17 In closing I just wanted to provide a very general  
18 comment to the panel concerning the fact that, and I  
19 believe it's been alluded to by other counsel already, that  
20 it needs to maintain the big picture. One thing that was not  
21 in short supply in this hearing, other than lawyers, were  
22 issues.

23 MS. GREENE, Q.C.: The lawyers were in short supply?

24 MR. KENNEDY: Not in short supply.

25 MS. GREENE, Q.C.: Oh, sorry.

26 MR. KENNEDY: And perhaps they go hand in glove. We  
27 looked at efficiency factors, conversion factors, capital  
28 structures, rates of return, operational expenses, interest  
29 expense treatment and other pure financial issues.  
30 However, the Board may wish to remain cognizant of the  
31 fact that Hydro has just implemented a new process, and it  
32 is a process. While this Board has been asked to make  
33 specific determinations on specific issues pursuant to  
34 Hydro's general rate application, this is in effect Hydro  
35 embarking on a new era in its existence, and accordingly, I  
36 would suggest that this needs to be viewed more as a  
37 process than as a decision per se that the panel is being  
38 asked to make pursuant to the application. Accordingly,  
39 the Board must decide not only what to order on the  
40 specific issues raised in the general rate application, but  
41 keep an eye looking forward to one year out, two years out,  
42 five years out, and perhaps even ten years into the future  
43 and set with that in mind a broad policy for the future  
44 regulation of Hydro. Should Hydro be treated as an  
45 investor owned utility, or as a Crown corporation, or as a  
46 combination of the two, or as an entity unique with unique  
47 properties? Will it be regulated on an incentive based  
48 regime or an efficiency based regime? Will it be closely  
49 monitored or will it be provided general parameters within  
50 which it must operate. Issues such as the Grant Thornton  
51 efficiency factor need to be weighed against the trimming

52 of specific expenses, those two approaches. Similarly  
53 Hydro's use of specific efficiency factors for Holyrood,  
54 should the Board order Hydro to use a specific efficiency  
55 factor for Holyrood, or should it implement a process that  
56 in the future would allow Hydro and its customer to benefit  
57 from increases in efficiency? Should it implement a fixed  
58 rate of return or a range of rate of return for Hydro or  
59 should it indicate to Hydro that it can move towards some  
60 sort of automatic adjustment formula similar to  
61 Newfoundland Power, that that's what's in the offing.

62 The Board will always be asked to wade in on  
63 specific issues. This is going to be expected, and one  
64 example might be the transformer loss issue that's been  
65 raised by the Industrial Customers. However, the Board  
66 should attempt to set a regulatory framework that is both  
67 reasonable and workable having regard to Hydro's own  
68 circumstances, the nature of its operations, the future  
69 direction of its business and the Board's own resources  
70 that can be committed to this process. That's all the  
71 comments I have. Thank you, Chair. Thank you,  
72 Commissioners.

73 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
74 Kennedy. Do the panel have any questions either for Mr.  
75 Kennedy or Mr. Browne, and Mr. Fitzgerald for that matter?  
76 Okay, thank you very much. We have just one scheduled  
77 item, and that's Ms. Greene's rebuttal and there's been a half  
78 hour provided for that, and likely, Ms. Greene, I'm not  
79 prejudging, but you may want the lunch time to consider  
80 the matter, or you may not, I don't know, but in any event  
81 you have the lunch time to consider the matter.

82 MS. GREENE, Q.C.: Thank you.

83 MR. NOSEWORTHY, CHAIRMAN: So we will reconvene  
84 at 2:00.

85 *(break)*

86 *(2:00 p.m.)*

87 MR. NOSEWORTHY, CHAIRMAN: Good afternoon. Mr.  
88 Kennedy, for the last time, I hope, could you inform us if  
89 there are any preliminary matters please?

90 MR. KENNEDY: Yes, Chair, Commissioners, there was a  
91 letter filed with the Board by e-mail, I believe, from the  
92 IBEW Local 1615, and in light of the lateness of the filing of  
93 the letter of comment, I just wanted to check with the other  
94 counsel to make sure that there wasn't an issue. There isn't,  
95 and so I recommend that it just be filed in the appropriate  
96 manner as a letter of comment.

97 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
98 Kennedy. Ms. Greene, your rebuttal please. Good  
99 afternoon.

