

1 (9:30 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Good morning
3 everybody. Hope our mood this morning is better than the
4 weather outside. It's foul.

5 MR. WELLS: It's a perfect day, Mr. Chair. *(laughter)*

6 MR. NOSEWORTHY, CHAIRMAN: Just right. Anyway,
7 perhaps we could continue on where we left off yesterday,
8 if we're in a position to proceed with Mr. Kennedy's cross-
9 examination of Mr. Wells, please.

10 MR. KENNEDY: Yes, Chair. There's one preliminary from
11 Newfoundland Power.

12 MR. NOSEWORTHY, CHAIRMAN: Okay.

13 MR. ALTEEN: Mr. Chairman, I'm filing today and sent to
14 the parties' offices, requests for information relating to the
15 pre-filed testimony, supplemental for Henderson that was
16 filed yesterday. Henderson is coming up in the queue fairly
17 quickly, it's probably better to get at it with some dispatch,
18 and those are just additional (inaudible).

19 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.
20 So recorded. Okay, Mr. Kennedy, are you in a position to
21 proceed? Good morning, Mr. Wells.

22 MR. KENNEDY: I am, Chair, believe it or not. It looks like
23 someone got married here in the corner, confetti.

24 MR. KENNEDY: Good morning, Mr. Wells.

25 MR. WELLS: Good morning.

26 MR. KENNEDY: Mr. Wells, when we left off yesterday we
27 were going through, if you will, some of the factors or
28 evidence concerning the relationship between Hydro and
29 the Government of Newfoundland and Labrador, and
30 specifically the Mines and Energy Department of the
31 Government of Newfoundland and Labrador, and I wanted
32 to start with the end of that and I wanted to bring to your
33 attention in particular a passage where, in the first day of
34 testimony by yourself ... this time I wrote the line number
35 down and not the page, so you'll have to bear with me for
36 a second. Page 30. Now, I think this is the PDF version I
37 have. I have it at line ... well, it's a statement that begins at
38 line 29. Yes, that's it, part of the issues. If you just want to
39 read from line 33, and this is you in reply to a question of
40 Ms. Butler, "And the best way I can put that to you from
41 my perspective or that maybe of our witnesses is that in its
42 initial consideration of the capital structure of Hydro, the
43 Board and everybody in the room really should be
44 indifferent as to who owns the entity, whether it be
45 Government, an individual or investor-owned." So I'm
46 trying to get a sense of your testimony in this regard and
47 correct me if I'm wrong but the way I understand you seem
48 to be conceptualizing it is that you start with the premise

49 that Hydro is a pure commercial entity to be treated as it's
50 (phonetic) investor-owned, a broadly-held corporation in
51 that regard. That's the beginning premise of how this
52 Board would view Hydro. Am I gathering that ...

53 MR. WELLS: Much like that. I don't think I had used the
54 term broadly-owned or not, but if the thesis is, or the
55 theory, and the suggestion we're saying to the Board as is
56 expressed in the testimony or the pre-filed evidence of our
57 expert witnesses is that one should look at the entity in first
58 blush as a commercial entity, as a utility or commercial
59 entity that stands on its own right and don't look at who
60 the shareholder is, and then say what happens in that
61 circumstance, what is the real theory of how you construct
62 your balance sheet, your debt equity ratios, the capital
63 structure of a company, and then from that, if you accept
64 that, then the way I put it in my pre-filed testimony in
65 theory then is what are the things that would influence the
66 Board to adjust against that standard for whatever facts it
67 may have before it.

68 MR. KENNEDY: Okay. So it's not a case of Hydro's
69 position being one of asking the Board to be wilfully blind
70 of the fact that it's a Crown corporation for instance.

71 MR. WELLS: Oh, my goodness, no, no, but ...

72 MR. KENNEDY: That you start with a premise that it's a
73 company and it runs itself as a commercial entity, a chance
74 of profit, risk of loss, operating in the financial markets of
75 the world ...

76 MR. WELLS: That's right.

77 MR. KENNEDY: ... but then there are a subtext, if you will,
78 to the fact that it's also a vehicle of Government, it's a
79 Crown corporation acting as an agent of Government and
80 that there are certain considerations that the Board needs
81 to take into account in that regard.

82 MR. WELLS: Yes, and I'm sure as others will bring to their
83 attention, but having said that, you know, if you were to
84 ask me, you know, I would be on the side of the fence, let's
85 put it this way, that despite the fact that the Government is
86 the shareholder, this utility should not depart, without very
87 good reason, should not be treated without the normal,
88 from the norm, and I think that's where our expert witnesses
89 are. Now obviously in this application we have retreated
90 substantially from the norm because we ourselves at
91 Hydro, and it was Hydro's management, Hydro's Board that
92 made this application, and we decided to request of the
93 Board a three percent return on equity in this particular
94 application for circumstances that we have tried to explain
95 and will explain in the course of the hearing, why the Board
96 should look at that, but then we also say to the Board that
97 in the normal course of events and to provide a position to
98 the investor agencies, you know, the credit rating agencies,

1 that the Public Utilities Board of Newfoundland has, and
2 Labrador, has a view with respect to utilities, and in part the
3 Board has already expressed that view, or in full part, with
4 respect to the investor-owned utility operating under the
5 same legislation in the province. So, yes, the ... but if you
6 take, if you take the purer theory, the guide (phonetic) that
7 would apply for capital structures financing and business
8 risk and apply all these financial parameters, like the experts
9 will talk about, and then you would say on the facts of this
10 case, well, we think we'll adjust for this or we'll adjust for
11 that, and if the Board is going to adjust for our application,
12 well, first off, anything that would normally be regarded as
13 a return on equity in any stretch of the imagination would
14 have to be abandoned for the setting of rates for the next
15 period and we're advocating that because of the underlying
16 effect on consumers, and if the Board agrees they might
17 accept that, but we are assuming a degree of risk more than
18 you would normally assume.

19 MR. KENNEDY: Okay. So I think that we're in agreement
20 then on that point and maybe what I thought would be
21 helpful for the Board is if we went through some of the
22 specific items where Hydro operates, taking in mind more
23 sort of social policy-based issues, for the Province of
24 Newfoundland and Labrador, whether it's on its own
25 instance or whether it's on the instance of the Government
26 of Newfoundland and Labrador. But before I was going to
27 start that, I just had one curiosity and I was going to ask
28 you to comment on, and in Section 3 of *The Hydro Act*
29 itself, and it's Section 3(6), and I guess what I was going to
30 ask is, would this be an instance where, because it's a
31 Crown corporation and specifically all the property of the
32 Corporation is actually the property of the Crown, that that
33 would be an instance where, unlike Newfoundland Power,
34 for instance, its property, not only is the title vested in
35 Newfoundland Power but the property of the Corporation
36 is actually the property of Newfoundland Power as well. In
37 Hydro's case the property is actually the property of the
38 Crown and then the title held by Hydro.

39 MR. WELLS: Hydro, yes, but not much different then in
40 the sense that the shareholders ultimately of
41 Newfoundland Power have the title to that property
42 through the entity, and in the case of the rate, or the
43 taxpayers of Newfoundland, represented by their
44 government of the day, own in effect Hydro, and they are
45 the ultimate authority and the taxpayers also determine the
46 government that represents them, so in the end they really
47 do have control.

48 (9:45 a.m.)

49 MR. KENNEDY: I did a search for orders-in-council
50 through the electronically filed documentation and I guess,
51 I don't know if it's my search results, but I came up with
52 three instances where there's comments made and I wanted

53 to bring you through those and get you to comment on
54 some of them. The first is a pretty innocuous one and I've
55 got a reference to it but I don't know if we need to
56 specifically bring it up, but it's a reference in Mr. Roberts'
57 pre-filed testimony or evidence, page six. It also shows up
58 in CA-59. CA-59 probably ... actually they're two different
59 references, I'm sorry. Go to Roberts J.C. (phonetic) first,
60 pre-filed, page six. Yeah. This was the first instance of an
61 order-in-council that I saw referenced in the pre-filed and
62 it's just at line 13 to 15 there, "That pursuant to Section 33
63 of *The Hydro Corporation Act*, our short-term debt as
64 prescribed by order-in-council may not exceed \$300
65 million." So that's an instance, that's an order-in-council
66 directed through the Department of Finance, I take it,
67 concerning the financing of Hydro by the Government of
68 Newfoundland and Labrador.

69 MR. WELLS: Well it's an order-in-council of Government
70 and it's, it provides for that \$300 million short-term
71 borrowing which is actually an advantage to Hydro and we
72 can use the flexibility of that as described in that paragraph
73 of Mr. Roberts' testimony ...

74 MR. KENNEDY: Sure, but ...

75 MR. WELLS: ... to good advantage, yeah.

76 MR. KENNEDY: But the order-in-council puts a cap on it
77 ...

78 MR. WELLS: Yes.

79 MR. KENNEDY: ... of \$300 million.

80 MR. WELLS: \$300 million, yes.

81 MR. KENNEDY: So in that respect the level of short-term
82 debt that the Company can use is limited by an order-in-
83 council.

84 MR. WELLS: That's correct, but I think that in our financial
85 management of, us or any other company, you want to look
86 at the percentage of your short-term debt as opposed to
87 your fixed debt. In other words, the short-term debt is a
88 floating charge and the fixed, the long-term debt has a fixed
89 charge, so when you're in the management of a company,
90 any entity, you want to be carefully looking at the amount
91 that you have fixed and floating and you're looking at your
92 business risks and you're looking at the market, and in our
93 case we manage ... we have a big parameter here, the \$300
94 million relative to our total outstanding debt in Hydro is
95 really our capability of the Treasury Department to manage
96 our operation to the advantage of our bottom line, is not
97 restricted by this.

98 MR. KENNEDY: Okay.

99 MR. WELLS: It is a help, yes. Now, if they said ...

100 MR. KENNEDY: So if ...

1 MR. WELLS: ... you could only, for argument's sake,
2 borrow \$100, you'd be in pretty short circumstance.

3 MR. KENNEDY: Right. So it's a cap but it's a theoretical
4 one, if you will. It hasn't imposed any practical limitations
5 on Hydro's ...

6 MR. WELLS: It certainly provides a high degree of margin
7 in terms of being, looking at your fixed and floating
8 charges.

9 MR. KENNEDY: The next one I wanted to look at was **CA-**
10 **58** revised, and this shows up in **CA-59** as well. Just go to
11 the next ... yeah, just scroll down. Number four there. It's
12 referenced again in that **CA-59** we had up a minute ago.
13 "The Board recommends that the special general service
14 rate for the first kilowatt, first 700 kilowatt hours per month,
15 which was established by order-in-council in 1989, be
16 eliminated. No change is recommended for the basic
17 customer charge." And then, "Hydro concurs with this
18 recommendation and will address this issue at its next rate
19 application as part of its five-year rate implementation
20 plan." So as I understand it, there is an order-in-council
21 which in effect requires Hydro to charge an energy rate for
22 that first 700 kilowatt hour block to certain customers the
23 same as if they were customers of Newfoundland Power.
24 Is that right?

25 MR. WELLS: That's correct.

26 MR. KENNEDY: And is it safe to assume that without that
27 order the energy charge for that particular block would be
28 higher than it otherwise is?

29 MR. WELLS: Not necessarily. I think ... and others would
30 be able to answer that in particular going back to the
31 history because it didn't start at 700 kilowatt hours, that
32 lifeline rate. It has been moved over time. It's more, I think,
33 in terms of the customers at the retail level throughout the
34 province are treated on the same basis, and that would be
35 my understanding of that. It's more of a practical effect, but
36 I think that I would defer, say, to Mr. Osmond to state the
37 background to this and ...

38 MR. KENNEDY: Okay. I guess ...

39 MR. WELLS: But there is an order-in-council that was
40 established in '89 to which the Board has given effect and
41 Hydro concurs with the Board's decision in the past.

42 MR. KENNEDY: Uh hum.

43 MR. WELLS: Yes.

44 MR. KENNEDY: Well, the Board concurs with the
45 recommendation that this lifeline block be eliminated.

46 MR. WELLS: Yeah. We said we would address that issue
47 in our next rate ... I don't have the advantage on the screen
48 going up to the top here to find out what ... this is in ... just

49 tab up a bit more.

50 MR. KENNEDY: Sure. Give the witness an opportunity ...

51 MR. WELLS: Just go up ahead of those blocks and ...

52 MR. KENNEDY: Go to the page one, please.

53 MR. WELLS: Yeah. This is taken out of the report on, the
54 1996 report.

55 MR. KENNEDY: Uh hum.

56 MR. WELLS: Yes, and the recommendations of the report
57 are then put in, because our position was, and we haven't
58 addressed it any further than that, to say that, we're saying
59 that, in our pre-filed testimony, Hydro is not proposing to
60 commence implementation of all the recommendations of
61 the Board's 1996 report, and the one to which you refer is
62 one which we have not addressed for the purposes of this
63 application.

64 MR. KENNEDY: And can I ask you why that's the case?

65 MR. WELLS: Well, in consideration of what we were to
66 deal with in our application in total, there were some things
67 that we thought were more pertinent than others to
68 address, and which has been detailed in our application, in
69 our pre-filed testimony as part of our application, and it all
70 must fit within the context. We devised an overall plan
71 with respect to rates and the largest influence on our
72 proposal on all the rate issues is to try to reduce the
73 immediate impact of the high oil prices on the customer, so
74 it's ... you know, we deferred ...

75 MR. KENNEDY: I appreciate that. That ...

76 MR. WELLS: That's how it was sort of put together.

77 MR. KENNEDY: That's the big issue.

78 MR. WELLS: That's the big issue.

79 MR. KENNEDY: And you'll grant me that there are a lot of
80 smaller issues that also arise from this application, and I
81 guess one of the issues that I'm focusing on right now is
82 the order-in-council requiring Hydro to charge what
83 amounts to preferential rate, if you will, for the lifeline block
84 for its residential customers so that they get charged the
85 same as if they were a customer of Newfoundland Power.

86 MR. WELLS: That's right.

87 MR. KENNEDY: And I understood ...

88 MR. WELLS: On the ...

89 MR. KENNEDY: And I understood that it would be the
90 case that but for that preferential rate their energy rates
91 would be higher than what would be charged to
92 Newfoundland Power and ...

93 MR. WELLS: Yes, I think ... yes, it would have been, yes.

1 MR. KENNEDY: Okay.

2 MR. WELLS: Yes.

3 MR. KENNEDY: And so this is a subsidization, if you will,
4 of the energy rate that's charged to the people that fall
5 under this lifeline block rate.

6 MR. WELLS: It's a transfer of cost one could say, yes.

7 MR. KENNEDY: From the whole group of customers to
8 subsidize in part the energy charged to a smaller group of
9 customers.

10 MR. WELLS: That would be correct, yes.

11 MR. KENNEDY: And is it fair to say that this is a socially-
12 based decision? In other words, this is public policy or
13 social policy driven decision to provide this preferential
14 rate to this smaller group of customers?

15 MR. WELLS: Well, one would ... it's very difficult to give
16 you an answer in terms of the Government having ... the
17 decision of the Government in issuing the order-in-council,
18 one would say the Government is taking the public interest,
19 the larger view of the whole of the scheme of things, into
20 account and providing for some equality to a certain level
21 of service amongst all ratepayers in the province. I mean,
22 that must be the public policy theory behind that, you
23 know, and therefore we do have issues with respect to the
24 isolated rural systems and to the rural interconnected, and
25 in the case of the rural interconnected they pay
26 substantially, you know, up to, I think it's about 86 percent
27 of the cost of the service provided, roughly in that area,
28 whereas in the case of the rural isolated it's about 22
29 percent, and it establishes a certain equity amongst all
30 users of electricity at a level, at a certain level within their
31 households.

32 MR. KENNEDY: And this effect, if you will, this effect
33 takes place ... for instance, if I'm a customer of
34 Newfoundland Power living in a high density residential
35 neighbourhood, the cost to deliver power to my house is
36 lower than if I was living in a rural environment down in the
37 Burin Peninsula, but I get charged the same for my energy
38 rate irrespective of where I live, so that there's no
39 subsidization ... there is a subsidization inherent in the
40 overall charging of one energy rate for all residential
41 customers by Newfoundland Power, for instance.

42 MR. WELLS: Yes, and I suggest to you, and others can
43 provide more detail than I, that in any system the cost of
44 service and the amounts received back related to a specific
45 cost of service or customer are not always the same. You
46 will see in utility applications the cost of service, say, at \$1,
47 and some rate classes are paying \$1.05 and some are paying
48 95 and that is not unique, I don't think, to the
49 Newfoundland jurisdiction, but ...

50 MR. KENNEDY: That's the ...

51 MR. WELLS: ... this particular thing only applies to a
52 certain, it's called, I guess for convenience, the lifeline rate
53 up to 700 kilowatts to a household in a month. You get that
54 at the same rate. Beyond that you're going to have to pay
55 something.

56 MR. KENNEDY: And just so as I make sure I understand
57 this correctly, as I understand it the 700 kilowatt hour
58 lifeline block was established as being a benchmark of what
59 is required for usage by a resident in maintaining certain,
60 you know, minimum ...

61 MR. WELLS: Minimal services, yes.

62 MR. KENNEDY: Minimum standards and levels of service
63 for heating and cooking and what have you.

64 MR. WELLS: I don't think it includes electric heat. It's
65 intended to include your lights, your stove, your fridge,
66 your freezer, things like that, your dryer, and the other
67 thing, and, you know, there have been changes in that 700.
68 I think that used to be 500 and then it went to 600 and then
69 it evolved to 700, reflecting, you know, the household
70 today uses more electricity and more appliances related to
71 the normal household life, and that has ... so that's a
72 reflection again of consideration of the public and some
73 public policy saying this is the standard we apply in this
74 jurisdiction.

75 MR. KENNEDY: So, yeah. So there's some elements of
76 public policy in determining what's considered to be the
77 lifeline block and then there's public policy implemented in
78 a decision through an order-in-council of establishing a
79 preferential rate for those people who live in rural isolated
80 communities.

81 MR. WELLS: Yes.

82 MR. KENNEDY: And if we could just scroll back down to
83 page two again, please. It's number four. So in 1996 it was,
84 "The Board recommends that the special general service
85 rate for the first 700 kilowatt hour per month, which was
86 established by order-in-council be eliminated, and no
87 change is recommended from the basic customer charge,"
88 which would be the flat monthly rate, just so we're clear,
89 correct?

90 MR. WELLS: Yeah.

91 MR. KENNEDY: Yeah. And then Hydro's response to that
92 was, "Hydro concurs with this recommendation and will
93 address this issue at its next rate application as part of its
94 five-year rate implementation plan."

