

- 1 (9:30 a.m.)
- 2 MR. NOSEWORTHY, CHAIRMAN: Good Friday morning,
3 everybody. I never thought I'd look forward to a weekend
4 of raking leaves so much before in my life. *(laughter)*
- 5 MS. GREENE, Q.C.: Not saying ...
- 6 MR. NOSEWORTHY, CHAIRMAN: Pardon?
- 7 MS. GREENE, Q.C.: Not saying you find us boring or
8 *(laughter)* ...
- 9 MR. NOSEWORTHY, CHAIRMAN: No. Just I like the
10 raking leaves, that's all. Before we proceed, Counsel, would
11 you have any preliminary matters, please?
- 12 MR. KENNEDY: The only preliminary matter, Chair, is
13 Newfoundland Power has filed a revised page 22 from Mr.
14 Browne's pre-filed direct testimony which corrected the
15 number from 144 percent to 158 percent, and that's being, as
16 I understand it, distributed to all the parties and the
17 Secretary of the Board has been given copies as well to
18 update your own documentation.
- 19 MR. NOSEWORTHY, CHAIRMAN: Thank you, Counsel.
20 Is that it?
- 21 MR. KENNEDY: And that's it.
- 22 MR. NOSEWORTHY, CHAIRMAN: Thank you. Good
23 morning, Mr. Browne.
- 24 MR. JOHN BROWNE: Good morning.
- 25 MR. NOSEWORTHY, CHAIRMAN: Good morning, Ms.
26 Greene. Are you prepared to continue with your cross,
27 please?
- 28 MS. GREENE, Q.C.: Yes, thank you, Mr. Chair. Good
29 morning, Mr. Browne.
- 30 MR. JOHN BROWNE: Good morning, Ms. Greene.
- 31 MS. GREENE, Q.C.: I think we broke off yesterday when
32 we were looking at the definition of regulated versus
33 unregulated activities for Hydro. The next thing that I
34 wanted to look at was the issue of separate accounting
35 records to reflect the regulated activities. I take from your
36 evidence that is not necessary that there be a separate
37 corporate entity established for the unregulated activities.
38 Is that correct?
- 39 MR. JOHN BROWNE: As I indicated, I'm not proposing
40 that, no.
- 41 MS. GREENE, Q.C.: Are you aware that the issue of the
42 appropriateness of the financial report has never been
43 raised by the financial expert for the Board?
- 44 MR. JOHN BROWNE: I do not know what comments he's
45 made in that area.
- 46 MS. GREENE, Q.C.: Have you reviewed the annual
47 financial report completed by the current auditor, Grant
48 Thornton, and the previous auditor?
- 49 MR. JOHN BROWNE: I have gone over the reports that
50 are prepared for this Board. I'm not sure if I've seen the
51 most recent one but certainly, which came out this summer,
52 but certainly the one before I did go through and I glanced
53 through some of the earlier ones.
- 54 MS. GREENE, Q.C.: And in the ones you reviewed, did you
55 find any reference to raising the issue of the
56 appropriateness of the financial reports for regulatory
57 purposes?
- 58 MR. JOHN BROWNE: I don't recall specific comments in
59 there, no.
- 60 MS. GREENE, Q.C.: No.
- 61 MR. JOHN BROWNE: But I couldn't verify absolutely they
62 weren't there but I don't recall any.
- 63 MS. GREENE, Q.C.: You wouldn't be surprised then if I told
64 you that it has never been raised?
- 65 MR. JOHN BROWNE: I wouldn't be surprised the comment
66 was there, although I'm a little surprised the comment hasn't
67 been raised, but if this Board is being asked to regulate
68 Hydro, at a minimum they should have financial statements
69 on Hydro or the regulated operations of Hydro.
- 70 MS. GREENE, Q.C.: I'm going to get to your position. I
71 was just trying to establish that this has not been raised by
72 the Board's own financial expert, and I believe you have not
73 been able to refer to any report where it has been.
- 74 MR. JOHN BROWNE: No, I have not.
- 75 MS. GREENE, Q.C.: I'd like to look at **Mr. Roberts'**
76 **evidence, page one**, again, please, Mr. O'Rielly, if you could
77 bring it up on the screen. Mr. Roberts' evidence ...
- 78 MR. JOHN BROWNE: Is there a button I'm supposed to
79 push on this thing?
- 80 MS. GREENE, Q.C.: We just have to push Mr. O'Rielly's
81 button. *(laughter)*
- 82 MR. NOSEWORTHY, CHAIRMAN: It must be Friday.
- 83 MS. GREENE, Q.C.: Yes, it is Friday. At the bottom of the
84 page. We looked at this yesterday, and the definition of
85 what non-regulated activities for Hydro ... Mr. O'Rielly, if
86 you could scroll down, please, to the bottom of the page.
87 And I won't take you through that again. We looked at
88 that yesterday and we saw that it talked about the
89 exclusions from regulated activities and the non-regulated
90 activities. Can you just scroll to the next page, Mr. O'Rielly,
91 please? And he's referring to Schedule I, and in line three,
92 beginning on line two actually, he talks about that the,

1 there are certain costs in an unregulated customer in the
2 Labrador industrial customer and that that ... would you
3 agree that Schedule 1 attached to Mr. Roberts' evidence
4 provides for all non-regulated activities being excluded
5 with the exception of the Labrador industrial customer?

6 MR. JOHN BROWNE: Sorry, could you state that again?
7 A bit of a mouthful, I gather.

8 MS. GREENE, Q.C.: I can go through this more slowly. I
9 was just trying to save time. I thought we had established
10 yesterday that in Mr. Roberts' evidence he had defined
11 what were the unregulated activities, and I won't read that
12 again. That was clear from page one, as well as **IC-259**.
13 And looking to Schedule 1, if we could, we can go to
14 Schedule 1, to Mr. Roberts' evidence, which is the revenue
15 requirement. Looking back to page two, lines three and
16 four I just referred you to, he indicated that the only thing
17 included, that the ... refer you specifically to line three and
18 four. The projected margin in this customer, this customer
19 being the Labrador industrial customer, is included on his
20 Schedule 1 but everything else has been excluded, if you
21 read the bottom of page one and the top of page two.

22 MR. JOHN BROWNE: The question is?

23 MS. GREENE, Q.C.: The question is, I would take from that
24 that you would agree that Schedule 1 has excluded
25 everything that is unregulated with the exception of the
26 sales associated with unregulated Labrador industrial
27 customer.

28 MR. JOHN BROWNE: I'm not in a position to do that, and
29 I think that gets very much back to my evidence that I
30 believe Hydro should come forward clearly with a definition
31 ...

32 MS. GREENE, Q.C.: I thought we had agreed ...

33 MR. JOHN BROWNE: ... and there should be policies and
34 procedures to ensure that what you're saying is actually
35 there. You have this statement there but I have no way of
36 verifying it.

37 MS. GREENE, Q.C.: You would assume though that Mr.
38 Roberts has correctly truthfully stated what are the
39 unregulated activities and what Schedule 1 shows?

40 MR. JOHN BROWNE: I do not dispute that. All I'm saying
41 is that I believe the definition should come to this Board,
42 this Board should rule on it, and this Board should ensure
43 there are appropriate policies and procedures to ensure
44 what is stated there actually occurs.

45 MS. GREENE, Q.C.: And I thought yesterday afternoon
46 you had agreed that in terms of a definition of what is
47 regulated and unregulated, that that information had been
48 provided to the Board.

49 MR. JOHN BROWNE: I ...

50 MS. GREENE, Q.C.: Will we go to your transcript?

51 MR. JOHN BROWNE: ... would like to clarify then.
52 Certainly there is a definition but I cannot verify that that
53 is an accurate definition.

54 MS. GREENE, Q.C.: Okay. So let's assume then that what
55 I just said is correct, that Schedule 1 excludes all of the
56 unregulated activities with the exception of the Labrador
57 sales, which is what Mr. Roberts has said on page one and
58 two of his evidence. I wanted to ... if that is correct, for the
59 purpose of my question I'll ask you to assume that that is,
60 and that Mr. Roberts in his evidence did truthfully state
61 what the impact is for Hydro ...

62 MR. JOHN BROWNE: Let me clarify. I was not in any way
63 stating that Mr. Roberts was not truthful. I'm just stating
64 that you, certainly most corporations would have good
65 controls in place, and possibly Hydro has them. I'm just
66 suggesting that those policies and procedures put before
67 the Board so they can have assurance that that statement
68 is correct.

69 MS. GREENE, Q.C.: If we assume that there is revenue from
70 one unregulated activity in there, your recommendation to
71 the Board will be to have that excluded as well, I take it,
72 from the revenue requirement.

73 MR. JOHN BROWNE: I would suggest that non-regulated
74 operation should be kept separate. It wouldn't be just the
75 revenues you would take out, it would be the cost.

76 MS. GREENE, Q.C.: All the implications.

77 MR. JOHN BROWNE: And of course to the extent that
78 there are benefits that the non-regulated operations are, I'm
79 sorry, the regulated operations are providing to those non-
80 regulated operations, the value of those benefits should be
81 included in the calculation through a reduction of revenue
82 requirement.

83 MS. GREENE, Q.C.: And perhaps that is what I wanted to
84 explore with you, because in your evidence before the
85 Board on Newfoundland Power's application for approval
86 of its pole purchase agreement, one, and I acknowledge
87 that there were several reasons why you suggested the
88 non-joint use pole should be included in rate base, which
89 wouldn't be an ordinary regulatory principle, one of the
90 reasons was that the part of flow out of that
91 recommendation is that the revenue from the non-joint use
92 poles would also have been included as part of the revenue
93 from the regulated activities.

94 MR. JOHN BROWNE: I'm sorry, I missed the exact
95 question there. Are you asking me that the revenue, the
96 proposal was both the cost and the revenues would have
97 been put into the overall calculation?

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

2 MR. JOHN BROWNE: Yes, that is correct.

3 MS. GREENE, Q.C.: So that there would have been an
4 unregulated aspect, ownership of non-joint use poles
5 included in the regulated activity.

6 MR. JOHN BROWNE: In that particular case, yes, and the
7 regulated operations would be fully compensated for the
8 costs.

9 MS. GREENE, Q.C.: So your principle that there should
10 always be the separation is to be modified, I take it then.

11 MR. JOHN BROWNE: Certainly I was talking as a general
12 principle. The non-use joint poles were a relatively small
13 asset and my understanding that in doing the deal Newtel,
14 or Aliant, sorry, wanted to sell the poles as a group and
15 that was part of the overall transaction and therefore from
16 a, in order to have that transaction, it would have to be
17 done as a whole, and my understanding is that the
18 regulated customer would be left whole in that the
19 revenues would cover the costs associated with those
20 poles. That was my understanding and that underlay my
21 testimony at that time.

22 MS. GREENE, Q.C.: But you have agreed that there are
23 situations when the unregulated activity gets blended in a
24 financial sense with the regulated activity and that is in fact
25 what you recommended to this Board with respect to
26 Newfoundland Power's application on the poles, isn't it?

27 MR. JOHN BROWNE: There's exceptions to every rule. I
28 think you have to look through it and boards are, certainly
29 their responsibility is to determine what is just and
30 reasonable, and certainly there will sometimes be
31 exceptions where boards will deem differences from the
32 general rule to be just and reasonable and to the benefit of
33 the ratepayers.

34 MS. GREENE, Q.C.: I'd like now, please, Mr. O'Rielly, if you
35 could turn to **page 15 of Mr. Browne's pre-filed evidence**.
36 If you could look, please, at line 20. And I take from your
37 evidence, both pre-filed and yesterday, that you agree in
38 principle, which is what's stated on line 20, that the
39 investment, that the ... I'll read line 20 so we won't have any
40 dispute as to my summary of your evidence. "I believe that
41 there is an opportunity cost associated with the investment
42 of a government in a utility and the allowed return on rate
43 base for a public sector utility should be determined on a
44 stand-alone basis, the same as an investor-owned utility."
45 I took it from reading that and from what you said
46 yesterday that you agreed in principle with the starting
47 point of Ms. McShane and Dr. Kalymon that a government
48 or Crown-owned utility should be allowed to earn the same
49 commercial rate of return as an investor-owned utility and
50 that would be your starting point.

51 MR. JOHN BROWNE: That is correct.

52 MS. GREENE, Q.C.: You have suggested, unlike Dr.
53 Kalymon and Ms. McShane, that normal rate of return
54 which a government-owned utility is entitled to like the
55 investor-owned utility needs to be modified in certain
56 situations. And what would that be in your opinion?

57 MR. JOHN BROWNE: Sorry, what were you suggesting
58 that I was proposing to modify?

59 MS. GREENE, Q.C.: Let's turn to **page 16**. My question
60 was directed at lines three to five of your evidence where
61 you say, "It may be appropriate for a public sector utility to
62 seek a lower return or to incur costs that are not
63 recoverable through rates." So while you started with the
64 same basic principle as Ms. McShane and Dr. Kalymon,
65 you have suggested that a government-owned utility's rate
66 of return may need to be adjusted. Is that correct?

67 (9:45 a.m.)

68 MR. JOHN BROWNE: What is a just and reasonable return
69 may be lower. I think that is a common practice among
70 regulators. For example, some regulators, I believe this
71 Board also, treats certain costs as a shareholder cost, even
72 though it's a cost the utility incurs. One example that
73 comes to mind are donations. Boards say that certainly is
74 a cost. I don't think anyone can dispute it's a cost, but they
75 believe that that is not a cost that should be recovered from
76 the ratepayers. They therefore leave it as a shareholder
77 cost which effectively reduces the rate of return that the
78 utility is able to earn.

79 MS. GREENE, Q.C.: Now donations are common to both
80 Crown and investor-owned utilities, is that correct?

81 MR. JOHN BROWNE: I can't see any reason why a Crown
82 would not, but there may be certain instances where their
83 policies are such that they don't, but I can't, as a general
84 principle, see why Crowns couldn't.

85 MS. GREENE, Q.C.: But what I wanted to explore with you
86 was why you believe that the return of a Crown-owned
87 utility should be adjusted in circumstances and that would
88 not occur for an investor-owned utility. Now ...

89 MR. JOHN BROWNE: Excuse me. You're making ... you're
90 implying that I'm stating there's a different ...

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

92 MR. JOHN BROWNE: ... treatment and I'm not. What I am
93 saying is that where there are costs that the shareholder
94 decides to incur and which the Board feels are not
95 necessary to provide regulated service, they should not be
96 recovered in rates, whether that is a Crown or a privately-
97 owned utility. So I am not implying different treatment for
98 Crowns rather than a private utility.

1 MS. GREENE, Q.C.: Well, could we look at line 17 on that
2 page, please?

3 MR. JOHN BROWNE: 17?

4 MS. GREENE, Q.C.: Page 15.

5 MR. JOHN BROWNE: Sorry.

6 MS. GREENE, Q.C.: I'm sorry, it's page 18 actually. Page
7 18, line 20, okay. You say would be appropriate to ask
8 Hydro, so you're saying that actually if an investor-owned
9 utility also pursued social or policy objectives then they
10 should have the rate of return adjusted. That's what you've
11 just stated.

12 MR. JOHN BROWNE: Actually I was, my statement was
13 broader, that any case where a utility be privately-owned or
14 government-owned, pursued certain objectives and incurs
15 costs which are not necessary to provide regulated service,
16 it is certainly within the bounds of the regulatory board to
17 remove those costs from the revenue requirement and
18 effectively treat them as a shareholder cost, which of
19 course would effectively reduce the rate of return they
20 could earn.

21 MS. GREENE, Q.C.: And you state there on line 20 that it
22 would be appropriate to ask Hydro to identify cases where
23 it has pursued social or public policy objectives, because
24 if it or another utility has, in your opinion, then the Board
25 may need to consider whether the rate of return needs to be
26 adjusted. Are you aware that your client asked that very
27 question to Hydro?

28 MR. JOHN BROWNE: Which question?

29 MS. GREENE, Q.C.: Whether Hydro has pursued social or
30 public policy objectives.

31 MR. JOHN BROWNE: Yes, I believe they did and I ...

32 MS. GREENE, Q.C.: Have you reviewed the answer?

33 MR. JOHN BROWNE: Yes, I have.

34 MS. GREENE, Q.C.: Mr. O'Rielly, could you bring up **NP-**
35 **214**? Hydro was asked to identify where it has pursued
36 social or public policy objectives by Newfoundland Power,
37 presumably to see if the return, if the Government has or if
38 Hydro has followed such objectives and whether the Board
39 should consider on your opinion adjusting to take that into
40 account with respect to the rate of return. Just could you
41 scroll to the next page, Mr. O'Rielly? I just wanted Mr.
42 Browne to see that there are only three items that have
43 been listed, so could we go back to the first page? And
44 again, Mr. O'Rielly, can you scroll down so Mr. Browne
45 could see what the three are? We have the rural rates
46 policies listed and then in number three we have the
47 payment of the rural deficit, and actually in hindsight I
48 would have put them together as one because it's really the

49 impact is on the deficit as a result of policy, and the second
50 one is purchase power from NUGS. I believe in your
51 evidence you'll agree that if there was a legislation to allow
52 a cost, then that, the Board must allow that.

