

1 (9:30 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Good morning and
3 welcome everybody once again. I understand before we
4 proceed this morning and continue our, the industrial
5 customers, cross-examination of Mr. Wells, there are a
6 couple of preliminary matters, one which Newfoundland
7 Power, I understand, would like to introduce, and two items
8 that Hydro would like to speak to as well, so I'll ask Hydro
9 in the first instance to ...

10 MS. GREENE, Q.C.: Thank you, Mr. Chair. The two items
11 that I would like to discuss this morning or to raise this
12 morning are, first, the appropriateness or the benefit to the
13 hearing of filing revised 2002 cost of service, and the
14 second item relates to the filing of documentation that was
15 referred to yesterday.

16 So moving to the first point, when Hydro filed its
17 application on May 31st, part of the application was the
18 2002 forecast cost of service. That was filed based on
19 information that had been prepared in late 2000, in some
20 cases early 2001. In past rate applications for Hydro or past
21 rate hearings concerning Hydro, our practice has been to
22 file a cost of service, a forecast cost of service with the
23 original filing and then not to file another cost of service
24 until the conclusion of the hearing when the Board has
25 given us direction with respect to such matters as the price
26 of Bunker C fuel. In the old days it was interest cover, etc.,
27 so we would file two cost of service. One was with the
28 application or the filing and one was at the conclusion of a
29 hearing.

30 And what I wanted to raise for the consideration
31 of the Board and for the other parties here this morning was
32 whether it would be beneficial to the process if for this
33 hearing Hydro filed what I am calling an interim 2002 cost
34 of service, and I think part of the problem for this hearing
35 is the time lag which is longer than in our past hearings.
36 As I mentioned, some of the data that was used in the 2002
37 cost of service is 2000 data, some is early 2001 data. For
38 this current application we have a longer time period from
39 the time we filed to the hearing and a longer time frame from
40 the filing to the conclusion of the hearing, so the time
41 period is longer than we have experienced in the past so it
42 raises the issue of the currency of the data that is before
43 the Board and before the parties. This was pointed out by
44 Mr. Brushett in his 2001 report on page six, and that report
45 on that page reference, he recommended that Hydro be
46 requested to update its assumptions and revenue and
47 expense forecasts with more current information and he
48 suggested the end of the third quarter as an appropriate
49 date.

50 So Hydro has been considering this issue as to
51 whether it would be beneficial to the Board and to the

52 parties to file an updated cost of service, and I would like
53 to raise a proposal this morning for the Board's
54 consideration and for that of the other parties. I have
55 raised the issue in a very limited way to be fair with the
56 other parties, other counsel that are present here this
57 morning, and wanted to raise it with the Board as well.

58 Our proposal is that we would file a revised cost
59 of service using actual data to the end of August of 2001.
60 Mr. Brushett suggested the end of the third quarter, which
61 will be the end of September, but that timing is a little
62 problematic in terms of how long it takes to run a new cost
63 of service.

64 As we indicated in the response to **IC-1** and at the
65 last motions day, it takes approximately 8 to 10 weeks to
66 run a full cost of service, so if we use the end of September,
67 it wouldn't be available till the end of November, thus we
68 are suggesting that we use the end of August actual data,
69 that's the end of August 2001, to update the cost of service,
70 so that would include such things as a Hydro thermal split
71 for 2001 to the end of August, etc. It would be an update
72 to the end of August.

73 And I'd like to caution, all this is is a more current
74 picture. It's still not the final picture and that will come at
75 the end of the hearing when we will have to run a final cost
76 of service including the directions received from the Board
77 on return on equity and Bunker C fuel prices, so what this
78 is is another step along the way to update with more
79 current information. It would also reflect some of the errors
80 we found in going through the, in responding to
81 information requests, and you may recall that in certain
82 information requests we pointed out that these would be
83 corrected when the revised cost of service was filed. For
84 example, in **NP-12**, a municipal tax, and in **IC-244** with
85 respect to the generation credit for Newfoundland Power,
86 we indicated that we found an error and that it would be
87 corrected in the revised cost of service.

88 So what we are proposing for the Board's
89 consideration and for that of the other parties is that we
90 would file a revised 2002 cost of service using the
91 information available as of the end of August, this would
92 not be available until approximately the end of October, and
93 that what we would do if it's acceptable to the Board and
94 the parties is to file the revised cost of service with
95 supplementary evidence explaining major changes from
96 what was filed on May 31st.

97 Why I raise it this morning is to get an indication
98 from the other parties and from the Board as to whether this
99 is acceptable before of course ... while we have started the
100 process, we still have another five weeks or so of work to
101 do before it's completed, so we wanted to ensure that the
102 process was acceptable to the Board and to the other

1 parties.

2 If the Board or the other parties don't think it
3 necessary, we will be thrilled, it will be less work for us, and
4 it really is an issue for discussion I'm raising here this
5 morning on the first point, and I'm not sure now if you wish
6 to seek the views of the other parties on that point or ...

7 MR. NOSEWORTHY, CHAIRMAN: Could you raise the
8 second point and I'll do just hopefully one circuit on both,
9 if that's possible, please?

10 MS. GREENE, Q.C.: Certainly. The second issue concerns
11 the filing of documentation that was referred to yesterday.
12 The first item that I'd like to refer to is the article that was
13 referred to by Mr. Wells in his cross-examination by Mr.
14 Henderson (*sic*) and it is a copy of an article found in the
15 *Policy Options Magazine* and is entitled, "Hydro-One
16 should pay market rates for its capital." So we have copies
17 this morning of that article that was referred to by Mr.
18 Wells yesterday afternoon to distribute to all the parties.

19 MR. KENNEDY: Mr. Chair, if I may, I think that should be
20 labelled as an exhibit and if it's appropriate, WW-1.

21
22 **EXHIBIT WW-1 ENTERED**

23 MS. GREENE, Q.C.: The next item that I wanted to refer to
24 that relates to documentation is the additional
25 supplementary evidence that I referred to yesterday as well.
26 At that time I indicated that we would be filing
27 supplementary evidence on three topics. One was the
28 appropriate hydrological record to use for the purposes of
29 our application, the second was the prudence of the GNP
30 interconnection, and the third was an allocation of costs
31 issue. What we have available this morning is the
32 supplementary evidence with respect to the first two
33 topics. On the first one, which was the hydrological
34 records, we have the supplementary evidence of Robert
35 Henderson to distribute at this time. With respect to the
36 second topic, the prudence of the GNP interconnection, we
37 have copies of the supplementary evidence of Hubert
38 Budgetell on this topic to distribute at this time.

39 MR. KENNEDY: Mr. Chair, there's no need to label these
40 as exhibits as they'll be adopted by the witnesses when,
41 presumably when they take their direct testimony.

42 MR. NOSEWORTHY, CHAIRMAN: Thank you.

43 MS. GREENE, Q.C.: And the last topic for supplementary
44 evidence that I have referred to yesterday was an allocation
45 of costs issue, and I wanted to briefly raise that this
46 morning. I think I mentioned yesterday that late last week
47 in reviewing some of the answers to responses to
48 information requests, we detected what looked, what
49 appeared to be an anomaly. Since that period of time, staff

50 have been reviewing that and in fact what we have found
51 is that there was an error made by Hydro with respect to
52 the allocation of certain costs when the May 31st filing was
53 done. The error relates to how certain costs were allocated
54 to Labrador from our central region and as well how certain
55 costs were functionalized between generation and
56 distribution. Those are the two primary errors. We will be
57 filing evidence to explain what the changes are, and what
58 I wanted to do this morning is to advise the Board and the
59 parties of this error, to tell you about it and what we are
60 doing with respect to it.

61 For example, what happened with respect to
62 central region on one of the topics, transportation, is that
63 the central region does provide a service to Labrador for
64 transportation, whether it's helicopter services or transport
65 of equipment, and in doing the allocation no costs have
66 been allocated to Labrador but all have been remained for
67 the island interconnected system. So when we go back and
68 look at the appropriate allocation, we will explain what
69 happened and why and what the new allocation is. We will
70 see that more costs have been allocated to the Labrador
71 interconnected system.

72 Similarly with respect to the one I mentioned on
73 the functionalization, what we found was that in one
74 category all have been allocated to generation and some of
75 it should have gone to distribution, because in the central
76 region they do both transmission and distribution, so this
77 will result in some change in the allocation of costs
78 between our customer groups.

79 Where we are today is that we know the error, we
80 know the correction, and what we're working through is the
81 cost of service to see how this impacts the various
82 customer groups. That won't be ready till early next week,
83 so what our proposal is, that we would file next week or,
84 early next week, supplementary evidence to explain first
85 what the error was, secondly what the correction is, and
86 thirdly how it impacts the customer groups.

87 What we are thinking of right now is that we will
88 file a revised cost of service for 2002 to reflect the new cost
89 allocations, so in fact this is another cost of service in
90 addition to the ones I just mentioned about updating 2002,
91 but what it would be would be the May 31st, the 2002 cost
92 of service as filed on May 31st updated to reflect the
93 appropriate cost allocations as we now believe that they
94 should be, and we know this is of concern to all of the
95 parties and that's why I wanted to advise you of the
96 change but unfortunately I can't tell you what the specific
97 impact is on the customer groups today. That will come
98 next week and so the parties obviously will want time to
99 review it and see how it impacts their customer groups. So
100 that last issue was really for information and that concludes
101 the preliminary comments I have this morning.

1 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you very
2 much, Ms. Greene. Perhaps I could ask for comments on
3 these items, the last, I guess there's two pieces of
4 supplementary evidence which has been placed before us,
5 a matter of record, and I understand from counsel will be
6 accepted when the evidence is presented. There's likely no
7 comment on that, and clarification on the information on
8 the allocation of costs, if anybody would care to comment
9 on that, but specifically as well the proposal here to submit
10 the revised cost of service at the end of October, any
11 particular comments. I'll go to Newfoundland Power first,
12 please.

13 MR. ALTEEN: If I can handle this, Mr. Chairman, I think
14 from the Board's perspective it's probably a necessity that
15 a filing in this nature be made. The Board is being asked to
16 set rates based on the 2002 test year. The record, as I
17 understand it, indicates that Ms. Greene has indicated that
18 we're dealing with a 2000 forecast of 2001 costs from which
19 there's been some scaling done to get to a 2002 test year,
20 and this is how Mr. Brushett's described it and there's
21 absolutely nothing inappropriate with that seeing we're
22 forecasting, Hydro is forecasting two years ahead.
23 However, as we approach the fall of the year, it seems we
24 have the benefit of significant experience, cost experience,
25 from Hydro's perspective, and that information would in
26 Newfoundland Power's view be essential to be before the
27 Board.

28 In terms of the past practice of the Board, at the
29 last general rate proceeding for Newfoundland Power, I
30 believe Vice-Chair Whalen may have been on the panel, I'm
31 not certain of that, however, a filing was done just before
32 the start of the hearing where Newfoundland Power re-filed
33 essentially its full test year forecast and the parties were
34 given a few days to review it, I believe it was a long
35 weekend and an extra day or two, and the hearing went on,
36 and I think a similar scheduling issue will come up to be
37 dealt with by the Board in terms of how we will proceed
38 with this, however, I think the costs are absolutely
39 essential. It's consistent with past practice of the Board
40 and we fully support what Hydro is doing in (inaudible).

41 MR. NOSEWORTHY, CHAIRMAN: Thanks very much,
42 Mr. Alteen. Industrial customers, please.

43 MR. HUTCHINGS: Thank you, Mr. Chair. We do feel that
44 what has been proposed is appropriate and necessary and
45 that that should be allowed to proceed on the schedule that
46 Ms. Greene has indicated. In terms of the other filings this
47 morning, if on review of the material about Hydro-One, we
48 have any other questions for Mr. Wells, I'm sure he'll be
49 around at some point that we can put them to him.

50 MR. NOSEWORTHY, CHAIRMAN: Consumer Advocate,
51 please.

52 MR. FITZGERALD: Mr. Chairman, yeah, we don't see any
53 prejudice whatsoever in the request of Hydro this morning
54 and we'll just echo the comments of the other intervenors
55 on this issue.

56 MR. NOSEWORTHY, CHAIRMAN: Board counsel have
57 any comments on this?

58 MR. KENNEDY: No, no comments, Mr. Chair. It all seems
59 to be appropriate and in order.

60 MR. NOSEWORTHY, CHAIRMAN: Okay. We'll take the
61 matter under advisement for now as I would have a chance
62 to discuss with my colleagues at the break in a little bit
63 greater detail and if there are any scheduling problems
64 associated with this that need to be sorted out, I'll report
65 back a little bit later, but I don't understand there's any
66 fundamental difficulty or problem with this.

67 Okay, thank you very much. Just before
68 proceeding, one small item, relatively minor item, and I'll
69 mention it now. It was brought to my attention yesterday
70 that the 3:15 break in the afternoon really doesn't, provides
71 sort of a disproportionate allocation of time in respect of
72 the hearing. We have an hour and 15 minutes up front, 15-
73 minute break, and only a half an hour at the end, and if
74 indeed we run over a little bit, perhaps there's less than
75 that. There's two ways we can handle that. I guess we can
76 leave it as is or indeed we can move the break to three
77 o'clock, which might provide a more even balance and
78 provide the opportunity for some momentum to be gained
79 at the end of the day, and if that was of preference to you,
80 you could certainly indicate it to counsel and I'll be quite
81 prepared to change that. There's no loss of momentum in
82 my listening at the end of the day. That's not an issue so
83 I'm certainly, if it's preferable for you, I will make that
84 change but I'd like you to indicate to counsel one way or
85 another.

86 And I apologize to Newfoundland Power. There
87 was another issue that I commented on initially that you
88 had to raise and it slipped my mind, so ...

89 MR. ALTEEN: It's hardly worthy of an apology. Today we
90 filed with the Board staff a revised, a revision to the
91 response to information request **IC-281** which deals with
92 Newfoundland Power's peaking power. The revision was
93 relatively minor and deals with one, a change in one in
94 terms of the calls that Hydro has made on Newfoundland
95 Power to make its generation available to meet system peak.
96 Relatively minor matter, just to keep the record straight. It's
97 part of the record. That's all, Mr. Chairman.

98 MR. NOSEWORTHY, CHAIRMAN: Okay. I trust there's
99 no other comment on that. Okay, thank you very much.
100 We'll proceed with the matter at hand and industrial
101 customers' continuation of cross of Mr. Wells, please. Just

1 ... do you have any indication, Mr. Hutchings, at this point
2 in time how much longer you would be for the benefit of ...

3 MR. HUTCHINGS: I would expect to be finished by mid-
4 morning, Mr. Chair.

5 MR. NOSEWORTHY, CHAIRMAN: By mid-morning,
6 okay. Thank you very much.

7 MR. HUTCHINGS: Good morning, Mr. Wells.

8 MR. WELLS: Good morning.

9 MR. HUTCHINGS: Harkening back for a moment to your
10 opening statement of yesterday, you indicated that you felt
11 that it was important that Hydro be regarded as a
12 commercial entity. Can you explain for us why you feel that
13 it's important that Hydro be regarded as a commercial
14 entity?

15 MR. WELLS: Well, from my perspective I think that you
16 have an entity that has to carry out operating business
17 functions. The nature of the work that Hydro performs is
18 not exclusive to a Crown corporation or a monopoly,
19 whether it be investor-owned or otherwise, it could operate
20 in a competitive environment, and I think that the discipline
21 that would come from everybody who's dependent on
22 Hydro, the regulatory authorities and customers and
23 intervenors at rate applications, that the, if Hydro were to
24 operate on the commercial principles that apply to an
25 enterprise conducting an activity of this type, that we
26 would all be better served, and it's from that perspective
27 that I made that statement and I think in, certainly in my
28 view and the view of Hydro and its Board, that the
29 legislation, and particularly the amendments in 1996 that
30 were, came into effect, one would draw from that, if you
31 thumb through it, that Hydro should be operating as a
32 commercial enterprise subject to the same laws and
33 procedures as any other commercial enterprise, and our
34 expert witnesses will certainly support the fact that we
35 should be regarded as a financial entity subject to the
36 conditions and rigors of the market tempered by the fact
37 that there's a government guarantee but operated as an
38 entity that is capable of sustaining a sound financial
39 footing, being a burden in that sense to nobody, making it
40 on its own business, and the other aspect of that that
41 various witnesses will talk about, is the sending of the right
42 signals to the market, that people understand the service
43 they're getting and the cost that that service incurs and
44 appreciate, you know, that this is not some sort of entity
45 that's, you know, dispensing largesse at somebody's
46 expense but not necessarily those who are receiving the
47 service.

48 MR. HUTCHINGS: I take two points really from your
49 statement, and one I don't think anyone can disagree in
50 that Hydro should be operated in a business-like fashion,

51 and that's part I guess of what you're saying. Is that fair?

52 MR. WELLS: Certainly, yes. From my perspective it is,
53 yes.

54 MR. HUTCHINGS: Okay. But in terms of whether or not
55 Hydro is a utility like any other utility, would you agree that
56 from some of the things that we discussed yesterday about
57 interactions that you had with Government and things that
58 Government tells you, you know, are going to happen or
59 may not happen, that you are in somewhat a different
60 position than a privately-owned utility would be in that
61 regard?

62 MR. WELLS: Yes. I think that in reason again, but one
63 would have to take into account the fact that the
64 shareholder is the Government and that the shareholder
65 created the Corporation and that the shareholder has the
66 ultimate authority with respect to the operation of the
67 Corporation whether it chooses for instance, and it's all in
68 the legislation, to give a legislative direction which could
69 be particular to the Corporation as well as other, you know,
70 to other companies, but we do have legislation that's
71 particular to the Corporation and the Government under the
72 legislation has certain powers, for instance, the appointing
73 of the Board of Directors or confirming the Board of
74 Directors. The Board of Directors under the new legislation
75 can hire a CEO but it's subject to a concurrence, I think,
76 from, you know, the Government. So there is these things
77 that are a little different, would distinguish us from an
78 investor-owned corporation.

79 MR. HUTCHINGS: Insofar as your operation as a public
80 utility, unless there is a specific legislative direction to the
81 contrary, this board should regard you in the same way as
82 it regards Newfoundland Power.

83 MR. WELLS: Yes. It's really ... we should ... we're two
84 regulated utilities operating in the same jurisdiction and to
85 the intent of the legislation, certainly as I read it or interpret
86 it, is that in that sense we are really indistinguishable.

87 MR. HUTCHINGS: Okay. So in terms of the legislative
88 changes that you and your counsel spoke about at the
89 opening of the hearing, I want to try to explore what the
90 actual impact of those will be on this present application.
91 I think we know the institutional changes and I spoke of
92 them myself of how the Board now actually approves rates
93 as opposed to recommending them to the Governor in
94 Council and so on. But looking at this particular
95 application, you are now seeking a three percent return on
96 equity for the purpose of this application, correct?

97 MR. WELLS: Yes.

98 MR. HUTCHINGS: Okay. And I think from what Mr. Hall
99 said in his evidence, that's going to produce for you a 1.08
100 interest coverage?

1 MR. WELLS: Yes.

2 MR. HUTCHINGS: Okay. And the 1.08 is what this Board
3 actually approved for you in 1992 when interest coverage
4 was the important thing, isn't it?

5 MR. WELLS: That's correct.

6 MR. HUTCHINGS: Okay. So in this sense, solely for the
7 purpose of this hearing, you're asking the Board effectively
8 to confirm the previous target.

9 MR. WELLS: Only by comparison. That is not the
10 influencing factor on why we chose the three percent
11 return on equity. We were influenced by the results that
12 we, with respect to rates. Coincidentally it is the same as
13 the 1.08, yes.

14 MR. HUTCHINGS: Yes. The rate ... the last time in 1992
15 you asked the Board to approve rates which will give you
16 a 1.08 interest cover and that's what you're asking again.

17 MR. WELLS: I'm not certain in 1992 what the initial
18 presentation of the Corporation was but ...

19 MR. HUTCHINGS: Well, actually it was ...

20 MR. WELLS: ... somebody I'm sure could ...

21 MR. HUTCHINGS: It was a bit more than that. It was 1.10
22 you were looking for, but anyway ...

23 MR. WELLS: Okay, yes.

24 MR. HUTCHINGS: ... that's what the Board approved, was
25 1.08, and that's what you're asking this Board to approve
26 now, effectively rates that will produce a 1.08 interest
27 cover.

28 MR. WELLS: That's true, at three percent.

29 MR. HUTCHINGS: Alright. And I don't think we need to
30 bring it up but at page ten of your evidence you say that
31 the rates that you're looking for reflect the immediate
32 financial requirements of the Corporation.

33 MR. WELLS: Yes. If I might just refer to that and get it in
34 context. On page 10 in my ...

35 MR. HUTCHINGS: Page 10, line 19.

36 MR. WELLS: Yeah. Line 19 is one of three points. The
37 first paragraph under the answer, which says, "The rates
38 proposed reflect three fundamental considerations," and
39 you're referring to the third consideration, and in that third
40 consideration the emphasis there and the intent was to
41 state to everyone, and particularly to the Board, that
42 "Hydro's proposals," I'm quoting line 22, "Hydro's
43 proposals are designed and intended to reduce the impact
44 of rate increases to its customers," and that is one of the
45 fundamental issues that Hydro is presenting to the Board,
46 that given the circumstances and the financial situation

47 related to costs and operations and rates, that we are
48 proposing to do something that one could say is somewhat
49 extraordinarily different than what one would propose in
50 normal financial circumstances, and the only reason that we
51 are doing this is because we were trying to reduce the
52 effect of the rate impact on customers and we have, like, on
53 the island portion of the province, five in terms of ... we
54 have Newfoundland Power and our four industrial
55 customers and our customers on the island we distribute to
56 to have the benefit, as we propose, of Newfoundland
57 Power's rates, whatever flowed through, so to put it clear to
58 everyone, we looked at the results, we asked for normal
59 rates of return, if we followed the, totally the provisions in
60 the EPCA as to what we are supposed to do and said to
61 everyone let's face today the real impact of the price of fuel
62 that's being burned, which is an undeniable fact, had we
63 done that we were looking at, in the case of your clients,
64 Mr. Hutchings, rates that would have exceeded 20 percent,
65 and therefore we exercised a value judgement to try to
66 reduce the impact and spread this out over time, although
67 as the Consumer Advocate has pointed out, we are only
68 deferring the costs with respect to fuel and unless we have
69 an extraordinarily good break on hydrology and demand,
70 these costs will have to be met.

71 MR. HUTCHINGS: But to get back to again what you said
72 at the beginning of your point three there on page 10, the
73 rates reflect the immediate financial requirements of the
74 Corporation.

75 MR. WELLS: Yes, we think that we can be consistent with
76 the requirement of the Act, maintain a sound financial
77 footing and not suffer any un, you know, undesirable
78 consequences with respect to a report from the rating
79 agencies, and more particularly, not that Hydro would be
80 affected directly by that, because our debt is guaranteed by
81 the Government, but that we would not put ourselves in a
82 circumstance where we would affect the Government's
83 financial rating which would be a bad scene. We're 12
84 percent of the provincial debt. Our financial advisors, in
85 their pre-filed testimony, advise that while they don't agree
86 with this as a proposition, that this would, this could be
87 accommodated, and I think again they say to the Board but
88 there should be some appropriateness from a, you know,
89 some appropriate signal from the regulatory authority
90 should they accept Hydro's proposal, that that's not the
91 type of situation they would expect in a regulated utility.
92 For instance, one would, might say, as you asked me are we
93 indistinguishable or I said we were indistinguishable in my
94 view from Newfoundland Power, so the first thing you'd
95 say in this jurisdiction, should our rate of return be any
96 different than the rate of return of an investor-owned
97 utility. That would be an arguable point and I know that
98 the investor-owned utility in the room has had some fairly
99 significant argument with the Board as to what the

1 appropriate rate of return should be for the investor-owned
2 utility.