95 MR. WELLS: Yes. We put that in in terms of appearance
96 for the general service class in that category, like,
97 preferential rate treatment and that we've proposed, but in

1 consideration of the increases coming in now within the
2 system, that we would have a five-year rate proposal to
3 spread the appropriate increase over that general service
4 class in the same sense that we proposed to do it for the
5 preferential rates for Government and come back on the
6 others in the preferential rates for 2004 year. We treated it
7 the same way, yes.

8 (10:00 a.m.)

9 MR. KENNEDY: So when I see that, "Hydro concurs with
10 this recommendation," that was the recommendation to
11 eliminate the preferential rate.

12 MR. WELLS: Yes, and in the course of preparing our
13 application we came to the conclusion that we would
14 recommend to the Board, because our whole application is
15 a recommendation, that we would recommend to the Board
16 that while we agree that we're going to have to deal with
17 the issue of a general service rate, that we would, we are
18 recommending to the Board that we deal with it at our next
19 filing and then, and that would not have been so concrete
20 a proposal had we not also indicated that we intend to file
21 again in 2003 for a test year in 2004, so we're telling the
22 Board we recommend that you defer this, we agree with the
23 principle of what you are saying, and let's start the process
24 in the rates of 2004. The Board will tell us which way we
25 are to go.

26 MR. KENNEDY: This would ... to actually eliminate that
27 special rate, that would require another order-in-council or
28 no?

29 MR. WELLS: I ...

30 MS. GREENE, Q.C.: I don't know if it would be helpful
31 because really the line of questioning seems to suggest
32 that Hydro has taken a position that Government may by
33 order-in-council direct Hydro to do a certain rate design.
34 That is not the legal position of Hydro. Our position is that
35 Hydro is a fully-regulated utility under *The Public Utilities*
36 *Act*. If direction is to be given by Government on such
37 issues, it will be given to the Board under **Section 5.1** of
38 *The Electrical Power Control Act*. Part of the historical
39 problem is that in approaching this hearing we had historic
40 rates which may have been based on previous orders-in-
41 council and the issue for the Board is how to deal with our
42 historical context. Originally it was set by order-in-council
43 which would be viewed by this Board and accepted by this
44 Board as a means of how rates were designed for rural
45 customers, but on a go-forward basis, if Government were
46 to issue direction, it would have to be to the Board under
47 **Section 5.1** of *The Electrical Power Control Act* and that's
48 Hydro's position for this hearing.

49 MR. KENNEDY: So if I can gather counsel's position
50 correctly, that Hydro is indicating that the Board is not

51 bound by that ...

52 MS. GREENE, Q.C.: No.

53 MR. KENNEDY: ... by that order-in-council, that if the
54 Board chose, it could eliminate the 700 kilowatt hour lifeline
55 block rate?

56 MS. GREENE, Q.C.: That's correct, and similarly with
57 respect to the preferential rates for, primarily for customers
58 in isolated areas such as the fish plants. It is not Hydro's
59 position that the Board is bound by those previous orders-
60 in-council which were passed before Hydro became fully
61 regulated. It is Hydro's position it is fully within the
62 authority of the Board to make recommendations with
63 respect to the preferential rates and with respect to the
64 lifeline block.

65 MR. KENNEDY: Thank you, counsel.

66 UMR. YOUNG: Orders, orders.

67 MS. GREENE, Q.C.: Orders of the Board. The Board may
68 deal with this matter and of course as Hydro is fully
69 regulated they would through an order of the Board
70 determine how the matters would be dealt with.

71 MR. KENNEDY: Still on this sort of issue that's related to
72 that, I wonder if we could pull up **NP-21**? Revised, yeah,
73 that's fine. Mr. Wells, this was a question Newfoundland
74 Power issued to Hydro concerning uncollected bills for the
75 period 1992 to the year 2000 and then it's forecast for this
76 year and the test year, and it was asked to be split up
77 among the, those four groups that you see, the island rural
78 isolated, island rural interconnected and so on, and then
79 there was an answer first that gave the definitions to each
80 of them and the data was actually presented in a different
81 format that the question asked for it as has been explained,
82 that was the way that Hydro kept it. I was wondering if we
83 could just go to the next page? So what we have is
84 beginning in 1992, total Hydro revenue you'll see, and then
85 the bad debts for the different groupings, island, Happy
86 Valley, St. Anthony, Wabush, Labrador City, and clearly
87 the amounts involved here pale in comparison to the total
88 revenue generated by Newfoundland and Labrador Hydro,
89 so clearly this is not an issue of, an issue in absolute dollar
90 terms, but more an issue of the underlying social
91 implication, if you will, of the response provided. And I
92 wonder if we could flip to the next page, three of five? We
93 can see that the amount owing by each of these groups,
94 the island, Happy Valley, St. Anthony, Wabush, '95, '96, '97,
95 continues to grow. As a percentage it also continues to
96 grow just marginally?

97 MR. WELLS: Yes.

98 MR. KENNEDY: If you'd go to the next page, please.
99 Again the amounts in absolute dollar terms continue to

1 grow, and then the percentage of that bad debt in relation
2 to revenue also continues to grow?

3 MR. WELLS: That's correct.

4 MR. KENNEDY: If you could go to the next page, please.
5 So for 2001 and 2002, 2001, I'm not sure when ... the
6 document is dated July the 12th. I'm not sure if that's the
7 bad debt forecast as of July the 12th but we won't quibble
8 with the, whether it's proforma or based on some financial
9 projection for the full year, but nonetheless in 2001 you
10 were forecasting bad debts of a total of \$450,000 and then
11 the percentage of that bad debt as a proportion of revenue
12 is the largest it's ever been by 2001, and then 2002 you
13 project a decrease, which I'd suggest to you sort of goes
14 against the trend for the previous five or six years. So I'm
15 wondering two questions, and I appreciate you probably
16 don't have the knowledge at a level of detail about the bad
17 debts, I don't imagine that you're sending collection
18 notices, but is there, as far as you're aware, an underlying
19 issue here of where Hydro treats the collection of bad
20 debts for this group of customers differently than it would
21 for other rate classes that it serves?

22 MR. WELLS: Well, these are all ... what's incorporated on
23 those tables are all our retail customers.

24 MR. KENNEDY: It's only Newfoundland Power left and
25 then the industrials.

26 MR. WELLS: Yeah, the industrials. That's right, yeah.

27 MR. KENNEDY: And you don't have to go far to collect
28 your bad debts from Newfoundland Power and you know
29 where the industrial customers ...

30 MR. WELLS: No. These ...

31 MR. KENNEDY: ... live and reside, so these are the only
32 ones where you would have bad debts, if you will.

33 MR. WELLS: That's right, at the retail level. That's right.
34 And maybe what, you know, the figures as presented
35 reflect ... I think that one of the things that you would see
36 in our outstanding accounts, and now these are in the
37 category of bad debts, not the category of delayed
38 payments, but the ebb and flow of the revenues in respect,
39 in some respects, reflect the economic conditions that exist
40 in rural Newfoundland, where we are located, in the isolated
41 communities, and you can see a reflection. I think if you
42 follow through with the accounts of Hydro and looking
43 back, somebody could say, well, something has happened
44 in this particular point in time in Newfoundland, you know,
45 either like a moratorium in the fishery or there's a bad year
46 or there's a higher degree of unemployment, things like that
47 that would be, you would reasonably expect in the
48 communities that we serve, which we don't have the benefit
49 in terms of like Newfoundland Power with a much broader

50 customer base. If one area of their operations where people
51 are having a bit of a time or a down time period in a mill or
52 something is that you don't get the immediate impact in
53 terms of the percentages in dollars that they're collecting
54 from retail customers, but I'm sure in some of their areas, if
55 you look at it, fine tooth, it might show up. That's all I can
56 ... I can't help you any more than that on these issues.

57 MR. KENNEDY: Okay. I wonder if we could turn to **NP-**
58 **214?** Again this was a question Newfoundland Power
59 issued to Hydro and the Question A was the, "Identify all
60 cases where Hydro has perceived social or public policy
61 objectives. Indicate whether these objectives were pursued
62 on its own or based on direction from the shareholders."
63 And then B was, "Identify and support the associated
64 impact on Hydro's revenue requirement of Hydro's pursuit
65 of the social and public policy objectives identified in A."
66 Now, the answer as stated in A re-words the question ever
67 so slightly. That's hanging around those politicians that ...
68 it says, "The following are social or public policy
69 objectives of Government that have affected Hydro's
70 actions or the nature of services provided and are included
71 in Hydro's 2002 test year revenue requirements." So it
72 became, the answer became a little more focused than the
73 question because the question didn't limit it to the test year
74 per se. But I wanted to look at these three issues, the rural
75 rates policy that ... if you could just scroll down a little bit,
76 please. And these items result from direction from Hydro's
77 shareholders, rural rates policy, "Customers served on the
78 island interconnected rural system will be charged the same
79 rates as Newfoundland Power's customers." So that's the
80 issue that we were just talking about here, about the order-
81 in-council. So these items, that first item, this is the lifeline
82 block, or, sorry, number two, the lifeline rate block issue.
83 It's indicated in this response that that's a direction from
84 Hydro's shareholder, i.e., the Government of Newfoundland
85 and Labrador, but the order-in-council is not binding on
86 Hydro anymore and Hydro agreed with the
87 recommendation of the Board to eliminate that lifeline block
88 but then it is deferring that to another decision, so I guess
89 I'm just trying to get down to exactly whose decision is it
90 and whose decision is it to change that decision about the
91 lifeline block?

92 MR. WELLS: Okay. Hydro of its own, in its own initiative,
93 cannot make any rate changes and under the amended
94 legislation that we're now proceeding under at this hearing
95 the Board is the only authority to make the change and
96 implicit in our application, as counsel for Hydro just
97 expressed, it's implicit that we've assumed that the Board
98 has authority to make certain, to make changes with respect
99 to the rates in, you know, and in keeping with the
100 legislative fact that the Board is now to decide on the rates
101 issues. Government has the save-all or catch clause that
102 they could come in at some time but they haven't

1 intervened with respect to this application, and therefore
2 the decisions will be the decisions of the Board, so, and as
3 we've said on a particular point, the general service in
4 excess of the 700 in isolated areas, we concur in principle
5 with the Board's recommendation of the 1996 report that
6 that be eliminated, but we are suggesting to the Board a
7 particular time frame and a methodology by which to
8 eliminate it, and the Board, in our view, unless somebody,
9 unless there's some other intervention, will make that
10 decision.

11 MR. KENNEDY: Okay. So when ...

12 MR. WELLS: We've already exercised our value judgement
13 and made a recommendation. The Board will now exercise
14 its judgement and make a final decision.

15 MR. KENNEDY: Okay. So is it fair to say then, just taking,
16 you know, your counsel's statement, that the reason we
17 have it is a historically-based one, that it stems from an
18 order-in-council, that's why it's there, and, but now the, it's
19 opened up again as an issue in the sense that the Board is
20 free to deal with this issue and Hydro in turn is free to make
21 recommendations on this issue, not, and not having to
22 concern itself with the order-in-council still binding up the
23 issue?

24 MR. WELLS: That's right, yes.

25 MR. KENNEDY: And that would be similar for the
26 preferential rates for certain rural customers, that I believe
27 Mr. Hutchings questioned you on as well?

28 MR. WELLS: That's correct.

29 MR. KENNEDY: And there was one other issue, just want
30 to see if you had any specific knowledge about, and that
31 was that in 2000 there was a capital budget hearing for
32 Hydro and part of that was a request to install new fuel
33 storage capability and additional generation at Davis Inlet.
34 Are you aware of that?

35 MR. WELLS: Yes, I'm aware that we made expenditures in
36 Davis Inlet related to fuel storage. I'm aware of the issue of
37 fuel storage in Davis Inlet and it did come into the 2000
38 capital budget, yes.

39 MR. KENNEDY: And as I understand it in that 2000 capital
40 budget the additional generation was an extra 120 kilowatts
41 of peak power.

42 MR. WELLS: For Davis Inlet.

43 MR. KENNEDY: For Davis Inlet.

44 MR. WELLS: Yes.

45 MR. KENNEDY: And that cost \$450,000 as per your capital
46 budget.

47 MR. WELLS: Yes.

48 MR. KENNEDY: And as I understand it, 67 kilowatt hours
49 of that 120 was for an infrared heating system in the Davis
50 Inlet skating rink.

51 MR. WELLS: I accept your word. When you get down to
52 detail, from my level, I was aware and I would question as
53 CEO somebody proposing to put anything into Davis Inlet
54 with our system when everybody can take the view with
55 the public notice that their ... (unintelligible) is the new
56 community.

57 MR. KENNEDY: Right.

58 MR. WELLS: So you would automatically, you know, by
59 the time it got to the Management Committee, we were
60 saying what is ... but the circumstances were such that we
61 still have to provide the service and are obligated, I think,
62 to provide a service in Davis Inlet until the community no
63 longer exists, and I think that the, like the generation
64 expenditure is not a loss to Hydro, that diesel engine is
65 quite capable of being moved, you know, and we could use
66 it in the system elsewhere down the road, but I think that
67 the problem that TRO had, and Mr. Reeves is coming on
68 the stand later, is that we had to increase the capacity and
69 the supply of energy to the existing community of Davis
70 Inlet.

71 *(10:15 a.m.)*

72 MR. KENNEDY: I understand of the 120, as I said, 67, 120
73 extra kilowatts of peak, 67 of it is attributable to the infrared
74 heating system in the skating rink. The remaining 65
75 kilowatts of incremental peak demand was for new
76 residences with electric heat for some of the community
77 elders. So I guess what I'm asking is, would this be an
78 example of a more social-based decision on the part of
79 Hydro about implementing, you know, installing plant in
80 Davis Inlet for those purposes in light of the fact that the
81 community was going to be moved?

82 MR. WELLS: No. Our obligation is to provide a service in
83 an area and I think by practice or convention where there's
84 more than, where there's a level of 15 customers or more in
85 the Province of Newfoundland and Labrador that Labrador,
86 Newfoundland and Labrador Hydro has viewed that as an
87 obligation to provide service, you know, to the group, and
88 the, for us to start to question what is going on in the
89 community and make value judgements with respect to
90 whether somebody should be doing this or that is really
91 beyond what the ... who in the Utility would decide that,
92 our management? You know, we can't make those
93 judgements. As I mentioned in my testimony earlier, in the
94 community of Charlottetown we were pushed suddenly to
95 add additional capacity because there was a new fish plant
96 established there, additional requirement for energy and
97 capacity because of the new fish plant, and ...

1 MR. KENNEDY: I'm sorry, which community?

2 MR. WELLS: ... it's not for us to question that in the
3 community of Charlottetown that there's some activity. We
4 just reacted to the demand when it was made known. The
5 only reason I reference that is that I don't think we had that
6 in our budget because we weren't aware, but when the
7 demand came we had to meet and we moved quickly to do
8 it.

9 MR. KENNEDY: The capital expenditure for Charlottetown
10 was \$953,000 and that this was to meet the demands of the
11 seasonal shrimp plant.

12 MR. WELLS: Yeah. The only ... yes. What caused the
13 increased demand in that small community was the addition
14 of the shrimp processing plant or the capability to process
15 shrimp and then they needed that ... the requirement was
16 reflected in the demand that we supplied.

17 MR. KENNEDY: So the pay-back period wasn't considered
18 in that instance because you have an obligation to provide
19 the service.

20 MR. WELLS: We have an obligation to provide the
21 service.

22 MR. KENNEDY: So is it fair to say then there's some
23 instances, and those are two, for instance, where on first
24 blush it would appear that Hydro is making a decision or
25 could be perceived that Hydro is making its decision based
26 on social policy issues but in actual fact the decision is one
27 of an obligation to provide the service?

28 MR. WELLS: It would be no different if 50 new residents
29 were to come into the community of St. Anthony and build
30 houses and have to be hooked up. We would do it as
31 would Newfoundland Power in their ... the population of
32 Gander or Corner Brook or St. John's, there's a good
33 example, 100 new households are established this year in
34 St. John's and Newfoundland Power will provide the
35 service and they don't think of it, and that total, whatever
36 the number of households, may be the same type of thing
37 that we're talking about in in terms of Davis Inlet, which is
38 a community, and they do it because, well, in their case as
39 an investor-owned utility, they have an obligation there
40 and it's an opportunity for them, but ...

41 MR. KENNEDY: Okay.

42 MR. WELLS: So we treat that in the same way. And for us
43 to make any other judgement other than that we are a utility
44 that is providing a service under prescribed rules, would
45 be, you know ... I don't think you could leave it up to any
46 management group in Hydro or its Board to say, well, we
47 think Davis is going to be abandoned in two or three years,
48 we're just not going to put any more in there and we're a
49 public utility providing, charged under our mandate to

50 provide reliable least cost power to the communities in
51 Newfoundland and Labrador. Somebody else would have
52 to make those decisions. We think purely in the business
53 terms and follow the public policies that are expressed like
54 the 700, you know, lifeline rate and certain things that have
55 over time come into the system and that's our business.

56 MR. KENNEDY: The other order-in-council I wanted to
57 speak about, which is referenced obliquely is, and I think
58 it's from your testimony, is that it concerns the Granite
59 Canal Project, and as I understand it from your testimony,
60 and I think it appears in a couple other places, that Granite
61 Canal, that comes on stream in 2003.

62 MR. WELLS: Yes.

63 MR. KENNEDY: And if I also understand it, the total
64 capital cost for Granite Canal are budgeted at approximately
65 \$135 million.

66 MR. WELLS: Yes.

67 MR. KENNEDY: And that there was some 100 and, I think
68 it was roughly \$120 million of that capital spending in 2001
69 to 2003 period.

70 MR. WELLS: That's correct.

71 MR. KENNEDY: And as I also understand it, the
72 Government issued an order-in-council removing the
73 Granite Canal from the jurisdiction of the Public Utilities
74 Board. Is that correct?

75 MR. WELLS: That's correct.

76 MR. KENNEDY: Now once Granite Canal comes on stream
77 in 2003, it becomes part of your rate base, correct?

78 MR. WELLS: Yes.

79 MR. KENNEDY: And your revenue requirement will have
80 to take that into account.

81 MR. WELLS: Yes.

82 MR. KENNEDY: Can I ask you first, in light of the fact ...
83 and we looked at the section of the EPCA, **Section 6 of the**
84 **EPCA**, which otherwise gives authority to the Board to
85 make determinations regarding generation. Can I ask you
86 are you aware of why the Granite Canal Project was taken
87 from the jurisdiction of the Board? Was there a specific
88 reason or reasons as to why that would not have been
89 subject to the Board's jurisdiction?

