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<p>1 (9:26 a.m.)</p> <p>2 CHAIRMAN:</p> <p>3 Q. Good morning. I guess Happy New Year probably</p> <p>4 is in order since the last time we saw each</p> <p>5 other. I'd like to indeed welcome everybody</p> <p>6 here this morning to the last scheduled day in</p> <p>7 the hearing into Hydro's General Rate</p> <p>8 Application and a day which has been set aside</p> <p>9 for final oral argument and a day which I</p> <p>10 think is probably welcomed by all in this</p> <p>11 room, to be frank with you. I think by way of</p> <p>12 schedule, my understanding is that we may very</p> <p>13 well require a lunch break, based on the time</p> <p>14 I understand it's likely to be taken by</p> <p>15 individual parties. So what we will do is to</p> <p>16 proceed with Hydro's final argument and the</p> <p>17 Consumer Advocate, and we'll see where we are</p> <p>18 then with regard to a break. And then after</p> <p>19 that we'll proceed on and see where we are by</p> <p>20 lunchtime or around lunchtime, 12:30 or 1:00.</p> <p>21 And that's all I have. Ms. Newman, are there</p> <p>22 any matters before we begin?</p> <p>23 MS. NEWMAN:</p> <p>24 Q. No, Chair.</p> <p>25 CHAIRMAN:</p>	<p>1 Q. Okay. Mr. O'Reilly. I'm into--I enjoy</p> <p>2 quotable quotes, actually, and I've collected</p> <p>3 a bunch over the years from what I've read and</p> <p>4 what I've collected. But the most apt one for</p> <p>5 today probably comes, Ms. Newman met Mr.</p> <p>6 O'Reilly in the parking lot this morning,</p> <p>7 everybody was dripping rain and driving in and</p> <p>8 his comment to Ms. Newman was a hell of a day</p> <p>9 for an argument. So on that note, good</p> <p>10 morning, Ms. Greene.</p> <p>11 GREENE, Q.C.:</p> <p>12 Q. Good morning, Mr. Chair, Commissioners. We</p> <p>13 can always count on Mr. O'Reilly for a bit of</p> <p>14 levity, even in the most difficult of times.</p> <p>15 Thank you, very much. My argument will be</p> <p>16 about 45 minutes or so, and it does follow the</p> <p>17 final argument. Fortunately, we had</p> <p>18 anticipated most of the issues that were</p> <p>19 raised in the briefs of the other parties.</p> <p>20 And I would refer you to my final argument for</p> <p>21 the position on each of the main issues.</p> <p>22 But to begin this morning I wanted to</p> <p>23 point out that rates that Hydro currently</p> <p>24 charges became effective on September 1, 2002</p> <p>25 following our 2001 General Rate Application.</p>
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<p>1 The Board in the order from that hearing, P.U.</p> <p>2 7, gave a number of decisions and directions</p> <p>3 which Hydro followed in the submission of the</p> <p>4 2003 Application now before the Board. And I</p> <p>5 will be making a number of references to P.U.</p> <p>6 7 as I proceed this morning.</p> <p>7 During our last hearing in 2001 Hydro</p> <p>8 told the Board and the parties at that time</p> <p>9 that new sources of supply were required to</p> <p>10 meet customers' load requirements and that</p> <p>11 they would be coming in service in 2003. The</p> <p>12 cost of these three new sources of supply,</p> <p>13 which are Hydro's Granite Canal project and</p> <p>14 two new power purchase contracts are not</p> <p>15 included in the current rates and are the</p> <p>16 primary reason or driver for the timing of</p> <p>17 this application. As well, the Board in P.U.</p> <p>18 7 directed Hydro to file a rate application no</p> <p>19 later than December 31st of 2003.</p> <p>20 Under the power policy in Section 3(a) of</p> <p>21 the Electrical Power Control Act rates are to</p> <p>22 be based on forecast costs for one or more</p> <p>23 years so that the filing of a General Rate</p> <p>24 Application requires that all expenses be</p> <p>25 updated so that an accurate forecast of the</p>	<p>1 test year can be provided. Thus, while the</p> <p>2 timing of our application was driven by the</p> <p>3 new sources of supply, there are increases and</p> <p>4 changes in other categories of expenses that</p> <p>5 arise in the preparation of the 2004 test year</p> <p>6 costs.</p> <p>7 The current application before the Board</p> <p>8 was filed on May 21st of 2003 and Hydro is</p> <p>9 seeking approval for increases in the rates</p> <p>10 charged Newfoundland Power, Rural Customers</p> <p>11 and Industrial Customers. Hydro is proposing</p> <p>12 to increase the rates charged to Newfoundland</p> <p>13 Power by 12 percent, which will result in an</p> <p>14 increase of six and a half percent for</p> <p>15 Newfoundland Power's customers and for our</p> <p>16 Rural Customers. The increase proposed for</p> <p>17 island Industrial Customers is 12.2 percent</p> <p>18 for firm service. We are also asking for</p> <p>19 approval of the proposed rural rates which</p> <p>20 have been filed which we submit are consistent</p> <p>21 with the decisions of the Board in P.U. 7 as</p> <p>22 modified by the directions received by the</p> <p>23 Board from the government in July of 2003.</p> <p>24 Hydro is also proposing the implementation of</p> <p>25 uniform rates for customers on the Labrador</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Interconnected System as directed by the Board</p> <p>3 in P.U. 7.</p> <p>4 (9:31 a.m.)</p> <p>5 In addition, Hydro is proposing changes to</p> <p>6 other rates that I will refer to as minor</p> <p>7 rates, including the rate for wheeling energy</p> <p>8 for Abitibi Consolidated, the rate for non</p> <p>9 firm service for Industrial Customers, the</p> <p>10 rate for the firming up charge for energy</p> <p>11 supplied by Corner Brook Pulp and Paper and</p> <p>12 the specifically assigned charges for</p> <p>13 Industrial Customers. These specific rates</p> <p>14 are included in the amended rate schedules</p> <p>15 dated October 31st and we are seeking approval</p> <p>16 of the changes in these rates as well.</p> <p>17 Hydro acknowledges that the increases</p> <p>18 being proposed are significant. We also note</p> <p>19 that the Board and the parties were advised of</p> <p>20 the magnitude of the 2003 increases during the</p> <p>21 2001 General Rate Application.</p> <p>22 It's our position that the proposed rates</p> <p>23 cannot be viewed in isolation but must be</p> <p>24 viewed in the context of the reasons for the</p> <p>25 increase.</p>	<p>1 Hydro's revenue requirement has increased</p> <p>2 by \$50.5 million from the approved 2002 test</p> <p>3 year costs. The increase is due to a number</p> <p>4 of reasons which are outlined in our final</p> <p>5 argument, and most of which I will touch on</p> <p>6 later this morning in oral argument. It</p> <p>7 should be noted that even after the proposed</p> <p>8 increases in base rates and including the RSP</p> <p>9 recovery amount, the rates paid by Industrial</p> <p>10 Customers will continue to be the lowest in</p> <p>11 Atlantic Canada and they will generally</p> <p>12 compare favourably with those in the rest of</p> <p>13 Canada. This information was provided in the</p> <p>14 responses to CA-25 and IC-17. Those responses</p> <p>15 were based at the time on a two-year recovery</p> <p>16 period for the new RSP. With the four-year</p> <p>17 recovery period, the rates are lower than</p> <p>18 shown in those responses for information so as</p> <p>19 the comparisons are even better than</p> <p>20 demonstrated in those responses to the</p> <p>21 Requests for Information.</p> <p>22 The same applies for the retail rates.</p> <p>23 With the current four-year recovery period for</p> <p>24 the new RSP balance, and what I refer to as</p> <p>25 the new RSP balance is the one that started on</p>
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<p>1 September 1, 2002, retail rates are lower than</p> <p>2 are shown on CA-25. And, in fact, even with</p> <p>3 the increases as proposed by Hydro, retail</p> <p>4 rates in Newfoundland will continue to be</p> <p>5 among the lowest in Atlantic Canada. They</p> <p>6 will be lower than Nova Scotia and P.E.I. and</p> <p>7 roughly the same as New Brunswick.</p> <p>8 The legislative provisions which must</p> <p>9 guide the Board in its consideration of the</p> <p>10 issues raised in the hearing are found in the</p> <p>11 Public Utilities Act and the Electrical Power</p> <p>12 Control Act. These provisions are set out on</p> <p>13 pages 5 to 7 of our final argument. And here</p> <p>14 I would like to point out that somehow in the</p> <p>15 printing process one section was actually</p> <p>16 deleted. It was in the final draft that I</p> <p>17 read before it went to the printer but somehow</p> <p>18 two lines got deleted in the final argument so</p> <p>19 that on page 5 of our final argument the</p> <p>20 reference to Section 3(a)(2) of the Electrical</p> <p>21 Power Control Act is deleted and it should be</p> <p>22 there, and that is the requirement the rates</p> <p>23 be based on forecast costs for the supply of</p> <p>24 power for one or more years. So the general</p> <p>25 policy with respect to setting rates which</p>	<p>1 must guide the Board in its review of the</p> <p>2 issues as set out in Section 3(a) of the</p> <p>3 Electrical Power Control Act is that rates to</p> <p>4 be charged should be reasonable and not</p> <p>5 unjustly discriminatory, should be</p> <p>6 established, wherever practical, based on</p> <p>7 forecast costs for the supply of power for one</p> <p>8 or more years, and should provide sufficient</p> <p>9 revenue to enable the utility to earn a just</p> <p>10 and reasonable return as construed under the</p> <p>11 Public Utilities Act. Under Section 3(b) of</p> <p>12 the Electrical Power Control Act. The power</p> <p>13 policy further states that facilities should</p> <p>14 be operated in such a way that results in</p> <p>15 power being delivered to customers at the</p> <p>16 lowest possible cost consistent with reliable</p> <p>17 service. So these general policy statements</p> <p>18 are the ones that must guide the Board in its</p> <p>19 deliberation of the issues in this hearing.</p> <p>20 It is our submission that the rates we</p> <p>21 have proposed meet these legislative</p> <p>22 provisions. We believe that the proposed</p> <p>23 rates are reasonable, that they are not</p> <p>24 unjustly discriminatory and that they will</p> <p>25 result in the lowest possible cost for</p>

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<p>1 GREENE, Q.C.:</p> <p>2 customers consistent with reliable service in</p> <p>3 the context of all the circumstances facing</p> <p>4 Hydro.</p> <p>5 Many complex issues were raised</p> <p>6 throughout the hearing and are before the</p> <p>7 Board for decision. The position of the</p> <p>8 parties on these various issues have been</p> <p>9 summarized in their final argument. It is not</p> <p>10 possible in the time provided this morning to</p> <p>11 address all these issues in any type of depth</p> <p>12 in oral argument, so I would refer the Board</p> <p>13 to Hydro's final argument for its position on</p> <p>14 each of the issues.</p> <p>15 For the purposes of oral argument I have</p> <p>16 grouped the issues under five main headings,</p> <p>17 "Revenue Requirement", "Financial Issues",</p> <p>18 "Cost of Service", "Rates", and</p> <p>19 "Miscellaneous". And I'd like to look at each</p> <p>20 of those topics in order.</p> <p>21 The first major topic is the revenue</p> <p>22 requirement, and this will take the longest</p> <p>23 time to cover for me in my oral argument. The</p> <p>24 first step in determining the rates to be</p> <p>25 charge customers by a utility is to determine</p>	<p>1 the expenses that are approved for recovery</p> <p>2 from customers. The total amount of approved</p> <p>3 expenses is commonly referred to as the</p> <p>4 revenue requirement. The components of our</p> <p>5 proposed 2004 revenue requirement are listed</p> <p>6 on Schedule 2 to the evidence of John C.</p> <p>7 Roberts, and they are depreciation, fuel,</p> <p>8 power purchase, interest, other costs and a</p> <p>9 return on equity. I will now deal with each</p> <p>10 of those categories.</p> <p>11 The first is depreciation. The first</p> <p>12 major category in the revenue requirement on</p> <p>13 Schedule 2 is depreciation which is forecast</p> <p>14 for 2004 to be \$33.7 million. The only issue</p> <p>15 raised by an intervenor in their final</p> <p>16 arguments with respect to the calculation of</p> <p>17 the depreciation expense for 2004 relates to</p> <p>18 the issue of capital budget underspending.</p> <p>19 And I will come back to this issue. But Hydro</p> <p>20 submits that the depreciation expense on</p> <p>21 Schedule 2 should be approved by the Board</p> <p>22 subject to an adjustment for capital budget</p> <p>23 underspending that I will outline later.</p> <p>24 The next category of expense is fuel. In</p> <p>25 the fuel category of expense there are two</p>
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<p>1 major components, diesel fuel and No. 6 fuel.</p> <p>2 No issues were raised by any of the parties</p> <p>3 with respect to the proposed forecast for</p> <p>4 diesel fuel for 2004 of \$6.8 million. So</p> <p>5 Hydro submits that this amount should be</p> <p>6 approved for inclusion in the 2004 test year</p> <p>7 costs. The largest component of fuel costs is</p> <p>8 No. 6 fuel costs, and there are three issues</p> <p>9 which need to be reviewed with respect to the</p> <p>10 No. 6 fuel cost. They are the price for the</p> <p>11 No. 6 fuel, the volume of fuel forecast for</p> <p>12 2004 for the Holyrood plant and the forecast</p> <p>13 fuel conversion factor for the Holyrood</p> <p>14 thermal plant.</p> <p>15 Looking at the first issue, which is the</p> <p>16 price of No. 6 fuel, Hydro has proposed that a</p> <p>17 weighted average purchase price of \$28.95</p> <p>18 Canadian per barrel be used to establish the</p> <p>19 cost for No. 6 fuel for 2004. This is based</p> <p>20 on the forecast received from PIRA, an</p> <p>21 internationally recognized consultant in the</p> <p>22 area, and exchange rates based on Hydro's</p> <p>23 October 31st revision.</p> <p>24 In P.U. 7 the Board said that the most</p> <p>25 prudent course of action was to set fuel</p>	<p>1 prices at or near the price forecast for the</p> <p>2 test year. No intervenor at the hearing has</p> <p>3 raised the issue of whether the--whether a</p> <p>4 price other than the forecast prices proposed</p> <p>5 by Hydro should be used in setting rates. In</p> <p>6 fact, Newfoundland Power, in its final</p> <p>7 argument, specifically consented to the use of</p> <p>8 the price as proposed by Hydro. Hydro</p> <p>9 therefore submits that the Board should</p> <p>10 approve Hydro's proposal on the price for No.</p> <p>11 6 fuel to be used in determining the 2004</p> <p>12 revenue requirement.</p> <p>13 The second issue with respect to No. 6</p> <p>14 fuel is the volume of fuel forecast to be</p> <p>15 consumed at the Holyrood plant in 2004. This</p> <p>16 volume is dependent on the 2004 forecast load</p> <p>17 and the forecast hydraulic production as the</p> <p>18 Holyrood thermal production accounts for the</p> <p>19 bulk of the difference between the forecast</p> <p>20 load and the forecast hydraulic production.</p> <p>21 And on this issue there is a difference of</p> <p>22 opinion among the parties at the hearing. The</p> <p>23 method for determining the hydraulic</p> <p>24 generation forecast was one of the issues</p> <p>25 during our 2001 GRA.</p>

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<p>1 GREENE, Q.C.</p> <p>2 The Board, in P.U. 7 ordered Hydro to use</p> <p>3 the average annual hydraulic production based</p> <p>4 on the most recent 30 years of hydrological</p> <p>5 records for the test year forecast but further</p> <p>6 asked Hydro to commission an independent study</p> <p>7 into its current forecasting methodology for</p> <p>8 hydraulic production. When Hydro filed its</p> <p>9 2003 rate application, it did, as ordered by</p> <p>10 the Board, base the forecast hydraulic</p> <p>11 production on a 30 year average. And we also</p> <p>12 filed the study of Hydro's hydraulic</p> <p>13 production forecasting methodology as we had</p> <p>14 also been asked to do by the Board. This</p> <p>15 report was filed as exhibit JRH-2 and was</p> <p>16 completed by SGE Acres. Ms. Richter of that</p> <p>17 company testified at the hearing with respect</p> <p>18 to the report. The analysis contained in the</p> <p>19 report shows that the longest reliable</p> <p>20 hydraulic record should be used. The only</p> <p>21 reason to curtail the length of a record is</p> <p>22 for computer modelling purposes where a</p> <p>23 consistent length of record is necessary for</p> <p>24 all the facilities that are used in the</p> <p>25 model. SGE Acres has recommended the use of</p>	<p>1 Hydro's records from 1950 onwards. I would</p> <p>2 point out that this recommendation, to use the</p> <p>3 longest available reliable records, is</p> <p>4 consistent with the practice of other</p> <p>5 utilities, as demonstrated in the Acres report</p> <p>6 and Ms. Richter's testimony.</p> <p>7 Hydro accepts the recommendations of the</p> <p>8 Acres report that the longest reliable record</p> <p>9 should be used to determine the estimate for</p> <p>10 hydraulic production, but we are not proposing</p> <p>11 that it be implemented for 2004. Hydro, in</p> <p>12 light of the increases it is proposing, is</p> <p>13 suggesting that we use the longest record for</p> <p>14 the next rate application and not the current</p> <p>15 one in order to mitigate the impact of the</p> <p>16 rate increases for customers.</p> <p>17 From a financial perspective Hydro is</p> <p>18 revenue neutral with respect to the actual</p> <p>19 time period to be used for the hydraulic</p> <p>20 production forecast because of the RSP, so it</p> <p>21 does not affect Hydro financially. But we do</p> <p>22 believe, as does Acres, that the full</p> <p>23 historical record should be used in the future</p> <p>24 to determine hydraulic production because it</p> <p>25 will produce the most reliable estimate for</p>
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<p>1 hydraulic production which should be used for</p> <p>2 all purposes, including operation, system</p> <p>3 planning and rate setting. In fact, Acres</p> <p>4 found that the use of the current records,</p> <p>5 even with the minor inconsistencies that are</p> <p>6 there, will produce a more reliable estimate</p> <p>7 than one based on 30 years.</p> <p>8 The Consumer Advocate has agreed with</p> <p>9 Hydro's position on this issue in his final</p> <p>10 argument, while Newfoundland Power has</p> <p>11 suggested that the issue be deferred and</p> <p>12 debated again during the next Hydro general</p> <p>13 rate application. The Industrial Customers'</p> <p>14 position appears to be similar to Newfoundland</p> <p>15 Power's. However, it is our submission that</p> <p>16 the evidence is clear, the existing</p> <p>17 inconsistencies are minor, and in fact, even</p> <p>18 with them, the longest records produce the</p> <p>19 more reliable estimate than an estimate based</p> <p>20 on only 30 years of records. And it is our</p> <p>21 position that it is unnecessary to defer such</p> <p>22 a simple issue. The report has been done, the</p> <p>23 expert has been called. We believe it is more</p> <p>24 appropriate that Hydro should prepare its next</p> <p>25 application based on the best estimate of</p>	<p>1 hydraulic production which the experts say</p> <p>2 comes from the use of the longest historic</p> <p>3 record. So we believe the Board should make</p> <p>4 that decision at this time so that Hydro in</p> <p>5 filing its next rate application can use the</p> <p>6 longest historic record to provide the best</p> <p>7 estimate of hydraulic production.</p> <p>8 The third issue with respect to the cost</p> <p>9 of No. 6 fuel is the conversion factor to be</p> <p>10 used for the Holyrood thermal plant. And</p> <p>11 again, there was not consensus with respect to</p> <p>12 this issue. Hydro is proposing that the</p> <p>13 current conversion factor of 615 kilowatt</p> <p>14 hours per barrel set by the Board in P.U. 7 be</p> <p>15 increased to 625 kilowatt hours per barrel.</p> <p>16 (9:45 a.m.)</p> <p>17 We are making this proposal based on the</p> <p>18 average value for the period from 1996, which</p> <p>19 is the commencement of the time in which the</p> <p>20 online efficiency monitoring system was placed</p> <p>21 in operation to 2003, as we believe that this</p> <p>22 will result in an average efficiency that the</p> <p>23 plant can achieve on average over a variety of</p> <p>24 operating conditions. Rates when set are also</p> <p>25 expected to last more than one year.</p>

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<p>1 GREENE, Q.C.:</p> <p>2 There are a number of conditions which</p> <p>3 affect the efficiency factor which have been</p> <p>4 outlined in responses to information requests</p> <p>5 and in evidence, and I will not repeat them</p> <p>6 here. While it is true that Hydro has made a</p> <p>7 number of efficiency improvements at the plant</p> <p>8 from 1996 to 2003 not all have yet</p> <p>9 demonstrated that they will actually achieve</p> <p>10 the efficiencies anticipated. Moreover, these</p> <p>11 improvements were taken into account in</p> <p>12 Hydro's proposal to increase the efficiency</p> <p>13 factor to 625 kilowatt hours per barrel. In</p> <p>14 our final argument at page 18 we did give the</p> <p>15 actual conversion factor for December which</p> <p>16 was not in evidence before the Board during</p> <p>17 the hearing. We could have filed a revised</p> <p>18 information request, as well, because this is</p> <p>19 just a simple statement of fact. The other</p> <p>20 thing is, it doesn't affect Hydro's proposal,</p> <p>21 625 is reasonable. In actuality, December was</p> <p>22 somewhat lower than have been in November. So</p> <p>23 the determination of the fuel conversion</p> <p>24 factor by the Board will have an impact, but</p> <p>25 on the rates charged to customers and on</p>	<p>1 Hydro's bottom line.</p> <p>2 Hydro submits that the most appropriate</p> <p>3 approach is to pick a conversion factor or to</p> <p>4 determine the conversion factor which is one</p> <p>5 that the plant can produce on average. If the</p> <p>6 highest efficiency factor that the plant has</p> <p>7 ever achieved is picked or one based only on</p> <p>8 two years, as suggested by Newfoundland Power,</p> <p>9 then Hydro submits that this is not reasonable</p> <p>10 as there is no guarantee that the plant can</p> <p>11 consistently achieve that highest efficiency</p> <p>12 factor. The average conversion factor has</p> <p>13 varied considerably from a low of 577 kilowatt</p> <p>14 hours per barrel in 1999 to a high of 648.5</p> <p>15 kilowatt hours per barrel in 2002. With this</p> <p>16 volatility Hydro submits that its proposal to</p> <p>17 use the average of 625 kilowatt hours per</p> <p>18 barrel is the most appropriate.</p> <p>19 Newfoundland Power, in their final</p> <p>20 argument, suggested a fuel conversion factor</p> <p>21 of 636 kilowatt hours per barrel based on an</p> <p>22 average of two years, 1997 and 2001, which the</p> <p>23 average for those two years was 631, plus an</p> <p>24 add on of 5 kilowatt hours per barrel to</p> <p>25 reflect as yet unrealized gains from capital</p>
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<p>1 projects. The Industrial Customers also</p> <p>2 recommended 636 kilowatt hours per barrel, but</p> <p>3 provided no rational for their position.</p> <p>4 Hydro submits that it is not appropriate, as</p> <p>5 suggested by Newfoundland Power, to average</p> <p>6 only two years and then to add on gains that</p> <p>7 have not yet been proven. If an unrealistic</p> <p>8 fuel conversion factor is set that is not</p> <p>9 achieved, there will be a direct impact on</p> <p>10 Hydro's net income with the amount of the</p> <p>11 impact depending on the shortfall. For</p> <p>12 example, the evidence demonstrates that if the</p> <p>13 fuel conversion factor is set at 636 kilowatt</p> <p>14 hours per barrel and 624 is achieved, there is</p> <p>15 a loss of net income to Hydro \$1.6 million.</p> <p>16 Hydro's submission is that the conversion</p> <p>17 factor that it has proposed of 625 kilowatt</p> <p>18 hours per barrel is an appropriate balance of</p> <p>19 all the relevant factors.</p> <p>20 The next main category of expense in the</p> <p>21 2004 revenue requirement is power purchased.</p> <p>22 This is forecast to be \$33.6 million in 2004,</p> <p>23 which is an increase of 18 and a half million</p> <p>24 dollars over the 2002 test year cost due to</p> <p>25 the two new power purchase contracts Hydro has</p>	<p>1 entered into since the 2001 GRA with Corner</p> <p>2 Brook Pulp and Paper and the Exploits River</p> <p>3 Hydro partnership. The Lieutenant Governor in</p> <p>4 Council gave direction to the Board under</p> <p>5 Section 5.1 of the Electrical Power Control</p> <p>6 Act that the cost of projects exempted from</p> <p>7 the Public Utilities Act and the Electrical</p> <p>8 Power Control Act were to be recovered in</p> <p>9 rates. Both of these power purchase contracts</p> <p>10 were exempt by Order in Council from the</p> <p>11 legislation. There are other costs included</p> <p>12 in this category of power purchase costs,</p> <p>13 including the purchases of secondary energy</p> <p>14 for the L'Anse-au-Loup system from Hydro</p> <p>15 Quebec, the cost of purchases from CF(L)Co for</p> <p>16 sales by Hydro to customers in Labrador and</p> <p>17 the costs paid by Hydro to two other non-</p> <p>18 utility generators, the Star Light Hydro</p> <p>19 partnership and Algonquin Power. All of these</p> <p>20 costs were approved by the Board in P.U. 7.</p> <p>21 No intervenor raised any objection to this</p> <p>22 category of expense. And Newfoundland Power,</p> <p>23 in its final argument, specifically said that</p> <p>24 Hydro was entitled to recover these costs.</p> <p>25 Hydro submits that the power purchase costs as</p>

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<p>1 GREENE, Q.C.:</p> <p>2 forecast by Hydro should be approved by the</p> <p>3 Board.</p> <p>4 The fourth major category of expense in</p> <p>5 the 2004 revenue requirement is interest</p> <p>6 expense which is forecast to be \$98.2 million.</p> <p>7 Only one issue was raised by any intervenor in</p> <p>8 final argument with respect to the interest</p> <p>9 calculation. This was raised by Newfoundland</p> <p>10 Power only and it relates to Schedule 8 to the</p> <p>11 evidence of John C. Roberts and it relates to</p> <p>12 the accounts payable and accrued liabilities</p> <p>13 line. This issue was addressed by Hydro in</p> <p>14 final argument on pages 24 to 25. I will</p> <p>15 point out one typo correction here that on</p> <p>16 page 25, line 2 of my final argument there is</p> <p>17 a reference to Schedule 13 and it should be a</p> <p>18 reference to Schedule 8. Hydro's interest</p> <p>19 expenses and its promissory note balance is</p> <p>20 calculated using an iterative interest model</p> <p>21 which takes into account the projected receipt</p> <p>22 of revenue and the payment of expenditures.</p> <p>23 Our methodology of determining interest</p> <p>24 expense has been the same for a number of</p> <p>25 years and has been found to be appropriate by</p>	<p>1 Grant Thornton. Interest expense is not</p> <p>2 derived from the projected balance sheet files</p> <p>3 as Schedule 8. There is no evidence to</p> <p>4 support Newfoundland Power's position that the</p> <p>5 interest expense flowing from the interest</p> <p>6 model should be reduced. Hydro submits that</p> <p>7 it should be approved as filed by Hydro.</p> <p>8 The fifth main category of expense in the</p> <p>9 2004 revenue requirement is other costs which</p> <p>10 is forecast to be \$101.4 million for 2004</p> <p>11 before allocations. It includes items such as</p> <p>12 salary and fringe benefits, system equipment</p> <p>13 maintenance, insurance, professional services</p> <p>14 and transportation. Eighty percent of the</p> <p>15 costs in this category are composed of two</p> <p>16 items, salaries and system equipment</p> <p>17 maintenance with the remaining 20 percent</p> <p>18 covering all other expenses. Hydro's position</p> <p>19 on this category of costs have been set out in</p> <p>20 detail on pages 27 to 35 of final argument.</p> <p>21 However, Newfoundland Power raised several</p> <p>22 issues on this category of costs in its final</p> <p>23 argument which I need to address at this time.</p> <p>24 No other intervenor raised any issue under the</p> <p>25 category of other costs, other than the</p>
Page 23	Page 24
<p>1 Industrial Customers who raised two issues,</p> <p>2 the issue of an adjustment for capital budget</p> <p>3 underspending and the treatment of non-</p> <p>4 regulated costs.</p> <p>5 I will now deal with the issues raised by</p> <p>6 Newfoundland Power, and this will take a</p> <p>7 period of time because they have recommended</p> <p>8 ten reductions in the categories of costs</p> <p>9 called other costs. However, before I address</p> <p>10 their specific recommendations, I would like</p> <p>11 to review the relevant evidence on this topic</p> <p>12 before dealing with the specific issues.</p> <p>13 There are ten relevant facts. No. 1,</p> <p>14 Hydro's other costs before allocations were</p> <p>15 \$102.7 million in 2000 and the 2004 forecast</p> <p>16 is 101.4 million. Thus, Hydro's other costs</p> <p>17 have actually decreased since 2000 by \$1.3</p> <p>18 million or about 1.3 percent.</p> <p>19 No. 2, 53 percent of the costs in this</p> <p>20 category relate to salaries. No party,</p> <p>21 including Newfoundland Power, questioned the</p> <p>22 salaries paid to Hydro employees or the Hydro</p> <p>23 staffing levels. The evidence demonstrates</p> <p>24 that Hydro has reduced its permanent</p> <p>25 compliment by over 100 positions since 2000,</p>	<p>1 which is 12 percent, and that there has been a</p> <p>2 similar decline for total staffing, including</p> <p>3 temporaries. There has been no evidence lead</p> <p>4 at the hearing by any party that either</p> <p>5 individual salaries are too high or that there</p> <p>6 are too many employees in any area of the</p> <p>7 Company.</p> <p>8 The third relevant fact is that Hydro's</p> <p>9 core wage expense, excluding employee future</p> <p>10 benefits is tracked below inflation since</p> <p>11 1992.</p> <p>12 The fourth relevant fact is that Hydro</p> <p>13 has started a business process improvement</p> <p>14 initiative and that three areas have had</p> <p>15 changes implemented in 2003, being accounts</p> <p>16 payable, corporate purchasing card and</p> <p>17 consumables and inventory. These process</p> <p>18 changes implemented in 2003 result in an</p> <p>19 annual salary savings of \$600,000, and these</p> <p>20 are annual savings, they will reoccur each</p> <p>21 year, with additional salary savings in meter</p> <p>22 reading route optimization of 100,000. The</p> <p>23 cost for the external consultants was a</p> <p>24 million dollars, so there has been an</p> <p>25 appropriate payback of just over one year for</p>

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<p>1 GREENE, Q.C.:</p> <p>2 the external costs. Even if you look at the</p> <p>3 internal costs for BPI, and I submit that that</p> <p>4 shouldn't be included because that includes</p> <p>5 the normal salary for the normal</p> <p>6 responsibilities of employees doing their</p> <p>7 duty, normal job duties, to reduce efficiency.</p> <p>8 There's still a payback for BPI from just</p> <p>9 these three initiatives of four years. This</p> <p>10 is a good payback. We've also indicated that</p> <p>11 there are other anticipated savings in 2004</p> <p>12 which was why the allowance was increased.</p> <p>13 The fifth relevant fact is that Hydro has</p> <p>14 indicated that there are opportunities for</p> <p>15 further efficiencies in 2004 and it has</p> <p>16 increased its vacancy allowance from one</p> <p>17 million dollars to two and a half million</p> <p>18 dollars to reflect a vacancy adjustment and</p> <p>19 anticipated efficiencies in 2004 which will be</p> <p>20 in salaries.</p> <p>21 The sixth relevant fact is that Hydro's</p> <p>22 performance on its total controllable costs</p> <p>23 has been similar to and even better than the</p> <p>24 experience of peer utilities in Canada, as</p> <p>25 demonstrated in Schedule 1 to the pre-fill</p>	<p>1 evidence of Bill Wells. For the period from</p> <p>2 1998 to 2002 Hydro's increase in operating,</p> <p>3 maintenance and administration expense has</p> <p>4 been the lowest of B.C. Hydro, Hydro Quebec,</p> <p>5 Nova Scotia Power, New Brunswick Power,</p> <p>6 Manitoba Hydro and Saskatchewan Power.</p> <p>7 The seventy relevant fact is that system</p> <p>8 equipment maintenance accounts for 17 percent</p> <p>9 of the total of other costs. No party has</p> <p>10 raised any objection to any system equipment</p> <p>11 maintenance costs.</p> <p>12 The eighth relevant fact is that total</p> <p>13 other costs on a kilowatt hour basis sold have</p> <p>14 been declining over the period 2000 to 2004.</p> <p>15 Ninth relevant fact is that total other</p> <p>16 costs have tracked below inflation since 1992,</p> <p>17 demonstrating performance gains.</p> <p>18 And the tenth relevant fact is that key</p> <p>19 performance measures have been agreed to by</p> <p>20 Hydro for regulatory reporting to allow the</p> <p>21 Board and stakeholders to monitor and track</p> <p>22 Hydro's performance on an operational as well</p> <p>23 as a financial basis.</p> <p>24 So when one takes the above undisputed</p> <p>25 evidence into account, it is clear that Hydro</p>
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<p>1 has demonstrated strong performance in</p> <p>2 controlling and managing costs over which it</p> <p>3 has influence. This evidence is in stark</p> <p>4 contrast to the lack of evidence presented by</p> <p>5 any intervenor that Hydro's salaries are too</p> <p>6 high, that its staffing level is too high or</p> <p>7 that any expense is unreasonable.</p> <p>8 Now, Newfoundland Power listed a number</p> <p>9 of facts on page B-20, lines 10 to 22 of its</p> <p>10 final argument which it says are relevant to</p> <p>11 the issue. Hydro actually disputes most of</p> <p>12 the statements made there as being either</p> <p>13 contrary to the evidence or irrelevant. For</p> <p>14 example, Newfoundland Power states that Hydro</p> <p>15 has no plans to proactively reduce the number</p> <p>16 of FTEs. However, as I just outlined, Hydro</p> <p>17 has increased the allowance in the 2004</p> <p>18 revenue requirement to reduce the revenue</p> <p>19 requirement by an additional \$1.5 million over</p> <p>20 and above the vacancy allowance. We can only</p> <p>21 achieve this through a reduction of FTEs, so</p> <p>22 it is not correct to say there's no plan for</p> <p>23 an FTE reduction. Other statements they made</p> <p>24 are irrelevant. For example, they refer to</p> <p>25 the number of departments and the structure.</p>	<p>1 However, they produced no evidence to suggest</p> <p>2 that a mere reduction in the number of</p> <p>3 departments or a change in the structure would</p> <p>4 reduce costs.</p> <p>5 I'd like now to turn to the specific</p> <p>6 proposals made by Newfoundland Power, and</p> <p>7 there are ten of them, but I will deal with</p> <p>8 each of them fairly quickly.</p> <p>9 (10:00 a.m.)</p> <p>10 The first was to reduce wages by \$300,000</p> <p>11 to supposedly reflect an April 1, 2004</p> <p>12 effective date for bargaining unit wage</p> <p>13 increases. It's our position that the</p> <p>14 effective date for the union wage increase has</p> <p>15 already been properly reflected in the 2004</p> <p>16 forecast. The 2004 forecast includes the</p> <p>17 increase in union wages of April 1, as well as</p> <p>18 the three percent wage adjustment for non-</p> <p>19 union employees that became effective January</p> <p>20 1 and progression increases for non-union</p> <p>21 employees who are below their job rate. There</p> <p>22 is absolutely no evidence to support</p> <p>23 Newfoundland Power's position that salary</p> <p>24 costs should be reduced by \$300,000, which is</p> <p>25 a 25 percent reduction on all salary increases</p>