3 MR. HUTCHINGS: Okay. Just let me deal with an
4 incidental point, I guess, that you mentioned there in terms
5 of the effect on the provincial credit rating. I wonder if we
6 could put up the answer to **IC-65**? This is a question that
7 went to Ms. McShane, one of your expert witnesses, and
8 perhaps you could read for us, starting at the second
9 sentence, "Based on the experience of other Crown
10 corporations"?

11 MR. WELLS: She has stated, "Based on the experience of
12 other Crown corporations, debt ratios of up to 90 percent
13 in the short-term have been maintained without negative
14 impact on the province's credit rating. The debt rating
15 agencies would tend to focus on the utility's ability to
16 recover its debt service costs without running the risk of
17 having to turn to the Provincial Government for assistance.
18 Stated alternatively, as long as Hydro's debt is guaranteed
19 by the province, the debt rating agencies' concerns are with
20 the assurance that Hydro is self-sufficient, that is, Hydro
21 will cover its total out-of-pocket costs, including interest
22 expense, from its own revenues without risk of a shortfall."

23 MR. HUTCHINGS: Okay. Now, I would take that to imply
24 a number of things, one of which would be that Hydro
25 should have an adequate interest cover.

26 MR. WELLS: Yes.

27 MR. HUTCHINGS: Yes, okay.

28 MR. WELLS: Well, if you measure by that means, and that
29 now we're rate based we have to go the other route by the
30 legislation, but you can compare them as you have.

31 MR. HUTCHINGS: Okay. Well certainly the result has to
32 be stated in terms of a return on rate base ...

33 MR. WELLS: Yes.

34 MR. HUTCHINGS: ... under the current legislation. Yes, I
35 agree with you there. Mr. Wells, have you familiarized
36 yourself at all with the position that Hydro put before the
37 Board in terms of interest cover the last time it was here in
38 1992?

39 MR. WELLS: At the commencement of, well, for us, getting
40 ready for this hearing back in late fall and spring, I reviewed
41 the evidence or the submission of, you know, Hydro at the
42 last rate hearing or certainly a substantial part of it. It's
43 rather dry reading in the perspective of time, but ...

44 MR. HUTCHINGS: You and I are making some more of that
45 now, Mr. Wells. *(laughter)*

46 MR. WELLS: But I did refer to it. Whether I can be really
47 conversant on it, but I'm sure you'll refresh my memory.

48 MR. HUTCHINGS: I would think that you would recall that
49 Hydro was at that point asking for an interest coverage
50 ratio of 1.10.

51 MR. WELLS: I accept your ... yeah.

52 MR. HUTCHINGS: Yes, okay. But at that time the Board,
53 or Hydro was making a somewhat similar request to the
54 Board as it's making now in asking the Board to reconfirm
55 the long-term target interest coverage ratio of 1.15 to 1.25
56 gross, times gross interest. Do you recall that being part of
57 the presentation to the Board?

58 MR. WELLS: It's certainly the nature of the debate, yes.

59 MR. HUTCHINGS: Uh hum, yeah. And the Board on that
60 occasion in its report with respect to that referral approved,
61 as we've already talked about, a 1.08 times gross interest
62 coverage which was somewhat lower than Hydro
63 requested, correct?

64 MR. WELLS: That's correct.

65 MR. HUTCHINGS: Okay. And the Board said also, did it
66 not, that it would be premature for them to suggest an
67 interest coverage rate for use in the future and it refused to
68 recommend setting financial guidelines, future financial
69 guidelines at that time.

70 MR. WELLS: Yes.

71 MR. HUTCHINGS: Do you recall that?

72 MR. WELLS: I don't precisely recall it but I'm sure that
73 you're quoting from the record.

74 MR. HUTCHINGS: Okay. If you need to refer to it at any
75 time, you'll find it on page 93 of the Board's report.

76 MR. WELLS: Thank you. I accept your statement.

77 MR. HUTCHINGS: So in terms of where we are today, you
78 come before the Board essentially asking them the same
79 sorts of things that you were asking them before, give us
80 something lower than what we feel is the appropriate range
81 but confirm our targets for the future. Is that fair?

82 MR. WELLS: No. It may sound to be self-serving to
83 Hydro to say confirm our targets for the future. What my
84 understanding is of our approach is certainly part of it is
85 that if, for instance, the cost factors, and take the price,
86 other things had been different and we could have asked
87 for a normal rate of return on rate base and the effect on the
88 consumers and our customers would have been an increase
89 such as we have proposed now, then you would never
90 have heard in our application anything about something
91 less. We would have been spot on to Ms. McShane's
92 testimony and to Mr. Hall's and I would have been arguing
93 that point based on the legislation, based on the expert
94 advice, and we would have debated that point in front of

1 the Board and the Board would have made a decision, but
2 not on anything related to a three percent return on equity.
3 It is very difficult ... I mean, people who are not privy to
4 what is happening here or engaged in the proceedings like
5 we are, if you were sitting down in Toronto or New York
6 and you were discussing what somebody was doing with
7 respect to a rate of return on a commercial entity or a utility
8 and you knocked around three percent rate of return, you'd
9 be thrown out of the club. You would be looked upon as,
10 I mean, absolutely this is idiotic. Whoever talks of that?
11 We have an issue across the Board in Canada that the rate
12 of return to Crown utilities does not correspond with the
13 rate of return afforded to US utilities, and as a Canadian
14 debate we are in the business of trying to cope with no
15 border in terms of energy transfers and flows between
16 Canada and the United States, and you will find a great
17 argument coming together. I can see it through members of
18 the CEA, the Canadian Electricity Association, which
19 represents about 95 percent of the electrical capacity in
20 Canada, and the issue is, are we going to be able to
21 compete, are we going to be able to make the right and
22 appropriate investments and to be able to have the services
23 at a level that's going to meet the competition, because it's
24 not going to be regulated? So I'm just saying to you that
25 I find it ... it's a really ... it's not even a moot point for
26 argument that a commercial entity, and based on our
27 legislation, which gives no indication that we are to just
28 operate on the cost of debt, which is a possibility, had the
29 Government chosen they could have said in the legislation
30 that this particular Crown corporation will operate based on
31 the cost of debt and service its debt and provide the
32 service to the customers.

33 MR. HUTCHINGS: Mr. Wells ...

34 MR. WELLS: They didn't do that.

35 MR. HUTCHINGS: ... I have to stop you there because I
36 said yesterday I wasn't going to ask you for legal opinions.
37 Given that, I don't think I can sit here and let you give them,
38 so ...

39 MR. WELLS: I didn't think it was a legal opinion, but ...

40 MR. HUTCHINGS: The interpretation of a legislation, you
41 know, your counsel and others will deal with during the
42 course of the submissions before the Board at the end, but
43 to the extent that you raised the issue of Canadian
44 companies competing with American companies in the field
45 of electricity, is that not in fact one of the advantages that
46 Newfoundland and Labrador Hydro has, that is, that it is
47 one of, although not the only, non-interconnected system
48 in North America.

49 MR. WELLS: It's not my view that this is an advantage to
50 Hydro if you're true to the intent of Hydro to service the
51 customers. Not being interconnected is a distinct

52 disadvantage to the consumers of Newfoundland and
53 Labrador ...

54 MR. HUTCHINGS: But it does put ...

55 MR. WELLS: ... because if they open the doors to
56 competition ...

57 MR. HUTCHINGS: It protects you from competition, does
58 it not?

59 MR. WELLS: It protects Hydro from competition but the
60 interests of Hydro really are the interests of its customers.
61 Our mandate is to provide reliable, least cost power and
62 energy and that's what we try to do.

63 MR. HUTCHINGS: But it takes you out of this debate of
64 competition with American utilities, does it not?

65 MR. WELLS: We're not competing with American utilities
66 directly, but the point I was trying to emphasize to you,
67 that there are, it would be really an eye opener to people
68 elsewhere in other jurisdictions, generally speaking, I say
69 this to the Board, generally speaking, that you are not
70 going to find a huge number of people out of 100 that
71 would advocate that we should operate on the basis of
72 either a 1.08 interest coverage or a three percent return on
73 equity, and it's pretty clear, you know, from the reasonable
74 evidence, and I don't think there's any dispute even
75 amongst expert witnesses, to obtain an investment grade
76 rating in the world we live in today, you would have to
77 have a debt equity ratio of 60/40 to get a Triple B, and the
78 only reason we're able to have a coupon, a Triple B rating
79 today on our borrowings is because the Government
80 guarantees it, for which we pay a fee which is charged into
81 our costs.

82 MR. HUTCHINGS: So, Mr. Wells, you've told us already
83 that your approved interest cover in 1992 was 1.08. Has
84 that resulted in any downgrading of your credit since that
85 time?

86 MR. WELLS: Certainly not because as is clear in the
87 testimony filed that we are still being guaranteed by the
88 province, and so that's not an immediate issue. The
89 question that, or what response that I can give you on this
90 kind of subject matter in defence of a position that we put
91 to the Board is that the 1.08 that the Board outlined or
92 ordered in 1992 would not necessarily reflect the consensus
93 of what it would take to have an entity on a sound financial
94 footing in its own right, and since the Board made that
95 order in 1992 we have the legislation which says, and I'm
96 quoting from, you have it in the Energy, the EPCA, "We are
97 to earn a just and reasonable return so that it is able," "it"
98 being Hydro, "is able to achieve and maintain a sound
99 credit rating in the financial markets of the world." It didn't
100 say because the Government guarantees the debt. It says
101 we want you to operate in this way. It's in the legislation,

1 it's in the book. So we turn and say what is the best advice
2 that we can get in the world with respect to the operation
3 of a regulated utility that has to have a sound credit rating,
4 we are told you need Triple B to get an investment rating.
5 We are told to get a Triple B and the only way you're going
6 to make it is a 60/40 debt equity ratio, ergo ...

7 MR. HUTCHINGS: Or alternatively have a guarantee from
8 the Government of Newfoundland.

9 MR. WELLS: We know that and ...

10 MR. HUTCHINGS: And you have that, correct?

11 MR. WELLS: Yes, yes.

12 MR. HUTCHINGS: Yes, okay. And ...

13 MR. WELLS: But that still doesn't deny the fact of what
14 the legislation says, and it can't deny the facts of how the
15 financial community operates and how ratings are made.

16 MR. HUTCHINGS: We'll argue the intent and purpose of
17 the legislation ...

18 MR. WELLS: That was only my opinion.

19 MR. HUTCHINGS: ... at another time. I quite understand
20 that, Mr. Wells. But I'm sure you've also looked at from
21 time to time the DBRS ratings for Newfoundland and
22 Labrador Hydro.

23 MR. WELLS: Yes.

24 MR. HUTCHINGS: And read the note that appears right
25 under the name at the top of that that says, "The rating is
26 a flow-through of the rating of the Province of
27 Newfoundland and Labrador which guarantees the Utility's
28 debt."

29 MR. WELLS: Yes, and thank goodness, because otherwise
30 we'd have a terrible report.

31 MR. HUTCHINGS: Okay. And the guarantee is there and
32 as far as you know and according to the answers you've
33 provided in requests for information, it's staying there.

34 MR. WELLS: We have no reason to believe that it won't be
35 there, but that will again be the Government.

36 MR. HUTCHINGS: Yes, exactly.

37 MR. WELLS: All of this is recognized by our expert
38 witnesses in their proposition.

39 MR. HUTCHINGS: Okay. So in terms of the actual impact
40 of the legislation on what this Board must do in this
41 hearing, there is no requirement that the Board grant
42 something more in the way of rates, that is to say
43 something that would provide more than a 1.8, 1.08 interest
44 cover mandated by the legislation.

45 MR. WELLS: If the Board were to accept the plea of those

46 who want the Board to set up a situation where those
47 receiving the benefit don't pay the full cost of the service,
48 you're absolutely right.

49 MR. HUTCHINGS: No. What I'm saying to you, sir, is that
50 there's nothing in the legislation, and I think you have to
51 accept this because you're the one that's asking for the
52 three percent return, there's nothing in the legislation that
53 requires this Board to order more in terms of rates than
54 what will produce a 1.08 interest cover.

55 MR. WELLS: There's no limit on what the Board will order,
56 period. They can reject our proposal and accept the advice
57 of expert witnesses, if they wish, or their own recognizance,
58 say that we're going to set the pattern here with respect to
59 the utilities that we regulate and here's what we have
60 determined, and they might throw out our three percent as
61 being far too modest a return on rates and say that we have
62 to get on with it and accept reality. See, the only people
63 that really want this three percent embedded forever would
64 be people who would benefit and customers who don't
65 want to recognize the cost of operating the system, the true
66 cost. We're only disguising things here, as the Consumer
67 Advocate has said. Oil is, you know, if you're paying \$31
68 a barrel and you're getting \$12.50 for it, how long does that
69 kind of an entity stay in business, and we're deferring the
70 cost. That is the issue here. We have to, the customers
71 and everybody in Newfoundland has to recognize on the
72 island how we get our electricity.

73 MR. HUTCHINGS: I don't think anybody is questioning,
74 Mr. Wells, that the price of fuel is what the price of fuel is
75 and that it must be paid and the only question in that
76 regard is, you know, are we paying the minimum possible
77 that we can pay and yet get the reliable service and exactly
78 when we're going to pay for it. There's no way around that.
79 What we're talking about here is the question of return.
80 And I want to try to clarify, have you clarify something you
81 said yesterday about the intent of the application as it
82 relates to anything beyond 2002, because I understood you
83 to say that you're not asking the Board to order anything
84 beyond 2002 at this stage.

85 MR. WELLS: No. The recommendation to the Board is
86 that if the Board were to accept our three percent return on
87 equity for the purposes of this hearing and adjusting rates
88 going forward from this hearing, our advice to the Board,
89 proffered advice by our expert witnesses is, and in my
90 evidence, that if you do that, the Board should explain what
91 they think the more appropriate rates would be in a normal
92 situation, because the Board order saying a three percent
93 return on equity would certainly raise some comment in
94 DBRS or Moody's saying that the Public Utilities Board in
95 Newfoundland and Labrador endorses a three percent
96 return on equity and that is, seems to be their position as
97 opposed to the Board saying we've accepted Hydro's

1 proposal in the circumstances but we do appreciate that in
2 the financial markets of the world and in terms of any entity
3 achieving a sound credit rating, that this would not be the
4 normal rate of return. Now they might say it should be
5 seven, eight or nine or ten or eleven, they might say in
6 normal circumstances it might be whatever Newfoundland
7 Power is getting today ...

8 MR. HUTCHINGS: Yeah. Well ...

9 MR. WELLS: ... but it would be ... you know, the Board
10 doesn't want to look not to be credible, and all our financial
11 experts are saying is that the Board should, if they depart
12 from what they think is normal, the Board should just say
13 to everybody, now, we're doing this for this purpose, but
14 we also understand how the world works.

15 MR. HUTCHINGS: Assuming that any of this will have
16 any impact on the credit agencies at all, given the fact that
17 your rating is a pass through, in any event, and the
18 Government guarantee is still there, is not the concern of
19 the credit rating agency that the regulation of the Utility be
20 reasonable?

21 MR. WELLS: That the regulation be reasonable.

22 MR. HUTCHINGS: Yes, the ... what this Board does to the
23 ...

24 MR. WELLS: Yes, but ...

25 MR. HUTCHINGS: ... Utility in terms of ... can I get you to
26 yes or no on that before you carry on?

27 MR. WELLS: Say it again, please.

28 MR. HUTCHINGS: Is it not the concern, is not the primary
29 of the credit rating agency as regards the issue of
30 regulation whether or not the regulatory scheme imposed
31 on the Corporation is reasonable?

32 MR. WELLS: Yes. Well they expect to see certain things
33 happening in a jurisdiction.

34 MR. HUTCHINGS: And if in fact you come to the Board
35 and ask for a three percent rate of return and the Board
36 gives you a three percent rate of return, will that not be
37 viewed as a reasonable result from ...

38 MR. WELLS: Oh, that's our whole point.

39 MR. HUTCHINGS: ... the credit rating agencies' point of
40 view?

41 MR. WELLS: That's our whole point ...

42 MR. HUTCHINGS: Yes.

43 MR. WELLS: ... that they will accept that provided that it's
44 not the Board saying that the normal rate of return ... I
45 mean, supposing they construe from that kind of result
46 with this Board in Newfoundland and Newfoundland Power

47 comes forward again, and everybody says in an investor-
48 owned utility, which is really pertinent, there's no
49 Government backing there, that, boy, you got to watch it in
50 Newfoundland. If you're going to invest in a utility, there's
51 a board down there that thinks a three percent rate of return
52 is okay, and ...

53 MR. HUTCHINGS: All the Board has to say though, all the
54 Board has to say, Mr. Wells, is that what is or is not a just
55 and reasonable rate of return is not actually an issue before
56 us in this proceeding.

57 MR. WELLS: And that's what we're saying, isn't it?

58 MR. HUTCHINGS: Okay.

59 MR. WELLS: Because we're the ones that advocated the
60 three percent.

61 MR. HUTCHINGS: So can we leave Ms. McShane and the
62 other witnesses home then, I mean, if we don't need to deal
63 with all those issues?

64 MR. WELLS: Not all at, not at all, particularly given, you
65 know, the way you're approaching this, is you really would
66 benefit from their evidence because what it is telling us is
67 what the real world is all about and they're acknowledging
68 and reassuring the Board that you can, you could accept
69 Hydro's proposal and that's fine, but for goodness sake
70 you have to send a signal as to, that in the jurisdiction of
71 Newfoundland and in the regulation of utilities, this Board
72 is conversant with what's required in terms of rate of return.

73 MR. HUTCHINGS: I think that's obvious from the Board's
74 previous decisions on Newfoundland Power and in other
75 matters, but we just agreed that all the Board need say is
76 that that is not an issue we need to deal with at this
77 hearing.

78 MR. WELLS: No, it's not an issue that they need to deal
79 with with respect to setting the rates for, you know, their
80 order with respecting to Hydro, but I think it's important
81 that our utility regulator in Newfoundland show that it's,
82 the way it thinks about the economic matters and situations
83 and regulation of utilities is consistent with what one
84 would expect, and the other thing, supposing the Board
85 said we never see in the future any time where
86 Newfoundland and Labrador Hydro will ever require more
87 than a three percent rate of return. If they were to say that,
88 and dependent on how things go within the province, I can
89 see credit rating agencies saying, well, this is different, this
90 is different. This is a situation where now Hydro's debt and
91 financial circumstances are probably more of a burden or a
92 potential burden to this province than we otherwise
93 expected, and that's the, you know ... I'm not the expert on
94 this kind of stuff but I can read and understand a few
95 things about business, and all our expert witnesses and
96 any of the other expert witnesses, rate of return of three

1 percent on an operating entity is just not on ... and the only
2 ... anybody who would argue for it is trying to receive a
3 benefit that they would not otherwise get.

4 MR. HUTCHINGS: Well, Mr. Wells, I think I'd give the
5 Board more credit as to what it knows it should and should
6 not say than perhaps your suggestion would indicate, but
7 let's get to this question of your debt equity ratio, and I
8 take it from what has been said in the evidence to date that
9 you would like to adopt, generally speaking, the
10 recommendation of your advisors that you move to a 60/40
11 debt equity ratio. Is that correct?

12 MR. WELLS: I think that ... I regard Hydro ... I think it's in
13 the best interest of everybody in the long-term that Hydro
14 was run as a business and my background is not in the
15 monopoly business, it's more private enterprise and in a
16 competitive world. I think that the signals it sends outside
17 and inside to employees and everybody else is, it just
18 changes the nature ... it's not good to have a group that feel
19 totally immune and protected from whatever goes on
20 around them, and the nature of monopoly is such that for
21 investor-owned utilities or Crown corporations you always
22 got to be very careful of that, so it's just my view here that
23 if we're running a business, the management and the board
24 and the employees have a better chance to achieve the kind
25 of operation that everybody would want. Again that's just
26 a personal view and therefore you would like to see ... I
27 mean, I would take great pride if we could say that
28 Newfoundland and Labrador Hydro was producing reliable
29 least cost power and that we were dependent on nobody,
30 that we could go to the financial markets if we want on a
31 60/40 debt equity ratio, we're as solid as a rock, we'll get a
32 Triple B rating, and we pay our own way and provide the
33 service to those who pay us for the product and
34 everybody'd be happy.

35 MR. HUTCHINGS: Have you directed your mind to how
36 you intend to get that additional equity?

37 MR. WELLS: How we get that additional equity?

38 MR. HUTCHINGS: Uh hum.

39 MR. WELLS: I'm certainly not looking to Government in
40 the short-term as a source of equity. I think that we would
41 have to do it out of really good management of the
42 Corporation and it's certainly not going to happen in the
43 period of my tenure. It's not going to happen in the, you
44 know, in the next two or three or four or five years,
45 assuming I'll last even part of that time. It's just not going
46 to happen. What we're looking at here in the situation
47 we're in in Newfoundland and Labrador is a longer-term
48 view, but ...

49 MR. HUTCHINGS: I wasn't asking you so much as to
50 when you're going to get it as to how you're going to get it.

51 I think your answer is that you intend to build it up out of
52 the earnings of the Company that go into retained earnings.

53 MR. WELLS: That's correct.

54 MR. HUTCHINGS: Okay. And which is the source of the
55 existing equity ...

56 MR. WELLS: That's where the retained earnings and the
57 equity have come from in the past, yes.

58 MR. HUTCHINGS: And that being your goal, I think we
59 need to come back to this question of the dividend that
60 you discussed to some extent with Ms. Butler yesterday.
61 Do you see that the payment of such a large dividend is
62 inconsistent with the goal of moving toward a higher
63 equity component in your capital structure?

64 MR. WELLS: Well on the face of it one, yes, one could say
65 that that's an inconsistency.

66 MR. HUTCHINGS: Yeah. I mean, when you looked at the
67 dividend policy and we looked at the letter from Ms.
68 McLeod that was up yesterday when Ms. Butler was cross-
69 examining you, Hydro obviously went to some effort to
70 ensure that it was adopting an appropriate dividend policy
71 at the time. Isn't that fair?

72 MR. WELLS: Yes. I think the management at that time got
73 the appropriate advice from financial advisors to be able to
74 advise the Board to the extent that they might have needed
75 it, you know, but put together what one would expect a
76 financial entity to deal with and what we should be
77 targeting, and that's the kind of advice you always get from
78 the financial advisor.

79 MR. HUTCHINGS: And you want to have a policy that is
80 a reasonable one that this Board could approve of.

81 MR. WELLS: Yes. When the Government indicated for the
82 first time that it wanted dividends from Hydro, then the
83 Board, having had the benefit of financial advisors and
84 general advice, adopted a dividend policy in 1995 which
85 was 75 percent of net income which is, with a proviso,
86 caveat that it not affect the debt equity ratio, which again,
87 from, you know, that Board in making that decision acted
88 as one would expect.

89 MR. HUTCHINGS: Yes, I absolutely agree with you. How
90 is it then that your proposal for 2002 represents a 99
91 percent pay-out ratio of dividends over that period?

92 MR. WELLS: That stems from the Government's request,
93 which was made known in the budget speech of, for this
94 fiscal year we're in, that they would be seeking a payment
95 from Hydro to that dollar level which gives you the result,
96 yes.