100 MS. GREENE, Q.C.: Good afternoon, Mr. Chair and

1 Commissioners. There's a general comment first, I wanted  
2 to comment on our approach to this application, and I think  
3 it's been clear to the parties that our approach throughout  
4 this hearing has been to be totally forthright and  
5 transparent in responding to all of the information requests,  
6 the evidence the witnesses have given at the hearing and  
7 the position we have taken in the various issues through  
8 the hearing. This hearing process has given the  
9 opportunity of public scrutiny of Hydro's operations, and  
10 we welcome that opportunity. It has been, although it's  
11 been a long process, we do believe it's been a valuable  
12 process for that and we are happy to be here and to be fully  
13 regulated.

14 Looking at each of the final arguments, I'd like first  
15 to look at Newfoundland Power, and I will do them in the  
16 order in which they were presented. I have three  
17 comments. The first relates to the hydraulic forecast and  
18 the additional case from the Alberta Energy decision that  
19 was filed. I did want to point out that I don't think that case  
20 is particularly helpful, and that in fact, if anything, it may  
21 support Hydro's position. In that particular case the utility  
22 used a 20 year record. We don't know why it was 20 years,  
23 we don't know if it was a shorter period or a (inaudible)  
24 arbitrarily reduced, but we do know that the regulator  
25 accepted the record as proposed by the utility even though  
26 other parties have been suggesting it may not be  
27 representative because a previous year had been wet. So  
28 I don't think that that case is particularly helpful to any of  
29 the parties at the hearing actually.

30 The next comment also relates to the hydraulic  
31 issue, and that is the hydraulic generation forecast for the  
32 test year, and Ms. Butler referred to U-Hydro-17, and yes,  
33 U-Hydro-17 is very relevant for the Board. It can be  
34 interpreted in a number of ways. When we look at it we see  
35 that the years are wet, which the last few years have been  
36 wet. The 30 year forecast would have been closer to the  
37 wet period, but we also see that 2001 was the 7th highest  
38 year on record of all of the years that we have records for.  
39 We don't know what's going to happen next year. We  
40 don't know how much rain there is going to be, and we do  
41 believe that the best record to use is the longest period that  
42 is available to look at what can be produced on average  
43 from our hydro plants. The last comment on the hydraulic  
44 generation, because there's been a lot of comment about it,  
45 is with respect to the suggestion that there are true savings  
46 of \$4.6 million if you use the shorter period. As we've  
47 explained, the difference goes into the RSP and what we're  
48 doing is shifting from the base rate to what we believe the  
49 RSP balance.

50 As we pointed out, Hydro financially is indifferent  
51 to this issue for we are recommending the longest hydraulic  
52 record be used because we do believe that that is the best

53 estimate to use to determine what can be produced, and  
54 that's our position as the operators of that system for many  
55 years.

56 The only other issue raised by Newfoundland  
57 Power that we need to address is a suggestion to have a  
58 hearing in early 2003 on the Rate Stabilization Plan, and  
59 forgive me for being cynical today but we've just completed  
60 14 weeks of hearings for this particular hearing. We know  
61 that Hydro, the evidence has been that Hydro's cost for  
62 this hearing has been \$4 million. If you add on  
63 Newfoundland Power's and the Industrial Customers, we're  
64 talking about a cost in excess of \$5 million for the hearing.  
65 While Newfoundland Power has suggested that a hearing  
66 might be shorter on the RSP, it's quite ... at this point today,  
67 it's hard to see any hearing on the Rate Stabilization Plan  
68 being a short hearing, so I think the Board has to bear in  
69 mind the cost of the hearing and the length of time, in light  
70 of the fact that we will be here later in the year 2003 for a  
71 general rate application anyway and we have agreed that  
72 the cap on the RSP will be reviewed at the earlier of Hydro's  
73 next rate application in three years. So we think the  
74 suggestion of having a hearing in early 2003, really that  
75 timeframe is premature in light of the cost that the hearing  
76 would involve.

