(10:30 a.m.)

MR. SAUNDERS, CHAIRMAN: Good morning.

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

MR. SAUNDERS, CHAIRMAN: Counsel is not in, I guess. I was hoping we could go through this morning without a break, seeing it's late, but that will depend in a large part on how long each of you are, and how long I can retain that jug of water in front of me.

MS. GREENE, Q.C.: And as the, just a caveat or advanced warning, depending on the nature of the argument, I might like a short break before reply.

MR. SAUNDERS, CHAIRMAN: Yes.

MS. GREENE, Q.C.: Because in this particular case, where argument hasn't been prefiled ...

MR. SAUNDERS, CHAIRMAN: Sure.

MS. GREENE, Q.C.: I have not, I may not have anticipated all of the argument.

MR. SAUNDERS, CHAIRMAN: Well, if anyone wants a break it's a matter of asking and we shall do so. If there aren't any preliminary matters, which I under there aren't, Ms. Greene, are you ready?

MS. GREENE, Q.C.: Yes, thank you very much, Mr. Chair, Commissioners. I would like to begin my final argument with respect to the application for approval of the 2003 capital budget by reviewing the legislative provisions or the legislative framework that is applicable to this particular application.

As you know, this is an application under Section 41 of the Public Utilities Act for approval of Hydro's proposed 2003 capital budget. Subsection 1 of Section 41 requires a public utility to submit its capital budget for a particular year no later than December 15th of the prior year. Hydro filed this particular application for 2003 on September 18th.

Under subsection 3 of Section 41, the prior approval of the Board is required for projects in excess of $50,000 and leases where the annual value of the lease is in excess of $5,000, so that's the first legislative provision that I wanted to refer to, which is Section 41 of the Public Utilities Act.

The second relevant legislative provision is Section 37 of the Public Utilities Act, which requires Hydro or any utility to provide services and facilities which are reasonably safe and adequate and just and reasonable. As well, the Electrical Power Control Act, 1994, sets out the power policy of the Province, and it also is relevant for this particular application.

Section 3(b) of that Act requires a utility's sources and facilities to be managed and operated in the most efficient manner and in a manner that results in power being delivered to customers at the lowest possible cost consistent with reliable service.

Capital expenditures are required each year by a utility in order for the utility to meet its statutory obligations under the Public Utilities Act, and under the Electrical Power Control Act. It is clear from the legislative provisions that I have just outlined that proposed capital expenditures must be required for safe, adequate, reliable power or service for customers and they must be considered in the context of cost considerations and the implications for least cost power for customers. This often is an exercise in judgement. It is not an exact science.

Hydro's current application for approval of the 2003 capital budget must be considered in the light of the statutory framework that I've just outlined. To summarize, Hydro has a statutory obligation to supply customers with safe, adequate, reliable service, and the supply of Hydro must be least cost for customers.

Hydro and the Board must ensure that only those capital projects required to provide reliable safe service are carried out, and that they are done in the least cost manner.

Turning now to the specific application before the Board, I would like to point out that Hydro's capital budgets became subject to the jurisdiction of the Board in 1996. This is the seventh capital budget that Hydro has submitted to the Board for approval. It is the lowest in terms of value that Hydro has requested approval of. We believe and submit to the Board that the proposed 2003 capital budget as outlined in our application and during the hearing is the minimum level of capital expenditures required in 2003 to provide reliable safe power to our customers.

The Board in PU-7, 2002-2003, in Schedule 3, outlined 12 guidelines and conditions to be met by

Hydro in submitting capital budget applications. We believe that the current application addressed these requirements fully. As well, through the replies to the Board and to the Intervenor's information requests, and during the hearing, Hydro supplied additional information. Hydro submits that the capital projects proposed in its application are appropriate, and that the evidence before the Board clearly supports approval of the application in its entirety.

In the opening statement of Industrial Customers, Mr. Hutchings stated that it was not the intention of that Intervenor to micro-manage Hydro, nor should it be the Board's intention. We agree fully with that position and we believe that is the position the Board has adopted as evidenced in such previous orders as PU-7 in dealing with capital.

Hydro's management and staff have the training, the operating experience, the expertise and the responsibility to manage all of Hydro's operations and activities. The Board also has a general supervisory role, and with respect to capital expenditures, the Board's role is to review and approve annual capital budgets of utilities and to give prior approval of projects over $50,000.

Hydro, in submitting its proposed 2003 capital budget, drew upon and based its application upon the experience of its personnel, their professional opinions, and the judgement of their staff. We submit that all of the proposed 2003 projects are, in the judgement of Hydro, required in 2003 to provide and to meet our statutory obligation; that is to provide reliable, safe power and service to our customers at the lowest cost.

I'd like now to look at what it is specifically we are asking the Board to approve. Hydro is requesting approval of the funds required in 2003 to undertake the projects as detailed in the application. Generally, these projects are completed in 2003. If you look at pages B-1, B-2, and B-3, you will see all of the projects over $50,000 are listed. You will also see that the vast majority of these projects will all be completed in 2003.

If a project is not scheduled to be completed in 2003, then future capital dollars required to complete the project are indicated for future years. Hydro is asking the Board to approve the 2003 capital expenditures and we will include in future applications for further review and approval by the Board, the dollars associated in a future year for any particular project. For example, we will include in the 2004 capital budget application those projects that may have started in 2003 but will require funding in 2004 as well, and details of that have been provided throughout the application.

However, as I noted just a moment ago, if you review sections, or pages B-1, B-2, and B-3, you will see that the vast majority of our projects all will be completed in 2003.

In conclusion then, it is our position that the evidence before the Board fully supports all of the projects that were listed in Hydro's original application and upon which you have heard evidence over two days. We request that the Board issue the order and the specifics of the order as requested is set out in our application. Thank you very much, Mr. Chair, that concludes my argument.

MR. SAUNDERS, CHAIRMAN: Thank you, Ms. Greene. Are you ready to proceed, Ms. Henley Andrews?

MS. HENLEY ANDREWS, Q.C.: Yes, Mr. Chairman. Mr. Hutchings and I are going to proceed with the argument in basically the same way that we dealt with the application itself, which is that I will do the introduction and the section on generation, and Mr. Hutchings will deal with the transmission and the general properties portions of the budget, and do the conclusion.