97 MR. HUTCHINGS: What do you think the reaction of the
98 Board would be if Mr. Alteen came in here on behalf of

1 Newfoundland Power and said that Fortis wanted \$100
2 million dividend so we have to pay it out?

3 MR. WELLS: What would be the reaction of this Board?

4 MR. HUTCHINGS: Uh hum.

5 MR. WELLS: Does the Board decide on the dividend or ...

6 MR. HUTCHINGS: Well, if you look at ...

7 MR. WELLS: Or if it came in and said this is the effect on
8 our rates or something, yes.

9 MR. HUTCHINGS: Yeah. If you look at the last decision
10 or one of the decisions, I'm not sure it was the last one, but
11 I picked up the 1996/97 **PU-7** decision of Newfoundland
12 Power and the Board there approved a capital structure for
13 Newfoundland Power, 40 to 45 percent equity, 3 to 6
14 percent preferred, and 40 to 45 or whatever, 47 to 55 percent
15 debt, and it in fact went a little bit further and said that if
16 there's additional equity there, if there's excess equity, we're
17 going to deem that to be preferred equity for the purpose
18 of regulation.

19 MR. WELLS: My understanding of that, they'd want the
20 capital structure in a certain balance to relate to the return
21 on equity and, yes.

22 MR. HUTCHINGS: Yeah, okay. And since there's no
23 reason to treat Hydro from a regulatory point of view any
24 different than Newfoundland Power, if the Board feels that
25 the \$70 million dividend is an inappropriate reduction in
26 your capital, presumably the Board can deem that dividend
27 not to have been paid, correct?

28 MR. WELLS: The Board could do that.

29 MR. HUTCHINGS: Yes.

30 MR. WELLS: The Board could do that.

31 MR. HUTCHINGS: Yeah. And so notwithstanding, as you
32 say, that the Government may demand and in fact get its
33 \$70 million dividend, for regulatory purposes you may
34 nonetheless be deemed to have those \$70 million or the
35 appropriate portion of it in your retained earnings whether
36 it's there or not.

37 MR. WELLS: You're asking me could that happen.

38 MR. HUTCHINGS: Yes.

39 MR. WELLS: Yes, that could happen. In other words, the
40 shareholder would pay a price or we can all fight over who
41 gets what to the last drop of Hydro's blood.

42 MR. HUTCHINGS: Yeah. And, I mean, would you not
43 regard that as a reasonable regulatory approach for this
44 Board to take?

45 MR. WELLS: I think that in light of the relatively modest,
46 relatively modest increase that we're proposing in terms of,
47 what we're proposing on return on equity, it has to be taken
48 in light as well with respect to the total picture for the
49 shareholder and for Hydro. I mean, look at the Board. I'm
50 sure the ... I'm not going to ... the Board will look at all of
51 the factors here and make its decision. You've outlined a
52 course of action that I've agreed is within the range of
53 probability but I didn't say, and I should say possibility, it's
54 in the range of possibility. The probability will be
55 determined by the Board.

56 MR. HUTCHINGS: Okay. Let's leave it there. I wonder if
57 we could put up the answer to **IC-206**?

58 MR. NOSEWORTHY, CHAIRMAN: Could we just ... we
59 have a blank screen here which hopefully we'll get sorted
60 out during the break but we may have a, take a little bit
61 longer to refer to it. Okay.

62 MR. HUTCHINGS: I'm looking at page four of six which
63 contains a graph that represents an extension of the graph
64 that was included in your pre-filed evidence.

65 MR. WELLS: Yes. Is it the same as ... you're saying ...

66 MR. HUTCHINGS: I think it's the same up ... your other
67 graph I think only goes to 2002, if I recall, and this one ...

68 MR. WELLS: Yes. So who extended this? We did ...

69 MR. HUTCHINGS: You did.

70 MR. WELLS: ... in our answer.

71 MR. HUTCHINGS: In answer to ...

72 MR. WELLS: Okay, we're there. *(laughter)* Okay. I recall
73 that now, yes. You asked us to extend it.

74 MR. HUTCHINGS: Okay, alright. The graph starts off in
75 1991 and uses 1991 as its starting point as 1.0 and moves
76 up or down on that basis, correct?

77 MR. WELLS: Yes.

78 MR. HUTCHINGS: It's a starting point of 1991. And I think
79 as regards the industrial customers and apparently
80 Newfoundland Power as well, there's not much change
81 there from '91 to '92 and rates began to change in '92. Is
82 that fair?

83 MR. WELLS: Yes.

84 MR. HUTCHINGS: Okay.

85 MR. WELLS: Very favourably from your perspective.

86 MR. HUTCHINGS: Well, I think the question is that it all
87 depends on the starting point. If we could put up **IC-205**,
88 page five, this is showing us the revenue to cost ratios for
89 both Newfoundland Power and the industrial customers,
90 and of course in the years prior to the year 2000 there was

1 a contribution by the industrial customers to the rural
2 deficit that's reflected there as well.

3 MR. WELLS: Yeah.

4 MR. HUTCHINGS: So if we look to the revenue cost ratio
5 for the industrial class in the year 1992 actual, we see that
6 industrial customers were paying 1.17 times their cost.

7 MR. WELLS: Yes.

8 MR. HUTCHINGS: Okay. And part of that of course
9 relates to the fact that they were paying a portion of the
10 rural deficit at the time.

11 MR. WELLS: Yes.

12 MR. HUTCHINGS: Okay. Now I want you to look at one
13 other response, which is **IC-243**, and at the bottom of that
14 page you'll see in the answer to B and C that industrial
15 customers paid rates that resulted in a gross interest
16 coverage of 1.13, 1992.

17 MR. WELLS: Yes.

18 MR. HUTCHINGS: And the approved interest coverage for
19 Newfoundland Power, sales to Newfoundland Power at that
20 time was 1.08, correct?

21 MR. WELLS: Yes.

22 MR. HUTCHINGS: So you were basically earning more
23 profit on your sales to industrial customers than you were
24 on your sales to Newfoundland Power.

25 MR. WELLS: Yes.

26 MR. HUTCHINGS: And if we proceed on then to Item C,
27 you will find that on an application of the 1.08 to the
28 industrial class, your revenue to cost ratio is actually 1.2.

29 MR. WELLS: Yes.

30 MR. HUTCHINGS: Okay. So I would suggest to you, sir,
31 that if industrial customers had been paying only the same
32 level of margin to you as Newfoundland Power was paying,
33 which seems like a fair thing, it didn't have to be so in 1992
34 but seems like everyone should contribute equally to the
35 profit portion, if that was so then industrial customers in
36 1992 were paying 20 percent more than their cost of service,
37 correct?

38 MR. WELLS: Let's agree, the interest coverage, you're
39 saying 20 percent more on the cost or you're saying ...

40 MR. HUTCHINGS: Yeah. Revenue of cost coverage, 1.20.

41 MR. WELLS: Yeah, yeah.

42 MR. HUTCHINGS: Okay. And that's on the assumption ...

43 MR. WELLS: More than the cost of service, allowing no
44 margin for those providing the service.

45 MR. HUTCHINGS: No, no. You're allowed ...

46 MR. WELLS: It's in there.

47 MR. HUTCHINGS: ... your 1.08 interest coverage.

48 MR. WELLS: Okay, yeah. Yes.

49 MR. HUTCHINGS: Okay. Instead of the 1.13 which you
50 got from us in 1992, if you had only been getting the same
51 interest coverage from us as you were getting from
52 Newfoundland Power, we would have had a revenue to
53 cost coverage of 1.2.

54 MR. WELLS: Yes.

55 MR. HUTCHINGS: So in 1992 industrial customers were
56 paying 20 percent more than their cost of service for their
57 power.

58 MR. WELLS: Yes.

59 MR. HUTCHINGS: Yeah, okay. So if we go back now to
60 your graph ...

61 MR. WELLS: Yes.

62 MR. HUTCHINGS: ... on **IC-206**, page four of six, where
63 industrial customers start at one, in order to be fair they
64 should be starting down at .8.

65 MR. WELLS: Well, yes, the mathematics will work out, and
66 then you'll notice what happened to industrial customers in
67 fact subsequent to that period.

68 MR. HUTCHINGS: Yes.

69 MR. WELLS: But you know ...

70 MR. HUTCHINGS: Or alternatively you could look at it and
71 say that the actual what we were paying was 1.2, so the
72 decreases only bring us down where we should have been
73 anyway.

74 MR. WELLS: The 1.2 as an interest coverage, if you equate
75 that out to rate base ...

76 MR. HUTCHINGS: No, that's ...

77 MR. WELLS: ... you're really not ...

78 MR. HUTCHINGS: ... revenue to cost. That wasn't an
79 interest coverage; that was a revenue to cost ratio.

80 MR. WELLS: Okay, revenue, yes. The ... look, the figures
81 that you, the questions you've asked in the request for
82 information and the figures that we have supplied back,
83 what you're saying is just stating the figures and the effect.
84 If you wanted to go further now, I'd be more comfortable if
85 you went at Mr. Osmond on this than me in explaining the
86 graph and the ... and also in 1992 what happened with
87 respect to your rates, he would be more conversant than
88 me.

1 MR. HUTCHINGS: No. I understand. I mean, it was your
2 graph and your evidence, so that ...

3 MR. WELLS: We thought it appropriate to put that in my
4 evidence as a general ... but I think I've answered your
5 questions or confirmed what you, the figures that you've
6 asked, and that is they're mathematically fine.

7 MR. HUTCHINGS: Yes, okay, thank you. I think just one
8 other point, Mr. Wells, and I mentioned this in my opening
9 on Monday, that a sort of overriding issue for the industrial
10 customers here with respect to cost of service is why the
11 increases are distributed in the way they are, and you may
12 or may not be able to or want to speak to that point but it
13 is a continuing puzzle as to why it is that the increases to
14 industrial customers who should have been facing a lot of
15 factors that would reduce their costs or the costs assigned
16 to them have in fact been faced with a larger percentage
17 increase than Newfoundland Power. Can you help us with
18 that?

19 MR. WELLS: I'll just say this in more principle than detail,
20 that the issue of the allocation of costs is a legitimate
21 subject matter of debate and there's any number of experts
22 apparently who are willing to entertain that debate, so the
23 ... all I can say from a Hydro perspective, we have
24 endeavoured, you know, factually and in principle, to apply
25 the cost of service and the cost of service study that
26 seemed to be consistent based on the Board and the
27 people that went through the experience with the Board
28 and the cost of service methodology back in 1992/93.
29 Beyond that, and I was, I am aware, let me put it this way,
30 that the industrial customers have a different view with
31 respect to the allocation of costs and I think that that is one
32 of the opportunities in a hearing like this and other than
33 Hydro's rate increase where we need to have that hammered
34 out in front of the Board and have the Board decide where
35 these costs would be most appropriately put. If there's any
36 benefit from this hearing, maybe you'll be satisfied at the
37 end of the day that even if you don't get your way that
38 what was done or, you know, was the appropriate way to
39 go.

40 MR. HUTCHINGS: Okay. You recognize I think, and you
41 can confirm I think from the evidence that has been pre-
42 filed and the answers, that the industrial customers are in
43 fact facing a 35 percent increase in rates between 01 and 04
44 on the basis of your ...

45 MR. WELLS: You're taking that figure out of our financial
46 plan, the five-year, and I caution everybody again, and this
47 was, I didn't expect that to be the first question really when
48 I got on the stand and, but the financial plan is not
49 prepared to give you any real forecast of what rates ... I
50 mean, I think that the financial plan is just for financial
51 planning purposes and the Board, I think, had requested

52 that we file one and we do prepare them every year, in any
53 event, so we did, we filed it. What you ...

54 MR. HUTCHINGS: And it's your best estimate of where
55 we're going to be over the next five years, is it not?

56 MR. WELLS: Yes, but it's for financial ... there is a
57 distinction in that for financial planning purpose and where
58 rates go. Now I think that you and your clients, as well as
59 Newfoundland Power, Consumer Advocate, looking at
60 what the price of oil is and looking ahead, can pretty well
61 extrapolate out, you know, that the rates and costs are not
62 going to decline substantially and that there are other costs
63 going to come in in 2003, we are bringing in to meet the
64 demand new sources of generation and contracts with
65 suppliers of generation to Hydro, and they all have to be
66 accounted for in the system and will affect rates. The price
67 of fuel, I don't know where it's going.

68 MR. HUTCHINGS: And whoever puts the demand on the
69 system should be paying for those additional, just
70 additional generation ...

71 MR. WELLS: There is a fair way to allocate those costs
72 and those who think that they ... I see from my own
73 household perspective, I don't need any more than we've
74 got in the system to keep the lights on at my place, but if
75 you add extra capacity to serve new people that come into
76 the province, I'm going to have to pay the extra on my rate
77 as well. That's the way the thing works. Otherwise you
78 would have ended up with one 12 volt battery, one light
79 bulb, and we would never have expanded the system
80 beyond that because it was going to increase the cost to
81 the original guy who owned the light bulb.

82 MR. HUTCHINGS: Okay. You and I are not getting into
83 marginal cost price (inaudible) right now, Mr. Wells.
84 *(laughter)* Thank you, sir. Those are all the questions I
85 have.

86 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.

87 MR. HUTCHINGS: It might be a good time to take a break,
88 Mr. Chair.

89 MR. NOSEWORTHY, CHAIRMAN: Have you completed
90 your entire questioning?

91 MR. HUTCHINGS: I have.

92 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you
93 very much, Mr. Hutchings. We will take a break now until,
94 well, quarter after, and we'll return and the Consumer
95 Advocate will begin his questioning. Are you ready to
96 proceed? Thank you.

97 *(10:50 a.m.)*

98 *(break)*

1 MR. NOSEWORTHY, CHAIRMAN: Just before we begin,
2 just to deal with the cost of service, revised cost of service
3 study that was raised by Hydro this morning. We had a
4 short discussion on it, and certainly, I think, as conceded
5 by everybody, we feel that it would be most beneficial to
6 have that revised cost of service study. And we certainly
7 appreciate the efforts of Hydro in that regard. It's my
8 understanding that it will be using data up to August the
9 31st and it will be provided by October the 31st, the study
10 itself. And I think with a view to the schedule, I believe we
11 don't cover that part of the proceeding until the third week
12 in November so there should be a reasonable time period to
13 review the information, and hopefully that will be the case.
14 So I don't think there's anything further. We look forward
15 to receiving that.

16 MR. ALTEEN: Just as a point of clarification, Mr.
17 Chairman, I understand Ms. Greene has talked about cost
18 of service, I mean, that's entirely appropriate. However, in
19 addition to a cost of service, some indication of where
20 Hydro is on their costs in terms of the reconciliation of the
21 revenue requirement from where it is today, their forecasts
22 today for 2001, 2002 and where it's going would be helpful
23 also. Because cost of service studies tend to be a little bit
24 complex, perhaps overly complex when reviewing to help
25 progress on cost (inaudible). And something in the nature
26 of what's involved in (inaudible) Schedule, I believe it's
27 Schedule 1, which is just a list of their costs and where they
28 are against that, it might be helpful, also.

29 MR. NOSEWORTHY, CHAIRMAN: Comments, Ms.
30 Greene?

31 MS. GREEN, Q.C.: I don't have ... I had anticipated that we
32 would file something similar to that. And also, we will need
33 to indicate how the change ... if there are any changes in
34 anticipated balances in the RSP, as well, as a result of the
35 updated data. So when I said we would file supplementary
36 evidence to addresses the changes what we file will cover
37 those sorts of broad issues.

38 MR. NOSEWORTHY, CHAIRMAN: Okay. Any other
39 comments on this matter? Okay. Thank you, very much.
40 I'd ask Mr. Browne to begin his cross-examination, please,
41 at this time?

42 MR. BROWNE, Q.C.: Thank you, Mr. Chairperson. Mr.
43 Wells, just on a point where Mr. Hutchings left off, we were
44 having these discussions concerning the financial markets
45 of the world and the credit rating agencies and how Hydro
46 wants to move to, or hopes to move to, a Triple B rating at
47 some point. Have your own financial advisors told you
48 that if you get what you're looking for from this Board that
49 the government's guarantee can be removed?

50 MR. WELLS: No, they haven't. I don't recollect anybody
51 saying that the guarantee can't be removed. It wasn't

52 addressed. But their opinion with respect to what we're
53 proposing, if it were couched in that light, would be quite
54 different from what they're giving us, I'm sure. We are
55 assuming that the ... in our proposal, that the government
56 guarantee will continue.

57 MR. BROWNE, Q.C.: So even with what you're looking for
58 the government guarantee would continue?

59 MR. WELLS: We assume that it will, yes. There's been ...
60 have I answered the question?

61 MR. BROWNE, Q.C.: I think you have. Now, when the
62 financial markets look at Hydro they would look at Hydro,
63 the total picture of Hydro, would they not? They wouldn't
64 just look at what this Board is granting Hydro? Would
65 they not also look at what income or revenue Hydro is
66 receiving from other sources?

67 MR. WELLS: Usually their reports are presented with
68 respect to our consolidated statement.

69 MR. BROWNE, Q.C.: And your consolidated statement is
70 all inclusive?

71 MR. WELLS: Yeah. Except for you have to account ... you
72 have to get into the detail of that and account for things
73 that are flowing through, such as the unregulated sales and
74 the recall of power from Churchill Falls. That would not be
75 included in the issues related to the debt equity ratio.

76 MR. BROWNE, Q.C.: So the financial market wouldn't look
77 at that at all in terms of your overall financial structure, is
78 that what you're telling this Board, they wouldn't look at
79 what you're receiving through the Churchill Falls
80 Corporation?

81 MR. WELLS: Just to be sure that we're not getting off the
82 facts, when you look at the credit service ratings that are
83 filed and the debt equity ratios that they show, then they
84 are different than the debt equity ratios that we're showing
85 on our regulated income for the purposes of this hearing.
86 And Mr. Osmond would be exactly the witness you should
87 question on the detail of that.

88 MR. BROWNE, Q.C.: Okay. Maybe he can check it out
89 and be alert to it. Okay, thank you, very much, on those
90 points. I'll move to the Rate Stabilization Plan. Your
91 proposal, right now, is to allow the Rate Stabilization Plan,
92 according to your projections, to go to \$100 million and it's
93 projected to go to that December 31, 2002. What's your
94 plan from there once we reach December 31, 2002?

95 MR. WELLS: There's two elements to that. We have
96 suggested that we move the cap set by the Board for
97 Newfoundland Power's customers from 50 to 100 million.
98 The peak is, I think, you're including the amount related to
99 the industrial customers as well as you ...

- 1 MR. BROWNE, Q.C.: That's correct.
- 2 MR. WELLS: The cap would only apply ...
- 3 MR. BROWNE, Q.C.: We'll get to that.
- 4 MR. WELLS: ... as it ... yeah, well, that's my answer, then,
5 is that the Newfoundland Power would come up in the
6 order of 60 or 70 million. It wouldn't be close to the cap.
- 7 MR. BROWNE, Q.C.: Yes. The financial markets probably
8 wouldn't distinguish whether the amount was owed by
9 consumers or industrials, would they not? A debt is a
10 debt.
- 11 MR. WELLS: Well, they would, yes, they would
12 understand the amount that was in the ... they could, if they
13 wished, look at the amount that would be outstanding in
14 the Rate Stabilization Plan in total.
- 15 MR. BROWNE, Q.C.: But what's the plan here? You're
16 saying let it go to 100 million and then you're telling us,
17 then, it probably will go to 100 million December 31, 2002,
18 according to your forecasting.
- 19 MR. WELLS: The total ...
- 20 MR. BROWNE, Q.C.: Where do we go from here? Yeah,
21 the total, that's what you're telling us.
- 22 MR. WELLS: The total amount. Well, what we projected,
23 as filed in the pre-filed testimony and certainly in answers
24 to requests for information, that it's forecast that the price
25 of fuel will diminish, not dramatically, but it will diminish
26 looking forward into 2003, 2004. And we then have filed,
27 again, projections that we should be able to start to bring
28 the cap down ... or not the cap down, bring the amount
29 down. And I think that with respect to Newfoundland
30 Power that we're showing where we would be back under
31 \$50 million in the 2003 or ... I don't have it right in front of
32 me, but I know that we have filed, either in our evidence or
33 response to request for information, indications that we
34 could bring the balance outstanding to Newfoundland
35 Power, as well, and the industrial customers down and the
36 Newfoundland Power balance would be below \$50 million
37 in our projections.
- 38 MR. BROWNE, Q.C.: So it's a hope that by the time we get
39 to 2003 or 2004 that the price of oil will come down?
- 40 MR. WELLS: That was the forecast that we had when we
41 filed our application.
- 42 MR. BROWNE, Q.C.: But realistically, as you just stated in
43 your response to Mr. Hutchings, you stated the price of
44 fuel, I don't know where it's going. I gather you haven't
45 taken out any futures, have you, based on these
46 projections?
- 47 MR. WELLS: No, no. And that certainly has to be the
48 most truthful answer I've given on the stand. Nobody
49 knows where the price of oil is going. That's not to put into
50 question my other answers.
- 51 MR. BROWNE, Q.C.: And I think that is the ...
- 52 MR. WELLS: That one you have to believe.
- 53 MR. BROWNE, Q.C.: That's the correct answer.
- 54 MR. WELLS: I hope the Board understands that. But
55 nobody knows where the price of oil is going. It's all
56 speculation. And that doesn't give any of us, you know, a
57 great deal of comfort. But in terms, as we've filed and at the
58 time that we filed, with the best estimate that we had from
59 the people that give us advice, that while prices were up
60 substantially, they did expect that there'd be a softening in
61 prices. And generally it's thought that the OPEC countries,
62 certainly up to September the 11th, that everybody,
63 including the suppliers, would be better off if they could
64 keep the price of crude around \$25 U.S. a barrel, because
65 they get burnt when it gets to 35 and 40, and they don't
66 want it to go down to 15. So in the world that we had prior
67 to September the 11th, my understanding and reading of it
68 is that the oil would revolve around a \$25. Now, you look
69 at the history of OPEC and how they even manage to meet
70 their own commitments or thoughts, it's a bit erratic. But
71 we felt that that was a reasonable proposition, that we
72 could get the figures back down and give the credit back to
73 the customers without sort of ballooning on through \$100
74 million total debt.
- 75 MR. BROWNE, Q.C.: Say the forecasting is wrong, and
76 say it's wrong in the extreme and the price of oil takes off,
77 where will that leave us?
- 78 MR. WELLS: We will have a very, very difficult situation
79 to confront, because the ... based on even our hydrology,
80 depending on how that worked out, if oil were to
81 substantially increase there's nothing in the system that
82 could actually save us from that event. There would be
83 significant expenses incurred in the burning of fuel. And
84 when you've had the benefit of Mr. Anderson's testimony
85 and you've questioned him on it with respect to our
86 hydrology we have had some very, very good years in the
87 last five or six. So it may continue, but you can't count on
88 that, either.
- 89 MR. BROWNE, Q.C.: Now, when you are borrowing to pay
90 for Bunker C fuel I gather that there's interest charged on
91 that, that money that you would borrow to pay?
- 92 MR. WELLS: It would be reflected in the shorter term, in
93 our short-term debt and promissory notes that are
94 outstanding at any point in time.
- 95 MR. BROWNE, Q.C.: Now, are consumers required to pay
96 that interest?

1 MR. WELLS: Yes.

2 MR. BROWNE, Q.C.: So now you're telling consumers to
3 remove the cap from 50 million on debt that they will owe
4 and increase the debt to 100 million, so they're paying
5 interest to 50 million, now they're going to pay interest to
6 100 million. Where are we headed with this?

7 MR. WELLS: There is no figure that we file that it's exactly
8 100 million, but I take your point that it's a significantly
9 high number. But that is the way, in terms of our operating
10 requirements and our working capital, these costs, to the
11 extent that we have outstanding debt which we can cover
12 up to 300 million on short-term borrowings, but that's all
13 Hydro's activity. And sometimes it's very much to our
14 advantage to go short and then after we exceed it we'll
15 issue another debenture. But ...

