(9:00 a.m.)

CHAIRMAN:

Q. Now before we start, are there any preliminary matters?

MS. GLYNN:

Q. Mr. Chair, we have filed from Newfoundland Power the responses to undertakings given yesterday, No. 6, 7 and 8. They have been circulated to all the parties.

CHAIRMAN:

Q. Okay. Well, if there's nothing else, I guess, Mr. Johnson, we are back to you to continue your cross-examination, sir.

MR. GARY SMITH, RESUMES STAND, CROSS-EXAMINATION BY MR. THOMAS JOHNSON

MR. JOHNSON:

Q. Thank you, Mr. Chairman. Good morning again, Mr. Smith.

MR. SMITH:

A. Good morning.

MR. JOHNSON:

Q. Mr. Smith, when we left off yesterday, we were talking about the amount of effort internally that's used at Newfoundland Power gearing up for one of these cases and this application

was filed back in May and there was a lead up to that and then you've been dealing with it since, and I'm wondering, would the fact that Newfoundland Power has been tied up in GRA proceedings in 2009 negatively impact upon the company's ability to find productivity gains?

MR. SMITH:

A. Well, I guess you'd have to look at the staff that's been working this year in preparation of the GRA. It's certainly been myself and Jocelyn and Earl, probably predominantly a group of probably seven or eight, maybe ten people on the administration side of our business. In terms of our ability to provide productivity this year, certainly that would continue to be managed by our managers this year and certainly, I have been in contact with our managers regarding the progress we are making and the types of things we are doing. So I would answer the question by saying, yes, it probably has some small layer of impact on it, but certainly we continue to find productivity throughout this year, as we do any other year.

MR. JOHNSON:

Q. And you indicated in your direct by my friend, Mr. Kelly, that Newfoundland Power's management is forecasting a $337,000 productivity improvement on the labour item for the 2010 forecast for the test year. Is that right?

MR. SMITH:

A. Yes, for the test year forecast, the number we've equated for labour productivity is $337,000, along with the other items that I mentioned however, which aren't equated in that number, that would give you the full picture of our efficiency or productivity in 2010, and as I mentioned, those other items that we will be doing in 2010 include our conservation efforts and the extra customers we'll have on the system and the extra kilometres of line. All those things together are what we need to be productive against, I guess, not just the 337 by itself.

MR. JOHNSON:

Q. Okay. I take it that the productivity that management had expected for the 2009 year was greater than the productivity expected in 2010. Would that be correct?

MR. SMITH:

A. There is an RFI, and I can't remember which one it is, but we did equate, in a similar fashion as we did the 2008 calculation and the 2010 calculation, we did equate a number for 2009 to be, I believe, $380-390,000. I can't remember the exact number.

MR. JOHNSON:

Q. I think, just for the record, to assist there, I think the record will show that management forecast 394,000 at CA-NP-226 in respect of 2009.

MR. SMITH:

A. Subject to looking at the RFI, I would agree, yes.

MR. JOHNSON:

Q. Okay, and is there a specific reason that we would expect less productivity in 2010 over 2009, given the focus that's in 2009 of executive time, leadership time on the GRA?

MR. SMITH:

A. The way I would look at it, I guess, the way I indicated the 2010 productivity is done is against the work that we will need to do in 2010 on the conservation. There certainly will be a lot of work in 2010. We're starting those efforts in 2009 and certainly a lot more work will occur in 2010. In 2009, certainly some members of the executive and the support staff at the administration level of the company are working on the GRA, and it's possible some of that work will continue, even into 2010, as we provided in the undertaking that you had requested. So when I look at 2010 relative to 2009 and the way we've equated the 394, I believe in 2009, and the 337 in 2010, the big difference for me would be the amount of conservation work that we will be doing in 2010.

MR. JOHNSON:

Q. How specifically will that impact the productivity forecast?

MR. SMITH:

A. Well, it's simply a matter that in 2010, a lot of our staff will be involved in doing a lot more of the conservation work. So for example, in 2010--and we will start this process in the next month or so, but in 2010, for example, we need to get out to all the retail building supply builders across the

province. There's approximately 130 of these retailers. Our staff in our area offices will be given the task to get out and visit these retailers to make sure the rebate programs are established and understood by the retailers, sort of on the front line of what the customer see. That type of activity will be done by our existing staff and for our staff to be able to do that extra work, we will have to find productivity and efficiency gains.