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<p>1 GREENE, Q.C.:</p> <p>2 for the year. They simply took the total</p> <p>3 increase and reduced it by a quarter,</p> <p>4 forgetting or ignoring the fact that over half</p> <p>5 of the salary wage budget is for non-union</p> <p>6 employees who did get a three percent increase</p> <p>7 as of January 1, because our timing is not the</p> <p>8 same for union and non-union, and that there</p> <p>9 were progression increases for non-union</p> <p>10 employees as of January 1. So there is</p> <p>11 absolutely no evidence to support their</p> <p>12 statement that the \$300,000 was--is too much.</p> <p>13 We submit that it was properly taken into</p> <p>14 account in preparing the forecast.</p> <p>15 The second proposal of Newfoundland Power</p> <p>16 was that the 2004 test year salary expenses</p> <p>17 should be adjusted to reflect salary savings</p> <p>18 related to the elimination of 10 FTEs due to</p> <p>19 the business process improvement initiative</p> <p>20 implemented in 2003. Hydro's evidence is that</p> <p>21 these salary savings were taken into account</p> <p>22 in the final salary numbers that have been</p> <p>23 submitted with the Board, to the Board and</p> <p>24 they are reflected in the two and a half</p> <p>25 million dollar allowance which includes the</p>	<p>1 vacancy allowance and an additional 1.5</p> <p>2 million. Hydro would not have increased the</p> <p>3 allowance to two and a half million if the</p> <p>4 elimination of these positions had not been</p> <p>5 taken into account by Hydro.</p> <p>6 The third proposal of Newfoundland Power</p> <p>7 is that the vacancy allowance should be</p> <p>8 increased from \$1 million to \$1.6 million</p> <p>9 based on historic experience. This, however,</p> <p>10 ignores Hydro's recent experience. On</p> <p>11 November 12th in the transcript at pages 71 to</p> <p>12 72, Mr. Roberts testified that Hydro did not</p> <p>13 achieve the vacancy allowance for 2003. The</p> <p>14 explanation he provided was that with the</p> <p>15 reduction in positions that has occurred over</p> <p>16 the past three years there is less flexibility</p> <p>17 regarding keeping positions vacant and that we</p> <p>18 anticipate this to continue for 2004. So in</p> <p>19 light of Hydro's 2003 experience and its</p> <p>20 forecast for continuation of the same in 2004,</p> <p>21 it is not reasonable to increase the vacancy</p> <p>22 allowance over the million dollars which was</p> <p>23 not achieved, the million dollars was not</p> <p>24 achieved in 2003.</p> <p>25 The fourth Newfoundland Power proposal</p>
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<p>1 was that the productivity allowance should</p> <p>2 remain at \$2 million exclusive of savings from</p> <p>3 ten identified eliminated positions. As I've</p> <p>4 already indicated, Hydro did provide an</p> <p>5 allowance of \$1.5 million over and above the</p> <p>6 vacancy allowance to reflect what it expects</p> <p>7 to be anticipated savings primarily in the</p> <p>8 area of salaries for 2004. This allowance was</p> <p>9 based in part on our knowledge that Hydro</p> <p>10 would achieve \$700 salary savings arising from</p> <p>11 the BPI initiative. As a minor point in this</p> <p>12 section, Newfoundland Power states that Hydro</p> <p>13 uses staff compliment for forecasting</p> <p>14 salaries. That's not correct. The evidence</p> <p>15 is clear that Hydro uses FTEs for budgeting</p> <p>16 purposes, including forecasting. Information</p> <p>17 was provided in this rate application covering</p> <p>18 both compliment numbers as well as FTEs as it</p> <p>19 was a transition hearing and we had to provide</p> <p>20 the information to compare with past years.</p> <p>21 Hydro submits that Newfoundland Power's</p> <p>22 position on the productivity allowance of \$2</p> <p>23 million is plucked from the air with no</p> <p>24 evidence to support it. Similarly, the</p> <p>25 Industrial Customers' suggestion of a</p>	<p>1 productivity allowance of \$5 million is</p> <p>2 arbitrary and no evidence was provided in</p> <p>3 their final argument to support their \$5</p> <p>4 million suggestion. Hydro's evidence has been</p> <p>5 that the primary area in which we can achieve</p> <p>6 savings in the category of other costs is in</p> <p>7 salaries which represents over 63 percent of</p> <p>8 the costs in this category. System equipment</p> <p>9 maintenance costs are 17 percent, and it is</p> <p>10 difficult, given the nature of Hydro's</p> <p>11 operations, to reduce system equipment</p> <p>12 maintenance costs. It should be noted that no</p> <p>13 party has recommended a reduction of system</p> <p>14 maintenance costs. Hydro itself has built in</p> <p>15 an allowance of 1.5 million for 2004 to</p> <p>16 reflect anticipated efficiencies. Using an</p> <p>17 average of \$50,000, this is 30 positions on an</p> <p>18 actual basis including the ten eliminated. To</p> <p>19 increase the allowance to \$2 million suggested</p> <p>20 by Newfoundland Power would mean the</p> <p>21 elimination of 40 new positions and that is</p> <p>22 the stark reality for Hydro and for the Board.</p> <p>23 In our opinion, we simply can't do it, it is</p> <p>24 not realistic and it is not achievable with</p> <p>25 Hydro continuing to provide reliable service.</p>



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<p>1 GREENE, Q.C.:</p> <p>2 It is our submission, based on the</p> <p>3 evidence before the Board, that Hydro has</p> <p>4 managed the category of other costs while at</p> <p>5 the same time meeting its mandate of providing</p> <p>6 reliable least cost power. In light of this</p> <p>7 and in the absence of any evidence that any of</p> <p>8 the costs are unreasonable or imprudent, it is</p> <p>9 not appropriate for the Board to impose a</p> <p>10 further productivity allowance than already</p> <p>11 included by Hydro. To do so, as Mr. Wells</p> <p>12 said, would be a penalty and a disincentive.</p> <p>13 As well, the Board will in the future be able</p> <p>14 to monitor Hydro's operational financial</p> <p>15 efficiencies with the key performance</p> <p>16 indicators that have been agreed to for</p> <p>17 regulatory reporting purposes.</p> <p>18 The fifth issue raised by Newfoundland</p> <p>19 Power on other costs related to the amount of</p> <p>20 capitalized expense. This was covered on</p> <p>21 pages 37 to 38 of our final argument. Hydro</p> <p>22 submits that its 2004 forecast of capitalized</p> <p>23 expense is reasonable and that the percentage</p> <p>24 of capitalized expense in relation to the</p> <p>25 total capital program for 2004 is in line with</p>	<p>1 previous historic experience as explained in</p> <p>2 our final argument. If the category were to</p> <p>3 be increased, as recommended by Newfoundland</p> <p>4 Power, by two million dollars, this would</p> <p>5 result in capitalized expense being 22 percent</p> <p>6 of the capital program for 2004, well in</p> <p>7 excess of anything it has been in the past.</p> <p>8 So we submit that our forecast is reasonable</p> <p>9 and should not be increased.</p> <p>10 The sixth proposal of Newfoundland Power:</p> <p>11 to reduce the category of other costs related</p> <p>12 to transportation. The total cost for</p> <p>13 transportation in the approved 2002 test year</p> <p>14 was 1.9 million dollars. Actuals were two</p> <p>15 million. The 2004 forecast is two million,</p> <p>16 which reflects Hydro's experience in 2000,</p> <p>17 2001 and 2002 with the average for these three</p> <p>18 years being above two million. The 2003</p> <p>19 reduction in this category reflects an anomaly</p> <p>20 which Hydro does not expect to be repeated in</p> <p>21 2004, and it is not reflected by our</p> <p>22 experience since at least 2000. Hydro has</p> <p>23 reviewed its forecast transportation costs in</p> <p>24 relation to its requirements and submits that</p> <p>25 the estimate it has proposed is the most</p>
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<p>1 reasonable one, based on past experience, as</p> <p>2 well as anticipated future experience.</p> <p>3 The seventh proposal of Newfoundland</p> <p>4 Power with the loss on disposal of assets for</p> <p>5 Davis Inlet. This was covered in our final</p> <p>6 argument on pages 41 to 42, and for the</p> <p>7 reasons set out there, it is our position that</p> <p>8 the loss included in the revenue requirement</p> <p>9 for disposals is representative of our past</p> <p>10 experience. In fact, the 2004 forecast costs,</p> <p>11 including the loss on disposal of the Davis</p> <p>12 Inlet plant, is less than the average loss of</p> <p>13 the past five years. So we don't believe this</p> <p>14 is unusual and that the cost should be</p> <p>15 deferred.</p> <p>16 The eighth proposal by Newfoundland Power</p> <p>17 related to a reduction in miscellaneous</p> <p>18 expenses related to travel--and this is in the</p> <p>19 area of travel and training. Hydro says that</p> <p>20 this is not warranted. We have provided</p> <p>21 information on the forecast training plan for</p> <p>22 2004, which is our best estimate of the</p> <p>23 training that needs to be undertaken for our</p> <p>24 employees to maintain their core skills and</p> <p>25 competencies and there was no evidence filed</p>	<p>1 to support the recommendation that it should</p> <p>2 be decreased.</p> <p>3 The ninth recommendation by Newfoundland</p> <p>4 Power related to inventory write-offs. They</p> <p>5 suggested that our forecast inventory write-</p> <p>6 offs for 2004 should be consistent with 2002</p> <p>7 actual experience resulting in a reduction of</p> <p>8 \$132,000. However, they neglected to point</p> <p>9 out that 2002 was not a representative year</p> <p>10 for write-offs. The response to NP-254 points</p> <p>11 out that the bulk of the inventory reductions</p> <p>12 forecast over 2001 and '02 were achieved in</p> <p>13 2001, leading to an abnormally low 2002. So</p> <p>14 we believe that what's in the 2004 revenue</p> <p>15 requirement for inventory write-offs is</p> <p>16 consistent with past practice and that 2002,</p> <p>17 for the reasons explained, was an anomaly.</p> <p>18 The last proposal by Newfoundland Power</p> <p>19 was that certain costs forecast for the</p> <p>20 terminal station at Wabush should be deferred</p> <p>21 and amortized over a five-year period. Hydro</p> <p>22 will point out that under normal general</p> <p>23 accounting principles, this type of cost</p> <p>24 should be expensed in the year in which it</p> <p>25 occurs. We don't believe that it is</p>

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<p>1 GREENE, Q.C.:</p> <p>2 appropriate to defer expenses on a regular</p> <p>3 basis unless there are compelling reasons to</p> <p>4 do so. We would further point out that this</p> <p>5 is an operating expense, not a capital expense</p> <p>6 and that the assets on which the work is to be</p> <p>7 done are not owned by Hydro. We do not agree</p> <p>8 with this recommendation to amortize these</p> <p>9 costs over a five-year period.</p> <p>10 The last issue that was raised on the</p> <p>11 category of other costs was raised by the</p> <p>12 industrial customers and it related to the</p> <p>13 treatment of non-regulated costs. Our point</p> <p>14 on this is that our practice, in this area, is</p> <p>15 consistent with regulatory practice in this</p> <p>16 jurisdiction and that such treatment has been</p> <p>17 consistently approved by the Board for</p> <p>18 Newfoundland Power with the most recent</p> <p>19 decision being in P.U. 19 from the 2003 GRA.</p> <p>20 The last category of expense in the</p> <p>21 revenue requirement is the return on equity,</p> <p>22 and the return forecast for 2004 of 18. 7</p> <p>23 million is based on a return on common equity</p> <p>24 of nine and three-quarters. Under Section 80</p> <p>25 of the Public Utilities Act, Hydro is entitled</p>	<p>1 to earn a just and reasonable return on its</p> <p>2 rate base in addition to expenses that are</p> <p>3 allowed as reasonable and prudent. We are</p> <p>4 proposing that the return on rate base be 7.88</p> <p>5 percent. The allowed return on common equity</p> <p>6 is one of the factors used to determine the</p> <p>7 allowed return on rate base and thus the</p> <p>8 appropriate return on equity must also be</p> <p>9 considered. Hydro is proposing a return on</p> <p>10 equity of nine and three-quarters, which is</p> <p>11 the same as recently allowed by the Board for</p> <p>12 Newfoundland Power. We continue to believe</p> <p>13 that this is appropriate given that the</p> <p>14 experts have said that the risks faced by</p> <p>15 Hydro are no less than the risks faced by</p> <p>16 Newfoundland Power and the return should</p> <p>17 reflect the risks.</p> <p>18 Certain of the intervenors have suggested</p> <p>19 that the allowed return on common equity</p> <p>20 should continue at three percent. However,</p> <p>21 Hydro voluntarily proposed this in 2001. At</p> <p>22 that time, the Board acknowledged it was well</p> <p>23 below market and it should be noted that in</p> <p>24 this hearing, no financial expert called has</p> <p>25 suggested a return of three percent. It is</p>
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<p>1 still obviously below market conditions. As</p> <p>2 we explained, our request for a three percent</p> <p>3 return on equity in 2001 was intended to apply</p> <p>4 for a limited time only to what was thought to</p> <p>5 be a temporary issue of adjusting rates to</p> <p>6 reflect higher fuel costs. Hydro cannot</p> <p>7 compromise its financial integrity by</p> <p>8 continuing at a rate of return that was</p> <p>9 recognized by everyone in the 2001 GRA and by</p> <p>10 the experts in this general rate application</p> <p>11 to be well below market and well below what</p> <p>12 Hydro is entitled to earn under the current</p> <p>13 legislative provisions.</p> <p>14 Two of the cost of capital experts called</p> <p>15 in the hearing, Ms. McShane and Dr. Kalymon,</p> <p>16 addressed the issue of the appropriate return</p> <p>17 on equity for Hydro using traditional concepts</p> <p>18 in the regulatory arena. Ms. McShane</p> <p>19 recommended a return in the range of 11 to 11</p> <p>20 1/4, while Dr. Kalymon recommended 8 1/2 to 9.</p> <p>21 Dr. Waverman, on the other hand, used a novel</p> <p>22 approach and suggested a lower return tied to</p> <p>23 the opportunity costs for the province for the</p> <p>24 portion of Hydro's capital structure</p> <p>25 represented by shareholder's equity. We</p>	<p>1 covered this issue in our final argument on</p> <p>2 pages 46 to 48 and for the reasons set out</p> <p>3 there, we believe that Dr. Waverman's theory</p> <p>4 should not be accepted by the Board. We</p> <p>5 believe that Hydro is entitled to the</p> <p>6 opportunity to earn a just and reasonable</p> <p>7 return which reflects the level of business</p> <p>8 and financial risk it faces and that this has</p> <p>9 been acknowledged by all of the experts to be</p> <p>10 no less than that of the other utility in this</p> <p>11 province. So we believe the evidence supports</p> <p>12 our position that we are entitled to earn a</p> <p>13 higher return than three percent and that the</p> <p>14 evidence supports the proposal of 9.75.</p> <p>15 Certain parties have suggested the</p> <p>16 continuation of a three percent return on</p> <p>17 common equity and argue that Hydro should not</p> <p>18 earn the return on equity of an investor-owned</p> <p>19 utility, as it does not act, in their</p> <p>20 submission, like an investor-owned utility,</p> <p>21 although I must say, it's not clear from their</p> <p>22 argument what the standard is for acting like</p> <p>23 an investor-owned utility. However, I submit</p> <p>24 that that argument is totally irrelevant. The</p> <p>25 evidence demonstrates that the risks faced by</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Hydro are no less than Newfoundland Power and</p> <p>3 that the return shall reflect the risk. The</p> <p>4 identity of the shareholder is irrelevant.</p> <p>5 The allowed returns on equity for Crown-owned</p> <p>6 utilities with similar capital structures to</p> <p>7 Hydro and similar risks, are the same as those</p> <p>8 of investor-owned utilities, so that the</p> <p>9 distinction of whether a utility is Crown-</p> <p>10 owned or investor-owned is meaningless in the</p> <p>11 context of the appropriate ROE. The response</p> <p>12 to PUB-46 provides the ROE for Crown-owned</p> <p>13 utilities and does demonstrate that their</p> <p>14 return on equity is the same as an investor-</p> <p>15 owned utility.</p> <p>16 (10:15 a.m.)</p> <p>17 Certain of the intervenors have also</p> <p>18 suggested that the Board should take the</p> <p>19 guarantee fee and the rural deficit into</p> <p>20 account in looking at the ROE. The issue of</p> <p>21 the impact on the rural deficit on the return</p> <p>22 on equity was not covered by the witnesses in</p> <p>23 this hearing. However, it was in the 2001</p> <p>24 GRA, and here I refer you to the evidence of</p> <p>25 Ms. McShane, Dr. Kalymon and Mr. Hall in the</p>	<p>1 2001 GRA, where they found that the rural</p> <p>2 deficit and social policy consideration should</p> <p>3 not influence the ROE while it may impact</p> <p>4 other things such as rate design issues.</p> <p>5 Similarly, the issue of the guarantee fee has</p> <p>6 been covered before. It has been found by the</p> <p>7 Board to be an expense and it is a fee for a</p> <p>8 service received and it should not affect the</p> <p>9 ROE.</p> <p>10 Now there were two minor issues arising</p> <p>11 on the revenue requirement. One, the first</p> <p>12 was the capital budget under spending.</p> <p>13 Newfoundland Power and the Industrial</p> <p>14 Customers have suggested that it be 14</p> <p>15 percent. In our final argument, we have</p> <p>16 proposed that it should be four percent, as</p> <p>17 our level of under spending has improved in</p> <p>18 the last four years and it is now consistent</p> <p>19 with the level of under spending at the time</p> <p>20 that the Board awarded or said that it should</p> <p>21 be a four percent adjustment for Newfoundland</p> <p>22 Power. So we believe there's absolutely no</p> <p>23 support for the 14 percent proposed and that</p> <p>24 the 7 1/2 percent imposed by the Board in P.U.</p> <p>25 7 should be reduced to four percent.</p>
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<p>1 The second miscellaneous issue on the</p> <p>2 revenue requirement is the hearing costs, and</p> <p>3 here again we have covered this in our final</p> <p>4 argument. We'd point out that we have</p> <p>5 included an estimate of 1.2 million for the</p> <p>6 Board's costs and the Consumer Advocate costs</p> <p>7 and that we have no knowledge of this and that</p> <p>8 if these costs are incorrect or if other costs</p> <p>9 are awarded, we request the Board to provide</p> <p>10 us with a reasonable estimate of these costs,</p> <p>11 so they can be used in the final cost of</p> <p>12 service.</p> <p>13 The next main topic is financial issues</p> <p>14 and I have covered generally these within the</p> <p>15 discussion on the revenue requirement and the</p> <p>16 discussion of return on equity. There's only</p> <p>17 three minor issues. One is the capital</p> <p>18 structure. We point out in our final argument</p> <p>19 that we're asking the Board to endorse the</p> <p>20 target of 80-20 for Hydro. The next issue is</p> <p>21 the return on rate base, and here again we</p> <p>22 point out in our final argument that it's our</p> <p>23 submission that the issues of the appropriate</p> <p>24 return on rate base, the excess earnings</p> <p>25 account and the Automatic Adjustment Formula</p>	<p>1 should all be dealt with at the one time,</p> <p>2 after the Board has given direction on the</p> <p>3 market return on equity. So in this regard,</p> <p>4 we're somewhat similar to Newfoundland Power's</p> <p>5 suggestion in their final argument that all of</p> <p>6 those issues be dealt with at the one time,</p> <p>7 following this hearing, once we know what the</p> <p>8 market rate of return on equity is to be.</p> <p>9 The next main topic was the cost of</p> <p>10 service methodology, and all of the issues</p> <p>11 with respect to that topic have been</p> <p>12 adequately covered in our final argument. Our</p> <p>13 position remains the same as it was during the</p> <p>14 hearing, with respect to the assignment of the</p> <p>15 GNP generation assets, that they should be</p> <p>16 assigned as common and that the GNP</p> <p>17 transmission assets continue to be assigned to</p> <p>18 Rural, and we have covered that in fair detail</p> <p>19 in our final argument and nothing needs to be</p> <p>20 said here additionally this morning.</p> <p>21 Similarly, the other issue on the cost of</p> <p>22 service was the treatment of the credit to be</p> <p>23 given to Newfoundland Power for its generation</p> <p>24 facilities. Again, we have covered that in</p> <p>25 detail in our final argument and we believe</p>

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<p>1 GREENE, Q.C.:</p> <p>2 that Newfoundland Power should continue to</p> <p>3 receive a full credit for all of its</p> <p>4 generation facilities in the cost of service.</p> <p>5 The fourth of the five main areas that I</p> <p>6 need to touch on was the area of rates, and</p> <p>7 again, in our final argument, we have spent</p> <p>8 some time outlining our position on the rural</p> <p>9 rates. There's only one issue and that is the</p> <p>10 lifeline block for Isolated Domestic</p> <p>11 customers. We believe that as long as the</p> <p>12 principle is that there should be no increase</p> <p>13 in the deficit that the alternative for the</p> <p>14 lifeline block we have proposed is about as</p> <p>15 best as you can do, and we leave it to the</p> <p>16 discretion of the Board as to whether they</p> <p>17 wish to continue with the lifeline block at</p> <p>18 700 kilowatt hours per month or whether it</p> <p>19 should be changed to reflect seasonal usage.</p> <p>20 We do not agree with the recommendation of the</p> <p>21 consumer advocate that we should try it on a</p> <p>22 one-year trial basis. That is</p> <p>23 administratively difficult. We believe if the</p> <p>24 Board changes the lifeline block, it should be</p> <p>25 in place until at least the next general rate</p>	<p>1 application.</p> <p>2 On the Rural deficit, we again have</p> <p>3 covered the issues in our final argument.</p> <p>4 There's only one minor one that I'd like to</p> <p>5 address and that relates to a statement of</p> <p>6 Newfoundland Power in its final argument on</p> <p>7 page F-4 relating to a policy recovering</p> <p>8 capital cost of installing generation</p> <p>9 equipment in isolated areas. Mr. Martin</p> <p>10 covered this in his evidence in the transcript</p> <p>11 of October 27th at pages 63 to 64. We believe</p> <p>12 that such a policy is not appropriate because</p> <p>13 it's impossible to allocate the benefit of</p> <p>14 common generation is used by all customers to</p> <p>15 one customer. Once it is common, it is used</p> <p>16 by everybody, so we submit that such a policy</p> <p>17 should not be developed from implementation.</p> <p>18 Our position on the Labrador</p> <p>19 Interconnected System rates were set out in</p> <p>20 final argument and there's nothing required in</p> <p>21 addition at this time.</p> <p>22 Similarly, on the demand energy rate,</p> <p>23 Hydro's position has been set out in detail in</p> <p>24 our final argument. The only thing I wanted</p> <p>25 to say here was with respect to three options</p>
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<p>1 that were outlined by Board hearing counsel</p> <p>2 for the Board to consider with respect to the</p> <p>3 implementation of such a structure. Hydro's</p> <p>4 position has been clear that the demand energy</p> <p>5 rate structure can be implemented if the Board</p> <p>6 so wishes in the order flowing from this</p> <p>7 hearing. If the Board were to consider option</p> <p>8 one as outlined by Mr. Kennedy or option two</p> <p>9 in his final argument, we would request that</p> <p>10 the Board would give specific direction to the</p> <p>11 parties as to how the issues that are</p> <p>12 outstanding are to be resolved. To date, the</p> <p>13 discussions between the parties have not been</p> <p>14 successful and we believe that specific</p> <p>15 direction from the Board on the outstanding</p> <p>16 issues would be required to guide those</p> <p>17 discussions in the future.</p> <p>18 Now the last topic, my last five minutes,</p> <p>19 is miscellaneous and I would refer the Board</p> <p>20 here to the ones that we have listed in our</p> <p>21 final argument, and there were only a couple</p> <p>22 of additional ones raised by the parties in</p> <p>23 their final arguments. The first was the one</p> <p>24 raised by Board hearing counsel as to whether</p> <p>25 a valuation of assets is required for Hydro.</p>	<p>1 Here, we would refer to Section 17, subsection</p> <p>2 2 of the Hydro Corporation Act and submit our</p> <p>3 position is that this section adequately</p> <p>4 covers this issue and that all assets at their</p> <p>5 net book value are to be included in rate base</p> <p>6 as a result of this section and that no</p> <p>7 further valuation is required. We do agree</p> <p>8 the rate base should be fixed, but this can be</p> <p>9 done without a valuation of the assets.</p> <p>10 The next issue here is the recommendation</p> <p>11 of Board hearing counsel and the Industrial</p> <p>12 Customers that the Board should consider</p> <p>13 ordering an integrated resource planning</p> <p>14 initiative to be undertaken. We would point</p> <p>15 out that there was no evidence in this hearing</p> <p>16 with respect to this issue. In fact, we're</p> <p>17 not sure what an integrated resource plan is</p> <p>18 intended by either the Board hearing counsel</p> <p>19 or by the Industrial Customers. The scope is</p> <p>20 unclear. The timing is unclear. We believe</p> <p>21 that in light of the lack of evidence on this</p> <p>22 issue at this hearing and in light of the</p> <p>23 other issues that have to be addressed,</p> <p>24 including such issues of the marginal cost</p> <p>25 study, that it would not be appropriate for</p>

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<p>1 GREENE, Q.C.:</p> <p>2 the Board to consider at this time.</p> <p>3 The Industrial Customers in their final</p> <p>4 argument have raised four procedural issues</p> <p>5 relating to the provision of the final cost of</p> <p>6 service study arising from the Board order,</p> <p>7 and that was their first suggestion. The</p> <p>8 second one was that Hydro provide the RSP</p> <p>9 reports to the stakeholders. Hydro would</p> <p>10 point out that with respect to those two</p> <p>11 recommendations, that is what we are now</p> <p>12 doing. In the last hearing, we did provide</p> <p>13 the final cost of service study flowing from</p> <p>14 the Board Order and we certainly would plan to</p> <p>15 do that at this hearing. Similarly, we do</p> <p>16 provide monthly RSP reports to the Industrial</p> <p>17 Customers and to Newfoundland Power and to the</p> <p>18 Board and we would expect to continue that</p> <p>19 practice.</p> <p>20 Their next recommendation was to provide</p> <p>21 the actual cost of service studies, and again,</p> <p>22 we have no problem if the Board believes that</p> <p>23 is appropriate that the parties receive actual</p> <p>24 cost of service studies following the</p> <p>25 completion of the year end. Similarly, with</p>	<p>1 their request that the Grant Thornton reports</p> <p>2 be provided. Again, Hydro does not object to</p> <p>3 that proposal.</p> <p>4 So I believe in the time that has been</p> <p>5 provided, I have covered the issues that were</p> <p>6 raised in the other parties' arguments that</p> <p>7 were not addressed in our final argument. It</p> <p>8 was not possible in the time allotted this</p> <p>9 morning to cover each of the issues, and as I</p> <p>10 said at the beginning, I would refer the Board</p> <p>11 to our written final argument where I believe</p> <p>12 we have covered all of the main issues,</p> <p>13 certainly all the main issues that were raised</p> <p>14 by the parties.</p> <p>15 The last point is costs and again, our</p> <p>16 position is set out on the issue of costs on</p> <p>17 pages 89 to 90 and I don't need to say</p> <p>18 anything additional at that time, but I would</p> <p>19 refer the Board to pages 89 to 90 of our final</p> <p>20 argument.</p> <p>21 I would like to thank you for your</p> <p>22 attention this morning. At this time, I also</p> <p>23 would like to thank the Board, the Board staff</p> <p>24 and all the parties to the hearing for their</p> <p>25 cooperation throughout. These proceedings can</p>
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<p>1 tend to be difficult at times. They certainly</p> <p>2 are lengthy, and the cooperation of all the</p> <p>3 parties to the hearing certainly lightened the</p> <p>4 burden as we progressed through, and I would</p> <p>5 like to thank everybody for that. Thank you.</p> <p>6 CHAIRMAN:</p> <p>7 Q. Thank you, Ms. Greene. I'd just ask my</p> <p>8 colleagues if there are any questions after</p> <p>9 each of the oral arguments. Any questions?</p> <p>10 COMMISSIONER WHALEN:</p> <p>11 Q. Thank you.</p> <p>12 CHAIRMAN:</p> <p>13 Q. Thank you once again. Good morning, Mr.</p> <p>14 Browne. Mr. Fitzgerald, good morning.</p> <p>15 MR. FITZGERALD:</p> <p>16 Q. Good morning, Mr. Chairman. I'm going to</p> <p>17 commence our submission this morning on the</p> <p>18 issue of Hydro's rate of return on equity.</p> <p>19 Hydro has come before this Board and has</p> <p>20 requested that you allow them a return on</p> <p>21 equity of 9.75 percent. At page 48 of Hydro's</p> <p>22 written argument, the following statement</p> <p>23 appears, this is at lines 28 and 30. I don't</p> <p>24 know if we have to go there. Hydro says</p> <p>25 "Hydro submits that the evidence supports its</p>	<p>1 position that the Board should allow a return</p> <p>2 on equity of 9.75 percent, the same as allowed</p> <p>3 recently for Newfoundland Power." Before I</p> <p>4 get into the reasons why we think that Hydro</p> <p>5 is not entitled to a level of return of that</p> <p>6 magnitude, it is important to keep in mind</p> <p>7 that things in the financial markets have</p> <p>8 changed since Newfoundland Power's</p> <p>9 application. Hydro has made no adjustment in</p> <p>10 its written argument or in its submissions for</p> <p>11 these changes.</p> <p>12 Specifically, the Board in P.U. 19 (2003)</p> <p>13 and that's the Power decision, the Board</p> <p>14 allowed a rate of return of 9.75 percent to</p> <p>15 10.25 percent based in part on the then risk-</p> <p>16 free rate linked to 30-year Canada bonds. At</p> <p>17 the time, the Board noted that the spot yield</p> <p>18 for these bonds was approximately 5.6 percent.</p> <p>19 The Board combined the risk-free rate of 5.6</p> <p>20 percent with a 4.15 percent deemed equity risk</p> <p>21 premium, therefore arriving at a rate of</p> <p>22 return of 9.75 percent. However, as recent as</p> <p>23 yesterday, the Globe and Mail has reported</p> <p>24 that the ask yield on 30-year Canada bonds has</p> <p>25 reduced to a level of 5.13 percent. That's</p>