90 MR. WELLS: I'm aware of circumstances that led to the,
91 that type of decision being made and the amendment that
92 the Government made to the legislation. It all goes back to
93 the issues related to the requirements of the system and it's
94 our System Planning Department that does the load
95 forecast and requirements for the island integrated system,
96 interconnected system, and when the System Planning said

1 we needed new capacity, which would be recommended for
2 2003, looking at that going forward, back in 1997, as I
3 mentioned earlier, we had issued a request for proposals to
4 ascertain who and what could supply energy to meet the
5 demand that would be created if the Voisey's Bay smelter
6 went ahead as announced in, you know, was contemplated
7 for the island portion of the province, and we found it was
8 subsequently Argentia, and that particular requirement was
9 200 megawatts and something like 1,400 gigawatt hours.
10 Having said that, we issued the request for proposals and
11 we got, we had our own answers to what Hydro of its own
12 right could do and we asked everybody else what they
13 could do and there were representations made or responses
14 filed from local companies, from outside companies, and
15 Hydro, and what it did is that when we had all that in, we
16 were aware of what the capabilities were within the Island
17 of Newfoundland and Labrador to supply power and
18 energy. Subsequently of course all that, when Voisey's
19 didn't proceed, then that was all abandoned. At the same
20 time in '97 that that was happening, we were engaged in the
21 discussions with Hydro-Quebec on the development of the
22 Lower Churchill which also had the possibility that we may
23 get Gull Island developed and the question of a line
24 extension into Newfoundland and a connection with
25 Labrador. In light of these things that were not ... we didn't
26 know what the answer would be. Hydro went to
27 Government and said we're going to need certain
28 requirements, you know, we go out over time, as Mr.
29 Budgell will explain, but given the uncertainty at that time
30 with respect to a final decision with respect to Voisey's
31 Bay, which didn't come till much later in the year, and given
32 the uncertainty with respect to the ongoing negotiations
33 with Hydro-Quebec on the development of the Churchill
34 and the possibility that a line may come, these factors may
35 influence a decision by anybody as to what the next best
36 step you would take to increase the capacity on the island
37 portion of the province to service the interconnected grid,
38 and we also said that if we take the normal approach under
39 the existing legislation and issued a request for proposals,
40 got them in, vetted them, appeared before the Public
41 Utilities Board and get a final decision made, that could
42 take us as long as five years, and we're looking at the 2001
43 at that time and 2003 period, so our recommendation to
44 Government was if you, you know, maybe we should defer
45 this decision before we commit because we might make the
46 wrong move and add things to the system that would later
47 prove to be, you know, just a cost that we shouldn't, or not
48 the right thing, so we said the longer the decision is
49 delayed with respect to the next source of generation
50 requirement, the more likely that the final decision made will
51 be the right one, and then we said because of the request
52 for proposals that we had received in 1997, we are aware of
53 projects in Newfoundland that other proponents have an
54 interest in and, you know, some good, and they're all on a

55 scale, and we can tell you that we can supply with Granite
56 Canal or we can supply depending on the requirement with
57 another unit at Holyrood, so our recommendation to
58 Government was to, let's defer, but your backstop is that
59 Hydro, for the demands in the absence of something big
60 happening, there are ways and means to be able to supply
61 that demand as a backstop, and pursuant to that
62 recommendation, I personally participated in a briefing of
63 the Finance Policy Committee of Government and with the
64 Deputy Minister of Mines and Energy, and outlined that to
65 that committee and subsequently made the same
66 presentation to Policy and Priority Committee of Cabinet,
67 and the Government accepted that, that we not move
68 precipitously until the situation became a little clearer as to
69 what was going to happen that may affect substantially the
70 delivery of power and energy to the interconnected grid,
71 and having done that, as events unfolded after, we found
72 out that we did not need to fulfill the requirement for a
73 smelter on the island, you know, as anticipated at the time
74 in 1997. You have to remember time and all of this and what
75 we knew at the time. And when it finally became clear that,
76 because this demand was so big, all the nugs (phonetic) in
77 Granite Canal couldn't possibly satisfy the Voisey's Bay
78 requirement. You either add a unit at Holyrood or a
79 Greenfield (phonetic) site that was proposed by others, you
80 know, for oil-fired generation or something like that, to meet
81 that demand. When that demand diminished, then System
82 Planning, you know, by 1998/99, were going into 2000, said
83 the requirement is going to be much less, and then it was
84 becoming pretty obvious that there wouldn't be an
85 interconnection down the road from Churchill, so what
86 System Planning had then to say is, if Churchill, and
87 Churchill's a 20 10, 20 12 item anyway, here's what the
88 province will need looking forward absent a large industrial
89 complex on the island that would eat up, and we came up
90 with the plan of, you know, the requirement of the 80 to 100
91 megawatts in a time frame of 2002, 2003, that, or 2004. By
92 that time when we went back to Government to explain that
93 aspect of the situation as it unfolded, we then had to move
94 more quickly than going through a request for proposals,
95 getting them all in, vetting them, taking it to the Board for
96 ... that would have precluded the timely delivery of the
97 energy as we had explained to Government back in the
98 '97/98 period, and then Government, in looking at the total
99 of the situation, said, well, what the outcome was, as we
100 now all see, is the order directing us to proceed with
101 Granite Canal, and our assurance to Government was that
102 within our knowledge in Hydro and everything we know
103 about the Hydro developments that could take place on the
104 Island of Newfoundland and Labrador, there is nothing
105 better than Granite Canal, because we said we could bring
106 it in ... if we bring it in on budget, we will bring it in at a cost
107 of five and a half cents a kilowatt hour, and there's nothing
108 better than that out there. This is taking advantage of the

1 existing Bay D'Espoir system which is ours.

2 (10:30 a.m.)

3 The Government in effect asked us are there other options
4 out there to fulfill any further requirement, and they had
5 then directed us, as our evidence shows, that we should
6 entertain discussions with Corner Brook Pulp and Paper
7 and with Abitibi Price in Grand Falls. Now why those two?
8 In our RFIs that came in to meet the Voisey's Bay issue,
9 Corner Brook Pulp and Paper made a submission with
10 respect to their boiler and what it could do, and Abitibi
11 Price had made submissions with respect to what they
12 could do in their Beaton (phonetic) Development, and they
13 were very attractive supply alternatives in the system, and
14 on the basis of that the Government said, well, go talk to
15 them and see what you could do in terms of can you bring
16 it in the range of, and that was exercising the Government's
17 public policy with respect to say to nugs (phonetic), go talk
18 to them and see if you can get something that would be of
19 interest in meeting the island system requirements. We
20 discussed these issues with those two entities, reported
21 back to Government on the total situation, and then
22 subsequently received the direction from Government to
23 proceed and enter into contracts with ACI for the Beaton
24 (phonetic) and Bishop's Falls upgrade, with Corner Brook
25 Pulp and Paper for their boiler, and proceed with Granite
26 Canal, and that came out in the ... you know, and there's an
27 amendment to the legislation and an order was put in. So
28 that's how that developed and these new sources of
29 generation in our view are consistent with what is available
30 in the island portion of the province to serve the
31 requirements. There are others. We have one more, as I
32 mentioned earlier, Island Pond, is another development
33 which in the absence of something else that would be
34 better, we would bring on down the road, but it all depends
35 on what the system requirements will be in between now
36 and 2007.

37 MR. KENNEDY: So this involvement of the Granite Canal
38 Project involved Newfoundland and Labrador Hydro and
39 Government, and the projects by the private enterprises
40 involved Hydro, Abitibi Price and Government.

41 MR. WELLS: We were directed by Government to talk to,
42 to explore the possibility of those two companies
43 supplying power and energy to the grid. I think that those
44 two companies, in addition to making representation or
45 responding to the RFI that Hydro had, were also making
46 representation to Government, as are others out there, non-
47 utility generators, saying we have projects that could
48 serve, you know, the grid here, and people do that
49 periodically, whoever has the requirement.

50 MR. KENNEDY: You're aware that Newfoundland Power
51 also is involved from time to time in generation projects.

52 For instance, correct me if I'm wrong, but the most recent
53 one by Newfoundland Power was Rose Blanche.

54 MR. WELLS: Yes.

55 MR. KENNEDY: And I guess, and that project itself was a
56 project of Newfoundland Power that was brought before
57 the Board, and I guess ...

58 MR. WELLS: Yes.

59 MR. KENNEDY: I guess what I'm trying to get is your
60 position on if the Board per *The Electrical Power Control*
61 *Act* has jurisdiction over generation unless otherwise
62 exempted or otherwise usurped, if you will, by an order-in-
63 council, and Hydro is subject to the Board's jurisdiction
64 pursuant to the EPCA and *The Public Utilities Act*, and so
65 to be treated in all respects as a fully-regulated utility, as
66 you've suggested, the same as if it was investor owned, as
67 is Newfoundland Power, do you see any conflict, if you
68 will, or shortcoming in having the generation issues of
69 Hydro removed from the jurisdiction of the Board so that
70 the, then the only thing the Board is left to deal with is the
71 rate increase applications and the resulting impact on the
72 revenue requirement that those generation projects have?

73 MR. WELLS: Not necessarily, because there are two
74 different things involved here. What I have given you is
75 the outline of what happened with respect to ... and it is a
76 fact because the, from the public perspective the order was
77 made pursuant to an amendment to the EPCA with respect
78 to the new requirements for generation, and one could say
79 that Government had intervened or come in and overridden
80 the jurisdiction of the Board, which in fact it does, and the
81 background to that in terms of the Government doing that,
82 that these, as they were explained at the time by
83 Government in public statements, what they, they were
84 making moves that they thought were to be in the best
85 interests of the province in the situation described. It
86 would be less than appropriate for me here before the
87 Board then to explain that we did under the circumstances
88 described make recommendations to Government with
89 respect to the fact situation, that if we followed for the first
90 time this procedure that was, it was set out in amended
91 legislation of '96, remember, we're only in the year 1997,
92 events are unfolding at a pace, and we had to meet the
93 requirements of the Voisey's Bay smelter, for instance, and
94 here's an issue with respect to procedures and the Board,
95 the Voisey's Bay smelter was going to be on stream in
96 about two and a half, three years. It was a very fast track.
97 They had to know the power requirement. How that would
98 be fulfilled would be essential. It would be very, very
99 difficult to take that process out to a regulatory hearing,
100 have all the proponents come in and state all, and how the
101 Board would make a decision in that time frame ... I don't
102 know what would have happened had the smelter gone

1 ahead. I suspect that the Government may well have had
2 to intervene and say, okay, what's your best assessment
3 here, Hydro, because it's our Systems Planning people that
4 know the system and requirements, and say, this will
5 supply the power, and subject to Voisey's Bay Nickel being
6 in agreement on price and whether that would have gone
7 into rate base for such a huge thing, I don't know. So what
8 I'm saying to you, you know, earnestly and in complete
9 understanding by everybody, that in the circumstances of
10 1997, going into 1998, as the situation was fast developing
11 with huge question marks as to what was going to be
12 required in the system and how you would meet that
13 demand, you know, and terms, like the industrial
14 development of the province, you know, we went through
15 that process with the Voisey's Bay Nickel thing. All that
16 collapsed and then we had this shorter, smaller term
17 requirement, but we had by our recommendation to
18 Government I guess precluded ... if we exercised a
19 judgement, it was a judgement that we can see what's
20 unfolding here and we can see what we have to do in terms
21 of the prescriptions, you know, the provisions of the
22 legislation as they now exist, and all we said is if we take
23 more time to be able to see events unfold, we're more likely
24 to make a better decision, whoever may finally decide. In
25 the end the Government decided what the next thing would
26 be. In the absence of Government, it would have been the
27 Public Utilities Board.

28 MR. KENNEDY: Okay. I guess and that's the major
29 distinction, if you will, between Hydro and Newfoundland
30 Power as an example, that in Newfoundland Power's case
31 its generation projects are subject to the jurisdiction of the
32 Board insofar as they have to apply for approval for their
33 capital spending on those generation projects whereas ...

34 MR. WELLS: And as we would normally contemplate. I'm
35 describing a set of ... the other thing with Newfoundland
36 Power, they're really not a generator of power and they
37 don't have, you know, access like to the system in Bay
38 D'Espoir like we do. We don't have any franchise rights in
39 other areas to develop other ... that was given up back in
40 1992. So the issue becomes the fact that we have the
41 expertise within Hydro with respect to the system and the
42 forecast requirements and the system planning. We have
43 a very good body of expertise and people within Hydro.
44 It's the only group I know of in the province that develop
45 these things and develop the forecasts and look at the
46 system, and we relied on them internally in the Company
47 and the Government would look to us and we filed
48 information with respect to the requirements of the system
49 to the Board now and keep the Board abreast of these
50 things and we're using the information that's provided by
51 our Systems Planning Department.

52 MR. KENNEDY: So the Granite Canal was an exception to

53 the rule, if you will? It was sort of a one off thing then ...

54 MR. WELLS: Yeah. Had ...

55 MR. KENNEDY: ... would you consider it?

56 MR. WELLS: Had we not had the situation with the
57 Voisey's Bay and the Churchill thing, you have to live
58 those ... you have to go back and live that time. And had
59 we not had that, I would suggest, because my first few
60 months in Hydro, first six months, and I say got introduced
61 to Systems Planning in 1996, before the Voisey's Bay thing
62 suddenly hit us, Mr. Budgell had, I remember, you know,
63 outlined the procedure he thought would provide under the
64 new legislation and we would be going to the Public
65 Utilities Board and things would be approved and how it all
66 would be vetted, and I think we were in discussions with,
67 you know, in ... you know, this is a new approach. The
68 legislation was fresh. It had come into effect in January of
69 that year. We didn't have an immediate requirement. There
70 was plenty of time, say, looking back between '96 and 2003
71 to go through that process, but as I described to you, then
72 other events, significant events, you know, the whole
73 Voisey's Bay thing ...

74 MR. KENNEDY: Overtook the situation.

75 MR. WELLS: Yeah, overtook the situation, and then we, if
76 anybody exercised judgement in the first instance in Hydro
77 (inaudible), in those circumstances, you know, if we were
78 put to the test to make a decision now, we would be hard
79 put to know what the ... and if we let the situation clarify
80 itself, then we would be in a better position to be able to
81 recommend to either the Board or to Government or
82 anybody, this is the way to go, but we didn't know that,
83 and there was a long period when Voisey's Bay, on again,
84 off again. Our Systems Planning did a marvellous job that
85 year. They had everything ready by that following June.
86 It was months before we knew what the answer was on
87 Voisey's Bay.

88 (10:45 a.m.)

89 MR. KENNEDY: Okay. So just so I'm clear, the Granite
90 Canal Project was sort of a, came out of a domino effect
91 from, that began somewhere around '96, '97, with Voisey's
92 Bay initially off the shelf, then back on the shelf because of
93 Voisey's Bay falling through, the whole process became
94 complicated by the fact of Voisey's Bay ...

95 MR. WELLS: And the Churchill to a lesser extent ...

96 MR. KENNEDY: And Churchill.

97 MR. WELLS: ... but that was factor.

98 MR. KENNEDY: And then time frames got contracted and
99 Hydro was certain about its decision that Granite Canal
100 made the most sense in the circumstances and that because

1 of the time frames there was sought and obtained an
2 exemption or an order-in-council exempting the Granite
3 Canal Project from the ...

4 MR. WELLS: No, no, no, no.

5 MR. KENNEDY: ... jurisdiction of the Board or ...

6 MR. WELLS: No, that's not exactly how it worked. We
7 said delay the decision, but we delay the decision to a
8 point where then we can't go for the normal process, then
9 we can get the thing built, you know, on a three-year notice
10 but not in a five-year time frame, and then Government, as
11 the other stuff disappeared from the scene, then it was
12 Government that said, well, we want you to take a look at
13 what these other two companies have that may contribute
14 to the grid. Talk to them, report back to us if, you know,
15 this is ... and then, which we did, and then Government
16 decided that, okay, conclude contracts with those other
17 two, because we were, Granite Canal was 42 megawatts.
18 We needed another, you know, 30, 40 megawatts to meet
19 the system, and Government directed us to do that. We
20 had not made any representation to Government with
21 respect to new generation other than the fact that we had
22 Granite Canal and we are confident and we stand by it that
23 there is no other hydro resource that's capable of
24 development in the province with that megawatt capacity
25 and that energy that can meet the kilowatt hour cost of
26 Granite Canal, so nobody is going to be disadvantaged by
27 Granite Canal.

28 MR. KENNEDY: And I appreciate that entirely. I guess
29 given that though, I suppose if there was a proposal put
30 before the Board there was a likelihood of the Board
31 agreeing with Hydro if Hydro was ...

32 MR. WELLS: On Granite, yes.

33 MR. KENNEDY: ... (inaudible) on its position.

34 MR. WELLS: I think we could have proven that, yes.

35 MR. KENNEDY: So in the future, generation projects that
36 Hydro has, you know, notwithstanding a complicated set
37 of issues arising again, would be placed before the
38 jurisdiction of the Board. Is that what the intention of
39 Hydro would be, to ...

40 MR. WELLS: The only thing that we would go by is the
41 provision of the legislation as it exists, and if, you know,
42 and that's the only procedure that we know of right now as
43 the legislation prescribes.

44 MR. KENNEDY: I just wanted to move on to the rate of
45 return issue, Mr. Wells. Hydro is requesting, as I
46 understand, a rate of return on its equity, if you will, of
47 three percent.

48 MR. WELLS: Yes.

49 MR. KENNEDY: And the references I've written down so
50 far of your, when you've referred to this three percent
51 increase, are a no-brainer, idiotic and extraordinarily
52 different.

53 MR. WELLS: The no-brainer I remember. I don't remember
54 the idiotic. In what context was that said?

55 MR. KENNEDY: We'd have to do a search ...

56 MR. WELLS: It is important but ...

57 MR. KENNEDY: Well, it would be in the transcript from
58 Tuesday. I'm sure we can do a keyboard search just to find
59 the reference to it. Now, in your direct testimony at page
60 15, line five of eight ... that's the pre-filed testimony of Mr.
61 Wells, page 15.

62 MR. HUTCHINGS: I think you've scrolled into Ms.
63 McShane's testimony.

64 MR. KENNEDY: Yeah, I think that ... too many charts. Line
65 five to eight. "So I wish to strongly emphasize that this
66 proposal is one intended to apply for a limited duration
67 only, to maintain a sound financial structure, and to ensure
68 that Hydro does not affect the provincial credit rating
69 Hydro must, and should, have a normal return on equity in
70 due course, and it is absolutely essential that, should the
71 Board accept Hydro's short-term proposal, it send a clear
72 signal to the financial markets to the world of its views as
73 to what the normal ROE should be for Hydro in the future."
74 So I guess, and as I understand it from your application,
75 and I think it's referenced in the next question there, is that
76 a, Hydro considers a normal rate of return to be in the order
77 of 11 percent to 11.5 percent on its equity.