53 MR. JOHN BROWNE: I'd say the direction that requires
54 the cost, then the Board must allow that.

55 MS. GREENE, Q.C.: And you are aware that under *The*
56 *Hydro Act* there is such a direction with respect of
57 purchase power from non-utility generators?

58 MR. JOHN BROWNE: Specifically, no.

59 MS. GREENE, Q.C.: You will take it that if I say that Section
60 17.3(c) of the Act does provide that with respect to
61 purchase power costs from NUGS, you will accept that?

62 MR. JOHN BROWNE: Certainly I wouldn't be able to
63 comment one way or the other, but for purpose of
64 questioning I'm willing to accept your assumption.

65 MS. GREENE, Q.C.: Okay. So that leaves us with one item
66 that has been listed, and that really is the rural rates and the
67 resulting deficit as a result of that. Are you aware of any
68 other social or public policy objective disclosed in this
69 record that the Board should consider or are, in the context
70 of this application is the only thing that you're suggesting
71 the Board should consider then the rural deficit? Are you
72 aware of any others not listed here?

73 MR. JOHN BROWNE: I am not but I think that comes back
74 to the purpose of my testimony, is that you should be, on
75 an ongoing basis, reporting what social policy objectives
76 you are pursuing, since it's my understanding that in a
77 response to another information request that Hydro
78 indicated, yes, they do pursue social policy objectives, so
79 consistent with that I believe it is appropriate for this Board
80 to ask that Hydro on an ongoing basis report to the Board.
81 I think it's very important that this was in response to a
82 question from Newfoundland Power. It is not information
83 that Hydro presented to the Board.

84 MS. GREENE, Q.C.: But you would agree this is now on
85 the record before the Board and this is the information the
86 Board will take into account and that there is no other
87 evidence on the record besides the social policy objectives
88 listed?

89 MR. JOHN BROWNE: In this particular proceeding I would
90 agree, however, my evidence talked about exerting
91 regulatory control on a going forward basis.

92 MS. GREENE, Q.C.: And what I'm trying to explore with
93 you, Mr. Browne, is to bring your general principles down
94 to specifics of this application to give some guidance to the
95 Board how they should take your evidence into account in
96 the context of this application.

- 1 MR. JOHN BROWNE: Uh hum.
- 2 MS. GREENE, Q.C.: Sometimes it's difficult to understand
3 the general principle unless you talk about in specifics of
4 what the Board has to deal with. Looking at the subsidy,
5 so the ... when we go back to your previous statement that
6 they should, the Board should consider pursuit of social or
7 policy objectives by a utility, be it investor-owned or
8 Crown, which you've said this morning, the one that is
9 before the Board here is the rural subsidy. I believe you've
10 acknowledged in your pre-filed evidence that subsidies
11 among ratepayer classes are common in utilities. Is that
12 correct?
- 13 MR. JOHN BROWNE: Some cross-subsidization is, yes.
- 14 MS. GREENE, Q.C.: And that your concern here, I
15 understood from the pre-filed evidence, is the size of the
16 deficit.
- 17 MR. JOHN BROWNE: Yes. It's my understanding this
18 Board has previously concluded that the subsidy, the rural
19 deficit in Newfoundland, is unusually large.
- 20 MS. GREENE, Q.C.: Have you done any of your own
21 analysis or reviewed any other documentation with respect
22 to the size of the deficit in Newfoundland compared to
23 other jurisdictions or even the size of the subsidy provided
24 to Newfoundland Power's customers in its rate classes?
- 25 MR. JOHN BROWNE: No, and that was not deemed to be
26 appropriate. My testimony basically starts from the point
27 that the Board has already concluded this and did not seem
28 to be a need to put evidence to the Board on an issue
29 they've already decided.
- 30 MS. GREENE, Q.C.: So you are basing it on the one
31 statement you refer to in the Board's '95 rural report. You
32 have no other information with respect to the size of the
33 deficit in Newfoundland compared to any other
34 jurisdiction?
- 35 MR. JOHN BROWNE: I relied on the report that was
36 prepared in 1995.
- 37 MS. GREENE, Q.C.: Can you refer me in that report to
38 anything other than the one statement you've referred to
39 to compare the deficit size in other provinces?
- 40 MR. JOHN BROWNE: I'd have to go back over it. That
41 was a conclusion and I presume that it was not just an idle
42 statement the Board made, that they had evidence at the
43 time and drew a conclusion based on that evidence.
- 44 MS. GREENE, Q.C.: Well if there is other evidence there,
45 would you provide me with an undertaking to provide it to
46 me?
- 47 MR. JOHN BROWNE: Certainly, to the extent that it is
48 there.
- 49 MS. GREENE, Q.C.: So it's the size of the deficit ...
- 50 MR. JOHN BROWNE: Just for clarification, in the report
51 itself or are you also asking that we ...
- 52 MS. GREENE, Q.C.: No. I'm only asking if you relied on
53 that report, I'm asking you to provide us with what in the
54 report you relied on specifically.
- 55 MR. JOHN BROWNE: I'm just asking for clarification in
56 that do you want us to also go back and collect the
57 information the Board used in preparing that report?
- 58 MS. GREENE, Q.C.: If you wish to do that, you can as well,
59 because what the issue is, if you're saying it's the size of
60 the deficit that the Board should be concerned about, I
61 wanted to explore with you now the size of that deficit, how
62 do you make the determination that it's large? You must
63 compare it to something else and what are you using for
64 your basis of comparison to make that statement? In your
65 question to me you said you relied on a statement the
66 Board had made.
- 67 MR. JOHN BROWNE: That is correct.
- 68 MS. GREENE, Q.C.: Okay.
- 69 MR. JOHN BROWNE: And it was ...
- 70 MS. GREENE, Q.C.: In a '95 hearing.
- 71 MR. JOHN BROWNE: ... referenced in my testimony.
- 72 MS. GREENE, Q.C.: So if there is any other information
73 with respect to, in the report, other than that one statement,
74 I would ask that you provide it. So that's the basis for your
75 assertion that the size of the deficit is unusually large.
- 76 MR. JOHN BROWNE: The conclusion of this Board, yes.
- 77 MS. GREENE, Q.C.: Do you know what the size of the
78 deficit was at that time in comparison would show
79 (phonetic) for revenue requirement?
- 80 MR. JOHN BROWNE: I don't recall that amount.
- 81 MS. GREENE, Q.C.: Do you know what the size of the
82 deficit is now in comparison to the total revenue
83 requirement?
- 84 MR. JOHN BROWNE: Total revenue requirement was \$318
85 million. No, it's gone up to \$320 million now. I'm sorry,
86 which ... and the ... my understanding, the rural deficit,
87 based on the latest numbers, is \$3.6 million, no, \$31.6
88 million, so \$31.6 million divided by ...
- 89 MS. GREENE, Q.C.: 320.
- 90 MR. JOHN BROWNE: ... 320, I think you're looking at
91 roughly 14, 15 percent of the total revenue requirements
92 relate to the rural deficit.
- 93 MS. GREENE, Q.C.: \$32 million out of ... 31.6 out of 323?

1 MR. JOHN BROWNE: I've got the ... I think it was 244.
2 That was another number there. So it would be, yes ...

3 MS. GREENE, Q.C.: Less than ten percent.

4 MR. JOHN BROWNE: Slightly less than ten percent, yes,
5 so your ten percent being 3, 32.2, and a 31.6, so, yes, it
6 would be slightly less than ten percent.

7 MS. GREENE, Q.C.: Mr. O'Reilly, could you bring up **NP-**
8 **185**, please? Are you familiar with this information request,
9 Mr. Browne?

10 MR. JOHN BROWNE: I recall seeing something like this,
11 so I believe I have seen it, yes.

12 MS. GREENE, Q.C.: We have prepared another schedule to
13 add a column to the table that is listed there that I have
14 available to distribute at this time. And just to be, I guess
15 to be ...

16 *(10:00 a.m.)*

17 MR. ALTEEN: We don't have it yet, Mr. Chairman.

18 MS. GREENE, Q.C.: And I was just going to explain some,
19 or go through with Mr. Browne to ensure that he
20 understood the table, because, and to ensure that
21 everybody does because it's not the total deficit. And
22 would you agree, Mr. Browne, that sometimes it's hard to
23 get information but, subsidization, because utilities don't
24 necessarily report on that basis where the, between ... for
25 example, Newfoundland Power wouldn't necessarily know
26 how much it would cost to serve a customer in one of its
27 more remote areas as opposed to a customer in St. John's,
28 that type of subsidy is not necessarily accounted for.

29 MR. JOHN BROWNE: It's difficult to specifically identify
30 the subsidies, I would agree with that comment, yes.

31 MS. GREENE, Q.C.: So this survey really ... it was done ...
32 you'll see in the answer that was done by Manitoba Hydro,
33 and you will see in the second line that it's only in the
34 remote areas served by diesel, so it wouldn't be for all of
35 Newfoundland Hydro's interconnected customers. It is
36 only the isolated diesel, so it's not all of the deficit. I
37 wanted to make sure you understood that, so ...

38 MR. JOHN BROWNE: Uh hum.

39 MS. GREENE, Q.C.: ... or that everyone under stood it. I'm
40 not saying that it is the total rural deficit but it is ... would
41 you accept that the largest portion of the rural deficit is
42 associated with serving the isolated customers of
43 Newfoundland Hydro?

44 MR. JOHN BROWNE: That is my understanding.

45 MS. GREENE, Q.C.: So this would be the largest portion of
46 the deficit. And that the survey was done of those utilities
47 that do have customers in remote areas served by diesel

48 generation. What ... in terms of looking at the operating
49 deficit in dollar terms, there would be other, there would be
50 higher amounts than the one indicated there for Hydro,
51 wouldn't there, in terms of total amount of deficit? You see
52 \$28 for B.C. Hydro, \$106 million Hydro-Quebec.

53 MR. JOHN BROWNE: I see the \$16 million and I gather
54 what you are saying is that is different than the \$31.6
55 million.

56 MS. GREENE, Q.C.: Yes, it is.

57 MR. JOHN BROWNE: Yes.

58 MS. GREENE, Q.C.: And in all fairness, Mr. Browne, one of
59 the difficulties I have is that the amount of the deficit keeps
60 changing if you change the allocation of costs.

61 MR. JOHN BROWNE: Uh hum.

62 MS. GREENE, Q.C.: It's not that the direct costs of
63 operation changes, how we allocate the cost change. So
64 this is only a portion of the deficit, yes, it is. So in terms of,
65 even from, which is the largest portion or the biggest
66 contributor to Hydro's deficit, there are utilities that have
67 higher amounts of the subsidy, aren't there, in terms of
68 absolute dollar terms?

69 MR. JOHN BROWNE: In absolute dollar terms, yes.

70 MS. GREENE, Q.C.: Now in what I've just circulated, if
71 you've had an opportunity to look at it, the first four
72 columns are the same and after the black line you'll see that
73 there's another column been added to show cost per
74 customer. If you look at the cost per customer, we'll have
75 to accept that the, we did the mathematics correctly, how
76 does Hydro's cost per customer compare to the other
77 utilities shown there, the cost of the subsidy per customer?

78 MR. JOHN BROWNE: Well I think you're using the wrong
79 terminology. My understanding of the number of
80 customers is not the number of customers ... for example, if
81 we look at B.C. Hydro, 9,100 is not, I presume, the number
82 of customers that B.C. Hydro has but the number of
83 customers that are being subsidized. Your last column
84 talks about cost per customer. I assume that it'd be more
85 accurately stated, it is the benefit per customer ...

86 MS. GREENE, Q.C.: Oh ...

87 MR. JOHN BROWNE: ... that is being received ...

88 MS. GREENE, Q.C.: Or even ...

89 MR. JOHN BROWNE: ... and I think a problem ...

90 MS. GREENE, Q.C.: ... the deficit per customer paid.

91 MR. JOHN BROWNE: I beg your pardon?

92 MS. GREENE, Q.C.: Maybe if we had to say deficit per
93 customer, how is that? I agree with you about the cost.

1 MR. JOHN BROWNE: I would say cost per customer is an
2 inappropriate term ...

3 MS. GREENE, Q.C.: Okay. What would you ...

4 MR. JOHN BROWNE: ... that it is a benefit to the customer,
5 and I think that gets to the heart of the problem with this
6 schedule. This is looking at the benefit, not the burden
7 that customers are paying.

8 MS. GREENE, Q.C.: Well looking at the ...

9 MR. JOHN BROWNE: And it's my understanding that the
10 burden per customer in Newfoundland is much higher than
11 in other areas, and I believe that was the gist of the Board's
12 report back in 1995.

13 MS. GREENE, Q.C.: Well let's go back. You would agree
14 that that column shows the amount of deficit paid per
15 customer by the other utilities.

16 MR. JOHN BROWNE: I would assume what it is is the
17 shortfall between the revenue requirement and the cost.

18 MS. GREENE, Q.C.: Per customer.

19 MR. JOHN BROWNE: Per customer ...

20 MS. GREENE, Q.C.: Receiving the benefit, as you've said.

21 MR. JOHN BROWNE: Yes.

22 MS. GREENE, Q.C.: Yes, I would ... and you've also agreed
23 with me you've done no independent analysis to be able to
24 verify the size of the subsidy in comparison to others.

25 MR. JOHN BROWNE: That is correct.

26 MS. GREENE, Q.C.: But you're suggesting to the Board
27 that the Board take into account the amount of the subsidy
28 and that they somehow discount, but you're not
29 suggesting how, what the return would be allowed to
30 Hydro as a result of social policy objectives, and the only
31 one that is on the record is the subsidy. Is that correct?

32 MR. JOHN BROWNE: It's the only one that I'm aware of.

33 MS. GREENE, Q.C.: Are you aware of any regulatory
34 precedent where the return to the utility has been adjusted
35 or discounted because there's a subsidization of one
36 ratepayer class by another?

37 MR. JOHN BROWNE: I don't know if it's been ... I can't
38 think of directly, but certainly a number of Crowns have
39 traditionally not sought a full return, so in effect it could be
40 argued that some of the subsidy is being covered in that
41 way. I'd also go back to my point that you're focusing just
42 on subsidy whereas boards traditionally do identify costs
43 that are not necessary to provide regulated service and
44 remove that, those amounts from revenue requirements.

45 MS. GREENE, Q.C.: So let's go to the subsidy, because

46 that's what we're talking about, because you have
47 suggested that the Board adjust the return for social policy
48 objectives. You've seen that there are two have been
49 identified, the subsidy and the power purchases from
50 NUGS. Put aside the power purchases from NUGS because
51 there's legislation on that issue, so we're back to the
52 subsidy. In other jurisdictions, as we've seen some here,
53 there definitely is subsidization and some of those are
54 Crowns on that list that are regulated, has a regulator, to
55 your knowledge, adjusted the return sought because of a
56 subsidization provided by one ratepayer class to another?
57 Can you provide a precedent where that has been done?

58 MR. JOHN BROWNE: As I said, a specific ...

59 MS. GREENE, Q.C.: Explicitly done.

60 MR. JOHN BROWNE: Explicitly done, no, however, as I've
61 mentioned, this Board itself has removed costs which it has
62 deemed not to be necessary to provide regulated service,
63 so I think the precedent is there for this Board and I think
64 in many other boards that if they deem the cost is not
65 necessary to provide regulated service, it is removed from
66 revenue requirements and effectively reduces the return the
67 utility is allowed to earn.

68 MS. GREENE, Q.C.: Does Hydro incur the cost to provide
69 that service to its customers?

70 MR. JOHN BROWNE: I'm sorry?

71 MS. GREENE, Q.C.: You said you're talking about
72 removing costs that aren't incurred to provide the regulated
73 service.

74 MR. JOHN BROWNE: No, no. Necessary to provide
75 regulated service.

76 MS. GREENE, Q.C.: Okay. Does Hydro incur the cost of
77 serving the rural customers to provide the service to the
78 rural customers?

79 MR. JOHN BROWNE: Hydro does, yes.

80 MS. GREENE, Q.C.: So your issue is not that Hydro
81 doesn't incur the cost to provide a regulated service. Your
82 issue is that one ratepayer class subsidizes another
83 ratepayer class.