There is obviously no disagreement between the parties with respect to the power policy of the Province referred to by Ms. Greene. Section 3(b) of the Electrical Power Control Act does mandate that Hydro operate its premises with, in an efficient manner and at the lowest cost consistent with reliable service. And while it's true that Hydro does have a great many staff, and experienced staff dealing with capital budgets, it is equally true that its shareholder, the Province of Newfoundland, saw fit to amend the legislation in, so that effective 1996, this Board has the obligation to oversee Hydro's capital projects.

The Industrial Customers are responsible for a significant percentage of the common costs of the island interconnected power system. As a result of the Board's decision in PU-7, these Industrial Customers will sustain a significant increase in cost in 2003 related

to not only a significant percentage increase in their power rates, but also many millions of dollars.

In addition, the Industrial Customers face another rate hearing in 2003 for the 2004 year, in which Hydro has previously indicated to the Board that it will be seeking another significant increase. In the rate hearing conducted in 2001/2002, the Industrial Customers identified and explored what they considered to be significant problems with Hydro's capital budget process. Those concerns led to their participation in this hearing.

We are pleased to see that Hydro is attempting to keep its capital budget at least within some measure of its depreciation cost, and we are pleased to see that the amount of detail that has been provided in accordance with the instructions of the Board in PU-7, is much greater than it was for the last capital budget.

However, in assessing our position at this hearing, we ask you to bear in mind that while the actual cost of energy is a serious and significant business issue for each of the Industrial Customers, reliability and availability of the power system is probably more important to the Industrial Customers than to the average customer. All of the recommendations which follow recognize that reality.

Our clients believe that they have been zealous in the protection of reliability and good environmental practice in assessing these projects. The Industrial Customers would not oppose a project if they believed its elimination had any demonstrated real risk with respect to reliability.

Hydro's evidence indicates that its proposed 2003 capital budget will have significant cost implications for its customers in 2004 and beyond. For 2004, this includes an increase in the rate base equal to the amount of the approved capital program, and it will result in an increase in depreciation of slightly in excess of $2 million, $2,059,000, plus or minus five to seven percent, and an increase in the average cost of capital of $2.5 million at today's rate of return, but $2.7 million if the rate of return is increased to 8 percent, and $2.9 million if it is increased for 2004 to 11 percent. The result is an increase in cost associated with this capital project even at today's rate of return on equity of $4,559,000 plus operating and maintenance costs.

The Granite Canal project will also add significant amounts to depreciation and cost of capital in 2004. That project has already been approved, but we already know that that is going to add $243,322 in depreciation, and $9.6 million in cost of capital, for a total of $9.84 million at the current rate of return on equity. It could go to $11.74 million if an 11 percent return on equity is approved in the 2004 rates.

Given that the Industrial Customers bear a significant portion of common costs, the $4.55 million resulting from this capital budget if approved for 2004 is a significant dollar increase for the Industrial Customers.

In assessing Hydro's capital projects, the Industrial Customers have referred to the standards of justification approved by this Board in PU-7. One is to protect human life, another is to prevent the imminent interruption of service to customers, another to protect Hydro's assets against loss or damage, to maintain power system reliability and availability, and to comply with pertinent regulations and standards as well as environmental standards.

In looking at the generation projects, I'd like to refer you to page B-2 of the application, or B-1 actually. The total of the projects for generation requested by Hydro is $4,713,000. When you move on to page B-2, the breakdown is provided. Having reviewed Hydro's application and supporting documents, having reviewed its response to information requests and having heard its witnesses, the Industrial Customers are reasonably satisfied with, and consent to the following projects. The upgrade of the control spherical valve number one at Bay d'Espoir, with the exception of the portion of that project that relates to spare parts. You may recall that it was indicated by Mr. Haynes in his testimony that spare parts were also forming a portion of that capital cost and that they really should be carried in inventory.

We agree with replacing the vibration data system at Bay d'Espoir, with replacement of the draft tube stop logs at Paradise River, and with replacing the fuel storage tanks at Ebbe and Burnt Spillway and Bay d'Espoir. We also agree with replacing the turbine electrohydraulic control system for unit number one at Holyrood and the purchase and the installation of a neutralization pit in Holyrood, as well as the purchase and installation of partial discharge analysis equipment for unit number one at Holyrood.

The remaining items will be addressed individually. There are three projects which raise a real issue as to whether they should be included at all in the 2003 capital budget. Those are the unit number seven exciter at Bay d'Espoir, the gate hoist at Ebbegumbaeg, and the loader and the backhoe for Bay d'Espoir. Our objection to these is that there is such a very small proportion of the total amount of the project that is proposed for 2003. In the case of gate hoist number two, one percent; of the unit number seven exciter, two percent; and the backhoe, two percent.

It was suggested by Hydro's witnesses that they're not looking for the approval of those projects, of the entire projects before this Board, but when you actually look at what they have requested, they have, in fact, not requested approval for engineering, but they have requested approval for the projects themselves. An example is the gate hoist number two on page B-13. It says project description, this project consists of the replacement of the existing screw stem hoist mechanism on gate number two. None of these projects say this project reflects having preliminary engineering done with respect to either of these projects, and there's a problem, and the problem is statutory, and that is that the Board under the current legislation does not appear to have the jurisdiction to approve capital projects on a multi-year basis. Can we really say that any of these three projects is a 2003 capital project?

The minimal amount that's been included will nonetheless make it very difficult for the Board and Intervenors in dealing with the 2004 capital budget, because once the engineering is done, it is very difficult to say, well now that project is not important, or perhaps is not as important as another project which may be a part of the 2004 capital budget.

So we would submit to you that none of these three projects should be included in the 2003 capital budget. Having said that, if the Board comes to the conclusion that the engineering portions claimed by Hydro should be included, then the Board should be very clear in its decision that it is only the engineering that is being approved.

Now, with respect to the loader, $3,000 has been asked for for 2003 for engineering. It was clear from the evidence that what is really being proposed is development of specs, and those are to be done by the fleet section at Hydro. There is no indication as to what engineering actually means, and whether this really would qualify as engineering, and similarly there is no real indication as to why a one year lead time would be required for the ordering of a backhoe. For a more complicated project you can see that that might be required, but with respect to the backhoe, it does seem to be a little bit excessive.