16 MR. BROWNE, Q.C.: Given the ...

17 MR. WELLS: ... it's just another part of Hydro's costs of
18 service, the cost of operating Hydro, that whatever is
19 outstanding at the time that we're paying interest on, that
20 reflects on the consumers. There are costs which
21 eventually get into the rate base, yes.

22 MR. BROWNE, Q.C.: But shouldn't the consumer be given
23 an option to pay as he goes, to pay for that oil that you're
24 burning without having interest tagged onto it? Shouldn't
25 a consumer be able to pay for the oil that you're burning as
26 he goes, if he wanted that option?

27 MR. WELLS: Well, I mean, what ... your proposition is
28 quite arguable, I mean some consumers may want that.
29 From what I know of it, back when the Rate Stabilization
30 Plan was put into effect consumers apparently were
31 prepared to take some portion of interest costs if they did
32 not have to pay immediately their price of fuel. Because the
33 big complaint was that they had this huge ballooning bill in
34 January, February, at the time of the greatest consumption
35 of electricity. So they didn't want that, they wanted
36 something to take away this lump in their lives, of cost, and
37 the Rate Stabilization Plan, in part, addresses that.

38 MR. BROWNE, Q.C.: Yes. And ...

39 MR. WELLS: But, I mean, that's not reflective of any
40 particular opinion, it's just the way the thing advanced. If
41 consumers said we want to be charged for what it's actually
42 costing us now for fuel, if that's what they want, I mean,
43 there's no detriment to Hydro from all of that. It would
44 actually improve our position.

45 MR. BROWNE, Q.C.: It would improve your position?

46 MR. WELLS: Well, we would have ... we would be subject
47 to less risk. Any time you have an outstanding debt you
48 still haven't got your money in, have you?

49 MR. BROWNE, Q.C.: So let me get this right. It could
50 improve some of the position of some consumers, those
51 who want to pay as they go, and it could improve your
52 position?

53 MR. WELLS: Well, only to the extent ... I mean, we can live
54 with what we have now. But all I'm saying is that would ...
55 I'm trying to get across the point that if anybody decided
56 that Hydro should pay and collect on the basis of the
57 expenses as they come in, then that is not prejudicial to
58 Hydro, per se. I mean, we would have no reason to argue
59 against that. What we have tried to advocate, not argue
60 about, is trying to reduce the impact on the consumers, you
61 know, by increasing the cap on the Rate Stabilization Plan
62 by trying to crawl over this hump. But, to the extent that
63 we defer the payment of the costs or collect the revenue to
64 pay those costs, then we're accumulating interest on the
65 outstanding amounts.

66 MR. BROWNE, Q.C.: Now, to your knowledge, are
67 consumers informed that fuel price increases will be passed
68 on to them after a delay and that they will have to finance
69 the interest charges associated with that delay?

70 MR. WELLS: I'm not aware of anybody issuing a bulletin
71 or making statements publicly to that effect. And you
72 know, an informed consumer who understands even the
73 rudiments of the Rate Stabilization Plan would understand
74 that and, you know, to some extent.

75 MR. BROWNE, Q.C.: Someone who understands the Rate
76 Stabilization Plan?

77 MR. WELLS: I said there were a limited number that
78 actually did understand it fully. No, but I say, with some of
79 the rudiments, you know, that the rate stabilization plan is
80 deferring the costs and then you pick it up on your rolling
81 three year average. And consumers, since 1985, have been
82 getting these adjustments in their bills in July 1 of each
83 year. Now, whether they attribute that to the whole scheme
84 of things, I doubt very much that the average consumer ...
85 any, you know, what can I say in answer to your question?
86 Some understand this, some don't.

87 MR. BROWNE, Q.C.: But you make no effort to explain to
88 end users the effects of the Rate Stabilization Plan in terms
89 of the cost of fuel and the interest charges that would
90 apply because you are borrowing to pay for Bunker C?

91 MR. WELLS: No, not in that narrow band. Nor do we make
92 ... to be fair, we don't make any representation to
93 consumers about our embedded cost of debt or how we're
94 doing on our short-term borrowings, you know, month to
95 month. We've never issued ...

96 MR. BROWNE, Q.C.: But in answer to my question, the
97 answer is no?

1 MR. WELLS: No, no, absolutely no.

2 MR. BROWNE, Q.C.: Okay.

3 MR. WELLS: No, definitely we have not.

4 MR. BROWNE, Q.C.: Now, many people heat their homes
5 and businesses with oil fired furnaces and people, from
6 time-to-time, compare alternative ways of obtaining space
7 heating. I'm just wondering your views on this, is it good
8 public policy for a Rate Stabilization Plan to apply to
9 electricity prices when furnace oil is in competition with
10 electric space heating, is this really an even playing field?

11 MR. WELLS: Well, it's very difficult to say what public
12 policy should be. From my perspective, since you've asked
13 it, is that people may not appreciate the factors that go into
14 the cost of the electrical service that they are getting, and
15 they may not appreciate the importance that the thermo
16 plant plays in the electricity that we get on the island, and
17 that this plant operates on a fuel that goes up and down
18 with world oil prices on fuel. I don't think that that is very
19 clear in the minds of consumers. So, at various times they
20 could think that certainly a lesser capital cost in a new
21 home to have electric heat in terms of the outlay and they
22 might think that this is the better bargain, and it may not be,
23 depending on the ebb and flow. But these things, at one
24 time it would be; at another time prices go up, it's not so
25 good. But there is not that awareness out there amongst
26 the public of all the factors that go into the cost of
27 electricity or the cost/benefits that may be there.

28 MR. BROWNE, Q.C.: So you would grant me that a person
29 living alone on a modest income and vigilant in turning off
30 lights and reducing heat and into time honoured
31 conservation measures, a senior citizen, we'll say, pays the
32 bill monthly, but she may be totally unaware of the
33 predicament that's coming her way because of the Rate
34 Stabilization Plan, she might be getting another bill. Is that
35 a fair comment?

36 MR. WELLS: Yes.

37 MR. BROWNE, Q.C.: And that same person lives next door
38 to a crowd of young fellows renting a house, and the doors
39 and windows are opened all the time in mid winter and
40 they're not conscientious of conservation, and they pay
41 their monthly electric bill, live in the house for a year, but
42 then move to Ontario upon graduation. They're gone from
43 the system. Now, who will pay their share of the Rate
44 Stabilization Plan?

45 MR. WELLS: Whoever is left.

46 MR. BROWNE, Q.C.: So the lady next door, who is
47 conserving, is going to pay their share, as well, her share
48 and their share?

49 MR. WELLS: Well, we're now into a hypothetical world,

50 and in that world ...

51 MR. BROWNE, Q.C.: No, isn't this the fact. How
52 hypothetical is it, isn't it factual?

53 MR. WELLS: Well, these possibilities ... no, the example
54 you describe could occur.

55 MR. BROWNE, Q.C.: People leave the province all the
56 time.

57 MR. WELLS: Yes. And some come in. But, you know,
58 there's no doubt, what you describe could happen, yes.

59 MR. BROWNE, Q.C.: But even for those who are coming
60 in, if they decide to heat their homes with electricity, are
61 they aware that there's a debt owing because of previous
62 consumers who purchase electricity and the share of the
63 Rate Stabilization Plan that will be owing, are they being
64 told that coming in and heating your home with electricity,
65 there might be a bill coming your way for someone else
66 who has used the electricity?

67 MR. WELLS: No. There's no science to that effect
68 anywhere. And generally, no, this is never adverted to ...
69 I mean, it's not discussed.

70 MR. BROWNE, Q.C.: Yeah. So there is a dilemma there,
71 isn't it, from the Rate Stabilization Plan and it can hardly be
72 described as fear?

73 MR. WELLS: The only question, I think, for us, in this
74 proceeding, and for the Board, when you look at the Rate
75 Stabilization Plan it's ... go back to Jeremy Bentham
76 (phonetic), "The Principals of Utility, The Greatest Good for
77 the Greatest Number." How else do you decide in a society
78 how things are going to work, and if the benefits of the
79 Rate Stabilization Plan outweigh the deficits of the Rate
80 Stabilization Plan in the democracy? You take your choices.
81 You know, I mean, because the questions you raise are
82 quite pertinent, but I don't have any help on the answer.

83 MR. BROWNE, Q.C.: Yes. But for the person I mentioned,
84 the person that's out there, and I'm sure there are people
85 like it, the person on modest means it's difficult to answer
86 here, get her response based on a philosophical
87 discussion. She has to pay the piper?

88 MR. WELLS: It's very immediate to the individual.

89 MR. BROWNE, Q.C.: Very immediate. Now, if an industrial
90 customer goes out of business, and we know your
91 industrial customers is limited, but say there is a downturn
92 in the newsprint industry and they go off stream, never
93 come back on, and they owe money into the Rate
94 Stabilization Plan, who'll pay for that, the other industrials
95 or the rest of the consumers?

96 MR. WELLS: If the industrial customer that was going out
97 of a business did not pay off its proportion of the balance

1 under the plan, as we know it, the other customers would
2 be responsible.

3 MR. BROWNE, Q.C.: Including the consumers as opposed
4 ...

5 MR. WELLS: No. The industrial customers as a class
6 would be responsible.

7 MR. BROWNE, Q.C.: As a class?

8 MR. WELLS: Yes.

9 MR. BROWNE, Q.C.: But the other industrials would have
10 to pay it off?

11 MR. WELLS: Yes.

12 MR. BROWNE, Q.C.: Is that fair?

13 MR. WELLS: Again, the way this was set up as a
14 deferment to the classes, like, Newfoundland Power and
15 Newfoundland Power's customers were one class in the
16 Rate Stabilization Plan. In the industrial customers it was
17 the same principals that were applied, to my understanding,
18 and that if one left the rest would still have that as a class,
19 that balance to deal with, which would be a significant
20 consternation, I realize. If it were to be other than that,
21 though, that they weren't responsible, then all we have is
22 a time payment plan for individual industrial customers. So
23 that doesn't ... that's not the concept under which the Rate
24 Stabilization Plan came in. If we said they weren't
25 responsible for the other customers' debt, then what we're
26 saying to four individual customers, you don't have to pay
27 us now, you can pay us later. It's an individual time
28 payment plan, and it wouldn't be related to what we seem
29 to have regarded it as a customer class. So individual
30 customers within Newfoundland Power come and go, the
31 issue of allocating their cost in the Rate Stabilization Plan is
32 not dealt with. And to the best of my knowledge, that's
33 how this was proposed or this system has worked, or has
34 been intended to work.

35 MR. BROWNE, Q.C.: Yes, intended to work. But now that
36 we're into these figures of 50 to 100 million dollars and
37 rising, conceivably, it's not working, is it, it's not working
38 for the examples I gave you?

39 MR. WELLS: No, it wouldn't be working. Well, the issue
40 is if you were going to defer a certain amount because of
41 the price of oil and the Rate Stabilization Plan, theoretically,
42 what you want is the price of oil, the actual price to vary,
43 sometimes to be under and sometimes to be over what's in
44 the rates. And then, at various times, we'll owe the
45 customer and then the customer will owe us and it all
46 comes out in the wash and you have a very smooth
47 handling of the variations in the fuel price. The problem is
48 at \$12.50 a barrel we never have the pendulum swinging ...
49 it swung once under it, you know. But if we had a ...

50 theoretically, again, in a Rate Stabilization Plan let's assume
51 the price of oil is going to vary between \$15 and \$25 a
52 barrel, we know that, and our rates were set at 20. Then the
53 Rate Stabilization Plan, in terms of consumers and in the
54 industry everything would work perfectly because the
55 adjustment would never be great, you know, everything
56 would be in balance.

57 MR. BROWNE, Q.C.: It wouldn't be in balance. I take
58 exception to that comment. It wouldn't work perfectly for
59 the person who's left the province without paying their
60 share of the Rate Stabilization Plan and for the person left
61 with a bill. That's still conceivable under the system that
62 you have there.

63 MR. WELLS: Oh, definitely. But that ...

64 MR. BROWNE, Q.C.: So one consumer is paying another
65 consumer's bill?

66 MR. WELLS: Yes, yes.

67 MR. BROWNE, Q.C.: Mr. Wells ...

68 MR. WELLS: But that's like if you say that, I mean, I don't
69 want to be pedantic about this, but God forbid I should die
70 tomorrow, but then I haven't paid my share of the
71 outstanding debt in Canada, you know. My personal debt
72 is ... I don't know how the Board or anybody designing rate
73 systems can get down to the individual nature of some
74 customer, you know, who, as you say, would for means of
75 necessity would conserve and is paying, again, a portion
76 for somebody else who's not doing that.

77 MR. BROWNE, Q.C.: But if they were advised of the
78 predicament, if Hydro sent an alert out there that there's a
79 difficulty coming up, people could at least attempt to
80 conserve. Wouldn't you grant me that?

81 MR. WELLS: Yes, they could, yes.

82 MR. BROWNE, Q.C.: Because the City of St. John's over
83 the summer, they didn't wait for Windsor Lake to go dry,
84 they sent out an advisory telling you not to water your
85 lawns and to begin conservation. Shouldn't the same
86 principal apply to Hydro, in this particular circumstance,
87 where we are in uncertain times where the Rate Stabilization
88 Plan is reaching its cap and where you are projecting the
89 Rate Stabilization Plan to reach the \$100 million mark, isn't
90 there time to take action, isn't this the time?

91 MR. WELLS: We would be advising the Board on a
92 quarterly basis, just the whole procedure, we meet with the
93 Board on a quarterly ... file a quarterly report, copies of
94 which, say, would go to Newfoundland Power, I'm sure of
95 that. I'm not sure about our industrial customers. So that
96 I think that the industrial customers, who are fairly
97 sophisticated businesses, and Newfoundland Power, are
98 aware of what's going on in the Rate Stabilization Plan.

1 They're aware of the balances outstanding, and they're very
2 much aware of the effect that it will have on them. And in
3 the case of Newfoundland Power and their customers,
4 Newfoundland Power, on occasion, sends out a note in
5 their bills to customers advising them of adjustments in the
6 price. They don't give out long term forecasts, but they
7 certainly say what the adjustment will be in the July bill.

8 MR. BROWNE, Q.C.: And that's fair enough ...

9 MR. WELLS: We all receive those, yeah.

10 MR. BROWNE, Q.C.: And we have received those, and
11 they are to be acknowledged. But given this situation that
12 I put to you, \$50 million to \$100 million and not knowing
13 where it is to go, isn't it time, now, for the alert to go out
14 there to advise consumers that we are coming into
15 uncertain times and to commence conserving?

16 MR. WELLS: Yes. The other thing I should say, though,
17 that this proposal with respect to the removal of the \$50
18 million cap is nothing more than that at the moment, it's a
19 proposal to the Board which may or may not be accepted.
20 And to follow your line, the best that we could put out
21 today and to whom, I mean, with public notice, that we
22 expect that we will be expending more on the price of fuel
23 to service the electrical requirement and this is going to
24 impact on your bills but we're not sure how, yet, or when,
25 because it ...

26 MR. BROWNE, Q.C.: But what's the down side of it to
27 suggest to people to commence conserving, is there any
28 down side to that for you or for your company?

29 MR. WELLS: No, no, no, not really.

30 MR. BROWNE, Q.C.: Now, we can understand there may
31 be a down side if people are choosing between different
32 forms of heat and it mightn't be in the utility's interest,
33 perhaps, to advise consumers that electric heat may rise
34 dramatically as a result of the situation we're in. Is that
35 possible? You grant me that, it mightn't be in their interest
36 to advise?

37 MR. WELLS: Yeah, it wouldn't effect us so much in our
38 areas of distribution. It might effect Newfoundland Power.

39 MR. BROWNE, Q.C.: Sure it would.

40 MR. WELLS: Yes.

41 MR. BROWNE, Q.C.: In the organization, in your
42 organization, is there a committee which deals specifically
43 with issues pertaining to conservation?

44 MR. WELLS: Like an executive committee, you mean?

45 MR. BROWNE, Q.C.: Any committee?

46 MR. WELLS: No. There are, within our Customer Services
47 Department, people that are involved with issues of

48 conservation and work with outside agencies in our service
49 territories at distribution levels, yes. But Customer
50 Services comes under Mr. Osmond. They may have a
51 committee, but I'm not aware of a ... I am aware of
52 individuals who are involved in the corporation dealing
53 with outside agencies on the matters of conservation and
54 we filed, I think ...

55 MR. BROWNE, Q.C.: It has not come to your attention that
56 there is a committee?

57 MR. WELLS: Oh, no, as I say, I'm aware of it, but you
58 asked me did we have a committee, like some sort of
59 standing committee on conservation, and we don't.

60 MR. BROWNE, Q.C.: And you don't. And what you do
61 have is what? You're attempting to tell me what you do
62 have out there in terms of conservation.

63 MR. WELLS: We have, and it's noted in our last annual
64 report, I think it's noted somewhere in the responses or in
65 our pre-filed testimony about working on conservation of
66 domestic bills in our service area. And we outline the
67 activity that is taking place.

68 MR. BROWNE, Q.C.: Maybe if we went to some of those
69 responses. **CA-126**, please? Can you put that on? **CA-**
70 **127**, just go to 127 for a moment. And I asked the question
71 in then **CA-127**, "Has Hydro considered advertising
72 campaigns or other measures aimed at MPN users, the
73 largest group of consumers, to encourage them to conserve
74 energy?" And the answer is "No, Hydro has not
75 undertaken any advertising campaigns or other measures
76 aimed specifically at MPN users to encourage them to
77 conserve energy."

78 MR. WELLS: No, that's correct.

79 MR. BROWNE, Q.C.: Is that correct?

80 MR. WELLS: Yes, definitely correct. I'm talking about
81 amongst the 35,000 customers, retail, that we have. And we
82 haven't ... you know, in the Northern Peninsula in Labrador
83 in the ice, you know, that's where we've undertaken some
84 work with retail customers of Hydro. But we have not made
85 any communication and, quite frankly, never, ever
86 contemplated a direct communication with Newfoundland
87 Power's customers.

88 MR. BROWNE, Q.C.: Now, given the fact that this hearing
89 is to go on until December, that's the forecast, and the
90 result of the hearing we may have until ... to wait until
91 February or March, we're well into another winter.
92 Wouldn't it be prudent to convene a committee now to alert
93 consumers as to the dilemma which is facing consumers
94 and to focus on conservation and to commence an
95 advertising campaign urging consumers to conserve?
96 Would that not be prudent or appropriate in this

1 circumstance? What's your view on that?

2 MR. WELLS: No, no, it could be. It's, well ... these are
3 appropriate things to be ... it's like motherhood, I can't
4 knock motherhood. So what you're saying, you know, I'd
5 kind of look silly to say no, that wouldn't be of help to tell
6 people what's going on with respect to ...

7 MR. BROWNE, Q.C.: It's common sense, isn't it?

8 MR. WELLS: It could be done.

9 MR. BROWNE, Q.C.: People should know?

10 MR. WELLS: People should be aware of that fact. I think
11 that one of the issues within the province, it may be
12 something like this hearing would help us to understand
13 the nature of the electrical services in the province and how
14 it's supplied and where it comes from and what's involved
15 in it all. It's not in the Hydro culture, really, to be out doing
16 much in terms of public ... we have very ... I mean, we don't
17 ... you don't see us with any great advertisements or series
18 of things out there. It's not been part of Hydro. And, you
19 know, that ...

20 MR. BROWNE, Q.C.: No, we noticed that. But yet, that's
21 not saying that there may not be a duty on your part right
22 now, because the Rate Stabilization Plan is within your
23 bailiwick?

24 MR. WELLS: Yes. And what we have done is when we
25 filed, and there's some publicity with respect to the filing of
26 a rate application by Hydro and when we filed in May we
27 said what the effect would be on consumers of what we
28 were proposing at retail would be 3.7 percent. I suspect
29 that most consumers, 3.7 percent, nobody wants an
30 increase in electricity rates, funny about that. But the ...

31 MR. BROWNE, Q.C.: No, and ...

32 MR. WELLS: You know, they would have taken that as not
33 too bad after ten years. And then, of course, the news
34 came, well, you're still going to get another, what is it, three
35 ...

36 MR. BROWNE, Q.C.: 3.4. I think it's 7.1 all in.

37 MR. WELLS: 3.7. 3.4 in next July because of the effect of
38 the Rate Stabilization Plan for a total rate increase of 7.1
39 percent. And I think that if that wasn't clear to the
40 Newfoundland Power it certainly made it clear to them that
41 they were looking at a 7.1 percent increase. And there
42 wasn't a great huge public outcry with respect to that.
43 Some communities and industrial customers commented on
44 it, but there wasn't, you know, a huge outcry. I'm not ...
45 that's not to counter any of the propositions that you've
46 advanced. But ...

47 MR. BROWNE, Q.C.: No, and I'll grant you there wasn't a
48 public outcry. But I don't believe that consumers know the

49 full story, wouldn't you allow me that? They don't know
50 the dilemma which may be approaching?

51 MR. WELLS: No. We did a survey ... well, I shouldn't ...
52 we were trying to, well what are the attitudes, you know, of
53 people out there. And people in Newfoundland don't
54 distinguish, I mean, they really don't know, I surmise, you
55 know, the role that Newfoundland and Labrador Hydro
56 plays in the industry compared to that of Newfoundland
57 Power. They confuse the two utilities in many respects in
58 some areas. In areas where we are the sole operator, then,
59 of course, they can see that. In Labrador there's no doubt
60 that Hydro is ... and if you're in the community of St.
61 Anthony all you ever see is the Hydro truck. But in St.
62 John's and areas and central Newfoundland or Corner
63 Brook, throughout, I would say that people really don't, a
64 lot of the people really don't know what Newfoundland
65 Power's role is or what Newfoundland Hydro's role is and
66 all that sort of stuff. People don't spend much time to do
67 that. They probably couldn't name five cabinet members in
68 Newfoundland, as well, if you look at it that way, you
69 know.

70 MR. BROWNE, Q.C.: But you will ... you were agreeing
71 with me a moment ago that it may be timely to convene a
72 meeting to focus on conservation, did you not state that,
73 that it may be timely?

74 MR. WELLS: Well, yes, there are issues here with respect
75 to the use of electrical services on the island that we do not
76 forecast that rates are going to subside. There's every
77 indication that the rates will increase. Now, whether they
78 increase beyond what we would normally expect in terms of
79 inflation and the normal things that effect the cost of living
80 is another factor. We've gone, basically, ten years without
81 having a rate increase to Hydro and the difference that was
82 absorbed in the Rate Stabilization Plan over these ten years
83 is well below the rate of inflation. So, the ...

84 MR. BROWNE, Q.C.: Mr. Wells, all that aside.

85 MR. WELLS: You'd have to look at it over a continuum,
86 wouldn't you?

87 MR. BROWNE, Q.C.: You're a lawyer, I'm a lawyer. I'm
88 looking for a commitment from you here. Are you going to
89 commit to convene a meeting over the next couple of
90 weeks, probably with your counterpart, Newfoundland
91 Power, to advise consumers that we are going into difficult
92 times, that there are going to be increases and it may be
93 time to start conserving, are you going to commit to that
94 here today?

95 MR. WELLS: I'll consider your question, but I will make no
96 commitment today. I mean, if we get ... I don't know what
97 reaction ... I'd have to think about it in terms of the
98 management of Hydro, the Board of Hydro, where we want

1 to go with this, discuss it with Newfoundland Power, where
2 do they want to go and their Board and whether we should
3 undertake a public campaign together now, as you've
4 suggested. It's a bit much to ask me here this morning, at
5 this hour, to say I give you my commitment. But I've
6 certainly heard your remarks as well as the others in the
7 room.