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<p>1 MR. FITZGERALD:</p> <p>2 nearly 50 basis points less than what it had</p> <p>3 been in the spring. Thus applying the Board's</p> <p>4 reasoning from the Newfoundland Power case,</p> <p>5 the combination of a 5.13 risk-free rate with</p> <p>6 an equity risk premium of 4.15 would only</p> <p>7 amount to a rate of return of 9.28 percent.</p> <p>8 So our point on this is that Hydro, even if it</p> <p>9 were regarded as an investor-owned utility or</p> <p>10 should be treated as such, Hydro was not in</p> <p>11 lock step with Newfoundland Power on this</p> <p>12 issue and can't expect a return of 9.75</p> <p>13 percent merely because this is the level of</p> <p>14 return another utility was awarded at another</p> <p>15 time.</p> <p>16 However, that really isn't the main point</p> <p>17 that we have on this, on the issue of return</p> <p>18 on equity. It is our position, and we note</p> <p>19 from the written briefs filed by other</p> <p>20 parties, in particular the Industrial</p> <p>21 Customers and Newfoundland Power, that Hydro</p> <p>22 has not demonstrated that it has the</p> <p>23 characteristics of an investor-owned utility</p> <p>24 and thus is not entitled to the level of</p> <p>25 return they seek.</p>	<p>1 In 2001, after a lengthy and arduous</p> <p>2 hearing, this Board made a very decisive</p> <p>3 finding on this issue within its Order, P.U.</p> <p>4 No. 7 (2002). We have reproduced this</p> <p>5 particular finding in our brief at page five,</p> <p>6 paragraph 12. The Board's ruling was clear.</p> <p>7 Reading from the extract, it says "the Board</p> <p>8 finds no statutory basis for treating NLH as</p> <p>9 an investor-owned utility." The Board then</p> <p>10 goes further and states, you know, and</p> <p>11 indicates what it would take for the Board to</p> <p>12 treat Hydro as an investor-owned utility, and</p> <p>13 again, quoting from the extract, again this is</p> <p>14 from P.U. No. 7 (2002), "the Board believes</p> <p>15 Hydro's request is premature in the absence of</p> <p>16 a sound plan by Hydro of how it will achieve</p> <p>17 financial targets similar to an investor-owned</p> <p>18 utility and what impact this will have on its</p> <p>19 customers."</p> <p>20 It is our submission it is quite obvious</p> <p>21 from the evidence that nothing has changed</p> <p>22 since P.U. No. 7 in this regard. Hydro's</p> <p>23 status has not changed. To be fair, this is</p> <p>24 not through any fault of Hydro's. It is</p> <p>25 merely a function of the fact that Hydro</p>
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<p>1 cannot achieve the standards required by the</p> <p>2 Board to qualify as an investor-owned utility</p> <p>3 without the cooperation of its shareholder,</p> <p>4 the Provincial government. We believe the</p> <p>5 evidence is fairly clear and we have included</p> <p>6 extracts from the transcripts of the hearing</p> <p>7 in our brief that indicate that Hydro has</p> <p>8 attempted to address these issues with its</p> <p>9 shareholder, but it takes two to tango. There</p> <p>10 has been no substantive response from Hydro's</p> <p>11 shareholder, thus Hydro is no further ahead on</p> <p>12 this issue than it was in 2001.</p> <p>13 Hydro's return on equity was set in 2001-</p> <p>14 2002 at three percent. It is our submission</p> <p>15 that there is absolutely no justification to</p> <p>16 move off this level of return.</p> <p>17 From a legal perspective, Hydro relies on</p> <p>18 Section 3A.3 of the EPCA as the legal basis</p> <p>19 for their requested return. The Act is</p> <p>20 contained at Tab 2 of our materials, and of</p> <p>21 course, the Board is very familiar with the</p> <p>22 wording of this section of the Act, but we</p> <p>23 believe it's worth repeating. The Act says</p> <p>24 "it is the policy of the Province that the</p> <p>25 rates to be charged for the supply of power</p>	<p>1 within the Province should provide sufficient</p> <p>2 revenue to the producer or retailer of the</p> <p>3 power to enable it to earn a just and</p> <p>4 reasonable return under the Public Utilities</p> <p>5 Act, so that it is able to achieve and</p> <p>6 maintain a sound credit rating in the</p> <p>7 financial markets of the world." It is</p> <p>8 explicit in the Board's Order P.U. No. 7</p> <p>9 (2002) that the Board recognized at that time</p> <p>10 that Hydro's credit rating was really</p> <p>11 established by the Provincial Government's</p> <p>12 guarantee. Furthermore, CA-99 in these</p> <p>13 proceedings, the information request, tells us</p> <p>14 that Hydro has agreed that its ability to</p> <p>15 achieve and maintain a sound credit rating in</p> <p>16 world financial markets is determined by its</p> <p>17 financial parameters on a consolidated basis.</p> <p>18 So we have to question therefore the</p> <p>19 applicability or relevance of Section 3A.3 of</p> <p>20 the EPCA. Again, Hydro's credit rating is not</p> <p>21 related to the level of return provided to its</p> <p>22 equity holder. It is established by other</p> <p>23 factors.</p> <p>24 (10:33 a.m.)</p> <p>25 We know that Hydro was allowed a return</p>

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<p>1 MR. FITZGERALD:</p> <p>2 on equity in 2001 of three percent, and at</p> <p>3 page 14 of Grant Thornton's report in this</p> <p>4 hearing, dated September 2003, it is indicated</p> <p>5 that in 2000, Hydro's ROE was 2.1 percent. In</p> <p>6 2001, it was 4.4 percent and in 2002, it was</p> <p>7 4.03 percent. Despite these levels of return,</p> <p>8 we do not believe that there is any evidence</p> <p>9 before the Board that these levels of returns</p> <p>10 have adversely impacted Hydro's credit rating.</p> <p>11 The question then must be asked, we submit,</p> <p>12 then what would be achieved by awarding Hydro</p> <p>13 a return on equity of 9.75 percent which would</p> <p>14 cost the taxpayers approximately 19 million</p> <p>15 dollars? We submit the purpose of the EPCA</p> <p>16 would not be achieved. It would merely be a</p> <p>17 very expensive exercise in artificiality, in</p> <p>18 our submission.</p> <p>19 The Consumer Advocate also submits that</p> <p>20 there would be a certain unfairness inherent</p> <p>21 in awarding Hydro's shareholder a 9.75 percent</p> <p>22 ROE, when this same shareholder is obtaining</p> <p>23 certain other benefits from Hydro, and I'm</p> <p>24 talking here about political benefits to the</p> <p>25 government in compelling Hydro to collect a</p>	<p>1 huge Rural deficit from Hydro's rate payers.</p> <p>2 By edict or successive orders-in-council, the</p> <p>3 Provincial government has caused the creation</p> <p>4 of the 41 million dollar Rural deficit. We</p> <p>5 realize there is always a certain amount of</p> <p>6 subsidization in any electrical system,</p> <p>7 similar to Hydro's. However, it is the level</p> <p>8 of the Rural deficit that is the concern, and</p> <p>9 certainly the Consumer Advocate takes no issue</p> <p>10 with the Government's decision to continue the</p> <p>11 subsidization of rural rate payers, but we</p> <p>12 submit, if Government wants to order or edict</p> <p>13 an expensive social policy and use Hydro has a</p> <p>14 tool to implement it, it's not fair, we</p> <p>15 submit, for rate payers to pay for this and</p> <p>16 also pay a further 19 million dollars for a</p> <p>17 9.75 percent rate of return that is not</p> <p>18 required. I'm hesitant to use the old saying,</p> <p>19 but I'm going to anyway. It might be apt</p> <p>20 here. We would submit that Government can't</p> <p>21 have its rate and eat it too. Sorry for that,</p> <p>22 I couldn't resist.</p> <p>23 In our submission, it works an</p> <p>24 unfairness, extracting money from rate payers</p> <p>25 to pop up a utility's rate of return when</p>
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<p>1 third parties are eroding that utility's</p> <p>2 financial integrity. Hydro, not unlike</p> <p>3 Newfoundland Power, vehemently pleads to this</p> <p>4 Board for a rate of return to help achieve a</p> <p>5 sound credit rating, yet the utility's</p> <p>6 shareholder takes a course of action that</p> <p>7 works against the whole purpose of the Board's</p> <p>8 endeavour to set a rate of return to protect</p> <p>9 credit worthiness.</p> <p>10 The futility in awarding a utility its</p> <p>11 requested rate of return on equity for the</p> <p>12 purpose of maintaining its credit worthiness</p> <p>13 is illustrated by the recent financial news,</p> <p>14 the report recently released by Standard and</p> <p>15 Poor's relating to Newfoundland Power.</p> <p>16 Earlier this year, the Board awarded</p> <p>17 Newfoundland Power the ability to earn 10.25</p> <p>18 percent on its equity for the purpose of</p> <p>19 maintaining Power's, Newfoundland Power's</p> <p>20 credit worthiness. At the very same time the</p> <p>21 hearing was taking place, Newfoundland Power's</p> <p>22 shareholder, Fortis, was negotiating a billion</p> <p>23 dollar purchase of some utilities out west.</p> <p>24 As a result of this deal and the link between</p> <p>25 Newfoundland Power and its shareholder,</p>	<p>1 Fortis, Standard and Poor's has, as of January</p> <p>2 8th of this year, downgraded Newfoundland</p> <p>3 Power's credit rating. So rate payers end up</p> <p>4 paying for a 10.25 percent rate of return and</p> <p>5 also end up paying the likely extra interest</p> <p>6 costs arising from this downgrade. Similarly</p> <p>7 here, the Board cannot control Hydro's</p> <p>8 shareholder and thus the Board should be</p> <p>9 cautious when considering the applicability of</p> <p>10 the EPCA.</p> <p>11 In summary, again we say there is no</p> <p>12 necessity to allow Hydro the level of returns</p> <p>13 it requests, and even if they were awarded</p> <p>14 returns at 9.75 percent, it's doubtful that</p> <p>15 the purposes of the EPCA would be met, as the</p> <p>16 Board has no control over Hydro's shareholder</p> <p>17 and Hydro's shareholder's activities, and it</p> <p>18 is Hydro's shareholder's activities that</p> <p>19 ultimately will determine Hydro's credit</p> <p>20 worthiness. We believe this reasoning was</p> <p>21 implicit in the Board's Order P.U. No. 7</p> <p>22 (2002) and in our submission, there has been</p> <p>23 no evidence presented justifying a departure</p> <p>24 from that reasoning. Hydro should be entitled</p> <p>25 to no more than the three percent rate of</p>

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<p>1 MR. FITZGERALD:</p> <p>2 return on its equity. From a practical</p> <p>3 viewpoint, CA-173 indicates that such a level</p> <p>4 of return, that is a three percent level of</p> <p>5 return, would reduce Hydro's present revenue</p> <p>6 requirement by 12 million dollars.</p> <p>7 Alternatively, if the Board is inclined</p> <p>8 to move from this level of return, then the</p> <p>9 Consumer Advocate would endorse the approach</p> <p>10 presented by Dr. Waverman, novel as it is.</p> <p>11 By way of clarification, we have referred</p> <p>12 to Dr. Waverman's testimony in our written</p> <p>13 brief and categorized his position, perhaps</p> <p>14 incorrectly, as supporting the view that Hydro</p> <p>15 is akin to an investor-owned utility, which,</p> <p>16 of course, is not his view. What was intended</p> <p>17 there was to express our view that Dr.</p> <p>18 Waverman's approach to Hydro's cost of</p> <p>19 capital, pegged at Hydro's marginal cost of</p> <p>20 new debt, would be endorsed by the Consumer</p> <p>21 Advocate, if the Board was inclined to raise</p> <p>22 Hydro's level of return from its 2002</p> <p>23 decision.</p> <p>24 Finally and alternatively, if the Board</p> <p>25 finds that Hydro now is indeed entitled to be</p>	<p>1 treated as an investor-owned utility, we would</p> <p>2 urge the Board to accept the evidence of Dr.</p> <p>3 Kalymon over that of Ms. McShane for the</p> <p>4 reasons as stated in our written submission</p> <p>5 and there's need, we don't believe, in</p> <p>6 repeating that here. Really in conclusion, we</p> <p>7 repeat Hydro has not, and again, through no</p> <p>8 fault of its own, achieved the status of an</p> <p>9 investor-owned utility; and thus, its return</p> <p>10 should be held at the level of three percent.</p> <p>11 Absolutely no harm would come to Hydro's</p> <p>12 credit rating if this were the case and the</p> <p>13 consumers would save \$12 million.</p> <p>14 That's our submission on the issue of</p> <p>15 rate of return on equity and Mr. Browne has</p> <p>16 other points he wants to -</p> <p>17 CHAIRMAN:</p> <p>18 Q. Good morning, Mr. Browne.</p> <p>19 BROWNE, Q.C.:</p> <p>20 Q. Mr. Chairman, members of the Board, fellow</p> <p>21 counsel, in reply to some of the comments that</p> <p>22 Ms. Greene has made already this morning, one</p> <p>23 of which is particularly bothersome she states</p> <p>24 that the rates here, even with the increase,</p> <p>25 are the lowest in Atlantic Canada. And so</p>
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<p>1 they should be the lowest in Atlantic Canada</p> <p>2 because no province in Atlantic Canada has our</p> <p>3 hydraulic resources. We have between 60 and</p> <p>4 70 percent hydrology; Nova Scotia is depending</p> <p>5 on coal; PEI has some form of mix over there;</p> <p>6 New Brunswick is into nuclear power. It is an</p> <p>7 unfair comparison and those who make it, are</p> <p>8 somewhat disingenuous, if not misleading.</p> <p>9 In reference to the fuel conversion</p> <p>10 factor and the hydraulic record, we take no</p> <p>11 exception to the position put forward by</p> <p>12 Hydro. Our own expert has advised us that</p> <p>13 Hydro's position in reference to these matters</p> <p>14 is reasonable and we accept Mr. Bowman's</p> <p>15 advice in that regard.</p> <p>16 In regard to the productivity allowance,</p> <p>17 while it is always interesting from a</p> <p>18 consumer's perspective to watch the two</p> <p>19 utilities go at it in these proceedings, we</p> <p>20 believe that the Board should look to the low</p> <p>21 rate of return first and foremost. If the low</p> <p>22 rate of return is provided, we do not see any</p> <p>23 need for a productivity allowance.</p> <p>24 In reference to some of the major issues</p> <p>25 which are before the Board, I wish to first</p>	<p>1 and foremost deal with the demand energy</p> <p>2 charge. In our submission these were the</p> <p>3 first words we gave to the Board in our</p> <p>4 opening submission that we favour the demand</p> <p>5 energy charge. The history goes back to 1989</p> <p>6 and is one of inaction and procrastination and</p> <p>7 we have to say there's no good faith here on</p> <p>8 the part of the utilities and that the Board's</p> <p>9 efforts to implement the demand energy charge</p> <p>10 have been ineffectual to date and the result</p> <p>11 confidence in this process and resulting</p> <p>12 orders have been undermined. And who is paid</p> <p>13 at the cost of these delays? Well, Mr.</p> <p>14 Greneman gave us the answer to that when he</p> <p>15 said, November 14, 2003 at page 29, line 3,</p> <p>16 "Had it been put in earlier, I think efforts</p> <p>17 would have been made earlier on to change and</p> <p>18 apply and put in plans and road management</p> <p>19 techniques to lower the demand at this point</p> <p>20 in time. It would have instilled the need to</p> <p>21 conserve capital and demand, there would have</p> <p>22 been an intellectual recognition of the fact</p> <p>23 that there are two components of supply;</p> <p>24 namely, capacity and energy." Mr. Doug Bowman</p> <p>25 has said, I think, that if it had been put in,</p>



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<p>1 BROWNE, Q.C.</p> <p>2 "it would encourage more efficient use of</p> <p>3 resources over the current energy only rate",</p> <p>4 from the transcript of November 17th.</p> <p>5 Mr. Chymko and Ms. Tabone has stated on</p> <p>6 November 19th, "I think at the end of the day,</p> <p>7 there's two parts to the system. One is</p> <p>8 supply and planning for supply; and the second</p> <p>9 is what's the customer going to take at the</p> <p>10 end of the day and if you want to move towards</p> <p>11 better resource management, conservation,</p> <p>12 energy management, the customer has to be</p> <p>13 receiving a signal that matches the supply</p> <p>14 side. We should have had that signal in 1989,</p> <p>15 in the result, there's been more capital</p> <p>16 projects, the consumers have paid dearly."</p> <p>17 But now we have the vast majority of experts</p> <p>18 in this proceeding strongly endorsing the</p> <p>19 introduction of the demand energy rate. The</p> <p>20 demand energy rate and we are fifteen years</p> <p>21 later still discussing demand energy rate, the</p> <p>22 demand energy rate is endorsed by all, with</p> <p>23 the exception of Newfoundland Power. They are</p> <p>24 the outlier. All experts agree and there has</p> <p>25 never been so consistent testimony among</p>	<p>1 experts in a particular issue before this</p> <p>2 Board since I've been here, since 1996. Your</p> <p>3 own hearing counsel has given you three</p> <p>4 options to consider in the implementation of</p> <p>5 the demand energy rate. While you have stated</p> <p>6 in recent decisions that you place</p> <p>7 considerable stock in the advice given by</p> <p>8 Board hearing counsel and we respect that, we</p> <p>9 request in this instance that you defer to the</p> <p>10 experts who have testified with a complete</p> <p>11 consistency in reference to the demand energy</p> <p>12 rate and what is required for its immediate</p> <p>13 implementation. The experts have been</p> <p>14 consistent, no Marginal Cost Study prior to</p> <p>15 implementation.</p> <p>16 (10:45 a.m.)</p> <p>17 Mr. Chymko stated in November 19th, page</p> <p>18 59, line 1, "The first step will be to put in</p> <p>19 an initial demand energy rate. We would try</p> <p>20 and be conservative. The second step would be</p> <p>21 looking at an integrated resource plan. The</p> <p>22 third step would be following through with a</p> <p>23 marginal study. And then the fourth step is</p> <p>24 then coming back and tweaking the demand</p> <p>25 energy rate."</p>
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<p>1 Mr. Greneman does not agree that a</p> <p>2 Marginal Cost Study is a prerequisite to the</p> <p>3 immediate implementation of the demand energy</p> <p>4 rate. Mr. Greneman testified when he was</p> <p>5 asked, but the first step would be to</p> <p>6 implement the demand energy rate, Mr. Greneman</p> <p>7 says, "Absolutely, I think it would be a</p> <p>8 mistake to wait for the Marginal Cost Study.</p> <p>9 It's my feeling we would never have a demand</p> <p>10 and energy rate because if we can't agree on</p> <p>11 something so simple as a demand and energy</p> <p>12 rate, with the added complexity of marginal</p> <p>13 cost, it just becomes too involved in my</p> <p>14 view." I think there's a warning in that.</p> <p>15 Let's not get bogged down now by going back</p> <p>16 into mediation, into protracted discussions.</p> <p>17 I think this is not rocket science. Every</p> <p>18 other utility in the country has it, and</p> <p>19 surely it can be implemented without much to</p> <p>20 do. Mr. Patrick Bowman told us on November</p> <p>21 13th, "I don't see the link between the two,</p> <p>22 in terms of the items we just talked about in</p> <p>23 regards to demand energy rate. The Marginal</p> <p>24 Cost Study doesn't change the fact that most</p> <p>25 other wholesale or retail utilities seem to</p>	<p>1 face this type of rate structure. It doesn't</p> <p>2 change the fact that there will be some form</p> <p>3 of price signals. Someone may argue whether</p> <p>4 they're exactly the right ones, but right now,</p> <p>5 there's no rate related price signals in</p> <p>6 regard to peak load. So it's hard to know</p> <p>7 what's there in terms of DSM that could be</p> <p>8 easily accomplished, so I don't necessarily</p> <p>9 see the link." Then he says, "I don't think</p> <p>10 it's a reason to delay implementing a demand</p> <p>11 energy rate."</p> <p>12 Mr. Doug Bowman stated clearly to</p> <p>13 Commissioner Whalen in reference to the</p> <p>14 Marginal Cost Study, who asked him the</p> <p>15 question, "So the question of whether we go</p> <p>16 with the demand energy rate doesn't depend on</p> <p>17 having a Marginal Cost Study and the results</p> <p>18 of such study completed in advance?" Mr. Doug</p> <p>19 Bowman says, "Not at all, those</p> <p>20 recommendations are completely independent."</p> <p>21 And Mr. Doug Bowman says in the transcript as</p> <p>22 well, when he was asked by Mr. Kelly, "Could</p> <p>23 you make an appropriate recommendation without</p> <p>24 having marginal costs? I could." He says, "I</p> <p>25 could make an appropriate recommendation on</p>

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<p>1 BROWNE, Q.C.:</p> <p>2 the basis of embedded costs. I prefer to</p> <p>3 incorporate marginal cost price signals in my</p> <p>4 rates, but certainly the norm is to use</p> <p>5 embedded cost."</p> <p>6 And on the issue again, Mr. Chymko said,</p> <p>7 "Yes, again, we believe that in 2004, strides</p> <p>8 should be taken and put in place a</p> <p>9 conservative, what we call a conservative</p> <p>10 demand energy rate, until we get through and</p> <p>11 we would recommend an integrated resource</p> <p>12 process and then a marginal study."</p> <p>13 And so, only Newfoundland Power stands in</p> <p>14 the path of a demand energy charge. The</p> <p>15 reasons are self serving: revenue. More to</p> <p>16 do with their shareholder than their</p> <p>17 customers. Every utility in Canada and the</p> <p>18 United States has one, and the time has</p> <p>19 finally arrived here. And let's not make this</p> <p>20 another lost opportunity through</p> <p>21 procrastination, further hearings, further</p> <p>22 studies. That only plays into their hands and</p> <p>23 gives them another year with the energy only</p> <p>24 rate. We request that the Board implement a</p> <p>25 demand energy charge along the lines as</p>	<p>1 suggested by the experts, one of whom</p> <p>2 suggested it could be done within a month of</p> <p>3 the Board's decision. We do not want to go</p> <p>4 into another year of this.</p> <p>5 Just to move on from that discussion and</p> <p>6 go to the Labrador issues, in reference to the</p> <p>7 Town of Labrador City and Labrador West and</p> <p>8 the Labrador East situation, the consumers of</p> <p>9 Labrador West do not believe that their</p> <p>10 proposed rates reflect the actual cost of</p> <p>11 service for the residents of Labrador West.</p> <p>12 The residents of Labrador East take the</p> <p>13 contrary view. Complicating this matter is</p> <p>14 that the Board was ordered to re-examine this</p> <p>15 particular issue by an Order-in-Council and</p> <p>16 the Board has done that. We find it difficult</p> <p>17 in this particular circumstance because it's</p> <p>18 our function to represent consumers generally</p> <p>19 and not particular interest, we would hope</p> <p>20 that the Board would examine this issue on a</p> <p>21 cost basis and come to its own conclusions.</p> <p>22 But because we cannot represent the consumers</p> <p>23 and their various interests and their opposing</p> <p>24 interest in Labrador in reference to this</p> <p>25 issue, we believe that the Town of Labrador</p>
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<p>1 City, who has decided to put their case</p> <p>2 forward based on the Order-in-Council and the</p> <p>3 Cabinet directive, it be given their cost in</p> <p>4 reference to this proceeding.</p> <p>5 In reference to the lifeline block, the</p> <p>6 changes to the lifeline block come from the</p> <p>7 report as found in CA-13 NLH, a review of the</p> <p>8 inadequacy of the lifeline on diesel electric</p> <p>9 systems and let's not forget that when we're</p> <p>10 dealing with the lifeline block. When we went</p> <p>11 to Labrador, people seemed to be unfamiliar</p> <p>12 with what was suggested and the Board, in its</p> <p>13 wisdom, instructed Newfoundland and Labrador</p> <p>14 Hydro to go back and inform people as to what</p> <p>15 the ramifications would be of the new</p> <p>16 proposal. And Newfoundland and Labrador Hydro</p> <p>17 have made a very fair attempt to do that in</p> <p>18 the pamphlet that was sent to customers and to</p> <p>19 community leaders, along the coastal areas of</p> <p>20 Labrador and others who are affected by</p> <p>21 diesel, and I think now, perhaps, that the</p> <p>22 information is there, it may be appropriate to</p> <p>23 introduce the new lifeline block, at least on</p> <p>24 a trial basis, to determine if it works. I</p> <p>25 can't see it being any worse than what the</p>	<p>1 people have there now. They're certainly</p> <p>2 going to get more electricity at a less rate</p> <p>3 and it does impose certain conservation</p> <p>4 restraints, as it should, where electricity is</p> <p>5 so expensive to produce in those areas of our</p> <p>6 Province.</p> <p>7 In dealing with the issue of</p> <p>8 conservation, Newfoundland and Labrador Hydro,</p> <p>9 prior to their hearing, have introduced the</p> <p>10 HYDROWISE Program. Interestingly enough when</p> <p>11 I was coming into the proceeding this morning,</p> <p>12 there was a radio ad on advocating HYDROWISE</p> <p>13 and giving specific examples of how consumers</p> <p>14 would be HYDROWISE which is something that we</p> <p>15 do advocate, as opposed to the other radio</p> <p>16 advertisements Hydro has on telling people to</p> <p>17 be careful on the roads. Electricity</p> <p>18 obviously is in their mandate, roads aren't,</p> <p>19 so I would hope they would have the good sense</p> <p>20 to have a good consistent message to consumers</p> <p>21 dealing with conservation during all times of</p> <p>22 the year, not during selective periods. We</p> <p>23 note that the HYDROWISE Program lacks specific</p> <p>24 targets. Newfoundland and Labrador Hydro</p> <p>25 seems to say that's okay, which causes us some</p>

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<p>1 BROWNE, Q.C.:</p> <p>2 concern. I think any program which urges</p> <p>3 conservation should have specific targets, and</p> <p>4 a good example of that was Mr. Porter's</p> <p>5 evidence in Labrador West, where IOC, who are</p> <p>6 getting a very good electricity rate, by the</p> <p>7 way, but they're nonetheless are probably the</p> <p>8 only industry in the Province to take</p> <p>9 advantage of the Kyoto protocol and the</p> <p>10 Climate Control Plan for Canada and got money</p> <p>11 out of that program and have a goal to reduce</p> <p>12 their own consumption. And certainly that</p> <p>13 should be the target in any conservation</p> <p>14 program, including HYDROWISE. HYDROWISE</p> <p>15 should be encouraging consumers individually</p> <p>16 in the Province to reduce their consumption</p> <p>17 and it should have specific goals in dealing</p> <p>18 with the facility at Holyrood to burn less and</p> <p>19 to show conservation in that particular way.</p> <p>20 We know the consumers of the province and</p> <p>21 everywhere you went, I asked the questions in</p> <p>22 Stephenville, in Corner Brook and in Labrador</p> <p>23 City and in Happy Valley/Goose Bay, consumers</p> <p>24 are ready for this, all consumers who I asked,</p> <p>25 "Oh yes, we are very interested in</p>	<p>1 conservation, tell us how to go about it, tell</p> <p>2 us how to do it." I got some comments in our</p> <p>3 brief there from Mr. Terry Locke of the Great</p> <p>4 Humber Joint Councils and Mr. Michael Lacey, a</p> <p>5 concerned citizen in Corner Brook, and Mr.</p> <p>6 Isaiah Hann who is very well respected in</p> <p>7 Corner Brook and is dealing with senior</p> <p>8 citizens there, and Cator Best, the Deputy</p> <p>9 Mayor of Kippens, and Michael Tobin, the Chair</p> <p>10 of the Economic Development Committee for</p> <p>11 Stephenville, they all are ready for this.</p> <p>12 It's only the utilities who are not and the</p> <p>13 Board, if it's interested in pursuing its</p> <p>14 mandate of ensuring the lowest possible</p> <p>15 electricity costs, obviously have to endorse</p> <p>16 conservation and have to direct the utilities</p> <p>17 in obtaining certain goals from a conservation</p> <p>18 perspective. This could be done also by the</p> <p>19 billing format. Some years ago, I think it</p> <p>20 was back in the 1990's, Newfoundland Power</p> <p>21 stated that they were going to come up with</p> <p>22 another billing format. Well, we're still</p> <p>23 waiting, but I notice that there should be a</p> <p>24 common billing format for both Newfoundland</p> <p>25 and Labrador Hydro and Newfoundland Power and</p>
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<p>1 the billing format should deal and provide</p> <p>2 information to consumers concerning energy</p> <p>3 usage, how much a baseboard heater uses and</p> <p>4 how much fans on, electric fans and so on, how</p> <p>5 much these use. This is valuable information</p> <p>6 and we have no better advice than that</p> <p>7 rendered by Barbara Mullaly Pauley from the</p> <p>8 Natural Resources Department, who has been</p> <p>9 involved in these matters since 1996--sorry,</p> <p>10 since 1976 and testified before the Board at a</p> <p>11 recent hearing and said that when people get</p> <p>12 direct feedback and understand how much they</p> <p>13 are spending, it is effective. And, of</p> <p>14 course, if people are to understand how much</p> <p>15 they are spending, they need their meters</p> <p>16 read. Hydro is doing that and we commend them</p> <p>17 for their efforts and the other utility is</p> <p>18 doing it on a sporadic basis and that's not</p> <p>19 good enough. People need to know how much</p> <p>20 they are spending on a monthly basis.</p> <p>21 Estimates are not good enough and only in an</p> <p>22 emergency circumstances that estimates be</p> <p>23 given. The connection between reading your</p> <p>24 meter, reporting to consumers and</p> <p>25 conservation, they're all interconnected and</p>	<p>1 for the Board to allow a utility not to read</p> <p>2 meters on a monthly basis, is entirely in</p> <p>3 appropriate.</p> <p>4 We're particularly struck by the</p> <p>5 presentation by Blueline Innovations Inc. We</p> <p>6 are happy that Newfoundland Power has</p> <p>7 announced their intention to introduce this</p> <p>8 technology in a hundred homes, but we've yet</p> <p>9 to hear Hydro announce similar plans and one</p> <p>10 would think that Hydro, who produces the</p> <p>11 electricity, that such a device would be at</p> <p>12 the forefront of their thinking because while</p> <p>13 it's good to advise people of the HYDROWISE</p> <p>14 Program on the radio, and take various actions</p> <p>15 to bring down their electricity costs, a</p> <p>16 device such as this, if it becomes common in</p> <p>17 this jurisdiction, can only help and it will</p> <p>18 help us all.</p> <p>19 In reference to the Automatic Adjustment</p> <p>20 Formula, we do not advocate any further</p> <p>21 introduction of an Automatic Adjustment</p> <p>22 Formula in this jurisdiction until the</p> <p>23 Legislation is straightened out. The Board,</p> <p>24 following the 2003 hearing, made it crystal</p> <p>25 clear that their interpretation of the Stated</p>

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<p>1 BROWNE, Q.C.:</p> <p>2 Case puts their jurisdiction into rate base</p> <p>3 only. They have no jurisdiction over equity,</p> <p>4 according to their findings, and therefore, no</p> <p>5 jurisdiction over excess earnings which come</p> <p>6 out of equity, as long as it stays within the</p> <p>7 confines of--but that would change if it goes</p> <p>8 outside the confines of rate base, of course,</p> <p>9 but we are--we believe the time is now, it</p> <p>10 would now be a very good time for the Board to</p> <p>11 meet with the Minister of Justice and request</p> <p>12 a change in Legislation. We do not need, at</p> <p>13 this time, a performance based regulation, we</p> <p>14 don't need a major overhaul of the Act right</p> <p>15 now, but we do need this amendment to allow</p> <p>16 the Board to assume its jurisdiction, so that</p> <p>17 there's no confusion out there. And so that</p> <p>18 the Board can have control, should a utility</p> <p>19 earn within the confines of rate base, but yet</p> <p>20 over earn on equity. It's not good enough for</p> <p>21 the Board to sit back and do nothing about</p> <p>22 this. The Board can request a meeting with</p> <p>23 the Attorney General, point out the problem,</p> <p>24 request the amendment. I can't imagine a</p> <p>25 politician refusing any amendment that would</p>	<p>1 help the consumers of the Province.</p> <p>2 If the amendment goes through, we believe</p> <p>3 an Automatic Adjustment Formula would be</p> <p>4 appropriate for Newfoundland Hydro. We fully</p> <p>5 recognize these hearings can't go on and on</p> <p>6 indefinitely. We don't advocate any more</p> <p>7 hearings in the future and we don't see any</p> <p>8 need for any generic hearings on any</p> <p>9 particular issues. I think we should now work</p> <p>10 to ensure that the Automatic Adjustment</p> <p>11 Formula is serving both the interest of the</p> <p>12 consumers and the utility well and is doing</p> <p>13 what it was intended to do. Your counsel,</p> <p>14 hearing counsel in his brief, said there were</p> <p>15 lessons learned from the Automatic Adjustment</p> <p>16 Formula and the way it went awry during the</p> <p>17 period 2000, 2001 and 2002. Well, that</p> <p>18 remains to be seen if the lessons have been</p> <p>19 learned. Certainly there were problems cited,</p> <p>20 whether the lessons have been learned, we'll</p> <p>21 have to wait on that.</p> <p>22 I've already addressed the issue of costs</p> <p>23 for the Town of Labrador City and we do favour</p> <p>24 the Town of Labrador City getting their costs</p> <p>25 and we also favour a contribution for the cost</p>
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<p>1 for the Industrial Customers, similar to what</p> <p>2 the Board did in a previous hearing because</p> <p>3 the Industrial Customers have specific issues.</p> <p>4 In reference to salaries and executive</p> <p>5 compensation, we take no issue with the salary</p> <p>6 level and executive compensation paid by</p> <p>7 Hydro, which we find reasonable.</p> <p>8 Finally I should state this, the past,</p> <p>9 the 1990's was not a particularly good one for</p> <p>10 the consumers of the Province in dealing with</p> <p>11 the Public Utilities Board. From 1992 to</p> <p>12 1996, there were no hearings and Newfoundland</p> <p>13 Power was left on a 1992 rate for those</p> <p>14 intervening years which was exorbitant.</p> <p>15 Consumers paid the price. In 1996, the Board</p> <p>16 attempted to deal with the utility as best it</p> <p>17 could and called it back for another hearing</p> <p>18 in 1998. In 1998, a good rate of return was</p> <p>19 set; however, after the Stated Case,</p> <p>20 Newfoundland Power ended up over earning on</p> <p>21 its equity and therefore, the years from 2000,</p> <p>22 2001 and 2002 were not particularly good for</p> <p>23 consumers. Now that the Board is regulating</p> <p>24 Newfoundland Hydro and has two utilities to</p> <p>25 regulate, I think it's very important that the</p>	<p>1 Board keeps to its objectives, particularly in</p> <p>2 between hearings we request the Board to be</p> <p>3 vigilant. We request that the Board's</p> <p>4 financial consultants be required to file its</p> <p>5 reports on a timely basis within 60 days of</p> <p>6 the end of any particular year in dealing with</p> <p>7 these utilities. If action has to be taken,</p> <p>8 we request immediate action. We do not see</p> <p>9 any merit in a utility examining itself or</p> <p>10 giving any kind of study, it's hardly</p> <p>11 independent. If the utility is over earning</p> <p>12 or not earning as it is intended to and the</p> <p>13 consumers are paying more, the Board has to</p> <p>14 take action and we absolutely request the</p> <p>15 Board to monitor the situation in between</p> <p>16 these hearings because the likelihood of</p> <p>17 another hearing until 2008 is not promising.</p> <p>18 So therefore, these are our closing comments,</p> <p>19 we would like to thank the Board, its staff,</p> <p>20 particularly Barbara Thistle, Cheryl Blunder</p> <p>21 and the efforts that were made to put the</p> <p>22 trips together to Stephenville, Corner Brook</p> <p>23 and to Labrador. It was all done very, very</p> <p>24 efficiently and for that, we are most grateful</p> <p>25 and I think we got a good result. Thank you</p>