Now, with respect to the site fencing at Bay d'Espoir, we look at the site fencing at Bay d'Espoir in the context of the guidelines which the Board has set for Hydro with respect to its capital budget process. The Bay d'Espoir facilities have existed without a fence for in excess of 30 years. This fence is proposed to cost $250,000. In the ... it does not meet the criteria. It was indicated in the evidence that safety both of the public and of Hydro's employees is not the significant issue. The issue was some increasing of security, but no real security risk was identified. There was no indication, referring back to the guidelines, that this fence was necessary to protect Hydro's assets against loss or damage. There has been no loss or damage to date, while there is an indication that members of the public fish within the confines of the property, there is no indication that any of them have been injured, nor that they have been at any significant risk for injury or in what way they would have been at significant risk for injury, so it's our submission that Hydro has not demonstrated that the site fencing would come within the guidelines established by the Board, and nor has it demonstrated that the installation of such a fence would be consistent with least cost planning. There certainly does not appear to be a reliability issue associated with it.

The same thing applies to the project which is the security locks at B-19, the $77,000 project. Again, there is no evidence before you that this project meets any of the approved criteria for capital projects. It may be nice to have it and it may improve security, but there is no indication of a security problem at this point in time that needs improving.

That leads to the ambient monitoring system at Holyrood, and I'm going to deal with the ambient monitoring system at Holyrood and the flue gas particulate removal study for Holyrood together because our arguments with respect to both of these projects are basically the same.

If you look, if you go back and you look at Hydro's proposal at page B-19 of its 2002 capital

budget, it proposed the purchase and installation of continuous emission monitoring equipment for a cost of $801,000. Hydro testified that as a result of the delay in the approval of its capital budget, that project has not been completed. When you look at the rationale that was contained in the 2002 capital budget, it refers specifically to air emissions from the Holyrood generating station, include particulate matter, NOX, SOX, and acid aerosols, and says that although the emissions are below the statutory limit, and that's important because the guideline is whether there would be any breach, or there is any environmental problem with respect to pertinent regulations, so even at the time that the Board dealt with last year's $801,000 project, Hydro was acknowledging that the emissions were below the statutory limit, but that a recent health risk assessment concluded that quantification of the emissions should be undertaken, and that this monitoring system would allow direct quantification. So here we have $801,000 that's currently in the process of being spent, but hasn't yet provided any continuous monitoring or any data to indicate whether the problem is more significant than was first believed. So the next year before that equipment is even up and running, we have a proposal for $184,000 for the mobile ambient monitoring system, and $150,000 for the flue gas particulate removal study.

The plant, if you look at the justifications, in particular for the monitoring system, which is at B-26, it refers, just like last year's continuous emission monitoring program did, to fine particulates, nitrogen oxides, and sulfur oxides. Similarly, if you look at the next project, which is the study, it refers to particulates, NOX, SOX, and acid aerosols, exactly the things that were part, or the monitoring that was part of last year's $801,000 project.

PUB-2, in answer to PUB-2 at page 2 of 2, lines 6 through 8, Hydro indicates that the permanent ambient monitoring stations have generally shown the concentrations of sulfur dioxide and total suspended particulate to be below the regulatory limits at these specific locations.

When you look at the Can Tox Report, which was also provided as part of that response, and you look at page 10 of the Can Tox Report, it says in summary, the results of the risk assessment of air emissions from the Holyrood thermal generating station indicate that measurable, long-term adverse health effects would not be expected to occur in the community now, or in the future, based on current production levels. Measurable long-term adverse health effects would not be expected to occur if production levels increase in the future, assuming maximum daily emission levels don't change.

Similarly, that report at page 13 says that there were no exceedances over guidelines for total suspended particular matter measured at air monitoring stations within the vicinity of the Holyrood facility, although no data were available on the concentrations of fine particulate matter.

The project, these projects clearly are not justified because there is no evidence, in fact, there is evidence to indicate that Hydro's emissions are within the applicable or pertinent statutory and regulatory requirements. Our suggestion is that for 2003 these projects can't be justified. However, once last year's project is up and running, if there is an indication of a problem or a potential to exceed the applicable regulatory guidelines, then in those circumstances, Hydro may want to resubmit these projects for a future year.

The other alternative is that if Hydro's Board of Directors feels that strongly that these projects should go ahead, notwithstanding that they are apparently in compliance with the regulatory requirements at Holyrood, then that is a cost which should be borne by the shareholder and not by the ratepayers.

The last project that we want to address is the upgrading of the civil structures at Holyrood, and that is specifically addressed at page B-32. Now it's also addressed in PUB-3, and we don't have any difficulty with the portion of the project that relates to the circulating water stream structures, so we agree that that portion of the project should be approved. Our difficulty is with the boiler stack proposal. We agree that Hydro has provided sufficient data to indicate that work should be done on the steel liner for stack number one at Holyrood. Where we disagree is with respect to the evidence that has been put before you on which of the three options is reasonable.

Now, if you look at PU-3, and in particular page 9 of 9, (inaudible) have discussed with the witnesses the present value of option three, which is Hydro's preferred option, the replacement of the line, and option one, which would have the least cost in the

next couple of years, intersects somewhere between, somewhere around 2018/2019, and what that tells you is that option number one is the least cost option for the next 17 years.

Now, that in and of itself is quite demonstrative of the issue which we have, but it's a little bit more complicated than that because Mr. Haynes testified that, in fact, when you include in the cost of option number three the engineering ... page 3 of 9 ... that internal engineering, internal construction, environment, overhead, and contingency, that the cost for option number three would, is in fact not $1.2 million, but is expected to be $1.5 to $1.7 million. In other words, those additional costs which are not included in the present value calculation, would increase the cost of the project by 25 to 40 percent, so we asked the question whether including those costs for option number one would increase the cost of option number one proportionally, so if you go from $1.2 million to $1.5 to $1.7 million for option three, then adding 25 to 40 percent to option one, you would increase its cost to a range of $475,000 to $532,000. What that will do if you plot the same lines on page 9 of 9 for option one versus option three, but start them at the different spot, start them at that cost place, so in the case of option number one, the triangle line starts up closer to $1.5 million but follows the same track, and option number one which is the X'ed line, instead of starting at around 380, starts at around 475, what you'll find is that the present value of option one is less than the present value of option three, beyond 2020.