8 MR. BROWNE, Q.C.: Would it be reasonable, and I'm
9 prepared to be reasonable in reference to it, I grant it I have
10 you there on the stand and you'd like to consult, to get
11 back to us on it and to advise as to where you are on it
12 sometime over, say, the next two week period, that you
13 would undertake to do that and advise the Board and
14 advise consumers, generally, as to where you are in
15 reference to forming a committee to deal with conservation
16 and the promotion of conservation issues, would that be an
17 unreasonable request to make of you now?

18 MR. WELLS: Well, I will review the issue that you have
19 raised internally and externally in the area that you've
20 talked about and talk to you again within a couple of
21 weeks. Look, I hear the proposition and the efficacy of it
22 and whether it ... what we should be saying. One thing you
23 don't want to do is mislead or confuse consumers about
24 things. And we're right in the middle of a rate hearing. You
25 know, all these things are in the back of my mind at this
26 moment. And outside of this room and off the stand I can
27 tell you that we will consider what you have said and report
28 back, because the Board has been listening in to what
29 you've been asking me.

30 MR. BROWNE, Q.C.: Mr. Wells, I'm just a little baffled as
31 to why you would give a half commitment here. It would
32 seem to me, given your problems, that you should do that
33 as an obligation. You're the President of the Corporation.
34 Someone has to start in terms of conservation. Why isn't
35 conservation a priority here?

36 MR. WELLS: Conservation is a ... what you're saying is
37 intuitively logical, but the going about of it and mounting
38 a campaign, I have already said to you that we had not ...
39 that was obviously not in our mind to do that at this time.
40 We have not taken any direct notices out to customers of
41 the Newfoundland Power, for argument sake, we've never
42 approached them directly. We would only do that through
43 Newfoundland Power. Our objective, our focus for the
44 moment, within the Corporation, is to deal with the issues
45 related to his hearing and everything that's gone into it. It's
46 a pretty time consuming exercise. And the overall issue of
47 consumption in terms of a great campaign out to the people
48 of Newfoundland we have not undertaken. Now that
49 you've raised it, and you're sort of challenging us to the
50 issue, the best I could say today, to be reasonable, is that
51 we've heard it, and the commitment I can make on behalf of
52 me is that this will certainly be discussed within Hydro and

53 we will discuss it with the other utility. How we go about
54 this, how we plan it, could it be effective, what are the
55 means available to us, it has to make some sense to people
56 and some planning to it. And, to be honest, as I always am,
57 that was not on our mind ten minutes ago. So we will ...

58 MR. BROWNE, Q.C.: Well, I find that a little bit
59 frightening. But anyway. I think it should have been to the
60 forefront, because you're into a fuel problem and you
61 should be urging people to conserve, because if people
62 started conserving I think the proposition would be you
63 would buy less fuel. Isn't that correct?

64 MR. WELLS: The end result, while conservation is ... and
65 people could, you know, turn down the thermostat at night
66 if they have electric heat and turn off lights, wear an extra
67 sweater, I mean, these types of messages keep going out to
68 consumers all the time. But a massive campaign, like you
69 seem to be suggesting, to have a really appreciable impact
70 on the system and how many barrels of fuel we would save,
71 I don't know. And look, we've ... I've heard what you've
72 said and we will respond to that suggestion by the
73 Consumer Advocate.

74 MR. BROWNE, Q.C.: Okay. Thank you, Mr. Wells.
75 Would Hydro's customers, particularly the end users
76 benefit from a wholesale (inaudible) that varied by time of
77 day? I'm talking about innovative rates. Is it possible
78 consumers could benefit through the implementation of
79 innovative rates, time of use rates?

80 MR. WELLS: In theory, yes, there's much ... as I think you
81 made the statement the day before yesterday about, you
82 know, time of use rates are in vogue elsewhere. One of the
83 things, and I'm not the expert on this, by any means, but I
84 have been cautioned ...

85 MR. BROWNE, Q.C.: Well, if you want to defer, that's fair.

86 MR. WELLS: No, no. But I have been cautioned by, you
87 know, people in our own organization that in the system
88 that we operate the time of use rates would be of very little
89 benefit. The most you might achieve is transferring costs
90 from one consumer to another. But our basic costs are
91 generally there. And take electric heat, for instance, you
92 turn it down at night, but everybody should turn it down at
93 night. We're all under the same time zone on the island,
94 and therefore, I'm not going to heat my house with electric
95 heat between the hours of six and eight if you're going to
96 do it between ten and twelve, that won't work. And I think
97 that if you ask people more conversant with the subject
98 that we could waste a lot of money trying to do time of use
99 studies and demand side management and the end result
100 would be, just because of our system, would be very little.
101 We're an enclosed system on the island and we can't share
102 with other jurisdictions and move things around. And I'm
103 not saying ... I mean, they've been proven to be effective

1 elsewhere and they're obviously used. But I suspect ...

2 MR. BROWNE, Q.C.: Well, if they're ...

3 MR. WELLS: I suspect ...

4 MR. BROWNE, Q.C.: ... proven elsewhere why not here?

5 MR. WELLS: No, because our system is a bit different.
6 You have to look at the system and where it could work
7 and what classes of customers could take advantage of it.
8 You know, you can dry your clothes between the hours of
9 two and three a.m. if you've got an automatic dryer, willing
10 to get up at ... you know, my understanding, and I'll end it
11 there and you can ask others who appear for Hydro if they
12 can be of more help. But my understanding is that we have
13 very limited opportunities on the island portion of this
14 province with time of use rates.

15 MR. BROWNE, Q.C.: Who would be the expert to speak to
16 that from the list of witnesses, who are you offering up to
17 us?

18 MR. WELLS: I think they're down there trying to draw
19 straws now. Mr. Budgell might be. He's one of our
20 perennial favourites for esoteric questions. No, seriously,
21 I think that it's correct of you to raise it, and everything
22 you've said in your opening statement about time of use
23 rates. I think the reason you haven't seen it when human
24 beings don't react like other human beings, there's usually
25 a reason for it. And maybe within Newfoundland Power
26 and in our situation, because they are, by far, the larger
27 distributor where it would be more meaningful than our
28 customers and our isolated system. I mean, in (inaudible)
29 time of use systems rates are not going to ... you know, the
30 diesel system is not the issue. The reason that it hasn't
31 achieved the notoriety in the jurisdiction on the Island of
32 Newfoundland, I think, is because of the nature of the
33 system. And you can explore it, but there have to be other
34 solutions to our problem than time of use rates.

35 MR. BROWNE, Q.C.: Is it not true to say that if there were
36 implemented rates based on other than pure energy charge,
37 based on demand and consumers had that particular option
38 that you would see some volatility in your own earnings,
39 they wouldn't be the smooth ... they wouldn't operate as
40 smoothly as they do now? Granted that you'll have to end
41 up, the end result will have to be the same if you're given a
42 rate of return, but there would be peaks and valleys in your
43 own earnings. Is that not true to say?

44 MR. WELLS: Because of demand?

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

46 MR. WELLS: I don't think so. But I think, you know,
47 again, I don't really understand what you ... we have
48 demand charges for classes of customers now, if you're at
49 retail, you know, as would Newfoundland Power. How are

50 you ... how would you want this to work?

51 MR. BROWNE, Q.C.: Well, I made reference to it in my
52 opening statement. There's a letter from the counsel at
53 Newfoundland Power to the counsel at Newfoundland
54 Hydro. I forget the exact exhibit for it because I wasn't
55 planning to refer to it at this time. But they seem to make
56 reference to the fact that they want it business as usual,
57 comfortable pew, because ...

58 MR. WELLS: Oh, that's between ...

59 MR. BROWNE, Q.C.: ... relate to volatility in earnings.

60 MR. WELLS: No, whether Newfoundland Power should
61 have demand charge from Hydro?

62 MR. BROWNE, Q.C.: Yes. Because it would have to come
63 through you, initially, it has to come down through the
64 system?

65 MR. WELLS: No, we don't have to have a demand charge
66 with Newfoundland Power for Newfoundland Power to
67 have demand charges within its system. And those
68 demand charges within its system would send the pricing
69 signals to the consumer, that's the theory. Us sending
70 pricing signals to Newfoundland Power is really ... I mean,
71 Newfoundland Power, as a utility, and we, their major
72 supplier, and they knowing the system, they should know
73 what the ... you know, why would we have to send them
74 signals on the use of power?

75 MR. BROWNE, Q.C.: So they could implement it on their
76 own, time of use rates, is that what you're telling this Board,
77 Newfoundland Power could?

78 MR. WELLS: But I think ... no, but they can do that
79 without ... the issue of the demand charge with
80 Newfoundland Power and the issue of sending signals to
81 consumers as to whether they should have this or have
82 that, you don't have to have the one to have the other.
83 They're not necessarily connected.

84 MR. BROWNE, Q.C.: Because I thought we had been told
85 in the past ...

86 MR. WELLS: Now, in the ...

87 MR. BROWNE, Q.C.: ... they are connected and you have
88 to have the one to have the other, that Hydro has to be
89 involved in this. I stand to be corrected, but I ...

90 MR. WELLS: And well now you got me worried that I
91 might be wrong. And again, the evidence will come out.
92 But I don't think that that's the case if you're talking about
93 the ... at least that's my understanding. And again, you'll
94 have an opportunity to ... if I'm wrong on the electrical side
95 of it, then there are others who'll put it right.

96 MR. BROWNE, Q.C.: We'll wait for Mr. Budgell, see what

1 he has to offer. Thank you on that topic. Can you move to
2 **CA-116** and can you tell us in reference to your expansion
3 options what the future holds?

4 MR. WELLS: Yes, well ...

5 MR. BROWNE, Q.C.: It's down towards the end. I
6 understand that you're working on Granite Canal?

7 MR. WELLS: Yes. Our systems planning had forecast
8 deficits in energy and capacity, which would have to be
9 addressed, at least by 2003 and in 2004. And the
10 government has approved that we proceed with the Granite
11 Canal development, which is a 42 megawatt development,
12 slightly over 200 ... well the figures are there, gigawatt
13 hours. And we hope to bring it in service in 2003.

14 MR. BROWNE, Q.C.: And what relief will that provide?

15 MR. WELLS: Well, that will be, in part, a response to the
16 requirement for capacity and for energy that the system
17 requires. And Mr. Budgell will be outlining in total detail,
18 because he is the director of systems planning, our
19 forecasted deficits in capacity and in energy and how we
20 propose to meet them in the next round, which is Granite
21 Canal and two contracts, one with Corner Brook Pulp and
22 Paper and one with Abitibi Consolidated in Grand Falls.

23 MR. BROWNE, Q.C.: In Island Pond, that's on page 11 of
24 that exhibit, I think, Mr. O'Rielly.

25 MR. O'RIELLY: That's unavailable.

26 MR. BROWNE, Q.C.: That's an exhibit attached to that.
27 Okay, it's unavailable. Island Pond, that's another ...

28 MR. WELLS: Yeah. We have two developments that make
29 some sense ... or not make some sense. It makes sense in
30 further taking advantage of the Bay d'Espoir system as it
31 now exists. The best was Granite Canal. And Island Pond
32 is a more expensive electricity than Granite Canal, that's
33 why we were promoting Granite Canal. And Island Pond,
34 in the absence of something else over time would seem to
35 be a development that will fit in the system. Our options
36 are relatively limited in terms of the total of the island.
37 There's nothing, with the exception of the Beaton Unit
38 (phonetic) which is a major part of ACI's, the agreement we
39 have to produce from there, it's a very effective Hydro
40 power source. Granite Canal. Island Pond, again, is more
41 expensive. After that there are very small developments
42 that don't supply, you know, a significant amount of
43 energy, and all of which are more costly. We are unlikely
44 to tap any hydraulic resources, you know, like on the
45 Humber River or the Terra Nova, you know, the Gander.
46 And then there's a moratorium right now, by government,
47 on small Hydro developments. So ...

48 MR. BROWNE, Q.C.: So save for Granite Canal and Island
49 Pond you're into thermal, is that ...

50 MR. WELLS: After that Hydro's, in terms of our own
51 options, it's expand Holyrood, that type ... and Mr. Budgell,
52 again, has spelt out the options that we have. But, we
53 don't have any further cost effective Hydro development
54 within our system, and cost effective relative to options is
55 you got to consider that, other than Granite Canal and
56 Island Pond.

57 MR. BROWNE, Q.C.: What about the Labrador option, is
58 that pursued or being discussed?

59 MR. WELLS: Well, in terms of effecting the island?

60 MR. BROWNE, Q.C.: Yes, in terms of bringing the line ...

61 MR. WELLS: Yes. Well, the first issue there would be is
62 there a new source of generation in Labrador, because we
63 can't do anything from the current Churchill Falls facility,
64 you know, to bring it back to the island. So the first issue
65 would be is there a new source of generation to be
66 developed, and that's Gull Island would be the most likely.
67 At this stage there are no agreements, as yet. There are
68 prospects for Gull Island but no agreements. Even if Gull
69 Island were to be developed it would cost in accordance of
70 our studies that we've been working on ... you know, the
71 engineering studies for a transmission line, which are fairly
72 recent, because we did them in the context of the
73 discussions that were ongoing with respect to
74 development of the Lower Churchill, you're looking at
75 roughly \$2.2 billion ... billion, billion dollars to bring a line
76 from Gull Island into Newfoundland, which would, in the
77 end, the terminus here would be at Soldier's Pond, which is
78 just outside our Holyrood thermal plant. \$2.2 billion. And
79 the cost then to consumers of paying off that debt for
80 transmission, plus the cost of the power to (inaudible) at
81 Gull, that's not the most cost effective alternative that we
82 would have going forward.

83 MR. BROWNE, Q.C.: So realistically ...

84 MR. WELLS: You know, for some time.

85 MR. BROWNE, Q.C.: ... are going to see that?

86 MR. WELLS: I'm here to give evidence with respect to a
87 rate application. And the development in Labrador, well, I
88 mean, I think all of us fervently hope that there's some way
89 to get the Lower Churchill developed. But having the
90 Lower Churchill developed, one cannot assume that that
91 automatically means there's going to be a link to the Island
92 of Newfoundland. Within the resources of this province
93 and Hydro, which would be principally involved, we could
94 not, in our own right ... I hesitate to speak on behalf of the
95 Government of Newfoundland and Labrador, but the
96 government and Hydro could not, on their own, finance
97 and develop that line and bring it in. We'd have to take it
98 out of the consumers here and it wouldn't be cost effective
99 power for the moment. I mean, there may come a time. And

1 the other thing that we should bear in mind for the
2 purposes of this hearing, if we started the switch on Gull
3 tomorrow to develop it, we're ten years away from first
4 power. So you pay attention to Mr. Budgell's evidence,
5 because he will forecast what he thinks will happen
6 between now and, say, 10 or 20, 12 before there's any
7 option for something from ... that's the closest reasonable
8 time that we could expect anything.

9 MR. BROWNE, Q.C.: So what we have to look forward to
10 here is the Granite Canal and Island Pond from a hydraulic
11 perspective?

12 MR. WELLS: From a hydraulic perspective there are other
13 people or interests out there that have rights to the
14 development of small hydro power that fall in the non-
15 utility generator's category that they would be interested in
16 developing their sites and selling power to the grid. But
17 right now, beyond what has been contracted for in our own
18 development, we don't need anything extra until about
19 2007, 2008 period, as matters now stand. We won't need
20 anything beyond what's going to be provided through ACI
21 and Grand Falls and Corner Brook Pulp and Paper and
22 Granite. That will take us out to around the 2007, 2008
23 period. And the question then is what will be the source.
24 Hydro, if everything holds together, at that time would put
25 Island Pond on the table for, you know, as we know it now.
26 Others may come. The other thing is we've filed, as well ...
27 we have undertaken a feasibility study with respect to the
28 potential for wind in the province. That stage will be
29 completed. And then there's an issue of whether we go
30 forward with an experimental, you know, project, a small
31 project from 5 to 25 megawatts as described in Mr.
32 Budgell's evidence. We're not even close to that decision
33 yet. But, to see if wind could be a cost effective source of
34 energy on the island. We're dealing with non-dispatchable
35 power. But they are making great strides in bringing that
36 technology price in a range. It's not as remote as it once
37 was. But when they say that Denmark is 25 or 30 percent,
38 you know, wind generation prices of electric power in
39 Denmark, to consumers, would just shock people here. It's
40 just another world. But they are coming down. You know,
41 they're certainly getting lower, and probably more attractive
42 to us as time goes by.

43 MR. BROWNE, Q.C.: We've all been waiting for the energy
44 policy review and it's gone on for a couple of years now.
45 Do you have any updated information you could offer?
46 Because apparently a lot depends on that in terms of ...

47 MR. WELLS: No, I have nothing.

48 MR. BROWNE, Q.C.: You have no information on that at
49 all as to where it sits?

50 MR. WELLS: I have no ... it sits within government. And
51 the prime responsibility in terms of government, I mean,

52 you'd look to the Department of Mines and Energy, is the
53 operating department in government that is in this area.
54 But I have no information that I could ... I don't have any
55 information to share with you on the status.

56 MR. BROWNE, Q.C.: So you don't know when it's coming?

57 MR. WELLS: No, I don't, no. Government certainly hasn't
58 made a decision yet.

59 MR. BROWNE, Q.C.: Before we finish for this morning,
60 just on a small point, I guess, on page 17 of your evidence
61 yesterday, the evidence of September 25, at line 84
62 something caught my attention.

63 MR. WELLS: Oh, this is in the ...

64 MR. BROWNE, Q.C.: It's in the transcript of September 25.

65 MR. WELLS: In the transcript.

66 MR. BROWNE, Q.C.: I don't know if you can pick it out
67 there on the screen, the line 84 to 88. And you made a
68 comment there about having budgets, capital expenditure
69 budgets. "We all know the Board was going to take four
70 percent off our capital budget, or capital expenditure
71 budget every year. You've got to watch that. You don't
72 pad it by four percent, so we're trying to get a balance." Is
73 padding a practice within utilities?

74 MR. WELLS: Definitely not. One of my ... one of the
75 issues that caused great consternation to the general
76 counsel of Hydro is my willingness to say more than I need
77 to answer a question. Extraneous comment. It's probably
78 age, you tend to wander. What I was really ... and I'm
79 serious about this, because this is an issue that affects all
80 of us, it affects the rate payers and everybody, on a capital
81 budget issue and as the Grant Thornton report, you know,
82 has outlined this, and it's our first experience in the last four
83 years in Hydro of having the capital budget reviewed by
84 the Board, an outside entity. So, before that if you
85 budgeted the issue wasn't what you budgeted so much as
86 what you spent, as such, you know. It was a different ... it
87 wasn't focused on in the way it now has been focused on
88 with Newfoundland Power who went through the
89 experience earlier. And again, my understanding of this, I
90 mean, is from a management point of view, we don't want
91 anything in the budget more than we can do. And the
92 issue is that we prioritize and only do those things that are
93 immediately necessary. And from my perspective, and I'm
94 sure the chief financial officer, I only want to fool around
95 with things that are inside the free cash flow of the
96 Corporation. I mean, I'm not ... you know, if we have to
97 spend more money than that then there has to be a darn
98 good reason. The pressure, from my perspective is down
99 through the ranks on people who see things that they
100 would all like to have done, and they're probably quite
101 legitimate in their own right, but you have to curb your

1 appetite. So there's pressures within. In forecasting the
2 budget or presenting a budget to the Board and the Board
3 has brought it to our attention, you know, look, you've
4 budgeted this this year, you didn't spend it all and now
5 we've got a pattern developing with the Board. And what
6 we've said is okay, there are reasons for this. I think that we
7 should be questioned on the reason. And if you take out,
8 as I said in my testimony here, the carry overs and
9 deferrals, the percentages drop dramatically. But there is
10 still this, what would appear to the Board, a systemic
11 problem. And we now have a precedent, how does the
12 Board deal with that with Newfoundland Hydro. The
13 Board, again, doesn't ... only looks at the dollar figures that
14 are spent against what was budgeted, and it doesn't look at
15 the subsets of what happened. So the approach of the
16 Board certainly puts the pressure on the utility to bring the
17 thing in as tight as it can. But it's sort of a blunt approach
18 to it, it's not fine surgery. And I didn't have to make that
19 comment. But you know what happens with budgets.

20 MR. BROWNE, Q.C.: But in answer to the question, there's
21 no policy or practice within Hydro of telling departments in
22 preparing their budget to pad them as they go before the
23 Board?

24 MR. WELLS: From the management committee down, and
25 from my perspective, the word is you cut that cost. There
26 is a good internal fight within Hydro to get something
27 accepted, and believe me ... and my background and where
28 ... what do you mean we're going to spend that? We're not
29 going to spend it. And the budget from first flush to what's
30 presented to the Board, there's a lot of blood left on the
31 floor in various rooms in getting that number down. Now,
32 when you ... there's certain things that we want to do. We
33 have a major capital program over the last five, six years
34 coming to conclusion next year on the upgrade of the
35 Avalon transmission lines which the Board is very
36 conversant with. I mean, this is money, this is a lot of
37 money, but for the security of the system and the amount
38 of people served this is money well spent, you know.

39 MR. BROWNE, Q.C.: We'll probably ... I think you've
40 answered the question. It's 12:30 and you might need a
41 break.

42 MR. WELLS: Okay.

43 MR. BROWNE, Q.C.: And we might need a break. So it's
44 12:30. We'll continue at 2:00. Thank you.

45 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
46 Browne, thank you, Mr. Wells. We'll take a break for lunch
47 and we'll reconvene at 2:00. Thank you.

48 (break)

49 MR. NOSEWORTHY, CHAIRPERSON: Good afternoon,
50 just a couple of very small items before we get started, I

51 guess, in trying to refine this, excuse me, trying to refine
52 this process as we go through. I'm asked by the Corporate
53 Secretary to, or the Board Secretary, excuse me, to ask the
54 parties to three hole punch any filings including exhibits
55 when they're being distributed so it will accommodate our,
56 I guess, our placing those in suitable binders, and
57 secondly, if there's any supplementary evidence to be filed
58 in the first instance, like the copies to go to the Board
59 Secretary, and she will record them and ensure they're
60 distributed to everybody at that point in time, if that's okay.
61 Thank you very much and I'll ask the Consumer Advocate
62 to proceed please?

63 MR. BROWNE, Q.C.: Thank you, Mr. Chairman. Mr.
64 Wells, why doesn't Hydro offer equalized billing to its
65 customers, a monthly equal billing plan similar to what
66 Newfoundland Power offers?

67 MR. WELLS: There's no definable reason that we have at
68 the moment. We have not internally, in my presence we
69 haven't discussed that issue, nor am I aware of any issue
70 that customers would prefer that. It could be done but it
71 hasn't appeared, at least to my knowledge, as an issue.

72 MR. BROWNE, Q.C.: Are there any plans to present
73 customers with this option?

74 MR. WELLS: I am not aware of any plan within our
75 Customer Services Department. It certainly was not
76 brought forward to Management Committee.

77 MR. BROWNE, Q.C.: But you have the capability?

78 MR. WELLS: Oh, we would have the capability, I'm sure.

79 MR. BROWNE, Q.C.: Mr. Wells, in terms of the cost of
80 hearings, and that's something that we're all conscious of,
81 and I'm sure consumers would be extremely conscious of,
82 did you consider when you brought forward this
83 application to apply to be included in an automatic
84 adjustment formula, as is Newfoundland Power? Are you
85 familiar with that process, Newfoundland Power's, on the
86 automatic adjustment formula for three years for rates.