77 Moving on to the Industrial Customers, I first  
78 wanted to comment on some of the comments by Mr.  
79 Hutchings with respect to my analogy of a package deal,  
80 and I think that it was misunderstood by Mr. Hutchings, as  
81 well as by Mr. Lockyer. I didn't mean to suggest that the  
82 Board has to accept all of our application and can't change  
83 any of it. What I was trying to say, probably not well, is  
84 that the factors are interrelated. If you're going to make a  
85 decision on one factor, in most cases you can't make it in  
86 isolation without considering the impact it has on another,  
87 and throughout our final argument we have attempted to  
88 point out in all those cases where one decision might  
89 impact another and where you might need to consider that  
90 as well, so I didn't mean it in the concept that you had to  
91 take the whole package or not at all. It wasn't ... it was  
92 trying to show the interrelationship of the various factors.

93 My next point arises from Mr. Hutchings' issue  
94 about who owns the equity in Hydro, and I guess we didn't  
95 respond because this was one of those ones we thought  
96 the issue so straightforward that the equity in a company  
97 is owned by the shareholder, and that's the legal position.  
98 I think Mr. Wells' example of Belbin's Grocery says it and  
99 brings it home to everybody, that a customer of Belbin's if  
100 he goes and says to the Belbin brothers, I want a return of  
101 the profit because I have shopped here for many years. I  
102 think we would know what the Belbins would say.  
103 Similarly, I think I know what would happen if I went to  
104 Newfoundland Power as a customer and said I want a

1 return because I've been a customer of yours for many  
2 years. The position is simple, the equity in the company is  
3 owned by the shareholder. While we say that position, I  
4 also wanted to point out that the government has  
5 contributed to Hydro. The guarantee fee was not imposed  
6 until 1989. However, prior to that the government  
7 guaranteed the debt, which we've all agreed has been of  
8 real value to the ratepayers of Newfoundland because it  
9 allowed Hydro to borrow at lower rates and at lower cost.  
10 So that was a real contribution by the government to  
11 Hydro. Similarly, all of the PDD (*phonetic*) assets that were  
12 acquired by Hydro, that capital was contributed by the  
13 government. Our position is that it is the shareholder who  
14 owns the equity in the company.

15 A third point of Mr. Hutchings relates to the RSP  
16 and his comments with respect to the load component.  
17 Here he referred to evidence of Ms. McShane to say that  
18 she even agreed that the utility should bear the risk of the  
19 load. I'm afraid Mr. Hutchings here has done what he had  
20 complained of other counsel doing. He has taken evidence  
21 out of context. To rely on that he didn't tell you that he  
22 was relying on an extract of one page attached to a  
23 response to an information request where she testified in  
24 the Northwest Territories, so we don't know if the issues  
25 were the same there as they are here. She was not cross-  
26 examined with respect to her view of the load component  
27 for Newfoundland Hydro. Moreover, the evidence on the  
28 record is clear that we take the load forecast from  
29 Newfoundland Power and our industrial customers. Our  
30 position to date has been that those customers know best  
31 what their operations are. We do do the forecast for our  
32 rural customers but for the island system, 90 percent of the  
33 load information comes from our customers. Mr. Hutchings  
34 is asking us to bear the risk of the error made by our  
35 customers, and if that is to happen, I guess we would need  
36 to take a different approach in the load. To date we have  
37 accepted their load information, our customers being most  
38 knowledgeable with respect to their own operations.

39 With respect to comments made by Mrs.  
40 Andrews, there is two points I wanted to respond to. She  
41 pointed out that Hydro had changed the assignment of  
42 plant with respect to transmission line plant, and that is  
43 correct, but she didn't point out that Hydro changed the  
44 assignment as a result of the decision of the Board in the  
45 rural inquiry with respect to the GNP transmission line, so  
46 Hydro was responding to a direction received from the  
47 Board in that hearing and if the policy is correct that the  
48 GNP was to be common, then what we did was look at other  
49 situations and apply the same criteria, so Hydro was  
50 responding to a direction from the Board which on review  
51 we do support the rationale for the assignment as common.

52 The next point arising from Mrs. Andrews was, I

53 guess, really a question as to what load Hydro intended to  
54 use for Corner Brook Pulp and Paper and she had asked for  
55 some clarification, and that clarification I would like to give  
56 now, is that Hydro is prepared to use the load forecast that  
57 we had indicated we had received in October prior to doing  
58 our October 31st revision, but we hadn't received it in time  
59 to incorporate it, so we are prepared to use the revised  
60 forecast we had received before October 31st, with the  
61 associated energy that goes along, because that had been  
62 (inaudible) revision.