Now, the life of the Holyrood plant is to 2020, but the witnesses did indicate that they certainly wouldn't expect that Holyrood would be taken out of service in 2020. They indicated that prior to that time, Hydro would probably want to do a major upgrade. Given that, when we look at this stack issue, we're really not looking at bringing it out as far as 2020, because that facility is likely to be undergoing upgrading prior to that time.

So the issue, having established that option number one is the least cost option, the issue that we then had to address was the issue of reliability, and we looked at Hydro's evidence, its own evidence and its own justification for that, and I would refer you to Section 2.1 on page 4 of 9, and it says to continue with this practice, which is annual inspection, and to provide the minimum liability for this liner will require the reinforcement of the three identified thin rings as well as the addition of four vertical support columns and ring stiffening beams during the major outage in 2003. And then the base ring beam will require substantial upgrade no later than 2006. These expenditures are considered adequate in the next few years to provide an acceptable level of reliability but may not be sufficient to extend the life of the stack liner until 2020.

Now, some of Hydro's witnesses did indicate that there is a possibility of a catastrophic loss of the liner which would have significant impact for customers. However, that possibility has not been presented as something that is likely or something that is going to cause any significant problem in the short-term, and nor has there been any evidence that the annual inspections which Hydro proposes as part of option one would be unable to determine that, a faster than expected erosion in the status of the liner. So given the statement in Section 2.1, that the expenditures are considered adequate in the next few year to provide an acceptable level of reliability, it is our submission that option number one should be accepted by the Board as the preferred option to deal with the stack liner, and that Hydro's proposal for option number three, while it would virtually eliminate the possibility of catastrophic loss with respect to the liner is not what is required to provide adequate reliability at least cost, and that deals with the generation part of the capital budget, and I'm now going to turn the argument over to Mr. Hutchings.

MR. SAUNDERS, CHAIRMAN: Thank you, Ms. Henley Andrews. Mr. Hutchings?

MR. HUTCHINGS, Q.C.: Thank you, Mr. Chair. I will not be addressing many of the projects that are listed under transmission, rural operations, and general properties. The Board can take it that any particular project that is not addressed, we have no objection to record in respect of it.

The bulk of the projects that I need to address relate to technology and telecommunications, and this obviously has been reflected in the cross-examination that the Board has heard. We have a concern obviously which arose out of the IT Architecture Strategy Report, and I think it is a useful guide post to note that this report did not identify among its governing principles, the provision of service at least cost ... reliable service at least cost, and that is a fundamental philosophical problem that I think Hydro needs to address, and it doesn't appear that Hydro, in

its consultations with the preparers of that report, raised that as an issue.

It is, in fact, to ensure that that issue, among others is dealt with, that we would suggest that the Public Utilities Board has the power that it has in respect of capital budgets and their approval, and it's certainly one of the reasons why the industrial customers come here and participate in this process, which I would suggest is a useful process, in order to make sure that that concern is at the top of the list, both in dealing with capital and operating budgets for Newfoundland and Labrador Hydro.

The concern becomes concrete here when we look at two very expensive projects that are proposed in this capital budget; one being the so-called west coast powerline carrier replacement, and that is proposed to be replaced to some extent by a microwave radio system; and the digital microwave radio system, so-called east/west interconnection, and these projects are at pages B-109 and B-106 respectively.

Just peripherally, the B-106 project reflects one of the concerns that my friend, Ms. Andrews, has already addressed in the sense that there was an amount approved in the 2002 capital budget for engineering with respect to this project, and it had not been spent up to the end of June. We don't know what was spent after June of 2002 in respect of it, but it may well be that there has been some expenditure in respect of that project, but the bulk of the work, some $8.673 million worth, is scheduled for 2003.

The question is whether or not the digital microwave system is required or whether the enhanced powerline carrier system is sufficient and will serve Hydro's purpose and corporate goal of providing reliable service at least cost.

We had a fair bit of discussion, Mr. Downton and I, on the subject of powerline carriers, and that starts off at the beginning of the second day of the hearing, and particularly at page two, where we were talking about the necessity for a system, the communications system to provide teleprotection, and Mr. Downton agreed that the powerline carrier system provided adequate teleprotection, but he kept adding a qualification saying for specific areas, or in specific cases, but he did agree with me that the PLC was a more economical alternative and we had to look for some justification for using something different.

The cross-examination then went off on a tangent, I would suggest, toward the bottom of page three of the transcript, when Mr. Downton started to talk about the necessity of having data available from generating stations, and we discussed that for some time through the cross-examination until ultimately at page six of the transcript, around line 58 through 60, we discovered that this particular issue wasn't an issue with respect to the west coast powerline carrier system, because we weren't talking about any information that had to pass from a generating station, or two a generating station in this particular instance, so the fact that we got off on an irrelevant subject, if you will, in an effort to seek out the justification for using the microwave rather than the powerline carrier, I think says something about the real reasons why this project has been put forward.

The proposal, the comparison that was made, and that's in Section H, in the west coast PLC replacement study at page seven, which demonstrates $150,000 net present value saving of the enhanced PLC over the microwave radio, it's crystallized at page seven of the transcript between lines 64 and 69, where you can say that there's a better PLC, you get better teleprotection, but not as good as the microwave. The question is whether or not the microwave is necessary.

The enhanced PLC, Mr. Downton told us, will provide the 9,600 baud that is required in respect of the EMS system. The only substantive real difference at this stage that we can identify is at page nine in line 60 through 66, where we find out that with the faster bandwidth there can be a difference of 50 to 56 seconds in the transmission of information and that could result in the extension of an outage by that period of time.