78 MR. WELLS: It would be consistent with the pre-filed
79 evidence of Ms. McShane.

80 MR. KENNEDY: And you're aware that, as we've covered
81 off in the first day, that I was, when I commenced my cross-
82 examination, that pursuant to **Section 80** of *The Public*
83 *Utilities Act* and **Section 3** of the EPCA, the Board's
84 obligation, if you will, is to assess a fair and reasonable rate
85 of return or a just and reasonable rate of return, because
86 there's two different words used in two of those acts, on
87 the, for Hydro on its rate base.

88 MR. WELLS: Yes.

89 MR. KENNEDY: And am I taking it right that Hydro
90 considers a fair and just reasonable rate of return to be 11
91 to 11 1/2 percent on its equity and then whatever the
92 resulting rate of return is on the rate base?

93 MR. WELLS: Yes, that is ... I've said this a number of times
94 now at this hearing. As the financial experts, let's take our
95 financial witnesses, have stated, that this is what one
96 would normally expect under the tests that they've

1 described in their testimony for a regulated entity in our
2 situation. If we were in a competitive world, I'm sure they'd
3 have a different figure, and it's assessed in light of the
4 degree of risk exposed and it's a pretty clear statement, and
5 we follow that. In our own ... in this particular application
6 we took the three percent, which is, and I do recall saying
7 it, that should not be a ... I can't imagine anybody in this
8 room saying that a three percent return on equity is not
9 acceptable. You know, that ...

10 MR. KENNEDY: Let's just delve into that. If it's affected
11 the financial soundness of Hydro, then people would be
12 concerned in this room.

13 MR. WELLS: Oh, yes, on the other way. The Board might
14 say you've gone too far.

15 MR. KENNEDY: I believe a reference you used at one
16 point in talking about the preferential rates to some of your
17 customer classes that maybe you're being too soft, and I'm
18 wondering ...

19 MR. WELLS: Somebody asked me that.

20 MR. KENNEDY: I think it was ...

21 MR. WELLS: I didn't make that statement.

22 MR. KENNEDY: ... a suggestion yourself, but in any event
23 that Hydro is saying that a fair and reasonable rate of
24 return on its equity is 11 to 11 1/2 percent, but that it's
25 asking for three percent in this application. The legislation
26 requires the Board to assess a fair and reasonable rate of
27 return.

28 MR. WELLS: Yes, and the Board will within its jurisdiction
29 make a decision on this.

30 MR. KENNEDY: So again I don't want to delve into a legal
31 argument with you, but clearly there's a jurisdictional issue
32 here then of whether the Board in carrying out its
33 obligations under Section 80 of the Act and Section 3 of
34 the EPCA has the ability to even assess anything other
35 than a fair and reasonable rate of return on Hydro, which
36 would be 11 to 11 1/2 percent, if that's what's considered to
37 be fair and reasonable.

38 MR. WELLS: Well, I think the Board has some discretion
39 based on the circumstances of the case that's, the issues
40 that are apparent, and what we have done is take the advice
41 of our financial advisors, these are, you know, these are our
42 regular financial advisors, and who note the substantial
43 difference that we've said here, but they are, our financial
44 advisors have said that you can accommodate this for the
45 period that you're proposing, that this is not going to affect
46 the financial viability of Hydro. We all know that this is not
47 in the period again described going to affect the financial
48 (unintelligible) impacting on the Government, so people are
49 saying that in terms of taking a little higher debt equity

50 structure for a period and in terms of taking a lower return
51 on equity, you are not affecting the financial viability of
52 Hydro, and putting any, you know, putting it at risk.
53 Having said that, we don't want to create the impression
54 that we are proposing that a three percent return on equity
55 would be acceptable to Hydro in the normal course of
56 events.

57 MR. KENNEDY: Okay. Well let's ... we drew out the
58 comment that you had previously that this Board has to
59 make its decision in light of current circumstances.

60 MR. WELLS: The Board has some discretion surely to
61 exercise its judgement. It listens to all the inputs and it will
62 make a decision and it may or may not agree with any
63 proponent or any intervenor. The Board will exercise its
64 judgement with the view, as I think I mentioned in my
65 opening statement, the Board is the one group in the room
66 that have the larger view of the whole system.

67 MR. KENNEDY: And the Board's jurisdiction comes out of
68 the Act.

69 MR. WELLS: That's right.

70 MR. KENNEDY: And the Board has to comply with the
71 Act just like everybody else does.

72 MR. WELLS: Yes.

73 MR. KENNEDY: And the Act requires the Board to assess
74 a fair and reasonable rate of return.

75 MR. WELLS: And in the circumstances I suppose that by
76 making the proposal that we have, we are saying that in
77 these circumstances we would accept, Hydro would accept,
78 the three percent as a fair and reasonable return because,
79 because, and, you know, we spelled out our reasons.

80 MR. KENNEDY: For the reasons stated, that Hydro
81 considers a three percent ROE to be fair and reasonable for
82 the test year period.

83 MR. WELLS: It will allow us to survive the next few years
84 without causing any deterioration. We're not going to
85 suddenly be a burden on anybody. Our financial
86 structures will still remain sound and the benefit would flow
87 to our customers. There's no other purpose. The benefit
88 will flow to our customers.

89 MR. KENNEDY: And back when Mr. Hutchings was
90 cross-examining you there was some back and forth about
91 opportunity costs and the Government's investment in
92 Hydro, if you recall, and I guess that's what normally an
93 ROE is based in part upon is the opportunity cost to the
94 investor. In other words, what rate of return should that
95 investor be given that's commensurate with the risk of the
96 investment itself, correct?

97 MR. WELLS: Yes.

1 MR. KENNEDY: And so I guess from that perspective if 11
2 to 11 1/2 percent would be the normal, if we can use that
3 word, rate of return given to an investor in Hydro, then the
4 decision by Hydro to come forward with a three percent
5 rate of return and to state that that's fair and reasonable in
6 the circumstances given all the givens, and for the period
7 of which you're looking for this rate of return in, is driven
8 in part again by underlying social or public policy issues
9 about trying to keep energy prices low in the province and
10 avoiding rate shocks (phonetic) and taking into account
11 the economy of the province and so on and so on?

12 (11:00 a.m.)

13 MR. WELLS: Well, our mandate is reliable least cost
14 power. You know, that is our mandate and what we have
15 here is a situation over which we in Hydro have no control,
16 the price of oil. We've talked about that. And we have
17 very little control, as we've talked about, over all our costs,
18 and those that we do we stand accountable for. Those that
19 we don't, to that extent in Newfoundland and Labrador we
20 have to live with the circumstances, and what we're coming
21 to this hearing with our customers and the Consumer
22 Advocate and the Board is to say here's a most difficult
23 situation that now confronts Newfoundlanders, here is our
24 idea and what we can put our shoulder to wheel to help.
25 Now if we've overshot the mark, then somebody will correct
26 us, you know. I don't think we've undershot the mark in
27 proposing a three percent return on equity, you know, and
28 I made some comments on that. We are just trying to help
29 out everyone in a situation. We are very mindful, you can't
30 operate in Newfoundland and Labrador a utility like ours
31 and not be mindful of the impact that our industrial
32 customers, for argument's sake, have on the economy and
33 the fortunes of a lot of people in Newfoundland and
34 Labrador. We have to be mindful of the fact that, I mean,
35 Newfoundland Power is quite capable of looking after itself,
36 but it does have 265,000 customers out there in
37 communities across Newfoundland that we have to think
38 about that the generation comes from us, 80 percent of
39 what they get, or sell, comes from Newfoundland and
40 Labrador Hydro.

41 MR. KENNEDY: Uh hum.

42 MR. WELLS: And if we weren't willing in our effort here in
43 fulfilling our mandate to make some suggestions to the
44 Board or just walk in here and say, there's the breaks, sorry
45 industrial customers, sorry Newfoundland Power, sorry
46 300,000 customers out there in Newfoundland, sorry Board,
47 the price of oil is 30 bucks a barrel, rates are going up 20 to
48 30 percent, nothing we can do about it. We didn't take that
49 approach.

50 MR. KENNEDY: Buy some sweaters.

51 MR. WELLS: So what it tells you what's going on at Hydro

52 is that we do think about the situation that we're involved
53 in, we look to the future and, believe it or not, we try to
54 stick by this mandate, least cost, reliable power. I go out
55 and preach a song to, or gospel to 1,100 employees about
56 the essential service that they provide and how their work
57 is so important and we have an obligation and stewardship
58 here, and that's what I'm trying to do. We don't have
59 competition. I'm not out ... you know, it sometimes helps
60 (phonetic) in running a company if you had competition
61 and enemies and they're coming at you and we're going to
62 take them on. We don't have that at Hydro, but we do have
63 a very important service and therefore we exercise within
64 the management group that I'm responsible for today a
65 certain approach to this application as the facts unfolding,
66 and it's a pretty grim picture in terms of rates when you
67 look at where the price of oil is going and the impact it has
68 on us, and that's why we put this proposition forward.

69 MR. KENNEDY: That's a good place to break, Chair,
70 Commissioners.

71 MR. NOSEWORTHY, CHAIRMAN: Thank you very much,
72 Mr. Kennedy. It is 11:00. We will reconvene at 11:15.
73 Thank you.

74 (break)

75 (11:15 a.m.)

76 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy, Mr.
77 Wells, are you ...

78 MR. KENNEDY: Thank you, chair. So just continuing one
79 more thought, Mr. Wells, where we left off in discussing
80 the rates of return between what is being proposed by
81 Hydro for the test year, and then, in turn, what it considers
82 a more normal rate of return for an investor owned utility
83 such as Hydro, as if Hydro was an investor owned utility.
84 And there's a statement in your pre-filed evidence and
85 we've looked at it concerning ... that's page 15, lines 5 to 8
86 in which you're asking the Board to expressly send a
87 message to the financial markets about what it considers to
88 be a fair and reasonable rate of return. And maybe we can
89 get the language exactly. "It is absolutely essential that
90 should the Board accept Hydro's short-term proposal to
91 send a clear signal to the financial markets of the world of
92 its views as to what the normal ROE should be for Hydro in
93 the future." And I'm wondering, again, from your
94 background as a lawyer and as president and CEO of
95 Hydro, in light of the fact that Section 80 of the Public
96 Utilities Act and Section 3 of the EPCA provide jurisdiction
97 to the Board to assess a fair and reasonable rate of return
98 for a particular application, and looking at the test year
99 revenue requirements and so on, do you feel that it is the
100 role of this Board to be taking a proactive stance of
101 expressly sending a message to the financial markets of the
102 world as opposed to the message being inherent in the

1 Board's order of assessing a fair and reasonable rate of
2 return? In other words, the normal course of events would
3 be that a proponent, an application would come before the
4 Board from Newfoundland Power. They would say we
5 think that we should have this rate of return. And then the
6 experts weigh in and yea or nay on that, and ultimately the
7 Board determines what it considers to be a fair and
8 reasonable rate of return. And one of the consequences of
9 that determination and decision by the Board is that it's
10 sending a message to the financial markets that that's what
11 it considers to be a fair and reasonable rate of return. But
12 it's not an actual, if I may, direct effort on the Board to send
13 a message to the financial markets, that it's just a
14 consequence that flows from its decision. And ...

15 MR. WELLS: We're not suggesting anything different, that
16 the Board ... all we're suggesting is that the Board, yes, go
17 through that. We've proposed through our people, our
18 evidence, 11 to 11.5. There will be various arguments to
19 and fro with respect to that. And the Board, what we're
20 saying is that the Board should make some reference to that
21 fact, even though if they accept our proposal this time it
22 would, in effect, allow for ... would so structure the rates
23 that we would get the three percent return on equity. But
24 if they left it at just that and the only thing in the Board's
25 report is that we approve a three percent return on equity
26 and such and such and ignore the other argument and
27 approach, then it would be that kind of a message
28 consistent with any other report to which you've described
29 which the Board would lead people wondering what is ...
30 where does the Board sit with respect to the returns that
31 the utility might expect in future. And so it's exactly the
32 same experience that Newfoundland Power went through
33 that we would be going through with the same Board and
34 waiting for the Board to express its view. There's not going
35 to be a paragraph in the Board's report, you know, all
36 financial recording entities please take note. It'll come out
37 in their view as to what they think an appropriate rate of
38 return is for this particular utility. They've already
39 expressed their opinions with respect to Newfoundland
40 Power.

41 MR. KENNEDY: Okay. So, we're of the same view, then,
42 that the message to the financial markets is as of a
43 consequence of the Board's decision, not the ...

44 MR. WELLS: Oh, definitely.

45 MR. KENNEDY: Not the purpose of the Board's decision?

46 MR. WELLS: Oh, definitely, yes.

47 MR. KENNEDY: Okay. I wonder if we can just turn to the
48 issue of the rate stabilization account, Mr. Wells. And
49 you've given some extensive evidence already and a fair
50 amount or significant amount of evidence has been pre-
51 filed and given in responses to information requests and so

52 on concerning this issue. And you've been fairly clear in
53 your testimony to date that you consider this to be the
54 issue for Hydro in this application. That's correct?

55 MR. WELLS: Our proposal on rates?

56 MR. KENNEDY: No, no, on the ... that the cost of Number
57 6 fuel ...

58 MR. WELLS: Oh, is the issue, yes.

59 MR. KENNEDY: Is the issue, from Hydro's perspective, it
60 is the issue for this application?

61 MR. WELLS: Yes.

62 MR. KENNEDY: And it is, more than anything, driving the
63 application itself and the reason for the adjustment in
64 rates?

65 MR. WELLS: It is certainly a prime factor. It is the issue
66 most impacting on rates. There may be other things that
67 would impact on rates, but they pale in comparison to that
68 particular issue. There are other rate issues, per se, that
69 should be considered by the Board, as well as this
70 application, there are other things, yes.

71 MR. KENNEDY: I wonder if we could turn to Mr.
72 Henderson's report, his pre-filed testimony, and
73 specifically, Schedule 8 of his pre-filed testimony. And this
74 provides, Mr. Wells, the forecast for fuel purchase prices
75 for Newfoundland and Labrador Hydro for the years 2001,
76 through to 2005. And clearly, the years that are of interest
77 to us are year 2002 out to 2005. Would you agree with me
78 that ... and I think you may have provided some testimony
79 on this already, that as you try to forecast this, you get
80 further out, of course, it becomes more speculative about
81 what the price of anything will be. And that can be
82 particularly problematic for the price of oil because it's
83 impacted and affected by things on a geopolitical scale,
84 rather than on a, you know, commodity price scale, local
85 market dynamics, if you will?

86 MR. WELLS: Yes.

87 MR. KENNEDY: And that based on the evidence being
88 put forward by Hydro its experts and, I guess, internal
89 resources are indicating that as best as it could be
90 determined at the time of filing the application, at the time
91 that this information was put together, this was the price of
92 Number 6 fuel that Hydro was going to have to pay for
93 2002 to 2005. And clearly, there's a hope here that the price
94 of fuel may drop down to \$23 in 2004 and 2005, that that's
95 presumably what your experts are telling you was the
96 forecast at the time this was filed?

97 MR. WELLS: Yes. I wouldn't characterize it as a hope. It
98 is the best forecast available with the consultants that we
99 deal with or approach.

1 MR. KENNEDY: And that certainly there's no certainty as
2 to what the price of fuel will be in 2004 and 2005, or at least
3 we can't forecast it with any high level of certainty?

4 MR. WELLS: No. One can only provide a forecast and
5 then you look to who's providing the forecast and their
6 more than ... their reasoned judgment based on their
7 experience.

8 MR. KENNEDY: For instance, events on September the
9 11th have had a dramatic impact on the price of oil on the
10 world market?

11 MR. WELLS: Yes.

12 MR. KENNEDY: And that, as I understand it, current
13 economic theory is that if we do head into a global
14 recession that the price of oil is likely to stay low because
15 of decreased demand?

16 MR. WELLS: One could say that. OPEC will govern
17 supply relative to price, as we know it, and generally
18 speaking ...

19 MR. KENNEDY: And that's an example of an event that
20 was impossible to predict but has a dramatic impact on the
21 price of fuel?

22 MR. WELLS: Yes.

23 MR. KENNEDY: And so, for the purposes of the Board in
24 determining what an appropriate benchmark is to be used
25 for the RSA is it more appropriate for the Board to look to
26 the short-term than it is to look to the longer term in trying
27 to determine the reasonableness of that benchmark?

28 MR. WELLS: Yes. Well, we are only proposing a two-year
29 period and then there would be a further review of the
30 circumstances relative to rates where the Board would be
31 able to make another decision.

32 (11:30)

33 MR. KENNEDY: Okay. So, the benchmark that Hydro has
34 picked is \$20 a barrel, correct?

35 MR. WELLS: No. We've suggested that for the purposes
36 of our rates that it be adjusted to \$20 a barrel and the rest
37 would go into the Rate Stabilization Plan. We are
38 forecasting for the test year, \$28 a barrel.

39 MR. KENNEDY: Yes.

40 MR. WELLS: That we forecast at the time we filed the
41 application.

42 MR. KENNEDY: But your rates, the benchmark, if you will,
43 I guess, is what I'm referring to it as, that the benchmark to
44 be used for the calculation of rates is \$20 a barrel?

45 MR. WELLS: Yeah. But so nobody gets confused later on.

46 MR. KENNEDY: Sure.

47 MR. WELLS: If you're saying a benchmark, our benchmark
48 for the price of oil for the year 2002, to the best of our
49 ability at the time it was made was \$28 a barrel. We're
50 saying 20 in embedded cost of Hydro's rates and the
51 remainder would go into the Rate Stabilization Plan.

52 MR. KENNEDY: Right, okay. And that Hydro intends to
53 revisit this issue in 2003?

54 MR. WELLS: Yes. We proposed that we will be ... or
55 indicated that we would be filing an application in 2003 for
56 a 2004 test year, so there would be a two-year interval.
57 And the Board and everybody else, I mean, because we
58 don't know, we would have at least that experience of what
59 the price of oil will be, you know, two years from now.

60 MR. KENNEDY: And if I understand it correctly, the
61 reason that you're not using a \$28 a barrel price for your
62 embedded cost, as you put it, is because of the impact that
63 that would have on increasing the rates again over and
64 above what increase is already being sought in this
65 application?

66 MR. WELLS: That's correct.

67 MR. KENNEDY: And so are there rate shock issues here
68 that we're dealing with in the event that we went to the full
69 \$28 in the embedded costs?

70 MR. WELLS: You might describe it in terms of a shock. It's
71 a question of degree. We know that at \$28 a barrel it would
72 provide a certain result to rates.

73 MR. KENNEDY: The ...

74 MR. WELLS: Immediate, you know, new rates would be
75 established effective as of the date at \$28 a barrel would
76 obviously be more than at \$20 a barrel.

77 MR. KENNEDY: I wonder if we could turn to Mr.
78 Osmond's pre-filed, page 2, line 28? This continues over to
79 page 3. This is Mr. Osmond's testimony regarding the
80 increase that would have to be passed on in the event that
81 you were booking \$28 into your embedded costs verses 20.
82 And I just did up a quick little table for myself which shows
83 ... and you can read that. It starts at line 28 and continues
84 over to the beginning of page 3.