MR. JOHNSON:

Q. I guess in addition to labour productivity, Mr. Smith, there's also non-labour productivity, and would it be fair to say that under the non-labour productivity possibility that your group benefits for your employees and retirees would be one of the bigger potentials for non-labour productivity improvement in 2010?

MR. SMITH:

A. Could you repeat the question, please?

MR. JOHNSON:

Q. Well, your undertaking and review of group benefits for your employees and retirees which you've agreed to earlier this year with the

unions, correct?

MR. SMITH:

A. Yes, I believe that is correct.

MR. JOHNSON:

Q. Okay, and I take it that there would be-- you're anticipating that there will be, if you will, productivity improvement in respect of employee benefits and retiree benefit costs?

MR. SMITH:

A. Well, I'm a little bit out of my area of evidence here, but I believe the way Ms. Jocelyn Perry spoke to this was that we're unsure what the end result of that review will be at this time, but I would add that I'm a little bit out of my area of expertise on that subject.

MR. JOHNSON:

Q. Do you have anything to do with that file, Mr. Smith?

MR. SMITH:

A. Which?

MR. JOHNSON:

Q. The group benefits and retiree benefits file, does that come under you?

MR. SMITH:

A. That would be more under Ms. Perry.

MR. JOHNSON:

Q. Okay. So you have no involvement with it?

MR. SMITH:

A. You would have to ask me a specific question, I think.

MR. JOHNSON:

Q. Like for instance, would you be involved in sitting down with union representatives to try to get a handle on group benefits?

MR. SMITH:

A. That would primarily be driven through our HR group, which falls under Ms. Perry. It's possible that I may have some involvement, but primarily it would fall under Jocelyn.

MR. JOHNSON:

Q. Okay. I guess you would agree though to the extent that Newfoundland Power is able to reduce these costs that customers are not going to see any benefit of that in the 2010 test year, correct?

MR. SMITH:

A. Again, it's not really my area of evidence and I think the way I would defer that is to the way Jocelyn has already responded to it and

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that's simply we don't know at this time.

MR. JOHNSON:

Q. Okay. Now as I understand it, in your last GRA case, similarly Newfoundland Power did a refiling of its forecast expenses for the test year in around October, so around October of 2007, would that be your recollection?

MR. SMITH:

A. I believe that is correct.

MR. JOHNSON:

Q. And I take it that the record will reflect that actual cost in 2008 were $736,000 less than forecast, as late as October 2007, for the 2008 test year? Would that be correct?

MR. SMITH:

A. Yes, that is correct.

MR. JOHNSON:

Q. Yeah, and that would be a figure excluding non-regulated costs. We're just talking regulated costs of $736,000 to the good, right?

MR. SMITH:

A. I believe the number 736, which does not include non-reg.

MR. JOHNSON:

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Q. Yeah, and I take it that one of the variances that led to being $736,000 to the good was Newfoundland Power's projections for the test year uncollectible bills cost? Can you confirm that? And maybe I can assist you at CA-NP-102, Schedule A. Page two of three, Michael. You see under uncollectible bills, yeah, the actual uncollectible bills expense is 834,000 but there had been a forecast of 1,050,000 which produced a $216,000 variance?

(9:15 a.m.)

MR. SMITH:

A. Yes, that is correct.

MR. JOHNSON:

Q. Yeah, and in this case, I understand, just by looking at Exhibit 2, that you are forecasting uncollectible bills expense for both '09 and 2010 at 963,000?

MR. SMITH:

A. You'll just have to give me a minute, please.

MR. JOHNSON:

Q. Sure.

MR. SMITH:

A. So yes, we're forecasting the 2010 uncollectible bills amount to be 963.

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MR. JOHNSON:

Q. Yes, and you're also forecasting that for 2009 as well?

MR. SMITH:

A. Yes, that is correct.

MR. JOHNSON:

Q. And that 2009 forecast figure of 963, that is identical to the number that executive approved in its forecast for 2009 many, many months ago? Is that correct?