84 MR. JOHN BROWNE: Yes, that the cost ... really we're
85 talking about Newfoundland Power and its customers are
86 being forced to pay a cost which is not necessary to
87 provide them with regulated service, and that is mandated
88 by Hydro's shareholder.

89 MS. GREENE, Q.C.: You've also acknowledged that that is
90 common among utilities for one ratepayer class to pay a
91 subsidy for another, but your issue is not the principle, it's
92 the size.

1 MR. JOHN BROWNE: It's the degree on issue, as I've said
2 several times, this Board has already addressed.

3 MS. GREENE, Q.C.: And you will provide me with other
4 information in that report if you can, as we agreed. With
5 respect to the dividend policy and the payment of
6 dividends in the forecast test year, you have recommended
7 that the Board consider deeming a capital structure for
8 Hydro. Is that correct?

9 MR. JOHN BROWNE: I'd say I'd put a caveat on it. If it ...
10 if they believe it is appropriate in order to contain the cost
11 that ratepayers pay, if they believe it is just and reasonable.

12 MS. GREENE, Q.C.: Would you be making a similar
13 recommendation to deem a higher equity than Hydro would
14 actually have if Hydro were seeking a commercial rate of
15 return or even one greater than its cost of debt?

16 MR. JOHN BROWNE: I would change that wording, if you
17 don't mind. If the Board decided that it was appropriate for
18 them to earn that higher amount, I would not be
19 recommending that. As I explained in my opening
20 statement, it would be a case where the Board believes the
21 return should be constrained because of social policy
22 objectives and also believes the constraint should not be
23 avoided by paying out a dividend.

24 MS. GREENE, Q.C.: So what makes you able to do it in this
25 time is that Hydro is seeking such a low rate of return.

26 MR. JOHN BROWNE: No.

27 MS. GREENE, Q.C.: I misunderstood your previous answer
28 then.

29 MR. JOHN BROWNE: Certainly. What I did say is that if
30 this Board decides to constrain the return that Hydro can
31 earn because of social policy objectives, to have those
32 costs removed from its revenue requirement and effectively
33 reduce that return, what I'm saying is the Board may also
34 decide that it is inappropriate for Hydro to avoid some of
35 that constraint by paying out a large dividend, so it's not
36 constrain ... the issue, or my comments are not specifically
37 addressed to the three percent but really to what the Board
38 decided is an appropriate, just and reasonable return the
39 utility should be given the opportunity to earn.

40 MS. GREENE, Q.C.: You acknowledge that at the rate of
41 return that Hydro is requesting, if the Board accepts your
42 recommendation, that the overall rate of return be even
43 lower than three percent?

44 MR. JOHN BROWNE: I beg your pardon?

45 MS. GREENE, Q.C.: If the Board deems the capital
46 structure as you have recommended and unlike Ms.
47 McShane where the cost of debt remains the same and you
48 adjust that, the overall rate of return would become lower

49 as well?

50 MR. JOHN BROWNE: I'm sorry, I'm ...

51 MS. GREENE, Q.C.: Your suggestion ...

52 MR. JOHN BROWNE: ... for being so slow. It's maybe
53 Friday morning.

54 MS. GREENE, Q.C.: No, it could be me. Finance is not my
55 area. I'm a lawyer, not an accountant.

56 MR. JOHN BROWNE: I'm very leery when lawyers say
57 that.

58 MS. GREENE, Q.C.: Your suggestion that Hydro be
59 deemed to have a higher equity than it actually has ...

60 MR. JOHN BROWNE: If we just slow down so ... yes. So
61 one thing is under certain conditions the Board may deem
62 higher equity.

63 MS. GREENE, Q.C.: And that is what you're
64 recommending, isn't it?

65 MR. JOHN BROWNE: Depending on what the Board
66 decides with regards to what the social policies are, how it
67 should treat the cost of those social policies, so it's
68 conditional on that.

69 MS. GREENE, Q.C.: Were you here when Ms. McShane
70 testified that that would be very unusual for the Board to
71 deem a company to have a higher equity than it actually
72 would have? In fact, she could only think of one
73 precedent.

74 MR. JOHN BROWNE: Uh hum. Yes, but this is an unusual
75 situation. I mean, the principle when you deem a capital
76 structure is the belief is that the capital structure is
77 inappropriate and resulting in additional cost to customers,
78 and that's the basic principle. What I'm suggesting here is
79 that because of how the Board may treat the cost of social
80 policy objective, it may decide to have a lower return and
81 therefore in order to have a just and reasonable return, to
82 deem a lower, a higher equity ratio, so that the constraint it
83 applies to the return is not avoided by paying out the
84 dividend.

85 MS. GREENE, Q.C.: Now, we keep saying social policy
86 objectives. What was it specifically you're talking about?
87 I thought we had just agreed one is the subsidy. Is there
88 anything else?

89 MR. JOHN BROWNE: Not that I'm aware of at this current
90 time, however, certainly there's the possibility that things
91 could change in the future.

92 MS. GREENE, Q.C.: Okay, but in the context of the current
93 application before the Board, that's the only thing you're
94 aware of is the subsidy.

- 1 MR. JOHN BROWNE: It's the only one that I am aware of,
2 yes. I cannot testify that it's the only one.
- 3 MS. GREENE, Q.C.: And you do acknowledge that the
4 Board to deem a higher equity than the Company actually
5 has would be very unusual for a regulator to do that.
- 6 MR. JOHN BROWNE: It's unusual for regulators to ever
7 do it, but they have done it. I believe this Board, for
8 example ...
- 9 MS. GREENE, Q.C.: But now that wasn't for a higher
10 equity. You are asking the Board to deem that the
11 Company has a higher equity than it actually has. The
12 example in your evidence is Newfoundland Power which
13 deemed it to have a lower equity than it had. So I'm asking
14 you, you're asking to deem a higher equity, is that unusual,
15 just that part now?
- 16 MR. JOHN BROWNE: It is unusual, as is deeming in
17 general. Boards ...
- 18 MS. GREENE, Q.C.: Okay. And if ...
- 19 MR. JOHN BROWNE: ... tend to prefer to use actual capital
20 structures.
- 21 MS. GREENE, Q.C.: Right, but it would be more common in
22 fact if they do deem a capital structure it is to lower what
23 the equity component is.
- 24 MR. JOHN BROWNE: Yes, because that usually ends up
25 in a lower revenue requirement.
- 26 *(10:15 a.m.)*
- 27 MS. GREENE, Q.C.: Okay. So it is unusual to deem a
28 higher equity. You've agreed with me, I believe. Moving
29 on to intercompany charges. Mr. O'Rielly, could you bring
30 up **NP-11(B)**, please? And I believe you referred to this
31 yesterday in your direct evidence with Ms. Butler. This is
32 the report on the allocation of costs to CF(L)Co. You've
33 reviewed this, have you?
- 34 MR. JOHN BROWNE: I've briefly reviewed it, yes.
- 35 MS. GREENE, Q.C.: Mr. O'Rielly, could you please bring up
36 the **Grant Thornton 2001 Report**, please, page 37? I guess
37 first we need to start at 36. Alright. This will be 36. You'll
38 see starting on page 36 that Grant Thornton reviewed the
39 proposed method for allocating costs to CF(L)Co. If you
40 could turn to page 37, Mr. O'Rielly. These lines aren't
41 numbered but in that first full paragraph after (e), I wonder
42 if you could read that, Mr. Browne, please?
- 43 MR. JOHN BROWNE: Starting where?
- 44 MS. GREENE, Q.C.: The first full paragraph beginning with
45 "We."
- 46 MR. JOHN BROWNE: "We have reviewed the
47 methodological changes proposed by Hydro for
48 determining intercompany charges. Under the revised
49 approach the calculation for determination of cost
50 recoveries is based more on actual documentation and less
51 on management judgement. The result should be more
52 accurate determination of the cost of providing services.
53 Based upon our review we conclude that the new
54 methodology for determining intercompany charges is
55 reasonable and appropriate."
- 56 MS. GREENE, Q.C.: And I don't know if you'd like to look
57 back before, the previous page, but there you will see that
58 they were talking about the report on the allocation of
59 costs to CF(L)Co. which is the only operating subsidiary of
60 Hydro.
- 61 MR. JOHN BROWNE: I'm sorry, could you just point me to
62 where that is? I don't see that right away.
- 63 MS. GREENE, Q.C.: If you start at the bottom of the page,
64 36, it talks about the service agreement with Churchill and
65 it goes on to talk ...
- 66 MR. JOHN BROWNE: I see a table. Is it under the table?
- 67 MS. GREENE, Q.C.: It's under the table, yeah, or you could
68 accept what I'm saying, that this is the method set out in
69 **NP-11(B)**, which you've acknowledged you've read, as to
70 how to allocate costs from Hydro to CF(L)Co. and ...
- 71 MR. JOHN BROWNE: Yes. 11(B) was an Executive
72 Summary. It wasn't the full report. I would presume that
73 Grant Thornton had access to the full report.
- 74 MS. GREENE, Q.C.: And that they found it to be
75 reasonable and appropriate.
- 76 MR. JOHN BROWNE: That was their conclusion, however,
77 I believe your questioning doesn't hit the real thrust of
78 what my evidence was. My evidence is that Hydro should
79 come before this Board with its proposed policies and
80 procedures as Newfoundland Power has. This Board
81 should approve those policies and procedures in an open
82 and transparent process. The policies and procedures,
83 Hydro should then be bound by until such time they come
84 back to the Board and have changes approved. I would
85 also point out, if we could go to the other page, some of the
86 comments that you had me read, in particular they talk of
87 under the revised approach the calculation or determination
88 of cost recoveries is based more on actual documentation
89 and less on management judgement. I think it sounds to
90 me that there is still a problem, that they should be moving
91 more towards objective and verifiable methodology, one
92 that is not based on the judgement of management,
93 something that the Board can approve and which
94 subsequently can be verified.
- 95 MS. GREENE, Q.C.: In terms ...

1 MR. JOHN BROWNE: Just a second. It talks about the
2 result should be a more accurate determination of the cost
3 of providing services. It is more accurate, there is certainly
4 a question of is it as accurate as it should be. And again I
5 believe that it is this Board that should be making that
6 determination. This Board should have a hearing, a
7 transparent process where people can comment on those
8 policies and procedures.

9 MS. GREENE, Q.C.: And wouldn't that be one of the
10 purposes of this hearing? All of these issues are before the
11 Board now. The policy on the charges as identified in
12 11(B) has been reviewed by the Board's external auditors
13 and have not ...

14 MR. JOHN BROWNE: I believe that you've missed ...

15 MS. GREENE, Q.C.: And have been found to be
16 reasonable.

17 MR. JOHN BROWNE: You've missed my point.

18 MS. GREENE, Q.C.: I understand your point. Your point
19 is that there should be a policy. What I'm trying to ...

20 MR. JOHN BROWNE: No. It's more than that.

21 MS. GREENE, Q.C.: That the Board should approve and it
22 should be available. What I'm saying is that it's available
23 for this ...

24 MR. JOHN BROWNE: In a public process, that it should
25 be transparent, you should put your policies forward. The
26 policy should cover all intercorporate transactions. The
27 policies ... sorry?

28 MS. GREENE, Q.C.: Where are we now? Are we in a
29 hearing now?

30 MR. JOHN BROWNE: We are in a hearing.

31 MS. GREENE, Q.C.: Is one of the issues before the Board
32 the intercompany charges?

33 MR. JOHN BROWNE: I believe it is.

34 MS. GREENE, Q.C.: Is the policy that Hydro applies to
35 recover costs from Churchill before the Board in this
36 hearing?

37 MR. JOHN BROWNE: My understand ... could you say
38 that again?

39 MS. GREENE, Q.C.: The policy that we just looked at for
40 how services are rendered to CF(L)Co. and how costs are
41 recovered for those services, is that before the Board now?

42 MR. JOHN BROWNE: No, it is not.

43 MS. GREENE, Q.C.: It's not in 11(B) and it hasn't been
44 reviewed by the Board's auditors and it's not subject to
45 question by any of the other intervenors?

46 MR. JOHN BROWNE: Well, we clearly have a disconnect
47 in that my understanding of 11(B) is an Executive Summary,
48 is not the details. I think it's also a key point is that Hydro
49 should be putting this policy forward and asking for
50 approval, not waiting for Newfoundland Power to ask for
51 the information.

52 MS. GREENE, Q.C.: The request, whether it has been asked
53 for or not, you're not even agreeing that there's evidence
54 before the Board with respect to what the policy is, which
55 has been found to be reasonable by their auditor, okay?

56 MR. JOHN BROWNE: That is not a correct statement.
57 There is evidence, but what I'm saying is it's incomplete.
58 The details aren't there to allow for a full review of the
59 policies and procedures.

60 MS. GREENE, Q.C.: Your professional opinion would be
61 different than that of Grant Thornton.

62 MR. JOHN BROWNE: No, because I haven't had the
63 information to review it and I believe that is the problem
64 that I'm addressing. You need to have the information to
65 review it and that has not yet been presented.

66 MS. GREENE, Q.C.: So you're not willing to accept the
67 opinion of Grant Thornton as expressed in the 2001 report
68 that the policy is reasonable and appropriate, okay.

69 MR. JOHN BROWNE: I have ... I'm not taking any dispute
70 with Grant Thornton. I'm taking dispute with the process.
71 The process should be one in which those policies and
72 procedures come to the Board, not just to the advisors of
73 the Board.

74 MS. GREENE, Q.C.: Okay. And I must say I had thought
75 all of these issues were before the Board at this time. Can
76 you ... so you're saying that you haven't reviewed the
77 policy in sufficient detail to allow you to form an opinion,
78 are you?

79 MR. JOHN BROWNE: I have not seen the information to
80 do that, no.

81 MS. GREENE, Q.C.: With respect to other subsidiaries of
82 Newfoundland Hydro, I believe we talked about them
83 yesterday and you agreed that they were all basically
84 inactive except for CF(L)Co. and we just talked about the
85 policy for charges to, for services to CF(L)Co. Is that
86 correct?

87 MR. JOHN BROWNE: I agreed that I'm not ... my
88 understanding was that, but I have no details to verify it.
89 I have no details as to what Hydro's plans in the future are
90 and whether intercorporate charge, policies for
91 intercorporate charges would be appropriate for those
92 subsidiaries.

93 MS. GREENE, Q.C.: Normally would there be much

1 services provided to an inactive dormant company from
2 your perspective or your experience?

3 MR. JOHN BROWNE: If it is dormant, one would expect
4 they would be small, but you would probably have some
5 charges and whether they're material or not I would have to
6 really look at the details, but certainly if they were material
7 they should be identified and removed from the revenue
8 requirement.

9 MS. GREENE, Q.C.: And in looking at that the Board
10 should also consider your caution of yesterday that the
11 costs of the regulatory control should be considered in
12 light of the value to be obtained from the imposition of the
13 control?

14 MR. JOHN BROWNE: Definitely. As I said, it would have
15 to be material.

16 MS. GREENE, Q.C.: Moving on to employee future
17 benefits, you mentioned in your pre-filed evidence and
18 again yesterday that the change in the accounting
19 treatment for employee future benefits is a requirement
20 under CICA Guidelines for all companies in order to get, I'll
21 call it a clean financial statement with the exception of
22 utilities who may get exempt from those guidelines?

23 MR. JOHN BROWNE: Could we leave that last part out for
24 a moment and I can address that separately? Yes, that is a
25 recommendation of the CICA handbook and all companies
26 that file public financial statements would have to adhere
27 to that recommendation if they wanted a clean audit
28 opinion.

29 MS. GREENE, Q.C.: And how would you be able ... now I'll
30 go to the second part of the question that you wanted to
31 remove. In order to get a clean financial statement, a utility
32 can still get a clean financial statement if the regulator
33 exempts it from the application of those principles of the CI
34 ...

35 MR. JOHN BROWNE: No, definitely not.

36 MS. GREENE, Q.C.: Again, maybe we're having a
37 disconnect because of my understanding of accounting,
38 and actually this isn't significant in terms of the, where I
39 wanted to go with it. But Newfoundland, for example, has
40 not changed how it treats employee future benefits, is that
41 correct?

42 MR. JOHN BROWNE: That is ... that's my understanding,
43 yes.

44 MS. GREENE, Q.C.: So they're still on a cash basis.

45 MR. JOHN BROWNE: That's my understanding.

46 MS. GREENE, Q.C.: So they're not complying with the
47 recommendations of the CICA in the guidelines.

48 MR. JOHN BROWNE: I believe that they will get a clean
49 audit opinion.

50 MS. GREENE, Q.C.: And why is that?

51 MR. JOHN BROWNE: I'm sorry, we're getting a little
52 technical here. Where to start?

53 MS. GREENE, Q.C.: Isn't it because there's a regulator there
54 and, as you mentioned in your evidence, that normally
55 utilities follow the GAP principles or the CICA Institute
56 principles unless the utility, the regulator determines the
57 utility does not have to?