87 MR. WELLS: For their rates.

88 MR. BROWNE, Q.C.: For their rates.

89 MR. WELLS: Yes. No, with respect to this particular
90 application, as we know the circumstances that we're in in
91 terms of ... and what we're applying for, that wasn't part of
92 the consideration of an automatic formula which would, the
93 intent being that we wouldn't have to be back too soon?

94 MR. BROWNE, Q.C.: Yes.

95 MR. WELLS: Yes, well ...

96 MR. BROWNE, Q.C.: After this hearing you might
97 consider that.

1 MR. WELLS: Well, I certainly say since the process has
2 started the thought has crossed my mind, although people
3 question, you know, where, you know, Hydro hasn't shown
4 up for ten years, so you get it from that end, or maybe we're
5 too early now, but I think the facts and the circumstances
6 under which we're applying now and the proposals that
7 we're making, plus we think the necessity that we should be
8 back before the Board within two years, and because of the
9 expansion to the system, if for no other reason, that we
10 resigned ourselves to our fate that we were going to have
11 to apply again in the 2003 period. In light of that kind of
12 thinking, and the issue of automatic rate adjustments and
13 not having to participate in a general rate application for
14 some extended period, it didn't, it wasn't considered in that
15 sense.

16 MR. BROWNE, Q.C.: But if the Board decided to put you
17 on an automatic adjustment formula, would that, would you
18 have any comment on that?

19 MR. WELLS: Well, I could find a lot of support with my
20 colleagues, it would certainly be a good idea, you know,
21 but ... no, in the circumstances, if the Board, if we saw a
22 solution to dealing with the fact situation, and the Board
23 felt comfortable, and the intervenors, with a situation where
24 you could have an adjustment and preclude the expense of
25 further hearings, or cut down the number of hearings, I
26 mean that would be good regulatory administration and in
27 the interest of the consumer.

28 MR. BROWNE, Q.C.: Right now you're moving to a rate
29 base system. Have you considered other options, or had
30 discussions with government on other options such as the
31 price cap system, or a performance-based system?

32 MR. WELLS: In discussions with our shareholders?

33 MR. BROWNE, Q.C.: Yes.

34 MR. WELLS: On the methodology of the regulatory
35 process?

36 MR. BROWNE, Q.C.: Sure.

37 MR. WELLS: No.

38 MR. BROWNE, Q.C.: Have you had discussions within the
39 company concerning the merits of a price cap system or
40 some kind of performance based system?

41 MR. WELLS: We have, as an objective, and it may be
42 influenced by this exercise, but actually we were discussing
43 it prior to this, as to the regulatory processes and could we
44 come up with any innovate means to put forward for
45 discussion which would save the consumers and the
46 system money, but we're not very far advanced on that, but
47 it is one of the issues that we have identified, you know, in
48 terms of the management of the corporation that we would
49 like to address, but we're not very far advanced on that at

50 the moment.

51 MR. BROWNE, Q.C.: In reference to cooperation between
52 the two utilities, between Newfoundland Power and
53 yourselves, do you consult one with the other in reference
54 to your capital budget expenditures?

55 MR. WELLS: Prior to submission?

56 MR. BROWNE, Q.C.: Yes.

57 MR. WELLS: No, no.

58 MR. BROWNE, Q.C.: Have you attempted to jointly put
59 together a proposal to tender for computers in an attempt
60 to get a discount through volume purchase?

61 MR. WELLS: On computers?

62 MR. BROWNE, Q.C.: Yes.

63 MR. WELLS: No.

64 MR. BROWNE, Q.C.: Have you attempted to tender
65 together for the purchase of poles in an effort to get
66 savings through volume purchases?

67 MR. WELLS: No.

68 MR. BROWNE, Q.C.: Have you attempted to tender
69 together in reference to insulators or other equipment for
70 the purpose of obtaining savings through volume
71 purchase?

72 MR. WELLS: I don't think so. I hesitate on that one. The
73 others I'm pretty confident but ...

74 MR. BROWNE, Q.C.: Have you attempted to tender
75 together for vehicles?

76 MR. WELLS: No.

77 MR. BROWNE, Q.C.: Is there any aspect within your
78 economy where you know, that you know of that you are
79 tendering jointly with Newfoundland Power for the
80 purchase of items?

81 MR. WELLS: There's a series of, as you are aware, we have
82 filed in response to requests for information, the
83 documentation with respect to a series of interactions
84 between the two utilities over an extended period of time,
85 where there were any number of subcommittees, I think it
86 was 16 that were under the auspices of an overall steering
87 committee. Now within the detail of these things you may
88 be touching upon something if you ask the general
89 question, I wouldn't be giving the right answer. I'm not ...
90 that level of detail, but the times or the issues that you are
91 addressing were considered and we filed the results of that
92 with the, in the proceedings, and Mr. Reeves who is our,
93 the Vice-President who participated in that would be the
94 best to deal with those issues. Now like there are, people
95 would ... there are a number of ways that the two utilities

1 cooperate and work together and there are certain areas
2 where ... I think I mentioned the other day that because
3 they're really all distribution and we're very minor
4 distribution but mostly production and high voltage
5 transmission, that the systems are not compatible, like the
6 tendering for poles ... other than distribution poles and ...
7 I mean we're into towers and big structures, and they're into
8 the distribution, so I'm pretty confident we haven't
9 tendered together for poles. But there are a variety of
10 things that other witnesses could tell where we are
11 cooperating in terms of going right to the water
12 management of the system, meeting the load, and
13 addressing issues when we have problems on the system,
14 and in terms of interchanges of equipment, emergency
15 situations. There's a whole variety of interactions between
16 the two utilities, you know, cooperative issues and ...

17 MR. BROWNE, Q.C.: And I would agree with you on that.

18 MR. WELLS: I'm not the one to take you down through
19 them, but they do exist.

20 MR. BROWNE, Q.C.: I would agree with you on that, that
21 there is evidence of cooperation on technical matters, but
22 when it comes to real cash matters such as joint purchases
23 or sharing, that seems to be lacking, but I'll take that up
24 with Mr. Reeves, and he can speak to that because he was
25 at nearly all of these committee meetings, according to the
26 minutes.

27 MR. WELLS: Yes.

28 MR. BROWNE, Q.C.: When Newfoundland Power recently
29 purchased poles from Aliant Telecom, or NewTel,
30 Newfoundland Hydro intervened in the application initially.
31 Why did Newfoundland Hydro intervene in that
32 application?

33 MR. WELLS: More for informational purposes than any
34 other reason because the issue was before the Board and
35 on the poles issue there are, what the Board was ... the
36 intervention that we filed was when Newfoundland Power
37 was looking for approval of the purchase from Aliant of
38 telephone, of poles in their service area and poles outside
39 their service area. The original application was rejected and
40 it reappeared. We didn't intervene on that but where we are
41 involved is that Aliant wishes to sell poles in our service
42 area, and we are interested in purchasing those poles to
43 which we have attachments, and we would certainly
44 consider purchasing those poles in our service area where
45 we don't have attachments, and we thought that we should
46 have at least a watching brief, or intervenor status at the
47 Newfoundland Power/Aliant proceeding before the Board
48 to see what the Board's reaction was and what the parties
49 were discussing, because we are in the same situation
50 down the road.

51 MR. BROWNE, Q.C.: And is Aliant offering for sale
52 purchases of poles in your service area to Hydro?

53 MR. WELLS: They are now. I mean the original deal as
54 announced was to, Aliant was prepared to sell all their
55 poles in our service area, or in Newfoundland Power's
56 service area to Newfoundland Power. They hadn't
57 consulted with us and they seemed to have ignored the
58 fact that we had an agreement of right of first refusal with
59 them on poles on which we were attached in their service
60 area. Now when we brought that to their attention they
61 agreed that they were prepared to sell to us the poles in our
62 service area to which we are attached.

63 MR. BROWNE, Q.C.: And the poles that they're offering to
64 sell to you, have you agreed upon a price or are you still in
65 negotiations?

66 MR. WELLS: We're currently in negotiations and hope to
67 have a memorandum of understanding prior to the end of
68 the year. That's what we're targeting.

69 MR. BROWNE, Q.C.: Now, if you do come to an
70 understanding with them, I would imagine that that will put
71 value to your company and have the overall effect of
72 increasing your rate base, would that not be true, if you
73 purchase all these poles from Aliant?

74 MR. WELLS: Subject to the approval of the Board but the
75 poles to which we are attached would go into our rate base,
76 yeah. I mean they are used in the delivery of service. To
77 the extent that others use them, we would recover revenues
78 for that.

79 MR. BROWNE, Q.C.: But Newfoundland Telephone, or
80 Aliant Telecom, whatever you want to call them, they will
81 continue to rent from you in that case, the way you're
82 renting from them in reference to these poles? They have
83 an ...

84 MR. WELLS: In principle, yes.

85 MR. BROWNE, Q.C.: In principle.

86 MR. WELLS: Yes, those ... or a cable company, whoever is
87 attached. Originally, or more recently the idea had been to
88 equalize each utility, whether it was a telephone company
89 or a power server or a cable, but certainly, you know,
90 between the power utility and the telephone, to have an
91 equilibrium in the poles owned and related to the regulation
92 and the charges, so we were actually in the process, as was
93 Newfoundland Power, I think, of selling certain poles, a
94 certain number of poles a year to Aliant, or Newtel as it was
95 then, to give them ownership in more poles and reduce our
96 ownership but then sort of make it easier to administer the
97 cost of maintenance and replacement of poles for the ...
98 because everybody was regulated. That's a very thumbnail
99 sketch of that. We could get into more detail if it were

1 pertinent with Mr. Reeves.

2 MR. BROWNE, Q.C.: No, I just want it from a policy
3 perspective and I guess I'll bring home the point. If Aliant
4 sells poles to Hydro ...

5 MR. WELLS: Yes.

6 MR. BROWNE, Q.C.: You purchase those poles from
7 Aliant, your rate base increases and therefore consumers
8 ultimately are going to end up paying more, are they not,
9 because they're paying on your rate base?

10 MR. WELLS: No, no, no.

11 MR. BROWNE, Q.C.: Just on the rate base system.

12 MR. WELLS: No, no, because the poles that we sold
13 within the last five years to Aliant in that sense would be
14 coming out of the rate base, but the cost that was
15 attributable to the pole, for the utility's use of it, would be
16 part of the rate base. I don't think ... I mean that ...

17 MR. BROWNE, Q.C.: So it's a switch you're doing, it's a
18 swap?

19 MR. WELLS: We either own the pole or we rent space on
20 the pole and then the cost of maintaining the pole or
21 replacing the pole have to be shared around between those
22 who are using it. Because Aliant just wants to get out of
23 the hardware, it is no prejudice, I'm fairly confident it's
24 certainly not our intent ... it would make a lot of sense that
25 we, as the utility in the area using those poles, if Aliant
26 doesn't want to own them, that we own them, because most
27 of them we owned before Aliant purchased them from us,
28 and the idea of the purchase agreement, if we owned 100
29 and they owned none, was to bring us closer to 50/50
30 ownership in the area. If they want out, then we'll take back
31 what we had before. The only other issue is the issue on
32 poles in our service area to which we are not attached.
33 Now if we purchase them and we're not actually using
34 them, then there would be an issue that the Board would ...
35 because this all has to be approved by the Board, could
36 they be incorporated in our rate base, and I suggest
37 probably not. That would be the most likely outcome of
38 the Board decision, but I don't know.

39 MR. BROWNE, Q.C.: But subject to check, and you're
40 saying ... you end up, "I don't know".

41 MR. WELLS: I think that will be an issue before the Board,
42 if not by us, by others.

43 MS. GREENE, Q.C.: I think we'll acknowledge that that has
44 already been decided in the Newfoundland Power hearing
45 which was part of our submission, that the non-joint use
46 poles would not be part of the rate base, and at this time,
47 until the agreement is finalized, it's very difficult to
48 speculate. We will have to apply to the Board, if we reach

49 agreement, for the necessary approval.

50 MR. WELLS: That's right.

51 MR. BROWNE, Q.C.: Mr. Wells, re. your union collective
52 agreement. I believe you were subject to a strike some,
53 couple of years ago, or last year, were you, at CF(L)Co.?

54 MR. WELLS: CF(L)Co. unit was on strike, yes.

55 MR. BROWNE, Q.C.: But you came to an agreement with
56 your employees here on the island?

57 MR. WELLS: Yes.

58 MR. BROWNE, Q.C.: Now your rates, how do they
59 compare with Newfoundland Power's rates? Are you all in
60 the same ballpark for linesmen?

61 MR. WELLS: For wage rates?

62 MR. BROWNE, Q.C.: Yeah, the wage rates?

63 MR. WELLS: No, during the period of '92 to '95 Hydro was
64 included in the government wage freeze and there was a
65 freeze with respect to the rates that were paid under our
66 collective agreement, and when that freeze expired in '95, we
67 resumed negotiations with Local 1615, and that's our local,
68 and we concluded a three year agreement. The average
69 increase was 2.5 percent in each of the three years. With
70 respect to our linemen in that period, at the end of ... when
71 they reached the third 2.5 percent in the third year, their
72 rate then became equal with Newfoundland Power, but then
73 Newfoundland Power is renegotiating a new agreement and
74 went ahead of our linemen again. I'm just comparing the
75 linemen categories for the moment. So one of the
76 difficulties that we've had is because of the wage freeze and
77 the (inaudible) by government with respect to our
78 bargaining, that our rates which were normally ... all utilities
79 in Atlantic Canada in the power business ... New Brunswick
80 Power, Nova Scotia Power, Newfoundland Power,
81 Newfoundland and Labrador Hydro, if you looked at our
82 bargaining unit position they were all relatively over the
83 years in the same categories. You might be slightly ahead
84 in one or another but it was similar. We've gotten a bit out
85 of line with the other utilities and it was an issue, it is still
86 an issue with our local and it's an issue that we're trying to
87 address. We've concluded another three year agreement
88 with them and we're getting closer, we're getting closer.

89 MR. BROWNE, Q.C.: So you expect to have to increase to
90 Newfoundland Power's level, is that what you're saying?

91 MR. WELLS: We don't have to match Newfoundland
92 Power's levels exactly because they're not ... but what the
93 unions were proposing, Local 1615, looking at the historical
94 record where this pattern of bargaining had existed prior to
95 1992 for some 20 years, they look at the Atlantic average of
96 the power utilities and say our rates should match the

1 Atlantic average and generally speaking ... which includes
2 Newfoundland Power and ourselves, we are part of that
3 Atlantic average ... and generally speaking over, I'm told,
4 and I think it's a fact that everybody would agree, that if
5 you look at the bargaining pattern, Local 1615 members
6 employed by Hydro under the collective agreement had
7 comparable wages with those of the other utilities and we
8 slipped behind during that period of absolute freeze. Now
9 there was restraint exercised within Newfoundland Power
10 in that period and the other utilities but it wasn't an
11 absolute freeze and therefore our units got behind.

12 MR. BROWNE, Q.C.: In reference to executive
13 compensation, do you follow the same executive
14 compensation scheme as Newfoundland Power? Are you
15 more or are you less?

16 MR. WELLS: No, we would be less.

17 MR. BROWNE, Q.C.: Do you find that you're losing
18 employees, losing executives because you are less, or are
19 they being preyed upon by Newfoundland Power ... or are
20 you losing people to the mainland or anything?

21 MR. WELLS: No, the number of executives in the
22 organization has reduced since the nineties from nine to
23 five, as we test ... I think that's in our evidence somewhere.
24 We put it five to nine, so as not to be catchy about it. And
25 that was not because of anybody taking executives away,
26 that was part of the restraint program. I view that as, that
27 we cut right across the board, including the highest levels
28 in the organization so there are four vice-presidents now
29 and a chief executive officer, and you would have found
30 four more in those categories at the start of the decade, but
31 not, we haven't lost anybody to another business at that
32 level. The average turnover in Hydro, roughly two percent
33 on an annual ... which is pretty low. We have a fairly high
34 average age amongst employees because a lot of people
35 came when Hydro was in the building category coming to
36 the end of their working career, so we'll have a fairly
37 substantial change out starting last year, going forward in
38 the next three or four years.

39 MR. BROWNE, Q.C.: Because you are paid lesser by way
40 of executive compensation than Newfoundland Power, will
41 that change now that you're looking to go into this
42 particular system, into a rate base system and become more
43 of a private corporation, I guess, in many respects than a
44 public one?

45 MR. WELLS: No, I don't think that has any effect. We're
46 still very much a Crown corporation. The rate base is just
47 to recognize the financial structure of the corporation. I
48 assume, you know, the change of ... because you can
49 always compare the two but these type of legislative
50 changes related to things we've been discussing and the
51 financial structure and how you determine the revenue

52 requirement in rates, that really doesn't affect the fact that
53 as a Crown corporation pay, certainly at the executive level,
54 has never been the same as it is in an investor-owned
55 utility. That could become a problem over time in
56 recruitment, but we haven't had any evidence yet, but we
57 are, you know, part of our human resources strategy and
58 everything is looking at how competitive we are for
59 engineers that are graduates now that we are going to
60 need, and locally even with the oil developments. I mean
61 there are other opportunities for graduate engineers now,
62 more opportunities, I should say, than there were before,
63 and so therefore it's a more competitive field plus there's a
64 lot of young Newfoundlanders leaving with good
65 educations. So we will have to, as a strategy, a business
66 strategy, ensure that we are paying competitively,
67 especially for those, you know, key positions that you're
68 going to need, and we'll need professionals in a variety of
69 areas, not only engineering.

70 MR. BROWNE, Q.C.: I thought I read in some of the
71 minutes between the meetings between Power and
72 yourselves, that you don't count employees the same way,
73 you have different methodologies for counting employees.
74 Do you know anything about that? I guess we're into
75 permanent and permanent part-time and part-time
76 contractual and who is an employee after a while.

77 MR. WELLS: I think that Newfoundland Power uses the
78 FTE, full-time equivalent, and hopefully we are going to
79 move to full-time equivalent. It's a better way to keep track
80 of the actual number of employees, or the time worked by
81 employees. In other words, when you're attributing your
82 costs using full-time equivalents makes it a lot easier than
83 a person and a half, you know.

84 MR. BROWNE, Q.C.: So right now when we see your
85 employees and Newfoundland Power's employees and try
86 to compare, it mightn't be a good comparison because
87 you're under a different system than they are, is that a fair
88 comment?

89 MR. WELLS: Depending for what purpose you're looking
90 at it, you know, the permanent payroll or a temporary
91 payroll, but Newfoundland Power would look at ... I mean
92 the real issue is what did you pay in wages and salaries in
93 the run of the year to run your business, and
94 Newfoundland Power can give that in a full-time equivalent,
95 and we will give it in permanent term employees and
96 temporary employees.

97 MR. BROWNE, Q.C.: Mr. Wells, you made reference in
98 your evidence this morning of the two potential electric
99 generation projects which are considered in the public
100 interest ... Abitibi Consolidated's (inaudible) unit, and
101 Corner Brook Pulp and Paper's co-generation unit. Have
102 the terms of the power purchase agreements between, in

1 reference to these, have they been finalized?

2 MR. WELLS: Yes, I think at this point it's, our chief
3 negotiator, I think we've just, we've concluded with Corner
4 Brook Pulp and Paper and we're pretty well settled with
5 Abitibi Consolidated.

6 MR. BROWNE, Q.C.: And from your perspective, who
7 presided in these negotiations? Did you have a team
8 together?

9 MR. WELLS: Oh yes, to carry out the (inaudible) of the
10 overall, the larger aspects of the deal were worked out in
11 principle first and then the teams go in respectively and do
12 the nitty-gritty negotiations.

13 MR. BROWNE, Q.C.: Now I understand that the terms of
14 these agreements are not subject to scrutiny by the Public
15 Utilities Board.

16 MR. WELLS: That's correct.

17 MR. BROWNE, Q.C.: And what is regulated here and what
18 is not regulated after all is said and done? What would be
19 subject to scrutiny by the Public Utilities Board as a result
20 of these agreements?

21 MR. WELLS: When these agreements become effective in
22 an operational sense, and the cost associated with these
23 agreements in servicing energy to the grid, that will become
24 part of the cost of the operation of the grid and the supply
25 of energy, power and energy from Hydro and be part of ...
26 then would come under the purview of the Board.

27 MR. BROWNE, Q.C.: So the Board would be able to make
28 a determination if it's expensive power or how it compares
29 to thermal generation or ...

30 MS. GREENE, Q.C.: At this point I'd like to point out that
31 the Consumer Advocate is really getting into what I
32 consider is an area of legal argument and is the effect of
33 exemption orders that have been passed under the
34 appropriate legislation, and for the record, Hydro's position
35 is that the exemption order would exclude the prices paid
36 for those two contracts from the review as well. That will
37 be an issue for the 2003 hearing when the, when they
38 actually go into service and we will be filing at that time for
39 a rate change to reflect Granite Canal as well as those two
40 contracts, so it's premature at this time but I thought for the
41 record we should state our position that the exemption
42 orders granted, or issued by the government would exclude
43 the contracts and the prices from review by the Public
44 Utilities Board.

45 MR. NOSEWORTHY, CHAIRPERSON: Mr. Browne, do
46 you have any comment to make?

47 MR. BROWNE, Q.C.: I'll move on. Far be it for me to try to
48 get into a delicate area here, so I will ... I think I'll leave that

49 alone.

50 MS. GREENE, Q.C.: I have no problem with you getting
51 into it, it just probably will be with me as opposed to Mr.
52 Wells.

53 MR. BROWNE, Q.C.: But I'll ask you this much. These
54 employees who have been working on that and it's non-
55 regulated and not subject to scrutiny by the Board, have
56 you tracked their time by time cards so it will not be
57 expensed as a regulated expense? Have you done that
58 tracking?

59 MR. WELLS: No, we have not.

60 MR. BROWNE, Q.C.: Ms. Greene is trying to help you out
61 here now.

62 MR. WELLS: Yeah, well ...

63 MS. GREENE, Q.C.: With respect to the time reporting,
64 anyway, that is an issue (inaudible), and Mr. Wells can
65 speak to how we do normally record time, but I don't know
66 if he would know how specific individuals would have
67 recorded time.

68 MR. BROWNE, Q.C.: Who can answer to your tracking of
69 intercorporate transactions? Who would ...

70 MR. WELLS: Mr. Osmond, and ... yes, because if you ...
71 the issue you're raising is things that are regulated and not
72 regulated, and the question of costs being allocated, that
73 is done and Mr. Osmond, and certainly Mr. Roberts can
74 deal with the detail of that, because at various times, say
75 Mr. Young who was leading the team on the negotiations,
76 he would be keeping track of his time for various things
77 that he's on. The only thing, and maybe I ... but the issue
78 of securing the supply to service the grid, even though
79 these, that's exempted, eventually those costs related to
80 that are all done in the service of the grid, aren't they, you
81 know, so I didn't advert ... so I don't know if Mr. Young has
82 a card for that time, but the issue is that, I would say, that
83 what time he spent negotiating those contracts would
84 properly be part of duties by a Hydro employee to provide
85 for additional power and energy in the same sense that we
86 have a team of engineers working on bringing Granite Canal
87 on stream to secure a supply of energy. We haven't
88 brought those costs into the system yet but I mean that's
89 part of our job and I think they're legitimate expenses to
90 secure a future supply.

91 MR. BROWNE, Q.C.: What is your policy, do you have a
92 written policy on intercompany transactions? Is there a
93 written policy within the company?

94 MR. WELLS: Yes, I mean there is a policy and parts of it
95 may be written but we do have a policy on intercompany
96 transactions and the allocation of expenses which is a
97 critical item and I defer to Mr. Osmond to explain all that.