85 MR. WELLS: Yes, I'm familiar with the paragraph.

86 MR. KENNEDY: Okay. And as I understand it, Hydro's
87 application is stating that if the full \$28 was recovered for
88 the cost of Number 6 fuel that the rate increase to
89 Newfoundland Power would be on the order of 16 percent
90 and its industrial customers 23 percent?

91 MR. WELLS: Yes.

92 MR. KENNEDY: And that's on top of the already ... the

1 RSP adjustments, which are already booked, of 5.9 percent
2 for Newfoundland power and 7.4 percent for the industrial
3 customers?

4 MR. WELLS: The precise amount will crystallize at the end
5 of the year when we know how much fuel we've burnt at
6 what price, but that's our forecast, yes.

7 MR. KENNEDY: Right, okay. And that at \$20 a barrel the
8 resulting increase by, you know, increasing the embedded
9 cost of the price of fuel is 6.7 percent for Newfoundland
10 Power and 10.4 percent for the industrial customers?

11 MR. WELLS: That's correct.

12 MR. KENNEDY: Alright. Now, I did a total
13 oversimplification of this, I'm sure, but what I did was just
14 figured out how much a dollar per barrel increase was
15 driving the percentage increase in the rates. So in other
16 words, for every one dollar per barrel increase above the 20
17 I've worked out that Newfoundland Power's increase would
18 be 1.16 percent, and that for every one dollar per barrel
19 increase for the ... you know, in the price of fuel, the
20 industrial customers would end up paying an extra 1.57
21 percent. And I presume the difference, why that's not a
22 straight line, I'm presuming, and clearly this is a question
23 that might be more appropriate for Mr. Osmond, is that it
24 would have something to do with the assessment under the
25 cost of service for the industrial customers verses
26 Newfoundland Power. The question I have for you is, you
27 know, clearly there's a corresponding for every extra dollar
28 above that \$20, there's an extra increase that Newfoundland
29 Power is going to get hit with an extra increase that the
30 industrial customers would get hit with?

31 MR. WELLS: There would be an impact, yes.

32 MR. KENNEDY: And whether it's one percent or 1.5
33 percent or what have you, it's nonetheless, at least it looks
34 like to me for every dollar a little over a percent. And the
35 question I have is where did Hydro come up with the \$20,
36 where did that come from? In other words, why 20, why
37 not 21, why not 22, why not 24?

38 MR. WELLS: Oh. It was an exercise of viewing all the
39 options and ... first of all, when you're trying to forecast, as
40 you say, the difficulty there in getting what we think the
41 price would be as it comes out over the year, and then all ...
42 you know, you can take various levels and say the result
43 would be this or that. We thought, from my level, now, and
44 there's ... because there's a far more ...

45 MR. KENNEDY: Yeah. And that's the level that I'm
46 looking for, yeah.

47 MR. WELLS: And in sort of making policy decisions here,
48 that \$20 a barrel would be a significant movement to reflect
49 the real price of oil. We were also of the mind that, and the

50 forecast was that the price would decrease below \$28 a
51 barrel in following years. And therefore, at \$20 a barrel,
52 allowing for the impact that that would have on rates and
53 if we ... you know, it gets it closer. It's going to come down
54 below 28, you know, if our forecasts were right, and we'd
55 bring everything closer. And I think I used the term in my
56 opening statement a bit of good fortune. You know, if our
57 hydrology can hold then we can have the effect of helping
58 the consumers or customers over the hump of this
59 significant increase relative to our \$12.50 in our rates, and
60 in the two or three years we could stabilize the Rate
61 Stabilization Plan at levels where the balances outstanding
62 would, in effect, be lower than the existing cap. In other
63 words, we would have brought things back together. Now,
64 it was that kind of approach and thinking and looking at the
65 ramifications ... I mean, you look at all the possibilities of
66 oil, you know, from \$15 to \$40 for argument. You just ... it's
67 an exercise of in the end there's nothing sacrosanct
68 between whether it was 19 or 22. Twenty was a nice round
69 figure. There were any number of points that one could
70 have chosen. We had to get a more reflective price in our
71 rates to the real price. If you had accepted that as 100
72 percent, of course, it would be \$28 a barrel, and you've just
73 stated what the results would have been. And we thought
74 that there was probably a better approach, at least an
75 approach that we were prepared to suggest to the Board in
76 this application.

77 MR. KENNEDY: So the decision of \$20 is driven, in part,
78 by quantification of the issue, but then there's the
79 qualitative aspect to it on top. Is that fair to say?

80 MR. WELLS: It's whatever these words might mean in your
81 mind, but I ...

82 MR. KENNEDY: Quantification ...

83 MR. WELLS: I mean, the issue, I think ...

84 MR. KENNEDY: Quantification in the sense of \$20 verses
85 \$22 or in comparison to where we think the price of oil is
86 going to be rejected ...

87 MR. WELLS: Well, if we ...

88 MR. KENNEDY: Let me finish. Qualitative in the respect
89 to the fact that a full \$28 per barrel embedded cost is going
90 to cause an increase in rates to Newfoundland Power's
91 customers, which, in turn, are going to flow through to the
92 residential of 16 percent, and in turn, the industrial
93 customers 23, and that was seen as somehow on
94 presupposing as being an exorbitant increase and to be
95 avoided?

96 MR. WELLS: It's not ... well, it's an increase that the
97 circumstances would have dictated if you had no options.
98 What we thought we would try ... what we did do was see
99 what are some reasonable options. If we had come back

1 and said restate the price of oil at \$15 I think a lot of people
2 would have questioned that kind of judgment. If we had
3 come back and said 25, well, we might as well gone for the
4 28. So we said how can we accommodate this. And in my
5 pre-filed testimony it's there because it's summarizing the
6 policy of the Corporation. We said the Board had limited
7 alternatives, given the price of oil, they either accept the
8 price in the rates or they take a two pronged approach,
9 that's not the words actually used, but that the Board could
10 increase the cap on the Rate Stabilization Plan because we'll
11 have exceeded the existing cap. And if you did that it
12 would allow for something less than \$28 a barrel to be in
13 the rates. So, I think that everybody now, at this stage of
14 the game, understands the methodology of what we were
15 into here, our approach. And all I can say about it, under
16 the circumstances, that it seems to be if you're going to
17 take into account the rate impact, which we did, that this
18 would be one method that is not so far from the range of
19 irrational response that it should be thrown out
20 immediately. And ...

21 MR. KENNEDY: Can I ask you to comment, Mr. Wells, on,
22 I think it was on your first day of testimony you talked
23 about the three pillars and that they're about split equally.
24 In other words, the total revenue requirement of Hydro is
25 somewhere around \$300 million, and you said it's \$100
26 million in RSA, \$100 million in the interest ...

27 MR. WELLS: No, \$100 million really ... not the Rate
28 Stabilization Plan. Our costs of fuel could be, and other
29 costs like that, you know the fuel cost in total, including
30 Number 6. You know, and these as a generality.

31 MR. KENNEDY: 100 million.

32 MR. WELLS: But we've got this fuel expense sitting here
33 on one side, you have your interest expense on the other,
34 and then you have the column in between, which is some
35 of our controllables and still some uncontrollable. That's all
36 I refer to.

37 MR. KENNEDY: Right, full control ...

38 MR. WELLS: So it's pretty simple to see Hydro's revenue
39 situation.

40 MR. KENNEDY: The interest is embedded, there's nothing
41 you can do about that. Your controllable costs are just
42 that, you have some control over it. The cost of fuel you
43 have no control over?

44 MR. WELLS: That's correct.

45 MR. KENNEDY: And I guess under your recommendation,
46 your rate stabilization account, you're asking for a cap of
47 \$100 million. And your projections, I know, are not to go to
48 that point. But let's say things go take a turn for the worse
49 and that the price of oil stays high, stays at \$28 a barrel or

50 even increases above the projected \$28 a barrel for 2002
51 and 2003, that that could potentially drive your rate
52 stabilization account to a full \$100 million, theoretically?

53 MR. WELLS: That's conceivable, yes.

54 MR. KENNEDY: And that constitutes, as a proportion to
55 your total revenue, one third of the total revenue generated
56 by Newfoundland and Labrador Hydro?

57 MR. WELLS: As a contribution to our revenue?

58 MR. KENNEDY: No, as a proportion, not as a proportion
59 of your revenue, but in comparison to your total revenue
60 requirement, it represents a third of the total revenue, what
61 you would have in your rate stabilization account?

62 MR. WELLS: No, well, what goes into the rate stabilization
63 ...

64 MR. KENNEDY: Then you would collect it back, I know.
65 But what I'm trying to do is get an assessment of the size of
66 what could be in the rate stabilization account at a given
67 moment that has to be collected back.

68 MR. BROWNE, Q.C.: Can we take this a little bit slower, I'm
69 having some difficulty following the questions and the
70 responses? I think the witness is, as well, what's been put
71 to the witness.

72 MR. KENNEDY: Sure. Mr. Wells, your rate stabilization
73 account, you're asking for the cap to be increased from \$50
74 million to \$100 million?

75 MR. WELLS: Yeah. I'm not sure of the answer. I just want
76 to clarify something.

77 MR. KENNEDY: Sure.

78 (11:45)

79 MR. WELLS: People refer to the Rate Stabilization Plan as
80 sort of Hydro's Rate Stabilization Plan. I suppose in many
81 respects it is. But I think it came about by the fact of how
82 to deal with an issue that was inherent in the system and an
83 approach that was adopted by the Board, you know, and
84 by everyone as how to deal with a real big public issue in
85 the past about volatility in rates and fuel impact on rates.
86 So while we administer the Rate Stabilization Plan, we ... I
87 mean, I, not "we" certainly I don't feel like the Rate
88 Stabilization Plan is there for the benefit of Hydro so much
89 as it was there to accommodate the system and the
90 advocacy of consumers that were concerned about the
91 impact on their bills because oil was, even then, jumping
92 around, you know, in terms of value and prices and
93 effecting electricity rates and people were concerned about
94 that. And then, because of that, the Rate Stabilization Plan
95 was devised, not for the benefit of Hydro, per se, but for
96 the benefit of all the consumers, our industrial customers
97 and everybody who had to deal with the fact that oil prices

1 do vary, the amount of oil consumed varies, and it was
2 providing a lot of volatility in bills and upsetting people.
3 So, it is a plank in the floor of the system that helps. And
4 it is just as advantageous to Newfoundland Power or
5 industrial customers as it is to Hydro. It's there to serve the
6 system.

7 MR. KENNEDY: It was introduced to replace the fuel
8 adjustment charge system which is what was there prior to
9 ...

10 MR. WELLS: I understand it, yes.

11 MR. KENNEDY: Prior to the rate stabilization. And I know
12 that in the hearing for when the rate stabilization account
13 was introduced to the Board there was a Mr. Kierans, who
14 stated that it was important for the Board to acknowledge
15 that under the proposed Rate Stabilization Plan Hydro will
16 be assuming the risks of the volatility of oil prices as well
17 as the increased usage of oil due to lower than average
18 water years. So that it seemed to be the position of Hydro
19 at the time, at least, that there was some shifting of the risk
20 over to Hydro as opposed to it being borne by the
21 customers directly right at the time that the price of oil may
22 have increased or decreased.

23 MR. WELLS: Well, risk in the sense that your monies that
24 are being deferred, you're not getting your account paid the
25 day, you know, that you incur the expense, and it goes into
26 the Rate Stabilization Plan, that degree of risk. You
27 wouldn't entertain it if you knew that judgment day was ten
28 days away.

29 MR. KENNEDY: So, from that perspective, yes, the rate
30 stabilization account was introduced to help customers
31 deal with the volatility of oil prices. And ...

32 MS. GREEN, Q.C.: Just so there's no confusion,
33 Newfoundland Hydro's plan is the Rate Stabilization Plan,
34 Newfoundland Power's account is the re-stabilization
35 account, so as there is no confusion for the witness, it's the
36 Rate Stabilization Plan of Hydro you're referring to?

37 MR. KENNEDY: Yes. So, the Rate Stabilization Plan of
38 Hydro was introduced, in part, to ... or wholly to shelter, if
39 you will, consumers from the volatility of oil prices?

40 MR. WELLS: To assist them.

41 MR. KENNEDY: Dampen it?

42 MR. WELLS: Yes. The smooth, I think the term that most
43 people use associated with this, it enabled a smoothing out
44 of the rates. And ...

45 MR. KENNEDY: Right. And your testimony is that it's
46 worked well for Hydro and the consumers?

47 MR. WELLS: My understanding is, and while I was a
48 consumer, obviously, in Newfoundland, prior to joining

49 Hydro and I wasn't focused on the Rate Stabilization Plan,
50 but the Rate Stabilization Plan and my understanding, and
51 now I've seen it in operation for five years, has worked
52 extremely well. It's quite a ... you know, it's complex, but it's
53 a pretty good concept. And as I said, we'd have to be very
54 careful changing the Rate Stabilization Plan or doing away
55 with it. You have to really know what the effects would be.
56 So, I don't know what more I can say about it. It seems to
57 have been a relatively ingenious method to deal with the
58 issue. And as long as our prices and our rates are not too,
59 too far away from the actual prices being paid from time-to-
60 time, as I mentioned, the pendulum should swing, it has
61 worked, I think exceedingly ... we have absolutely no, to my
62 knowledge, I'm fairly sure, nobody has objected to the Rate
63 Stabilization Plan since it's come into effect, of which I'm
64 aware. I thought that everybody held it in a pretty positive
65 light.

66 MR. KENNEDY: Okay. The question I was trying to ask
67 earlier was that to try to get you to comment on the
68 business risk, if you will, that Hydro is assuming by
69 allowing its rate stabilization program to potentially climb
70 towards \$100 million? And then I'm wondering if you could
71 give some direction or some recommendation or advice to
72 the Board, what have you, regarding whether Hydro
73 perceives that as an additional risk, and if so, how much
74 additional risk do you perceive it as?

75 MR. WELLS: Implicit in making the proposal we've
76 obviously accepted the fact that we've entertained, we can
77 entertain the risk, otherwise we wouldn't have made the
78 proposal. And I think I've indicated earlier that this whole
79 proposal with respect to rates and the return on equity,
80 which is all part of this package, that we are not putting
81 Hydro in jeopardy with respect to the approach we're
82 taking from a financial ... this is the advice from our
83 financial advisors, which is, you know, a pretty solid group
84 of advisors. And the risks, the extra risk is that if you
85 increase the cap for Newfoundland Power's customers and
86 it goes beyond the \$50 million cap there, will Newfoundland
87 Power and its customers be able to pay it off, you know,
88 the outstanding balance on the three year rolling average.
89 And we're prepared, you know, obviously, we're prepared
90 to entertain that risk. And there's a corresponding degree
91 of risk with respect to our industrial customers, not the
92 same level in terms of amounts. But we are of the view, and
93 our financial advisors were of the view that this was not an
94 unreasonable approach to take in the circumstances that
95 we're in and considering our objectives with respect to
96 rates.

97 MR. KENNEDY: With regards to the rates themselves, I
98 wonder if we could just turn to an issue involving the
99 wholesale rate design of Hydro? And I think it might be
100 illustrative if we could just go quickly through the history

1 of that issue. But first I'd like to just get agreement on the
2 wholesale rate design itself as between Hydro and its
3 wholesale rate design for Newfoundland Power. And you
4 can correct me if I'm wrong, but as I understand it, right
5 now Hydro charges a flat energy rate to Newfoundland
6 Power, is that correct?

7 MR. WELLS: Yes.

8 MR. KENNEDY: And there's no demand component to
9 that charge?

10 MR. WELLS: That's correct.

11 MR. KENNEDY: Okay. Could we turn to Doug Bowman's
12 pre-filed and page 20 to 21? Just if you could scroll down.
13 No, page 20. Just scroll. No. Just the next page. Ah, there
14 we go. Okay. There's reference in Mr. Bowman's report to
15 letters exchanged between Newfoundland Power and
16 Newfoundland Hydro concerning the wholesale power rate
17 and then Hydro expressing agreement with the contents of
18 the letter. Then the letter states that, "1. The issues first
19 arose to Hydro's general rate proceeding in 1990. The issue
20 was considered again in the 1991, 1992 Hydro hearing, and
21 at that time the Public Utilities Board ordered that the two
22 utilities were to develop an acceptable," could we go to the
23 next page? "Rate form for the Board's review for the
24 pending hearing into Hydro's cost of service. The issue
25 was raised again in Newfoundland Power's 1996 general
26 rate proceeding, and following that hearing the Board in
27 Order PU-7, 1996, '97 directed Newfoundland Power to
28 consult with Hydro on the development of an acceptable
29 form containing an appropriate division of demand and
30 energy costs. And prior to this application Hydro asked
31 Newfoundland Power if it was now possible for the two
32 companies to agree on a demand energy rate that could be
33 presented to the Board for approval. And Mr. Hayes
34 explained, in the half page, the reasons that Newfoundland
35 Power does not believe it necessary or desirable to
36 introduce a demand energy rate structure for wholesale
37 power purchases at this time." So that was Mr. Bowman's
38 summation, if you will, of the history behind the wholesale
39 rate design issue. And what I'd like to first do is just
40 establish that in order to, for instance, implement
41 innovative rate designs, time of use rate designs as has
42 been introduced by the Consumer Advocate in his cross-
43 examination that that necessarily involves, first the
44 establishment, or would be greatly assisted by the
45 establishment of a wholesale rate design between Hydro
46 and Newfoundland Power, would it not?

47 MR. WELLS: Well, you're into an area where, given the
48 testimony or evidence that's already been pre-filed and the
49 response to what's been filed and the counter responses to
50 counter responses in this whole area of rate design I am
51 really ... should not get into the debate. There's Mr.

52 Bowman, there's Mr. Brickhill and there are others. And for
53 me to comment, my ... all I would say, in my position with
54 the Company, that this is not an open and shut case. That
55 the issue of a demand rate for Newfoundland Power and
56 the circumstances of our system may not give the type of
57 results that everybody expects in some other areas where,
58 as the Consumer Advocate put, the time of use rates or in
59 other places, how come they don't apply here, which is a
60 very legitimate question. And within the context of the
61 Newfoundland system I suggest there are things there that
62 will come out in ... it may not be as effective as everybody
63 thinks. And the only thing that I know about it is that a
64 demand charge does send a signal to the customer, look, if
65 you increase your requirement you're going to ... and I
66 understand that from having operated fish plants, because,
67 you know, so ...

68 MR. KENNEDY: It's the mechanism for pricing signals?

69 MR. WELLS: Yes. The issue for Newfoundland Power, in
70 terms, it's what's important is its pricing signals to its
71 customers who are actually creating the demand. And
72 really, that's as far as I'm prepared to go. You know, I ...