58 MR. JOHN BROWNE: Technically what you said is
59 incorrect.

60 MS. GREENE, Q.C.: How about in normal layman's terms,
61 without getting into technical accounting terminology?

62 MR. JOHN BROWNE: For example, the committee that I
63 was chairing, the issue of whether regulatory boards can
64 set generally accepted accounting principles was brought
65 up, and it was unanimously agreed, no, they cannot set
66 GAP. What boards can do is set rates which have an
67 economic impact which should be reflected. For example,
68 Newfoundland Power, if you decide to, or if it continues to
69 use the pay as you go approach, what one approach would
70 be is to set up the liability in accordance with the
71 recommendations in the handbook. It would then set up a
72 regulatory asset which would offset it. Impact on income
73 would be exactly the same and it would have the liability
74 and the asset. Now some people would say just use the
75 cash basis. As a matter of fact, some people on the study
76 group that I chaired suggested that. What they said is use
77 the cash basis and in notes to the financial statement
78 disclose what the amount of the liability and asset would
79 be. Their argument for that was they agreed in principle,
80 what I said earlier was appropriate, but the latter approach
81 saves capital tax and is therefore deemed to be more
82 practical, so the point is is that, yes, certainly
83 Newfoundland Power or even Hydro could continue to use
84 the cash basis and still get a clean audit opinion.

85 MS. GREENE, Q.C.: Why did they recommend going with
86 the accrual basis for employee future benefits? Why did
87 the CICA Institute recommend that and actually now make
88 it a requirement for all companies?

89 MR. JOHN BROWNE: Uh hum. It certainly is, I would say,
90 better financial reporting, both costs of these future
91 benefits or a cost of the current period and for financial
92 reportings should be included in the expenses of this
93 period. I would say in, certainly that issue should also be
94 addressed as the Board addresses the issue of whether or
95 not to move to the accrual basis for rate setting purposes.
96 I would add that I think there's a lot of merit that, to that
97 argument, it should be considered, but you should also

1 consider the impact on rates.

2 MS. GREENE, Q.C.: So let's take ...

3 MR. JOHN BROWNE: For example, this Board in dealing
4 with Newfoundland Power requires the equivalent of a cash
5 basis for dealing with income taxes, presumably because
6 for whatever reason it believes that is more just and
7 reasonable.

8 MS. GREENE, Q.C.: From your answer I had asked you
9 why they have recommended it. I understood from your
10 answer that, among other things you said on my questions,
11 that it had to match the cost with the benefits as they were
12 accruing.

13 MR. JOHN BROWNE: Well, I wouldn't say the benefits so
14 much as it's the, those costs arise from service provided in
15 the period and there is a liability as a result of employees
16 providing service, there's a liability to provide those
17 benefits in the future, so good accounting would say that
18 liability should be recognized.

19 MS. GREENE, Q.C.: So ...

20 MR. JOHN BROWNE: Much the same way with income
21 taxes, the CICA states that it is preferable reporting to
22 recognize the liability of future deferred taxes in the period
23 that gives rise to that future liability.

24 MS. GREENE, Q.C.: So simply a recognition of the liability
25 in the period in which the liability arises, and if that doesn't
26 occur then the deferring the recognition of the liability, is
27 that correct?

28 MR. JOHN BROWNE: I think I agree with the first part.
29 Could you just slow down? The first part of your question
30 was?

31 MS. GREENE, Q.C.: I was trying to get you, and I must say
32 I'm ... in terms of what, the answers to the questions I was
33 getting, very frustrating. I'm asking you a question and
34 you're not answering the question, so, yes, I'll go one piece
35 at a time. All I wanted you to say to the Board is why
36 CICA recommended that for all companies that companies
37 recognize liabilities associated with future benefits. My
38 understanding is that it's to match in the period in which
39 the benefits arise the cost associated with the benefit.

40 MR. JOHN BROWNE: That's ... yes, that's certainly the
41 income statement approach. I would say the liability is to
42 recognize the liability also and I would presume that's what
43 drove the recommendation.

44 MS. GREENE, Q.C.: And that this is an issue of
45 intergenerational equity, which is also of concern to
46 regulators, is that correct?

47 MR. JOHN BROWNE: I don't ... excuse me, it's just ... the
48 issue of intergenerational equity is not something that
49 would have motivated the CICA.

50 MS. GREENE, Q.C.: Alright, but it is ...

51 MR. JOHN BROWNE: It is an issue ...

52 MS. GREENE, Q.C.: ... of concern for the regulator. It is of
53 concern to the regulator, intergenerational equity, whether
54 my grandchildren ...

55 MR. JOHN BROWNE: I'm sorry, I thought you were asking
56 what drove the CICA.

57 MS. GREENE, Q.C.: I was trying to ask is intergenerational
58 equity an issue to be considered in the recognition of
59 employee future benefits?

60 MR. JOHN BROWNE: For the regulator?

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

62 MR. JOHN BROWNE: For the regulator, definitely.

63 MS. GREENE, Q.C.: And the issue is whether my
64 grandchildren will pay for the benefits that I am accruing
65 today or whether there should be recognition in the period
66 for the people who are earning the benefit. If we defer it
67 and don't recognize the liability and it doesn't get recovered
68 till later years, it's my children or my grandchildren who
69 may end up paying for their electricity rates the cost of
70 benefits that I am earning today.

71 MR. JOHN BROWNE: That's the ... yes.

72 MS. GREENE, Q.C.: That's the theory.

73 MR. JOHN BROWNE: That's the theory.

74 MS. GREENE, Q.C.: With respect to the transitional
75 obligation, that transitional obligation as you called it in
76 your evidence, is the liability that was incurred for future
77 benefits up to December 31, 1999, for Hydro, associated
78 with the benefits earned that period, is that correct?

79 MR. JOHN BROWNE: Not exactly as you said it. It's the
80 present value of the future ...

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

82 MR. JOHN BROWNE: ... benefit ... sorry. As of the
83 transition date it's the present value of the future benefits
84 as a result of past services. It's not equal to the amount of
85 the future benefits.

86 MS. GREENE, Q.C.: That's my accounting knowledge
87 again. I agree with that. So it was ... so when Hydro
88 recognized the transitional obligation, December 31, 1999,
89 for me, for example, I've been there 21 years, Hydro
90 recognized the value of the benefits that I had earned to
91 December 31, 1999, for my past service which I will not
92 receive until I retire. Is that correct?

93 MR. JOHN BROWNE: The present value of it, yes.

1 MS. GREENE, Q.C.: And as you noted in your evidence,
2 Hydro has already dealt with the transitional obligation and
3 in fact has taken it into retained earnings. Is that correct?

4 MR. JOHN BROWNE: Yes, I believe they ... for accounting
5 purposes, retroactive application, and I assume the
6 implication of that is that they're not going to ask to
7 recover it from, through rates.

8 MS. GREENE, Q.C.: That's correct. Now, you are
9 suggesting with respect to the going forward from
10 December 31, 1999, that that be treated or that the Board
11 consider treating that in a different way. Is that correct?

12 *(10:30 a.m.)*

13 MR. JOHN BROWNE: What I wanted to lay before the
14 Board was that the Board had options.

15 MS. GREENE, Q.C.: Oh, you didn't make a
16 recommendation?

17 MR. JOHN BROWNE: I say that there was options. As I
18 indicated in my evidence, if you were starting from scratch,
19 I believe the accrual approach would be the best approach,
20 however, as a result of you, as, changing over, there is an
21 increase in costs. I forget the exact increase in the
22 upcoming year as a result of moving to the accrual
23 approach, and what I suggest is the Board should consider
24 that as part of the overall increase which I understand with
25 the RSP, etcetera, will amount to about seven percent to
26 Newfoundland Power's customers over the next year.

27 MS. GREENE, Q.C.: So let's go back now to the ... you have
28 no problem with the fact that Hydro wrote off the
29 transitional obligation to December 31, 1999, is not
30 expecting to recover that from ratepayers.

31 MR. JOHN BROWNE: I believe that utility should have an
32 opportunity to recover that transitional obligation. Hydro
33 has decided not to. If Hydro does not seek to recover it, I
34 think it's just and reasonable for the Board to grant that.

35 MS. GREENE, Q.C.: In terms of moving forward first, I
36 found it somewhat inconsistent that there would be a
37 recognition to a period but not on a go-forward basis. Do
38 you find that inconsistent? You're recognizing my ... again
39 I'll use my example. The Board will be recognizing that the
40 value of the benefits that I earn for my service to December
41 31, '99, is recognized as a liability, (unintelligible) an
42 accountant would be, but then if they go to the cash
43 method and not the accrual method, my service from 2000
44 onward will not be recognized as a liability anywhere until
45 I actually retire and I start to receive the benefits.

46 MR. JOHN BROWNE: From an accounting point of view
47 I believe the appropriate way to do it would be to recognize
48 the liability and then recognize a regulatory asset equal to
49 that liability because if you're under the cash basis the

50 Board is implicitly stating that you have a right to receive
51 additional revenues in the future when those payments
52 come due, and that would be deemed to be a regulatory
53 asset. That's my preferred approach, although I would
54 state that some people would argue you could still just use
55 the cash basis because the end result is similar.

56 MS. GREENE, Q.C.: And with respect to the switch to the
57 accrual method, your concern, as I understood it from page
58 34 of your evidence, was the impact on the revenue
59 requirement or the rates. Is that correct?

60 MR. JOHN BROWNE: I'm sorry, I missed your question
61 there.

62 MS. GREENE, Q.C.: Page 34 ...

63 MR. JOHN BROWNE: No, just the last part.

64 MS. GREENE, Q.C.: Oh. In terms of ... well, from an
65 accounting perspective the accrual method that Hydro is
66 proposing recognizes the liability in the period which it is
67 incurred. Your concern that why this wouldn't be followed
68 is that the impact that it would have on rates.

69 MR. JOHN BROWNE: Yes, I believe the impact on rates is
70 something this Board should consider.

71 MS. GREENE, Q.C.: And what impact would it have? I
72 understand that it's less than a third of a percent of the
73 total revenue requirement.

74 MR. JOHN BROWNE: Yes, I believe that's on the screen.
75 I did the calculation. I believe it's in a range of .31 percent.
76 As I indicate there in itself, that seems to me to be pretty
77 immaterial, however, it is part of an increase in rates that I
78 gather could be in the range of seven percent to
79 Newfoundland Power's retail customers.

80 MS. GREENE, Q.C.: Now, so you're concerned about .31
81 percent of the revenue requirement. I'm just trying to
82 understand what your basis is for cautioning on the accrual
83 method.

84 MR. JOHN BROWNE: What I'm saying to the Board is
85 that, yes, consider intergenerational equity. What I'm also
86 saying is what's the overall impact on rates, and I would
87 say that that is a judgement call this Board has to make as
88 to what is reasonable.

89 MS. GREENE, Q.C.: On the issue of what Hydro is looking
90 for in this hearing, the 7.1 percent, you would agree that
91 that's the total increase Hydro is, that actually will happen
92 in the rate after the RSP adjustment, that the actual amount
93 is about half of that that Hydro is looking for in this hearing
94 in its base rates?

95 MR. JOHN BROWNE: Yes. That does include the
96 adjustment for the RSP, yes.

- 1 MS. GREENE, Q.C.: Which is an automatic adjustment to
2 recover for past costs?
- 3 MR. JOHN BROWNE: That is correct, yes.
- 4 MS. GREENE, Q.C.: Okay.
- 5 MR. JOHN BROWNE: However, it's an amount that
6 customers are going to have to pay.
- 7 MS. GREENE, Q.C.: Oh, yes, I agree with that. It's just
8 Hydro is not actually proposing seven percent in this
9 particular ...
- 10 MR. JOHN BROWNE: Sorry.
- 11 MS. GREENE, Q.C.: ... application ...
- 12 MR. JOHN BROWNE: Yes.
- 13 MS. GREENE, Q.C.: ... for change in base rates. Thank
14 you, Mr. Browne. That concludes my questions.
- 15 MR. JOHN BROWNE: Thank you.
- 16 MR. NOSEWORTHY, CHAIRMAN: Thank you.
17 (inaudible) still have about 20 minutes or so. The Industrial
18 Customers, please.
- 19 MR. HUTCHINGS: Yes, thank you, Mr. Chairman. My first
20 question is just really by way of clarification, Mr. Browne.
21 I believe somewhere in the books behind you you'll find the
22 hard copy of the answer to **NP-11(B)**.
- 23 MR. JOHN BROWNE: Yes, I have that.
- 24 MR. HUTCHINGS: Okay. The schedule that's attached, in
25 my copy there's an opening page that has NP-11(B) on it
26 and then it says, "Newfoundland and Labrador Hydro,
27 Review of Operating Costs Recovered from Churchill Falls
28 Labrador Corporation as of December 31, 2000." Do you
29 have that?
- 30 MR. JOHN BROWNE: I'm at that page now.
- 31 MR. HUTCHINGS: Okay. When you turn over to the next
32 page, it says "Executive Summary."
- 33 MR. JOHN BROWNE: That's correct.
- 34 MR. HUTCHINGS: And that's one page long.
- 35 MR. JOHN BROWNE: Yes.
- 36 MR. HUTCHINGS: Okay. Now, I took the rest of this, from
37 page two to eight, with a schedule, to be the body of the
38 report, but I take it from your evidence that you thought
39 that all that was produced in 11(B) was the Executive
40 Summary. Am I missing something?
- 41 MR. JOHN BROWNE: I thought that was just the
42 Executive Summary. I would have expected to see more
43 detail.
- 44 MR. HUTCHINGS: You think the eight pages which ends
45 up in summary, the last page of the summary, you thought
46 that was just, all of that was the Executive Summary.
- 47 MR. JOHN BROWNE: Yes.
- 48 MR. HUTCHINGS: Okay. Did you file a supplemental
49 demand to get the balance of the report?
- 50 MR. JOHN BROWNE: No.
- 51 MR. HUTCHINGS: Okay. In connection with your
52 evidence relative to the rate of return for Hydro, you said,
53 I believe, that you felt that Government as shareholder
54 should be allowed a normal rate of return similar to that of
55 an investor-owned utility. Is that fair?
- 56 MR. JOHN BROWNE: As a starting point, yes.
- 57 MR. HUTCHINGS: What, if any, adjustments would you
58 see (inaudible) to be necessary arising out of the fact that
59 the Crown is the shareholder?
- 60 MR. JOHN BROWNE: As I said, I think there's a general
61 policy that costs that are incurred on behalf of the
62 shareholder that don't benefit customers or not necessary
63 to provide regulated service should be removed.
- 64 MR. HUTCHINGS: Yes. That would apply whoever the
65 shareholder is.
- 66 MR. JOHN BROWNE: That is correct.
- 67 MR. HUTCHINGS: Okay. Is there anything specific that
68 you would adjust because it's the Crown that's the
69 shareholder?
- 70 MR. JOHN BROWNE: No.
- 71 MR. HUTCHINGS: Would you agree ...
- 72 MR. JOHN BROWNE: There might be minor things but
73 nothing of a material nature.
- 74 MR. HUTCHINGS: Okay. Would you agree with me that
75 ...
- 76 MR. JOHN BROWNE: I mean, broadly the statement would
77 stand.
- 78 MR. HUTCHINGS: Would you agree with me that tax
79 implications have to be regarded differently where you're
80 dealing with a shareholder who's not taxable?
- 81 MR. JOHN BROWNE: I was referring to the after-tax return.
82 Certainly I do not believe if a, if a Crown utility does not
83 pay income taxes it should not recover that cost from
84 customers, but my comment was directed solely at the after-
85 tax return.
- 86 MR. HUTCHINGS: Okay, that's fine. At **page 15 of your**
87 **evidence** you deal with this and specific reference there at
88 line 22 refers to the rate base being determined on a stand-

1 alone basis. That's a phrase that has come to be used here
2 in connection with whether or not there is a Government
3 guarantee. Was that the way you intended that phrase to
4 be read?

5 MR. JOHN BROWNE: That's correct.

6 MR. HUTCHINGS: Is it fair to say, however, that the Board
7 should take into account the existence or non-existence of
8 a Government guarantee in determining what an
9 appropriate return is for Hydro?

10 MR. JOHN BROWNE: My answer is no. I just want to be
11 clear that I'm treating the guarantee as a certain (inaudible)
12 a charge for a service provided and with that statement I
13 would say, no, there should not be an adjustment.

14 MR. HUTCHINGS: Okay. Should the guarantee, the
15 existence or non-existence of the guarantee affect what the
16 Board will regard as a reasonable capital structure for
17 Hydro?