Now, frankly, that is not in our submission justification for the additional $150,000 of net present value. Everything else that Mr. Downton spoke of in respect of the justification of the digital microwave system for the west coast related to items that are mere possibilities for the future. There is no plan to automate the substations, which was one of the things that the increased bandwidth would be useful for. There is nothing specifically arising out of the Energy Policy Review, or any other firm plan that would mandate a necessity for more than the 9,600 baud of bandwidth that the enhanced PLC can provide and accordingly, in our view, it is not appropriate to justify the additional expenditure when the evidence before you does not show that it is, in fact, a requirement.

We recognize that there should be planning for the future in the construction of the telecommunications network but the issue before the Board here is to pass its judgement on whether or not the potential future possibilities, as opposed to probabilities or actual plans, justify the spending of the additional money.

And we do agree with Ms. Greene in her opening statement that there is a great deal of judgement involved in making the decisions that reflect the capital budget as we see it, and the Board has a duty to scrutinize the judgements that Hydro makes in this regard, and it has to look at how that judgement has been exercises in the past, in our submission. Some members of the Board will recall, or this panel will recall that as part of the 2002 capital budget there was a proposal to spend some $8.373 million on a replacement of the VHS mobile radio system, and Hydro put that project before the Board as one that was to be completed in 2002, was a necessary project, had to go ahead at that stage to ensure that the corporation and personnel have access to mobile communications during routine and emergency maintenance and repair. I'm reading from the explanation at page B-66 of the 2002 capital project, capital budget. It now turns out that that project, according to Hydro, is not required to begin until 2004, so clearly its judgement has changed. We need to look closely at how Hydro exercises its judgement because these are very big dollars that we're talking about in respect of these telecommunications projects.

We can take assurances from officials of Hydro who provide evidence before the Board, but their judgement needs to be scrutinized and looked at in the context of how that judgement has been exercised in the past. If, in fact, as this Board concluded clearly last year, that the VHF radio system, which in Hydro's judgement was necessary in 2002, now in Hydro's judgement is not necessary until 2004, what does that say about their judgement with respect to the immediate requirement to spend the millions of dollars necessary to put in the digital radio system.

The east/west microwave raises the same issues with respect to teleprotection, and we didn't go through that in all of the cross-examination. The only other two issues that were raised by way of justification there were the ability to use the towers to house VHF facilities, and that, of course, is only a benefit if this VHF mobile radio system which apparently was needed in 2002, is in fact brought before the Board in 2004 and approved by the Board in 2004, so I would suggest that is a speculative advantage at best.

And the only other justification there listed is the question of reducing dependency on third parties, and that, I suppose, as a matter of principle, as generally a good thing. The issue is how much are we prepared to pay for it, and how much should Hydro be paying for it. It's interesting that with respect to the east/west microwave, we don't have a net present value cost comparison with an enhanced powerline carrier system, but clearly, given that the east/west project is a quite considerably larger project than the west coast replacement system, we're talking about almost $9 million as opposed to $1.4 million, we, I think, can conclude that there would be a significant net present value difference if we looked at the enhanced powerline carrier system.

So at this point, Mr. Chair, we would submit that these two microwave systems are not justified by the evidence which is before the Board. There is not a lot that the Board can do by way of order in respect of items of this nature. Undoubtedly if these particular projects are not approved, other things will have to be done under the capital budget and there is no restraint prior to, certainly prior to December 15th, on Hydro in submitting alternative proposals to deal with these issues should the Board decide that the particular projects that are before it now are not justified on the evidence.

The next item that I wanted to address, Mr. Chair, is the issue of peripherals for Hydro's computer system, and that project speaks of the replacement of printers, scanners, and projectors, and we had some discussion with Mr. Downton about that as well. There are apparently some 100 printers at issue, and maybe a dozen or so projectors in total, and that's the project at B-105. This is not a large amount of money, but it illustrates a point in that when an outside agency looked at Hydro's system for the purpose of compiling the IT Technical Architecture Strategy, it, that the outside agency commented that Hydro basically was overbuilt in terms of printers. It had more printing capacity than it needed, and Mr. Downton, I believe it was, indicated that that circumstance had been taken into account in putting forward the budget for capital projects for 2003.

One is left to wonder what an outside agency would conclude if they had examined the issues of scanners and projectors, and in a situation such as that, I would suggest it's incumbent upon the Board to send a message to Hydro that it needs to scrutinize these things a little more carefully. It's not within an appropriate role in our view for the Board to send experts in to Hydro willy-nilly to examine every decision they make in terms of replacement of items such as this, but when we get a hint from an outside agency that was in there for a legitimate purpose aside from looking at how many printers the company ought to have, the Board can exercise some judgement and I would suggest that Hydro should be sent a message in respect of this particular project, not necessarily by deleting the project entirely, but by looking to a reduction to allow Hydro to become more efficient in respect of its use of these resources.

The next item I wanted to deal with, Mr. Chair, related to the storage system and particularly the so-called SAN, the storage area network. This project was discussed at some length before lunch on the last day of the hearing and then after lunch we were provided with an additional piece of information which was entered into evidence as ED-1. This is, in fact, a project that has two parts to it, and it's talked about at page B-99. The two parts of the project involve, first of all, the creation of the SAN, the storage area network, and secondly, the installation of the single tape storage. We have no objection with respect to the tape storage replacement system, and as noted both in the justification at page B-100 and in the evidence, that can be implemented separately from the SAN. We have significant difficulty with the SAN. I don't think it's necessary at this stage to present a great deal of argument relative to the nature or the evolving nature of the SAN, and whether or not it constitutes a system to which Hydro should commit large amounts of money at this point, but I think if we look at ED-1, and specifically in the context of Mr. Downton's answers at page 34 and 35 of the transcript, we will see that for the year 2003 we are in all cases better off not to proceed with this project.

There is a time value to money. Money that we will spend in 2004 costs us less than money we will spend in 2003, and that's true of Hydro as well as everyone else, unless one has an unlimited supply of money. The attachment to ED-1 quite clearly establishes that by deferring this project for a year, there is a saving of $1 million. See, the point is, and this is confirmed in Mr. Downton's evidence, that there needs to be server replacements under both systems, whether you go with individual storage or the ESS storage infrastructure, servers need to be replaced on a particular schedule.