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<p>1 very much.</p> <p>2 CHAIRMAN:</p> <p>3 Q. Thank you, Mr. Browne. Thank you, Mr.</p> <p>4 Fitzgerald. Any questions Commissioner</p> <p>5 Saunders? Commissioner Whalen? I have none</p> <p>6 either. It's 10 after 11 now, could we take a</p> <p>7 break until 11:30 and return?</p> <p>8 (BREAK 11:10 a.m.)</p> <p>9 (RESUME - 11:32 A.M.)</p> <p>10 CHAIRMAN:</p> <p>11 Q. Ms. Newman, anything before we continue?</p> <p>12 MS. NEWMAN:</p> <p>13 Q. No, Chair.</p> <p>14 CHAIRMAN:</p> <p>15 Q. Okay. Mr. Browne, I just--before we proceed</p> <p>16 to Mr. Kelly--Mr. Browne?</p> <p>17 BROWNE, Q.C.:</p> <p>18 Q. Yes.</p> <p>19 CHAIRMAN:</p> <p>20 Q. I just have one question, if you will, that</p> <p>21 came to me while I was in there.</p> <p>22 BROWNE, Q.C.:</p> <p>23 Q. Should be interesting; go ahead.</p> <p>24 CHAIRMAN:</p> <p>25 Q. No, no, it's perhaps a clarifying question</p>	<p>1 more than anything. I believe it was in the</p> <p>2 Newfoundland Power hearing, there was a</p> <p>3 consensus in the mediation report, as I</p> <p>4 recall, supporting a Performance Based Review</p> <p>5 and that the Board would look at that as, at</p> <p>6 least, an option. And I think the Board has</p> <p>7 gone on record and, indeed, we have done some</p> <p>8 work in that area, but we've gone on record in</p> <p>9 relation to the Energy Policy Review that we</p> <p>10 would support looking at that and, in</p> <p>11 addition, having a return on investment or</p> <p>12 return on equity as being something that we</p> <p>13 would wish to regulate as, sort of, a set of</p> <p>14 tools enabling us to do perhaps a better job</p> <p>15 in relation to regulating the utilities. But</p> <p>16 are you now saying, because I seem to recall,</p> <p>17 in your oral argument, you said that you</p> <p>18 didn't support the notion of PBR system at</p> <p>19 this point in time which seems to be a little</p> <p>20 bit contradictory from what I understand your</p> <p>21 position to be previous.</p> <p>22 BROWNE, Q.C.:</p> <p>23 Q. We support the Performance Based Regulation in</p> <p>24 the long term, but in order to have</p> <p>25 Performance Based Regulation our own experts</p>
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<p>1 tell us you need proper rate design which we</p> <p>2 do not have in this jurisdiction. But the</p> <p>3 immediate concern is the legislative amendment</p> <p>4 to bring about the Board's jurisdiction to</p> <p>5 deal with equity as opposed to rate base. And</p> <p>6 that could be an amendment that you could get</p> <p>7 through the legislature very quickly.</p> <p>8 Whereas, if you wait for a Performance Based</p> <p>9 Regulation and a major overhaul of the Act, I</p> <p>10 wouldn't want that to delay a quick amendment</p> <p>11 that could be made. Because the amendment</p> <p>12 could be made just to Section 80 of the Act.</p> <p>13 But in the long run, we do favour Performance</p> <p>14 Based Regulation and we do favour something</p> <p>15 along the lines that was introduced in Boston,</p> <p>16 in Massachusetts when Performance Based</p> <p>17 Regulation, when in place there, the initial</p> <p>18 savings for the first two years, as I recall,</p> <p>19 went to the consumers of the State. So, we</p> <p>20 would want any savings that come from</p> <p>21 Performance Based Regulation not to go to the</p> <p>22 utility initially, but to go to the consumers</p> <p>23 of the Province because there will be savings</p> <p>24 and we would not want those pocketed. So, we</p> <p>25 do favour it, but we would want to be very</p>	<p>1 careful as to how it would be implemented, but</p> <p>2 that's a long-term goal and I believe it would</p> <p>3 require a massive overhaul of the Act and I</p> <p>4 don't believe you would get that through the</p> <p>5 legislature in a session such as the one</p> <p>6 coming; whereas, you could get a quick</p> <p>7 amendment through.</p> <p>8 CHAIRMAN:</p> <p>9 Q. So, it's a timing issue more than -</p> <p>10 BROWNE, Q.C.:</p> <p>11 Q. It's a timing issue, yes. Thank you very</p> <p>12 much.</p> <p>13 CHAIRMAN:</p> <p>14 Q. Okay.</p> <p>15 MS. NEWMAN:</p> <p>16 Q. Chair, sorry to interrupt, but I would point</p> <p>17 out that the mediation report filed in this</p> <p>18 hearing in Paragraph C.C. says that the</p> <p>19 parties request the Board prepare or obtain a</p> <p>20 report on Performance Based Regulation</p> <p>21 alternatives for Hydro and Newfoundland Power.</p> <p>22 CHAIRMAN:</p> <p>23 Q. Yes, I -</p> <p>24 MS. NEWMAN:</p> <p>25 Q. So, that was from this hearing.</p>

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<p>1 CHAIRMAN:</p> <p>2 Q. Yes, so this hearing as opposed to the -</p> <p>3 MS. NEWMAN:</p> <p>4 Q. Yes.</p> <p>5 CHAIRMAN:</p> <p>6 Q. Okay, thank you, Ms. Newman. Thank you, Mr.</p> <p>7 Browne. Good morning, Mr. Kelly.</p> <p>8 KELLY, Q.C.:</p> <p>9 Q. Thank you, Chair.</p> <p>10 CHAIRMAN:</p> <p>11 Q. When you're ready, please.</p> <p>12 KELLY, Q.C.:</p> <p>13 Q. Chair and Commissioners, Hydro's application</p> <p>14 seeks a substantial rate increase, an</p> <p>15 additional 36.6 million in rates. That would</p> <p>16 mean a 12 percent price increase for</p> <p>17 Newfoundland Power. Combined with the July</p> <p>18 RSP adjustment, that would mean almost a ten</p> <p>19 percent increase for Newfoundland Power's</p> <p>20 customers. The issues that arise in this</p> <p>21 hearing require consideration by the Board of</p> <p>22 the regulatory objectives that flow from the</p> <p>23 Power Policy of the Province under the</p> <p>24 Electrical Power Control Act.</p> <p>25 The two most important regulatory</p>	<p>1 objectives that affect the issues in this</p> <p>2 proceeding are first, Hydro's long-term</p> <p>3 financial strength and credit worthiness</p> <p>4 derived from Section 3(a)(3) of the Act and</p> <p>5 two, the efficiency objectives derived from</p> <p>6 Section 3(b)(1) and 3(b)(3) of the Act.</p> <p>7 Meeting those regulatory objectives requires</p> <p>8 the exercise by the Board of regulatory</p> <p>9 judgment and discretion. Guidance is found in</p> <p>10 what the Board has already decided in relation</p> <p>11 in Hydro in P.U.7. The Board acknowledged</p> <p>12 that it would take time to implement full</p> <p>13 regulation of Hydro and discuss the phasing is</p> <p>14 of policy decisions over time. A policy of</p> <p>15 gradualism.</p> <p>16 The Board also expressed the need for a</p> <p>17 clear and consistent message in regulation.</p> <p>18 Efficiency, rate stability and predictability</p> <p>19 were some of the factors identified by the</p> <p>20 Board as important considerations.</p> <p>21 In my presentation, I will deal with the</p> <p>22 following issues. First, the revenue</p> <p>23 requirement, then the return on equity and</p> <p>24 third, the wholesale rate issue. I would also</p> <p>25 comment on the Industrial Customers position</p>
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<p>1 with respect to three cost of service issues.</p> <p>2 First, the revenue requirement. The</p> <p>3 Board's mandate in considering Hydro's revenue</p> <p>4 requirement is found in the Public Utilities</p> <p>5 Act in Section 80 and in the Electrical Power</p> <p>6 Control Act in Section 3(b)(1) and 3(b)(3).</p> <p>7 Under Section 80(2), Hydro should be allowed</p> <p>8 those expenses that are reasonable and prudent</p> <p>9 and properly chargeable to operating account.</p> <p>10 Reasonable and prudent also takes direction</p> <p>11 and meaning from the Electrical Power Control</p> <p>12 Act because the Board is mandated to implement</p> <p>13 a power policy that requires the most</p> <p>14 efficient production transmission and</p> <p>15 distribution of power and that requires power</p> <p>16 to be delivered at the lowest possible cost</p> <p>17 consistent with reliable service. Therefore,</p> <p>18 expenses which are reasonable and prudent and</p> <p>19 necessary for the efficient operation should</p> <p>20 be allowed and expenses which are not</p> <p>21 reasonable or prudent and which are</p> <p>22 inefficient should be disallowed. Hydro's</p> <p>23 controllable operating costs have risen seven</p> <p>24 percent or six million dollars from the 2002</p> <p>25 allowed test year costs to forecast 2004. As</p>	<p>1 shown in the Table on page B31 of our Brief,</p> <p>2 both salaries and non-labour costs have risen.</p> <p>3 Hydro's proposed total revenue</p> <p>4 requirement apart from its ROE is</p> <p>5 approximately 350 million dollars.</p> <p>6 Newfoundland Power submits that the amount to</p> <p>7 be paid by consumers should be reduced by</p> <p>8 approximately 7.7 million dollars or two</p> <p>9 percent. That amount is comprised of</p> <p>10 approximately seven million dollars in expense</p> <p>11 reductions at page B46 of our Brief, an</p> <p>12 increase of five hundred thousand dollars in</p> <p>13 Hydro's productivity allowance at page B48 and</p> <p>14 a reduction of two hundred and seventy eight</p> <p>15 thousand in interest expense at page C6.</p> <p>16 Newfoundland Power submits that approximately</p> <p>17 7.2 million of that amount comprising the</p> <p>18 expense and interest reductions are costs that</p> <p>19 are not, on the evidence, reasonable and</p> <p>20 prudent, while the remaining five hundred</p> <p>21 thousand dollars is an increase in the</p> <p>22 productivity allowance to achieve more general</p> <p>23 productivity or efficiency gains. The</p> <p>24 detailed explanation for all of the items is</p> <p>25 set out in our brief. I will only comment on</p>

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<p>1 KELLY, Q.C.:</p> <p>2 a few of them.</p> <p>3 The first if the fuel conversion factor.</p> <p>4 The evidence does not support Hydro's position</p> <p>5 of a fuel conversion factor of 624 kilowatt</p> <p>6 hours per barrel. Three factors are important</p> <p>7 that lead to a conclusion that 636 kilowatt</p> <p>8 hours per barrel is the best estimate of the</p> <p>9 fuel conversion factor for 2004, rather than</p> <p>10 the simple average proposed by Hydro. And</p> <p>11 that's the test, what is the best estimate of</p> <p>12 the fuel conversion factor for the test year?</p> <p>13 The first factor is that the forecast</p> <p>14 thermal production for 2004 is 18.5 percent</p> <p>15 higher than the 1996 to 2002 average. The</p> <p>16 evidence is clear that the higher the</p> <p>17 production, the higher the achieved fuel</p> <p>18 conversion factor. This suggests a fuel</p> <p>19 conversion factor of 631 before adjusting for</p> <p>20 efficiency improvements and the detailed</p> <p>21 analysis of that is set out in our Brief.</p> <p>22 The second factor is that the efficiency</p> <p>23 initiatives and an additional five kilowatt</p> <p>24 hours per barrel bringing the total to 636.</p> <p>25 And the third factor is that the recent</p>	<p>1 years experience should be rated more heavily</p> <p>2 than earlier years to reflect current</p> <p>3 operating methods. Hydro, in its Brief,</p> <p>4 suggests--Ms. Greene said again this morning,</p> <p>5 that the Board should wait and see whether the</p> <p>6 efficiencies are being achieved.</p> <p>7 Well, first of all, these expenditures</p> <p>8 for those initiatives were presumably</p> <p>9 justified on the basis of improving</p> <p>10 efficiency. But more importantly, the recent</p> <p>11 experience demonstrates that these</p> <p>12 efficiencies are being achieved. These</p> <p>13 benefits should now be passed on to customers.</p> <p>14 The best estimate of the fuel conversion</p> <p>15 factor for 2004 is therefore, 636 kilowatt</p> <p>16 hours per barrel, not 624 or 625.</p> <p>17 The second item with respect to the fuel</p> <p>18 issue relates to the usage of the hydrology</p> <p>19 record. Determination of changes with respect</p> <p>20 to the hydrology record should await the</p> <p>21 completion of the Acres Analysis and</p> <p>22 consideration of the implications by the</p> <p>23 parties and the Board. The Board should not</p> <p>24 now predetermine this issue at this time</p> <p>25 without the complete review, without the</p>
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<p>1 complete analysis and the opportunity of the</p> <p>2 parties to respond.</p> <p>3 The next point that I'd like to discuss</p> <p>4 is Hydro's vacancy allowance. Hydro has</p> <p>5 proposed a vacancy allowance for 2004 of 2.5</p> <p>6 million dollars and proposed that it includes</p> <p>7 first, one million dollars for normal</p> <p>8 vacancies and 1.5 million for future</p> <p>9 productivity gains. However, on closer</p> <p>10 analysis that vacancy allowance requires</p> <p>11 modification for three factors. First, it</p> <p>12 includes seven hundred thousand dollars of</p> <p>13 productivity improvements already achieved and</p> <p>14 implemented. The seven hundred thousand</p> <p>15 dollars in salary savings already achieved in</p> <p>16 2003 should be deducted from 2004 test year</p> <p>17 salaries. Mr. Brushett confirmed that those</p> <p>18 existing productivity gains are in the vacancy</p> <p>19 allowance and Ms. Greene confirmed it in her</p> <p>20 argument this morning.</p> <p>21 The second factor that requires</p> <p>22 adjustment is that the normal vacancy</p> <p>23 allowance should be 1.6 million dollars, not 1</p> <p>24 million dollars as Hydro proposes. That</p> <p>25 analysis is set forth in our brief and is in</p>	<p>1 line with the 1.5 million vacancy allowance</p> <p>2 set by the Board in 2002. Without reviewing</p> <p>3 the argument in detail, I would note that the</p> <p>4 evidence shows that even as late as October in</p> <p>5 2003, Hydro had 29 vacant position at an</p> <p>6 average cost of fifty four thousand dollars,</p> <p>7 after you adjust for the eight percent salary</p> <p>8 increase, which goes to 1.6 million dollars.</p> <p>9 There's consistent evidence that 1.6 million</p> <p>10 dollars is the normal vacancy factor. The</p> <p>11 \$700,000 in existing productivity gains and a</p> <p>12 normal vacancy allowance of \$1.6 million,</p> <p>13 totals in itself \$2.3 million and leaves</p> <p>14 little for future productivity improvements in</p> <p>15 Hydro's 2.5 million proposal. And that takes</p> <p>16 us to the third factor. There are many</p> <p>17 opportunities for real productivity gains.</p> <p>18 Hydro has spent \$2.8 million on the business</p> <p>19 process improvement process. The recognized</p> <p>20 savings to date are only \$700,000. Clearly</p> <p>21 there is more to be achieved by that process</p> <p>22 from these ongoing initiatives. The JD</p> <p>23 Edwards benefits are still being realized.</p> <p>24 Reorganization opportunities should exist.</p> <p>25 (11:45 a.m.)</p>

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<p>1 KELLY, Q.C.:</p> <p>2 Hydro did not actually achieve the \$2</p> <p>3 million productivity allowance that the Board</p> <p>4 granted in the last order. Mr. Wells cited</p> <p>5 that as one reason why controllable costs for</p> <p>6 2002 exceeded forecast by \$6 million.</p> <p>7 Considering these factors, the Board should</p> <p>8 consider continuation of the \$2 million</p> <p>9 productivity allowance for Hydro.</p> <p>10 The next issue I want to touch on is the</p> <p>11 issue of capitalized salary expense. This</p> <p>12 item has been a continuous issue in Hydro's</p> <p>13 hearings. Hydro's capital projects</p> <p>14 consistently occupy more employee time than</p> <p>15 anticipated, resulting in greater than</p> <p>16 forecast capitalized salaries. On average,</p> <p>17 there has been over \$2 million of under</p> <p>18 estimation from forecast or budget. That</p> <p>19 under estimation goes directly to Hydro's</p> <p>20 bottom line at the expense of consumers. Mr.</p> <p>21 Brushett testified that you should consider</p> <p>22 that historical experience. Newfoundland</p> <p>23 Power submits that the Board should take a</p> <p>24 close look at this item because of the amount</p> <p>25 involved and the continuing nature of this</p>	<p>1 under budgeting over many years. Newfoundland</p> <p>2 Power submits that there should be a \$2</p> <p>3 million reduction in revenue requirement for</p> <p>4 this item.</p> <p>5 The last specific item I'll comment on is</p> <p>6 the Davis Inlet. Hydro's updated evidence</p> <p>7 includes a decommissioning cost for Davis</p> <p>8 Inlet of \$725,000 to be included in test year</p> <p>9 costs. The Davis Inlet relocation to</p> <p>10 Natuashish is in many ways a unique event</p> <p>11 involving various levels of government. It is</p> <p>12 inappropriate that such a large extraordinary</p> <p>13 amount be included in expenses for a test year</p> <p>14 that will determine rates to be paid by</p> <p>15 consumers for several years to come. Mr.</p> <p>16 Brushett proposed that the amount should be</p> <p>17 amortized over three to five years.</p> <p>18 Newfoundland Power supports that approach and</p> <p>19 recommends a five-year amortization.</p> <p>20 The other specific items are set out in</p> <p>21 our brief in Section B and the interest</p> <p>22 reduction is found at the beginning of Section</p> <p>23 C. I will not spend further time on them in</p> <p>24 my oral submission.</p> <p>25 The next issue I would like to discuss is</p>
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<p>1 the return on equity. In considering an</p> <p>2 appropriate return on equity for determining</p> <p>3 the return on rate base, the starting point is</p> <p>4 how should Hydro be regulated? And the</p> <p>5 evidence on that is clear. Hydro is not an</p> <p>6 investor-owned utility and it does not have</p> <p>7 the operating or financial characteristics of</p> <p>8 an investor-owned utility. Hydro should</p> <p>9 therefore be regulated on the basis of what it</p> <p>10 is, a crown-owned utility. How should the</p> <p>11 Board approach task? What are the regulatory</p> <p>12 objectives that the Board should consider,</p> <p>13 because that's the question you need to ask.</p> <p>14 The answer is found in the Electrical Power</p> <p>15 Control Act. The Board is directed by Section</p> <p>16 4 to implement the power policy in Section 3.</p> <p>17 Section 3(a)(3) provides for sufficient</p> <p>18 revenue for Hydro to earn a just and</p> <p>19 reasonable return, so that it is able to</p> <p>20 achieve and maintain a sound credit rating in</p> <p>21 the financial markets of the world. The just</p> <p>22 and reasonable return is determined in a</p> <p>23 purposive way, to ensure long-term credit</p> <p>24 worthiness. It is to earn a return so that it</p> <p>25 will be credit worthy. That approach is</p>	<p>1 consistent with the Court of Appeal's decision</p> <p>2 in the Stated Case discussing a purpose of</p> <p>3 interpretation of the Public Utilities Act and</p> <p>4 the Electrical Power Control Act. Ms. McShane</p> <p>5 told us what that should mean for a crown-</p> <p>6 owned utility with a debt guarantee. She said</p> <p>7 that Hydro should have a maximum of 80 percent</p> <p>8 debt to provide the minimal equity cushion</p> <p>9 compatible with being a self-supporting</p> <p>10 enterprise. Ms. McShane stressed the</p> <p>11 importance of obtaining agreement for a</p> <p>12 supportive dividend policy to achieve that</p> <p>13 objective. Hydro itself recognized in its</p> <p>14 discussion paper that failure to adhere to</p> <p>15 such a policy could result in similar</p> <p>16 disallowances by the Board; therefore</p> <p>17 adversely affecting shareholder return.</p> <p>18 However, the dividend policy remains at 75</p> <p>19 percent, not the 50 percent proposed by Hydro</p> <p>20 or the 25 percent that it would take to come</p> <p>21 close to an 80/20 capital structure, not in</p> <p>22 2004, but even in 2008. A 75 percent pay-out</p> <p>23 policy means no meaningful progress will be</p> <p>24 made even by 2008 in achieving the capital</p> <p>25 structure for Hydro that Ms. McShane says is</p>



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<p>1 KELLY, Q.C.:</p> <p>2 appropriate for a crown-owned utility with a</p> <p>3 debt guarantee. So the Board must ask what</p> <p>4 regulatory objective will be fulfilled by</p> <p>5 increasing Hydro's ROE from three percent?</p> <p>6 Will it improve Hydro's long-term financial</p> <p>7 strength and credit worthiness? The answer is</p> <p>8 no. It simply means that more money will flow</p> <p>9 through Hydro from consumers to Government,</p> <p>10 without giving consumers what the power policy</p> <p>11 of the Province requires: long-term financial</p> <p>12 strength and credit worthiness for the</p> <p>13 principal generating utility in this Province.</p> <p>14 Newfoundland Power does not contend that the</p> <p>15 Board can order Hydro to change its dividend</p> <p>16 policy, that is a matter for Hydro and its</p> <p>17 shareholder. Hydro is aware of the</p> <p>18 consequences that that may lead to a reduced</p> <p>19 return. Hydro, at page 47 in its Brief of</p> <p>20 Argument and Ms. Greene repeated this morning</p> <p>21 the following, "Hydro cannot compromise its</p> <p>22 financial integrity by continuing at a market</p> <p>23 return that was recognized by all to be well</p> <p>24 below market and well below what Hydro is</p> <p>25 entitled to earn under current legislative</p>	<p>1 provisions." Now, that statement requires two</p> <p>2 comments. The first is that Hydro has reduced</p> <p>3 its financial strength by reducing the equity</p> <p>4 component of its capital structure below its</p> <p>5 previous level and more importantly, below its</p> <p>6 recommended level. It cannot invoke its own</p> <p>7 actions in support of increasing its ROE; and</p> <p>8 secondly, and perhaps more importantly,</p> <p>9 current legislative provisions do not entitle</p> <p>10 Hydro to a market rate of return, but to one</p> <p>11 which is purposive to achieve long-term</p> <p>12 financial strength and credit worthiness. It</p> <p>13 is reasonable and prudent for the Board to</p> <p>14 require proof of a plan that will achieve that</p> <p>15 objective before determining that it is</p> <p>16 appropriate to have consumers pay an increased</p> <p>17 return. Because of the Government guarantee,</p> <p>18 for which Hydro pays a fee of more than \$14</p> <p>19 million, Hydro currently remains able to</p> <p>20 borrow and maintain its credit rating. Hydro</p> <p>21 continues to have appropriate interest</p> <p>22 coverage on its debt. Hydro has no major</p> <p>23 capital projects requiring substantial</p> <p>24 borrowing in the next few years. This gives</p> <p>25 Hydro time to develop a sound financial plan</p>
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<p>1 before its next General Rate Application. The</p> <p>2 Board should consider the payment of the</p> <p>3 guarantee fee and the social policy benefits</p> <p>4 derived from Hydro's operations. The Board</p> <p>5 grappled with that issue in P.U. 7 at page 127</p> <p>6 where it considered the social policy costs of</p> <p>7 Hydro's operations. And at that time, the</p> <p>8 Board said, "The Board is not inclined to</p> <p>9 adjust NLH's regulated three percent ROE in</p> <p>10 this Application." The Board left open the</p> <p>11 question of what adjustment is appropriate if</p> <p>12 Hydro was requesting a more normal market</p> <p>13 return. Newfoundland Power submits that it is</p> <p>14 appropriate for the Board to consider the</p> <p>15 guarantee fee and the social policy benefits</p> <p>16 in determining an appropriate ROE for Hydro.</p> <p>17 All of these matters are matters of regulatory</p> <p>18 judgment. There is no mathematical answer in</p> <p>19 the evidence. The Board should consider what</p> <p>20 regulatory objectives, if any, will be</p> <p>21 advanced in making its decision.</p> <p>22 The related issue with ROE is the range</p> <p>23 of rate of return, the excess earnings'</p> <p>24 account and the Automatic Adjustment Formula.</p> <p>25 All of these matters are ultimately required</p>	<p>1 for full regulation of Hydro and their</p> <p>2 determination is affected by the rate of</p> <p>3 return on equity. There is little evidence in</p> <p>4 the record to determine an appropriate range</p> <p>5 or an Automatic Adjustment Formula. In</p> <p>6 principle, a range for Hydro should not simply</p> <p>7 be a matter of copying the range for</p> <p>8 Newfoundland Power. However, Hydro has not</p> <p>9 brought forward an integrated proposal or</p> <p>10 evidence on those issues. Rather at pages 51</p> <p>11 to 52 of its brief, Hydro suggests that the</p> <p>12 Board should ask Hydro for its opinion and</p> <p>13 relevant evidence on these issues. With</p> <p>14 respect, the onus is on Hydro first to</p> <p>15 implement a sound financial plan with a</p> <p>16 supported dividend policy to attain</p> <p>17 appropriate financial characteristics and</p> <p>18 achieve the 80-20 capital structure. And</p> <p>19 second then, for Hydro to bring forward an</p> <p>20 integrated proposal with respect to a rate of</p> <p>21 return, a range of rate of return on rate</p> <p>22 base, an excess earnings account and an</p> <p>23 Automatic Adjustment Formula. An appropriate</p> <p>24 ROE range excess earnings mechanism and</p> <p>25 Automatic Adjustment Formula should be</p>

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<p>1 KELLY, Q.C.:</p> <p>2 determined together when Hydro implements a</p> <p>3 plan to achieve the financial characteristics</p> <p>4 of a properly structured Crown-owned utility.</p> <p>5 However, if the Board decides to increase</p> <p>6 Hydro's ROE, the Board will also need to</p> <p>7 consider a range and an excess earnings</p> <p>8 account. Unfortunately, there is little</p> <p>9 guidance in the record to assist the Board in</p> <p>10 making that determination.</p> <p>11 I turn next to discuss the wholesale rate</p> <p>12 issue, and again, the starting point is to ask</p> <p>13 how should the Board approach this issue. The</p> <p>14 starting point is to ask what regulatory</p> <p>15 objective, what is the regulatory objective</p> <p>16 that the Board must consider. In very simple</p> <p>17 terms, what are we trying to achieve? And</p> <p>18 again, the answer is found in Section 4 and in</p> <p>19 this case, Section 3B.1 and 3 of The</p> <p>20 Electrical Power Control Act. The Board is</p> <p>21 directed by the Legislature to implement the</p> <p>22 power policy of the Province and to do what</p> <p>23 promotes the most efficient production,</p> <p>24 transmission and distribution of power, so as</p> <p>25 to provide least cost power consistent with</p>	<p>1 reliable service. That's the long-term</p> <p>2 objective. So the relevant regulatory</p> <p>3 objective for the consideration of this issue</p> <p>4 is therefore system efficiency.</p> <p>5 So the next step is to understand the</p> <p>6 characteristics of the Newfoundland electrical</p> <p>7 system. Why? Because efficiency doesn't</p> <p>8 exist in a vacuum. Efficiency is related to</p> <p>9 the characteristics of the system.</p> <p>10 Newfoundland's system is in many ways unique</p> <p>11 in North America because it is not connected</p> <p>12 to the North American grid. It is</p> <p>13 predominantly hydraulic, a factor that</p> <p>14 indicates that demand costs may be relatively</p> <p>15 low. The evidence indicates that unlike the</p> <p>16 early 1990s when demand pressures were a</p> <p>17 significant factor, currently there is no</p> <p>18 capacity shortfall forecast until 2011. The</p> <p>19 next plant addition will be required for</p> <p>20 energy and demand. No pure demand addition,</p> <p>21 no peaker-type unit, is foreseen within the</p> <p>22 planning horizons far out as anybody can see.</p> <p>23 The best evidence is that the marginal cost of</p> <p>24 demand is somewhere between zero and \$28.20</p> <p>25 per kilowatt per year, and the short run</p>
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<p>1 marginal cost of energy is the same all year</p> <p>2 around, at about five cents.</p> <p>3 Given the particular characteristics of</p> <p>4 our system, the fact that it is not connected</p> <p>5 to the North American grid and the coordinated</p> <p>6 approach to systems operation between the two</p> <p>7 utilities, the Board should be very cautious</p> <p>8 about assertions that we should do something</p> <p>9 with our electrical system simply because</p> <p>10 that's the way it's done elsewhere in North</p> <p>11 America. Rather, the Board should ask what is</p> <p>12 best for us here in Newfoundland.</p> <p>13 Currently, we have an energy only</p> <p>14 wholesale rate. It has been in place for</p> <p>15 almost 40 years, since the 1960s. It works.</p> <p>16 Hydro acknowledges it remains viable. Hydro's</p> <p>17 application has been filed on the basis of an</p> <p>18 energy only rate and that's the rate structure</p> <p>19 for which public notice of this application</p> <p>20 has been given. The energy only rate achieves</p> <p>21 the principles of good rate design. The</p> <p>22 energy only rate with the RSP collects Hydro's</p> <p>23 revenue requirement very efficiently. Hydro</p> <p>24 has no earnings risk from forecast variations.</p> <p>25 Costs are fairly allocated between</p>	<p>1 Newfoundland Power and the Industrial</p> <p>2 Customers through the cost of service study.</p> <p>3 System efficiency is achieved. There's a</p> <p>4 coordinated dispatch of Newfoundland Power's</p> <p>5 generation and no one in this hearing has</p> <p>6 suggested changing that coordinated approach.</p> <p>7 There is efficient retail pricing.</p> <p>8 Newfoundland Power makes its retail rates as</p> <p>9 efficient as possible with the available</p> <p>10 information, balancing fairness and</p> <p>11 efficiency. We look at the system as a whole,</p> <p>12 with overall system costs, not the wholesale</p> <p>13 purchase power rate.</p> <p>14 (12:02 p.m.)</p> <p>15 Newfoundland Power's rates are reviewed</p> <p>16 and approved by the Board. There is revenue</p> <p>17 stability and there's rate stability. About</p> <p>18 one-half of Newfoundland Power's range of rate</p> <p>19 of return on rate base, .9 million dollars for</p> <p>20 the half, is at risk from load variations</p> <p>21 under the energy only rate. That is an</p> <p>22 acceptable and appropriate level of risk. An</p> <p>23 entire regulatory regime of range of rate of</p> <p>24 return, excess earnings account and automatic</p> <p>25 adjustment mechanism has been built around</p>