18 MR. JOHN BROWNE: I believe that where a government
19 guarantees the debt and charges the utility, which then
20 gets passed on to customers, for that service, the lower
21 equity ratio that's allowed because of that should be
22 considered. I do not believe that you should be setting a
23 capital structure as if there wasn't a debt guarantee and
24 then have the debt guarantee fee passed on to customers.
25 That to my mind would be inappropriate.

26 MR. HUTCHINGS: In your mind is there an optimal debt
27 equity structure for Hydro?

28 MR. JOHN BROWNE: I would say there is probably an
29 optimal range.

30 MR. HUTCHINGS: And is that affected by the existence of
31 the guarantee?

32 MR. JOHN BROWNE: Certainly if you have the guarantee
33 the amount of debt a utility can maintain goes up and if
34 customers are being charged for that service then certainly
35 the impact of that guarantee, through the lower equity ratio,
36 should be considered.

37 MR. HUTCHINGS: Would you say it's fair to try to seek
38 out the least cost debt equity structure?

39 MR. JOHN BROWNE: Yes.

40 MR. HUTCHINGS: I was left a little unclear on your
41 position relative to the dividend. I understood that if there
42 were in this instance to be a deemed capital structure by
43 the Board, which would deem additional equity, that is to
44 say deem that the dividend not be paid, in the peculiar
45 circumstances that we have where Hydro is seeking a three
46 percent rate of return there would actually be a saving to
47 ratepayers because presumably there would be also a
48 deeming that there be \$70 million less debt and

49 disallowance of the interest. Is that the way you would see
50 that shaping up?

51 MR. JOHN BROWNE: Yes, and presumably also a
52 disallowance of the debt guarantee on top of that portion
53 of the debt.

54 MR. HUTCHINGS: Yes, of course, okay. What I'm not
55 clear on is whether or not you're actually recommending
56 that the Board do that in the circumstances of the present
57 case as we understand it.

58 MR. JOHN BROWNE: It is conditional on what the Board
59 decide with regards to dealing with social policy objective
60 such as the rural deficit. Certainly if they believed that no
61 consideration should be given to the rural deficit and if
62 Hydro were actually seeking a full rate of return, then
63 additional equity would be detrimental to customers and I
64 believe that it would not be just and reasonable for the
65 Board in that case to deem a higher equity ratio.

66 *(10:45 a.m.)*

67 MR. HUTCHINGS: Okay. I was trying to have your
68 answer in the context of where we are in the current
69 application, which means a three percent requested return
70 on equity. Does that ... does your answer mean that
71 whether or not you recommend this procedure of the
72 deemed capital structure to the Board depends upon
73 whether or not the Board acts on your suggestion that all
74 or part of the rural subsidy be regarded as part of the
75 Government's return?

76 MR. JOHN BROWNE: I would say that issue has to be
77 addressed first, yes.

78 MR. HUTCHINGS: Does the one depend on the other, is
79 my question.

80 MR. JOHN BROWNE: Yes.

81 MR. HUTCHINGS: Okay. So if the Board says that the
82 rural deficit, which is really the rural deficit itself being of
83 no real interest to the people I represent because they don't
84 contribute to it, but if the Board says that all or part of the
85 rural deficit should be regarded as a return to equity as far
86 as the Government is concerned, in that case you would
87 recommend that the Board deem a capital structure on the
88 basis that no dividend was paid in 2002.

89 MR. JOHN BROWNE: If in dealing with the cost of that
90 social policy objective they determine there should be a
91 decrease in return to effectively put that cost back on the
92 shareholder, set a lower rate of return, then yes, they
93 should deem it so that Hydro cannot avoid a constraint by
94 paying out a dividend.

95 MR. HUTCHINGS: Okay.

96 MR. JOHN BROWNE: However, if you were to say the

1 Board were to decide that they believe in their judgement
2 that the subsidy is just and reasonable, then I don't believe
3 that they should address the issue of the dividend.

4 MR. HUTCHINGS: Okay. So in principle then I take it you
5 don't have an objection to the payment of the dividend or
6 the implications on that for the capital structure. Is that
7 correct?

8 MR. JOHN BROWNE: As long as there is the guarantee,
9 my understanding is that Hydro will have no problems in
10 raising adequate debt and that is a service the Government
11 is providing at a fee. Presumably it is happy with that fee.
12 I've not heard of ... I'm not aware that Hydro has come in
13 and said the fee is inadequate, so if the customers are
14 paying for this service, they should get that service.

15 MR. HUTCHINGS: Do you recognize any inconsistency in
16 the payment of the dividend and the alleged target of
17 Hydro to increase its equity?

18 MR. JOHN BROWNE: Sorry. Yes, it is inconsistent.

19 MR. HUTCHINGS: You had some discussion with Ms.
20 Greene about the matching of revenues and costs in the
21 context of the employee benefits. Am I correct in my
22 understanding that this is a generally accepted principle of
23 accounting that revenues and costs in a given fiscal year
24 be matched?

25 MR. JOHN BROWNE: Yes.

26 MR. HUTCHINGS: Okay. And in what sort of
27 circumstances, if at all, under generally accepted
28 accounting principles, is it appropriate to defer costs from
29 one year to another?

30 MR. JOHN BROWNE: Where they represent an asset,
31 there's a future, they represent a future benefit. For
32 example, if you bought inventory or, sorry, bought fuel, at
33 the end of the year if it's still sitting there, available to use
34 next year, that would be an asset. You would defer the cost
35 by setting it up as an asset.

36 MR. HUTCHINGS: Okay. I just need to review a note for
37 a moment to see whether there are other items that are left
38 unaddressed. **At page 14 of your evidence**, I was struck by
39 the language at line 11 where you say that Hydro is
40 proposing to use a return on rate base methodology, do
41 you regard the use of the return on rate base methodology
42 as something that Hydro is free to propose or something
43 that is mandated by the legislative changes?

44 MR. JOHN BROWNE: My understanding, is consistent
45 with the legislation.

46 MR. HUTCHINGS: Okay. And I won't take that any further
47 in the sense of asking you for any opinions on the
48 legislation because that's something we'll have to argue

49 about at a later date. Are there any alternatives in your
50 mind that would also be consistent with the legislation
51 other than a rate base methodology?

52 MR. JOHN BROWNE: The reason I'm hesitating is, is
53 because there's sometimes questions whether these other
54 approaches are really consistent, for example, performance
55 based methodologies. I've had some discussions, I gather
56 that some people view that as inconsistent with the
57 legislation. In my view, performance based regulation is
58 just an extension of return on rate base regulation, so I
59 think there's other approaches. My bias is I believe boards
60 should be moving more towards performance based
61 regulation but it's not an issue I've really considered in the
62 context of this particular proceeding.

63 MR. HUTCHINGS: Thank you, Mr. Browne. Those are all
64 my questions, Mr. Chair.

65 MR. NOSEWORTHY, CHAIRMAN: Thank you. Thank
66 you very much, Mr. Hutchings. It is five to eleven now.
67 We'll proceed to break for 15 minutes and then we'll come
68 back with the Consumer Advocate.

69 *(break)*

70 *(11:15)*

71 MR. NOSEWORTHY, CHAIRMAN: Thank you. I'll ask the
72 Consumer Advocate to begin with his cross. Mr. Browne,
73 I understand that you'll be doing it.

74 MR. BROWNE, Q.C.: Thank you, Mr. Chairman. Mr.
75 Browne, you've dealt with accounting issues on page 24 of
76 your evidence, one of which is intercorporate charges. Is
77 this an area with which you have some familiarity?

78 MR. JOHN BROWNE: Yes.

79 MR. BROWNE, Q.C.: And how did you acquire that
80 familiarity?

81 MR. JOHN BROWNE: I guess we'd start back in my
82 undergraduate days and taking accounting and
83 management accounting courses, my graduate days as a ...
84 studying economics, my training as an accountant and
85 through a number of consulting assignments.

86 MR. BROWNE, Q.C.: Have you dealt with intercorporate
87 charges in dealing with any particular utility?

88 MR. JOHN BROWNE: Yes.

89 MR. BROWNE, Q.C.: And what is that utility?

90 MR. JOHN BROWNE: I have done work with
91 Newfoundland Power and other utilities and
92 telecommunication companies.

93 MR. BROWNE, Q.C.: On page 25 of your evidence, line 15,
94 you state, "Costs should be allocated on the basis of

1 causality, that is a cost should be allocated to what caused
2 the cost to be incurred. Unfortunately, fixed common costs
3 cannot be allocated on this basis.", and then, "In
4 developing intercorporate charges fixed common costs
5 must be allocated and the preferred approach is usual
6 relative benefits received." Now, in determining the cost
7 for a particular service should that determination be
8 discussed with the provider of the service, we're dealing
9 with intercorporate charges now, before the service is
10 undertaken?

11 MR. JOHN BROWNE: We're talking about intercorporate
12 charges, not a normal commercial transaction, and the
13 discussions are as between the two affiliates?

14 MR. BROWNE, Q.C.: Yes. The regulated versus the non-
15 regulated. I'm a non-regulated when coming to you, you're
16 regulated, I want a service. Should the cost of that service
17 be discussed prior to you embarking upon the service?

18 MR. JOHN BROWNE: Just for clarity, are we talking about
19 the regulated company providing a regulated service or a
20 non-regulated service, like management services or
21 something else other than its normal regulated services?

22 MR. BROWNE, Q.C.: A regulated company is providing a
23 service to a non-regulated company.

24 MR. JOHN BROWNE: I'm just asking for clarification. If,
25 for example ...

26 MR. BROWNE, Q.C.: I don't think it's that difficult, now,
27 Mr. Browne. I'm a regulated company, you're coming to me,
28 you're non-regulated, we're all part of the same ... under the
29 same umbrella, we have a common parent. And I'm looking
30 ... or you're looking to me for a service. The non-regulated
31 is calling the regulated looking for a service.

32 MR. JOHN BROWNE: And I believe there's a distinction
33 on whether the service is regulated or not. I think to
34 regulate it, you know, there's the tariff, that's it.

35 MR. BROWNE, Q.C.: Okay. How is the tariff created, how
36 is the tariff created? Is there a tariff in place at the
37 commencement of the call? I'm looking ... you're looking to
38 me for engineering services?

39 MR. JOHN BROWNE: Okay. So we're moving away from
40 the regulated service. What I was trying to distinguish
41 between is, for example, in the case of Newfoundland
42 Power, if an affiliate comes to it saying we want power, I
43 don't know there's much to discuss. There's the tariff rate,
44 that's what they pay. Now, if we're ...

45 MR. BROWNE, Q.C.: But what if they want engineering
46 services, what if they want engineering services?

47 MR. JOHN BROWNE: Okay. So ...

48 MR. BROWNE, Q.C.: Go to that, go to something that's

49 non, that isn't a part of the tariff.

50 MR. JOHN BROWNE: In a case like that I think it is
51 reasonable to certainly be aware of the charge.

52 MR. BROWNE, Q.C.: Yeah, but you're aware of the charge.
53 Should the charge be stated at the outset of the service?
54 You're coming to me, I'm an engineer. You're in the non-
55 regulated part of the entity, I'm in the regulated part of the
56 entity. Should the charge be stated at the beginning of the
57 service or should it be ball parked at the end?

58 MR. JOHN BROWNE: Whether I ... I would say that as a
59 good business practice it would be reasonable. As a
60 regulatory practice, not necessarily, because I think the
61 regulated entity should be following its approved policies
62 and procedures for intercorporate charges.

63 MR. BROWNE, Q.C.: And as part of those policies and
64 procedures then, should the policy be that there's a charge
65 for a particular service. If you're calling an engineer, is
66 there an engineer's rate that should be available to the non-
67 regulated entity?

68 MR. JOHN BROWNE: I believe that if a regulated entity is
69 going to be providing non-regulated services to an affiliate
70 it should do so in accordance with appropriate policies and
71 procedures. And as I discussed earlier, with regards to
72 Hydro, I believe that they should come to this Board and
73 have those policies and procedures approved. Once those
74 policies and procedures are ...

75 MR. BROWNE, Q.C.: Just one moment, witness. I know
76 that ... I don't want you to get away from the question here.
77 The question is, I'm looking for an engineering service,
78 okay, the regulated as providing an engineering service to
79 the non-regulated. Should there be a cost at the outset
80 determined? I'm just asking you generally. I'm not asking
81 you about Newfoundland Power, I'm not asking you about
82 Hydro. I'm asking you what a proper procedure would be.

83 MR. JOHN BROWNE: And I'm ...

84 MR. BROWNE, Q.C.: Should there be a cost determined at
85 the outset for that service?

86 MR. JOHN BROWNE: And I'm making a very, what I
87 believe, important distinction. From a management point of
88 view it makes sense. From a regulatory view, as long as the
89 company is adhering to its policies and procedures, I don't
90 believe there's a regulatory issue.

91 MR. BROWNE, Q.C.: And what should the policy and
92 procedure be, then, what should be the correct policy and
93 procedure? You're looking for engineering services, the
94 non-regulated, for me, the regulated. Should you say I can
95 give you this service at, my rate is \$50 an hour or \$100 an
96 hour and it will take 20 hours for me to provide you with
97 that, so at the end of it you can expect a bill of \$2000 and

1 plus there's a premium attached? Is that the approach that
2 should be taken?

3 MR. JOHN BROWNE: I think you have to look at the
4 details of the situation to arrive at ...

5 MR. BROWNE, Q.C.: Well, that is the situation, I'm giving
6 you that example.

7 MR. JOHN BROWNE: I'm sorry. Excuse me.

8 MR. BROWNE, Q.C.: I'm just giving you that example. Is
9 that a ... would that be an example of the way it should be
10 done?

11 MR. JOHN BROWNE: I don't know. You've got to look at
12 the details of the situation. You're asking for a policy, an
13 appropriate approach when I don't have the detailed
14 knowledge in order to answer it. Certainly what my
15 evidence addressed is that companies or utilities should
16 have established policies and procedures for establishing
17 that amount. What the specific amount is, I can't say
18 generally.

19 MR. BROWNE, Q.C.: So you can't say if that will be ... give
20 the Board any guidance, because you're here as a witness,
21 you're speaking to intercorporate charges. Can you give
22 the Board even a little hint maybe of what the procedure
23 ought to be in a specific situation? Should the cost of a
24 particular service be determined at the outset of that
25 service?

26 MR. JOHN BROWNE: I believe I've answered the
27 question.

28 MR. BROWNE, Q.C.: No, you haven't, sir.

29 MR. JOHN BROWNE: Well ...

30 MR. BROWNE, Q.C.: With all due respect, you have not
31 answered that question.

32 MR. JOHN BROWNE: If I have a chance to explain, sir.

33 MR. BROWNE, Q.C.: Sir, if you'd answer the question that
34 will be preferable.

35 MR. JOHN BROWNE: What I'm saying is the policy, the
36 procedure that should be followed is the policies and
37 procedures should be put to this Board and the utility
38 should follow those policies and procedures, whatever
39 they are, that the Board has approved. Now, whether ...
40 how they actually develop the charge, that should be
41 consistent with the policies and procedures the Board
42 approves.

43 MR. BROWNE, Q.C.: Would that practice that I've put to
44 you by way of example, would that be a prudent approach
45 in developing a policy?

46 MR. JOHN BROWNE: A prudent approach in developing

47 a policy, I believe, would be to say for certain types of
48 employees we will come up with a rate that will be charged
49 out. That rate should reflect, certainly, the hourly rate of
50 the employee, overheads for things like statutory holidays,
51 vacation pay and other costs that are associated with
52 providing the service.

53 MR. BROWNE, Q.C.: And should it be down in a schedule
54 at the ... should all employees know what the policy is at
55 the commencement of their employment?

56 MR. JOHN BROWNE: All employees?

57 MR. BROWNE, Q.C.: Yes, all employees?

58 MR. JOHN BROWNE: No. Just those that would need to
59 know to ensure that the regulated operations are
60 appropriately compensated.

61 MR. BROWNE, Q.C.: But wouldn't all employees need to
62 know that, that there's a chance that the non-regulated
63 entity might call looking for advice or may call looking for
64 a particular service? We're all part of the same group of
65 companies here, you know, me, Joe, yes, Henry, I know
66 you. And all of a sudden he's given the service without
67 knowing that there may be, in fact, a policy he may be
68 violating. Wouldn't it be better if all employees knew what
69 the policy is upon the commencement of their employment?

70 MR. JOHN BROWNE: I do not think that's necessary.
71 Certainly, for example, you may have, I don't know, let's say
72 a lineman doing service for non-regulated operations. I
73 don't think it's important that he knows how he's charged,
74 just so long as there are policies and procedures in place to
75 ensure the regulated operations charge the non-regulated
76 operations an appropriate amount. It certainly isn't
77 necessary to every employee to know the policies and
78 procedures.