The capital costs for 2003 under the individual storage are $226,000, whereas if the new system was put in in 2003, there is in excess of $1.3 million in capital costs. Deferring this project, basically eliminating it from the 2003 budget, and allowing Hydro to represent it in 2004, should it choose to do so, will not only save the million dollars that shows up in the net present value comparison on this document, but will also allow another year of experience and perhaps allow Hydro to make a better determination as to whether or not this is really where it should be going with respect to its storage capacity for data.

And I've referred specifically, if you need to go back to it, to page 34, starting at line 70 and over onto page 35, down to line 14, and a little bit beyond actually.

MR. SAUNDERS, CHAIRMAN: That's October the 29th?

MR. HUTCHINGS, Q.C.: October 29th, yes. The next item I wanted to address was the end user and server evergreen program that is spoken of at page B-101 and following in the submission of Hydro. The thin client philosophy I think is an attractive one on its face, and basically this appeared to be a project that generally speaking, the Industrial Customers could support. Our concern arises from the nature of the machinations that we got into in terms, in looking at the justification that Hydro has put forward for this project.

Through page B-102 onto page B-103, Hydro had put forward three different options in respect of dealing with the issue of end-user equipment and the so-called server evergreen program. In the course of evidence, however, Hydro's witnesses abandoned this justification altogether, basically saying that option one was not really an option. One is left to wonder why option one found its way into this document, why someone presumably spent a fair bit of time putting together the numbers and doing the comparisons and the analysis that is spoken of there, if in fact option two is the only available reasonable course to follow.

This notwithstanding, it still seems that Hydro has not provided the evidence which justifies the project that they have outlined. Having abandoned the notion that the savings illustrated in the table are the reason behind the project, the Board has to look to what evidence is before it that the thin client deployment is the only way to go with respect to work station infrastructure and the server and operating systems, and quite frankly, that evidence is not before you. It's not surprising that it's not before you because the whole tenor of the project justification was that this is, in fact, the most economical way to go. It was never approached apparently until the evidence was given orally here as being the only possible way to go in any event, so given where we ended up in terms of trying to justify that project, I think the only conclusion that the Board can reach at this stage is that the project, as outlined, is not justified, and Hydro ought to be required to resubmit and give its justification or attempt to give its justification for proceeding with option two, if in fact that is the only option.

The other small project that I wanted to deal with very briefly, Mr. Chair, as the question of Long Harbour and the station service there. Frankly, there ought to be a better business solution to the problem of access to this facility to maintain the station service than throwing 80 odd thousand dollars of money at providing a separate independent station service. This is simply a logistical question, it seems to me, of working out the proper access to the facility which Hydro needs to have access to in order to maintain that capacitor bank which the Board has held as part of the general infrastructure of the electrical system. That is a matter that, in our submission, Hydro can better deal with by business negotiation rather than by spending capital money.

Mr. Chair, those are the only specific projects that I need to address in respect of the transmission, rural operations, and general properties items. As the Board has probably already noted, a great number of the projects under those headings are for facilities that are specifically assigned to rural, and therefore do not impact the Industrial Customers. I would note that there have been a couple of issues raised here that impact the question of depreciation and there have been some astonishing judgements made in terms of classifying particular assets so as to result in extraordinary charges for depreciation arising out of abbreviated service lives when additions are made to assets that have been almost already fully depreciated, but these are not specifically questions for the capital budget, but obviously are issues that the Board will have to deal with in deciding whether or not to allow those depreciation expenses in future years, so there will be hopefully an opportunity to address that at another time.

The only other point, Mr. Chair, that I would make before closing is that the Industrial Customers would ask the Board to make an order awarding costs in favour of the Industrial Customers in respect of this hearing. In our submission, this has, as I've noted earlier, been a useful exercise for the Board. We are dealing with large amounts of money in terms of the capital money, and of course, none of that money is Hydro's as such, all of, everything that Hydro has has come one way or another from the ratepayers, and the Industrial Customers represent a significant portion of that, but in the context of where we are here, I think the Board should also consider not only that the Industrial Customers have made, in our view, a significant contribution to the hearing by way of demands for information and cross-examination and submission, but also that there has not been any other outside intervenor here to assist the Board in its examination of this particular application. Notwithstanding that these things are done on a rather abbreviated timeframe, the costs are not insignificant, and the ability of the Industrial Customers and the willingness of the Industrial Customers to continue to pursue these things and make their contributions is always affected by questions of cost and I think it would be appropriate for the Board to consider an award of costs to ensure that this process can continue to be a valuable one for all of the participants here. With that, Mr. Chair, we would submit the matter for the Board's attention.

MR. SAUNDERS, CHAIRMAN: Thank you, Mr. Hutchings. Now, Ms. Greene, how do you feel about continuing or do you need a break?

MS. GREENE, Q.C.: I think it would be helpful to have a break. I think it should be borne in mind, if you look at the argument, the Industrial Customers have objected to more than half of the projects in which they said they had an interest at the beginning of the hearing, leaving aside rural operations, so I think it may expedite things if I had time to collect my thoughts rather than to address each one of the numerous projects they have objected to.

MR. SAUNDERS, CHAIRMAN: How much time would you need?

MS. GREENE, Q.C.: Oh, and I won't be long in reply, perhaps 20 minutes, if that's satisfactory to the Board.

MR. SAUNDERS, CHAIRMAN: Okay, we'll check with you at ten after.

MS. GREENE, Q.C.: I can promise to be finished by 12:30.

MR. SAUNDERS, CHAIRMAN: Thank you.

(break)

MR. SAUNDERS, CHAIRMAN: Okay, Ms. Greene?

MS. GREENE, Q.C.: Thank you, Mr. Chair, Commissioners. In addressing the argument of Industrial Customers, I refer to it as the scatter gun approach. It was a similar approach they took during the general rate application last year and in our view, the approach is attack as much as you reasonably think you can in the hopes that something will stick. If you recall in the last general rate application, they objected to dozens of projects, only one of which was not approved at the end of the day, and they were the only intervenor to have done that and it appears to be their approach again in this particular application.

When you look at the specific projects, for example, Ms. Henley Andrews spoke to the ones under generation, when you look at the ones that she spoke to, they are more than the majority of the projects. There are 15 projects, she has objected to eight and a qualified one for the ninth, and I'd like to very briefly speak to each of those.