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<p>1 KELLY, Q.C.:</p> <p>2 that current energy only rate structure.</p> <p>3 Revenue stability, rate stability and</p> <p>4 regulatory consistency are all important</p> <p>5 regulatory objectives. In a nutshell, what we</p> <p>6 have now works.</p> <p>7 So let's see what's proposed. Hydro has</p> <p>8 now proposed a demand energy rate. Mr.</p> <p>9 Greneman proposed actually a rate structure.</p> <p>10 He didn't propose a rate. He put forward a</p> <p>11 sample rate as an example and proposed that</p> <p>12 Hydro perform analysis and share the analysis</p> <p>13 with Newfoundland Power. That analysis and</p> <p>14 sharing did not occur. Hydro simply adopted</p> <p>15 the sample rate. The sample rate is based on</p> <p>16 embedded demand costs, and this is where the</p> <p>17 Board should ask itself what improved</p> <p>18 efficiency claims are made for this demand</p> <p>19 energy rate. Mr. Greneman, in his report,</p> <p>20 identified the key objectives of the demand</p> <p>21 energy rate and two objectives. The first was</p> <p>22 to send a current price signal to all parties</p> <p>23 and encourage demand side management or DSM</p> <p>24 projects. And the second objective was to</p> <p>25 provide Newfoundland Power with an incentive</p>	<p>1 to minimize the Island peak through use of its</p> <p>2 own generation, through rates or through other</p> <p>3 cost effective means, being demand side</p> <p>4 management.</p> <p>5 These are the efficiency benefits that</p> <p>6 are claimed and the Board should consider</p> <p>7 these claims very carefully. First, if</p> <p>8 customer behaviour is to be affected, it is</p> <p>9 the rates to the end use customer that are</p> <p>10 important. Newfoundland Power already designs</p> <p>11 its retail rates to reflect system costs, but</p> <p>12 as everyone has agreed in this hearing, you</p> <p>13 don't create rates only from embedded costs.</p> <p>14 While embedded costs are important for cost</p> <p>15 recovery and cost allocation purposes,</p> <p>16 efficiency in rate design requires</p> <p>17 consideration of marginal cost information.</p> <p>18 Marginal costs, not embedded costs, are</p> <p>19 required to send an appropriate price signal</p> <p>20 and determine cost effective DSM.</p> <p>21 Mr. Greneman, in his pre-filed evidence,</p> <p>22 at page 16, said the following "the demand</p> <p>23 portion of Hydro's rate will provide</p> <p>24 Newfoundland Power a quantitative measure</p> <p>25 against which to develop a viable load</p>
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<p>1 management plan." If Newfoundland Power has a</p> <p>2 demand energy rate that prices demand at</p> <p>3 \$84.00 per kilowatt per year, then if</p> <p>4 Newfoundland Power reduces demand by spending</p> <p>5 up to that amount, Newfoundland Power saves</p> <p>6 money. But is that good for the system? Is</p> <p>7 that good for consumers? If Newfoundland</p> <p>8 Power spends \$50.00 to reduce demand and that</p> <p>9 demand reduction is really only worth \$5.00</p> <p>10 then consumers are worse off because they're</p> <p>11 paying \$50.00 in Newfoundland Power rates, but</p> <p>12 only getting a \$5.00 benefit. It would be</p> <p>13 better if the money had never been spent.</p> <p>14 That's what you mean when you're talking about</p> <p>15 cost effective means, and that's why the</p> <p>16 demand portion of a wholesale rate must be</p> <p>17 derived from marginal costs, not from</p> <p>18 historical or embedded costs. You simply</p> <p>19 cannot send an appropriate price signal to</p> <p>20 Newfoundland Power or improve the price signal</p> <p>21 to retail customers through rates without</p> <p>22 marginal cost information.</p> <p>23 The second objective was to minimize the</p> <p>24 Island peak, and the first way was through use</p> <p>25 of Newfoundland Power's generation. Yet no</p>	<p>1 one, not Mr. Haynes, not Mr. Banfield, not Mr.</p> <p>2 Greneman, proposed that we should change the</p> <p>3 current coordinated dispatch of Newfoundland</p> <p>4 Power's generation. And the second way, and</p> <p>5 third way, was to minimize the Island peak</p> <p>6 through rates or other cost effective DSM.</p> <p>7 And again, that requires marginal cost</p> <p>8 information because otherwise you will spend</p> <p>9 money inappropriately, not cost effectively,</p> <p>10 and not efficiently.</p> <p>11 So none of the efficiency claims for the</p> <p>12 proposed demand energy rate are made out. The</p> <p>13 regulatory objective of promoting efficiency</p> <p>14 is not met. Rather, the available evidence</p> <p>15 indicates that the current marginal cost of</p> <p>16 demand is low, between zero and \$28.00 a</p> <p>17 kilowatt per year, and energy should not be</p> <p>18 sold below the short run marginal cost of 5.13</p> <p>19 cents. At that price for all kilowatt hours,</p> <p>20 the demand charge would be \$12.00 a kilowatt a</p> <p>21 year or \$1.00 a month. The proposed demand</p> <p>22 energy rate has a demand charge of \$84.00 a</p> <p>23 kilowatt a year and an energy cost below the</p> <p>24 short run marginal cost of energy. That means</p> <p>25 there is a strong likelihood of significant</p>

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<p>1 KELLY, Q.C.:</p> <p>2 inefficient results from the proposed demand</p> <p>3 energy rate.</p> <p>4 While many of the experts supported a</p> <p>5 demand energy rate in principle, none had</p> <p>6 analyzed Newfoundland Power's retail rates or</p> <p>7 could determine what DSM might be cost</p> <p>8 effective. None had analyzed the effect on</p> <p>9 the system of implementing the sample rate.</p> <p>10 Some speculated as to potential benefits, but</p> <p>11 no analysis had been performed to determine</p> <p>12 the costs and benefits of adopting the sample</p> <p>13 rate. Some experts proposed adopting the</p> <p>14 sample rate now and adjusting or tweaking it</p> <p>15 later. However, adopting this rate with its</p> <p>16 high emphasis on demand charges and low energy</p> <p>17 charges places an unwarranted emphasis on</p> <p>18 demand. The Board should not adopt a</p> <p>19 wholesale rate which is not proven to be</p> <p>20 efficient.</p> <p>21 The discussion of the Interruptible B</p> <p>22 program exemplifies this problem. By</p> <p>23 terminating Interruptible B, peak demand</p> <p>24 reduction is currently valued by Hydro at</p> <p>25 zero, and that is completely inconsistent with</p>	<p>1 encouraging Newfoundland Power to spend up to</p> <p>2 \$84.00 per kilowatt to reduce peak. If the</p> <p>3 value is zero, whatever Newfoundland Power</p> <p>4 spends to reduce peak is of no benefit to</p> <p>5 consumers in the long term. And the Consumer</p> <p>6 Advocate also falls into this inconsistency.</p> <p>7 The Consumer Advocate advocates the demand</p> <p>8 energy rate, but with respect to Interruptible</p> <p>9 B says the following, at paragraph 93 of his</p> <p>10 brief, and I'd just like to read this.</p> <p>11 "Although the Consumer Advocate is empathetic</p> <p>12 to the Industrial Customer view that the</p> <p>13 Interruptible B program should continue, no</p> <p>14 evidence has been filed that would suggest</p> <p>15 that continuation of this program is</p> <p>16 beneficial to non-participating customers. As</p> <p>17 the marginal cost of capacity has not been</p> <p>18 identified, it is difficult to know the value</p> <p>19 of Interruptible B load. The Interruptible B</p> <p>20 program should be reevaluated once the</p> <p>21 marginal cost of capacity is determined." Now</p> <p>22 that statement is completely correct and it is</p> <p>23 also correct with respect to the value of</p> <p>24 capacity or demand in setting the demand price</p> <p>25 in a demand energy wholesale rate.</p>
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<p>1 The Greneman report pointed out that</p> <p>2 revenue stability and rate stability also</p> <p>3 needs to be considered. Under the proposed</p> <p>4 demand energy rate, the revenue instability</p> <p>5 for Hydro is so great that they proposed a</p> <p>6 floor of 98 percent of demand. There is no</p> <p>7 cap, so Hydro would stand to gain up to five</p> <p>8 million dollars extra from load variations.</p> <p>9 Newfoundland Power, on the other hand, already</p> <p>10 has an earnings cap, so it's up side is</p> <p>11 limited. However, it's downside risk rises</p> <p>12 from .9 million to 8.3 million dollars.</p> <p>13 That's nine times the risk under the energy</p> <p>14 only rate. It is four times Newfoundland</p> <p>15 Power's allowed range of plus or minus two</p> <p>16 million dollars or plus or minus 18 basis</p> <p>17 points. Even a dollar a month demand charge</p> <p>18 consumes all of Newfoundland Power's range of</p> <p>19 two million dollars. Newfoundland Power</p> <p>20 submits that that is inappropriate.</p> <p>21 This would mean that implementing a</p> <p>22 demand energy wholesale rate has a major</p> <p>23 effect on the existing regulatory regime that</p> <p>24 the Board has implemented with respect to</p> <p>25 Newfoundland Power. These revenue variations</p>	<p>1 have to be passed on to consumers to ensure</p> <p>2 revenue stability to Newfoundland Power and to</p> <p>3 effect the price signal to the end use</p> <p>4 consumers, and that means rate instability for</p> <p>5 customers. So some kind of reserve mechanism</p> <p>6 and pass-through process would have to be</p> <p>7 implemented. Customers want and expect rate</p> <p>8 stability.</p> <p>9 You know, it's interesting, all through</p> <p>10 this hearing, Hydro's witnesses took the</p> <p>11 position that it was up to Newfoundland Power</p> <p>12 to determine how to deal with revenue</p> <p>13 volatility, all through this hearing, and for</p> <p>14 the first time in its brief, Hydro now argues,</p> <p>15 at page 83, that the structure of that reserve</p> <p>16 account is relevant. Listen to what they say.</p> <p>17 "Hydro cautions however that the use of a</p> <p>18 reserve mechanism should not simply be a means</p> <p>19 whereby costs are passed directly to customers</p> <p>20 with no signal, either positive or negative,</p> <p>21 to shareholders for demand containment." That</p> <p>22 statement demonstrates that all of these</p> <p>23 issues are interrelated and must be considered</p> <p>24 together.</p> <p>25 Newfoundland Power asks why are we doing</p>

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<p>1 KELLY, Q.C.:</p> <p>2 this if the efficiency objective of the demand</p> <p>3 energy rate is not being fulfilled, and is</p> <p>4 there a better way, and we submit that there</p> <p>5 is. The first step is to complete the</p> <p>6 Marginal Cost Study and the Retail Rate Design</p> <p>7 Study. That ties in with Newfoundland Power's</p> <p>8 load research study which is already underway.</p> <p>9 That gives everyone the critical information</p> <p>10 to consider potential improvements to retail</p> <p>11 rate designs and cost effective DSM. The</p> <p>12 objectives claimed for the demand energy rate,</p> <p>13 improved retail rate design, and DSM options,</p> <p>14 can be achieved directly without changing the</p> <p>15 wholesale rate and creating the problems of</p> <p>16 revenue and rate stability that flow from it.</p> <p>17 (12:15 p.m.)</p> <p>18 The second step, after the Marginal Cost</p> <p>19 Study and Retail Rate Design Study, would be a</p> <p>20 mediated process or a generic hearing to</p> <p>21 consider rates, rate options and DSM,</p> <p>22 including the Interruptible B rate.</p> <p>23 Successful mediation requires information.</p> <p>24 The studies will give us that information so</p> <p>25 that the parties can make intelligent and</p>	<p>1 informed choices. If the Board prefers, a</p> <p>2 generic hearing could be held. Then the Board</p> <p>3 would have the information to make informed</p> <p>4 choices.</p> <p>5 Newfoundland Power does not believe that</p> <p>6 we need to change the wholesale rate structure</p> <p>7 to improve retail rates, send a price signal</p> <p>8 to end use customers or do DSM. But if the</p> <p>9 Board ultimately decides otherwise, a demand</p> <p>10 energy rate must be based on accurate marginal</p> <p>11 cost information, if the regulatory objective</p> <p>12 of efficiency is to be achieved. If the rate</p> <p>13 is based on incorrect information, then</p> <p>14 inefficient decisions will be made and the</p> <p>15 results will not be least cost or in the long</p> <p>16 term interests of consumers.</p> <p>17 The Board should have the results of the</p> <p>18 Marginal Cost Study before further</p> <p>19 consideration of the wholesale rate issue.</p> <p>20 Hydro suggests that the Board has sufficient</p> <p>21 information to deal with this issue. Yet the</p> <p>22 evidence indicates clearly that the Board does</p> <p>23 not have the essential information to enable</p> <p>24 the Board to make a decision in accordance</p> <p>25 with the regulatory objectives prescribed by</p>
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<p>1 The Electrical Power Control Act. The Board</p> <p>2 should not embark upon a fundamental change to</p> <p>3 the existing regulatory regime with</p> <p>4 significant implications for consumers, the</p> <p>5 regulatory process, and the utilities, without</p> <p>6 information that is essential to enable the</p> <p>7 Board to make decisions that fulfil the</p> <p>8 Board's regulatory objectives.</p> <p>9 I'd like to turn next to respond to three</p> <p>10 issues raised by the Industrial Customers</p> <p>11 related to cost of service and related</p> <p>12 matters. The first is an allocation issue</p> <p>13 with respect to the Burin transmission line.</p> <p>14 Let me say first that Newfoundland Power</p> <p>15 supports the generation and transmission plant</p> <p>16 assignments as proposed by Hydro for the Great</p> <p>17 Northern Peninsula, Burin and Doyles Port aux</p> <p>18 Basques. Newfoundland Power believes that</p> <p>19 Hydro's approach is logical and reasonable.</p> <p>20 The Industrial Customers have agreed with the</p> <p>21 plant assignment methodology proposed by</p> <p>22 Hydro. However, they disagree with the</p> <p>23 assignment of transmission line TL-219 on the</p> <p>24 Burin Peninsula as being common. NP disagrees</p> <p>25 and takes issue with a number of the</p>	<p>1 statements in their brief, from page 26 on.</p> <p>2 First, the Industrial Customers assert</p> <p>3 line TL-212 is the only Burin line that</p> <p>4 physically serves Hydro Rural customers. This</p> <p>5 ignores the fact that TL-219 can be used to</p> <p>6 serve Hydro Rural customers when line 212 is</p> <p>7 unavailable or out of service.</p> <p>8 Second, they assert that TL-219 services</p> <p>9 only Newfoundland Power customers. 219 has</p> <p>10 multiple purposes. First, it serves</p> <p>11 Newfoundland Power customers. Second, it</p> <p>12 serves Hydro Rural customers via Newfoundland</p> <p>13 Power's transmission loop on the Burin</p> <p>14 Peninsula. And third, 219 serves the grid,</p> <p>15 the entire grid, by enabling supply from the</p> <p>16 Burin Peninsula to reach the grid.</p> <p>17 Third, the Industrial Customers assert</p> <p>18 that 212 and 219 are not physically</p> <p>19 interconnected by Hydro assets and that point</p> <p>20 is simply irrelevant. NP's, Newfoundland</p> <p>21 Power's transmission line on the Peninsula</p> <p>22 connects 219 and 212. There's a loop that</p> <p>23 results in improved reliability for all</p> <p>24 customers on the Burin Peninsula and all</p> <p>25 customers on the grid.</p>

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<p>1 KELLY, Q.C.:</p> <p>2 Fourth, there clearly are two customer</p> <p>3 classes on the Burin Peninsula, Newfoundland</p> <p>4 Power's customers and the Hydro Rural</p> <p>5 customers. The percentage breakdown is not</p> <p>6 relevant.</p> <p>7 Fifth, the Industrial Customers assert</p> <p>8 that the Burin generating capacity is less</p> <p>9 than that necessary to serve the Burin load in</p> <p>10 normal operating conditions, and that is</p> <p>11 incorrect. The winter Burin peak is 58. 7</p> <p>12 megawatts. However, normal operating</p> <p>13 conditions are not the winter peak conditions.</p> <p>14 The load on the Burin line is not normally</p> <p>15 58.7 megawatts. Generating capacity on the</p> <p>16 Burin Peninsula can provide generation to the</p> <p>17 grid for significant periods during the year.</p> <p>18 Newfoundland Power submits that lines 212 and</p> <p>19 219 should be assigned as common in accordance</p> <p>20 with Hydro's methodology. There is</p> <p>21 substantial generating capacity already on the</p> <p>22 Burin Peninsula, and an additional 25</p> <p>23 megawatts of wind power is contemplated.</p> <p>24 The next issue is the treatment of</p> <p>25 Newfoundland Power's generation credit. That</p>	<p>1 credit has been approved and affirmed by the</p> <p>2 Board since 1997 and most importantly, in the</p> <p>3 1992 Cost of Service Study and reaffirmed by</p> <p>4 the Board in P.U. 7. A cost of service study</p> <p>5 is an integrated whole. The Industrial</p> <p>6 Customers should not be permitted to modify</p> <p>7 any one component without reopening the whole</p> <p>8 cost of service. Reopening would not be in</p> <p>9 accordance with the principles of consistent</p> <p>10 regulation set forth by the Board in P.U. 7.</p> <p>11 The generation credit should only be</p> <p>12 considered in this hearing insofar as the</p> <p>13 issue relates to the wholesale rate structure.</p> <p>14 The Industrial Customers make two</p> <p>15 recommendations on the generation credit.</p> <p>16 First, they recommend that Hydro should assume</p> <p>17 that the 43.9 megawatts of thermal generation</p> <p>18 owned by Newfoundland Power does not exist in</p> <p>19 determining the cost of service peak demand</p> <p>20 requirements of Newfoundland Power. The peak</p> <p>21 demand assigned to Newfoundland Power through</p> <p>22 Hydro's cost of service study is net of</p> <p>23 Newfoundland Power's generation capacity less</p> <p>24 reserve. That's no different than the peak</p> <p>25 demands and the cost of service study for</p>
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<p>1 Corner Brook Pulp and Paper being based on its</p> <p>2 demand requirement net of its generation. The</p> <p>3 reality is that Newfoundland Power owns its</p> <p>4 thermal generation that reduces the load</p> <p>5 requirements that Hydro must plan for</p> <p>6 supplying Newfoundland Power. However,</p> <p>7 Newfoundland Power only operates those</p> <p>8 facilities for system requirements when</p> <p>9 required to do so by Hydro in accordance with</p> <p>10 The Electrical Power Control Act.</p> <p>11 Consequently, the generation credit reflects</p> <p>12 the fact that Hydro does not have to serve</p> <p>13 that load.</p> <p>14 Second, the Industrial Customers also</p> <p>15 recommend that the credit for hydraulic</p> <p>16 generation should be reduced from Hydro's</p> <p>17 estimate of 81.6 megawatts. As indicated in</p> <p>18 IC-306, Newfoundland Power's hydraulic peak</p> <p>19 potential output is approximately 95 megawatts</p> <p>20 and is reduced by 16 percent reserve to</p> <p>21 determine the 81.6 megawatts of production for</p> <p>22 peak. What's important is that Mr. Haynes</p> <p>23 testified that Newfoundland Power actually</p> <p>24 provides that 82 megawatts when required.</p> <p>25 Newfoundland Power submits that there should</p>	<p>1 be no change in the treatment of Newfoundland</p> <p>2 Power's generation credit.</p> <p>3 The last of the three issues related to</p> <p>4 the Industrial Customers relates to the demand</p> <p>5 forecast. The Industrial Customers suggest,</p> <p>6 at page 29 of their brief, that Newfoundland</p> <p>7 Power's demand forecast should be increased by</p> <p>8 16.3 megawatts. In considering that</p> <p>9 submission, keep in mind that Newfoundland</p> <p>10 Power's previous highest weather adjusted</p> <p>11 native peak was 1135 megawatts in 2001. What</p> <p>12 we forecast for 2004 is 1163 megawatts or 28</p> <p>13 megawatts higher than the previous maximum.</p> <p>14 There is no basis to conclude that the 2004</p> <p>15 forecast is unreasonable and should be further</p> <p>16 increased. Cost of service allocations are</p> <p>17 based on expected or normal test year</p> <p>18 conditions. The evidence does not indicate</p> <p>19 that Newfoundland Power's native peak forecast</p> <p>20 is too low. Newfoundland Power submits that</p> <p>21 its 2004 demand forecast is appropriate.</p> <p>22 A final comment before I touch on costs,</p> <p>23 the Consumer Advocate comments on a number of</p> <p>24 matters with respect to Newfoundland Power,</p> <p>25 both in its brief and its oral argument.</p>

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<p>1 KELLY, Q.C.:</p> <p>2 Newfoundland Power simply notes that this</p> <p>3 application is in relation to Hydro and</p> <p>4 Newfoundland Power's operations are not</p> <p>5 currently before the Board.</p> <p>6 Finally, with respect to costs,</p> <p>7 Newfoundland Power submits that the Industrial</p> <p>8 Customers should bear their own costs of</p> <p>9 participating in this hearing. That position</p> <p>10 is consistent with the position we took at</p> <p>11 Hydro's last hearing. The Industrial</p> <p>12 Customers are served directly by Hydro, not as</p> <p>13 customers of Newfoundland Power. The primary</p> <p>14 focus of their intervention has been to seek</p> <p>15 to shift cost allocations between themselves</p> <p>16 and Newfoundland Power's customers. That is</p> <p>17 of no benefit to Newfoundland Power's</p> <p>18 customers and Newfoundland Power's customers</p> <p>19 ought not to be ultimately responsible for any</p> <p>20 costs of the Industrial Customers.</p> <p>21 Newfoundland Power has taken no position with</p> <p>22 respect to the Labrador Interconnected System</p> <p>23 issues that prompted Labrador City's</p> <p>24 intervention. Therefore, Newfoundland Power</p> <p>25 takes no position with respect to Labrador</p>	<p>1 City's costs.</p> <p>2 Finally, Chair and Commissioners, I'd</p> <p>3 like to, on behalf of both myself and</p> <p>4 Newfoundland Power, thank the Board for their</p> <p>5 patience and attendance throughout this</p> <p>6 hearing, to thank the Board staff for their</p> <p>7 kindness and cooperation, and thank other</p> <p>8 counsel for their courtesy throughout the</p> <p>9 hearing. Those are my submissions, unless the</p> <p>10 Board has questions.</p> <p>11 CHAIRMAN:</p> <p>12 Q. Thank you, Mr. Kelly. Any Board questions?</p> <p>13 Commissioner Saunders?</p> <p>14 COMMISSIONER SAUNDERS:</p> <p>15 Q. No questions, Mr. Chair.</p> <p>16 CHAIRMAN:</p> <p>17 Q. Commissioner Newman?</p> <p>18 COMMISSIONER NEWMAN:</p> <p>19 Q. No. Thank you, Mr. Kelly.</p> <p>20 CHAIRMAN:</p> <p>21 Q. Thank you, Mr. Kelly, once again. It's 12:30.</p> <p>22 I think it would be an appropriate time to</p> <p>23 break for lunch. I'm going to restrict it to</p> <p>24 an hour. We'll reconvene at 1:30. I see some</p> <p>25 people out there who'd be likely wanting to</p>
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<p>1 catch planes and what have you perhaps later</p> <p>2 on this afternoon, so if we could maintain an</p> <p>3 hour here, I'd appreciate it. Thank you.</p> <p>4 (LUNCH BREAK - 12:30 P.M.)</p> <p>5 (RESUME - 1:38 p.m.)</p> <p>6 CHAIRMAN:</p> <p>7 Q. Thank you. Good afternoon. Ms. Newman, any</p> <p>8 items?</p> <p>9 MS. NEWMAN:</p> <p>10 Q. No, Chair.</p> <p>11 CHAIRMAN:</p> <p>12 Q. Okay. Good afternoon, Mr. Hutchings.</p> <p>13 HUTCHINGS, Q.C.:</p> <p>14 Q. Good afternoon, Mr. Chair. Mr. Chair, Mr.</p> <p>15 Commissioners and Commissioners. It must have</p> <p>16 been, I think, somewhat galling to Mr. Synder</p> <p>17 and Mr. Guillot who were seated behind me this</p> <p>18 morning to hear the somewhat feeble admission</p> <p>19 on behalf of Hydro that the increases being</p> <p>20 sought here were significant. The modifier</p> <p>21 that comes more easily to mind from our point</p> <p>22 of view is probably outrageous. It is an</p> <p>23 extraordinary thing for customers of any</p> <p>24 particular utility or other supplier of</p> <p>25 services to face the level of increases that</p>	<p>1 are being sought here. And it makes this a</p> <p>2 very serious and significant hearing for the</p> <p>3 people that I represent.</p> <p>4 It was disappointing, as well, to see a</p> <p>5 reference to the somewhat mischievous</p> <p>6 comparisons that were previously referred to</p> <p>7 by Mr. Wells in his evidence such as the</p> <p>8 reference to the industrial rates still being</p> <p>9 the lowest in Atlantic Canada after these rate</p> <p>10 increases were put into effect. Were the</p> <p>11 electrical systems in Nova Scotia and New</p> <p>12 Brunswick configured in the same way that--or</p> <p>13 the Newfoundland system configured in the same</p> <p>14 way as the systems in Nova Scotia and New</p> <p>15 Brunswick, I suspect that we'd be looking at a</p> <p>16 fuel bill annually closer to \$200 million</p> <p>17 rather than the \$85 million that forms part of</p> <p>18 the revenue requirement in this hearing. And</p> <p>19 with that additional amount of money it would</p> <p>20 be very clear that these rates would not be</p> <p>21 the lowest in Atlantic Canada.</p> <p>22 There is a concern raised as well about</p> <p>23 some of the matters that are put before the</p> <p>24 Board by Hydro both during the course of the</p> <p>25 hearing and under submissions as facts to be</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 taken into account by the Board. And the</p> <p>3 concern is not merely with the specific</p> <p>4 factual discrepancies that can be identified,</p> <p>5 but with the degree of faith that one can put</p> <p>6 in the material that is put before the Board</p> <p>7 by Hydro as a result of the certain identified</p> <p>8 discrepancies.</p> <p>9 Refer briefly to a point that I hadn't</p> <p>10 intended to address directly since other</p> <p>11 counsel had direct--had addressed it, but in</p> <p>12 respect of, for instance, the conversion</p> <p>13 factor for the Holyrood fuel, it is stated in</p> <p>14 Hydro's submission and was repeated this</p> <p>15 morning that the new projects which had</p> <p>16 intended to improve the efficiency of the</p> <p>17 Holyrood plant were taken into account by</p> <p>18 Hydro in its proposal to increase the</p> <p>19 conversion factor. And there's no doubt that</p> <p>20 as the submission refers, Mr. Haynes did say</p> <p>21 this in his evidence. But it's quite clear on</p> <p>22 the face of the record that that was not so.</p> <p>23 As we've pointed out in our submission, the</p> <p>24 624, which is now 625 that Hydro uses is a</p> <p>25 pure simple arithmetical average which doesn't</p>	<p>1 take into account at all the projects which</p> <p>2 were completed after the time period during</p> <p>3 which these numbers were generated. So, I</p> <p>4 mean, that's just quite simply factually wrong</p> <p>5 on the basis of the record that's before the</p> <p>6 Board here.</p> <p>7 We also should look carefully at the</p> <p>8 comparisons that Hydro makes and the</p> <p>9 information it puts before the Board relative,</p> <p>10 for instance, to its controllable costs. And</p> <p>11 this was referred to again here today in terms</p> <p>12 of the Hydro's core wage expense being less</p> <p>13 than inflation since 1992. Yes, that's the</p> <p>14 correct statement, but it all turns on when</p> <p>15 one begins ones comparison. And I went</p> <p>16 through this with Mr. Wells and we had</p> <p>17 Undertaking Hydro No. 2 produced to show that</p> <p>18 since 1997 Hydro's core wage expense has been</p> <p>19 greater than the index of inflation.</p> <p>20 So, the Board needs to approach this</p> <p>21 hearing with a healthy degree of scepticism</p> <p>22 with respect to the information that is put</p> <p>23 before it. This is an adversarial process and</p> <p>24 each of the parties will put the best spin on</p> <p>25 the information which is put before the Board</p>
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<p>1 here. Hydro chooses 1992 as its comparison</p> <p>2 because that gives it the result it wishes.</p> <p>3 If you want to choose 1997, then that gives a</p> <p>4 different result. But the important part here</p> <p>5 is that in most of the areas that we're</p> <p>6 dealing, Hydro has all the information and it</p> <p>7 is for the intervenors to attempt to flesh</p> <p>8 that out and get the information on the record</p> <p>9 before the Board. The Board needs to be</p> <p>10 concerned that the information that Hydro is</p> <p>11 producing has been subject to a certain degree</p> <p>12 of spin and that's--I'm not saying that's an</p> <p>13 iniquitous thing. That is part of the</p> <p>14 adversarial process. But the Board needs to</p> <p>15 be aware that this is happening in order that</p> <p>16 the Board can ensure that to the greatest</p> <p>17 extent possible it relies on demonstrable</p> <p>18 facts in reaching its conclusions.</p> <p>19 The only other single point with respect</p> <p>20 to the submissions from Ms. Greene this</p> <p>21 morning that I wanted to refer to before</p> <p>22 dealing with our own submissions here was the</p> <p>23 issue with respect to the non-regulated</p> <p>24 expenses and the treatment proposed by Hydro</p> <p>25 whereby these are added back to equity for the</p>	<p>1 purpose of computing the return. The only</p> <p>2 justification that Hydro offers for this</p> <p>3 practice is that it's consistent with what was</p> <p>4 apparently done for Newfoundland Power in the</p> <p>5 past. If, in fact, that was done for</p> <p>6 Newfoundland Power, doesn't affect the</p> <p>7 Industrial Customers, obviously, but if it is</p> <p>8 in fact wrong in principle, I think the Board</p> <p>9 should revisit it and look at it. Unless</p> <p>10 there is a rational justification for doing it</p> <p>11 the way that Hydro has proposed, the mere fact</p> <p>12 that somebody else has done it the same way is</p> <p>13 not sufficient if the result that occurs is</p> <p>14 inappropriate and increases costs</p> <p>15 unnecessarily.</p> <p>16 Having dealt with those items, Mr. Chair,</p> <p>17 I want to deal effectively with three themes</p> <p>18 in putting our position before the Board here</p> <p>19 today.</p> <p>20 The first of those is the concept of</p> <p>21 reasonableness. And the necessity to deal</p> <p>22 with that is placed upon the Board by Section</p> <p>23 4 and Section 3(a)(i) of the Electrical Power</p> <p>24 Control Act which requires that rates to be</p> <p>25 charged for the supply of power in the</p>