73 MR. KENNEDY: But if Newfoundland Power, if
74 Newfoundland Power is not subject itself to a demand
75 component to the wholesale rate it's being charged by
76 Hydro, then will you agree with me that it then removes the
77 motivation, if you will, for Newfoundland Power to
78 introduce a demand component to its customers at the
79 residential level, for instance, because the pricing signal is
80 being camouflaged between Hydro and Newfoundland
81 Power?

82 MR. WELLS: All I can say is that my understanding is that
83 the opportunity to do things as, so clearly have come out
84 in other jurisdictions, have not happened here. And
85 usually you'll find when something like that has not
86 happened that there are reasons for it. And I think that you
87 will find that the reasons for not doing things that are
88 entertained in other jurisdictions is because of the nature
89 of our grid and system and the isolation and the
90 opportunities are extremely limited. One may end up only
91 transferring costs between rate classes instead of, you
92 know, dealing with the opportunity that might exist
93 elsewhere to use time of use rates effectively. And so, you
94 know, I think that the best thing in the circumstances for
95 this hearing, and we've obviously known the Board, again,
96 I mean, anybody would intuitively, logically, ask these
97 questions, you know, what about demand charges or time
98 of use rates in the circumstances we're in. And I think that
99 the best thing to do would be to probe the expert witnesses
100 and our witnesses who can speak with respect to this and
101 then some glimmer might emerge as to how effective this
102 may be or may not be and why, in fact, as a first step, for
103 instance, that Newfoundland Power should or should not

1 be subjected to a demand charge. I think that's a legitimate
2 area of exploration and we should all listen to people who
3 have an informed comment, and that would not be me.

4 MR. KENNEDY: Okay. And that leads right to my last
5 question, which is, that managements' mind on this issue is
6 not closed, that you are speaking on behalf of Hydro as the
7 president and CEO would still, I take it, entertain argument
8 and a rational discussion about the implementation of a
9 new wholesale rate design for Newfoundland Power?

10 (12:00)

11 MR. WELLS: I hope I have an open mind. The people that
12 I have questioned within Hydro about these things have
13 cautioned me that the opportunities are extremely limited,
14 etcetera, etcetera. And they might as well tell you
15 themselves and our experts.

16 MR. KENNEDY: Yeah, fair enough. The last issue I
17 wanted to deal with, Mr. Wells, was just going back to the
18 dividend issue that we were discussing yesterday. And I
19 just wanted to clarify something, because there was one
20 last point in that before we broke for the day that I didn't
21 address. Leaving aside, for the moment, the issue of who
22 made the decision or when the decision was made to have
23 the \$70 million dividend declared for 2002, paid out in 2002,
24 as I understood your testimony that dividends, if it's, in
25 fact, to be paid out, would, in all likelihood, be paid out
26 prior to the government's fiscal year-end of March 31 of
27 2002?

28 MR. WELLS: Yes.

29 MR. KENNEDY: Okay. And that comes out of the retained
30 earnings of Hydro, correct?

31 MR. WELLS: It would attributed to the retained earnings
32 of Hydro.

33 MR. KENNEDY: Right. So ...

34 MR. WELLS: Well, in part because there's a component of
35 that dividend that would represent the net income of Hydro
36 for that year.

37 MR. KENNEDY: Right.

38 MR. WELLS: And then there's the additional component
39 which would have to be attributed to, obviously, not net
40 income.

41 MR. KENNEDY: But if my understanding of the finance is
42 correct to suggest that by virtue of paying out that
43 dividend it, in fact, will lower the revenue requirement for
44 Newfoundland and Labrador Hydro for 2002 than would
45 otherwise be the case if the \$70 dividend was left there?
46 Am I understanding right there?

47 MR. WELLS: No. It ...

48 MR. KENNEDY: The three percent rate of return on equity
49 is based on the retained earnings of the company on its
50 equity, which includes the retained earnings?

51 MR. WELLS: No, the three percent return on base rate
52 translated into a return on equity is a return on the equity
53 of the corporation.

54 MR. KENNEDY: I thought it was vice versa, the three
55 percents on your equity ...

56 MR. WELLS: Our rates would be set that would, in effect,
57 result in a return of three percent on the equity of the
58 Corporation.

59 MR. KENNEDY: Right. And then you calculate your
60 revenue requirement ... never mind, we're getting turned
61 around. I'll ...

62 MR. WELLS: Maybe, look, on that, on the dividends and
63 the calculation and the effect on the rate structure, you ...
64 you know, I answered your question generally, but why
65 don't we do this with Mr. Osmond where all the particulars
66 are right there?

67 MR. KENNEDY: Yeah, that's fine. Thank you, Mr. Wells.
68 That's all the questions I have. Thank you, chair.

69 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
70 Kennedy.

71 MR. FITZGERALD: Mr. chairman, before we move on, just
72 I'm not clear on an answer that Mr. Wells gave. This is not
73 redirect, I just want some clarification to the witness'
74 answer to a question that was asked. It was put to Mr.
75 Wells that for every one dollar that the embedded cost of
76 Number 6 is incurred, the rates of Newfoundland Power
77 increase by a certain percentage. It was put to you what
78 that percentage was, and I don't know your answer
79 whether, in fact, you adopted what was put to you by
80 counsel or not?

81 MR. WELLS: No, I didn't. I didn't respond to that. That
82 was counsel's own numbers and they're his numbers,
83 they're not mine and they may be ... I mean, I think it's a
84 little more complicated answer to that question, and I didn't
85 confirm those numbers, nor I don't think I was asked to.

86 MR. KENNEDY: No, you weren't.

87 MR. FITZGERALD: Thanks.

88 MR. NOSEWORTHY, CHAIRMAN: Thank you. The next
89 facet, I guess, of the hearing would be redirect by Hydro.
90 It is ten after 12:00 now, and with everybody's indulgence
91 I'd, rather than begin this at this point in time, I'd prefer to
92 probably break for lunch and we'll reconvene at 2:00.
93 Would that be okay?

94 MS. GREEN, Q.C.: That would be acceptable to Hydro. I

1 was going to even suggest we might start earlier if we're
2 breaking earlier, but that's fine, 2:00 is fine with Hydro.

3 MR. NOSEWORTHY, CHAIRMAN: We'll do it at 2:00, yes,
4 okay. Thank you, very much.

5 (break)

6 (2:00 p.m.)

7 MR. NOSEWORTHY, CHAIRPERSON: Good afternoon.
8 Just before we get into the re-direct, I just ask Board
9 counsel to address one small issue please?

10 MR. KENNEDY: Yes, Chair, Commissioners, there was an
11 additional notice by letter given to the Board by the United
12 Church of Canada expressing concern with the increase in
13 Hydro prices and them having a detrimental effect on many
14 Newfoundlanders and Labradorians, and that would be
15 tendered as part of the normal record on the expressions of
16 interests by the public. I believe copies have been given to
17 all counsel so that they're aware of it as well.

18 MR. NOSEWORTHY, CHAIRPERSON: Thank you very
19 much. Okay, are you ready, Ms. Greene, to proceed with
20 the redirect?

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

22 MR. NOSEWORTHY, CHAIRPERSON: Mr. Wells, are you
23 ready?

24 MS. GREENE, Q.C.: Thank you, Mr. Chair, before I do that
25 there is one very small preliminary matter I would like to
26 mention and that is that Hydro has circulated a revised
27 response to **IC-260**. Copies have been provided to the
28 Board Secretary and to other counsel. The original request
29 related to orders in council applicable to Hydro and the
30 Board that were issued since 1985, and Hydro's initial
31 response to that request was too broad and unfocussed,
32 not required ... the information request, it wasn't required to
33 understand the issues before the Board. In discussions
34 with counsel for the Industrial Customers, counsel for the
35 Industrial Customers narrowed the request to orders in
36 council affecting electricity rates since 1985 and we have
37 obtained the consent of the government to release the
38 orders in council and any executive privilege that there may
39 have been with respect to them has been waived, so we
40 have filed a revised *IC-260*, attaching the relevant orders
41 in council.

42 MR. NOSEWORTHY, CHAIRPERSON: Thank you very
43 much. You may proceed.

44 MS. GREENE, Q.C.: Turning now then to redirect of Mr.
45 Wells, I'd like first to refer to the transcript of yesterday,
46 September 26th, to page 39 of the transcript, and I'd like
47 first to refer to line 83, and the two references that I am
48 making appear to be a summary by Mr. Kennedy of

49 evidence that was given by you, Mr. Wells, with respect to
50 the role of the board of directors and government with
51 respect to the declaration of dividends, and I would like to
52 read these two references, and then I will ask you whether
53 Mr. Kennedy's summary of your evidence is the correct
54 position, is a correct summary of your evidence.

55 Turning to line 83, Mr. Kennedy states, "The
56 question though is the determination of what dividend is
57 taken. Is it a decision that rests entirely in the hands of
58 government at the end of the day". And if you look down
59 to line 96, Mr. Kennedy states, "I'm simply trying to
60 establish that ultimately the decision on what dividend to
61 pay out was a decision made by government, and it's a
62 decision normally made by government, not by the board
63 of directors". Mr. Wells, is that a correct statement of what
64 the position is with respect to the role of the board and
65 government with respect to the declaration of dividends?

66 MR. WELLS: No, not in my view. I was attempting to
67 establish that the decision with respect to dividends is, had
68 been established by the board in terms of policy. Actual
69 dividends declared to date have been determined by the
70 board and are in conformance with the board policy to date,
71 and in the consideration of dividends, the financial viability
72 of the corporation and the effect of dividends with respect
73 to the financial viability of the corporation are taken into
74 account and we have sought, as I mentioned earlier, the
75 advice of our financial advisors with respect to the special
76 dividend or the dividend of 2002 that we have projected
77 based on the information received from government, but
78 this has been discussed with the financial advisors as to
79 the effect that would have on the corporation, would it be
80 detrimental or not, and the advice was that it was not, and
81 our financial advisors, and as well, the government
82 financial advisors, some of whom are the same, have
83 advised government with respect to that issue as well.

84 MS. GREENE, Q.C.: I take from your answer that the final
85 decision taken is taken by the board of directors with
86 respect to the declaration of dividends as it is in a normal
87 corporate company.

88 MR. WELLS: Exactly, we have no other, there's been no
89 other different approach taken to date with respect to
90 dividends within the Hydro board.

91 MS. GREENE, Q.C.: Turning to line 88 on that same page.
92 You were attempting to provide an answer when Mr.
93 Kennedy interrupted, and if you look there on page 88, it
94 begins halfway in that line ... we see, "No, it might help that
95 in doing this extraordinary dividend the financial advisors
96 to Hydro and the financial advisors to government were
97 asked about this and would it affect the corporation on the
98 longer term", and Mr. Kennedy then interjected with a
99 statement, "And I understand that, and that's not where I'm

1 going with this". I wanted to ask you was there anything
2 additional that you would like to say at this time relating to
3 that? I know you've just mentioned that we did seek
4 financial advice, but I wanted to ensure you had the
5 opportunity to complete your thought.

6 MR. WELLS: As that answer indicated I refer to the fact
7 that with respect to the extraordinary dividend, the financial
8 advisors to Hydro and the financial advisors to
9 government were asked about this and I didn't get to say
10 what their answer was, but our financial advisor had
11 advised us, because we had to bring that type of
12 information to our board of directors as well, so the
13 financial advice to Hydro Corporation was that this would
14 not affect the financial viability of the corporation in the
15 terms that were put forward, and my understanding is that
16 that same advice was conveyed to the Government of
17 Newfoundland and Labrador by their financial advisors.

18 MS. GREENE, Q.C.: Turning now to some discussion again
19 with Mr. Kennedy, this time this morning. In cross-
20 examination by Mr. Kennedy there was reference to capital
21 projects in 2000, both Davis Inlet and in Charlottetown.
22 Were both of these capital projects submitted to the Public
23 Utilities Board under the Public Utilities Act for approval?

24 MR. WELLS: Yes, they were.

25 MS. GREENE, Q.C.: Were both of these projects approved
26 by the Public Utilities Board?

27 MR. WELLS: Yes, they were.

28 MS. GREENE, Q.C.: The next topic that I wanted to raise
29 with you again comes from the cross-examination of Mr.
30 Kennedy, and your discussion relating to how Hydro
31 formulated the proposal contained in the application. In
32 that discussion you mentioned that Hydro had taken into
33 account the impact of the proposed increases contained in
34 the application and other possible increases on such
35 matters if full fuel price had been used and the full rate of
36 return. In your answer you replied that we had taken into
37 account the impact on customers and what I wanted you to
38 comment on now was did Hydro ... or how did Hydro take
39 into account the impact of the proposal on its financial
40 position.

41 MR. WELLS: They review it internally and again taken
42 through to our financial advisors, and we had the benefit of
43 their advice, and I think there's a confirmation of that
44 expressed in our expert witness with respect to our current
45 application. The financial advisors said that this would not
46 be detrimental to the financial viability of the company and
47 we, that was confirmation that we did have the capability of
48 some choice in this exercise.

49 (2:15 p.m.)

50 MS. GREENE, Q.C.: Moving to the cross-examination by
51 Mr. Browne. There was a question again yesterday, and if
52 you could turn to the transcript at page 25 concerning the
53 equal payment plan, and the question was put to you, on
54 lines 56 to 59 with respect to whether Hydro offered an
55 equalized payment billing, and you responded no. The
56 second question on line 65 was whether there are any plans
57 to present customers with this option, and your reply was
58 you're not aware of any plan within the Customer Services
59 Department. With respect to the equal payment plan,
60 would you like to ... what is your position today with
61 respect to the comments you made yesterday on that?

62 MR. WELLS: Yes, when I answered the question and I
63 couldn't just bring it up in that moment in my mind about
64 being involved in discussions but I am, I have been briefed
65 on that and there were discussions and it went out of my
66 mind when I realized that, you know, the issue was solved.
67 We are, with the new systems that we have in our customer
68 services related to the JD Edwards ... we are in a position to
69 do that and there had been some customer requests as well,
70 because I was asked that question and I said not that I was
71 aware of, but I, if I ... I just did not remember. I was aware
72 at one time, and forgot, that there were customer requests,
73 and not in a great deal. The other issue was could we do it
74 and were we willing to do it, and we could and we are
75 willing, and I think I said to the Consumer Advocate that
76 we could implement, we have the capability and could. I
77 apologize for that fact, but the issue is related to our
78 capabilities when these modules came into being, and then
79 the set up for the new Customer Services Department as we
80 now have it, and that was a consideration within customer
81 services, and the Management Committee was aware of it
82 and I was a member of the Management Committee.

83 MS. GREENE, Q.C.: And Mr. Wells, I won't ask that **NP-**
84 **266** be brought up on the screen now, but isn't it correct
85 that the response to **NP-266** indicates that there are monies
86 included in the 2002 capital budget to explore the
87 implementation of an equal payment plan at Hydro?

88 MR. WELLS: That's correct, yes, we have already filed in
89 the evidence related to that particular issue and
90 unfortunately my testimony in response to the question
91 didn't reflect our own evidence that's been filed.

92 MS. GREENE, Q.C.: Yes, and that was why we asked those
93 questions, to ensure the record was accurate. Moving now
94 to the discussion with the Consumer Advocate on the Rate
95 Stabilization Plan. I have a number of questions for you
96 with respect to that. The first concerns the
97 intergenerational equity issue that was raised by the
98 Consumer Advocate, and his use of the example of a widow
99 with modest means having to pay for the partying
100 university students who leave the province and who
101 parted without regard to their electricity consumption

1 while they were at university, and I believe you
2 acknowledged in your answer that that is an issue. There
3 is an intergenerational equity issue arising from the Rate
4 Stabilization Plan, but I wanted you to comment at this time
5 as to whether there are benefits to the widow or the person
6 of limited means, or in fact to all customers arising from the
7 Rate Stabilization Plan?

8 MR. WELLS: Of course, the benefits that would apply to
9 the widow as described who was on a fixed income would
10 be the effect of the Rate Stabilization Plan, and the result is
11 to smooth out the rates, so that her bills in January at the
12 point of highest consumption, for argument's sake, would
13 not reflect what formerly had been the fuel adjustment
14 charge, which caused such consternation amongst, you
15 know, customers prior to the Rate Stabilization Plan, so
16 indeed for anybody on a fixed income, the Rate
17 Stabilization Plan is a significant benefit in smoothing out
18 the costs and that would apply to anybody and particularly
19 those on fixed income.

20 MS. GREENE, Q.C.: I'd like now to look at Hydro's
21 response to CA-179 and I would ask that that be brought
22 up on the screen. If you look at the question in subsection
23 4. Hydro was ... you'll see that Hydro was asked to provide
24 documentation related to public pressure to provide stable
25 rates.

26 MR. WELLS: Yes.

27 MS. GREENE, Q.C.: Unfortunately the attachments are not
28 available electronically so you may have to refer to the hard
29 copy of CA-179, Mr. Wells. Are you familiar with the
30 documentation that was filed by Hydro in response to that
31 question?

32 MR. WELLS: Yes, not studied but I'm aware of it and have
33 flipped through that documentation.

34 MS. GREENE, Q.C.: And could you give an overview of
35 what the documentation provides?

36 MR. WELLS: Well, it's all to the effect that, as one can see,
37 that in 1985 there was a great deal of public comment and
38 one could say controversy over the effect of the higher
39 electricity bills that consumers had to pay in winter months
40 and particularly in relation to the, what they called at the
41 time, the fuel adjustment charge, and what has been filled
42 is various headings from newspaper clippings, like "Inquiry
43 needed into hydro costs", "Federation is not quitting fight
44 against utility rates". That was the Newfoundland and
45 Labrador Federation of Municipalities which was engaged
46 in the issue. Newfoundland Power was rejecting a
47 recommendation for a two price system of rates. Another
48 headline, "The burden must be removed", an action
49 committee, there was an action committee at the time
50 established of citizens and with the chair who was speaking

51 and the action committee was not satisfied with the
52 situation and, well it just ... as you can read through, just
53 rates are too high, government fingered as villain in high
54 cost of electricity, etcetera, etcetera ... "Consumers
55 unhappy with answers at meeting on electrical rates".
56 "Kentucky Chicken outlets plan blackout in protest".

57 MS. GREENE, Q.C.: Some of us lived through those days
58 of '85. I realize you weren't with Hydro at the time, but
59 based on your review of this documentation and your
60 discussion with representatives at Hydro, would you ... is
61 it fair to say that in your opinion there was fair public
62 comment with respect to volatility in rates at that time?