63 The next submission was made by Mr. Lockyer for  
64 CFB Goose Bay, and I guess that raises the real issue as to  
65 how the power policy in Section 3 of the *Electrical Power*  
66 *Control Act* is to be applied, if at all, to non-firm or  
67 secondary sales. The section that Mr. Lockyer referred to  
68 talks about setting the price for electricity based on  
69 forecast costs wherever practicable. It is Hydro's view that  
70 that does not apply, the limitation to forecast costs, that  
71 that does not apply to non-firm or secondary sales, and  
72 that that has been accepted before by the Board and orders  
73 issued by this Board with respect to secondary sales, and  
74 I'll go through those in a moment. So the basis of non-firm  
75 sales or secondary sales are that they are non-firm. There  
76 is no commitment on the supplier to supply, it's only when  
77 it is available. In those cases you don't allocate costs to  
78 that type of arrangement, so that's why I said yesterday, it's  
79 not really relevant to look at the revenue to cost ratios, but  
80 I did want to point out that the revenue to cost ratio that  
81 was referred to by Mr. Lockyer for IOC is not the true cost  
82 ratio. It was only used for the cost of service to ensure that  
83 the implications of IOC were eliminated, but it is not the  
84 actual revenue to cost ratio for the Iron Ore Company of  
85 Canada, which is a non-regulated sale and not before the  
86 Board today.

87 Now the Board has approved secondary sales  
88 before. At one time Corner Brook Pulp and Paper sold to  
89 Hydro, and the Board did approve the rate, and at that  
90 particular time, the rate, similar to here, wasn't tied to the  
91 cost of producing the power being sold. It was tied to the  
92 alternative use of the power that the mill had, so there have  
93 been two or three orders of this Board approving the  
94 secondary sale from Deer Lake Power to Newfoundland  
95 Hydro. We haven't had sales in recent years, but there  
96 were orders of the Board in the late seventies and through  
97 the eighties approving sales of secondary power on that  
98 basis, which were after the *Electrical Power Control Act* was  
99 passed. The other thing is we have similar sales from  
100 Abitibi, where again the same concept applied. Now at the  
101 time we had those sales they were non-regulated, but I use  
102 it to show that in the electrical industry, that is the common  
103 accepted practice towards secondary sales, and we believe  
104 that the power policy in the Act was intended to cover firm  
105 power, not secondary sales and that is recognized by the

1 phrase "wherever practicable", which is used based on  
2 forecast costs in Section 3(a), I believe it is, of the power  
3 policy.

4 The last comment with respect to the submission  
5 of CFB Goose Bay is a reference to the Interruptible B  
6 arrangement by, with Abitibi, but I don't think Mr. Lockyer  
7 understood the nature of that arrangement and I don't think  
8 it really is relevant here. If you recall that is we don't  
9 supply power to them. There is an arrangement for an  
10 interruption to their power supply.

11 (2:15 p.m.)

12 Moving on to Mr. Hearn's submission, the first  
13 comment is that, again, in preparing one cost of service  
14 study for the Labrador interconnected system, Hydro is  
15 complying with the recommendation of the Board in the  
16 1993 cost of service study hearing. When the Board issued  
17 the report arising from that generic hearing on the cost of  
18 service, they recommended one cost of service study for  
19 the whole Labrador interconnected system, and that is the  
20 basis of Hydro's application before the Board now. We  
21 further believe that that is appropriate for the reasons we  
22 set out in our evidence. We would also point out that the  
23 cost that have been filed for Wabush were not done in  
24 accordance with the approved cost of service methodology  
25 and really to determine the Wabush surplus, and cannot be  
26 used by Mr. Hearn to determine what the revenues and  
27 costs are for both Wabush and Labrador City. You need to  
28 look at what has been filed in this hearing to do that.

29 Mr. Hearn has also suggested another hearing to  
30 deal specifically with Labrador rates. He made that  
31 suggestion back in 1992 when we were here before the  
32 Board, and at that time it was agreed to defer the issue of  
33 Labrador interconnected rates, and here we are today to  
34 deal with them. So I think all of the issues are now before  
35 the Board. They are in a position to make the decision on  
36 all the issues on the Labrador rates, and that it is not  
37 appropriate to defer to another hearing. Again, it's the  
38 issue of costs, the costs associated with a hearing when all  
39 the evidence is now before you to allow you to make that  
40 decision.