79 MR. BROWNE, Q.C.: But if every employee didn't know
80 the policies and procedures wouldn't that lead to a rather
81 loose practice if someone, given my example, could call
82 from the non-regulated entity in to the regulated entity and
83 get advice or find that they're all of a sudden providing a
84 service of some sort, and the employees would be ignorant
85 of the fact that he's dealing from a regulated entity into a
86 non-regulated entity?

87 MR. JOHN BROWNE: As I stated, the people that should
88 know the policy are those that are responsible for ensuring
89 the charge is made. As I say, I don't think every lineman
90 has to know the policies and procedures, but the person
91 that certainly assigns them to do the non-regulated work or
92 has control over that should be aware of the policies and
93 procedures, or at least, there should be a policy and
94 procedure in place to ensure that they contact someone
95 who is knowledgeable and responsible.

1 MR. BROWNE, Q.C.: And should the service that's
2 provided, should it be at a market cost? If you're looking
3 for an electrician you pay electricians' rates in the market in
4 which you're in?

5 MR. JOHN BROWNE: As I stated in my evidence, I believe
6 that is the preferable approach, market based pricing.

7 MR. BROWNE, Q.C.: And should there be timecards kept
8 to reflect the service that's provided from one entity to the
9 other?

10 MR. JOHN BROWNE: Certainly that's a very good policy,
11 and I recall recommending that in the case of
12 Newfoundland Power. I'm just hesitant to say that it's the
13 best policy in all cases. It certainly is one, one that I've
14 recommended in the past.

15 MR. BROWNE, Q.C.: So the timecard approach is one that
16 you have recommended?

17 MR. JOHN BROWNE: I wouldn't go so far as to say
18 timecard, but time record keeping.

19 MR. BROWNE, Q.C.: And the time record keeping that you
20 have recommended, that's one approach. You said that
21 there are others. Is there another approach we should
22 know about?

23 MR. JOHN BROWNE: You'd really have to look at all the
24 detailed situation ... or the details of the situation. In some
25 cases some other approach may be reasonable for
26 establishing the cost. Sometimes ... I'm just trying to think
27 if it's ... if the major driver of the cost is the employee hours,
28 certain time records, to my mind, would appear to be the
29 best measure. In other cases, for example, let's say you're
30 using equipment, perhaps maybe the thing is it's not the
31 labour hours you keep track of but the equipment hours.
32 So I think you have to look at the specific situation to really
33 arrive at a conclusion as to what's the most appropriate
34 allocators in a given situation.

35 MR. BROWNE, Q.C.: But is there any other approach,
36 other than a time approach that could be used? If you're
37 using equipment wouldn't there be a time component to
38 that, if you're using an employee wouldn't there be a time
39 component to that?

40 MR. JOHN BROWNE: You could ...

41 MR. BROWNE, Q.C.: What other ways are there, can you
42 be specific, give us an alternative?

43 MR. JOHN BROWNE: In some cases there might just be a
44 charge for the service regardless of the number of hours.
45 For example, well, let's say there's office space, for example,
46 and you have an office building, and you have a non-
47 regulated affiliate using part of that office. You may come
48 up with a market rate for the use of the space, and that will

49 include the use of the space, the cleaning staff, etcetera.
50 So you wouldn't necessarily have to keep track of the time
51 of the individual cleaning staff members. That would all be
52 covered by the overall market rate for the use of the office
53 space.

54 *(11:30 a.m.)*

55 MR. BROWNE, Q.C.: You say, in your evidence on page
56 26, that ... in line 10, that it is difficult to avoid subjective
57 judgment after referring to the Grant Thornton report. Why
58 is it difficult to avoid subjective judgment, why can't it
59 always be objective?

60 MR. JOHN BROWNE: It's the nature of accounting. As I
61 talked about earlier, when you come to the fixed common
62 cost you have to find some way of allocating them. There's
63 not a direct causal link. And usually what you'll find is
64 objective judgment being used in order to find the most
65 appropriate allocator in the particular case. I believe that
66 when it comes to such allocations you could probably put,
67 you know, ten accountants in the room and come out with
68 at least ten reasonable ways of allocating it, so each one of
69 them would be applying their subjective judgment in
70 arriving at what's appropriate. Even when we deal with
71 causal based costs, often the information is not available in
72 order to identify those costs and some reasonable allocator
73 has to be chosen. Again, accountants apply their
74 subjective judgment in arriving at the best allocator, what
75 they believe is the best allocator.

76 MR. BROWNE, Q.C.: But that is effectively subjective,
77 isn't it, what they believe? Isn't it best to have an objective
78 analysis here, an objective approach, if there is an hour
79 used or if there's equipment used for a particular time
80 period that a cost be allocated for that equipment?

81 MR. JOHN BROWNE: Okay. What, certainly, I'm saying
82 in my evidence, is it's preferable that subjective judgment
83 go into the evaluation by the Board as to what the
84 appropriate allocators are. Those allocators should ideally
85 not include ... or the application of those allocators should
86 ideally not include any subjective judgment. So, for
87 example, as I mentioned the fixed common cost, you'd need
88 subjective judgment to decide on the best allocator. I
89 believe that information should be put before the Board in
90 approving the policies and procedures. The resulting
91 allocator should not ideally, not require ... or, sorry. The
92 application of the allocator that the Board approves ideally
93 should not require any subjective judgment.

94 MR. BROWNE, Q.C.: So it's not difficult to avoid
95 subjective judgment if you use that particular approach?

96 MR. JOHN BROWNE: No, sir. As I said, the subjective
97 judgment is there. What I'm suggesting though is that it be
98 an input into the decision the Board makes so that it is not

1 necessary in the application of what the Board approves.

2 MR. BROWNE, Q.C.: In an ideal world shouldn't ... if the
3 company is made up of engineers, electricians, chartered
4 accountants, lawyers, shouldn't there be a cost sheet
5 provided for a regulator? If you're using our accountants
6 we're charging you at \$120 an hour, if you're using a lawyer
7 a similar amount, if you're using an engineer a similar
8 amount. Shouldn't that be there for all to see at the outset
9 so that everyone knows what cost is going to be attributed
10 for the particular service required?

11 MR. JOHN BROWNE: When you say "all to see" who are
12 you referring to?

13 MR. BROWNE, Q.C.: Well, the Board, the consumer, it's a
14 transparent process for all to see.

15 MR. JOHN BROWNE: No, and I believe that goes back to
16 my opening statement yesterday. I believe in efficient and
17 effective control and that boards should focus on policies
18 and procedures, not the details.

19 MR. BROWNE, Q.C.: But isn't ...

20 MR. JOHN BROWNE: What ...

21 MR. BROWNE, Q.C.: But can't the Board approve that as
22 a policy, that for particular services there has to be a
23 particular amount relative to a discipline? If you're an
24 engineer you charge your fee at \$100. Shouldn't that be an
25 appropriate methodology put forward by the regulated
26 entity for Board approval?

27 MR. JOHN BROWNE: I believe the policy and procedures
28 should be put before the Board, and the policies and
29 procedures should be in sufficient detail that one could
30 unambiguously apply them and that they could be verified
31 after the fact. However, I don't think the Board should get
32 into the details.

33 MR. BROWNE, Q.C.: The Board shouldn't set the rate?

34 MR. JOHN BROWNE: No, it should not set ...

35 MR. BROWNE, Q.C.: For \$100?

36 MR. JOHN BROWNE: I don't think the Board has to set
37 the rate if they set a policy and procedure that would result
38 in unambiguous determination of that rate. I believe that's
39 adequate. And the Board may look for certain compliance
40 procedures such as the review by Grant Thornton to ensure
41 that, on a test basis, that the policies and procedures are
42 being carried out. I do not believe there's a need for the
43 Board to get mired in details of all the transactions.

44 MR. BROWNE, Q.C.: In terms of the directors and CEOs of
45 these companies, if they are on different boards should the
46 CEOs and directors be keeping track of their time to show
47 what time they spent on a particular board in a particular

48 entity?

49 MR. JOHN BROWNE: If they're being paid solely by the
50 regulated entity and that also covers the services they're
51 providing to these other entities then it's appropriate that
52 there be a charge. I would think that a time charge is one
53 approach that makes sense, but I wouldn't ... offhand I can't
54 think of another one, but I'm sure that some people could
55 come up with acceptable alternatives.

56 MR. BROWNE, Q.C.: Thank you, very much. These are
57 my questions.

58 MR. NOSEWORTHY, CHAIRMAN: Thank you, very
59 much, Mr. Browne. I'll ask Mr. Kennedy to begin his cross,
60 please?

61 MR. KENNEDY: Thank you, Chair. I just have a couple of
62 questions, Mr. Browne. On page 17 of line 1 you state ... in
63 fairness, since it begins with a "However" we should
64 probably look at the sentence before, although it's not
65 particularly relevant. "Also, charges for services provided
66 should be treated the same as where a privately owned
67 company provides services to an affiliated utility where the
68 service benefits regulated operations and is reasonable and
69 so on. To the extent that it does not meet this test it should
70 be considered a non-recoverable cost and in effect reduce
71 the return to the owner." And then you go, "However,
72 costs that would not normally be incurred by a privately
73 owned utility and that result from government ownership
74 should be excluded from recoverable costs and in effect
75 should be applied as a reduction to the return to the
76 owner." And then you state, on page 18, line 20, "It would
77 therefore be appropriate to ask Hydro to identify all cases
78 of where it has pursued social or public policy objectives,
79 whether on its own account or at the direction of the
80 shareholder." I wonder if we could just look to **NP-214** for
81 a moment, Mr. O'Rielly. This is the exhibit that counsel for
82 Hydro referred you to, Mr. Browne, and I wonder if we
83 could just go back to the question, Mr. O'Rielly? And the
84 question was further to **NP-26**, identify all cases where
85 Hydro has pursued social or public policy objectives.
86 Indicate whether these were pursued on its own or based
87 on direction from a shareholder; (b) was identify and
88 support the associated impact on Hydro's revenue
89 requirement if Hydro pursued the social and public policy
90 objectives identified in (a). And the answer, I'll suggest,
91 was a bit of a turn on the question in the sense that it said,
92 "The following are social or public policy objectives of
93 government that have affected Hydro's actions or the
94 nature of services provided and are included in Hydro's
95 2002 test year revenue requirement." Now, there's nothing
96 in the question limiting the issue to the 2002 test year. In
97 any event, these were the items that were provided by
98 Hydro as the social policy issues. Now counsel for Hydro
99 in questioning you on this exhibit had indicated to you that

1 there was no other evidence on the record of any other
2 social policy issues, and I don't know how much of the
3 hearing that you've either participated in or managed to
4 review through a review of the transcripts and whatnot.
5 But, are you aware of other issues such as the construction
6 by Hydro of an infrared heating system in its skating rink
7 in Nain, Labrador?

8 MR. JOHN BROWNE: I'm not aware of that.

9 MR. KENNEDY: And were you aware of the construction
10 by Hydro of a plant being built in Charlottetown, Labrador?

11 MR. JOHN BROWNE: No, I'm not aware of that.

12 MR. KENNEDY: And then in both instances the recovery
13 of costs may have been suspect in regards to whether the
14 costs would actually be claimed back by Hydro through
15 rates?

16 MR. JOHN BROWNE: If I saw it I don't recall it.

17 MR. KENNEDY: Okay. And have you seen references to
18 the intended or proposed capital expenditures relating to
19 the construction of a new diesel plant in Harbour Deep,
20 Newfoundland?

21 MR. JOHN BROWNE: No, I don't believe I have.

22 MR. KENNEDY: And were you aware of any of the issues
23 surrounding the decision by Hydro to pursue the
24 construction of a wood chip burning generating station in
25 Roddickton, Newfoundland?

26 MR. JOHN BROWNE: I might have seen some reference,
27 but I really would, don't know the details of it.

28 MR. KENNEDY: So you wouldn't know the details of the
29 decision making process by Hydro why they embarked
30 upon the construction of a wood chip generating station,
31 for instance?

32 MR. JOHN BROWNE: I could not answer that.

33 MR. KENNEDY: And have you reviewed any of the issues
34 concerning the collection of bad debts incurred by Hydro
35 in provision of services to its rural isolated customers?

36 MR. JOHN BROWNE: I don't recall seeing anything on
37 that.

38 MR. KENNEDY: And have you seen the evidence of
39 Hydro witnesses indicating that, from their perspective, the
40 decision by Hydro to apply for only a three percent rate of
41 return on their equity, or rate of return on their rate base
42 which results from a three percent rate of return on their
43 equity, is or can be, characterized as a social policy driven
44 decision?

45 MR. JOHN BROWNE: I believe I did see something to that
46 effect.

47 MR. KENNEDY: And you'll agree with me, on its face, that
48 none of these items are listed as items of a social nature in
49 **Exhibit NP-214**?

50 MR. JOHN BROWNE: No.

51 MR. KENNEDY: And so the question I have is, how is it
52 that you could be comfortable with leaving it to the
53 regulated utility to determine when its carrying out its
54 social directives of government?

55 MR. JOHN BROWNE: I believe that the starting point
56 should be what utilities put forward. I think that I'm not
57 aware of the details you have. I'm sure that you are correct,
58 and I'm sure that Hydro acted in good faith in answering
59 the question. I believe the starting point should always be
60 the utility should come to the Board. I think what you
61 proposed just emphasizes that need so that it's an open
62 and transparent process and people can question the utility
63 and address issues that perhaps the utility has a different
64 interpretation on so that the Board has all the information
65 in front of it and can make a just and reasonable decision.

66 MR. KENNEDY: Will you agree with me that particularly
67 on issues involving when and where Hydro is carrying out
68 some social policy versus when its fulfilling its mandate to
69 provide electricity to areas is sometimes a difficult one to
70 authoritatively determine?

71 MR. JOHN BROWNE: I can imagine that there will be
72 cases where there will be grey areas and where there could
73 be differences of opinion, and ultimately the Board will
74 have to make a judgment.

75 MR. KENNEDY: And so, if I'm gathering you correctly
76 then is it your recommendation that in the first instance it
77 would be to Hydro or a utility that's regulated by this
78 Board, but in this case Hydro, to state on the record what
79 it feels to be those items that were socially driven?

80 MR. JOHN BROWNE: I believe that should be the starting
81 point, yes.

82 MR. KENNEDY: But that the ultimate decision of what
83 items are considered to be social policy directed is made by
84 the Board?

85 MR. JOHN BROWNE: Definitely.

86 MR. KENNEDY: In regards to that just turning for a
87 moment to the rural rate subsidy. Page 19 of your
88 testimony at the bottom, I believe, of ... this involved the
89 issue of the cross subsidization, and you noted that it was
90 common. And you noted that the burden is significantly
91 higher in Newfoundland than the corresponding burden by
92 ratepayers in other jurisdictions. You can correct me if I'm
93 wrong, but from my understanding of government's direct
94 taxation that one of the underlying principles is that the
95 payment of taxation is based on the ability to pay the tax?

1 MR. JOHN BROWNE: That is one principle that is
2 sometimes followed.

3 MR. KENNEDY: And it's sometimes been suggested that
4 the rural rate subsidy should or might otherwise be
5 collected, instead of through a cross subsidization within
6 the rates being charged to electrical customers, that it be
7 actually achieved, the deficit recovery be achieved through
8 a direct taxation by government. Are you aware of the
9 alternatives being proposed ...

10 MR. JOHN BROWNE: I've seen that proposal, and I would
11 certainly agree that I think a general broad tax is fairer than
12 allocating the subsidy just to electric power customers in
13 a particular region.

14 MR. KENNEDY: And will you agree with me that in the
15 case of treating it as a ... if government were to treat it as a
16 taxation issue that that would be, perhaps, a more precise
17 instrument to address this issue than to be addressing the
18 rural deficit through the recovery of rates in electricity in
19 the province?

20 MR. JOHN BROWNE: As a general statement I would
21 agree. I would think it would be fairer, and also I think it
22 would be more transparent.

23 MR. KENNEDY: And so the collection of the rural deficit
24 through the process of subsidization of electrical rates is
25 somewhat of a blunt instrument for achieving that
26 objective, I mean, that there are other and better procedures
27 to do so?

28 MR. JOHN BROWNE: In my opinion, yes. Although, it's
29 just a matter of I'm not privy to what the government thinks
30 and what their actual logic is. But as a general statement,
31 I certainly do agree.

32 MR. KENNEDY: So, nonetheless, we have to deal with the
33 hand that we're dealt, and so it is the situation where right
34 now the rural deficit is collected through the cross
35 subsidization of ratepayers?