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<p>1 HUTCHINGS, Q.C.:</p> <p>2 province be reasonable. And reasonableness in</p> <p>3 this area is to be considered in the context</p> <p>4 of the other provisions of 3(a) which provide</p> <p>5 that power must be provided at the lowest</p> <p>6 possible cost consistent with reliable</p> <p>7 service. So the first theme will be</p> <p>8 reasonableness.</p> <p>9 The second theme is the theme of</p> <p>10 fairness. This is stated somewhat negatively</p> <p>11 in the Electrical Power Control Act in the</p> <p>12 requirement that rates be not unjustly</p> <p>13 discriminatory, but more positively under</p> <p>14 Section 4, the Board is required to apply</p> <p>15 tests that are consistent with generally</p> <p>16 accepted sound public utility practices. And</p> <p>17 Bonbright's principles and others are clear</p> <p>18 that rates should be fair in the sense that</p> <p>19 they assign costs to those who impose those</p> <p>20 costs on the system and those who benefit from</p> <p>21 assets are those who should pay the cost of</p> <p>22 them in the appropriate proportions. So the</p> <p>23 second theme is fairness.</p> <p>24 The third theme which we'll touch on is</p> <p>25 the question of the future, and that is where</p>	<p>1 this electrical system is going in the long</p> <p>2 run and what this Board can do for the purpose</p> <p>3 of ensuring that the principles of the</p> <p>4 Electrical Power Control Act do protect</p> <p>5 ratepayers over the long term.</p> <p>6 The first theme then is reasonableness.</p> <p>7 And the question before the Board is what is a</p> <p>8 reasonable rate. The Act could have said that</p> <p>9 rates will be set at the fair market value of</p> <p>10 the commodity being sold. Didn't say that.</p> <p>11 We need to balance reasonableness between the</p> <p>12 seller and the buyer when we're talking about</p> <p>13 a rate, just as with any price. This is not</p> <p>14 an arithmetical exercise, although it seems at</p> <p>15 times that Hydro would have it in that way.</p> <p>16 Hydro tends to want to add up the costs,</p> <p>17 including their return, and calculate what</p> <p>18 must be paid in order to make them whole.</p> <p>19 But, that's only one side of the equation.</p> <p>20 The effect on the customer of the rate must be</p> <p>21 taken into account. We can't have</p> <p>22 reasonableness in a vacuum. It can't be just</p> <p>23 reasonable from Hydro's point of view; it has</p> <p>24 to be reasonable from the point of view of the</p> <p>25 person who is paying the rate. And Hydro,</p>
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<p>1 with respect, has not taken that into account</p> <p>2 and it falls to the Board to do that. In</p> <p>3 general terms, as well, as I say, you don't</p> <p>4 have reasonableness in a vacuum, you have</p> <p>5 reasonableness in a certain context. And what</p> <p>6 context do we find ourselves in today? We</p> <p>7 have certain increasing demand on the</p> <p>8 electrical system. We have new sources of</p> <p>9 power which are higher cost sources than the</p> <p>10 existing sources. We have, as Hydro tells us,</p> <p>11 minimal further hydraulic potential, at least</p> <p>12 in large projects on the island. We have</p> <p>13 sharply rising oil prices. We have huge</p> <p>14 deficits from previous years oil consumption</p> <p>15 that were not dealt with at the time that they</p> <p>16 were accruing, but now are burdening us into</p> <p>17 the future. So we have a great number of</p> <p>18 factors which tend to increase the cost of</p> <p>19 acquiring electricity from the consumers'</p> <p>20 point of view. So what is reasonable relative</p> <p>21 to a rate in that context? Hydro appears to</p> <p>22 think that given all of that or perhaps</p> <p>23 notwithstanding all of that, that this is the</p> <p>24 time for Hydro to more than triple its profit,</p> <p>25 the return that it takes in respect of its own</p>	<p>1 activities. With respect, I don't know that</p> <p>2 anyone but Hydro would regard that as the</p> <p>3 reasonable thing to do at the present time.</p> <p>4 Given all the other upward pressures on the</p> <p>5 ultimate price that consumers must pay, the</p> <p>6 reasonable approach, in our submission, is to</p> <p>7 shave the margin to the bare minimum that will</p> <p>8 be sufficient to allow Hydro to properly</p> <p>9 continue its operations. And that is</p> <p>10 consistent with the legislative direction that</p> <p>11 power be priced at the least possible cost.</p> <p>12 So, in that context of the requirement to</p> <p>13 produce a reasonable rate, let us look at the</p> <p>14 Rate of Return for Hydro.</p> <p>15 Hydro is not an investor owned utility.</p> <p>16 Had government decided to invest half a</p> <p>17 billion dollars in Hydro and give it a 40</p> <p>18 percent equity cushion and let it operate as</p> <p>19 an investor owned utility, one could speak in</p> <p>20 an entirely different way about an appropriate</p> <p>21 Rate of Return for Hydro.</p> <p>22 As everyone has agreed, Hydro's financial</p> <p>23 position is perfectly secure with the</p> <p>24 guarantee of government of all of its debt, a</p> <p>25 guarantee, which has been pointed out, the</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 ratepayers pay for in 2004 to the extent of</p> <p>3 something in excess of \$14 million. As has</p> <p>4 been said previously, to provide a Rate of</p> <p>5 Return to Hydro as if it were an investor</p> <p>6 owned utility is of no advantage to Hydro, of</p> <p>7 no advantage to ratepayers and in the end of</p> <p>8 no advantage to government. Government in</p> <p>9 terms of acquiring its funds for use for</p> <p>10 public purposes will either borrow them itself</p> <p>11 or will take dividends out of Hydro which</p> <p>12 Hydro has to produce by going out and</p> <p>13 borrowing money itself which government is</p> <p>14 guaranteeing. So government is no better off</p> <p>15 at the end of the day, in any event. There is</p> <p>16 nothing that Hydro can do which will improve</p> <p>17 government's credit rating. So long as</p> <p>18 Hydro's debt is self-supporting, then there is</p> <p>19 no damage to government, but it doesn't help</p> <p>20 to increase Hydro's return because it's not</p> <p>21 going to get a better rate anyway, it's going</p> <p>22 to have government's rate. The tail will not</p> <p>23 wag the dog in this instance.</p> <p>24 We refer you to our submissions at</p> <p>25 specifically at pages 7 through 11. We would</p>	<p>1 suggest that the Board leave the Rate of</p> <p>2 Return at three percent as it is. If the</p> <p>3 Board considers moving away from that rate</p> <p>4 which has served Hydro well, which was put in</p> <p>5 for valid reasons in 2001, which reasons</p> <p>6 remain more valid today, if the Board is going</p> <p>7 to move away from that, you have to review the</p> <p>8 evidence which shows that the risk of Hydro</p> <p>9 is, in fact, significantly lower than that of</p> <p>10 Newfoundland Power. You have to consider the</p> <p>11 reality of the tax benefits that government</p> <p>12 receives as a shareholder. You have to</p> <p>13 consider the reality that there are no</p> <p>14 flotation or issuance costs to consider in</p> <p>15 adding up the necessary return and you have to</p> <p>16 consider the reliability of the data that Ms.</p> <p>17 McShane produced as discussed in that</p> <p>18 submission. But primarily, this Board, in</p> <p>19 response to the provisions of the Electrical</p> <p>20 Power Control Act, must seek to provide Hydro</p> <p>21 only with the minimum return which will allow</p> <p>22 it to properly continue its operations, and</p> <p>23 that has been demonstrated to work at three</p> <p>24 percent.</p> <p>25 How then do we just look at reasonable</p>
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<p>1 rates in the context of other costs aside from</p> <p>2 the Rate of Return? Clearly, the reasonable</p> <p>3 thing to do is to reduce those costs to the</p> <p>4 minimum possible amount. Newfoundland Power</p> <p>5 had taken the approach of identifying specific</p> <p>6 items and specific issues with specific</p> <p>7 numbers which should reduce the costs and we</p> <p>8 feel that that this a perfectly valid approach</p> <p>9 to take and there are good points made in</p> <p>10 Newfoundland Power's submissions which the</p> <p>11 Board should look at very closely.</p> <p>12 But, what is Hydro? If Hydro existed in</p> <p>13 the open market the way that Abitibi or Corner</p> <p>14 Brook Pulp and Paper or North Atlantic</p> <p>15 Refining or Voisey's Bay Nickel did, Hydro</p> <p>16 would be facing demands from customers at this</p> <p>17 stage to reduce its prices. That's the nature</p> <p>18 of the market that we're living in. That's</p> <p>19 the way that business is working now. We want</p> <p>20 the same value for less money, and those are</p> <p>21 the demands that managers in the open market</p> <p>22 make on their suppliers. If government--if</p> <p>23 Hydro was still as it once effectively was a</p> <p>24 part of government, Hydro would presumably be</p> <p>25 asked, like all other government departments</p>	<p>1 are now being asked, as we understand, to cut</p> <p>2 their expenses by the famous ten percent and</p> <p>3 respond to the call that the Premier has made</p> <p>4 to get the government's fiscal house in order.</p> <p>5 What is Hydro doing? As opposed to</p> <p>6 reducing rates or cutting costs by ten</p> <p>7 percent, Hydro is demanding a 17 percent</p> <p>8 increase in its revenue requirement which</p> <p>9 translates into increases in rates for our</p> <p>10 clients in excess of 20 percent.</p> <p>11 The rate is to be reasonable. Is it</p> <p>12 reasonable that Hydro be made fully whole from</p> <p>13 all of these effects and that the customers</p> <p>14 take the full hit? That apparently is Hydro's</p> <p>15 view. Hydro doesn't feel the pinch of the gap</p> <p>16 between the price that a product can be sold</p> <p>17 for and the cost that it takes to produce it.</p> <p>18 The customers, on the other hand, are facing</p> <p>19 financial strangulation.</p> <p>20 The Board's role is not to micro manage</p> <p>21 Hydro. The Board can't get into the</p> <p>22 individual accounts and say this expense must</p> <p>23 be cut by that amount and that expense must be</p> <p>24 cut by this amount. But the Board has to send</p> <p>25 a message to Hydro that its corporate mind set</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 must change. It is singularly inappropriate</p> <p>3 for Hydro's demands to result in layoffs or</p> <p>4 cutbacks in Stephenville or Corner Brook or</p> <p>5 Come By Chance when Hydro continues to operate</p> <p>6 as if the world was carrying on in--on an</p> <p>7 entirely different plane. We don't want to</p> <p>8 get down to the point of saying does Hydro</p> <p>9 have to have a full colour picture in three</p> <p>10 other different colours on the front of its</p> <p>11 final argument. Does it need the \$20,000</p> <p>12 colour photocopier to produce that or could it</p> <p>13 get by with the \$5000 one which will produce</p> <p>14 this in black and white. Does Mr. Wells need</p> <p>15 to sign a three line letter on embossed colour</p> <p>16 letterhead of Newfoundland and Labrador Hydro</p> <p>17 or can he simply pick out an e-mail on his</p> <p>18 computer and send it out without additional</p> <p>19 cost? We're not getting down to that level of</p> <p>20 detail, nor should we. But, Hydro has to be</p> <p>21 incented (sic.) to look at those things</p> <p>22 themselves. And it is for that reason that we</p> <p>23 have proposed the \$5 million productivity</p> <p>24 allowance that we refer to in our submission.</p> <p>25 This constitutes approximately a five percent</p>	<p>1 cut in controllable expenses, half of what</p> <p>2 Hydro would probably be required to do if it</p> <p>3 were still a government department and a long</p> <p>4 way ahead of what the market would force it to</p> <p>5 do if it was subject to market forces.</p> <p>6 And it's impossible to deal with this</p> <p>7 without making the further connection with the</p> <p>8 so called controllable and uncontrollable</p> <p>9 costs. Paper mills use bunker C and other</p> <p>10 fuels in the course of their operations. They</p> <p>11 don't have an RSP that protects them from</p> <p>12 those costs. Those costs hit them and they</p> <p>13 have to deal with them and they have to cut</p> <p>14 back elsewhere and they have to economize in</p> <p>15 order to stay alive. Hydro doesn't do that.</p> <p>16 Hydro says, this is the price, we have to pay</p> <p>17 it, consumers, pay up. So the mind set has to</p> <p>18 change in terms of what Hydro should be paying</p> <p>19 out. We have to get away from this cost plus</p> <p>20 world where there is no control over the</p> <p>21 costs. It is impractical to do it at the</p> <p>22 level of does the photocopier need to be</p> <p>23 colour or not. It is quite practical to do it</p> <p>24 in a reasonable way and say, okay, keep your</p> <p>25 so called non-controllable costs,</p>
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<p>1 notwithstanding that people like us have to</p> <p>2 fight with them anyway, but take your</p> <p>3 controllable costs and cut five percent, cut</p> <p>4 \$5 million from those costs and come back to</p> <p>5 the real world.</p> <p>6 (2:01 p.m.)</p> <p>7 The second theme I want to address is the</p> <p>8 theme of fairness. And this is primarily a</p> <p>9 theme that is applicable to the Cost of</p> <p>10 Service issues. As has already been mentioned</p> <p>11 here, there no hard and fast rules on the</p> <p>12 subject of plant assignment for the purpose of</p> <p>13 Cost of Service. The goal is fairness. And</p> <p>14 the regulator must seek after that goal of</p> <p>15 fairness on a case by case basis in every</p> <p>16 proceeding. There are no magic rules, there's</p> <p>17 no magic in Hydro's Cost of Service Study.</p> <p>18 All it is, is a construct which attempts to</p> <p>19 assign costs fairly. One could propose, by</p> <p>20 way of assignment, that there be a cent per</p> <p>21 kilowatt hour rate for every kilowatt used and</p> <p>22 everyone pays the same rate. That's a way of</p> <p>23 assigning costs. We don't do that because</p> <p>24 that doesn't reflect the costs that are</p> <p>25 imposed on the system by the need to meet</p>	<p>1 capacity at peak, so we get into more</p> <p>2 complicated things like the Cost of Service</p> <p>3 Study. The Board can and should apply</p> <p>4 guidelines and principles that have been</p> <p>5 established over time in dealing with these</p> <p>6 issues. But the ultimate test is whether the</p> <p>7 dollar costs assigned to the particular</p> <p>8 customer classes are fair. That is to say,</p> <p>9 are they related to that class's demand on and</p> <p>10 use of the system. That's why it is obvious</p> <p>11 to us that the current Newfoundland Power</p> <p>12 generation credit is simply wrong. You can</p> <p>13 tell it's wrong because the result is that the</p> <p>14 Industrial Customers pay almost eight times as</p> <p>15 much for Newfoundland Power's peaking capacity</p> <p>16 as they do for the admittedly more valuable</p> <p>17 Hydro gas turbines. Now that's simply unfair.</p> <p>18 That has to be changed. This isn't some</p> <p>19 intricate part of the working of the Cost of</p> <p>20 Service Study, as Mr. Kelly suggests that</p> <p>21 can't be changed without changing everything</p> <p>22 else. This is simply an input into the Cost</p> <p>23 of Service Study. This tells us what level of</p> <p>24 demand is on the system from Newfoundland</p> <p>25 Power. So it is a separate and independent</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 issue from the inner workings of the Cost of</p> <p>3 Service Study. To state it differently, the</p> <p>4 Industrial Customers and the Rural Customers</p> <p>5 together pay 60 percent of the cost of these</p> <p>6 peaking units as a result of the generation</p> <p>7 credit, but they're together responsible for</p> <p>8 only about 20 percent of the peak. Now,</p> <p>9 that's wrong, it's out of proportion, it's</p> <p>10 unfair, it's discriminatory and it can be very</p> <p>11 easily changed and there is a sound basis</p> <p>12 outlined in the evidence of Mr. Osler and Mr.</p> <p>13 Bowman for doing that which gives Newfoundland</p> <p>14 Power a proper and fair and proportional</p> <p>15 credit for what it actually does with its own</p> <p>16 resources, which is a benefit to the system</p> <p>17 and at the same time, does not impose burdens</p> <p>18 on the Industrial Customers and the Rural</p> <p>19 Customers that do not have a corresponding</p> <p>20 benefit for those customer groups.</p> <p>21 I note also that Hydro has even gone</p> <p>22 further and suggested that there should be a</p> <p>23 generation credit relative to the Northern</p> <p>24 Peninsula and I think we've demonstrated that</p> <p>25 the generation credit notion is simply wrong</p>	<p>1 in principle and obviously shouldn't be</p> <p>2 extended any further.</p> <p>3 The theme of fairness is also appropriate</p> <p>4 to apply when we look at the load forecast</p> <p>5 which is input by Newfoundland Power to Hydro</p> <p>6 for their use in the Cost of Service Study.</p> <p>7 It is quite clear and has been demonstrated</p> <p>8 what happened in 2002 that an inaccurate</p> <p>9 forecast by Newfoundland Power shifts costs in</p> <p>10 the Cost of Service Study from Newfoundland</p> <p>11 Power to the Industrial Customers, and this is</p> <p>12 all outlined in the evidence. This is, again,</p> <p>13 simply an unfair result. If this is the</p> <p>14 result that the system produces, there's</p> <p>15 something wrong with the system. And this is</p> <p>16 a very easy fix. The Board needs to</p> <p>17 scrutinize the Newfoundland Power forecast in</p> <p>18 the context of the information that we've put</p> <p>19 before you about historical numbers and so on,</p> <p>20 and make the adjustment that we suggest in the</p> <p>21 submission in order that the costs are fairly</p> <p>22 and properly assigned.</p> <p>23 The fairness principle applies to other</p> <p>24 issues of plant assignment. The Doyle's</p> <p>25 assignment is, and should remain as previously</p>
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<p>1 ordered, because that is fair. That properly</p> <p>2 assigns the costs. With respect to the Great</p> <p>3 Northern Peninsula, the Board obviously saw</p> <p>4 last time and Hydro now sees that it is</p> <p>5 obviously unfair to dump a million dollars</p> <p>6 worth of cost on the Industrial Customers each</p> <p>7 year for transmission, for this transmission</p> <p>8 line which, in effect, reduced the quality of</p> <p>9 service that the Industrial Customers got from</p> <p>10 the system. So that goes without saying and I</p> <p>11 don't think we need to tend to spend a lot of</p> <p>12 time on that. But we do need to consider the</p> <p>13 generation on the Great Northern Peninsula,</p> <p>14 and the evidence shows that almost all of the</p> <p>15 benefit of the Great Northern Peninsula</p> <p>16 generation accrues to Hydro Rural. The</p> <p>17 numbers are quoted in our submission, the</p> <p>18 number of times that those assets are used for</p> <p>19 local support, versus the number of times that</p> <p>20 they are used for system support. And even</p> <p>21 when used from system support, they cannot</p> <p>22 have any material benefit on operations the</p> <p>23 size of the Industrial Customers, simply</p> <p>24 because there is not enough power there. Even</p> <p>25 if there was no power being used on the</p>	<p>1 Northern Peninsula, the amount that could be</p> <p>2 sent to the grid, where the Industrial</p> <p>3 Customers can access it, is so insignificant</p> <p>4 as to make it wholly unfair that these costs</p> <p>5 be assigned to the Industrial Customers. And</p> <p>6 again, you have to look at the result. The</p> <p>7 result is an additional \$190,000 each and</p> <p>8 every year to the Industrial Customers, and</p> <p>9 where is the benefit of that? The Industrial</p> <p>10 Customers would be better off if Hydro simply</p> <p>11 said we won't run that generation for your</p> <p>12 benefit, we'll put a stop at Deer Lake so you</p> <p>13 never get any of that power, we'd be fine and</p> <p>14 we'd save \$190,000. The benefit that we get</p> <p>15 for it is so insignificant that it effects an</p> <p>16 unfair result and hence, reflects an improper</p> <p>17 allocation. Equally with respect to Burin,</p> <p>18 there is no distinction between the Burin</p> <p>19 situation and the GNP situation as regards</p> <p>20 transmission line 219. 212 is there. We</p> <p>21 admit that it joins the Paradise River</p> <p>22 generation to the grid and that is of benefit</p> <p>23 to the grid, and that is a cost that the</p> <p>24 Industrial Customers are prepared to share.</p> <p>25 But there is no requirement on the grid for</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 the second line. We don't build two lines out</p> <p>3 to Port aux Basques, we don't build two lines</p> <p>4 up the Northern Peninsula, we don't build two</p> <p>5 lines unless the capacity is such that you</p> <p>6 need two lines. You don't need two lines on</p> <p>7 the Burin Peninsula. The fact that it could</p> <p>8 be used, 219 could be used if 212 is down,</p> <p>9 doesn't mean that you go out and spend the</p> <p>10 million dollars or whatever it costs to build</p> <p>11 219. We don't duplicate the system in that</p> <p>12 way. So why then, simply because it is there,</p> <p>13 should costs be assigned to Industrial</p> <p>14 Customers? The benefit of that line is for</p> <p>15 the Newfoundland Power customers and to a</p> <p>16 certain extent, to the Hydro Rural Customers</p> <p>17 who are half of a percent of the load there.</p> <p>18 I can't agree with Mr. Kelly that cost</p> <p>19 assignment should be unresponsive to the</p> <p>20 notion of whether two customers are sharing a</p> <p>21 line 50/50 or 99.5 to .5. Again, that comes</p> <p>22 down to a matter of fairness. If you're</p> <p>23 getting half of one percent of the value, then</p> <p>24 you shouldn't be paying 50 percent of the</p> <p>25 cost. How is it possibly fair to charge the</p>	<p>1 Industrial Customers for that line when they</p> <p>2 don't need it, they don't get any benefit from</p> <p>3 it and those who do benefit from it, should,</p> <p>4 in fairness, be paying for it.</p> <p>5 I'd like to move now to the third theme</p> <p>6 which is the question of the future of this</p> <p>7 system. And we want to highlight before the</p> <p>8 Board the recommendation for a direction to</p> <p>9 Hydro to undertake integrated resource</p> <p>10 planning. This is not a foreign concept. It</p> <p>11 was discussed with witnesses who appeared</p> <p>12 before the Board and any organization of the</p> <p>13 size and sophistication of Hydro should have</p> <p>14 no difficulty in understanding what an</p> <p>15 integrated resource plan is. There needs to</p> <p>16 be an examination of the hydraulic resources</p> <p>17 on the Island. There may be smaller projects</p> <p>18 that are inappropriate for Hydro to develop,</p> <p>19 but others might develop that can be of</p> <p>20 benefit long term. There has to be</p> <p>21 initiatives to explore alternatives to</p> <p>22 continued reliance on oil of uncontrolled</p> <p>23 price from offshore. There needs to be a</p> <p>24 long-term consideration of where the whole</p> <p>25 system is going and the significant part of</p>
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<p>1 that is Demand Side Management. DSM needs to</p> <p>2 be taken seriously. There needs to be</p> <p>3 specific plans and specific goals and these</p> <p>4 are long-term plans, long-term plans into</p> <p>5 which fit items like the Interruptible B type</p> <p>6 of rate that was in place up until last year.</p> <p>7 The Interruptible B scheme was actually</p> <p>8 the biggest DSM initiative that Hydro has ever</p> <p>9 attempted. Its position now, though, is that</p> <p>10 well we don't need it in 2004. Equally, Mr.</p> <p>11 Chair, there are peaking generators, thermal</p> <p>12 generators out there that Hydro doesn't need</p> <p>13 in 2004. No one has suggested that they be</p> <p>14 retired or taken out of rate base or anything</p> <p>15 else, I mean, we're at an LOLH now of one and</p> <p>16 our goal is 2.8. We don't dump all the</p> <p>17 capacity that makes the difference between one</p> <p>18 and 2.8 because we know that in the long-term</p> <p>19 view, that's going to have value for us</p> <p>20 somewhere down the road. Equally with an</p> <p>21 Interruptible or Curtailable rate, like</p> <p>22 Interruptible B, the fact that in a given</p> <p>23 particular year, the chances of getting</p> <p>24 specific value, specific cost savings from</p> <p>25 that particular plan may be small, doesn't</p>	<p>1 mean that you throw out the entire issue.</p> <p>2 This is a long-term consideration under Demand</p> <p>3 Side Management which Hydro should be directed</p> <p>4 to continue.</p> <p>5 (2:15 p.m.)</p> <p>6 Mr. Chair, I have not touched upon each</p> <p>7 and every one of the points that are raised in</p> <p>8 our written submission. We have attempted to</p> <p>9 conserve our words in making this submission</p> <p>10 and in that sense, each of those words has an</p> <p>11 enhanced value. We commend each of those</p> <p>12 words to you and we want to ensure that you</p> <p>13 don't take from our lack of reference to a</p> <p>14 particular point in the written submission</p> <p>15 during this oral argument, that there is any</p> <p>16 less value or less significance to those items</p> <p>17 and we trust that you will review them all as</p> <p>18 you reach your decision.</p> <p>19 In closing, Mr. Chair, I would return to</p> <p>20 the theme of fairness and the other aspect of</p> <p>21 this process that the theme of fairness</p> <p>22 applies to, is the issue of the cost of</p> <p>23 proceedings of this type. This process is a</p> <p>24 necessary part of the provision of electrical</p> <p>25 service to all customers in this Province in</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 accordance with the Legislation that applies</p> <p>3 to all of us. Accordingly, the costs of</p> <p>4 Hydro, the cost to the Consumer Advocate, the</p> <p>5 cost of Newfoundland Power indirectly through</p> <p>6 their own hearing, and the cost to the Board</p> <p>7 are all allocated under the Cost of Service</p> <p>8 Study with similar types of overheads.</p> <p>9 Fairness demands that the Board ask itself why</p> <p>10 the Industrial Customers are discriminated</p> <p>11 against in this regard. In our submission,</p> <p>12 our participation clearly meets the tests</p> <p>13 which are referred to in the Bell Canada case</p> <p>14 and others. I don't think anyone can deny</p> <p>15 that there was significant added value to this</p> <p>16 process by the participation of Mr. Osler and</p> <p>17 Mr. Bowman, both in their written submissions</p> <p>18 and in their evidence before the Board. And</p> <p>19 it is our view that the Industrial Customers</p> <p>20 have put forward a professional and</p> <p>21 responsible level of participation in this</p> <p>22 process which merits an award of costs in</p> <p>23 accordance with the principles in that regard.</p> <p>24 The notion that ability to pay ought to be the</p> <p>25 primary consideration here, I think is,</p>	<p>1 frankly, wrong headed. There is no part of</p> <p>2 the mandate of the Industrial Customers in</p> <p>3 their operations that requires them to aid</p> <p>4 this Board in reaching the determinations that</p> <p>5 it must make. This is a cost to these</p> <p>6 participants and in order to see fair</p> <p>7 treatment among all the parties, it is only</p> <p>8 appropriate that those costs be reimbursed.</p> <p>9 Finally, Mr. Chair, we note that the Cost</p> <p>10 of Service Study will need to be adjusted to</p> <p>11 take into account whatever the Board orders in</p> <p>12 this connection and any implication in the</p> <p>13 Hydro submission that there is some sort of</p> <p>14 fixed point on October 31, 2003 in respect of</p> <p>15 cost of service issues, I don't think is an</p> <p>16 appropriate one to give effect to at this</p> <p>17 stage.</p> <p>18 And finally, Mr. Chair, I think we've</p> <p>19 dealt specifically with the other issues that</p> <p>20 Newfoundland Power has raised before the Board</p> <p>21 which relate to submissions of the Industrial</p> <p>22 Customers. We return to the point of the</p> <p>23 reasonableness of the rates that arise from</p> <p>24 this hearing, both in the context of business</p> <p>25 operations, such as our clients who need to</p>
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<p>1 deal with a degree of stability in rates, and</p> <p>2 the Board will never ignore, I am sure,</p> <p>3 comments such as those made by Mr. Israel Hann</p> <p>4 and others who gave evidence of the effect</p> <p>5 that these rate increases have on individual</p> <p>6 consumers, that it is not our mandate to</p> <p>7 advance those positions, but it is impossible</p> <p>8 not to be reminded of the concern that Mr.</p> <p>9 Hann had, relative to the decisions one makes</p> <p>10 to heat a house or buy food when one looks at</p> <p>11 the view of Hydro in terms of how it spends</p> <p>12 its money and how much money it spends. As I</p> <p>13 indicated in the beginning, Mr. Chair, these</p> <p>14 are very serious issues that may well have</p> <p>15 direct impact on the lives of particular</p> <p>16 employees of this Industrial Customer group</p> <p>17 within a fairly short space of time. We have</p> <p>18 been pleased by the degree of co-operation,</p> <p>19 especially with Board staff and other counsel</p> <p>20 and so on, that has been evident throughout</p> <p>21 this hearing, but we cannot escape the serious</p> <p>22 nature and the potentially disastrous results</p> <p>23 that could arise from the level of increases</p> <p>24 that are being proposed in this particular</p> <p>25 application. We must rely upon the Board to</p>	<p>1 do everything in its power to ensure that the</p> <p>2 minimal possible increase is the result of</p> <p>3 this hearing, with a view to maintaining the</p> <p>4 Industrial base and the jobs that are</p> <p>5 dependent upon that. And if the Board</p> <p>6 exercises its mandate to ensure that rates</p> <p>7 arising from this hearing are reasonable, then</p> <p>8 we feel that its job will be well done.</p> <p>9 Thank you again, Mr. Chair, for your</p> <p>10 attention and Commissioners and thank you to</p> <p>11 all the other participants for their</p> <p>12 assistance throughout the hearing.</p> <p>13 CHAIRMAN:</p> <p>14 Q. Thank you, Mr. Hutchings. Commissioner</p> <p>15 Saunders?</p> <p>16 COMMISSIONER SAUNDERS:</p> <p>17 Q. No questions, Mr. Chair.</p> <p>18 COMMISSIONER WHALEN:</p> <p>19 Q. No questions.</p> <p>20 CHAIRMAN:</p> <p>21 Q. Once again, thank you. The Board appreciates</p> <p>22 the tone of your comments as well, Mr.</p> <p>23 Hutchings. Good afternoon, Mr. Hearn.</p> <p>24 HEARN, Q.C.:</p> <p>25 Q. Good afternoon, Mr. Chairman. On behalf of</p>

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<p>1 HEARN, Q.C.:</p> <p>2 the Towns of Labrador City and Wabush, we have</p> <p>3 filed a written argument and we will be</p> <p>4 relying on the argument that we have filed and</p> <p>5 we--as supplemented by our oral comments here</p> <p>6 today.</p> <p>7 We would start out by pointing out that</p> <p>8 the Lieutenant Governor in Council gave</p> <p>9 direction to the Board in July of last year to</p> <p>10 hold a hearing into the appropriate rate</p> <p>11 calculation methodology for the so called</p> <p>12 Labrador Interconnected System on receipt of a</p> <p>13 complaint of discriminatory rates. This</p> <p>14 complaint was filed by the Towns of Labrador</p> <p>15 City and Wabush. By the Order-in-Council, the</p> <p>16 Board was directed in such circumstances as to</p> <p>17 hold a full hearing with opportunity for all</p> <p>18 interested parties to be heard, to make its</p> <p>19 decision upon the evidence presented and to</p> <p>20 provide detailed reasons. The issue is to be</p> <p>21 fully examined in this hearing without pre-</p> <p>22 conditions.</p> <p>23 We submit that Hydro has presented no</p> <p>24 evidence to support a policy of common rates</p> <p>25 for Labrador East and Labrador West. No</p>	<p>1 economic, social, political or legal reasons</p> <p>2 have been presented to support this proposed</p> <p>3 policy. The evidence that has been presented</p> <p>4 shows that a common rate policy discriminates</p> <p>5 against consumers in Labrador West and we'll</p> <p>6 go through that in more detail. My learned</p> <p>7 friend, Mr. Hutchings, referred to the</p> <p>8 proposed increases for the Industrial</p> <p>9 Customers as being outrageous and yet, the</p> <p>10 percentage increases proposed for Labrador</p> <p>11 West dwarf any other proposed increases that</p> <p>12 are proposed in this hearing process, and</p> <p>13 there's no suggestion that these proposed</p> <p>14 increases are driven by any increased costs in</p> <p>15 Labrador West.</p> <p>16 We would emphasize to the Board the</p> <p>17 following considerations: Labrador East and</p> <p>18 Labrador West are served by two separate</p> <p>19 systems. There is not a single Interconnected</p> <p>20 System and it would be an error to impose a</p> <p>21 common rate policy on the erroneous assumption</p> <p>22 that there is a single Interconnected System.</p> <p>23 Also it is cheaper to supply electrical</p> <p>24 services to Labrador West than to Labrador</p> <p>25 East and that the cost difference is material.</p>
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<p>1 The ratio is approximately three to one, as</p> <p>2 we've seen from the evidence. And each of the</p> <p>3 components of cost, generation, transmission,</p> <p>4 distribution, is cheaper by a considerable</p> <p>5 margin for Labrador West. A common rate</p> <p>6 policy wrongfully spreads the subsidies from</p> <p>7 the mining companies to Labrador East and also</p> <p>8 requires Labrador West to pay most of the cost</p> <p>9 for the back-up generation for Happy</p> <p>10 Valley/Goose Bay that's unrelated to Labrador</p> <p>11 West and for the transmission to Labrador East</p> <p>12 which is unrelated to Labrador West. A common</p> <p>13 rate policy unfairly adds huge extra costs to</p> <p>14 the mining companies that they cannot afford</p> <p>15 and threatens their viability. The continued</p> <p>16 existence of the air base in Goose Bay is in</p> <p>17 doubt for different reasons. This is not a</p> <p>18 time to be changing electricity policy. We've</p> <p>19 only recently heard through media such as the</p> <p>20 Globe and Mail and CBC, a statement from DND</p> <p>21 to the effect that they're not supportive of</p> <p>22 the long-term interest of the base and that</p> <p>23 they're not prepared to invest in a long-term</p> <p>24 basis and that they're actually seeking some</p> <p>25 25 million dollars in cost reductions. That's</p>	<p>1 the climate we're in. And when my learned</p> <p>2 friend for the Industrial Customers suggests</p> <p>3 that this could have a terrible impact, then</p> <p>4 that's true for both Labrador East and</p> <p>5 Labrador West and a wrong headed policy that</p> <p>6 increases the peril for Labrador West at a</p> <p>7 time when Labrador East may not even exist as</p> <p>8 a viable economic area, is certainly not</p> <p>9 justified at the present time and that's what</p> <p>10 a common rate policy does. The Labrador East</p> <p>11 and Labrador West systems are not analogous to</p> <p>12 the rural diesel systems where the systems are</p> <p>13 lumped together for purposes of subsidy,</p> <p>14 especially in relation to the supply of diesel</p> <p>15 fuel. Furthermore, there is not analogy to</p> <p>16 the postage stamp systems with a common rate.</p> <p>17 There's not suggestion in this hearing or in</p> <p>18 this province for common rate throughout the</p> <p>19 province. We now have six different rate</p> <p>20 systems and then the issue here, in this</p> <p>21 hearing, is where there should be five or six.</p> <p>22 There's no suggestion of a common rate system.</p> <p>23 The proposed collection of the rural deficit</p> <p>24 from Newfoundland Power Customers and certain</p> <p>25 customers in Labrador discriminates against</p>

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<p>1 HEARN, Q.C.:</p> <p>2 those customers. The collection of this</p> <p>3 deficit is a social tax and should be</p> <p>4 collected, in our view, as a dedicated tax on</p> <p>5 all electrical production in the province,</p> <p>6 utilizing the authority conferred on the</p> <p>7 province by Section 92(a)(4) of the Canadian</p> <p>8 Constitution. Rather than collect it from</p> <p>9 customers, it should be spread over the entire</p> <p>10 production base of the province. And we</p> <p>11 suggest that the Board should be recommending</p> <p>12 such a tax to the province and that the</p> <p>13 authority to recommend legislation is clearly</p> <p>14 found in Section 83 of the Public Utilities</p> <p>15 Act.</p> <p>16 To fully air these issues, the presence</p> <p>17 of the towns of Labrador City and Wabush and</p> <p>18 other interested parties has been essential</p> <p>19 and therefore, we'll be suggesting, in detail,</p> <p>20 at the end of our argument, that we should</p> <p>21 have the cost of our intervention and that</p> <p>22 that's consistent with the principles in which</p> <p>23 costs are normally given to intervenors.</p> <p>24 Returning for a moment to the suggestion</p> <p>25 of whether the so-called Labrador</p>	<p>1 Interconnected System is an interconnected</p> <p>2 system. Let's look at the profile of that</p> <p>3 system. The towns of Labrador City and Wabush</p> <p>4 supported by the iron ore companies have</p> <p>5 presented evidence to the Board on this issue.</p> <p>6 And it's fair to say that the evidence has</p> <p>7 been uncontradicted. The evidence presented</p> <p>8 discloses that the electrical system serving</p> <p>9 Labrador West is separate and distinct from</p> <p>10 the system serving Labrador East. To call</p> <p>11 these two systems a single interconnected</p> <p>12 system is to stretch the term "interconnected"</p> <p>13 beyond its meaning. Labrador West receives</p> <p>14 its energy from Churchill Falls via a 230 kV</p> <p>15 transmission line owned by Twinco. The power</p> <p>16 is wheeled by Twinco to the Wabush substation</p> <p>17 at no cost to Hydro. The energy is then</p> <p>18 contributed throughout Labrador West on the</p> <p>19 electrical system built by the mining</p> <p>20 companies and given to Hydro for nominal</p> <p>21 consideration. The mining companies also</p> <p>22 contributed millions of dollars to upgrading</p> <p>23 to ensure that the facilities were in proper</p> <p>24 operating condition. The subsidy continues in</p> <p>25 that the iron ore company bear the costs of</p>
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<p>1 any outage on the system. They agree that</p> <p>2 their load should be taken off the system</p> <p>3 first. The system is operationally distinct</p> <p>4 from the system serving Labrador East. The</p> <p>5 system has operated separately from Labrador</p> <p>6 East for the entire history of Labrador West,</p> <p>7 since these mining towns have come into</p> <p>8 existence. Labrador East, in contrast,</p> <p>9 receives its energy partially from Churchill</p> <p>10 Falls via a 138 kV line owned and maintained</p> <p>11 by Hydro. The costs of the line and the costs</p> <p>12 of transmission are born by Hydro. Labrador</p> <p>13 East also has backup generation capacity in</p> <p>14 the form of a gas turbine and perhaps also</p> <p>15 some diesel generation backup that may be used</p> <p>16 from time to time. The back up generation</p> <p>17 capacity for Labrador East is designed for</p> <p>18 Labrador East alone and has no relevance to</p> <p>19 Labrador West. The system serving Labrador</p> <p>20 East is operationally unrelated to the system</p> <p>21 serving Labrador West. No energy flows from</p> <p>22 Labrador West to Labrador East. No energy</p> <p>23 flows from Labrador East to Labrador West.</p> <p>24 There is no plausible scenario in which energy</p> <p>25 would flow from Labrador East to Labrador West</p>	<p>1 or vice versa. Thus it's clear that there are</p> <p>2 two separate systems, as separate and distinct</p> <p>3 as Newfoundland and PEI are separate islands.</p> <p>4 The two systems are operationally unrelated</p> <p>5 and have been for their entire history.</p> <p>6 We note that the Consumer Advocate</p> <p>7 acknowledges the strength of this argument in</p> <p>8 this brief. Looking at the cost of service</p> <p>9 between the areas, Labrador City and Wabush</p> <p>10 have again presented uncontradicted evidence</p> <p>11 that the cost of electrical service for</p> <p>12 Labrador West and Labrador East are different.</p> <p>13 It is cheaper to supply electricity to</p> <p>14 Labrador West than Labrador East. And as I</p> <p>15 mentioned, each of the components of cost,</p> <p>16 transmission, generation and distribution is</p> <p>17 cheaper in relation to Labrador West.</p> <p>18 Generation is cheaper for Labrador West than</p> <p>19 Labrador East because Labrador West receives</p> <p>20 all of its energy from Churchill Falls which</p> <p>21 Hydro buys under contract for approximately</p> <p>22 2.5 mils. While Labrador east has, in</p> <p>23 addition to the cost of energy from Churchill</p> <p>24 Falls, has the cost of backup generation</p> <p>25 capacity, the gas turbine and the diesel</p>