MR. SMITH:

A. The 963 was in the original filing with this GRA, I believe, if that's what you're referring to.

MR. JOHNSON:

Q. No, I'm not referring to that. I'm referring to when Newfoundland Power's leadership team, every year, receives budgets from the people below in the departments, right? Is that right so far?

MR. SMITH:

A. Yes, at the beginning of the year, there's a departmental budget built, yes.

MR. JOHNSON:

Q. Okay. So for 2009, when would that

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departmental budget have been built?

MR. SMITH:

A. It would have been early in the year, February, March timeline, I'm thinking.

MR. JOHNSON:

Q. February, March.

MR. SMITH:

A. Maybe into May also. I'm just not exactly sure of the date.

MR. JOHNSON:

Q. Of what year, 2009?

MR. SMITH:

A. Yes.

MR. JOHNSON:

Q. OKay, and then it goes up to the leadership team, right, and they approve it, they make changes or variations to it and then approve it, right? Is that how it's done?

MR. SMITH:

A. Yeah, there is a departmental budget that's built and it's accumulated through our finance department. All the various departments prepare it and it's accumulated and then it's reviewed by the executive and the managers to ensure that the numbers are where we would

like to forecast them for the year?
MR. JOHNSON:
Q. Okay, and the number of 963,000 for uncollectible bills, that's identical, is it not, to the number that management or the leadership team approved back early in 2009?
MR. SMITH:
A. I don't believe the number changed, but I'm not 100 percent sure, but I don't believe that number changed, no.
MR. JOHNSON:
Q. Yeah, I think that's borne out in CA-NP-226. I think you have to go a little bit further into this. Yeah, uncollectible bills, 963. This is the document you would have been referring to in your response a second ago?
MR. SMITH:
A. Yeah, this shows me, I guess, what the initial input was was one million dollars and that was revised to 963.
MR. JOHNSON:
Q. That's right. So that's a figure that was a projection for 2009 months and months ago?
MR. SMITH:
A. That is correct.

MR. JOHNSON:
Q. And it has not been updated?
MR. SMITH:
A. That is correct.
MR. JOHNSON:
Q. Okay. Now I'm just interested in what would be the basis--and if you go back for a second to Exhibit 2, Michael, yeah, the last year that we actually have hard actual data for a complete year is actual 2008. Isn't that correct, Mr. Smith?
MR. SMITH:
A. Just one second, I need to catch up.
MR. JOHNSON:
Q. Sure.
MR. SMITH:
A. So again, we're looking at Exhibit 2 under uncollectible bills?
MR. JOHNSON:
Q. That's correct.
MR. SMITH:
A. And you're referring to 2007 or 2008?
MR. JOHNSON:
Q. 2008.
MR. SMITH:

A. 2008, the number is 834, yes.
MR. JOHNSON:
Q. Yeah, and that's the last year that we actually have a hard figure for all the data in for a complete year?
MR. SMITH:
A. The most recent year, yes.
MR. JOHNSON:
Q. That's right, and why would we assume that uncollectibles would increase by 15 percent over 2008?
MR. SMITH:
A. The way the uncollectible bills number is calculated for 2009, and then the number was held consistent for 2010, was on a three-year average. So it would look at 2006's actual, 2007 and 2008. I believe that's typically how we've looked at this number. We use an historical average to forecast it.
MR. JOHNSON:
Q. Okay, but that doesn't give weight to the most recently confirmed number to the extent that I guess I'm suggesting it should, because the 2008 number gets lost within the other previous years, which were considerably

higher.
MR. SMITH:
A. Yeah, we look at this line and we believe the most appropriate way to forecast is with a three-year average, as opposed to the most current actual.
CHAIRMAN:
Q. Can I just ask a question there, so that--does that--I mean, when you have an uncollectible amount, that's not just for one year? That could be previous years, couldn't it?
MR. SMITH:
A. Yes.
CHAIRMAN:
Q. When do you finally write it off? How long has it got to be on the books before you finally write it off?
MR. SMITH:
A. I don't know the full details, but in any given year, there is an extension from one year into the next.
CHAIRMAN:
Q. Yeah.
MR. SMITH:
A. And I believe at the end of the year, we need

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to do an assessment of what that carry over would be and decide to write a certain amount of it off in the current year rather than carry it forward. So there is a year-to-year impact that needs to be taken care of at the end of the year.