41 The last comment with respect to Mr. Hearn's  
42 submission relates to his suggestion that the Board should  
43 recommend to government that it consider legislation under  
44 Section 92(a) of the constitution to impose a tax to recover  
45 the rural deficit. I would point out that this issue is an  
46 issue for government. It is for government to decide  
47 whether to impose a tax or not to impose a tax, or how to  
48 collect it. The only other thing, as Mr. Hearn is aware, this  
49 issue has been before government and government is  
50 certainly aware of its options under 92(a), and I leave it to  
51 the Board's discretion as to whether they wish to make an

52 additional recommendation. My point is, it's not an issue  
53 for the Board to decide. It's outside of your jurisdiction.  
54 It's for the government to decide with respect to the  
55 imposition of a tax.

56 Moving to the submission of the Consumer  
57 Advocate, there were a number of points that I wanted to  
58 address. The first is that we do agree with certain of the  
59 recommendations that have been made by the Consumer  
60 Advocate in his final argument as well as in his oral  
61 comments, or oral argument today. First we agree that it is  
62 appropriate for us to give written notice to our rural  
63 customers of a rate application.

64 Secondly, we do agree, and we are quite willing to  
65 work with the Board to in any way enhance our bill design  
66 to make it easier to understand for customers. I really don't  
67 think that's an issue between both utilities. Any  
68 suggestions for improvement we certainly would be quite  
69 willing to work with.

70 With respect to the recommendation on the life,  
71 increasing the lifeline block, our position is that that is an  
72 issue for the Board, again, to decide, but we did want the  
73 Board to be aware that an increase in the lifeline block  
74 would cause an increase in the rural subsidy, and the Board  
75 must consider that as well.

76 With respect to conservation, again, this is a  
77 recommendation of the Consumer Advocate that we  
78 support. We are quite willing to work with any cost  
79 effective conservation program that is of value to our  
80 customers and does not increase the rural deficit.

81 Moving to the next point I wanted to make on the  
82 Consumer Advocate's submission which is in respect to  
83 duplication. I would have to point out that there is no  
84 evidence on the record to support the Consumer  
85 Advocate's statement of a potential savings of millions of  
86 dollars. I believe that this is an exaggeration taken in the  
87 context of this hearing and I would point out that if the  
88 Board reviews the record, there is nothing to support the  
89 suggestion that there is that type of savings available.

90 Moving to the RSP, the Consumer Advocate  
91 suggested that Hydro had hidden and had not been  
92 accountable for the RSP balances over the past number of  
93 years. I would like to point out, as it is before the Board,  
94 that Hydro has reported to the Board on a quarterly basis,  
95 including with respect to the Rate Stabilization Plan  
96 balances since at least 1996. Copies of the RSP report are  
97 provided to our industrial customers and Newfoundland  
98 Power. They used to be done monthly, now they are being  
99 done quarterly, at the same time we report to the Board. So  
100 I don't think it's quite fair to characterize the fact that we  
101 have hidden anything about the RSP in any way. We have  
102 disclosed it to our two largest groups of customers, and we

1 have regularly reported to the Board.

2 The Consumer Advocate also stated that  
3 consumers want to pay as they go, and I think here we  
4 must look to the record. There has been no evidence  
5 before the Board to support that statement. That might be  
6 Mr. Browne's personal view, but I don't think he can rely on  
7 any evidence that's been filed before the Board to indicate  
8 that that is the view of the consumer that he represents.