The first objection related to three projects where there are small dollars forecast for 2003, and her objection is whether this should be included at all in the 2003 budget. They are, I believe, B-3, B-15 and B-13, and what has developed over the past six years is that through experience, Hydro has determined that it is necessary to put certain small amounts of money, capital dollars up front to allow for the engineering work and to allow for some long lead time delivery items. This allows for proper scheduling, it allows for the engineering work to be done up front and it leads to less carryovers which, as the Board is aware, is also an issue for Hydro. So from our experience over the past five to six years, we have found it necessary to do that to allow for proper planning and scheduling for the projects.

I would also point out that the while the small dollars are included in 2003, the amount of the funds are still up for review by the Board in 2004, when we are back here in the 2004 capital budget application, so we have found this to be one of the practical ways we can address the issue of the carryovers and the scheduling for budgets, and that is why we are, in the last two years, starting to do more up front engineering and planning work, and that requires dollars to be spent in advance of the year when the main bulk of the funds are being spent.

The next project to which Ms. Andrews took exception was with respect to the spares and the inclusion of the control valves for spherical valves at Bay d'Espoir, and I'd just like to point out, the issue of the spares is really a red herring. The spares will either be treated as capital and be depreciated over the life and be included in rate base with depreciation, or they will go in inventory, which is also included in rate base. Spares are required for the, for the particular control valves and under normal accounting principles, these particular ones are the types that will be capital spares with the appropriate depreciation related to those, the controls.

The next two projects Ms. Henley Andrews objected to, I will group together, and that is the site fencing for Bay d'Espoir, which was B-18, and the security locks, B-19, and from Hydro's perspective, we treat safety and security under one broad heading. Our property must be secure and that relates to safety as well to ensure that members of the public who may not be aware of risk, do not get access to the site, and to show that we are duly diligent with respect to members of the public gaining access. Similarly with respect to locks, we must ensure that our facilities are adequately protected. The fact that we may not have had an incident in the 30 years that Hydro has operated in the Bay d'Espoir area, I'm afraid is not much comfort. I'm sure we all remember the issues of security that arose with 911, and there is an obligation on everybody to ensure that adequate protection is taken for members of the public. We are probably most fortunate, we haven't had an incident. It doesn't mean that we will not have one in the future and from our perspective, we believe that these types of additional security measures such as the fencing at Bay d'Espoir and the security locks are

part of what utilities are generally doing now, all utilities have been looking at their security issues and those are two that Hydro brought forward, and we believe that security is very much a part of safety for both the public and for our own operations.

The next two projects Ms. Andrews objected to related to environmental issues at the Holyrood thermal plant, and unfortunately it appears that there is some misunderstanding of these particular projects so I wanted to take just a few minutes to refer to actual references in the transcript.

Ms. Andrews first referred to the project that was approved for 2002. She called it the CEM projects, the continuous emission monitoring projects. That was approved by this Board during our general rate application as a 2002 project. That is a project, and I'll use very simplistic terms, to study what goes up the stacks. It doesn't study where it goes once it's out of the stack, and this you can find when you look at that project description from last year, and I'll also refer you to a couple of times in the transcript where Mr. Haynes further explained why there is no duplication between the three projects that we're talking about.

So the project that was approved for 2002 will allow Hydro to monitor what's, the particulate that is sent up the stacks and to allow Hydro to fine tune its combustion process to have more efficient operation of the units at Holyrood. Now I'd like to look at the two projects that are included in the 2003 capital budget. The first is the ambient monitoring system, which is a mobile system. If you look at PUB-2, which was a response to an information request from the Public Utilities Board, you will see in the answer to question 2.1 that Hydro has had complaints from members of the public in the Seal Cove area with respect to particulates in that particular area. That answer refers to the fact that there was a temporary site there to see where the complaints were, in fact, founded, and you will see in lines 27 to 28 the statement that the site that was there did provide enough information to warrant further investigation.

Similarly, if you look at the evidence of Mr. Haynes in the transcript of the first day on October 28th, page 46, you will see a description there of the fact that there have been complaints from the residents in the Seal Cove area that this temporary monitoring site will allow investigation as to whether the particulate lands and whether it lands in that particular area where we have had complaints from the residents, so it is a study to look at where the particulate lands. Remember the one for 2002 looks at where it goes up the stack.

You will also see from Mr. Haynes' evidence in that regard that the investigation that has been done to date shows that in certain limited occasions we have not been within the environmental guidelines in that particular area, so in Hydro's view, it is very much required to assure the residents in that area as to where the particulate is landing, as to what actually is, in fact, occurring, and then we will be able to deal with the results of that study.

Now, the third project, again, with respect to the environment in Holyrood relates to the study of $150,000, which again, the Industrial Customers have objected to, is the flue gas particulate, and Mr. Haynes again gave evidence of this and I'd like, not to read at this time, but to refer the Board to pages 45 to 47 of the transcript of October 28th, where Mr. Haynes reviewed these three projects and distinguished between them. With respect to this study he pointed out that this is a study to determine what are the options with respect of Holyrood for the future. While Holyrood has been grandfathered with respect to certain environmental regulations, this may not be the case for the future and we all know about the recent discussion about Kyoto that's in the media.

There are times when Hydro has to be proactive environmentally. We can't always wait for the law to change to impose a burden on us. This study will determine what are the options and what are the costs of the options. If they are feasible to do then they will be submitted to this Board for review at a future capital budget hearing. And I guess that's the difference in the position of Ms. Henley Andrews and Hydro on this particular point. No, this study is not required at this point in time by a legislative requirement. However, as an environmental citizen and trying to be proactive with respect to the Holyrood thermal plant which is required to meet the generation needs of the province, we believe it is incumbent on Hydro to look for alternatives ways if they are feasible at lower cost to reduce some of the emissions that are being emitted from the plant. So those are the three environmental studies for Holyrood and why Hydro has submitted that them with the 2003 capital budget.

The next project objected to by Ms. Andrews was the civil structures for Holyrood and the stack liner. Here in the interest of time, I'll only refer to the transcript references, the transcript of October 28th at pages 51 and 52, and to PUB-3, page 5 of 9. All of those, in all of those references you will find the Vice-President of Production for Hydro explaining the risk if this liner fails. This will be a catastrophic failure for the Holyrood thermal plant, which is one third of the generation requirements of the province.