CHAIRMAN:

Q. And then you give it to a collection agency, do you?

MR. SMITH:

A. At some point in the process, we give it to a collection agency and when that occurs, if there is a recovery from the collection agency, then it shows up in the next year, of course.

CHAIRMAN:

Q. Sorry, I just -

MR. JOHNSON:

Q. No, no, no problem. But just to be clear, this number of 963, which is 15 percent higher than the actual 2008, I mean, that is your actual projected cost for the test year?

MR. SMITH:

A. That is correct, yeah.

MR. JOHNSON:

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Q. And why is--has Newfoundland Power considered why the uncollectible bills would have improved by nearly 200 some odd thousand dollars from '07 to '08?

MR. SMITH:

A. Again, we're back to 102?

MR. JOHNSON:

Q. Yeah. No, we're back to--I'm sorry, I think we're at Exhibit--are we at Exhibit 2 again? Is that where that is? Whatever's on the screen there now.

MR. SMITH:

A. Okay. So you're referring to the difference between '07 and '08?

MR. JOHNSON:

Q. Yeah. I mean, we saw a dramatic improvement in uncollectible bills between '07 and '08.

MR. SMITH:

A. Yes, that is correct. There's a significant drop in 2008.

MR. JOHNSON:

Q. And I'm asking any thoughts at Newfoundland Power as to why it improved so dramatically?

MR. SMITH:

A. Again, it would be a function of the abilities

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of customers to pay their bills in that particular year. That would be a reflection of what you see in this number of uncollectibles. We believe the best way to forecast this is using a three-year average, rather than the most recent actual.

MR. JOHNSON:

Q. I can see why you would, but Mr. Smith, I just want to turn to conservation and efficiency for a moment. You indicated yesterday that Newfoundland Power and Newfoundland and Labrador Hydro are working together in the energy conservation and efficiency partnership and that this would ensure a consistent and coordinated approach in the delivery of conservation programs. You recall saying that?

MR. SMITH:

A. Yes.

MR. JOHNSON:

Q. And you also indicated that the expanded energy conservation program, again which you discussed yesterday, includes new incentive rebates for both domestic and general service customers, and on the domestic side, you

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indicated that there were customer rebates for Energy Star windows, as well as thermostats and insulation?

MR. SMITH:

A. Yes, that is correct.

MR. JOHNSON:

Q. This is under the new roll out?

MR. SMITH:

A. Yes.

MR. JOHNSON:

Q. And I'm wondering, I guess I have a question as to--as you're aware, there's--just take the window piece for a moment. In addition to the Newfoundland Power or Hydro offered rebate, there's also rebates for the Federal Eco-Energy Retrofit Grant, right?

MR. SMITH:

A. That is correct.

MR. JOHNSON:

Q. And there is also the Provincial Energuide for Houses Grant, which can also provide a rebate to customers for windows?

MR. SMITH:

A. Yes, that is correct.

MR. JOHNSON:

Q. And their rebates are $40, I think--I just had, I had the pamphlet here. For instance, looking at your Take Charge pamphlet, if you have a 24 by 40 inch window, the Take Charge rebate is $13. The Federal EcoEnergy Retrofit Grant rebate is $40. The Provincial Energuide for Houses Grant rebate is $40, for a total rebate of $93, right?

MR. SMITH:

A. I haven't looked at it recently, but that sounds--sure.

MR. JOHNSON:

Q. Okay, and I guess what I'm wondering is there's a footnote on the pamphlet that says "the Eco-Energy Home Audit is required to receive the Eco-Energy and Energuide grants and visit oee.enercan.gc.ca for details" and I guess what I'm trying to get at is what role, if any, do your people play or are they expected to play in getting these other more lucrative rebates for customers or is it you just take it as far as the $13 one?