1 MR. BROWNE, Q.C.: The Cat Arm project, I noticed that
2 you spoke in reference to Bay d'Espoir yesterday, in
3 glowing terms. The Cat Arm project, I don't know the facts
4 of it and maybe you can help us here. There are always
5 rumours out there that Cat Arm is costing us more than it
6 ought to, that thermal generation would be cheaper than
7 what's coming out of Cat Arm. Cat Arm is costing us \$21
8 million a year or something and it might be cheaper to burn
9 at Holyrood. Is there a comment on that or is that just ...
10 give us the facts.

11 MR. WELLS: I have never heard such a rumour. Cat Arm
12 is one of the ... thankfully, that is a good hydro project. It's
13 a significant size, you know, it's larger than Hines Lake or
14 Upper Salmon, and the reservoirs, you know, levels have
15 been good. It's been a major contributor in my period of
16 time at Hydro. I have never heard anybody say whether it's
17 costing more or less than Holyrood, but the fact is as you
18 bring on in a system, additional capacity, then you must ...
19 because it's there for capacity. You have to pay for, you
20 have to pay the cost of that additional capacity and I don't
21 know, I have never heard the rumours. I don't know the
22 basis of it. Somebody might be saying it's cheaper to burn
23 a barrel of oil at Holyrood than run Cat Arm, but in the
24 system, that's just not on. I mean you can ask Mr.
25 Henderson about these things. I can assure you that we
26 are well served by Cat Arm.

27 MR. BROWNE, Q.C.: As I was going through the evidence
28 and I'll ask Mr. O'Rielly to put this on the screen ... **CA-177**.
29 It refers to your meter reading and given the area in which
30 you cover, I was rather surprised by the answer. Meters
31 are read on a monthly basis and over the past two years
32 approximately one percent of readings have been
33 estimated. It seems, given the geography in which you, in
34 which you are located, that seems like a phenomenal record
35 to me. Have you any comment on that?

36 MR. WELLS: It's part of the service. (*laughter*) One of the
37 things that ... you've got to forgive me now and then, but
38 one ... well one, people do like to have their meters read so
39 you do your best. The other thing is in the smaller
40 communities it may be easier, even though they're in
41 isolated environments, but it's like some of the temporary
42 employees I was ... you know, when Ms. Butler was
43 questioning me the first day and the numbers, and why I
44 suggested you had to go further down with other
45 witnesses to find out because you will find that a lot of our,
46 a significant number of temporary employees that may
47 show up in the run of a year are temporarily employed by
48 us but as meter readers, so that they're not working every
49 day of the week. You can go out in Rigolet, you know, at
50 the end of the month and get a fairly quick read because
51 there's not that many customers and you can use a
52 temporary ... and we're also planning to use our plant

53 operators which ... a new category of diesel service
54 representative to be able to have them be more multifaceted
55 in their jobs and also assist in meter reading, so it's these
56 types of things I would suggest why we can have such a
57 good record. In one community one can cover ... there's a
58 fair amount of ground at the end of the month, or
59 whenever, and do the meter reading, and we do employ in
60 my recollection a fairly significant number of temporary
61 employees as meter readers.

62 MR. BROWNE, Q.C.: And over the summer months is it
63 your practice to read the meters every month during the
64 summer?

65 MR. WELLS: Yes, I think every month, we read the meters
66 once a month, yes.

67 MR. BROWNE, Q.C.: Have you had any discussions with
68 Newfoundland Power in reference to that or any cost
69 savings that may be promoted by reading them every other
70 month during the summer or something? I don't know what
71 scheme they've got on the go there now but (inaudible)
72 something like that. Have you had any discussions with
73 them for cost saving?

74 MR. WELLS: I'm not aware, personally not aware of such
75 a discussion unless it came up in those other things, but
76 again, you have to look at our service area and, you know,
77 like 29 isolated communities and the issue of somebody in
78 those communities has to read meters, and we're successful
79 in our cost saving efforts with respect to DSR's that ... and
80 Mr. Reeves will be talking about one of the duties could be
81 meter reading, and then we wouldn't have another
82 temporary employee out there working periodically reading
83 meters in that particular community.

84 MR. BROWNE, Q.C.: There's no doubt in your mind, as
85 you've stated, people want their meters read every month.

86 MR. WELLS: Generally speaking I think they do, yes.

87 MR. BROWNE, Q.C.: I think we're about there. I'm just
88 looking down through my notes now to make sure I didn't
89 miss anything. I think that's fine. Thank you very much,
90 Mr. Wells.

91 MR. WELLS: Thank you.

92 MR. NOSEWORTHY, CHAIRPERSON: Thank you, Mr.
93 Browne. Mr. Kennedy are you prepared to begin your
94 cross-examination now?

95 MR. KENNEDY: Well, are we, Chair, are we breaking at
96 3:00 or are we sticking to the 3:15? I'm just thinking that ...

97 MR. NOSEWORTHY, CHAIRPERSON: I haven't heard any
98 particular comment or consensus around 3:15.

99 MR. KENNEDY: I'm going to suggest that if you would
100 take an early break and then we could plough right through

1 to 4:00.

2 MR. NOSEWORTHY, CHAIRPERSON: Is that ... any
3 objections to that? Okay, fine, thank you, we'll reconvene
4 at 3:00.

5 (break)

6 MR. NOSEWORTHY, CHAIRPERSON: Mr. Kennedy, are
7 you ready to proceed?

8 MR. KENNEDY: Thank you Chair,
9 Commissioners. Good afternoon Mr.
10 Wells. Mr. Wells, I'm advised by one of
11 the Commissioners that quite a number
12 of years ago a predecessor to me, a
13 Board counsel, would begin his
14 questioning by explaining first his role
15 as Board counsel and I thought that was
16 a pretty good idea, especially
17 considering that you were the first
18 witness. So I wanted to explain that I'm
19 not here to advocate a particular
20 position, my role is to ensure that all the
21 relevant evidence that the Board needs
22 in order to make a properly informed
23 decision on the issues that are brought
24 out during the hearing, and that that
25 includes the good, the bad and the ugly,
26 I suppose, and that it would seem that
27 there may be some particularly ugly
28 issues that have inadvertently been
29 unaddressed by some of the intervenors
30 so it would be my intention to delve into
31 those during the hearing here and during
32 my questioning of yourself. So if you
33 see me taking an adversarial position or
34 appearing to advocate a particular
35 position then certainly I'm not. The first
36 thing I'd like to do is just canvass over
37 your experience, your personal
38 experience in your own professional life,
39 and your career and I understand that
40 you are a lawyer as has been referenced
41 several times already and you were in
42 private practice for some time.

43 MR. WELLS: That is correct.

44 MR. KENNEDY: And the next position I had that you took
45 up was with the Salt Fish Corporation, but was there a
46 position in between your private practice and the Salt Fish
47 Corp?

48 MR. WELLS: Yes, President of Fisheries Association of
49 Newfoundland and Labrador.

50 MR. KENNEDY: And so after being the President of the
51 Fisheries Association of Newfoundland and Labrador then
52 you went the Salt Fish Corporation?

53 MR. WELLS: That's correct.

54 MR. KENNEDY: And what was your position there?

55 MR. WELLS: President.

56 MR. KENNEDY: And were you a Board of Directors on the
57 Salt Fish Corporation as well?

58 MR. WELLS: Yes, a member of the Board.

59 MR. KENNEDY: And is my understanding correct that
60 after your tenure at the Salt Fish Corporation that you then
61 became employed by Fishery Products International?

62 MR. WELLS: Yes, (inaudible).

63 MR. KENNEDY: And what was your position at FPI?

64 MR. WELLS: Executive Vice-President.

65 MR. KENNEDY: And were you a board member at FPI?

66 MR. WELLS: No.

67 MR. KENNEDY: And following your tenure at FPI, was it
68 then that you moved on to Newfoundland and Labrador
69 Hydro?

70 MR. WELLS: Yes.

71 MR. KENNEDY: And, if I gather correctly, that was in
72 1995, you said?

73 MR. WELLS: January 1, '96. Five years, eight months, 26
74 days.

75 MR. KENNEDY: Not that anyone is counting.

76 MR. WELLS: Seven hours.

77 MR. KENNEDY: And your position is President and CEO?

78 MR. WELLS: Yes.

79 MR. KENNEDY: And you are Chair of the Board?

80 MR. WELLS: No.

81 MR. KENNEDY: No, sorry.

82 MR. WELLS: No, there is an independent Chair, non-
83 executive Chair.

84 MR. KENNEDY: You're a Board member though?

85 MR. WELLS: Yes.

86 MR. KENNEDY: And according to page 1 of your direct
87 testimony you also hold directorships in Churchill Falls,
88 CF(L)Co.?

89 MR. WELLS: I'm also the President and Chief Executive
90 Officer of CF(L)Co.

1 MR. KENNEDY: And hold the directorship of CF(L)Co?
2 MR. WELLS: Yes.
3 MR. KENNEDY: And the Lower Churchill Development
4 Corporation, you are also a board member of that company
5 as well?
6 MR. WELLS: I am.
7 MR. KENNEDY: And, and you hold a position as officer of
8 that company?
9 MR. WELLS: President, president.
10 MR. KENNEDY: President. And you also hold the
11 directorship of Gull Island?
12 MR. WELLS: Yes.
13 MR. KENNEDY: And you hold, and do you also hold an
14 executive position with Gull Island?
15 MR. WELLS: President.
16 MR. KENNEDY: President. I just noticed, more out of
17 curiosity, that your not a board member of the Twin Falls
18 Corp.
19 MR. WELLS: No, I don't know how that escapes me but
20 they seem to have good meetings. No, no I'm not.
21 Seriously.
22 MR. KENNEDY: Is that because of a conflict issue?
23 MR. WELLS: No, I think over, I'm not sure it, the, the other
24 executive of, the other members of the executive of Hydro
25 are involved on the Twin Falls board because there are
26 others representing other interests and Ms. Greene is the
27 President of Twin Falls Power.
28 MR. KENNEDY: So, you are President and Chief Executive
29 Officer of Hydro, Churchill Falls, Labrador, or CF(L)Co., the
30 Lower Churchill Development Corporation, and Gull Island.
31 MR. WELLS: That's correct.
32 MR. KENNEDY: Could you give me sort of a ball park
33 estimate of what the total asset value of all those combined
34 companies are?
35 MR. WELLS: Oh, that would be the consolidated
36 statement. I'm just looking for one of our annual reports.
37 The end of 2000, \$2,141,600,000.
38 MR. KENNEDY: And do you know roughly the number of
39 employees that would be employed by all those entities
40 combined?
41 MR. WELLS: We filed the numbers with Hydro as
42 approximately in total ... in Churchill Falls there are
43 approximately 240 employees in addition to the employees
44 that we filed with respect to Hydro. There are ... the other
45 entities don't have any employees, like Gull Island Power,
46 or Lower Churchill Development Corporation.
47 MR. KENNEDY: Mr. Wells, you've had extensive
48 experience as both an executive and as a member of the
49 board of directors of quite a number of, of prominent
50 Newfoundland companies and large publicly traded
51 companies, so I'm sure you could teach me a thing or two
52 about corporate theory but I just wanted to see if you'd
53 agree with some very, sort of basic premises about
54 corporate governance and as I understand it just all else
55 being equal, inside a company the shareholders, among
56 other things, are responsible for electing the slate of the
57 board of directors of the company.
58 MR. WELLS: Yes.
59 MR. KENNEDY: And that in turn the directors then are the
60 ones that appoint the officers of the company.
61 MR. WELLS: That's correct.
62 MR. KENNEDY: And as a director of a company you owe
63 a fiduciary duty to that company, do you not?
64 MR. WELLS: Above all else.
65 MR. KENNEDY: And the, among other things one of your
66 duties in that, that are included in that overall general
67 fiduciary duty is to act prudently and properly in the
68 corporate governance of the entity of which you are a
69 director?
70 MR. WELLS: Yes.
71 MR. KENNEDY: And one of those specific duties in
72 carrying out that more general duty would be to set the
73 dividend rate of the company, would it not?
74 MR. WELLS: For the board?
75 MR. KENNEDY: For the board of directors to set a
76 dividend rate, or a dividend policy for a company?
77 MR. WELLS: Yes, that would be the board's role.
78 MR. KENNEDY: And under normal corporate governance
79 the board in setting the dividend policy would and, in turn,
80 what dividend is to be paid out underneath that policy,
81 would have a duty to act prudently and properly in the
82 circumstances having regard to the financial stability of the
83 company and its operational plans and market conditions
84 as forecast. Would you agree with that statement?
85 MR. WELLS: Yes.
86 MR. KENNEDY: What I'd like to do now is just turn to
87 some of the acts, some of which have already been referred
88 to but which I think might help illustrate a couple of things
89 on some of the questions to come, and the first one I'd like
90 to turn to is the EPCA, or the Electrical Power Control Act

1 and, in particular, Section 3. We're having monitor
2 problems, but I have the hard copy here so. Oh, here we
3 go. So Mr. Wells, under Section, and again, I guess, as
4 was indicated by, I believe it was my colleague, Mr.
5 Hutchings, it is not my intention to ask for your legal
6 opinion concerning the interpretation of the provisions or
7 their specific application to your application in turn.

8 MR. WELLS: My recollection of that it would usually be
9 a fee.

10 MR. KENNEDY: But, under Section 3, sub (b), (a) sorry,
11 Roman numeral (iii), its declared to be a policy of the
12 province that the rates to be charged either generally or
13 under specific contract for the supply of power within the
14 province should provide sufficient revenue to the producer
15 or retailer of power to enable it to earn a just and
16 reasonable return as construed in the Public Utilities Act so
17 that it is able to achieve and maintain a sound credit rating
18 in the financial markets of the world, and I believe that's the
19 passage you quoted specifically in your direct testimony,
20 the pre-filed testimony, and so obviously Hydro in turn
21 sees itself clearly being regulated under that specifically
22 stated public policy.

23 MR. WELLS: Yes.

24 MR. KENNEDY: And in implementing that policy under
25 Section 4 of the EPCA, it is indicated that in carrying out its
26 duties and exercising its powers under this Act, or under
27 the Public Utilities Act, the Public Utilities Board shall
28 implement the power policy declared in Section 3 and in
29 doing so shall apply tests which are consistent with
30 generally accepted sound public utility practice. So this
31 would be a, again a specific legislated direction to this
32 Board about how they're to actually implement that policy
33 as is stated in Section 3 of the EPCA Act.

34 MR. WELLS: Yes, I would agree with that.

35 MR. KENNEDY: And that when in doing so this Board has
36 to apply tests which are consistent with generally accepted
37 sound public utility practice.

38 MR. WELLS: Yes.

39 MR. KENNEDY: Now, of course, there's the curiosity of
40 Section 5.1 of the EPCA, which says "notwithstanding
41 Section 3 or Section 4, the Lieutenant Governor in Council
42 may direct the Public Utilities Board", so I guess I refer this
43 to, as the override position, if you will, that if I read the
44 provision correctly it would seem that it provides a
45 mechanism for the Lieutenant Governor in Council to step
46 in and give specific direction to the Board regarding the
47 implementation of certain policies that government may
48 have.

49 MR. WELLS: Yes, in some specifics that are mentioned in

50 that section.

51 MR. KENNEDY: The setting and subsidization of rural
52 rates, the fixing of debt equity ratio for Hydro, and the
53 phase in over years from the date of coming into force of
54 this section, of a rate of return determination for Hydro and
55 the Board, I'm sorry, and the phase in over a period of years
56 from the date of coming into force of the section of a rate of
57 return determination for Hydro and the Board shall
58 implement those policies and procedures. The next section
59 I wanted you to look at was Section 6 of the EPCA.
60 Specifically the first paragraph 1, "The Public Utilities
61 Board has the authority and responsibility to ensure that
62 adequate planning occurs for the future production,
63 transmission, and distribution of power in the province".
64 So again this is a legislated direction to the Board about
65 what their duties and responsibilities are, agreed?

66 MR. WELLS: Yes. Uh hum.

67 MR. KENNEDY: And, under the Public Utilities Board, the
68 Act itself, Section 80 is the provision ... I don't think you
69 have that. Section 80 provides for the actual
70 implementation, if you will, of the direction of the Board to
71 set a just and reasonable rate of return for utilities.

72 MR. WELLS: Yes.

73 MR. KENNEDY: Now my understanding, Mr. Wells, is that
74 the Electrical Power Control Act was introduced in an
75 environment where there was the, at least stated objective
76 at the time of government to privatize Newfoundland and
77 Labrador Hydro.

78 MR. WELLS: It came in that period, or subsequent to that
79 period, yes.

80 MR. KENNEDY: And, and that that clearly some of the
81 provisions of the EPCA are directed perhaps at that
82 objective. Would you agree with that? With the objective
83 of privatizing Hydro?

84 MR. WELLS: No, I don't think so because had Hydro been
85 privatized then you might have seen, you might not have
86 seen these other pieces of legislation that became effective
87 in '96. If Hydro had been privatized and was still operating
88 as an entity in the utility, the legislation applicable to
89 Newfoundland Power would presumably, or to any utility
90 unless they changed the general legislation, would have
91 been applicable to that new entity. It seems to me that
92 some of this legislation or the legislative amendments that
93 we're looking, you know, the '96 amendments, or the '96
94 legislation became effective, most of it in January '96, was
95 done in contemplation that Hydro would not be privatized.

96 MR. KENNEDY: I guess I was looking at Section 23 of the
97 EPCA. Section 23, 24, and 25 specifically, which as I
98 understand it has not yet been proclaimed. Section 23 of

1 the EPCA, if I may because it's a very lengthy provision,
2 basically provides a limit on the ownership through voting
3 trusts or otherwise of individuals, a group of individuals in
4 the ownership of Hydro.

5 MR. WELLS: Yeah, I, I'm, I haven't reviewed that Section
6 in, I can guarantee it for five years, if I in reading the
7 legislation I would have focused it in periodically as part of
8 the job, or the business or the application. You focus on
9 the sections that are most pertinent to you. This is a
10 section of the Act that I haven't given it or had any reason
11 to give it any reflection or consideration during my period
12 with Hydro.

13 MR. KENNEDY: No.

14 MR. WELLS: But, it is there. I mean I ...

15 MR. KENNEDY: And I guess we can take that as being the
16 case because the stated objective of government to
17 privatize Hydro was withdrawn for use, lack of a better
18 word that, that that the plans to privatize Hydro were
19 withdrawn and are no, were no longer a stated objective of
20 government.

21 MR. WELLS: That's right.

22 MR. KENNEDY: And, and, and as far as you're aware
23 there's nothing planned at this point to privatize Hydro, is
24 there?

25 MR. WELLS: None of which I'm aware.

26 MR. KENNEDY: There's no active discussions taking
27 place between Hydro and government as far as you're
28 aware that would be aimed or at least exploring the
29 possibility of privatizing Hydro?

30 MR. WELLS: No.

31 MR. KENNEDY: And so from that perspective there's no
32 need for this Board then is there to concern itself with the
33 possible privatization of Hydro when rendering its decision
34 on this particular application that's before it now.

35 MR. WELLS: There's nothing to my knowledge that would
36 concern them in that way.

37 MR. KENNEDY: And if I could borrow a line from your
38 direct testimony on page 14, the 24th, the direct testimony,
39 sorry. Direct testimony, pre-filed. I'm sorry. It started at
40 top of 14. No, the format is. Just try, what page are you on
41 now? No, just go back. Well, I have it on page 14 of the
42 hard copy.

43 MR. WELLS: I have page 14 of my pre-filed testimony.

44 MR. KENNEDY: Okay, in the, actually the sentence starts
45 on line 31 of page 13, "having established the ..." "Having
46 established the appropriate financial criteria for such an
47 entity, Hydro's position must be assessed in light of

48 current circumstances".

49 MR. WELLS: Yes.

50 MR. KENNEDY: And so that, that's a statement of position
51 that you stand to today?

52 MR. WELLS: Yes.

53 MR. KENNEDY: We can turn to **NP-76**, the question was
54 "What does Hydro view is the differences if any, between
55 the way Hydro is intended to operate and the manner in
56 which an investor owned utility operates?", and the answer
57 "Hydro views the following as the main differences
58 between the way Hydro is intended to operate and the
59 manner in which an investor owned utility operates", and
60 the first bullet "as a Crown Corporation, Hydro may receive
61 directions from its shareholder, the Government of
62 Newfoundland and Labrador which reflects social or public
63 policy considerations not in conflict with legislation which
64 Hydro will implement".

65 MR. WELLS: Yes.

66 MR. KENNEDY: And so the directions from your
67 shareholder you clearly stated cannot be in conflict with
68 the existing legislation?

69 MR. WELLS: No, it would then be against the law.

70 MR. KENNEDY: And this, I suppose, goes back to some
71 sort of similar question Mr. Hutchings asked ... the
72 government is bound by its own law, same as Hydro is
73 bound by the law, same as the Board is bound by the law?

74 MR. WELLS: That's right. Case in point, when we had
75 direction with respect to new sources of generation there
76 was an amendment passed which enabled the government
77 in exercising presumably its public policy to give direction
78 to Hydro which would not be in conflict with any
79 legislation and would relieve the Board of the obligation for
80 planning for, you referred to the section where the Board
81 had the obligation in the absence of anything else to plan
82 and direct the new generation requirements for the island.

83 MR. KENNEDY: Don't think it was anything to the
84 contrary, it was ...

85 MR. WELLS: No, no, okay.

86 MR. KENNEDY: The Public Utilities Board has the
87 authority and the responsibility to ensure that adequate
88 planning occurs for the future production.

89 MR. WELLS: That's right, yes. And in the case of the new
90 sources of generation which, you know, that we're talking
91 about for 2003, which has now been excluded from the
92 purview of the Board, in, before that was done there were
93 amendments to the legislation so that the government
94 would not be in breach of its legislation acted in light, so

1 are all on the same wavelength. If the government were to
2 intervene it would be, or give us a direction, it would be in
3 accordance with either existing legislation or some new
4 enabling legislation for them to do that.

5 MR. KENNEDY: I believe it was your first day of testimony
6 you indicated that the operating mind of Hydro for the
7 purposes of your dealing with government, you've
8 described them as the operating mind was Mines and
9 Energy.

10 MR. WELLS: Yes, the Department that we deal with and
11 associate with is the Department of Mines and Energy.
12 That would be as opposed to some other department in
13 government. There are some responsibilities in the
14 legislation which respect to the Minister of Finance but
15 these are specific, but the ... obviously its the Department
16 of Mines and Energy that we would have our dealings with.

17 MR. KENNEDY: Can you give the Board some indication
18 of, of what type of involvement almost on a day to day
19 basis that Hydro has with individuals in the Department of
20 Mines and Energy? For instance, do you meet on a regular
21 basis with representatives of the Department of Mines and
22 Energy?

23 MR. WELLS: Not on a regularly scheduled basis. The
24 meetings would occur depending on some circumstance or
25 requirement, you know, related to a particular issue or that
26 type of thing. There's not like every Monday morning we
27 will meet. It's not that type.

28 MR. KENNEDY: Is there a working group within Hydro
29 whose responsibility, or individual, whose responsibility it
30 is to liaison with representatives from the Department of
31 Mines and Energy on a regular basis?

32 MR. WELLS: No, there's no particular group. If there,
33 many of the, at times the Department of Mines and Energy
34 officials will be looking for information and Hydro could be
35 helpful to them in that regard, you know, with respect to
36 the power system and whatever within the province, and
37 they would, would address the issue, it could come to me
38 or it could come to another Vice-President, and in the
39 course of time and personal relationships, if somebody
40 wants to know what forecasts are with respect to the
41 system, then they might phone Mr. Budgell directly and,
42 you know, as Director of System Planning and say what is
43 the, what are you fellows saying about so and so. In the
44 nature of those types of, you know, there's that interaction
45 that may occur and not on a daily basis, but it is a fairly
46 good working relationship and as I say most of it is with
47 respect to, we can supply information from, you know,
48 which may whatever considering over in Mines and Energy
49 with respect to issues of energy within the province, or
50 specific questions that come in to the Minister.