9 Moving to the last submission, which was Board  
10 Counsel's, the issue of the appropriate role of Board  
11 Counsel has been raised now throughout this hearing on  
12 a number of occasions, and I do think it is an issue that the  
13 Board needs to consider for the future. When we have the  
14 type of hearing as this, which I guess all the parties have  
15 now agreed, it is as adversarial as any case before the  
16 courts, the role of Board Counsel needs to be carefully  
17 considered, particularly where the parties are present,  
18 where they actively pursue issues and present positions.  
19 Why I objected to Mr. Kennedy's particular position on  
20 marginal cost studies, is that he only supported one  
21 recommendation made by the Board expert. He did not  
22 refer to the evidence of other experts that have been before  
23 the Board on this issue, and I do believe there is a caution  
24 as to the role of Board Counsel in an adversarial type  
25 proceeding like this when he enters the fray and takes a  
26 position on issues, so I support the cautions that have  
27 been issued before by the Consumer Advocate and by the  
28 Industrial Customers, that there is a role for Board Counsel,  
29 and it must be very careful, he or she, in administering that  
30 role for the Board, and try to stay away from the adversarial  
31 nature of the proceedings, because there's enough of the  
32 parties here to do that and to ensure that all the issues are  
33 brought out before the Board. So thank you, Mr. Chair,  
34 that concludes my comments for rebuttal.

35 MR. NOSEWORTHY, CHAIRMAN: Thank you very much,  
36 Ms. Greene. Any questions, Commissioners? Thank you.  
37 I have a short sort of statement that I'd like to make at the  
38 conclusion, if you could just bear with me for a little while,  
39 to bring the day's events, and indeed the hearing to a  
40 conclusion, or at least this phase of it, in any event. This  
41 brings to a conclusion the scheduled evidentiary phase of  
42 this public hearing, including the submission and final  
43 arguments, and over the past two days, the presentation of  
44 oral arguments. While this is not necessarily the end of the  
45 public hearing, and we reserve the right to reconvene on  
46 matters if required at the call of the Chair ... but I, like you,  
47 and I'm sure fervently hope this will not be necessary. It is  
48 the task of this panel to now sift through the volume of  
49 evidence, testimony, and supporting data presented over  
50 the past several months and render as fair and equitable a  
51 decision as possible on behalf of all parties who have  
52 participated in this hearing. In a way your work has ended

53 and ours is just beginning. For those of you who have  
54 worked diligently throughout the hearing, and as Ms.  
55 Greene pointed out yesterday, Hydro has been at this for  
56 five seasons now, she said, no pity is sought and I'm sure  
57 little will be granted as we embark upon the decision  
58 making process.

59 Since this hearing represented Hydro's first rate  
60 application since 1991, as I indicated at the outset, the  
61 establishment of an appropriate regulatory regime, the  
62 volume of evidence and the myriad of issues stemming  
63 from the application promise to make this one of the most  
64 challenging, complex, and lengthy hearings before the  
65 Public Utilities Board. Being new to this process and  
66 without having any experience by which to compare, I  
67 would venture to say that it has lived up to that  
68 expectation.

69 For those of you interested in trivia, the following  
70 facts are significant in relation to this hearing. We've had  
71 61 hearing days. There has been over 20,000 pages of  
72 evidence, testimony, and RFI's ... 1,019 RFI's consuming  
73 16,250 pages. There has been 1,425 documents filed with  
74 the Board. There has been 2,200 pages of transcript at  
75 1,000 words. We have between us exchanged 2,200,000  
76 words. There has been 207 to 280 megabytes of memory  
77 used in electronic filing, and this, I understand, is quite a  
78 bit.

79 I want to thank all the parties for their cooperation  
80 and contribution throughout the course of this hearing. I  
81 wish to commend Hydro, the Applicant, who worked  
82 diligently, and I'm sure at times, exhaustively to respond to  
83 the numerous RFI's and undertakings in a timely and willing  
84 fashion. I want to thank as well all the intervenors, the  
85 ground rules for the hearings were for the most part, I  
86 believe, followed. While positions were advocated capably  
87 and competently on behalf of the various parties, given the  
88 continuous nature and length of the hearing, on balance an  
89 excellent display of decorum and cooperation existed, I  
90 think, among the parties. This certainly made my job easier  
91 and facilitated the hearing itself on behalf of the ratepayers  
92 in this province, and I thank you for that.

93 I want to express my appreciation to the long list  
94 of witnesses who were patient, responsive, and I believe  
95 made a sincere effort wherever possible to assist the Board  
96 with their testimony. I want to acknowledge the work of  
97 the staff of the Public Utilities Board and its unshaven  
98 counsel, Mr. Kennedy, for the planning, organization,  
99 information flow, and electronic filing, that have all played  
100 a major part in these hearings and represents work that was  
101 carried out independently by staff.