MR. SMITH:

A. Of course, our rebates are as you've quoted in the information. But certainly when we talk

to our customers and we meet with our customers, we make them aware also of the Provincial and the Federal rebates also, and so we certainly bring visibility of those to the customers also, because as an overall package of rebates, that's the most likely way you're able to bring customers to make a decision to want to change windows or insulation. So we certainly bring our customers aware of these additional rebates. Certainly with the Federal program and the Provincial program, there's other things that are required as conditions upon the rebates, such as the need to get an audit done of your home.

MR. JOHNSON:

Q. Yeah.

MR. SMITH:

A. We don't currently have that as a requirement in our programs to have an audit done, what I would say, an energy efficiency audit done of your home. We would simply do an audit after the fact to make sure that the customers were putting in the windows and were putting in the insulation.

MR. JOHNSON:

Q. Yeah, and I guess it's--what feedback are you getting from your people as to customers comfortableness with, you know, having to get the audit done and, you know, where they go to get it, et cetera? Is there any feedback that you're getting on that?

MR. SMITH:

A. Well, I have some limited feedback on that. For example, I sat a week or two ago with one of our energy conservation people who's on the phone, one of our CARs, we call them, and that individual was explaining to me that when a customer does call, how they pass along the information to customers on the Federal and Provincial rebates, but along that line, to get the Federal and Provincial rebates, you do need to have this energy efficiency audit done of your home. I believe there's only one or two contractors in the province able to provide that service. So customers who are trying to avail of those rebates need to go through that process of scheduling with this particular consulting company to have this audit done. I believe it slows people down

ultimately by doing this, and of course, our rebates are more fluid and are able to be processed quicker and easier and try to be more streamlined with where our customers are today.

(9:30 a.m.)

MR. JOHNSON:

Q. And you've indicated in, I think, the operations part of the evidence that you're getting more and more customer calls, inquiries, regarding conservation and efficiency, right?

MR. SMITH:

A. Yes, that is correct. Customers are more interested in the programs, the rebates, and that's a combination of the Take Charge website, of course, our own internal website and phone calls.

MR. JOHNSON:

Q. Okay, and I'm just wondering, I guess, Newfoundland Power would be set up to know whose accounts are large and, you know, who has--you can go through any number of slicing and dicing to see who's burning what, in terms of electricity, I take it, right?

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MR. SMITH:

A. Yes, for each customer, we would know the history of their consumption, yes.

MR. JOHNSON:

Q. Yeah, and I'm just wondering, would it be anticipated that there would also be, say, call outs to, say, some high consuming customers, as opposed to the more passive approach of calls having to be made by the customer?

MR. SMITH:

A. I'm not aware at this time that we're actually calling out to customers that have high consumption, I believe, as you put it. Certainly right now we're in more the reactive mode, because we are getting a lot of inquiries with the roll out of the new programs, but certainly as time goes by, that's one of the considerations you will give is to try to go out to those customers that have a high bill and try to work with them to stimulate them more to take advantage of these rebates and these services.

MR. JOHNSON:

Q. Mr. Smith, yesterday, there was a reference to

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known unknowns and to be honest with you, it was late before I got the transcript last night, but I thought that there was even a better rumsfeldian incident that happened yesterday, and that's when I was trying to get to the--trying to get a handle on whether you felt we were at a high water mark for 2010, and I'll just give you what I thought characterizes a rumsfeldian response. I said, at page 164, "would you think that we're at a high water mark now for FTE's at Newfoundland Power relative to what we can expect as we move out from 2010?" and here it is, "I think if we look into the future, I think the future will tell us what the workforce needs to be" and so I'd just like to revisit that with you to get a sense of where you, as the vice-president of this company in charge of operations, sees this FTE number in the next few years out.