63 MR. WELLS: Yes, my understanding, and in coming to
64 Hydro, and with the Rate Stabilization Plan and the role it
65 plays, I had to ... you know, we've discussed with my
66 colleagues in Hydro the origins of the plan, and how it
67 developed, how it works, and all that. You had to become
68 familiar with it, and so it was my understanding ... and I can
69 remember too, the controversy, not in great detail, but there
70 was some issue about electricity rates, you know, if you
71 live in the province, and the issue is purely, the RSP is
72 developed in response to a very vigorous public outcry
73 from ratepayers about the fact that they had to pay fuel
74 adjustment charges in the very months when they were
75 consuming the most electricity, and they wanted something
76 done about it and this was the response that eventually
77 has now resulted to my knowledge in no advocacy from the
78 public, you know, looking for any change in the Rate
79 Stabilization Plan. It seems to be a non-issue at the
80 moment.

81 MS. GREENE, Q.C.: And that was going to be my next
82 question to you. In your last five years that you have been
83 President and Chief Executive Officer of Hydro, have you
84 received in that capacity letters of complaint or controversy
85 with respect to the volatility of rates?

86 MR. WELLS: No, I have not received any such
87 correspondence, nor has any been referred to me, nor have
88 I had any communication with anybody that was opposed
89 to, or questioning the Rate ... certainly no consumer, no
90 consumer, no customer.

91 MS. GREENE, Q.C.: And what conclusion did you draw
92 from that with respect to customer's acceptance of the
93 plan?

94 MR. WELLS: Well, I assumed that it's not an issue.
95 There's no ... we advocate, you know, the retention of the
96 Rate Stabilization Plan as part of our application and there
97 is no customer or consumer that has made any proposition
98 to us that would cause us to even think about the
99 application of the Rate Stabilization Plan, outside of the
100 context of this hearing.

1 MS. GREENE, Q.C.: I was just going to say, until the
2 Consumer Advocate at this hearing.

3 MR. WELLS: Until the Consumer Advocate raised it and
4 it's raised in the, in some of the expert testimony that's been
5 filed with the Board.

6 MS. GREENE, Q.C.: Mr. Browne also asked you with
7 respect to what communication there had been with respect
8 to the mechanics or the working of the Rate Stabilization
9 Plan, and I wanted to explore that with you. In reading the
10 transcript I understood your answer to be that we had, that
11 there had not been communication with respect to the
12 mechanics of the Rate Stabilization Plan, and I wanted to
13 give you the opportunity to advise the Board whether there
14 had been any communication with respect to the Rate
15 Stabilization Plan with respect to customers, and as
16 opposed to the mechanics of the Rate Stabilization Plan. So
17 could you comment on that please?

18 MR. WELLS: Well I was trying to answer the specifically
19 phrased questions of the Consumer Advocate and answer,
20 and give the right answer, but it didn't, I didn't get the
21 opportunity to ... the Consumer Advocate was putting
22 different ways with respect to the communication and I
23 might have left the impression that there's no
24 communication with respect to the Rate Stabilization Plan
25 and that would not be correct. Every time there is an
26 adjustment in the July 1 ... you know, there's the power
27 billings of customers have a reference to ... Newfoundland
28 Power has put out material to customers with respect to the
29 Rate Stabilization Plan, as has Newfoundland and Labrador
30 Hydro. We, at various times, discussed the Rate
31 Stabilization Plan and how it works with certain segments.
32 I've been in meetings with town councils and in other
33 situations where I have outlined at a fairly high level the
34 principles of the Rate Stabilization, and what it intends to
35 achieve, so I think that it would not be fair to say that there
36 is no communication. There has been a fair amount of
37 communication throughout over the years about the Rate
38 Stabilization Plan, but obviously to everybody and the
39 Board at a certain level the actual mechanics of the plan
40 and the relationships of how you derive the formulas and
41 apply them, that would be extremely difficult to take out to
42 the general public and it would not serve a benefit. The
43 more important thing is that people understand the
44 components of the plan and what it is intended to do, and
45 which is smooth out the prices related to the variability in
46 fuel price, the amount of fuel consumed, the hydrology and
47 the demand on the system during the period.

48 MS. GREENE, Q.C.: Thank you, Mr. Wells. That
49 concludes our redirect.

50 (2:30 p.m.)

52 MR. NOSEWORTHY, CHAIRPERSON: Thank you very
53 much, Ms. Greene and Mr. Wells. I guess the next part of
54 the process would be Board questions and I'll begin with
55 my colleague on my far right, Mr. Powell, Commissioner
56 Powell please?

57 COMMISSIONER POWELL: Thank you, Mr. Chairman.
58 The far right is just where I sit, it has nothing to do with my
59 philosophy. Before I ask Mr. Wells anything I'd just like to
60 preface with the fact that I'm new at this. I was going to
61 say I'm the youngest member in the panel, but then that
62 would lead to some interpretation of the word "young" and
63 you don't want to get there. Also, I'd like to apologize a
64 little, not that a person should apologize anyway, but life
65 threw me a bit of a curve in August and I didn't get to read
66 in detail all the questions and all the answers, so if I ask
67 anything that is already pre-filed, if it's there, just point me
68 in the right direction and I'll leave it for another time
69 because I'm sure some of the issues will be repeated as we
70 go through this process.

71 One of the things that ... on page, the bottom of
72 page 2, page 3 of your evidence, Mr. Wells, we get into this
73 thing about fuel prices. You say the price of Number 6 fuel
74 will be by far having the largest impact on the rate
75 increases, and I assume Number 6 fuel and Bunker C which
76 I refer to are the same?

77 MR. WELLS: They're actually the same, yes.

78 COMMISSIONER POWELL: Yeah, okay, and I was ...
79 when I read it, and I had put my spin on (inaudible), but
80 then as the thing was going through I started wondering
81 whether I had the right interpretation what (inaudible) was
82 but then this morning you made a comment that all the
83 other increases would pale as compared to the effect of the
84 increase in Number 6 fuel going down the road, so I assume
85 that you're implying that the fuel price would be more than
86 the majority of the increase that you propose. So my
87 question, I'm an accountant and I like to keep things simple.
88 I didn't see anything, and I know this price of fuel impacts
89 into the Rate Stabilization Plan, and I don't want to go
90 there, but what I'd like to get my mind around some of these
91 numbers and figures, if it would be possible to have a
92 schedule done up, assume nothing else changes other than
93 the price of fuel as we see it, as you project down the road,
94 and let's just see what the effect would be on the consumer,
95 because as you said, the Rate Stabilization Plan takes in the
96 bumps in the fuel prices and that's one of the advantages
97 of it, so I would like to see, and I realize that in your
98 proposal here there's a lot of things going on besides the
99 price of fuel, in terms of the Rate Stabilization Plan and
100 hydraulics and all that, but I don't want to visit that. I'd just
101 like, to want to just if you could get the actual price of fuel

102 ...

1 MR. WELLS: What would the rates be if you take \$12.50
2 and make it \$20.00, yes.

3 COMMISSIONER POWELL: Well, no.

4 MR. WELLS: No?

5 COMMISSIONER POWELL: Leave everything the same.

6 MR. WELLS: Yes.

7 COMMISSIONER POWELL: But the price of fuel now is
8 going up to \$28.00. In here I think it's mentioned as high as
9 30 odd dollars a barrel. You have projected fuel prices for
10 the next three or four or five years, \$28 or \$29 ...

11 MR. WELLS: Ebb and flow.

12 COMMISSIONER POWELL: So just put those projections
13 through and leave everything else the same and see what
14 effect it would have on the rates. Just a simple ...

15 MR. WELLS: You don't want me to do that ...

16 COMMISSIONER POWELL: No, no, I just want you ... and
17 I know it's not ... I wouldn't have brought it up. I was
18 waiting for the Rate Stabilization thing to come up but since
19 it was mentioned and since it's in your statement, and it
20 seemed to be a big emphasis on the price of fuel, I'd just
21 like to see that popped out and (inaudible).

22 MR. WELLS: Yes, well the ... our people, we've heard the
23 question and you'd like something in a sheet of paper that
24 would in effect ... at least explanatory, if we haven't already
25 filed something to that effect.

26 COMMISSIONER POWELL: Yes, I haven't seen it there,
27 but I would like if you could have that for ...

28 MS. GREENE, Q.C.: We're not sure what Mr. Powell is
29 looking for so I hesitate to intervene but ...

30 MR. WELLS: Well, I'm off the hook anyway.

31 MS. GREENE, Q.C.: No, but we're not if we have to provide
32 a schedule later though a witness.

33 COMMISSIONER POWELL: Let's assume nothing else
34 changes in the next four or five years except the price of
35 Number 6 fuel as you've indicated where the prices are.

36 MS. GREENE, Q.C.: We have provided responses to
37 information requests varying, using \$15.00 a barrel, using
38 \$20.00 a barrel, using \$25.00, which gives some indication
39 of the ...

40 COMMISSIONER POWELL: But that's in context of the
41 Rate Stabilization and the other things that you think is
42 going to happen.

43 MS. GREENE, Q.C.: That is in the context ... right.

44 COMMISSIONER POWELL: But I'm just ... let's assume
45 nothing else happens other than what happens ...

46 MS. GREENE, Q.C.: No change in revenue requirement, no
47 change in the current ROE, no change in ...

48 COMMISSIONER POWELL: Hydraulics and all that, no.
49 The only thing that would change would be the price of
50 fuel every month and the interest costs.

51 MS. GREENE, Q.C.: And interest expense, we would use
52 the '92 interest expense?

53 COMMISSIONER POWELL: Whatever you're using now.
54 The only ...

55 MR. WELLS: I think you ... this would not ... the issue
56 you're looking for is what is the impact on various prices of
57 fuel on rates.

58 COMMISSIONER POWELL: Yes.

59 MR. WELLS: Yes, but ...

60 COMMISSIONER POWELL: The largest impact is fuel
61 prices and I'm sort of gleaning and I just want to be able to
62 put this down that there's a combination of things and I'm
63 not sure of the price of fuel, when it's all said and done,
64 may be the highest one, but I haven't got that yet.

65 MR. WELLS: There's no doubt about that but ...

66 COMMISSIONER POWELL: I'd like to see it.

67 MR. WELLS: I can see the technical difficulty that the
68 people down there ... I don't see a lot of people nodding
69 heads in the back of the room that they can come up with
70 this, you know.

71 MS. GREENE, Q.C.: Perhaps what I would suggest is that
72 during the break I will have the opportunity to discuss with
73 our technical people and come back to you with a
74 suggestion to see if it meets what you're looking for.

75 COMMISSIONER POWELL: Okay. Good, I'll take that.
76 From an accountant's point of view, the exercise, I realize it
77 shouldn't be all that hard. On page three of your pre-filed
78 evidence, I have ... again, this is probably my problem,
79 being new at the process but on line, starting on line 19
80 you say that portion of the costs previously paid by
81 Hydro's industrial customers for the rural subsidy must be
82 allocated to Hydro's other customers by order of the Board.
83 I had a problem with must.

84 MR. WELLS: After that was filed and I read this over, and
85 looking at it, a more preferable approach should have been
86 maybe "may only be allocated". The authority there, what
87 I was trying to say there and said "must", is that the only
88 authority would be the Board can make that type of order,
89 so it's not that the Board must do it, it's the may only be
90 allocated to Hydro's other customers by order of the Board
91 would have been more, it would have been preferable

1 language, you know, on reflection, yes.

2 COMMISSIONER POWELL: Can or should be, or would
3 be, or ...

4 MR. WELLS: Well, may only be ... I mean in other words,
5 Hydro can't make such a decision. The only entity that can
6 make such a decision would be the Board of
7 Commissioners.

8 COMMISSIONER POWELL: Yeah, and there's no real
9 requirement that they have to?

10 MR. WELLS: It's the unfettered right to do whatever you
11 wish, and it would have been preferable to have "may
12 only" there.

13 COMMISSIONER POWELL: And on page four of your
14 evidence, you're talking about various issues and you've
15 got, on line 8 you say, contract to supply capacity and
16 energy with this non-utility generators costs approximately
17 \$10 million per year which costs must now be incorporated
18 into Hydro's rates. Are you talking about new costs or
19 wouldn't they be replacing some existing costs or ...

20 MR. WELLS: No, these (inaudible) contracts reflect the
21 fact that the interconnected system on the island needed
22 more capacity and energy and as I state in the testimony
23 that the government had a policy with respect to opening
24 up the possibility for non-utility generators to supply
25 power and energy to the grid, and the Public Utilities Act
26 was amended in 1992, and the result was that under a
27 request for proposals back at that time various proponents
28 came forward with projects to fulfil the requirement. These
29 two projects were successful. Hydro entered into contracts
30 with them back in 1992 and the projects have now come on
31 stream and the cost of that power is now part of Hydro's
32 cost to meet the requirements of the system and that cost
33 must be reflected, you know, in Hydro's operational
34 expenses and in the rates. This would apply to any new
35 source of generation eventually as it comes into ...

36 COMMISSIONER POWELL: I figured \$10 million, is that
37 approximately what you're buying from the ...

38 MR. WELLS: Well the actual detail can be, I'm sure it's
39 provided somewhere in the evidence but ...

40 COMMISSIONER POWELL: It's probably there, but these
41 are not necessarily additional costs, there's not there ...
42 what you're ...

43 MR. WELLS: These are costs, we are actually buying
44 energy from these two companies, non-utility generators.
45 This energy is going into the interconnected grid, and we
46 are paying them for it in the same sense that we have to
47 pay the cost of our own generation.

48 COMMISSIONER POWELL: Yeah.

49 MR. WELLS: And not to replace, no, they were intended
50 to add new capacity to the system. In other words ...

51 COMMISSIONER POWELL: Yes, but when you're buying
52 from them you're replacing some other cost because you've
53 ...

54 MR. WELLS: No, we are ... in other words, let's say we had
55 developed our own source of generation, that cost would
56 go into the system. Instead of Hydro developing its own
57 source of generation, we contracted with those two
58 suppliers to supply electricity to th system and this is
59 reflective of the annual cost and that will ebb and flow
60 because they are hydraulic plants, but we now will pay
61 them for the energy that they deliver to the system, so it's,
62 that is part of the cost of meeting the energy requirements
63 of the interconnected system. Nothing else is shut down
64 necessarily as a consequence, but there is a note, and
65 others can explain it better, but we do have some offset
66 because, to the extent that they're hydraulic, it may assist
67 us in saving from burning some oil in Holyrood, but these
68 are additions to capacity in the system, and therefore, as
69 you add capacity to the system you must absorb that cost
70 of that additional capacity and energy in the system.

71 COMMISSIONER POWELL: I'm sure when we get in later
72 on, there's other questions that we can compare that \$10
73 million versus the costs, because what you're buying from
74 them you're producing ...

75 MR. WELLS: There was a number of applicants ... I'm
76 sorry, there were a number of applicants at that time and
77 these were the projects that were selected as being the
78 most favourable and cost effective, and contracts were
79 entered into with those entities and they are now supplying
80 to the system.

81 COMMISSIONER POWELL: So this would be lower, the
82 overall cost here would be lower than the thermal costs?

83 MR. WELLS: There's a relevancy there and maybe Mr.
84 Budgell can explain the detail of that.

85 COMMISSIONER POWELL: In the next paragraph you
86 talked about the \$1.3 million and the contract which you
87 have with Abitibi in Stephenville, and you say the cost of
88 this contract is \$1.3 million. And I presume what that is is
89 that you pay them \$1.3 million in case some day you had to
90 phone them up and tell them to close down because you
91 need the power? Is that ... in simplest ...

92 MR. WELLS: Well, yes, we have the right to take, in effect,
93 to use that capacity to help us in the operation of the
94 system should we require it, and for that right and privilege
95 we pay a fee.

96 COMMISSIONER POWELL: Yes, to cover, essentially to
97 cover the cost if they would have to close down.

1 MR. WELLS: Yes.

2 COMMISSIONER POWELL: Okay, what is the alternative
3 cost on that I mean if you didn't pay them?

4 MR. WELLS: Well then we wouldn't have that 46
5 megawatts to be able to handle the winter peak period. In
6 other words if ...

7 COMMISSIONER POWELL: If there's not enough in the
8 system, even if Holyrood was going max.

9 MR. WELLS: In the whole system, we have everything
10 going flat out with our own and what we've contracted for,
11 and say we start to run short, so before we let the system
12 run short you would contact Abitibi Consolidated, on
13 extremely, you know, on short notice, and say we need
14 your power now for the system. They would reduce their
15 own requirement, transfer the power into our system to
16 service the whole of the system for this peak period and for
17 that right we pay them the contract price. The alternative
18 would be to come up with another source of energy like
19 another Star Lake, for argument's sake, or a Granite Canal to
20 be able to have the capability to meet that peak should it
21 occur. So it is just another method short of building new
22 capacity to enable the system to meet its peak if somebody
23 will agree to interrupt the firm supply of power to them in
24 those circumstances and it is worth, you know, it is worth
25 money to the system.

26 *(2:45 p.m.)*

27 COMMISSIONER POWELL: In the area of cooperation,
28 when you did up this rate application and the numbers
29 popped out to be what they are, before you talked about
30 having meetings and discussion with your shareholders to
31 appraise them of the application, did, was there any
32 discussions with Newfoundland Light and Power and
33 Industrial Customers to see if, to get comments and see if
34 there's any ways of working together that you may be able
35 to reduce the application in terms of the anticipated rate
36 increase, or did you provide them with the application at
37 the same time you provided the Public Utilities Board?

38 MR. WELLS: Yes, we did but there would have been an
39 interaction prior to that, like in determination of load
40 forecast for the test year. We have to consult with our
41 customers as to what their anticipated demand will be
42 during the period.

43 COMMISSIONER POWELL: But did ...

44 MR. WELLS: But no, not have a discussion about the
45 actual rates themselves and what they could or would be,
46 no.

47 COMMISSIONER POWELL: That's not part of your
48 ongoing policy to interact with your main customers?

49 MR. WELLS: I guess they and we would rely on the
50 process, going to the rate hearing as we have with this pre-
51 filed testimony, responses, and get all the information in to
52 the Board.

53 COMMISSIONER POWELL: So would you think that from
54 a cost perspective it would be ... if some of the issues were
55 flushed out with them prior to the application would save
56 ...

57 MR. WELLS: Well we were, because of the changes in the
58 Act and the Board having the jurisdiction now over
59 contracts with our industrial customer as of the date of this
60 hearing, we were in the process of negotiating more
61 uniformed contracts with our industrial customers which
62 would have to be approved by the Board at this hearing,
63 but the other thing with respect to rates, nobody can
64 allocate, or reallocate costs or transfer costs ... you know,
65 we couldn't sit down and agree amongst our industrial
66 customers and Newfoundland Power that this is how we
67 want to adjust things. We have to bring all this to the
68 Public Utilities Board and that's where I ... you know, that
69 "may only" comment ... the only authority that can deal
70 with the rates is the Board.