51 MR. KENNEDY: So are there formal reporting requirements
52 then that Hydro must comply with, for providing
53 information on a regular basis with the financial status, or
54 what have you, of Hydro?

55 MR. WELLS: The key thing is the annual report, and that
56 contains all our financial information and that must be
57 provided to the Minister and is tabled in the House. We
58 have other, the government in the last couple of years has
59 been pursuing a policy to for all Crown corporations and
60 departments to facilitate reporting and we have had
61 meetings with Mines and Energy reviewing how we fit in
62 that because Hydro is the largest Crown corporation in the
63 province. We have a much more formalized and with this
64 type of thing we would brief the Minister on any major
65 topic, and review with the Deputy Minister issues and the
66 Deputy Minister of Mines and Energy, it's tradition that he
67 has a seat on the Hydro Board, so that the, there are a
68 number of ways that the information, the day to day
69 business of Hydro is not the preoccupation of the
70 department or the government.

71 MR. KENNEDY: So, let's take an example. This
72 application, would Hydro have briefed the government on
73 the issues that were going to be raised in this application
74 prior to taking the application?

75 MR. WELLS: There was a briefing, periodic briefings or
76 updates maybe once a year with respect, but there was a
77 briefing of the Minister of Mines and Energy and his
78 officials of the matters that we would contemplate raising
79 in this application, and before the application was
80 submitted there was such a briefing.

81 MR. KENNEDY: And that briefing, I take it, would include
82 information concerning the position that Hydro was taking
83 on particular issues that were included in the application.

84 MR. WELLS: Yes, yes.

85 MR. KENNEDY: And, and is it reasonable to assume then
86 that the Minister of Mines and Energy may also have views
87 on those positions?

88 MR. WELLS: He may, yes. The issue, your next question
89 will be (inaudible), and the direction, but no ... well, in the
90 course of the briefing there would be an interchange, be
91 questions, the normal very informal ... why this, or why
92 that, or what does this mean or what does that mean, and
93 you know what is the situation, so the overview, you know,
94 the big ticket items here, the rate issues, the impact on
95 consumers, what our immediate problems are, the Rate
96 Stabilization Plan, what one could expect and the necessity
97 of our going forward, of course, the government as you
98 already have seen in the pre-filed testimony with respect to
99 a letter from Mr. Grimes with respect to the direction on the
100 industrial, industrial customers' contribution to the

1 subsidy, when he was the Minister of Mines and Energy.
2 In this particular rate hearing the Minister was Mr.
3 Matthews and he was briefed and at his invitation we did
4 a subsequent briefing for the Premier and members of the
5 Planning and Priorities Committee of Cabinet, the same
6 briefing.

7 MR. KENNEDY: In regards to some specific issues that are
8 in the application, specifically the issues relating to the
9 customers of Newfoundland and Labrador Hydro located
10 in Labrador, and the, the ... for instance the decision to
11 establish one rate for the customers of Labrador, this is an
12 issue that would have been discussed with the appropriate
13 representatives of the Department of Mines and Energy.

14 MR. WELLS: As part of the briefing, that was part of our
15 briefing. Included in that our proposal that we
16 contemplated making as part of our application as you now
17 see in the filed application, yes.

18 MR. KENNEDY: And so would or has Hydro's position on
19 that issue been affected by feedback or directions that
20 you've received from representatives from the Department
21 of Mines and Energy?

22 MR. WELLS: No.

23 MR. KENNEDY: And what about the rural rates subsidy,
24 the 700 kilowatt block subsidy, was that an issue that was
25 raised with representatives of the Department of Mines and
26 Energy?

27 MR. WELLS: As part of the briefing outlining the rate
28 issues and the fact that we would be proposing to the
29 Board as we have to continue, you know, the 700, and our
30 customers treated the same as Newfoundland Power, that
31 was contained in the briefing, yes. I don't think there was
32 any comment on it.

33 MR. KENNEDY: So, I'll ask you specifically, to the best of
34 your knowledge did Hydro, was the position of Hydro
35 regarding that issue changed as a result of comments or
36 directions that you received from the representatives in the
37 Department of Mines and Energy or government overall?

38 MR. WELLS: No, this was a briefing of what the positions
39 we had taken which are reflected in our application and
40 there was no direction from government. It was an
41 information briefing, I'm sure government could have, you
42 know, we didn't, we explained the issues, like the one about
43 the Labrador interconnected going back to the fact that the
44 cost of service study that the Board had ordered, the '93
45 result, the Board's suggestion that that should be followed
46 with respect to, you know, we explained why our approach
47 to this is in relation to the cost of service study and this is
48 an issue to get those 24 rate classes down to 6 is the way
49 we're going about it and the initiative for this comes out of
50 the cost of service study by the Board and the

51 recommendation of Hydro. That's the nature, that was the
52 way, you know, we would present things in the same way
53 that we explained the balances in the Rate Stabilization Plan,
54 what we projected would be in the balances of the Rate
55 Stabilization Plan and our approach to, you know, what I
56 called the two-pronged approach. I'm the only one that
57 uses that term, but so much in Hydro rates and so much in
58 the Rate Stabilization Plan, the \$20.00 instead of the full \$28,
59 in our forecast of fuel prices, this would be part of our
60 briefing and on the financial matters of rates, like Mr.
61 Osmond's ... so we would explain the financial issues and
62 the rate issues and the overall background to the
63 application, and that's the nature of the briefing.

64 MR. KENNEDY: So, let's just go back to this dividend
65 issue then for just a minute. The dividend that's payable in
66 2002, as you've got booked in your financials of roughly
67 \$70 million, and for people's edification, **NP-72**, page 2 of 2,
68 if they want to reference it specifically. Can you indicate to
69 me when Hydro first received notice that government was
70 going to be looking for that dividend?

71 MR. WELLS: That particular ...

72 MR. KENNEDY: That size of that dividend?

73 MR. WELLS: Yes, that would have been communicated
74 from the Department of Finance, I think, the Deputy
75 Minister to Mr. Osmond. The issue of the dividends that
76 government would be paying to Hydro, or Hydro would be
77 paying to government, in the course of a year, it goes back
78 some five years and I think I testified earlier in the
79 proceeding that the government did not take the 75% of net
80 income that was available to it in four years in a row, but
81 the government had made it clear to Hydro and, you know,
82 in the past that we could expect that they would be looking
83 for a dividend from government and that was their policy,
84 but also that it could have been an extraordinary dividend
85 earlier had it not been for the fact that government
86 revenues before the end of the fiscal year ... in their
87 assessment they did not require that amount of dividend
88 from Hydro, therefore, they didn't request it in the final
89 position. So the issue, by the time it came down to this
90 particular year and this particular dividend, we had our
91 discussions. I had various discussions with the Minister
92 of Finance about that dividend, you know, back in '96, the
93 level of the dividend or the discussions with the ..

94 MR. KENNEDY: Back when, sorry?

95 MR. WELLS: It would back to as early as 1996 when the
96 first, you know, issue came up with government and
97 putting us on notice the nature of the dividend. So we
98 understood where the government was coming from so
99 what I'm saying on this particular dividend, at this time I am
100 pretty sure that Mr. Osmond is the one who was, nobody
101 called me and said the dividend is going to be X. For this

1 particular purpose the call would have come, most likely
2 from the Deputy Minister of Finance to Mr. Osmond.

3 MR. KENNEDY: I guess the question was though, when
4 did Hydro first receive notice that the government intended
5 to take a \$70 million dividend from Hydro in the year 2002.

6 MR. WELLS: The exact timing, it came, the, whether Mr.
7 Osmond was called prior to the budget speech or after the
8 budget speech, I'm not certain, but he's going to be on the
9 stand, but we were ...

10 MR. KENNEDY: The speech in the spring of 2001?

11 MR. WELLS: Yes, because in the budget speech the
12 Finance Minister outlined that they would be looking for a
13 certain level of payment from Hydro. Now I don't know if
14 we had any indication before the budget speech, maybe I
15 mean government does not have to share their budget
16 speech with us.

17 MR. KENNEDY: Would that after the briefing that Hydro's
18 given to government concerning the taking of an
19 application before the Board?

20 MR. WELLS: No, that would have been before the budget
21 speech of last year. It would have preceded our filing the,
22 this application.

23 MR. KENNEDY: I said the budget speech of 2001, but
24 you're referring to the budget speech of 2000 then?

25 MR. WELLS: We briefed the Minister after the budget
26 speech. I'm sorry, did I ... yeah, I'm probably misleading
27 you. It's 2001 that they announced for this special
28 dividend in the budget speech, the briefing with respect to
29 the application came after.

30 MR. KENNEDY: Would government have been aware of
31 Hydro's intention to file a rate increase application in 2001,
32 prior to ...

33 MR. WELLS: April of this year?

34 MR. KENNEDY: Prior to the budget speech?

35 MR. WELLS: Give me a second. We were appearing
36 before ...

37 MS. GREENE, Q.C.: I think it was a matter of public record,
38 so I was just going to say it was a matter of public record.
39 There was an order of the Board that was issued that
40 required us to file by May 31st and it was a matter of public
41 record of which the Department of Mines and Energy was
42 aware as well as government.

43 MR. KENNEDY: With all due respect to Counsel, that's not
44 the question, but I appreciate her comments.

45 MR. WELLS: I'm just having a little trouble with 2001 and
46 2002, but we filed May 31st. Everybody knew that Hydro

47 was to file, as it was suggested here, by order of this Board
48 because of the hearing with respect to the industrial
49 subsidy. Government, the Minister and government
50 generally would have been aware even prior to that that we
51 were going to file an application in 2001. In the normal
52 course of events we felt we were, you know, I know we
53 were ordered by the Board in the end but had the Board not
54 ordered it, we would have still, I think, because of the
55 circumstances, you can see in front of you, we would have
56 been filing anyway. The budget speech to which we're
57 referring relates to the current fiscal year of the province
58 and the dividend will be paid out before March 31st of
59 2002, so the budget speech had to be in April of this year
60 or May, so they, they definitely knew and it was a matter of
61 public record that we were filing this application, but the
62 briefing of the Minister, as I recollect, I'm very positive, I'm
63 pretty sure of this that we briefed the Minister, Minister
64 Matthews after the budget speech.

65 MR. KENNEDY: The, just pull up **IC-98**, page Roman
66 numeral (iv). Revised. Just scroll up a little bit. The fourth
67 bullet down "debt to capital ratio targets are set to achieve
68 a 75% dividend payout to the Hydro dividend portion
69 during 2003 to 2005. Over 2001 to 2005 timeframe \$334
70 million in dividends are expected to be paid to the Province
71 of Newfoundland and Labrador consisting of \$261, I guess,
72 million from Hydro and \$73 million from Churchill Falls
73 Labrador Corp. The budgeting for your dividends then, is
74 it based on just the 75% dividend payout as per the Board
75 policy in your financial plan?

76 MR. WELLS: I'm just checking the number here because ...
77 I think it does include the extraordinary dividend. I'm trying
78 to get the math right, but I think that Mr. Osmond would
79 have included what he anticipated and which we made it
80 part of our application the dividend payment for this year,
81 or in the spring of 2002.

82 MR. KENNEDY: But in Hydro's forecasting for its financial
83 projections for this rolling five year period, the dividend
84 figure would be based on knowns, I take it, from sort of
85 clear or expressed indications that you got from
86 government as you've described for the years where that
87 had been ascertained, but for the years where that has not
88 yet been ascertained, they would be based on the 75%
89 dividend policy.

90 MR. WELLS: Yes, on the Board policy for, yes,
91 subsequent dividends, yes.

92 MR. KENNEDY: In your testimony, on the first day of the
93 hearing, and I believe it shows up at page 34, at line 93,
94 page 34, line 93. That's interesting. Is that the 24th? Well,
95 we found one little glitch.

96 MR. O'RIELLY: The pagination is different.

1 MR. KENNEDY: If I can paraphrase Mr. Wells, this is sort
2 of a fairly running and I've lost my sentence. It's all
3 regarding the payment of the dividend by Hydro to
4 government and that that was done under the direction of
5 government and if my notes read right you stated
6 something to the effect "I had very little to say in the
7 matter, if the shareholder determines then the shareholder
8 is entitled to retained earnings".

9 MR. WELLS: I think I recall words to that ... the, whatever
10 the context was that a shareholder has the right to retained
11 earnings and can take retained earnings out of the
12 Company if the shareholder so desires. If well, certainly, if
13 your a majority shareholder and subject to the rights of
14 minority shareholders, in this case we have one
15 shareholder and it's pretty well sovereign it its jurisdiction.

16 MR. KENNEDY: And how does that play then with the
17 normal, normal corporate governance that we went through
18 at the very beginning, that the determination of a dividend
19 policy payout and then the actual payout of dividends is a
20 decision that's normally made by the Directors and is done
21 so being prudent and properly and cautiously done, having
22 regard to the financial circumstances of the company and
23 so on.

24 MR. WELLS: Yes.

25 MR. KENNEDY: And so is this a case of sort of the tail
26 wagging the dog a bit where your shareholder is
27 whipsawing the company about as opposed to the
28 Directors having complete control over the company as it
29 would be in a normal corporate governance situation?

30 MR. WELLS: Yes, dependent on the circumstances. One
31 of these, when you talk about the role of the director and
32 fiduciary responsibilities, I think it is equally applicable to
33 the Directors of Hydro, I don't mean that, but it's really all
34 been formulated and those things have developed to
35 protect the interest of shareholders in the broadly based
36 company where the Board of Directors are looking after the
37 interests of the company and no particular shareholder or
38 shareholding interest has a control. So, I think all these
39 things are valid, but in the case of a company which has
40 pretty well has a sole owner and they want to make
41 decisions and while the board of directors is there to
42 protect the company, one ... in the case say, Mr. Risley of
43 Clearwater, which is pretty well a sole ownership, I don't
44 think the board would want to trample around in
45 contravention of his wishes with respect to that particular
46 company.

47 MR. KENNEDY: The board wouldn't last long.

48 MR. WELLS: That could be, or they're all his friends. I
49 mean the point being that the interest of one become
50 merged in that of the other and Mr. Risley doesn't need to

51 appoint a board to protect his interests in the company. In
52 the particular case of government which is, again, the
53 shareholder for many, many years didn't take anything from
54 the company, you know, there was no return back to the
55 government in the form of dividends.

56 MR. KENNEDY: I understand, Mr. Wells, but you've
57 indicated that Hydro's not a broadly held Corporation. To
58 the contrary it's held by only one shareholder.

59 MR. WELLS: It's a statutory corporation, yes.

60 MR. KENNEDY: And you indicated that in regards to the
61 dividends that you're not the actors in this case. It's the
62 government who are the actors in the case of actually
63 determining what dividend is to be paid out by the
64 company.

65 MR. WELLS: In the ... the Board as they should have
66 done, did do ... they sought the appropriate advice now
67 that the government had decided that back sometime in '94
68 or '95, that they were going to take dividends from Hydro.
69 As we've heard in the evidence, the Board sought advice
70 and established a dividend policy and then they had
71 another meeting on the dividend policy and in the absence
72 of any direction from the shareholder, then it's pretty clear
73 what the dividend policy ... and it seems to be a reasonable
74 policy. The shareholder has over the last five years by and
75 large ... more by ... you know, has really followed and
76 collected dividends, or taken dividends from the company
77 that were less than the amounts that the Board had
78 stipulated. Now the reason they were less ...

79 MR. KENNEDY: I understand, and I hate to interrupt you,
80 Mr. Wells, I understand that, and you've said that a number
81 of times, that they took less than they were entitled to, and
82 I think that that's a well established fact before the Board.
83 The question though is the determination of what dividend
84 is taken is a decision that rests entirely in the hands of
85 government at the end of the day.

86 MR. WELLS: Yes, I think their decision in the end, if they
87 want to persist, will override anything else. I could add, to
88 help you, maybe in this ... no, it might help, that in doing
89 this extraordinary dividend, the financial advisors to Hydro
90 and the financial advisors to government were asked about
91 this and would it affect the corporation over the longer
92 term.

93 MR. KENNEDY: And I understand that and that's not
94 where I'm going with this.

95 MR. WELLS: Yeah, I'm sorry.

96 MR. KENNEDY: I'm simply trying to establish that
97 ultimately the decision of what dividend to pay out was a
98 decision made by government and it's a decision normally
99 made by government, not by the board of directors of

1 Hydro.

2 MR. WELLS: Well the dividends that we declared in '96 ...
3 '95, '96, '97, '98, were all decisions made by the Board and
4 well within their policy guideline.

5 MR. KENNEDY: Within their policy, yes, I understand
6 that.

7 MR. WELLS: Yeah, that's true.

8 MR. KENNEDY: But the, the decision of what dividend to
9 pay ...

10 MR. WELLS: To answer you, the government had said we
11 don't need any more than this so that's all ... and mindful of
12 the fact that they were always advising us that we might
13 get hit with the bigger one, you know.

14 MR. KENNEDY: And so, and you'll agree with me that the
15 fact that there is one shareholder who then can have direct
16 action on the board of the directors in determining what
17 dividend to pay out is, runs contrary to the normal
18 corporate governance that you would see with a broadly
19 held corporation.

20 MR. WELLS: With a broadly held corporation, but not
21 inconsistent with a corporation where there's a limited
22 number of shareholders and owner, one big owner really.

23 MR. KENNEDY: In your direct filed testimony, the pre-filed
24 testimony at page 6, and I never wrote the line down and I
25 never had ... can you just scroll down? It's close to the
26 bottom there. At line 20, this is a discussion about
27 amendments to the Hydro Corporation Act. You said the
28 legislative amendments indicate that as a matter of public
29 policy Hydro is intended to operate as a fully regulated
30 utility more similar to that of an investor-owned utility than
31 had previously been the case. That's a statement that you
32 still stand by here today?

33 MR. WELLS: Yes, and that was in reference to the
34 legislative amendments, some of which we reviewed, and all
35 have been noted in the evidence, and these amendments
36 certainly were intended to put Hydro in a different category
37 than it had been previously and in this continuum, it is
38 closer now to an investor-owned utility than it was prior to
39 these amendments.

40 MR. KENNEDY: Right, and in your opening statement and
41 in the written portion of your opening statement that was
42 passed out at page four at the bottom.

43 MR. WELLS: Yes.

44 MR. KENNEDY: You indicate Hydro provides an essential
45 service to all Newfoundlanders and Labradorians. It is
46 important that Hydro be regarded as a commercial entity
47 that is to be kept on a sound financial footing in its own
48 right. So are you using commercial entity to mean

49 something different than an investor-owned utility, that
50 they're not necessarily synonymous?

51 MR. WELLS: I didn't, my mind in writing that did not
52 advert to that particular issue. I was trying to reflect again
53 in the evidence, in the approach that we've taken on the
54 financial issues in Hydro's capital structure, consistent with
55 what's spelled out in the EPCA, that we are a commercial
56 entity that was intended to maintain a sound credit rating
57 in the financial markets of the world, you know, back to the
58 legislation. The use of the term commercial entity was not
59 intended to differentiate anything in my mind. I couldn't
60 say an investor-owned utility. We're not an investor-
61 owned utility. We are a commercial entity and should be
62 regarded ... that was my, that was my position, that is my
63 position.

64 MR. KENNEDY: In your pre-filed testimony you indicate
65 that it should be, you know, treated more similar to that of
66 an investor-owned utility, but am I taking you correctly
67 then that that's different than being treated synonymous
68 with an investor-owned utility, that it's a recognition that
69 Hydro stands in a position somewhat different from a pure
70 investor-owned utility and that that's something that this
71 Board should take into account.

72 MR. WELLS: You added something, if I may, that modifies
73 my statement in the direct evidence. In the direct evidence
74 in comment on the legislative amendments I said the
75 legislative amendments indicate that as a matter of public
76 policy Hydro is intended to operate as a fully regulated
77 utility more similar to that of an investor-owned utility than
78 had previously been the case.

79 MR. KENNEDY: Right.

80 MR. WELLS: That was in comment to legislation.

81 MR. KENNEDY: Uh hum.

82 MR. WELLS: This in my pre-filed, in my opening
83 statement, I'm not talking about legislative amendments, I'm
84 talking about please recognize Hydro as a commercial
85 entity, and that it should operate on a sound financial
86 footing. I wasn't categorizing it as a utility or not a utility
87 or closer to an investor-owned utility and that wasn't in my
88 mind right there then. It was just a shot in the opening
89 statement that (inaudible) Hydro to be regarded as a
90 commercial entity and then if you accept that principle, if
91 the Board were to accept that then it puts in context the,
92 our expert witness's evidence that if you have a commercial
93 entity here, this is how the world works and should work,
94 in that Hydro, in assessing Hydro's situation for the
95 moment you should be indifferent to the ownership. Now
96 having said that, that doesn't deny the ownership.

97 MR. KENNEDY: And that's irrespective of the fact that the
98 owner influences corporate decisions at a different level

1 than you would normally have in a broadly held investor-
2 owned utility.

3 MR. WELLS: Yeah, but that could come in the category, as
4 we've suggested to the Board as well, that if you take that
5 as the pure case, then you are to look at, or you may look
6 at, or you will look at things that would cause you to adjust
7 from that position for the moment. In the same way that I'm
8 saying that I don't agree that we should be getting a three
9 percent return on equity in the norm, but we're saying that
10 in the short-term and I think in my evidence I say to the ...
11 you know, that we all have an opportunity here to do the
12 right thing about how we regard Hydro as a regulated
13 entity and what rules of the game should apply to it, but in
14 this particular circumstance we can adjust. I mean then if
15 you determine what is the norm for a commercial entity then
16 what would provoke you to make an adjustment, what is
17 the basis for that adjustment ... now one could take your
18 point, or not your point, what you're raising, that issue, and
19 that may be a cause for some adjustment yet to be
20 determined.

21 MR. KENNEDY: That's probably an appropriate place to
22 break, Mr. Chair.

23 MR. NOSEWORTHY, CHAIRPERSON: Thank you very
24 much. We will break and we'll ... do you have any idea ...
25 no, okay.

26 MS. GREENE, Q.C.: It would be helpful to the parties for
27 planning tomorrow if counsel could indicate, have some
28 idea other counsel have as to the length of time he expects
29 to be.

30 MR. KENNEDY: I facetiously say that it's always a case of
31 how good the witness is but ...

32 MR. WELLS: This is getting ugly. *(laughter)*

33 MS. GREENE, Q.C.: I could say or how good counsel is as
34 well. It works both ways.

35 MR. KENNEDY: But it might ... I might finish by lunch
36 hour tomorrow.

37 MR. BROWNE, Q.C.: Just on that line of questioning, Mr.
38 Chairman, that's going on. If there is ... I don't know what
39 vibe I'm picking up here though. If there is something
40 that's suggested as untoward that the government has
41 misdirected Hydro or something and Board counsel is
42 suggesting that, I don't know what the ... maybe the Board
43 should give notice to the Minister of Justice that the
44 government itself may want to intervene. I don't know
45 where this is headed but just as I'm listening, I don't know
46 what the Board is suggesting here through their counsel.

47 MR. KENNEDY: Well, it's not the Board suggesting
48 anything, Counsel, it's Board counsel asking questions of
49 the witness which hopefully is explained by my opening

50 and a totally different thing. That's all I have to say to that.

51 MR. BROWNE, Q.C.: Well, I don't know if other counsel ...

52 MR. NOSEWORTHY, CHAIRPERSON: Thank you ... 9:30?

53 *(hearing adjourned to September 27, 2001)*

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