MR. SMITH:

A. What you see in this current forecast is a reflection mostly of what we know today, and what we know today is that we need to increase our FTEs because of conservation work, and the

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other thing that we'd indicate is that we need to increase our FTEs because of demographics issues, primarily with our apprentice power line technicians. When you look out in the future though, what your workforce really needs to be is a reflection of what your work will be. As we go forward, if energy conservation expands to be something even bigger, then perhaps we will have to hire some additional people. If we continue to get increased activity with customer growth capital, more housing starts, more people who want to connect into our system, then perhaps we would have to hire additional people. When we look into our five-year forecast and what we've provided the Board in our capital budget, for example, at this time, we haven't forecasted any significant changes in our customer growth capital work. So that would be one indication to me that the numbers that we currently have there should be stable of where we will be. But again, to exactly predict what will happen in the future becomes a difficult exercise.

MR. JOHNSON:

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Q. You indicated yesterday as well that "yes, we have a number of apprentices on. We've been adding to our apprentice complement," but you've indicated or you indicated that "the offset that we use right now is simply to have less contract labour on," and if I could just direct you to page 35 of the Grant Thornton report, and I'm referring to the table on the top of page 35. Now you see the contractors line. I guess I'm not seeing demonstrative evidence that while we are having more apprentices on that's adding to our cost, that we're saving anything significant on contractors. In fact, I'm seeing the contractors expense increase over 2007 from 7.6 million to '08, 8.3 million, to now 2009, it goes down slightly, 8.1, but then 2010 forecast is back up to 8 and a half. So where are the contract savings manifesting themselves, if not shown here?

MR. SMITH:

A. I believe my comment yesterday is a reflection that as we add apprentices into our workforce and apprentices are able to consume and do that additional work, then there would be a decrease in contract labour obviously, and in terms of the forecast, you would have to look at the details of the work forecast to try to find the impact of exactly how by adding apprentices does contract labour get influenced. So it's a reflection really of those two things and also an indication or a reflection of the forecast of what the work would be.

MR. JOHNSON:
Q. But you started adding apprentices a few years ago, didn't you?
MR. SMITH:
A. Yes, we've been adding apprentices for a few years now, yes.
MR. JOHNSON:
Q. Yeah, and then I asked you a question as well as to whether--let us assume, Mr. Smith, that the present complement of journeymen line technicians that you have, okay, are not going anywhere. Retirement is not an issue, okay, for a period of time, let's say ten years. My question was would we be able to get by with the present complement of journeymen linemen for the next, say, three to four years?

MR. SMITH:
A. And my answer to that would be if our work doesn't change, and that is the customer growth work especially, then the number of journey people that we have today, the actual PLTs that are fully qualified, then I would say that number should be sufficient.
MR. JOHNSON:
Q. Yeah, okay. Now Mr. Smith, yesterday, I asked you a question as follows: "is there a benefit, Mr. Smith, to Fortis' shareholders -
KELLY, Q.C.
Q. Page reference?
MR. JOHNSON:
Q. Page 124.
MR. SMITH:
A. What was the page again?
MR. JOHNSON:
Q. 124. Okay?
MR. SMITH:
A. Okay.
MR. JOHNSON:
Q. And my question was "is there a benefit, Mr. Smith, to Fortis shareholders from having this Fortis emergency response network?" and you

said right off the top, "I think it's--I characterize it differently. I would say it's a benefit to the customers of these utilities" and we had a chat about that yesterday and you told me what your perspective was on it, notwithstanding what was in the Fortis annual report. Now, Mr. Smith, would you tell me now who owns the wires and the poles and the transformers that were repaired at cost by Newfoundland Power's employees in the Grand Cayman and the Turks and Caicos?
MR. SMITH:
A. Who owns the wire?
MR. JOHNSON:
Q. Yeah, the wires and the poles and transformers, everything that was fixed by Newfoundland Power employees at cost.
MR. SMITH:
A. Well, I guess that your local utility would be the owners of the company that owned those wires and then, in turn, Fortis would own those companies.
MR. JOHNSON:
Q. That's right. So it would be owned by Fortis subsidiaries, which are in turn owned by