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<p>1 HEARN, Q.C.:</p> <p>2 facilities that are located there.</p> <p>3 Transmission is cheaper for Labrador West</p> <p>4 because the energy is wheeled from Churchill</p> <p>5 Falls over the Twinco lines at no cost to</p> <p>6 Hydro. In contrast, Hydro has to pay the cost</p> <p>7 of construction, maintaining and transmitting</p> <p>8 the energy from Churchill Falls to Labrador</p> <p>9 East via its line. Distribution costs are</p> <p>10 cheaper for Labrador West because the system</p> <p>11 in Labrador West was built by the mining</p> <p>12 companies at their cost, millions of dollars</p> <p>13 contributed to upgrade and it was turned over</p> <p>14 to Hydro for a nominal consideration. No such</p> <p>15 subsidy has been received in relation to the</p> <p>16 Labrador East system.</p> <p>17 (2:33 p.m.)</p> <p>18 Hydro's expert, Mr. Greneman, and the</p> <p>19 Board's expert, Ms. Tabone, agree that costs,</p> <p>20 in principle, should be recovered from the</p> <p>21 customers that cause it to be incurred.</p> <p>22 Having Labrador West subsidize Labrador East</p> <p>23 violates this principle and amounts to</p> <p>24 charging discriminatory rates to customers in</p> <p>25 Labrador West. In this proceeding, Mr.</p>	<p>1 Chairman, you've heard from the key employers,</p> <p>2 the two mining companies in Labrador West.</p> <p>3 The mining companies have given evidence of</p> <p>4 their past and continued contributions to the</p> <p>5 supply of electricity to Labrador West. As</p> <p>6 I've mentioned, they built the systems,</p> <p>7 contributed to upgrade and passed them over at</p> <p>8 nominal consideration to Hydro and still bear</p> <p>9 the costs of outages. In addition, they</p> <p>10 support, through a company of which they're</p> <p>11 shareholders, Twinco, the wheeling of energy</p> <p>12 from Churchill Falls at no cost. These</p> <p>13 subsidies were provided with the intention and</p> <p>14 expectation that electricity rates in Labrador</p> <p>15 West would be based on the costs of local</p> <p>16 service. And that was done to ensure, for the</p> <p>17 mining companies, that they could attract and</p> <p>18 maintain a skilled workforce. There was no</p> <p>19 expectation that subsidies for Labrador West</p> <p>20 would be spread to Happy Valley/Goose Bay.</p> <p>21 There was also no expectation that Labrador</p> <p>22 West customers would be forced to absorb most</p> <p>23 of the costs of the backup generation for</p> <p>24 Happy Valley/Goose Bay or for the costs of</p> <p>25 transmission from Churchill Falls to Happy</p>
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<p>1 Valley/Goose Bay, all which costs are</p> <p>2 unrelated to Labrador West. The result is</p> <p>3 that substantial unwarranted additional costs</p> <p>4 will be placed on a mining companies by a</p> <p>5 common rate policy at a time when they cannot</p> <p>6 afford such costs. And these costs would</p> <p>7 threaten the continued viability of the mines</p> <p>8 themselves as both Mr. Porter and Mr. McGrath</p> <p>9 explained in their evidence. The terminology,</p> <p>10 I believe, used by Mr. McGrath and there are</p> <p>11 quotes in the written submission, refer to</p> <p>12 grave consequences and the difficulty of</p> <p>13 meeting the costs in the first year increase</p> <p>14 alone, let alone the proposed increases over</p> <p>15 the whole phasing period. It has been</p> <p>16 suggested by Hydro and some of its witnesses,</p> <p>17 that the issue of a common rate policy is</p> <p>18 simply a matter of policy. Well, there's</p> <p>19 various types of policy and we would expect</p> <p>20 policy to be informed by facts and based on</p> <p>21 factual analysis.</p> <p>22 Let's examine for a moment the evidence</p> <p>23 that Hydro has presented on this issue. To my</p> <p>24 knowledge, the issue is only addressed in</p> <p>25 Hydro's evidence through its expert, Mr.</p>	<p>1 Greneman. And he talks of sending price</p> <p>2 signals and opportunity costs, suggesting that</p> <p>3 a low price encourages wasteful consumption</p> <p>4 and potentially deprives Hydro of further</p> <p>5 export sales to Quebec. With respect, there's</p> <p>6 no evidence of wasteful consumption in</p> <p>7 Labrador West. There's also no evidence that</p> <p>8 the electrical consumers in Labrador West do</p> <p>9 not pay the full cost of their service.</p> <p>10 Furthermore, if that's a consideration, then</p> <p>11 one would expect that the other side of the</p> <p>12 coin is a charging less than cost in Happy</p> <p>13 Valley/Goose Bay would send the opposite</p> <p>14 signal and the wrong signal, since their</p> <p>15 energy would not be based on costs and could</p> <p>16 encourage wasteful consumption in that area.</p> <p>17 Yet, with respect, the whole argument of Mr.</p> <p>18 Greneman is spurious. There's no evidence</p> <p>19 that this Board or Hydro should support a</p> <p>20 policy discouraging domestic consumption in</p> <p>21 Labrador in favour of export sales of further</p> <p>22 raw energy to Hydro Quebec. Indeed, with</p> <p>23 respect, that could be defined as a running</p> <p>24 sewer for this province in terms of how we've</p> <p>25 been treated. And the notion that we should</p>

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<p>1 HEARN, Q.C.:</p> <p>2 drive up local rates, regardless of cost</p> <p>3 considerations so that more energy can be sent</p> <p>4 to Hydro Quebec is to be kind, reasonable.</p> <p>5 Furthermore, Mr. Greneman, when he's</p> <p>6 presenting that argument, shows that he knows</p> <p>7 nothing of the export details. Remarkably, we</p> <p>8 have an expert coming in, speaking to a policy</p> <p>9 who doesn't know the circumstances that he's</p> <p>10 speaking of. And you can see it when you look</p> <p>11 at, review the transcript of his evidence or</p> <p>12 recall when he was there that was he groping</p> <p>13 in relation to export sales. And he was</p> <p>14 groping to provide support for an indefensible</p> <p>15 policy. The Board's expert, Ms. Tabone, also</p> <p>16 addressed this issue. She came all the way</p> <p>17 from the other side of the North American</p> <p>18 Continent to tell us about postage stamp</p> <p>19 common rate systems. Yet, we are not a common</p> <p>20 rate system. No common rate is proposed.</p> <p>21 Furthermore, and again with respect, she</p> <p>22 disclosed absolutely no factual knowledge of</p> <p>23 the electrical systems in Labrador and I find</p> <p>24 that remarkable. And I've been critical of</p> <p>25 Mr. Greneman's evidence and I would increase</p>	<p>1 the level of criticism with Ms. Tabone. And</p> <p>2 I've said in my written submission that her</p> <p>3 evidence is remarkably unincumbered by any</p> <p>4 factual understanding and I think that's the</p> <p>5 case. And she seemed to shrug it off in</p> <p>6 suggesting that the facts don't matter anyway</p> <p>7 because it's all a matter of policy. And I</p> <p>8 would reiterate that policy has to be based on</p> <p>9 factual analysis. And the sound basis of a</p> <p>10 policy has to be presented and no such sound</p> <p>11 base of a policy has been presented here.</p> <p>12 The only evidence before the Board</p> <p>13 supporting a common rate policy is that of Mr.</p> <p>14 Greneman and Ms. Tabone. The evidence is</p> <p>15 specious, spurious and disingenuous to say the</p> <p>16 least. It is also refuted by the analysis of</p> <p>17 Mr. Drazen and the evidence presented by the</p> <p>18 towns and the mining companies. The two</p> <p>19 systems in Labrador East and Labrador West</p> <p>20 respectfully are separate. They are not like</p> <p>21 the diesel systems which by definition involve</p> <p>22 electricity supplied by diesel fuel and are</p> <p>23 linked for purposes of subsidy. The two</p> <p>24 separate systems are also not analogous to</p> <p>25 towns within a single electrical system,</p>
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<p>1 within a single interconnected electrical</p> <p>2 system. It is, in our submission,</p> <p>3 insufficient to say that a common rate is a</p> <p>4 matter of policy and that such a policy has</p> <p>5 long been sought by Hydro. The Order-in-</p> <p>6 Council recognizes that the policy must be</p> <p>7 examined in detail and based on evidence. A</p> <p>8 policy can be good or bad. Hydro has</p> <p>9 presented no evidence to justify such a</p> <p>10 policy. The evidence that we have presented</p> <p>11 shows that the policy is contrary to principle</p> <p>12 and detrimental to the long-term viability of</p> <p>13 Labrador West. It is contrary to the</p> <p>14 expectation and intention of the mining</p> <p>15 companies when giving their electrical systems</p> <p>16 to Hydro. It is also contrary to the</p> <p>17 principle that costs should be recovered from</p> <p>18 customers that cause them to be incurred.</p> <p>19 Moving onto a consideration of the rural</p> <p>20 deficit. Through the rate system, there's a</p> <p>21 subsidy collected for rural electricity</p> <p>22 customers. This is, in effect, a social tax</p> <p>23 that is collected from certain rate payers,</p> <p>24 proposed to be collected from rate payers in</p> <p>25 Labrador East, Labrador West, as well as</p>	<p>1 Newfoundland Power customers. We submit that</p> <p>2 this is a discriminatory policy that</p> <p>3 discriminates against those customers and is a</p> <p>4 wrong way to do it. It is unfair and that the</p> <p>5 Board, as an independent regulatory agency,</p> <p>6 should recommend a fairer policy to</p> <p>7 government. I note in the submission of Board</p> <p>8 counsel, that he comments that the Board ought</p> <p>9 not to be considering this matter because the</p> <p>10 Board is not a taxing authority. With</p> <p>11 respect, Mr. Chairman, in the collection of</p> <p>12 the rural deficit, the Board is being used as</p> <p>13 a taxing authority. A social tax is being</p> <p>14 collected through the rate paying system from</p> <p>15 certain rate payers. So, we are suggesting,</p> <p>16 we're not saying that the collection of this</p> <p>17 social cost should not be done. We are simply</p> <p>18 suggesting the fairest way to do it and we</p> <p>19 think the Board has a role in not simply</p> <p>20 following the directives of government, but to</p> <p>21 recommend to them, utilizing the authority of</p> <p>22 Section 83 of the Public Utilities Act, the</p> <p>23 fairest way to carry out the social policy.</p> <p>24 What we suggest is a dedicated tax on all</p> <p>25 electrical production in the province</p>

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<p>1 HEARN, Q.C.:</p> <p>2 including production exported from Churchill</p> <p>3 Falls. Such a tax is authorized by Section 92</p> <p>4 (a)(4) of the Canadian Constitution, the so-</p> <p>5 called resource amendment and if I could just</p> <p>6 refer to 92(a)(4). "In each province, the</p> <p>7 legislature may make laws in relation to the</p> <p>8 raising of money by any mode or system of</p> <p>9 taxation in respect of" and then moving to B,</p> <p>10 which is the one we're concerned with here</p> <p>11 today, "sites and the facilities in the</p> <p>12 province for the generation of electrical</p> <p>13 energy and the production therefrom, whether</p> <p>14 or not such production is exported in whole or</p> <p>15 in part from the province, but such laws may</p> <p>16 not authorize or provide for taxation that</p> <p>17 differentiates between production exported to</p> <p>18 another part of Canada and production not</p> <p>19 exported from the province."</p> <p>20 This section was intended to expand</p> <p>21 provincial jurisdiction to authorize non-</p> <p>22 discriminatory indirect taxation, and that</p> <p>23 indirect taxation included electrical energy</p> <p>24 exported, not simply domestic production.</p> <p>25 That's what the section was designed to do.</p>	<p>1 That's what it says and that's what it does.</p> <p>2 Indeed, one could ask if the section does not</p> <p>3 do that, which is what the clear wording says,</p> <p>4 then what does it do and what is its purpose?</p> <p>5 We submit that the effect of this</p> <p>6 proposed tax would be to place the burden of</p> <p>7 the Rural deficit on all electrical production</p> <p>8 and not discriminate against Newfoundland</p> <p>9 Power customers and customers in Labrador East</p> <p>10 and Labrador West by compelling them to fund</p> <p>11 the entire Rural deficit.</p> <p>12 In my brief, I quote from an article by a</p> <p>13 distinguished Canadian academic, Professor</p> <p>14 William Mould, "Newfoundland Resources, the</p> <p>15 Supreme Court Strikes Again." Page 435 of</p> <p>16 that article, found under Tab 4 of my--I'm</p> <p>17 sorry, Tab 5 of my authorities, page 435, if I</p> <p>18 could quote that. "Section 92A(4) now</p> <p>19 authorizes a province to impose indirect</p> <p>20 taxation on sites and facilities in the</p> <p>21 province for the generation of electrical</p> <p>22 energy and the production therefrom, and this</p> <p>23 indirect taxation may be imposed whether or</p> <p>24 not such production is exported in whole or in</p> <p>25 part from the province so long as the tax</p>
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<p>1 regime adopted does not differentiate between</p> <p>2 production exported to another part of Canada</p> <p>3 and production not exported from the</p> <p>4 province." He agrees that that's the effect</p> <p>5 of the section.</p> <p>6 In my brief, I've also referred to a</p> <p>7 decision of the Supreme Court of Canada</p> <p>8 involving Ontario Hydro where at paragraphs</p> <p>9 80-81, page 23, Mr. Justice LaForest makes</p> <p>10 comments about the genesis of the section and</p> <p>11 the effect of the section and concludes by</p> <p>12 saying that the section permits indirect</p> <p>13 taxation in respect of resources, so long as</p> <p>14 such taxes do not discriminate against other</p> <p>15 provinces.</p> <p>16 By my calculations, with a Rural deficit</p> <p>17 of around 40 million dollars, a modest tax of</p> <p>18 approximately one mil, one-tenth of a cent,</p> <p>19 slightly over one-tenth of a cent, imposed on</p> <p>20 all electrical production, including that</p> <p>21 exported, would be sufficient to fund the</p> <p>22 Rural deficit. This is far less than the</p> <p>23 contemplated impact of having the entire Rural</p> <p>24 deficit funded by Newfoundland Power customers</p> <p>25 and customers in Labrador East and Labrador</p>	<p>1 West. This is presented to the Board not as a</p> <p>2 frivolous throw-away issue, but as an issue of</p> <p>3 vital importance to the proper rate setting</p> <p>4 process of the province and indeed to the</p> <p>5 fiscal responsibility of the province itself.</p> <p>6 The Board has a core role in setting fair</p> <p>7 electricity policy and indeed, in advising the</p> <p>8 province if there ought to be legislative</p> <p>9 amendments, as my learned friend, the Consumer</p> <p>10 Advocate, indicated in another context</p> <p>11 earlier, and I wholly agree with him on that.</p> <p>12 And this is an area as well where the Board's</p> <p>13 imprimatur and guidance is important. If this</p> <p>14 argument makes no sense, then for heaven's</p> <p>15 sake, say it and provide the reasons. If this</p> <p>16 argument makes sense and has merit, which I</p> <p>17 suggest any serious commentator would have to</p> <p>18 come to that conclusion as Professor Mould</p> <p>19 has, then please articulate that and let's get</p> <p>20 it in the public discussion of the province</p> <p>21 and let's make certain that the rates that are</p> <p>22 set, including rates that recover a Rural</p> <p>23 deficit, are principled and fair. And with</p> <p>24 respect to a comment of Board counsel, what is</p> <p>25 being suggested is that the Board is used as a</p>

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<p>1 HEARN, Q.C.:</p> <p>2       taxing authority to collect the subsidy for</p> <p>3       Rural Customers, but the method proposed is</p> <p>4       not ultimately fair because it places the</p> <p>5       entire burden on some select customers and</p> <p>6       we're suggesting a better way to do it and a</p> <p>7       way that results in a more modest burden for</p> <p>8       everybody.</p> <p>9       Turning to the issue of costs, which we</p> <p>10      briefly alluded to earlier, the Towns of</p> <p>11      Labrador City and Wabush are in this hearing</p> <p>12      by virtue of an order-in-council. We have</p> <p>13      attempted to present evidence in a focused,</p> <p>14      professional manner, on an issue of vital</p> <p>15      concern, and have attempted to not waste the</p> <p>16      time of the Board. We have not been present</p> <p>17      when issues that are peripheral to our</p> <p>18      considerations have been before the Board.</p> <p>19      Our interest is a particular interest and not</p> <p>20      a general interest and it's one that competes</p> <p>21      with the interest of consumers in Happy</p> <p>22      Valley-Goose Bay, so it's not one that we</p> <p>23      could reasonably expect the Consumer Advocate</p> <p>24      to present to this Board. All presence has</p> <p>25      been necessary and I think that fact is</p>	<p>1       recognized by the Order-in-council. I would</p> <p>2       endorse and adopt the comments of my learned</p> <p>3       friend, Mr. Hutchings, with respect to the</p> <p>4       principle of costs and that we are acting in</p> <p>5       accordance with that principle, and it's been</p> <p>6       the policy of this Board to grant costs to</p> <p>7       parties who ought to be here. The notable</p> <p>8       exception to that has been our participation</p> <p>9       in the last hearing, which was especially</p> <p>10      troublesome from our point of view, and we</p> <p>11      think that the Order-in-council itself</p> <p>12      recognizes the importance of our presence and</p> <p>13      the importance of this issue and that the</p> <p>14      issue had to be examined in detail with</p> <p>15      detailed evidence to be presented on it. So</p> <p>16      we submit that we ought to have our costs.</p> <p>17      The import of the Order-in-council is</p> <p>18      that the issue of common rates between</p> <p>19      Labrador East and Labrador West has not been</p> <p>20      fully examined in the past. It was to be</p> <p>21      fully aired in this hearing and a decision to</p> <p>22      be made with detailed reasons, based on the</p> <p>23      evidence presented. With respect, Hydro has</p> <p>24      presented no evidence to justify such a</p> <p>25      policy. The evidence presented is that a</p>
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<p>1       common rate policy discriminates against</p> <p>2       electrical consumers in Labrador West.</p> <p>3       Those are my comments, Mr. Chairman, and</p> <p>4       members of the Board. I would also like to</p> <p>5       finish by thanking the Board for its</p> <p>6       attention, the Board staff and counsel for</p> <p>7       their courtesy and cooperation throughout this</p> <p>8       entire process, and all other counsel for</p> <p>9       their cooperation and professionalism and if I</p> <p>10      might, it was certainly a pleasure to listen</p> <p>11      here today in a very difficult hearing, with</p> <p>12      very difficult issues, to hear the quality of</p> <p>13      presentations that the Board has heard earlier</p> <p>14      today, and it's certainly been a pleasure to</p> <p>15      work with all such dedicated professionals. I</p> <p>16      thank you very much, and if there are any</p> <p>17      questions, I'd be happy to try to answer them.</p> <p>18 CHAIRMAN:</p> <p>19      Q. Thank you, Mr. Hearn.</p> <p>20 COMMISSIONER SAUNDERS:</p> <p>21      Q. No questions, Mr. Chairman.</p> <p>22 COMMISSIONER WHELAN:</p> <p>23      Q. I just have one question, Mr. Hearn. Have</p> <p>24      you, in terms of looking at The Public</p> <p>25      Utilities Act, Section 73, which does deal</p>	<p>1       with, and certainly provides direction to the</p> <p>2       Board in terms of equality of rates. I</p> <p>3       wonder, I would be interested in getting your</p> <p>4       opinion on how that section may or may not</p> <p>5       apply in this case.</p> <p>6 HEARN, Q.C.:</p> <p>7      Q. If I may just have a moment to -</p> <p>8 COMMISSIONER WHELAN:</p> <p>9      Q. Sure. I don't know, Mr. O'Reilly, if you can</p> <p>10     pull up Section 73 of the P.U. Act?</p> <p>11 HEARN, Q.C.:</p> <p>12     Q. Section 73 of The Public Utilities Act -</p> <p>13 COMMISSIONER WHELAN:</p> <p>14     Q. Yes.</p> <p>15 HEARN, Q.C.:</p> <p>16     Q. - referring to "all tolls, rates and charges</p> <p>17     shall always, under substantially similar</p> <p>18     circumstances and conditions in respect of</p> <p>19     service of the same description, be charged</p> <p>20     equally to all persons at the same rate" and</p> <p>21     it carries on from there. It's our view that</p> <p>22     the operative part is "under substantially</p> <p>23     similar circumstances and conditions in</p> <p>24     respect of service of the same description"</p> <p>25     and that's why Mr. Drazen does his analysis on</p>

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1 HEARN, Q.C.:

2 costs, which is uncontradicted. We look at  
3 the history. We look at the operation. We  
4 say that the two separate systems serving  
5 Labrador East and Labrador West with different  
6 history, different cost base, completely  
7 operationally unrelated, that we're into a  
8 situation where it's not substantially similar  
9 circumstances and conditions in respect of  
10 service. It's, in fact, completely  
11 dissimilar, and that's the core of our  
12 presentation.

13 COMMISSIONER WHALEN:

14 Q. Thank you, Mr. Hearn.

15 CHAIRMAN:

16 Q. Thank you once again, Mr. Hearn. Moving now  
17 to Board hearing counsel. Good afternoon, Mr.  
18 Kennedy.

19 MR. KENNEDY:

20 Q. Good afternoon, Chair. I'll be quite brief.  
21 I just wanted to clarify a couple of matters  
22 arising from some of the comments of counsel  
23 and also from some of their statements in  
24 their briefs, where I thought it might be of  
25 assistance.

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1 was how to treat the guarantee fee, which, as  
2 we know, is another one percent, and you'll  
3 find at the last page of Dr. Waverman's pre-  
4 filed testimony, which is page 15, at line 14,  
5 the question was "how should the Board take  
6 into account the provincial guarantee which is  
7 currently one percent? Should this be added  
8 to the opportunity cost of debt?" And Dr.  
9 Waverman indicates that there are two  
10 approaches, either of which is theoretically  
11 supportable. As the one percent would be an  
12 additional cost, it could be added to the  
13 opportunity cost of debt. But then he goes  
14 "an approach I favour, on the other hand,  
15 would be to not add the one percent cost of  
16 the provincial guarantee to the opportunity  
17 cost of shareholder's equity. After all, when  
18 debt is issued, the cost of the guarantee is  
19 added in as a cost which is added into rates  
20 directly. If the opportunity cost of debt was  
21 to include the one percent, there could be  
22 double accounting of the cost of guarantee."

23 I'd note that Hydro confirms the fact  
24 that the guarantee fee is actually collected  
25 as part of rates as an expense item, an

1 The first point I wanted to speak to was  
2 just an issue concerning the testimony of Dr.  
3 Waverman, and specifically, his recommendation  
4 on the treatment of the provincially-backed  
5 guarantee fee. There seems to be some  
6 confusion which if it was just one person  
7 confused I would say it was their fault, but  
8 there seems to be a couple of parties  
9 confused, so I have to take the brunt of that.  
10 The Consumer Advocate references, for  
11 instance, at page 15, paragraph 44, of his  
12 brief that the guarantee fee would be added to  
13 the opportunity costs related to the retained  
14 earnings of Hydro, being the cost of new debt,  
15 the marginal cost of new debt. Just maybe I  
16 should back up a little bit.

17 Dr. Waverman's recommending that the  
18 opportunity costs for Hydro's retained  
19 earnings is equal to the marginal cost of  
20 debt, so the actual cost of new debt that  
21 Hydro would need to take on, and that there  
22 was evidence led in the hearing, as is  
23 referenced in my brief, that that marginal  
24 cost of debt would be 5.83 percent. And the  
25 question was or an issue that arose from that

1 interest expense item, and they reference that  
2 in their argument, page 24, line 4. You'll  
3 see there they confirm the debt guarantee fee  
4 paid to the Province of Newfoundland and  
5 Labrador is included as part of this interest  
6 expense. So in other words, the guarantee fee  
7 is collected as an interest expense. It  
8 therefore would not need to be added to the  
9 marginal cost of debt or the opportunity cost  
10 of the retained earnings or it would be a  
11 double accounting. So if the Board were to  
12 adopt Dr. Waverman's approach and assess the  
13 cost of capital for Hydro on that basis, that  
14 it need not add the one percent guarantee fee  
15 to the opportunity cost of debt, just the  
16 opportunity cost of debt itself would  
17 represent, in Dr. Waverman's opinion, the true  
18 cost of capital for that portion of Hydro's  
19 capital structure.

20 (3:00 p.m.)

21 Just to clarify as well, Hydro in its  
22 written argument indicates, and this is at  
23 page 48, that Dr. Waverman's theory is not  
24 supported by academic writing. I just wanted  
25 to comment that, well, just leaving aside the

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<p>1 MR. KENNEDY:</p> <p>2 fact that Dr. Waverman is an academic and he's</p> <p>3 placed this in writing, that I think I know</p> <p>4 what the counsel for Hydro's--the point that</p> <p>5 is trying to be made is that there's no</p> <p>6 academic papers per se that Dr. Waverman could</p> <p>7 point to, but that really Dr. Waverman's</p> <p>8 position was predicated on the fact that he</p> <p>9 was returning to first principles and as I</p> <p>10 think he indicated on the stand, this was on</p> <p>11 the basis of the cost of capital to Hydro and</p> <p>12 that that is clearly, I would suggest, an</p> <p>13 academically accepted principle in the cost of</p> <p>14 capital area of utility regulation. And so</p> <p>15 from that perspective, while his approach at</p> <p>16 the end of the day of assessing the</p> <p>17 opportunity cost of the retained earnings to</p> <p>18 be equal to the marginal cost of debt is an</p> <p>19 approach that's not practised in other</p> <p>20 jurisdictions in Canada that's readily</p> <p>21 admitted, it is nonetheless has the</p> <p>22 fundamental underpinnings of the academic area</p> <p>23 in this area.</p> <p>24 The second point I wanted to comment on</p> <p>25 was regards to the wholesale rate. The</p>	<p>1 Consumer Advocate suggested that the Board</p> <p>2 should ignore all the options that have been</p> <p>3 put forward by myself in the final submission</p> <p>4 and that the Board should immediately</p> <p>5 implement a new rate. And I just wanted to</p> <p>6 point out that that's, in fact, what option</p> <p>7 one is suggesting in the written argument in</p> <p>8 my brief. But that these options were put</p> <p>9 forward not as either/or scenarios. That</p> <p>10 really they're just points along a grey scale.</p> <p>11 That the issue is how quick--presuming the</p> <p>12 Board wishes to implement a wholesale rate,</p> <p>13 under what time frame does it desire for that</p> <p>14 to happen? The faster the Board wants to have</p> <p>15 a wholesale rate implemented, the more</p> <p>16 specific the instructions would need to be in</p> <p>17 its Order to the parties about what wholesale</p> <p>18 rate needs to be implemented. The longer the</p> <p>19 period of time that the Board is comfortable</p> <p>20 with in implementing a wholesale rate, the</p> <p>21 more it could leave to the parties to</p> <p>22 negotiate, if it was of the view that it would</p> <p>23 want to see the parties and principally, the</p> <p>24 utilities themselves, resolving what's</p> <p>25 referred to as the outstanding issues between</p>
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<p>1 them before a wholesale rate could be</p> <p>2 resolved.</p> <p>3 To that end, as is indicated in my</p> <p>4 written brief, there were four issues that the</p> <p>5 parties or that Hydro sensibly indicated were</p> <p>6 outstanding and would need to be resolved</p> <p>7 before a wholesale rate could be implemented.</p> <p>8 I refer to those. They're the weather</p> <p>9 normalization methodology, the degree of risk</p> <p>10 to be assumed by Hydro, the treatment of</p> <p>11 Newfoundland Power's generation credit, and</p> <p>12 the setting of the billing determinants as</p> <p>13 between the parties. The only thing I would</p> <p>14 comment on, and I thought counsel for Hydro</p> <p>15 may be able to shed some light on this in her</p> <p>16 rebuttal, is that I was a bit confused after</p> <p>17 reading Hydro's position about whether they</p> <p>18 feel that these issues are already resolved,</p> <p>19 and I think that that's the case as is</p> <p>20 referred to at page 82 of Hydro's written</p> <p>21 brief, and there's--I won't read it out.</p> <p>22 There's a lengthy quote there from Mr.</p> <p>23 Banfield, when he was providing testimony, and</p> <p>24 he indicates that as per Hydro putting--if I'm</p> <p>25 paraphrasing correctly, it's Mr. Banfield's</p>	<p>1 suggestion that option A per Exhibit RDG-2,</p> <p>2 which is the one that Hydro's putting forward</p> <p>3 as the sample rate, is in fact suggesting that</p> <p>4 many of these issues have, at least for</p> <p>5 Hydro's purposes, been resolved. Because the</p> <p>6 sample rate is a weather normalized rate, it</p> <p>7 does address the degree of risk to be assumed</p> <p>8 by Hydro and it does set the billing</p> <p>9 determinants. So from that perspective, I</p> <p>10 think Hydro's suggesting that it's comfortable</p> <p>11 with the resolution that it's reached on those</p> <p>12 outstanding issues.</p> <p>13 But again, if the Board feels that there</p> <p>14 is still some negotiation that would need to</p> <p>15 take place between the utilities before the</p> <p>16 final implementation of this wholesale rate,</p> <p>17 if it's moving in that direction, then it's a</p> <p>18 question of how much negotiation the Board</p> <p>19 feels is warranted or needs to take place, or</p> <p>20 how specific it can be in the directions that</p> <p>21 it provides to the utilities. If it feels,</p> <p>22 after looking at all the evidence, that it can</p> <p>23 be quite specific in what the billing</p> <p>24 determinant should be, for instance what the</p> <p>25 demand portion of this charge should be,</p>

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<p>1 MR. KENNEDY:</p> <p>2 whether there should be one block or two block</p> <p>3 energy rate and so on, that if it's quite</p> <p>4 specific in those directions, I'd suggest that</p> <p>5 there could be a fairly quick trigger on the</p> <p>6 implementation of wholesale rate. If it feels</p> <p>7 that there's more work that needs to be</p> <p>8 required, then it may need to allow the</p> <p>9 parties to have more negotiations before that</p> <p>10 takes place.</p> <p>11 The next point I wanted to make was</p> <p>12 concerning the integrated resource planning.</p> <p>13 Hydro's counsel suggested that--and again, if</p> <p>14 I'm paraphrasing incorrectly, I'm sure I'll be</p> <p>15 corrected, but if I gathered correctly,</p> <p>16 Hydro's counsel was suggesting that there was</p> <p>17 little or no evidence on integrated resource</p> <p>18 planning. I find that a bit curious because</p> <p>19 as per the transcript for November the 19th,</p> <p>20 which was when both Mr. Chymko and Ms. Tabone</p> <p>21 testified. Mr. Chymko makes 13 references to</p> <p>22 integrated resource planning. Ms. Tabone</p> <p>23 makes two references that I could count in</p> <p>24 that November the 19th transcript. And while</p> <p>25 admittedly there wasn't detailed specifics,</p>	<p>1 for instance, on exactly what goes into an</p> <p>2 integrated resource plan insofar, you know,</p> <p>3 chapter headings, there seemed to be</p> <p>4 sufficient evidence placed before the Board</p> <p>5 concerning what is an integrated resource plan</p> <p>6 and lots of good information on what would be</p> <p>7 examined as part of an integrated resource</p> <p>8 plan, how it would be used by this Board and</p> <p>9 the stakeholders for such things as system</p> <p>10 planning, DSM and the calculation of long-run</p> <p>11 marginal costs, so that could be reflected in</p> <p>12 rates. And so what impact an integrated</p> <p>13 resource plan would have on moving forward</p> <p>14 with the regulation of the utility and I would</p> <p>15 refer again as peppered throughout that</p> <p>16 November 19th transcript, but just a specific</p> <p>17 reference would be page 49, line 8 and page</p> <p>18 78, line 16, and they are specific references</p> <p>19 by Mr. Chymko about how an integrated resource</p> <p>20 plan would be used.</p> <p>21 I have three quickies, I believe is what</p> <p>22 we were calling them at a previous hearing</p> <p>23 under sort of miscellaneous items. One is the</p> <p>24 suggestion by Hydro in its brief concerning</p> <p>25 the cost issue. And if I'm gathering</p>
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<p>1 correctly, Hydro is suggesting that it would</p> <p>2 seek an estimate from this Board about what</p> <p>3 the costs for the regulatory process of this</p> <p>4 hearing are believed to be. It's, I presume</p> <p>5 on the assumption that the amount Hydro</p> <p>6 currently has booked in its revenue</p> <p>7 requirements of 1.2 million dollars amortized</p> <p>8 over the three-year period, may be too low and</p> <p>9 that if the regulatory costs, for instance, if</p> <p>10 this Board were to award costs to the</p> <p>11 Industrial Customers and the Labrador City and</p> <p>12 its own cost of being higher than anticipated</p> <p>13 and so on, that the 1.2 million dollars may be</p> <p>14 insufficient and if so, Hydro could be, to put</p> <p>15 it in the slang "short changed" if you will on</p> <p>16 what they're allowed to collect in their</p> <p>17 revenue requirement. I'm not sure if that's</p> <p>18 an actual achievable in a practical sense for</p> <p>19 this Board to make a pre-estimation if there</p> <p>20 would be a sufficient amount of time for it to</p> <p>21 be able to estimate how much, for instance,</p> <p>22 the Industrial Customer's costs are going to</p> <p>23 be or at least make an order in that regard in</p> <p>24 time for Hydro to be able to turn that into</p> <p>25 their next cost of service run that they'll do</p>	<p>1 following the Phase II Order. So as an</p> <p>2 alternative proposition, another way to treat</p> <p>3 that would be through the use of a deferral</p> <p>4 account. The Board could approve a deferral</p> <p>5 account for Hydro for any difference between</p> <p>6 the 1.2 million that they have booked for</p> <p>7 regulatory costs and what the actual costs</p> <p>8 would be. And that, however, would not be</p> <p>9 addressed again until the next GRA. So</p> <p>10 subject to the length of time between now and</p> <p>11 the next GRA, that's a fairly long time for</p> <p>12 that deferral account to operation, so it's</p> <p>13 kind of a judgment call on the part of the</p> <p>14 Board as to whether it feels it necessary to</p> <p>15 make adjustments to the 1.2 million dollars</p> <p>16 currently booked into the revenue requirement,</p> <p>17 again it's amortized over three years and if</p> <p>18 so, whether they would do that through a</p> <p>19 deferral account or whether they would do that</p> <p>20 by giving Hydro this additional information</p> <p>21 it's seeking by virtue of the order, so that</p> <p>22 the number can be a more accurate reflection</p> <p>23 of actuals.</p> <p>24 The next point I wanted to make was on</p> <p>25 KPI's. Again, the relevant document here is U</p>