You have the judgement of Hydro's engineering people who have operated this facility knowing it is critical to meet the needs of the province saying that it is not an acceptable risk to go with option one. Hydro is very concerned about the cost implications of these things for its customers, and obviously for those of you who sat through the general rate application last year, we don't submit things unless we feel they are required, and this is one particular case where it is the judgement and the operating experience that the Board has to rely on. The Board should not substitute its opinion or that of an industrial customer who operates in a totally different environment, a pulp and paper industry which is totally different that an electric utility, which must provide safe and reliable power when there is no option. We are not manufacturing a product like a piece of paper that we can sell and distribute. At the same time we have to be very cost conscious and I think we've demonstrated that by what we have submitted in responding to the questions. So with respect to the stack liner, we would point out the risk of the failure and the fact that option one does not address that risk and I have referred you to the references in the transcript, as well as to PUB-3, page 5 of 9, where the impact of a catastrophic failure is described and the fact that this was not an acceptable risk to Hydro.

Moving on now to the projects objected to by Mr. Hutchings. The first one was the west coast ... east coast ... the west coast microwave where he submits that the powerline carrier is adequate, and here I would like to refer to the telecommunications plan which was filed as Section H, on page 8, in Section 3.2, and on page 14, and the top of the page in Section, one little (i), you will find the explanation as to why the powerline carrier is not always and acceptable teleprotection device. It's Hydro's submission that the powerline carrier is not adequate as submitted by Mr. Hutchings and that, in fact, we do need the digital microwave.

The next comment that Mr. Hutchings made in the context of Hydro's judgement was with respect to the VHF radio. That was the one project in the 2002 capital budget application which was part of the general rate application that the Board did not approve and asked for Hydro to submit additional evidence. It is still Hydro's judgement that the VHF radio is required, and you will find in Section H a business case for that. There is a risk, of course, that we may not last to 2004, and we would have to obviously apply to the Board if that were to occur, but part of the reason why it's not in this application is because of the nature of the interest that was expressed at the last hearing by all of the parties, we deemed it prudent to include it in the 2004 application which will be heard around the same time as our general rate application, and I guess I can either take the credit or the blame for that one. It was an assessment of the risk associated with it and as to given the level of interest by the other parties, would it be appropriate, and in further discussion with our technical people, we determined that we will present the business case at the time of our next application. And again, I think we can all ... the comments with respect to Hydro's past judgement can also be equally applied with respect to the conduct of Industrial Customers at our last hearing, and at this particular one with respect to how they object to even routine capital projects.

The next project is the enterprise storage system. The documentation as filed for this project, B-99, demonstrates that Hydro's recommendation is the lowest cost option to meet Hydro's needs. I don't have time now to review that with you, but if you look at B-99, as well as the transcript on October 28th, page 28, lines 74 to 81, you will find evidence by Mr. Downton explaining why this is the least cost option for Hydro, and also evidence that this particular type of system has now been adopted by the Health Care Corporation here in the city and by X-Wave.

The last particular project that I wanted to address was the Long Harbour terminal station, and this is found in B-46. Mr. Hutchings didn't refer to all of the information and evidence that we feel is very relevant for this particular project. You will find that this is the only station where Hydro does not have access to its own station supply. We believe it is essential for Hydro to have access to its own facilities and for station supply. This is the only one where we don't currently.

There is also the safety issue which was addressed by Mr. Reeves in his evidence. The equipment there is deteriorated and is not in a safe condition. It is of concern to our employees going in to do work as required. We view this as a safety concern and I include in that, security. We need to have access to our own facilities and we need to provide them in a safe environment where our employees must work. So if you look at the project justification in B-46, and Mr. Reeves' evidence on this point, you will see that the business option suggested by Mr. Hutchings is not an option, it will not address those safety and security issues.

The final point I wanted to address is the issue of costs. I guess I was somewhat astonished that Mr. Hutchings would ask for costs. The Industrial Customers are a special interest group with significant resources of their own. The question is who should bear the cost of their intervention. Is it Hydro, and if it's Hydro it is all ratepayers, or is it the particular customer who decides when they will intervene, and when they come they represent very particular special interests. Industrial customers have not been granted costs in the past except with respect to the general rate application, and if you recall, that was not a general award of costs. There may have been merit in doing that given the length of time since the previous hearing and the number of issues that were to be discussed, and that were discussed during this general rate application, but again, I would point out and ask the Board to refresh their memories with respect to that order. It was not a strict award of costs in the traditional sense, it was some indication of some value towards the Industrial Customers, and it was not typical costs. I think the Board will be setting a very dangerous precedent if they allow special interest groups to be awarded costs for routine type proceedings, with these costs having to be passed on to all customers of the utility. Speaking as one of those individual ratepayers, and not for a moment as counsel, I certainly would have a personal objection to it, and as counsel for Hydro, Hydro strenuously opposes the granting of costs to Industrial Customers who come in with their own particular interests and have the adequate resources to fund these types of interventions, as is obvious. They have been here on all previous occasions when they didn't get costs. Those conclude my comments, thank you very much, Mr. Chair.

MR. SAUNDERS, CHAIRMAN: Thank you, Ms. Greene. Any other matters we need to deal with, Ms. Newman?

MS. NEWMAN: No.

MR. SAUNDERS, CHAIRMAN: I'd like to thank everybody for their contribution to the hearing. We will try to get a decision out as quickly as possible, realizing the time that we're into here in early November, and other than that, I have no other remarks. I think you covered, Ms. Greene, the points that were raised by the, counsel for the Intervenors. I had a few of them earmarked here, and just checking back, and I think you did cover them, either in your opening statement or in your closing statement, so if there isn't anything else, we'll conclude the hearing now and a decision will be forthcoming. Thank you very much for your time.

MS. GREENE, Q.C.: Thank you, Mr. Chair. I just noticed the time, sorry for ... thank you for your indulgence.

MR. SAUNDERS, CHAIRMAN: I wasn't paying attention.

(hearing adjourned)