Fortis, right?
MR. SMITH:
A. The ownership of the companies, yes.
MR. JOHNSON:
Q. That's right, and Mr. Smith, I take it that there is absolutely no agreement that Fortis Turks and Caicos and Caribbean utilities, whatever the corporate name is, each earn a return on these poles, wires and transformers that have been replaced or repaired by Newfoundland Power employees at cost. Would that not be correct, sir?
MR. SMITH:
A. I would agree that these companies make a return on the value of the plant, yes.
MR. JOHNSON:
Q. Yeah, including plant that was repaired by Newfoundland Power employees at cost, correct?
MR. SMITH:
A. Yes, that would be correct.
MR. JOHNSON:
Q. Yeah. Now yesterday, you indicated that Newfoundland Power has seen an increase in contractor prices. Now do you understand, sir, that these contractors charge a mark up,

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that they, in fact, don't charge on a cost recovery basis?

MR. SMITH:

A. Well, the way I look at our contractors is they provide a price to provide the service and in that price, there would be amount of money to run their business and profit, absolutely.

MR. JOHNSON:

Q. Absolutely, and so they don't charge on a cost recovery basis, do they?

MR. SMITH:

A. No, they don't, they include a profit.

MR. JOHNSON:

Q. And they didn't charge you on a cost recovery basis when they were assisting Newfoundland Power in cleaning up after the Bonavista Peninsula ice storm not two years ago, did they?

MR. SMITH:

A. They didn't -- they charged us their normal rate that would be in their tenders is what they would have charged us.

MR. JOHNSON:

Q. Yes. Those are my questions, Mr. Smith.

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Thank you.

MR. SIMMONS:

Q. Thank you, Mr. Chairman, I don't have any questions for Mr. Smith.

CHAIRMAN:

Q. Do you have anything?

VICE-CHAIR WHELAN:

Q. I just have one follow up question that goes back to Mr. Johnson's last point, and this may have been answered, and if it has, I apologize, but I'm wondering in the last -- I think one of the references we had yesterday referenced a span of about fifteen years, so I'll say fifteen, but in the last fifteen years has Newfoundland Power actually been asked to provide a similar support to other regions or areas within the country, in particular, service by non-Fortis companies? Have you been asked and responded, or have you not been asked?

MR. SMITH:

A. When Nova Scotia Power was dealing with Hurricane Juan, at that particular time I was with Maritime Electric. I'm pretty sure that both Nova Scotia Power and Maritime Electric

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made a request with Newfoundland Power were they able to provide assistance, and were they able to participate. For Hurricane Juan, a Newfoundland Power employee did not have to actually go and participate, but I do believe there was a request from both companies, and it was simply the way the response evolved and that other utilities that were perhaps closer provided that assistance.

VICE-CHAIR WHELAN:

Q. Are you aware of any other incidents over the last number of -- did Newfoundland Power, for example, respond during the Quebec ice storm, do you remember?

MR. SMITH:

A. I really don't know. I suspect there would have been a request. Typically when this happens, utilities go very broad in their initial assessment and they go out to as many people as they can in terms of utilities they have a relationship with and a history with. Certainly as being part of CEA, we would have relationships with Quebec Hydro, and for that particular event, I have no doubt there was a phone call made and it just would have been a

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reality of who they had closest to them at that time, were those people able to respond, and then, of course, if we didn't respond, the reason would be because they had other people that were closer to them that could do the response.

VICE-CHAIR WHELAN:

Q. Do you have any knowledge of what kind of arrangements, or are there pre-negotiated arrangements or any arrangements in place as to how that works, would they be deployed and then dealt with afterwards in respect of that cost recovery?

MR. SMITH:

A. The only one I can tell you specifically is when I was at Maritime Electric and we were experiencing Hurricane Juan, we did bring over a very small number of crews from St. John Energy, I believe, and they would have been recovered on a fully distributed cost basis also. There was no markup, no profit, it was just on their cost.

VICE-CHAIR WHELAN:

Q. And does -- are you -- I don't know how familiar you are with the operations in the Caribbean, the other Fortis companies, but the Turks and Caicos, their Caribbean utilities, do they have any arrangements with other utilities in that area, in that region, or do they go to the Fortis Emergency Response network for the relief call? Is that the first call?