71 COMMISSIONER POWELL: I appreciate that but if there's
72 some flushing out of some issues in terms of saving and
73 costs, obviously the industrial customers don't seem to
74 agree with the application as presented and Newfoundland
75 Light and Power has some, appears to have some
76 difficulties with it, and I'm just wondering if the process
77 wouldn't ... because it seems to be the trend, I'm not used
78 to dealing with large corporations but I'm sure if this
79 application had hit the vice-president of Walmart before it
80 hit the desk there would have been a couple of people in
81 Hydro's head office saying we've got a problem, how are
82 we going to handle it. They seem to have this proactive
83 dealing with issues as opposed to ...

84 MR. WELLS: I think that what you would find, I mean this
85 is a regulatory process and if Walmart were to come in ...
86 it's not that Abitibi Consolidated could come in and say to
87 us, look, we don't like the increase, why don't you charge
88 a bit more to Newfoundland Power's customers and leave
89 us off the hook.

90 COMMISSIONER POWELL: Well not so much charging
91 so much as saying that ... to me the question is, you know,
92 does Hydro need 300 and whatever million dollars to
93 provide least cost power and get a reasonable rate of
94 return, okay? That's the question that ... and then you
95 break it down and allocate then if it can be decided that is
96 it. So the question you would have with your customers is
97 this is going to cost us 300 and some odd million dollars to
98 run this system, you know, has anybody got any bright
99 ideas on how we can do it for less and get a reasonable

1 return and provide reliable power, and so that's the type of
2 discussion that I think, I would expect you would have with
3 your customers.

4 MR. WELLS: I think you would find, and I hear what
5 you're saying but in the circumstances of a regulated
6 system, and in the provision of power to a grid and, you
7 know, like the interconnected island grid, that while we
8 have discussions with Newfoundland Power in terms of the
9 operation of the system and where you can do things that
10 are of benefit to the consumers or save costs, or with our
11 industrial customers with the management of the water
12 system, we can do all those things but we can't, you know,
13 sit down in our own context and sort of come up with
14 things that would affect the rates. We're here because the
15 impact of the price of fuel in our view is now such that we
16 have to adjust our rates to accommodate that fact ... the
17 \$12.50, you know, compared to the \$28.00. We have gone,
18 we are forecasting going through the cap set by this Board
19 for the Newfoundland Power customers and we have the
20 issue of the industrial rates and what would happen with
21 the cost as a result of the industrial customers not
22 contributing to the rural subsidy and the Board ordered us
23 at that interim, or they're in an interim situation there,
24 ordered us to file a general rate application. I don't know if
25 I'm answering your question but there is a process and
26 procedure to handle certain issues. We could not cope in
27 terms of meeting with our customers, no matter how well-
28 intentioned, none of us could come up with a way, I
29 suggest, that could handle the issue of paying \$30.00 for oil
30 and yet only having \$28.00 or \$12.50 in the rate. It's just
31 too big a gap.

32 COMMISSIONER POWELL: Okay, we'll look at ... if I can
33 get my schedule I'll have a better grasp on the fuel, the
34 impact on it, but I tend to disagree a little bit with you. I'm
35 not suggesting that rates would be in the back room
36 (inaudible) and not be exposed. It still has the same
37 exposure, but I sort of think the majority of your power is
38 sold to some fairly sophisticated business people and I
39 can't help but think that they have some very sophisticated
40 people for planning and analyzing things that's not
41 expertise that a person wouldn't want to take advantage of.
42 Now how you do it, I'm not exactly sure, but I mean it's a
43 real world and big business today, it's a much more
44 cooperative process in terms of everybody trying to keep
45 their costs down so the ultimate price to the consumer, be
46 it buying kettles at a retail store, or buying parts to build a
47 car in southern Ontario, or selling power in Newfoundland,
48 I mean that's the real world, so I find it, this cooperation
49 thing, it sort of seems to be missing here. Now I may be
50 misinterpreting what's being said, but as we go down this
51 process maybe we can explore that a little more.

52 The guarantee fee you pay the government, it

53 doesn't seem that anybody has any problems with it, and
54 far be it from me, but just to ... I presume from comments
55 you made that the, if you were going to market yourself, it
56 would be costs that government is saying you that cost as
57 far as making the application prospectus and all the
58 regulatory requirements to raise the \$100 million or
59 whatever. So really the guarantee fee has two sort of
60 components. It has the cost of the application and then the
61 rest of it would be some sort of a risk management fee, or
62 an insurance fee to the government.

63 MR. WELLS: The big issue is the coupon rate. The
64 guarantee fee because the government guarantees its fee,
65 or the government guarantee is there, when we go to the
66 market, instead of having to assess Hydro's particular
67 standing in terms of its financial structure, capital structure,
68 they would look at the fact that the Government of
69 Newfoundland and Labrador is guaranteeing this issue.
70 Let's say it's a \$100 million issue ... and then we would have
71 the benefit of the government's credit rating and I think that
72 when you have the benefit of talking to some of the
73 financial, the expert witnesses that are going to appear,
74 they would tell you that that alone would be worth maybe
75 100 basis points on an issue which is, you know, one
76 percent is a significant saving. It would be the type of
77 saving that you would get if Hydro had a 60/40 debt/equity
78 ratio and a Triple B rating by the, you know, in the markets
79 we could, that would be the only way we could duplicate
80 that kind of coupon rate.

81 COMMISSIONER POWELL: So you're saying though that
82 the one percent is a wash anyway. If you had the credit
83 rating, if you went to the market yourself, the cost of doing
84 that ...

85 MR. WELLS: If we had that credit ...

86 COMMISSIONER POWELL: Yes, if you had the credit
87 rating and ...

88 MR. WELLS: Yeah, but the question is how does one get
89 to attain that credit rating.

90 COMMISSIONER POWELL: No, the question, I'm just
91 thinking about the guarantee fee itself. I'm just trying to ...
92 I sort of rationalize in my own mind there might be two
93 components to it. One is the actual administration cost of
94 raising the money.

95 MR. WELLS: There is a benefit that when you have the
96 guarantee fee from government, or the guarantee of
97 government, then we don't have to file prospectuses and
98 do a whole bunch of administrative things that other
99 companies would have to do before going on a public
100 issue, so that is an administrative burden that is not there
101 and the cost associated with it. The other thing is the
102 premium that we get in the marketplace by, in effect, having

1 the government's standing in the marketplace determine the
2 coupon rate that we're going to pay on the issue.

3 COMMISSIONER POWELL: So the only real return to the
4 government on the guarantee fee is the difference between
5 costs that somebody would incur regardless of who is
6 going to the market versus the ...

7 MR. WELLS: No, there are costs there that no one incurs.
8 Government doesn't incur them, nor do we, because the
9 financial community will accept the fact that we're a Crown
10 corporation with a government guarantee.

11 COMMISSIONER POWELL: So they don't have to do up
12 the prospectus and all the other ...

13 MR. WELLS: We don't.

14 COMMISSIONER POWELL: No.

15 MR. WELLS: The government doesn't have to. It's our
16 issue.

17 COMMISSIONER POWELL: Nobody does.

18 MR. WELLS: Nobody does it in that sense, yes, for that,
19 because ...

20 COMMISSIONER POWELL: But if you were doing it on
21 your own ...

22 MR. WELLS: If we were doing it on our own we would
23 have to file the documentation, prospectus and all our
24 financial information.

25 COMMISSIONER POWELL: So which would be ...

26 MR. WELLS: In support of the issue.

27 COMMISSIONER POWELL: That's right, so that could be
28 anywhere from half of one percent plus or minus.

29 MR. WELLS: There would be costs there. I don't know if
30 one of our witnesses could detail some of that. We'd have
31 a look at it.

32 COMMISSIONER POWELL: But the real benefit ... okay,
33 so the only benefit ...

34 MR. WELLS: But the real benefit is that if we end up with
35 an issue that in the end costs us say six percent, without
36 the government guarantee fee it could very well cost us
37 seven percent. You know, we are gaining a ...

38 COMMISSIONER POWELL: I have no problem with the
39 right, I was just trying to split the fee down a bit in terms of
40 saying, okay, if you get the 60/40, there's certain costs you
41 would have to put in your rate base anyway because that's
42 the cost of doing it, so the real benefit is not the one
43 percent.

44 MR. WELLS: Well, if you've got one percent on \$100
45 million for 30 years, it's a very significant figure.

46 COMMISSIONER POWELL: No, no, but I'm thinking if
47 Hydro had a 60/40, going to the market, and able to raise its
48 own money and get the lowest possible rate ...

49 MR. WELLS: Yes.

50 COMMISSIONER POWELL: There's still a cost.

51 MR. WELLS: But we still have the cost.

52 COMMISSIONER POWELL: Yes, that's right, so some part
53 of that one percent that should be in your rate base, if
54 somebody were to dispute the fact that none of it should
55 be there. That's the question I'm trying to say.

56 MR. WELLS: That's possible, yes.

57 COMMISSIONER POWELL: Okay, your ... I'll explore that,
58 the only reason I brought it up, it was brought up when we
59 get into some of your finances later on. There's been a lot
60 of questions on the dividends and your right to receive
61 dividends and the cost effect. I have no problem with
62 shareholders taking dividends out of a company however
63 they want. In the private sector there's a bunch of other
64 things that come into play and taxation is one of them, so
65 ... but it's not unusual for a person to put a dollar in a
66 company and take back thousands of dollars every year.
67 That's the dream of any free enterprise type person. With
68 this type of an application, whether it was Newfoundland
69 Light and Power and Hydro, and you want to be treated as
70 a private sector (inaudible), it all comes down to the cost of
71 capital, interest coverage, and these sort of situations, and
72 the 60/40 all comes into play, and there's a question
73 whether the cost of debt or cost of capital is, which is the
74 more (inaudible) and the better rate of return. What I'd like,
75 it would be an interesting exercise, and again, I don't know
76 if it's in the evidence that that ... what is the cost to the
77 ratepayers assuming that the government hadn't taken any
78 dividend and the retained earnings would be what it is,
79 they would be expected to have a rate of return on their
80 capital which we put into rate base versus what the savings
81 would have been on the interest coverage because they
82 would have more money and wouldn't have to borrow, and
83 then there's also the return on equity would be, I guess, the
84 cost recovery from the shareholder in terms of loss of
85 opportunity by not having the dividends. So that would be
86 a real, to me, seem to be a real true test of what the effect on
87 Hydro would be, so is there any sort of a schedule there
88 incorporating that?

89 MR. WELLS: If we were to take out the impact of
90 government dividends.

91 COMMISSIONER POWELL: Just so we have no
92 dividends.

93 MR. WELLS: Have we done a calculation, no, I don't think
94 we have developed that, we have developed no figures on

1 that, I think. Once you get into ... I don't know how to say
2 it because this is way more complex in the details than I
3 would want to discuss with the Board. It's very difficult
4 just to take one item here and say run this and this is what
5 the result would be. It's just too complex in the rate
6 structures and issues but I think again as counsel has said
7 on the first question you asked, if at the break we could
8 discuss this with our technical people and financial people
9 and see what we're talking about here, and what meaningful
10 information we could get for you and if something has not
11 been filed already.

12 COMMISSIONER POWELL: Okay.

13 MR. WELLS: If we have an opportunity we'll come back.

14 COMMISSIONER POWELL: And explain it a little
15 different. The schedule referred to this morning when
16 counsel was talking to you and they were doing the
17 schedule on bad debts, I had in my notes to bring it up later
18 in the process but since it was brought up this morning I
19 found the schedule not that meaningful in the sense that
20 they were looking at the bad debts relative to the gross
21 revenue and really I would like if you could see a schedule
22 done to put those debts relative to the gross revenue of the
23 areas in which they were charged. In other words, just deal
24 with the rural customer, the isolated customers and see if
25 we can see the movement and the percentages there
26 because to take the debts the percentage to gross revenue
27 you put in Newfoundland Light and Power and Industrial
28 Customers, I don't think it's as meaningful.

29 In your statement you talk about the increase in
30 the various rates and you talk about the effect on the
31 consumer. I think it comes out to 6.7 percent, I'm not sure
32 whether that's the right ...

33 MR. WELLS: 6.7 percent is the increase to Newfoundland
34 Power if our proposal were accepted and 3.7 percent to
35 their customers because the cost of the power that they
36 purchased from Hydro is approximately in the area of 56
37 percent of their costs.

38 COMMISSIONER POWELL: Plus there is a rate
39 stabilization adjustment in next July.

40 MR. WELLS: Yes, which is going to bring it up another ...
41 another 3. ... well 5.9 percent to Newfoundland Power and
42 3.4 percent to their customers.

43 COMMISSIONER POWELL: So ...

44 MR. WELLS: That would be as a result of how many
45 dollars are outstanding in the Rate Stabilization Plan with
46 respect to Newfoundland Power as of December 31st of this
47 year.

48 COMMISSIONER POWELL: Yes, that's right.

49 MR. WELLS: And you recover on the rolling three year
50 average and the first payment ...

51 COMMISSIONER POWELL: Yes, I realize all that. That's
52 ...

53 MR. WELLS: Okay.

54 COMMISSIONER POWELL: So that ... but is that, when
55 you say that's the price to the consumer, is that the full
56 price to the consumer before the HST or after the HST? So
57 is that the 85 percent or the ...

58 MR. WELLS: The 6.7 percent increase in the rates ...

59 COMMISSIONER POWELL: No, you're saying 6. ... you're
60 saying to Newfoundland Power when they pass it through
61 it will be approximately 3.7 to their customers and the same
62 thing with the Rate Stabilization.

63 MR. WELLS: Yes, they have, well any tax that they would
64 be required to pay would be paid on their bill. Yeah.

65 COMMISSIONER POWELL: I realize that but you sort of
66 said to consumers, so really the cost to the consumer is not
67 3.7, it's 3.7 plus applicable taxes?

68 MR. WELLS: Just like death and taxes, we all get ...

69 COMMISSIONER POWELL: I know, but to the commercial
70 sector, the HST is a wash, it's not applicable, but to let the
71 consumer think that its increase is only going to be seven
72 percent when it's going to be eight percent more or less, it's
73 a ... it makes a difference in my bill.

74 MR. WELLS: Well you would have to pay the 15 percent
75 tax on your bill, yes.

76 COMMISSIONER POWELL: Yeah, that's right, but we
77 have no increase, we didn't have any ...

78 MR. WELLS: That's true, yes.

79 COMMISSIONER POWELL: Okay, the other thing, and
80 this is the last question I have. Again, I wasn't, it sort of
81 got brought up in the questioning to yourself, talking
82 about the social cost and things that are included in the, in
83 the rate base. There was some question, I think,
84 Newfoundland Power had about interest coverage and they
85 were talking about \$1.7 million. Can you ask your people to
86 produce for us a summary of the annualized socialized
87 costs that are in the application on a ...

88 MR. WELLS: The annualized social costs?

89 COMMISSIONER POWELL: Yes.

90 MR. WELLS: There is no such category or ...

91 COMMISSIONER POWELL: I know there isn't any
92 category but there was some question, there have been ...
93 I haven't got all the documentation but every now and then

1 I hear somebody come up with a figure of \$500,000 and I
2 heard 1.7, I didn't hear any great disagreement.

3 MR. WELLS: I think that there is no category of social
4 costs.

5 COMMISSIONER POWELL: I realize there is no category.

6 MR. WELLS: No, but there is ... what I think that some
7 have been saying is that, as a prelude to argue, that what
8 are the social considerations in Hydro's rates, or the impact
9 of government with a social policy or public policy that
10 would impact Hydro but there is no way that we can come
11 back to you and say, well out of our whole revenue
12 requirement this \$3 million here is somehow a social cost.
13 There is no such animal and we're here to talk about ...

14 COMMISSIONER POWELL: Okay, can you give me ...
15 there's a number of subsidies, one of the ones in terms of
16 ...

17 MR. WELLS: Subsidies to?

18 COMMISSIONER POWELL: In terms of what's being
19 charged versus what it costs. Is there a schedule showing
20 those ...

21 MR. WELLS: Yes, there is a subsidy, there are rates, like
22 the isolated rural system, the cost of service exceed the
23 revenues that we get back and the evidence that's filed
24 says that the, there's a \$26 million deficit and this deficit is
25 to be paid under the current system by the customers of
26 Newfoundland Power, as one, and not the industrial
27 customers anymore and the Labrador interconnected
28 customers, so that the, the, this is the policy or the facts
29 that we now work under, and it's one of the issues at the
30 hearing. The people who are in the isolated rural
31 communities that we service pay approximately in their
32 rates about 22 percent of the cost of providing that service.
33 The people on the rural interconnected that Hydro has pay
34 approximately 86 percent of the cost of service. The
35 difference falls into this deficit ... what is termed like the
36 rural subsidy, the rural rate subsidy. Does that ... you're
37 referring to that?

38 COMMISSIONER POWELL: Partly. I'll leave that for
39 another time. There are some comments that I didn't get a
40 chance to go through them all but they're tabbing those as
41 we get into the cost of service, I'm sure I'm going to have
42 an opportunity, or I'm sure there will be some clarity to
43 some of these issues and I'll get an opportunity then.
44 Thank you.

45 MR. WELLS: Sure.

46 MR. NOSEWORTHY, CHAIRPERSON: Thank you,
47 Commissioner Powell. It is eight minutes after now. I
48 understand in talking to Commissioner Saunders that he
49 might consume the remainder of the afternoon, so rather

50 than start now and break in five or ten minutes, I think we'll
51 have a 15 minute break now and we'll begin with
52 Commissioner Saunders when we return. So it's 10 after,
53 we'll return at 25 after, thank you.

54 *(break)*

55 MR. NOSEWORTHY, CHAIRPERSON: You can see there's
56 only three of us. Unfortunately one of the commissioners
57 is ill this afternoon, so rather ... there's 25 minutes left and
58 I would prefer that we adjourn for the evening. She's really
59 not very well and I'd appreciate your understanding on this
60 matter.

61 MS. GREENE, Q.C.: Mr. Chair, I don't know if we could
62 proceed with respect to us responding to Mr. Powell's
63 request to get some indication if that is what, what would
64 be satisfactory to Mr. Powell?

65 MR. KENNEDY: If counsel have no objection to
66 proceeding with a part panel in that regard then for that
67 narrow point, but clearly the Board is a part panel now so
68 ...

69 MR. NOSEWORTHY, CHAIRPERSON: I would prefer that
70 Commissioner Whalen heard the responses as well.

71 MS. GREENE, Q.C.: It was only to clarify some of the
72 questions that have been deferred for supplementary or
73 further information by Mr. Powell, Commissioner Powell,
74 but we can do that in the morning.

75 MR. NOSEWORTHY, CHAIRPERSON: Okay, I appreciate
76 that. Thank you very much. We'll adjourn until 9:30
77 tomorrow morning.

78 *(hearing adjourned to September 28, 2001)*