102 I want to further acknowledge those organizations  
103 and persons who attended and made presentations during

1 public participation days, also those who submitted letters  
2 of comment, and as I indicated, this information will be  
3 carefully reviewed and considered by the panel in making  
4 our decision.

5 Mr. O'Rielly, as I have said a number of times in  
6 this hearing, you're worth your weight in gold, sir, and if  
7 you're like me, this means your stock probably is even more  
8 enhanced over Christmas (*laughter*). I figure with your  
9 assistance we may have saved as much as an hour per day  
10 throughout the course of the hearing, and this translates  
11 into more than two weeks, and you can calculate the cost  
12 of this hearing on a daily basis, and I trust your bosses at  
13 Hydro will appreciate the amount you've saved them. Once  
14 again, thank you very much.

15 And I want to recognize the work of Executech  
16 who have provided the transcription services, and Mr.  
17 Doug Morgan over here on our right. Thank you for your  
18 work throughout the hearing and pass along our  
19 appreciation to your colleagues who provided accurate  
20 daily transcription, and I think, without exception, they  
21 were on a timely basis.

22 Finally, I want to acknowledge the support of my  
23 fellow panel members throughout this hearing. There is a  
24 Yukon proverb, no less, that states the speed of the leader  
25 is the speed of the pack. Unfortunately, I have to speak  
26 that all proverbs are not necessarily true. As somebody  
27 aptly said, I can't say I was ever lost but I was bewildered  
28 once for three days. However, I take solace in another  
29 expression, that doubt is not a pleasant condition but  
30 certainty is an absurd one. Given this as my inaugural  
31 hearing, there is a final appropriate saying, the way to  
32 avoid mistakes is to gain experience, and the way to gain  
33 experience is to make mistakes, and you can take comfort in  
34 the prospect that I am now possibly one of the most  
35 experienced persons here in this room. Joking aside, thank  
36 you to my panel, and I look forward to your continuing  
37 cooperation and support throughout the decision making  
38 process that lies ahead of us.

39 I expressly want to recognize the commitment of  
40 Commissioner Powell who has travelled back and forth from  
41 Stephenville for this hearing, and I know others, such as  
42 Mr. Hutchings and Mr. Dean, have also had a similar  
43 commute and being away from your family as much as you  
44 have for such an extended period is indeed a singular, I  
45 think, sacrifice.

46 The process itself, though lengthy, has been  
47 focused and relatively efficient given the scope and  
48 timeframe covered by the application. I believe there was  
49 little duplication in the evidence, cross-examination, or  
50 questions by the various parties, and the statistics I quoted  
51 earlier, unfortunately all represent in one form or another,

52 records in a long history of public hearings before the  
53 Public Utilities Board. I, for one, would like to see those  
54 records remain intact for an indefinite period. Flowing from  
55 this hearing I feel strongly it is incumbent on this Board to  
56 review ways and means of streamlining the regulatory  
57 process as well as improving the accompanying regulatory  
58 administration and its associated compliance by utilities  
59 operating in the province. There have been some excellent  
60 suggestions made throughout the hearing by the parties  
61 and as I indicated in my opening statement as a new Chair  
62 and CEO, I am committed to addressing these issues in  
63 concert with our various stakeholders.

64 In closing, following a regularly scheduled  
65 meeting of the Board of Commissioners tomorrow to deal  
66 with other business, this panel will begin our deliberations  
67 on the issues in as continuous a manner as possible during  
68 the next several weeks. Clearly with the volume of  
69 evidence and complexity of the issues before us, it would  
70 be premature for me at this stage to try and speculate on  
71 when a decision might be rendered. Certainly following our  
72 initial deliberations over the next couple of weeks, we will  
73 be in a better position to give parties a heads up on our  
74 timing, and we will undertake to advise parties, through  
75 Board Counsel, when a realistic determination has been  
76 made.

77 Once again, I'd like to thank you, and I'd also like  
78 to recognize, I think, Pat Doyle, who has been down there  
79 periodically throughout this process, and indeed has made  
80 a very fair and concerted effort, I think, to report on these  
81 proceedings for the people in the province on behalf of the  
82 *Telegram*, and thank you very much, sir. This hearing is  
83 now adjourned at the call of the Chair, a call I'm sure we all  
84 hope we will not receive, or you will not receive. Thank  
85 you very much.

86 (*hearing adjourned*)