36 MR. JOHN BROWNE: Yes.

37 MR. KENNEDY: And so in light of the fact that this social
38 policy directed initiative is imposed upon Hydro by
39 government would it be appropriate for Hydro, then, to, if
40 you will, go down even deeper than it presently does and
41 attempt to, in collecting that rural deficit, behave more like
42 government than it actually is now and start assessing the
43 subsidization based on the ability to pay?

44 MR. JOHN BROWNE: That initially sounds to me to be a
45 very cumbersome and awkward approach that would have
46 quite an administrative burden and would not be the most
47 efficient way. I think if you were to agree to the principle
48 that ability to pay should determine it, I think it would be
49 more appropriate for the government to just have a general
50 tax and add it on to its general taxes than to institute
51 another tax collecting authority.

52 MR. KENNEDY: Thank you, very much, Mr. Browne.
53 That's all the questions I have, Chair. Thank you.

54 *(11:45 a.m.)*

55 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
56 Kennedy. Ms. Butler, would you have any redirect at this
57 time?

58 MS. BUTLER, Q.C.: Just bear with me one moment, Mr.
59 Chairman, please?

60 MR. NOSEWORTHY, CHAIRMAN: No Board questions
61 now, Mr. Powell ... Commissioner Powell?

62 COMMISSIONER POWELL: She's waiting.

63 MR. KENNEDY: Chair, Newfoundland Power is just
64 reviewing with her co-counsel about whether she has any
65 questions.

66 MR. NOSEWORTHY, CHAIRMAN: Oh, I apologize, Ms.
67 Butler. I thought that you had indicated you didn't have
68 any questions at this time. My apologies.

69 MS. BUTLER, Q.C.: Mr. Chairman, we have no questions
70 arising from the redirect. Thanks.

71 MR. NOSEWORTHY, CHAIRMAN: Thank you.
72 Commissioner Powell, please?

73 COMMISSIONER POWELL: I do have a couple of items,
74 Mr. Browne. You mentioned performance based
75 regulation?

76 MR. JOHN BROWNE: Yes.

77 COMMISSIONER POWELL: Have you ever been
78 consulted by Newfoundland Power on this issue?

79 MR. JOHN BROWNE: No, I have not.

80 COMMISSIONER POWELL: Would you recommend that
81 the Board explore with Newfoundland Power and Hydro
82 performance based regulation?

83 MR. JOHN BROWNE: I think it should be explored, yes.
84 There's an awful lot of issues that have to be addressed,
85 but as a general principle I think that it offers a lot of
86 benefits to ratepayers and the utilities.

87 COMMISSIONER POWELL: Have you given any thought
88 to the size of the province in terms of number of customers
89 and volume and how it would impact performance based
90 regulation?

91 MR. JOHN BROWNE: No, I have not, and as I said, those
92 are one of the issues you would have to delve into and
93 analyze. I think some people do take the view that
94 performance based regulations are very simple math and

1 you would just apply it. I think that it's actually a very
2 complex procedure and boards and utilities should explore
3 the implications before they jump into it.

4 COMMISSIONER POWELL: It tends to be costly to
5 implement?

6 MR. JOHN BROWNE: They're originally a lot of the
7 proposal was they would reduce costs. I think the end
8 result is that as their implemented costs tend to rise. I
9 would say in the medium to long term it's probably
10 reasonable to expect they are more cost effective, but
11 certainly a lot more costly than people originally claimed,
12 oh, 10, 15 years ago.

13 COMMISSIONER POWELL: Are these costs that would be
14 amortized over a period of time as opposed to charged up
15 front?

16 MR. JOHN BROWNE: Sorry, when I was talking the cost,
17 most of them are regulatory costs. The regulatory costs of
18 the boards, intervenors and ...

19 COMMISSIONER POWELL: Ongoing costs?

20 MR. JOHN BROWNE: ... utilities go up significantly. I'm
21 not too sure that they are that material in relation to the
22 overall revenue requirement. Certainly if they are large and
23 unusually it would be appropriate to amortize them over a
24 period of time, so the customers of one period don't pay all
25 the cost whereas customers in other periods get the
26 benefits.

27 COMMISSIONER POWELL: You talked a lot about having
28 proper policies and procedures which the utilities would
29 submit to the Board, helping us to regulate?

30 MR. JOHN BROWNE: Uh hum.

31 COMMISSIONER POWELL: Did you ask Hydro for a copy
32 of all of their existing policies and procedures?

33 MR. JOHN BROWNE: No, I did not.

34 COMMISSIONER POWELL: So you're not aware of the
35 policies and procedures they do have in place now?

36 MR. JOHN BROWNE: No, I'm not.

37 COMMISSIONER POWELL: Okay. So you didn't do any
38 comparison of the policies and procedures that Hydro have
39 versus the ones Newfoundland Light and Power have?

40 MR. JOHN BROWNE: No, I did not.

41 COMMISSIONER POWELL: Have you reviewed all the
42 policies and procedures of Newfoundland Light and
43 Power?

44 MR. JOHN BROWNE: No, I have not.

45 COMMISSIONER POWELL: So, you can't tell me if, in

46 your views that Newfoundland Light and Power have all
47 the proper policies and procedures in place that we should
48 have to more effectively regulate them?

49 MR. JOHN BROWNE: Sorry, was it Light and Power or
50 Hydro?

51 COMMISSIONER POWELL: Newfoundland Light and
52 Power.

53 MR. JOHN BROWNE: No, I have not looked at
54 Newfoundland Light and Power at all in that regard.

55 COMMISSIONER POWELL: So some of the comments
56 that you ...

57 MR. JOHN BROWNE: Sorry. I should say I was given
58 some information such as their quarter reports and things
59 like that, but it was more on the matter of understanding
60 what goes on in Newfoundland rather than specifically
61 looking at their policies and procedures.

62 COMMISSIONER POWELL: Employee future benefits,
63 should the Board look upon Hydro and Newfoundland
64 Light and Power as far as the treatment of those benefits
65 the same, should we have a different policy for ...

66 MR. JOHN BROWNE: I think there's a lot to be said for
67 consistency, however, I think you've got to look at the
68 details. I believe that the liability is much larger in the case
69 of Light and Power, and therefore, there might be greater
70 concerns about dealing with the transitional obligation
71 which may result in the Board tending more towards
72 maintaining the case basis.

73 COMMISSIONER POWELL: But you don't think there's
74 any inconsistency that we would treat one utility different
75 from the other?

76 MR. JOHN BROWNE: Not if it's justified by different
77 situations.

78 COMMISSIONER POWELL: Should we look at maybe
79 aiming down the road to try to work a plan that there would
80 be consistence?

81 MR. JOHN BROWNE: Again, if the situations warrant
82 differences there should be differences, if not, I would
83 agree with you that they should work ideally to be treated
84 the same.

85 COMMISSIONER POWELL: When you use the word
86 "warrant" do you mean impact on ratepayers?

87 MR. JOHN BROWNE: Impact on ... I meant it ... maybe I
88 didn't quite use the right word. What I meant was if there's
89 a different situation which justifies a different policy, then
90 certainly have a different policy, if there are not differences
91 that warrant a different policy the consistency would be
92 advisable.

1 COMMISSIONER POWELL: Example, we had a situation
2 where Newfoundland Light and Power had excess revenue
3 a year or so ago.

4 MR. JOHN BROWNE: Uh hum.

5 COMMISSIONER POWELL: Would that be a circumstance
6 the Board may want to look at and they apply for a rate ...
7 a refund to the customers which we approved. Would that
8 be a circumstance where there is a cost deferred ...
9 unrecognized cost that we maybe would have been a better
10 application of that excess revenue to absorb that cost at
11 that time?

12 MR. JOHN BROWNE: I haven't specifically looked at that
13 issue. Where boards have policies of earnings above a
14 level going back to customers, in some cases they do use
15 those amounts to reduce cost increases, or especially if
16 there's large unusual cost increases they'll net one against
17 the other. As far as whether it's ... I suppose it's some
18 people would argue it is technically fair to give the money
19 back to the customers who actually paid the excess rather
20 than reducing customers in a future period, although,
21 generally speaking, the customer group should be roughly
22 the same.

23 COMMISSIONER POWELL: Well, these costs we're
24 talking about were costs that past customers have not paid
25 and future customers will pay because we're doing it cost,
26 we're doing a cash method. So wouldn't that be a natural ...

27 MR. JOHN BROWNE: Oh, I'm sorry. I thought you were
28 talking about the excess revenues that ...

29 COMMISSIONER POWELL: Yeah, well the excess revenue
30 was from past customers.

31 MR. JOHN BROWNE: Yes. I'm sorry, sir, again, maybe it's
32 Friday morning, I'm a little slow.

33 COMMISSIONER POWELL: No, it was just a thought.
34 One other question. Hydro is attempting to go from a
35 Crown, solely Crown, and be treated as an investor owned
36 utility.

37 MR. JOHN BROWNE: Uh hum.

38 COMMISSIONER POWELL: Mr. Wells is the CEO. If he
39 came to you and asked you for advice on how to do it,
40 what would you suggest to him to make sure the structure
41 had changed?

42 MR. JOHN BROWNE: I think there should be a clear
43 delineation, as a start, between what are the costs
44 necessary to provide regulated service and what are social
45 policies. I believe, whether it's a Crown corporation, a
46 government department, or whatever, you should have
47 good policies and procedures to control your costs and
48 help you achieve your objectives, whatever they are. So I

49 think those things are important. I think if you have
50 objectives you should have very clear plans. I suppose
51 one example that I found a little strange was what I've been
52 reading is that Hydro believes moving to a 60/40 is a very
53 important target. They've put up experts that said it's a
54 very important target, but, from what I understand, they do
55 not have a plan for achieving it and plan to pay out a
56 dividend to move them in the opposite direction. I think
57 that's an example of a case where ... well, as I said, I think
58 no matter if you're privately owned, or publicly owned, or
59 whatever, you should have clearly defined objectives and
60 you should have plans for achieving them, and I guess in
61 a way I believe that that sort of management requirement is
62 not a function of being privately or being like a privately
63 owned company, it's just any organization should be
64 managed that way.

65 COMMISSIONER POWELL: Thank you. That's all, Mr.
66 Chair.

67 *(12:00 noon)*

68 MR. NOSEWORTHY, CHAIRMAN: Thank you,
69 Commissioner Powell. Commissioner Saunders?

70 COMMISSIONER SAUNDERS: No questions.

71 MR. NOSEWORTHY, CHAIRMAN: Commissioner
72 Whalen?

73 COMMISSIONER WHALEN: I thought you were going to
74 have questions, Commissioner Saunders. No, I have no
75 questions, but welcome back, Mr. Browne, nice to see you
76 again.

77 MR. JOHN BROWNE: Thank you, very much.

78 MR. NOSEWORTHY, CHAIRMAN: Good morning, Mr.
79 Browne. I have a couple of questions, I guess, for you.
80 Most of them would arise from your direct testimony. On
81 page 3 of your direct testimony, if I could get that called up,
82 please? There's a reference there on line 20 to, "Regulatory
83 control is exerted through approval of the rates and the
84 utilities allowed" ... or sorry, "that utility is allowed to
85 charge, although some regulatory boards may also have
86 other options." Could you just elaborate a little bit on what
87 other options you're referring to there?

88 MR. JOHN BROWNE: Some boards have, and I believe
89 this Board does too, the right to approve capital
90 expenditures before they occur. They also have the
91 utilities require regulatory approval to borrow new funds,
92 so those are additional regulatory controls they have.
93 Many boards though basically their only control is the
94 setting of rates.

95 MR. NOSEWORTHY, CHAIRMAN: On page 5 there's a
96 reference there to, I guess, the cost benefit of regulatory
97 board ... I'm reading from line 14. "A regulatory board must

1 weigh the benefits against the associated costs, indicates
2 then what should recognize ... it should recognize the
3 legitimate interests of both ratepayers and the utility." And
4 there in line 19, "It should also consider other costs of
5 imposing the control, including the loss of management
6 flexibility." From what I understand there you seem to be
7 saying that the Board should indeed conduct the cost
8 benefit. Am I understanding that correctly?

9 MR. JOHN BROWNE: They should make the judgment
10 call. I'm not proposing the Board develop a whole new
11 staff to do all this.

12 MR. NOSEWORTHY, CHAIRMAN: No.

13 MR. JOHN BROWNE: I would propose that utilities come
14 before the Board with the information.

15 MR. NOSEWORTHY, CHAIRMAN: Right, I see.

16 MR. JOHN BROWNE: Which would include the cost
17 implications.

18 MR. NOSEWORTHY, CHAIRMAN: Okay.

19 MR. JOHN BROWNE: And as people come in, intervenors
20 to also comment on it, and perhaps suggest additional
21 controls, they should also consider the costs associated.

22 MR. NOSEWORTHY, CHAIRMAN: Okay. That's clarifies
23 the process for me a little. The costs attributable to the
24 loss of management flexibility, how do you propose to
25 address that or how would you propose to address that
26 sort of thing?

27 MR. JOHN BROWNE: Well, as I stated yesterday, I believe
28 this Board should focus on policies and procedures and
29 not get mired down in the detail.

30 MR. NOSEWORTHY, CHAIRMAN: Alright.

31 MR. JOHN BROWNE: The Board can have very tight
32 controls which restrict management's ability to manage the
33 business. I believe that is a cost. It hurts, not only the
34 utility, but also ratepayers, because management is not as
35 flexible to seek out new opportunities, new efficiencies.

36 MR. NOSEWORTHY, CHAIRMAN: I understand that. I
37 was wondering how you actually determined that.

38 MR. JOHN BROWNE: Oh.

39 MR. NOSEWORTHY, CHAIRMAN: How you assign a
40 cost to something like that. I guess my ... again, being an
41 engineer, perhaps cost benefit analysis, you put in X, Y, Z
42 and you get out something else. It just ... the idea or the
43 notion of attaching a cost to the loss of management
44 flexibility is a little bit bewildering to me. I'm just asking for
45 clarification.

46 MR. JOHN BROWNE: Yes. Some of these things are

47 subjective judgments. It was more in the context of boards
48 should be moving, setting policies and procedures that
49 guide the utilities as opposed to, you know, getting mired
50 in the details, you know, reviewing every transaction they
51 do. I think a good issue was the discussion I had with Mr.
52 Browne. The Board shouldn't be looking at the individual,
53 you know, how much does this engineer charge, how many
54 hours did this engineer. I don't believe the Board should
55 get into that sort of detail. It should say, here is the
56 policies and procedures. Here are the controls to make sure
57 the policies and procedures are followed and leave the
58 utility to manage within that framework.

59 MR. NOSEWORTHY, CHAIRMAN: I agree. On page 6,
60 "Where possible a board should avoid detailed reviews
61 and controls and focus on policy and procedures", and I
62 say I agree. Could you give me just some examples of what
63 you would call a detailed review or control versus an
64 overall policy and procedures, or indeed, if you simply
65 wanted to focus on what tools you might view as being
66 detailed? Because I think you refer to it later, "A board
67 may always," on line 14, "require some detailed review." So
68 you are making that distinction, and perhaps you could just
69 elaborate for me on what tools you're talking about there?

70 MR. JOHN BROWNE: I hope you don't mind because it's
71 just on the top of my mind right now, come back to
72 intercorporate charges. Because I see that there is the
73 possibility that boards would say we want to see all your
74 details, you know, show us your time records and we'll go
75 over each transaction. What I'm suggesting is instead of
76 getting mired in that detail the Board set the policy, here's
77 how you are to do it, and it should be at sufficiently
78 detailed level that it can be unambiguously followed and
79 can be verified afterwards by on a test basis, let's say Grant
80 Thornton going in and saying, testing it and saying, yes,
81 they're following the policies and procedures the Board has
82 approved. I believe that would give you effective control
83 over the intercorporate charges without having that
84 detailed review, having all of the detail put in front of you
85 and, as I said, you'll have more effective control because if
86 the utilities came in with all their details they'd probably
87 bury you to the point you were totally confused.

88 MR. NOSEWORTHY, CHAIRMAN: So are you suggesting
89 that the financial review of Grant Thornton and perhaps
90 quarterly financial reports that we would require would be
91 detailed reporting as opposed to ...

92 MR. JOHN BROWNE: No, no. I would suggest that ...

93 MR. NOSEWORTHY, CHAIRMAN: ... requirements within
94 an overall rubric of policy and procedures that we might lay
95 down where indeed this might be one or two tools that
96 might be used to implement, I guess, those policies and
97 procedures?