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<p>1 MR. KENNEDY:</p> <p>2 No. 17, that's the document that was</p> <p>3 ultimately filed by Hydro in response to the</p> <p>4 undertaking requested that provides the</p> <p>5 detailed information concerning KPI data for</p> <p>6 2004. And Hydro addresses or provides some</p> <p>7 comments concerning KPI's in response to the,</p> <p>8 particularly the supplementary evidence of</p> <p>9 Grant Thornton, Hydro does so at page 32 of</p> <p>10 its written argument. The only thing is, I</p> <p>11 never saw in Hydro's written argument, at page</p> <p>12 32 or anywhere around there, I never saw where</p> <p>13 Hydro addressed Grant Thornton's main point</p> <p>14 which I think on this point, on KPI's, was</p> <p>15 that the KPI's are most importantly to be used</p> <p>16 to set targets for future years, that there</p> <p>17 was in Grant Thornton's opinion, no evidence,</p> <p>18 I guess, at this point of how Hydro was going</p> <p>19 to use those KPI's to set targets for 2005,</p> <p>20 for instance or 2006 and that that was the</p> <p>21 point that Grant Thornton was trying to make</p> <p>22 concerning these performance, Key Performance</p> <p>23 Indicators. Not good enough to just put them</p> <p>24 in, that there should be some target that</p> <p>25 Hydro is seeking to achieve.</p>	<p>1 Almost lastly is just points concerning</p> <p>2 the Automatic Adjustment Formula and the</p> <p>3 excess earnings account. Now subject to the</p> <p>4 Consumer Advocate's stated objection to the</p> <p>5 use of an Automatic Adjustment Formula, there</p> <p>6 seem to be otherwise a consensus that the</p> <p>7 Board--it would be appropriate for the Board</p> <p>8 to move ahead with the implementation of an</p> <p>9 Automatic Adjustment Formula, you know, within</p> <p>10 the context of it setting the approved rate of</p> <p>11 return. However, I'd suggest that regardless</p> <p>12 of whether the Board pursues the</p> <p>13 implementation of an Automatic Adjustment</p> <p>14 Formula, it should consider the implementation</p> <p>15 of an excess earnings accounts, the creation--</p> <p>16 and ordering of the creation of an excess</p> <p>17 earnings account; in other words, they're not</p> <p>18 necessarily linked or coupled and that it</p> <p>19 should do so, that it should consider making</p> <p>20 that recommendation for the creation of an</p> <p>21 excess earnings account regardless of whether</p> <p>22 AAF is implemented because it would provide</p> <p>23 regulatory consistency and also most</p> <p>24 importantly, regulatory certainty as to what</p> <p>25 would happen in the event that Hydro exceeds</p>
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<p>1 the approved rate of return, whatever that is</p> <p>2 at the end of the day.</p> <p>3 And Chair, just lastly, it's just</p> <p>4 concerning the actual implementation date for</p> <p>5 new rates flowing from this hearing, it may be</p> <p>6 helpful to receive some specific comments from</p> <p>7 counsel for Hydro concerning what, from their</p> <p>8 perspective would be an achievable and</p> <p>9 workable implementation date for new rates</p> <p>10 arising from this hearing, that subject to the</p> <p>11 Board's findings on these various matters of</p> <p>12 cost of capital and cost of service issues, is</p> <p>13 there a date that Hydro is seeking for the</p> <p>14 implementation of the new rates, one that</p> <p>15 would be preferred to Hydro over and above -</p> <p>16 GREENE, Q.C.:</p> <p>17 Q. January 1.</p> <p>18 MR. KENNEDY:</p> <p>19 Q. Pardon?</p> <p>20 GREENE, Q.C.:</p> <p>21 Q. January 1 was our application.</p> <p>22 HEARN, Q.C.:</p> <p>23 Q. Was that 2005 (laughter).</p> <p>24 GREENE, Q.C.:</p> <p>25 Q. Anyway, I'll discuss that in rebuttal.</p>	<p>1 MR. KENNEDY:</p> <p>2 Q. Yes, and that's what I'd like, is just the</p> <p>3 opportunity for counsel to be able to address</p> <p>4 that particular issue in light of the fact</p> <p>5 that the hearing has gone past its earlier</p> <p>6 suggested implementation dates. Subject to</p> <p>7 any questions by the Board, that's the sum of</p> <p>8 my comments, Chair and Commissioners.</p> <p>9 COMMISSIONER SAUNDERS:</p> <p>10 Q. No questions, Mr. Chair.</p> <p>11 COMMISSIONER WHALEN:</p> <p>12 Q. Thank you, Mr. Kennedy.</p> <p>13 CHAIRMAN:</p> <p>14 Q. Thank you very much, Mr. Kennedy. Ms. Greene,</p> <p>15 would you like--I think to be fair to you,</p> <p>16 particularly in light of, perhaps, some of the</p> <p>17 comments that the Board hearing counsel made,</p> <p>18 would you like five or ten minutes before -</p> <p>19 GREENE, Q.C.:</p> <p>20 Q. We think that would be helpful. I think we</p> <p>21 may all benefit from a short washroom break as</p> <p>22 well.</p> <p>23 CHAIRMAN:</p> <p>24 Q. Sure. Would 3:30 be okay for you?</p> <p>25 GREENE, Q.C.:</p>



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<p>1 Q. Yes, that would be fine.</p> <p>2 CHAIRMAN:</p> <p>3 Q. Okay, thank you.</p> <p>4 (RECESS - 3:17 P.M. )</p> <p>5 (RESUME - 3:30 P.M. )</p> <p>6 CHAIRMAN:</p> <p>7 Q. Now, Ms. Greene, once again when you're ready,</p> <p>8 please.</p> <p>9 GREENE, Q.C.:</p> <p>10 Q. As I mentioned before you arrived, my</p> <p>11 rebuttal, up to lunchtime, has been virtually</p> <p>12 non-existent, but in light of some of the</p> <p>13 questions raised particularly by Board</p> <p>14 counsel, there are a number of issues to be</p> <p>15 addressed.</p> <p>16 The first one relates to the demand</p> <p>17 energy rate structure for Newfoundland Power.</p> <p>18 In their oral argument today, as well as in</p> <p>19 written argument, Newfoundland Power did raise</p> <p>20 a number of issues to support an argument</p> <p>21 against the implementation of a demand energy</p> <p>22 rate structure for Newfoundland Power. We</p> <p>23 would point out that nothing new was raised,</p> <p>24 in either the written argument or the oral</p> <p>25 argument, which was not addressed during the</p>	<p>1 hearing and dealt with by the various cost of</p> <p>2 service experts.</p> <p>3 As we pointed out in our argument, the</p> <p>4 cost of service experts believe, with the</p> <p>5 exception of Mr. Brockman for Newfoundland</p> <p>6 Power, that a demand energy rate structure can</p> <p>7 be implemented following this hearing, that it</p> <p>8 is not necessary to defer it further. In</p> <p>9 fact, not only do they agree that it can be</p> <p>10 implemented, they are all unanimous that it</p> <p>11 should be implemented, that includes</p> <p>12 Newfoundland Hydro's expert and that is</p> <p>13 Newfoundland Hydro's position as well.</p> <p>14 Newfoundland Power also suggested this</p> <p>15 morning that it shouldn't be done until</p> <p>16 there's a Marginal Cost Study done. We will</p> <p>17 point out, as we did on pages 83 to 84 of our</p> <p>18 final argument, that all of the experts</p> <p>19 agreed, except again Mr. Brockman, that this</p> <p>20 was not necessary, that you could implement</p> <p>21 the demand energy rate structure without</p> <p>22 waiting for the results of a Marginal Cost</p> <p>23 Study. In fact, as we point out on page 84 of</p> <p>24 their final argument, this also appears to</p> <p>25 have been acknowledged by one of the witnesses</p>
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<p>1 for Newfoundland Power. So what were--there</p> <p>2 were issues that were unresolved with respect</p> <p>3 to the demand energy rate. We've pointed</p> <p>4 these out in the pre-filed evidence; however,</p> <p>5 we believe that all of those issues have been</p> <p>6 addressed, with the exception of one, which is</p> <p>7 metering. And this issue was also dealt with</p> <p>8 in our written argument where we pointed out</p> <p>9 that the treatment of the NP generation</p> <p>10 credit, the issue of the risk to Hydro, the</p> <p>11 issue of the billing determinants, have all</p> <p>12 been addressed in the proposed rate option</p> <p>13 outlined by Stone &amp; Webster, which we have</p> <p>14 called Option 1 and which we say we support.</p> <p>15 With respect to weather normalization,</p> <p>16 Hydro has proposed a reasonable method which</p> <p>17 we understand Newfoundland Power has</p> <p>18 acknowledged can work. So there's only one</p> <p>19 issue that needs to be addressed which is the</p> <p>20 issue of metering and possibly some discussion</p> <p>21 on weather normalization, although we are not</p> <p>22 certain that that is required. And that is</p> <p>23 why both Mr. Banfield and Mr. Greneman said</p> <p>24 that those issues could be resolved within one</p> <p>25 month, if that is what the Board has decided</p>	<p>1 is appropriate to proceed with implementation.</p> <p>2 So Hydro's position, just to ensure</p> <p>3 there's clarity for the record, is that if the</p> <p>4 Board deems it appropriate, a demand energy</p> <p>5 rate structure for Newfoundland Power can be</p> <p>6 implemented with the order flowing from this</p> <p>7 hearing. While Hydro has proposed an energy-</p> <p>8 only rate in its Application, we do support</p> <p>9 the implementation of a demand-energy rate</p> <p>10 structure. We request that the issue be dealt</p> <p>11 with, I think as well the Consumer Advocate</p> <p>12 has pointed out, this issue has been</p> <p>13 outstanding for a period of time, and we would</p> <p>14 like to see some resolution to the issue and</p> <p>15 that we will not be talking about it at the</p> <p>16 next General Rate Application.</p> <p>17 If there is to be any discussions between</p> <p>18 the utilities before the implementation of a</p> <p>19 demand energy rate structure, and if the Board</p> <p>20 deems that advisable, we submit, as we did in</p> <p>21 our oral argument this morning, that the Board</p> <p>22 should give direction on the issues to be</p> <p>23 discussed. We believe there's only one</p> <p>24 outstanding and that's the issue of metering,</p> <p>25 and that they should also give a specific</p>

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<p>1 GREENE, Q.C.:</p> <p>2 timetable for those discussions, with a report</p> <p>3 back to the Board, if required. To date, the</p> <p>4 discussion between the utilities has not been</p> <p>5 successful and we believe that there is</p> <p>6 specific direction required and a specific</p> <p>7 timetable established by the Board, if the</p> <p>8 Board feels further discussion is necessary</p> <p>9 between the utilities.</p> <p>10 So that was the first point on the</p> <p>11 demand-energy rate structure, which I believe</p> <p>12 addresses the questions that Board hearing</p> <p>13 counsel asked on that one. The next comment I</p> <p>14 must, I really feel that we have to make is in</p> <p>15 reply to Mr. Hutchings commentary at the</p> <p>16 beginning of his argument, somewhat to the</p> <p>17 effect that Hydro has been immune or</p> <p>18 indifferent to the concerns of the customers</p> <p>19 with respect to the rates being proposed.</p> <p>20 I would like to assure the Board that we</p> <p>21 take this issue very seriously and I just</p> <p>22 wanted to outline some of the actions Hydro</p> <p>23 has done in this regard. First, there has</p> <p>24 been a loss on regulated activities in 2003.</p> <p>25 Hydro did not attempt to recover and to apply</p>	<p>1 earlier to increase the rates which would have</p> <p>2 been obviously more money from customers at an</p> <p>3 earlier time. Secondly, rates cannot now be</p> <p>4 implemented on January 1, which had been the</p> <p>5 original intention when we filed. We are not</p> <p>6 seeking to recover that extra lost income.</p> <p>7 You will note from our final argument, we are</p> <p>8 asking for the same rates to be implemented as</p> <p>9 if they were on January 1. So we believe</p> <p>10 Hydro has, through its actions with respect to</p> <p>11 its loss in 2003 and with respect to the date</p> <p>12 for the implementation of the new rate, shown</p> <p>13 that it has taken into account and tried to</p> <p>14 mitigate impacts for customers.</p> <p>15 The next action is that it was Hydro who</p> <p>16 voluntarily asked for a three percent return</p> <p>17 on equity in 2001. In hindsight, that</p> <p>18 probably was not a wise decision and it has</p> <p>19 left us with a lot of baggage, but that it was</p> <p>20 a voluntary action of Hydro and it was</p> <p>21 acknowledged by the parties then and by the</p> <p>22 Board, that three percent was below what Hydro</p> <p>23 was entitled to and it was below a market rate</p> <p>24 of return. So those profits that Hydro could</p> <p>25 have asked for, we did not ask for, again it</p>
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<p>1 was with respect and consideration of the</p> <p>2 impact of rates on customers.</p> <p>3 The next one is that Hydro agreed to a</p> <p>4 four-year write off for the new RSP balance,</p> <p>5 which did have a two-year write off, that</p> <p>6 increased the risk to Hydro, it's a longer</p> <p>7 recovery period. Again, it was done to soften</p> <p>8 the overall impact and we have filed evidence</p> <p>9 as to how that did help to reduce the overall</p> <p>10 rate impact for customers.</p> <p>11 Another thing we have done is to defer</p> <p>12 the recommendation with respect to the</p> <p>13 implementation of a longest hydraulic record</p> <p>14 because of the impact it would have on rates</p> <p>15 at this time. And I wanted to assure the</p> <p>16 Board and the parties that Hydro does take</p> <p>17 these seriously, as the evidence has shown, we</p> <p>18 have reduced by 100 positions, almost 60 since</p> <p>19 the last hearing. And these are--this is a</p> <p>20 very difficult thing for Hydro in terms of--</p> <p>21 and it's part of the reality that we face, but</p> <p>22 in that process, we have had long-term</p> <p>23 employees of Hydro who were let go and it is</p> <p>24 not an easy thing to do, but again, is part of</p> <p>25 the reality that Hydro has faced and that it</p>	<p>1 has done in trying to meet its obligation to</p> <p>2 provide lowest cost power. And with my Human</p> <p>3 Resources hat on, as one of the parties who</p> <p>4 met a number of these permanent employees, as</p> <p>5 well as a number of the long-term temporaries,</p> <p>6 I can assure the Board that Hydro does treat</p> <p>7 these things very seriously and we were felt</p> <p>8 we were left with no alternative. As well,</p> <p>9 Hydro has provided for additional efficiencies</p> <p>10 in 2004, which will only come through salary</p> <p>11 savings. So I just wanted to give that little</p> <p>12 bit of context to try to offset the image Mr.</p> <p>13 Hutchings tried to create that we live in an</p> <p>14 ivory tower or pass on costs at all, no matter</p> <p>15 what the implications are for our customers.</p> <p>16 I assure you that is not the case.</p> <p>17 Now moving on to the Labrador</p> <p>18 Interconnected System issue, there was only</p> <p>19 one very minor point that I wished to address</p> <p>20 in rebuttal to what Mr. Hearn had said this</p> <p>21 afternoon, and that related to the expectation</p> <p>22 of the mining companies that the rates in</p> <p>23 Labrador West were to continue to be set based</p> <p>24 on only Labrador West costs. First, this</p> <p>25 issue is irrelevant before the Board.</p>

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<p>1 GREENE, Q.C.:</p> <p>2 However, I would point out that this</p> <p>3 expectation was not reflected in any of the</p> <p>4 agreements that were signed at the time or</p> <p>5 even in correspondence, and that this was</p> <p>6 acknowledged by the representatives of the</p> <p>7 mining companies at the hearing in Labrador</p> <p>8 West. One would expect that if that had been</p> <p>9 a significant part of the arrangement that it</p> <p>10 would have been reflected in the contractual</p> <p>11 documents or at least in correspondence.</p> <p>12 Moving on to some of the issues raised by</p> <p>13 Board hearing counsel, first dealing with the</p> <p>14 costs for the hearing. Hydro's position in</p> <p>15 its final argument outlines that in coming up</p> <p>16 with the 2004 revenue requirement, Hydro used</p> <p>17 an estimate of 1.2 million dollars to cover</p> <p>18 the cost of the Board and the Consumer</p> <p>19 Advocate and this was based on our experience</p> <p>20 in the 2001 GRA. This hearing has not been</p> <p>21 shorter. It has not been less costly than the</p> <p>22 previous hearing. We don't know if that</p> <p>23 estimate is reasonable for the costs of the</p> <p>24 Board and the Consumer Advocate, nor do we</p> <p>25 know if the Board will award costs to any</p>	<p>1 other intervenor.</p> <p>2 There is an issue as to costs. For the</p> <p>3 first time, the Board did give costs and</p> <p>4 wasn't their total cost, but a portion of</p> <p>5 their costs to Industrial Customers in the</p> <p>6 2001 GRA. We do not know whether this will be</p> <p>7 a practice of the Board or not. In our final</p> <p>8 argument, we point out that we do not support</p> <p>9 the award of costs to Industrial Customers.</p> <p>10 We haven't in the past and we do not in this</p> <p>11 current application. But there is uncertainty</p> <p>12 in light of the Board's decision in the 2001</p> <p>13 GRA and in our 2004 Capital Budget as to what</p> <p>14 exactly the practice is in this jurisdiction</p> <p>15 with respect to this issue. We did not</p> <p>16 include anything in our estimate for the</p> <p>17 costs. We have no control over these costs.</p> <p>18 We have no information on these costs. So we</p> <p>19 believe it is only reasonable that someone</p> <p>20 provide us with what an estimate of the costs</p> <p>21 are that the Board will allow to be recovered,</p> <p>22 especially where there is uncertainty as to</p> <p>23 who will get their costs so that we can use</p> <p>24 what is a reasonable estimate in providing the</p> <p>25 2004 final test year costs. The other costs</p>
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<p>1 in the revenue requirement of Hydro can</p> <p>2 provide estimates because we have knowledge.</p> <p>3 These costs, we have no knowledge other than</p> <p>4 our past experience in the 2001 GRA.</p> <p>5 (3:48 p.m.)</p> <p>6 We do not agree that these costs should</p> <p>7 be deferred to the next rate application. By</p> <p>8 the time of the next rate application, we will</p> <p>9 have other significant costs that we will be</p> <p>10 trying to recover. These hearings are very</p> <p>11 costly. To defer a significant portion of</p> <p>12 costs from this hearing to the next hearing</p> <p>13 will only exacerbate the problem for</p> <p>14 customers, because these costs are passed on</p> <p>15 to our customers.</p> <p>16 The next point of Board hearing counsel</p> <p>17 was with respect to the excess earnings</p> <p>18 account, and he recommended to the Board or</p> <p>19 stated that this wasn't tied to the Automatic</p> <p>20 Adjustment Formula and that it should be</p> <p>21 implemented. We will point out that the</p> <p>22 excess earnings account is usually tied to the</p> <p>23 range of return on rate base. It is not tied</p> <p>24 to one point in time. There is no evidence in</p> <p>25 this hearing as to what the appropriate range</p>	<p>1 should be for the return on rate base for</p> <p>2 Hydro. We agree that this should be deferred,</p> <p>3 which was Newfoundland Power's position, so</p> <p>4 that an integrated approach with respect to</p> <p>5 the range of return on rate base, the excess</p> <p>6 earnings and the Automatic Adjustment Formula</p> <p>7 all can be dealt with at an appropriate time</p> <p>8 when we have some direction from the Board as</p> <p>9 to what the return on equity is that the Board</p> <p>10 will allow Hydro to earn, the opportunity to</p> <p>11 earn.</p> <p>12 The next comment relates to the</p> <p>13 implementation date for the rates coming from</p> <p>14 this hearing, and here I'd like to first refer</p> <p>15 to a comment of Mr. Hutchings with respect to</p> <p>16 the statements in our final argument about</p> <p>17 using the October 31st revision as the basis</p> <p>18 for the final cost of service. And that is</p> <p>19 Hydro's position and we made that to make it</p> <p>20 very clear as a result of confusion arising in</p> <p>21 the last hearing. It is our submission that</p> <p>22 the October 31st revision contains the most</p> <p>23 recent information and should be used unless</p> <p>24 the Board does order a change. The Board may</p> <p>25 well order changes. We've acknowledged in</p>

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<p>1 GREENE, Q.C.:</p> <p>2 final argument that there should be a change</p> <p>3 for capital budget under spending, which in</p> <p>4 our view should be four percent. However, as</p> <p>5 a base to start the process, we believe that</p> <p>6 it should be the October 31st revision and</p> <p>7 that if there is to be any change, that the</p> <p>8 Board be clear and specific as to what the</p> <p>9 changes are and here I include everything from</p> <p>10 the load forecast, because there is an issue</p> <p>11 as to the peak demand of Newfoundland Power</p> <p>12 that has been raised by the Industrial</p> <p>13 Customers. So to start the process, we</p> <p>14 recommend that the base be the October 31st</p> <p>15 revision with such changes as may be directed</p> <p>16 by the Board on whatever issues the Board so</p> <p>17 chooses, whether it's No. 6 fuel price, the</p> <p>18 conversion factor, the load, the capital</p> <p>19 budget, under spending issue, et cetera. So</p> <p>20 that was the purpose of the reference to the</p> <p>21 October 31st revision.</p> <p>22 With respect to the implementation date,</p> <p>23 we've already acknowledged that we can't</p> <p>24 implement rates as of January 1. We are not</p> <p>25 looking for retroactive rates, nor are we</p>	<p>1 looking to recover the additional funds that</p> <p>2 we would have received had the rates been in</p> <p>3 effect as of January 1. But the practicality</p> <p>4 of the matter is that once the Board makes its</p> <p>5 decision and issues its Order, we have to run</p> <p>6 another cost of service to reflect the Board's</p> <p>7 decisions. Depending on the extent of the</p> <p>8 changes from the October 31st revision, that</p> <p>9 could take four weeks. It could take six</p> <p>10 weeks. All right, we'll use roughly four</p> <p>11 weeks, and that's what it took us last time in</p> <p>12 the 2001 GRA for us to turn around another</p> <p>13 cost of service study to reflect the</p> <p>14 directions of the Board. So once--of course,</p> <p>15 the timing of the Board order is totally</p> <p>16 beyond our control, so I can't make any</p> <p>17 comment on that, but once we have received the</p> <p>18 first Order, it would take us roughly one</p> <p>19 month to turn around the cost of service to</p> <p>20 reflect the decisions. As the last time and</p> <p>21 as we agreed this morning, we would then send</p> <p>22 that final cost of service around to the other</p> <p>23 parties to the hearing who may or may not have</p> <p>24 comment. You will recall that at the last</p> <p>25 hearing, there was commentary with respect to</p>
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<p>1 that first cost of service, which is why we</p> <p>2 would like specific and clear direction from</p> <p>3 the Board.</p> <p>4 So that deals with the issue of the</p> <p>5 implementation date, and I believe it deals</p> <p>6 with all the issues that Board hearing counsel</p> <p>7 have asked for a position on. And that</p> <p>8 completes what I had planned to say in</p> <p>9 rebuttal, unless there are some questions from</p> <p>10 the panel.</p> <p>11 CHAIRMAN:</p> <p>12 Q. Thank you finally, Ms. Greene, and I say that</p> <p>13 in the best sense. I guess this brings indeed</p> <p>14 to a conclusion the evidentiary phase of this</p> <p>15 hearing and I think while the day is not</p> <p>16 necessarily a definitive end to the hearing,</p> <p>17 since the panel does reserve the right to</p> <p>18 reconvene on matters at the call of the Chair,</p> <p>19 I certainly hope that that's not necessary in</p> <p>20 this situation.</p> <p>21 It is the task of this panel now to sift</p> <p>22 through the body of evidence and the testimony</p> <p>23 presented over the 35 hearing days and render</p> <p>24 as fair, equitable and expeditious a decision</p> <p>25 as possible. I do want to thank all the</p>	<p>1 parties for your cooperation and indeed</p> <p>2 contribution throughout the course of this</p> <p>3 hearing. I wish to commend Hydro, the</p> <p>4 applicant, represented by Ms. Greene and</p> <p>5 assisted by Mr. Young, as well as their staff</p> <p>6 who have indeed worked in a timely and at</p> <p>7 least apparently willing fashion, apparent to</p> <p>8 this bench in any event, to meet all the</p> <p>9 demands placed on them. I want to thank the</p> <p>10 intervenors as well of their able advocacy,</p> <p>11 the Consumer Advocate, Mr. Browne, assisted by</p> <p>12 Mr. Fitzgerald, and Mr. Kelly assisted by Mr.</p> <p>13 Myles, and Mr. Hutchings assisted by Mr.</p> <p>14 Seviour and indeed, Mr. Hearn, and to this</p> <p>15 group, I'd also like to add, Mr. Kennedy, the</p> <p>16 Board hearing counsel who I think once again</p> <p>17 performed a valuable role, representing the</p> <p>18 broader interests of the Board and its staff</p> <p>19 and I think I agree with Mr. Hearn, commented</p> <p>20 on the excellent quality of the presentations</p> <p>21 indeed in the final argument, both written and</p> <p>22 oral. They were very succinct and clear and I</p> <p>23 thank you for that.</p> <p>24 I'd also like to express my appreciation</p> <p>25 to the witnesses who I think indeed were</p>

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<p>1 CHAIRMAN:</p> <p>2 patient, responsive, and I believe made a</p> <p>3 sincere effort, wherever possible, to assist</p> <p>4 the Board with their testimony throughout. As</p> <p>5 others have done here, I want to acknowledge</p> <p>6 the work of Ms. Newman, Ms. Blundon and Ms.</p> <p>7 Thistle for their planning, organization and</p> <p>8 conscientious effort which indeed played a key</p> <p>9 role in the continuity and relatively seamless</p> <p>10 manner in which this hearing proceeded. I</p> <p>11 want to further acknowledge those</p> <p>12 organizations and persons who attended and</p> <p>13 made presentations during the public</p> <p>14 participation days and also those who</p> <p>15 submitted letters of comment, and this</p> <p>16 information will be carefully reviewed and</p> <p>17 considered by the panel in indeed considering</p> <p>18 its decision.</p> <p>19 I'd also like to thank Mr. O'Reilly of</p> <p>20 Hydro and indeed, Mike McNiven of the Board</p> <p>21 for the application of their expertise, which</p> <p>22 again, I think produced substantial benefits</p> <p>23 in the electronic filing processing and use of</p> <p>24 the evidence throughout the course of the</p> <p>25 hearing.</p>	<p>1 I'd also want to recognize Discoveries</p> <p>2 Unlimited who I think provided transcription</p> <p>3 service in both a timely and accurate fashion</p> <p>4 throughout the course of the hearing. And I'd</p> <p>5 also like to finally acknowledge the</p> <p>6 continuing support and cooperation indeed of</p> <p>7 my colleagues and the left and right of me,</p> <p>8 Darlene Whalen and Fred Saunders, who</p> <p>9 throughout the course of the hearing were</p> <p>10 indeed great in their support and cooperation</p> <p>11 in a variety of ways, while noting however, I</p> <p>12 think colleagues that I work with probably</p> <p>13 just beginning as opposed to ending.</p> <p>14 I did review some stats with you at the</p> <p>15 last Hydro GRA and just I noted Ms. Greene</p> <p>16 said that this hearing hasn't been shorter and</p> <p>17 I think I know wherein she's coming from, but</p> <p>18 indeed looking at the hearing days, I'm not</p> <p>19 commenting on this as regulatory efficiency or</p> <p>20 inefficiency, I'm just stating a fact.</p> <p>21 Previously we had 61 days in the first</p> <p>22 regulatory hearing of Hydro. That's 35 days</p> <p>23 for this hearing. RFIs and pages of RFIs,</p> <p>24 it's interesting, 1,019 previous hearings,</p> <p>25 16,200 pages roughly in this hearing, 1541</p>
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<p>1 RFIs but only 8,157 pages. I don't know what</p> <p>2 that says about the answers or the questions,</p> <p>3 but I'll leave that up to you. Transcripts,</p> <p>4 predictably based on the hearing, 2200 pages</p> <p>5 of transcripts previously with 1396 at this</p> <p>6 hearing. I think I commented on 2,200, 000</p> <p>7 words in this hearing. 1,100,000, just about</p> <p>8 50 percent less. That's good. Total pages of</p> <p>9 evidence, testimony and RFIs previously</p> <p>10 greater than 20,000 pages. In this, 16, 750</p> <p>11 roughly. And my IT person says total file</p> <p>12 space last time was 270 to 280 megabytes,</p> <p>13 whatever that means. This time, 550 simply</p> <p>14 because, I understand, based on the fact that</p> <p>15 we were able to scan in a lot more documents</p> <p>16 and use them in an electronic fashion, as</p> <p>17 opposed to the hard copy, which I think is</p> <p>18 good. Like I say, not commenting on the</p> <p>19 regulatory efficiency or inefficiency of that.</p> <p>20 And I have no information particularly on</p> <p>21 costs at this point in time.</p> <p>22 Since I've been here, it's been two GRAS</p> <p>23 for Newfoundland and Labrador Hydro and one</p> <p>24 for Newfoundland Power. I think there's a bit</p> <p>25 of a hiatus, hopefully a bit of a hiatus for</p>	<p>1 the next couple of years, and it will be</p> <p>2 certainly my intention, in any event, to get</p> <p>3 together with the utilities and indeed, the</p> <p>4 parties, if they're interested, and see--</p> <p>5 address this whole issue of GRAS and see what</p> <p>6 indeed we can do probably to improve the</p> <p>7 manner in which GRAS are addressed and treated</p> <p>8 and indeed, look at the whole regulatory</p> <p>9 efficiency and what issues you might have. So</p> <p>10 I would propose to do that when the time is</p> <p>11 appropriate.</p> <p>12 In closing, the panel will indeed proceed</p> <p>13 with its deliberations in as continuous a</p> <p>14 manner as possible over the next few weeks. I</p> <p>15 think it would be premature for me, at this</p> <p>16 stage, to try and speculate on when a final</p> <p>17 Order may be issued. The panel will be</p> <p>18 striving indeed to ensure the Order is clear,</p> <p>19 thorough and complete and have it available</p> <p>20 within the earliest time frame practical.</p> <p>21 Someone once said maturity of the mind is the</p> <p>22 capacity to endure uncertainty and far be it</p> <p>23 for me to interfere with the maturation of the</p> <p>24 mind.</p> <p>25 I would like to once again thank</p>

1 CHAIRMAN:

2 everybody and I guess, Mr. O'Reilly, you can  
3 now--hopefully you haven't taken down your  
4 Christmas tree and maybe you can enjoy  
5 Christmas. Thanks once again. This hearing  
6 is now adjourned at the call of the Chair,  
7 which I hope, as you do, won't happen. Thank  
8 you. Enjoy your weekend.  
9 (CONCLUSION AT 4:00 P.M.)

1

2 CERTIFICATE

3 I, Judy Moss Lauzon, hereby certify that the  
4 foregoing is a true and correct transcript of final  
5 argument in the matter of Newfoundland and Labrador  
6 Hydro's 2003 General Rate Application for approval  
7 of, among other things, its rates commencing  
8 January, 2004 heard on the 16th day of January,  
9 A.D., 2004 before the Board of Commissioners of  
10 Public Utilities, Prince Charles Building, St.  
11 John's, Newfoundland and Labrador and was  
12 transcribed by me to the best of my ability by  
13 means of a sound apparatus.  
14 Dated at St. John's, Newfoundland and Labrador  
15 this 16th day of January, A.D., 2004  
16 Judy Moss Lauzon