1 MR. JOHN BROWNE: Well, I think one of the things you
2 would do if you have compliance procedures, for example,
3 such things as the policies themselves should indicate how
4 everyone finds out about them, internal policies to ensure
5 the policy and procedures were followed. I wouldn't
6 suggest Grant Thornton go in and do all that detailed
7 checking of each transaction. As part of an audit they
8 could test check to see that are the policies and procedures
9 being followed. For example, back from my audit days,
10 when you went in to audit a company you didn't go in and
11 look at every transaction. The first thing you would do is
12 you'd go in and test are the controls there, and if the
13 controls were in place that would guide the amount of
14 testing, and most of the testing was around are the controls
15 in place. So, in that context I would suggest Grant
16 Thornton be going in, not to go over every transaction, but
17 on a test basis do these policies and procedures appear to
18 be followed, do we have evidence of that. And to the
19 extent the utilities had internal audit departments that were
20 doing that testing, I think Grant Thornton's work could
21 even be reduced more by testing the internal audit papers.
22 Again, going back to my audit days, when you went in to
23 audit a company what you would do is you'd look at what
24 internal audit did and you would test their test to see if you
25 could rely on their test to reduce the work you did. I think
26 those sort of things are important because not only do they
27 increase management flexibility, but they make rate
28 regulation more efficient, less costly.

29 MR. NOSEWORTHY, CHAIRMAN: Okay. I glaze over a
30 little bit when you start talking about internal audit.

31 MR. JOHN BROWNE: Fortunately my audit days are long
32 gone.

33 MR. NOSEWORTHY, CHAIRMAN: Just perhaps one
34 other question relating to that. How would you ... and I
35 understand the concept that you're talking about in terms
36 of overall policy and procedures versus detailed review.
37 How would we ... and I believe I heard you as well comment
38 to Commissioner Powell that indeed you weren't in a
39 position to comment on where this Board would be in
40 relation to either Hydro or Newfoundland Power in terms of
41 your approach. What would you suggest or how would
42 you go about evaluating where we would be, and indeed
43 operationalizing or implementing an approach that we
44 would come up with? And I guess I'm new to this, and I
45 might apologize a little bit perhaps to the parties that are
46 there. I haven't mentioned Hydro in any of this, but I think
47 it is beneficial to ... for me, in any event, to pursue some of
48 these questions in a general perspective as it related to the
49 Board and certainly as it will, undoubtedly, relate to the
50 electric utilities, if not specifically here, certainly at some
51 point.

52 MR. JOHN BROWNE: I think ideally it should be lead by

53 the utilities. And where the utilities don't come forth with
54 their policies and procedures the Board should encourage
55 it. Again, going back to the example of intercorporate
56 charges that we've been dealing with, if the utility is not
57 going to come forward with its policies and procedures for
58 review by you you would ask, in a future hearing, that they
59 do it ... or, I'm sorry, that they come forward in a future
60 hearing with those policies and procedures for your review.

61 MR. NOSEWORTHY, CHAIRMAN: Okay.

62 MR. JOHN BROWNE: But I would think or hope, ideally it
63 should be utility led and the Board should maintain its
64 control function of reviewing what is presented before it by
65 the utilities and various intervenors.

66 MR. NOSEWORTHY, CHAIRMAN: Okay. Just on page 6,
67 and I'll try and speed this up if I can. On page 6 you talk
68 about the idea, "As a practical matter regulatory boards
69 intervenors focus on changes in costs and evaluating their
70 reasonableness, at least to a large extent." But you go on
71 to say, I think, in page 7, line 4 that "Indeed, it's more
72 important to look at the principles and precedents that are
73 established for determining both the revenue requirements
74 and how this revenue requirement is to be recovered." So,
75 I guess what you would be ... and I'll come back to this in
76 a moment. But, I think what you seem to be saying there is
77 that it's more important really to look at establishing
78 appropriate standards and indeed assessing and regulating
79 against those standards, I think. Is that ...

80 MR. JOHN BROWNE: That's correct.

81 MR. NOSEWORTHY, CHAIRMAN: ... more or less what
82 you're saying?

83 MR. JOHN BROWNE: It's in the context of, certainly, a first
84 hearing you're going to want to go into more detail in order
85 to establish the standards going forward.

86 MR. NOSEWORTHY, CHAIRMAN: On page ... gosh, I
87 don't have it jotted down there. But Mr. Kennedy referred
88 to it earlier, the notion of opportunity cost.

89 MR. JOHN BROWNE: Yes.

90 MR. NOSEWORTHY, CHAIRMAN: And what do you see
91 as, in this particular application, perhaps, the elements or
92 the components of that opportunity cost?

93 MR. JOHN BROWNE: I don't quite see it as components.
94 Certainly as an economic concept, what an opportunity
95 cost is what you give up. And ...

96 MR. NOSEWORTHY, CHAIRMAN: Uh hum. As an
97 engineer I even understand that.

98 MR. JOHN BROWNE: And what is it, it's, at least in
99 theory, established by the best alternative use of the
100 resource. Within the context of rate of return it's usually

1 established as investments on alternate investments of
2 similar risk. The idea being that that is your best alternative
3 use of the funds. So that is my ... it's not so much that
4 there's elements of it, that is what the opportunity cost is.

5 MR. NOSEWORTHY, CHAIRMAN: Just my last question.
6 I guess this is ... Mr. Hutchings would have been alluding
7 to some of this earlier this morning. On page 15, and I
8 won't read, you seem to be indicating that indeed there be
9 a move to 60/40 return on equity, that these parameters be
10 established. Whether they're specific numbers or not at
11 this point in time, I think that's a moot point, but indeed
12 that these principles be established. But you indicate at
13 this point in time there's no particular plan in place that
14 Hydro would have to move in that direction.

15 MR. JOHN BROWNE: My understanding is they don't
16 have any plan.

17 MR. NOSEWORTHY, CHAIRMAN: They don't, no. Yeah.
18 I'm not commenting one way or another other than to say
19 that's my understanding of your testimony. On page 18
20 you talk about, and Mr. Kennedy referred to this earlier,
21 identifying cases of social policy. And certainly, the
22 discussion you had with Ms. Greene this morning seems to
23 indicate that there's one area in relation to subsidies, but
24 Mr. Kennedy maybe referred to a few other specific notions
25 where cases of social policy might apply, or instances of
26 the application of social policy might apply. I think if I look
27 at page 20, as I recall, however, you indicate there that,
28 "Also the Board has concluded that a margin," ... sorry, the
29 second sentence there, line 11. "Consist with this policy,
30 Hydro is not seeking an equity return on the rural assets in
31 these proceedings." Just, if you could, I see ... and I'm
32 perhaps a little bit confused, but I don't think ... I think
33 perhaps I'm looking for more of a comment here. There
34 seems to be a couple of alternatives available to us. And
35 I keep alluding to these because I do, indeed, see this as
36 being a critical issue for us. First of all, to sort of deal with
37 the application, I guess, on its own merits, Ms. McShane
38 talked yesterday about establishing principles and
39 consistent with your view, looking for a plan for Hydro,
40 and Hydro has indicated that they'd be coming back within
41 the next couple of years and put that sort of framework in
42 place, and I guess, as a follow-up to that, identification of
43 cases of social policy, and indeed, how that's to be dealt
44 with. That's one sort of option, as I see it, to a degree. The
45 second option might very well be to look at the
46 expectations around an investor owned company. And as
47 you had indicated earlier, I think, in response to Mr.
48 Hutchings, look at a deemed capital structure, deeming
49 costs associated with that and also revenue requirements
50 and sort of allocating, if you will, consistent with, I think
51 there's a reference on page 1, in effect a portion of the
52 deficit could be considered a non-recoverable cost and is

53 part of the return to the owner allocating the deficit in some
54 way, shape, or form, and there may be some combination
55 and there may be some other alternatives associated with
56 that. Would you have any comment on which you would
57 recommend, at this point in time, if indeed I have any fair
58 and reasonable assessment of those alternatives identified?

59 (12:15)

60 MR. JOHN BROWNE: Yes. It is a difficult decision. I think
61 going forward I would say that the government has ... or,
62 sorry. At the time the burden for the subsidy was passed
63 on to ratepayers the government was only getting a return
64 based on this eight percent margin, and I believe that the
65 Board should be considering, well, should you now be
66 getting a higher return while the ratepayers are still stuck
67 with this margin. In addition, of course, the Board should
68 be looking at ways, perhaps, to reduce the deficit directly
69 or if at all possible by greater efficiencies. So I think it's a
70 difficult situation going forward because it is so large. But
71 I would suggest that certainly consideration ... before
72 saying to Hydro you can now earn more, perhaps you
73 know, some consideration must be given to this rural
74 deficit. The government shouldn't be able to pass the
75 whole deficit off and they say, well, we now want to get a
76 higher return, but we're going to leave the deficit with you.
77 Unless, of course, they do come down with specific
78 legislation which directs you what to do.

79 MR. NOSEWORTHY, CHAIRMAN: We are left with the
80 dilemma, nonetheless. That's all I have, Mr. Browne.
81 Thank you, very much. We'll move on to matters of
82 questions arising now. And I'll go to Hydro, please?

83 MS. GREENE, Q.C.: I have no questions arising.

84 MR. NOSEWORTHY, CHAIRMAN: Okay. The Industrial
85 Customers, please?

86 MR. HUTCHINGS: I have nothing arising. Thank you, Mr.
87 Chair.

88 MR. NOSEWORTHY, CHAIRMAN: Consumer Advocate,
89 Mr. Browne?

90 MR. BROWNE, Q.C.: Yes. Commissioner Powell asked
91 you about a performance based system. Is the performance
92 based system, can it be implemented in a rate based
93 system?

94 MR. JOHN BROWNE: I had heard discussions that the
95 Board has had legal opinion that it can't be. To my mind,
96 many of the performance based methodologies are really
97 just extensions of return on rate based regulation, but I'm
98 speaking from the point of view of an economist and
99 accountant, not a lawyer.

100 MR. BROWNE, Q.C.: If at the conclusion of a hearing a
101 board makes a determination based on the evidence that

1 there are inefficiencies within the costs presented for its
2 approval, what options are available to the board?

3 MR. JOHN BROWNE: It's my ... well, it is normal policy for
4 boards to review the prudence of costs and where they
5 believe that costs have not been prudently incurred to
6 disallow them. What that means is the amount is removed
7 from revenue requirements and not recovered through
8 rates.

9 MR. BROWNE, Q.C.: Could the board also advocate a
10 productivity allowance of some sort?

11 MR. JOHN BROWNE: I believe that's ... well, perhaps
12 maybe just before I answer I should get clarification on
13 that, exactly what you mean by that?

14 MR. BROWNE, Q.C.: If they find that there are
15 inefficiencies in the system.

16 MR. JOHN BROWNE: Uh hum.

17 MR. BROWNE, Q.C.: And inefficiencies in costs, could
18 they come to a general conclusion, you know, they can
19 shave probably a million or two dollars off what's
20 proposed, in a general fashion, and refer to it as a
21 productivity allowance?

22 MR. JOHN BROWNE: I believe that's within the powers of
23 the board in establishing what they believe are just and
24 reasonable rates.

25 MR. BROWNE, Q.C.: Okay. Those are my questions.
26 Thank you.

27 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
28 Browne. Mr. Kennedy?

29 MR. KENNEDY: Nothing arising, Chair.

30 MR. NOSEWORTHY, CHAIRMAN: Okay. Ms. Butler, do
31 you have any redirect at this point?

32 MS. BUTLER, Q.C.: I have no redirect. Thank you, Mr.
33 Chairman. Thank you, Mr. Browne.

34 MR. NOSEWORTHY, CHAIRMAN: Thank you, very
35 much, Mr. Browne. We appreciate your testimony. Thank
36 you.

37 MS. GREENE, Q.C.: Mr. Chair, I have one minor matter. I
38 don't know if this schedule was marked, which was the
39 table from **NP-185**.

40 MR. NOSEWORTHY, CHAIRMAN: I assumed it was an
41 update and I ...

42 MS. GREENE, Q.C.: It's not a ...

43 MR. KENNEDY: Yes, this is still **MP-185** revised or is it ...

44 MS. GREENE, Q.C.: Oh, if you want. I was thinking of it as
45 an additional piece of information, but that's fine. We

46 hadn't done it up as a revised as we normally do, that's all.

47 MR. KENNEDY: Yeah.

48 MS. GREENE, Q.C.: I would prefer to have it marked so we
49 know what it is.

50 MR. KENNEDY: As an exhibit?

51 MS. GREENE, Q.C.: Yeah.

52 MR. KENNEDY: Okay.

53 MS. GREENE, Q.C.: It would be Hydro ...

54 MR. KENNEDY: So it would be Hydro number ...

55 MR. NOSEWORTHY, CHAIRMAN: Well, just come back
56 to that, I guess. For purposes of the day we'll be
57 concluding now. We next ... we're not concluding now?

58 MS. BUTLER, Q.C.: Actually, I just asked my learned ... my
59 college the same question. Is Mr. Budgell going to be
60 produced this afternoon or are we out?

61 MS. GREENE, Q.C.: When you say Mr. Budgell I would
62 have thought it would be Dr. Vilbert. We're still in cost of
63 capital, we're still in the week of cost of capital.

64 MR. KENNEDY: No, it's Mr. Budgell is the next witness on
65 Monday.

66 MS. GREENE, Q.C.: Yes. But we still have ... we had
67 agreed that there would be one week for cost of capital, this
68 week, we have a break and then we have four days. I
69 would have thought this was still cost of capital and
70 another witness would be Dr. Vilbert.

71 MR. NOSEWORTHY, CHAIRMAN: No, well, I guess I was
72 addressing what's going to happen with the rest of the day.

73 MS. GREENE, Q.C.: Day, yes.

74 MR. NOSEWORTHY, CHAIRMAN: You know. We have
75 the option, I guess, of calling Dr. Vilbert and spending a
76 half a day on the cost of capital, which would conclude the
77 week on the basis of the schedule that we have, in any
78 event, to begin with Mr. Budgell on Monday. And I guess
79 the question would be whether we'd get through or would
80 it be fair, I guess, to Dr. Vilbert if we didn't get through to
81 indeed have a week hiatus in the middle of Dr. Vilbert's
82 testimony. I'd ask, perhaps, for some guidance from Mr.
83 Hutchings on that. Certainly if we weren't going to do that
84 this afternoon it would be reasonable, I think, to adjourn for
85 the day and to begin with Mr. Budgell on Monday.

86 MS. GREENE, Q.C.: That's certainly acceptable to Hydro.
87 I guess I hadn't planned to have Mr. Budgell this week.

88 MR. NOSEWORTHY, CHAIRMAN: I'm easy. No, no, no,
89 no, I don't think that's the intention here at all, Ms. Greene.
90 I think we're just trying to reconcile what we do with the

1 rest of the day in relation to cost of capital that was
2 planned for this week.

3 MR. HUTCHINGS: Mr. Chair, if I might, I had certainly
4 been of the impression that Mr. Browne would be the last
5 witness this week. I don't think it's really useful to take the
6 amount of time that we'd have available this afternoon with
7 Dr. Vilbert. I expect that there would be a significant
8 amount of cross-examination for Dr. Vilbert and not being
9 able to finish it today, I think the week long break would be
10 really inappropriate both for the witness and for the Board.
11 I would also say that it is our current plan to file some
12 revisions with respect to Dr. Vilbert's evidence which arise
13 out of the oral evidence given by Ms. McShane primarily
14 earlier this week and we would certainly, by a week
15 Monday, or a week Tuesday, I guess, it will be ... have that
16 available. And I think that would assist the flow of things
17 quite a lot rather than to try to get started this afternoon
18 and carry on. I certainly hadn't contemplated Mr. Budgell
19 for today, either. So I think we're back to where you started
20 from, Mr. Chair, and concluding at this point.

21 MR. NOSEWORTHY, CHAIRMAN: I guess by default or
22 otherwise, perhaps we've reached that point. I don't think
23 it's, as Mr. Hutchings pointed out, he would not be
24 necessarily wanting to introduce Dr. Vilbert this afternoon
25 and present us with a week hiatus in the middle of his
26 testimony, and I don't think it's necessarily reasonable to
27 begin with Mr. Budgell. I think we'll do that on Monday
28 morning. And unless there are any objections from
29 anybody we would adjourn and take this lovely Friday
30 afternoon to do whatever we wish to do with it.

31 MR. KENNEDY: Chair, before you go to rake your leaves,
32 the exhibit is Hydro No. 1, Chair.

33 **EXHIBIT HYDRO 1 ENTERED**

34 MR. NOSEWORTHY, CHAIRMAN: Thank you. Are there
35 ... that's it? Okay. Thank you, we'll adjourn until 9:30 on
36 Monday morning, and have a good weekend. Thank you,
37 once again.

38 *(hearing adjourned to November 5, 2001)*