MR. SMITH:

A. For the Tucks and Caicos job specifically, there were other utilities local in the Caribbean that responded also. They are part of a network of utilities in the Caribbean that pull together and help each other out. So they would have received response from other utilities in that immediate area also.

VICE-CHAIR WHELAN:

Q. Okay, thank you. That's all I have.

CHAIRMAN:

Q. With respect to conservation, you guys have conservation costs which are obviously a cost of doing business, and those expenditures are made to try and assist customers in saving on electricity, is that how it would

basically work?

MR. SMITH:

A. Yes, we're incurring costs to assist customers put insulation in their basement, for example, and when customers do that, they will consume less kilowatt hours, and, therefore, save energy, yes.

CHAIRMAN:

Q. Do you have any numbers on -- I mean, you know what your conservation costs are.

MR. SMITH:

A. Yes.

CHAIRMAN:

Q. But do you have any idea what, in fact, consumers are saving in terms of their electricity bill?

MR. SMITH:

A. Typical example -- to try to put it in context, a typical example I asked our conservation engineer one day is how do you give me a simple example to put this in context with a basement installation project, for example. So the typical numbers he gave me was to insulate a typical basement would cost the homeowner approximately $1,200.00.

That would be for the insulation, assuming you're going to put it in yourself, not hire a contractor with that labour. The rebates that we would provide are somewhere around $250.00, I believe. The annual energy savings that we've equated for that customer would be about $220.00/$250.00. So the payback on that would be somewhere in the four to five year range for that homeowner. So that would be a typical example that they've sort of illustrated to me that I could pass on in a very simple was.

CHAIRMAN:

Q. Uh-hm, but you've got no way of systematically, I mean, creating a number or getting a number? I mean, you know what you're spending on conservation, but you don't know what -- you don't know overall what consumer are saying. There's no way of estimating that, I suppose, is it?

MR. SMITH:

A. I think what's very easy to estimate is the savings the insulation will create. So what is that thermal energy that you're saving.

CHAIRMAN:

Q. Oh, yeah, I mean, I know from -- I mean, I talked to one of your guys and I did the job on the basement, looks like it's working, but how many "me's" are out there, I mean, how much are we saving system-wide? There's no way of estimating or no way of knowing it, I guess, really, is it?

MR. SMITH:

A. Well, we have done estimates. For example, yesterday in my direct, I indicated that for the money that we're spending in 2010, the 1.9 million dollars, that the savings in cost for our customers in terms of what we will pay Newfoundland and Labrador Hydro for that energy is about $295,000.00 worth of energy savings. So that was in my direct yesterday. So when you do that, you --

CHAIRMAN:

Q. So you're spending 1.9?

(9:45 a.m.)

MR. SMITH:

A. That's correct, and the annual savings is 295. That's every year. That's the annual savings because of the 1.9. So yesterday in my direct, the simple math on that would indicate again about a six year pay back.

CHAIRMAN:

Q. That would -- that's not a bad investment, I suppose, is it?

MR. SMITH:

A. I think it's a pretty good investment, but you have to remember we're at the early stages of what we're doing, we are spending a bit more money on the front end in terms of advertising to stimulate people's interest to bring awareness to this and education. Over time as that takes hold, then presumably you can put a bit less money into that, and more money into the rebates. So I think --

CHAIRMAN:

Q. And I guess -- I'm sorry, go ahead.

MR. SMITH:

A. So, yeah, I think over time the update will be better. Right now in terms of how we've done the estimate of what people's participation will be, we're trying to find that middle of the road type of approach. Over time we believe customers will be more interested and there will be more of an uptake.

CHAIRMAN:

Q. And as long as we've got Holyrood there, I mean, that's the expensive energy?

MR. SMITH:

A. Holyrood is the expensive energy.

CHAIRMAN:

Q. So if we eliminated Holyrood, conservation may not make sense?

MR. SMITH:

A. No, I wouldn't go that far. I think when -- Holyrood's days are still out there a long way, of course.

CHAIRMAN:

Q. Yeah.

MR. SMITH:

A. The way I think about it eventually when Holyrood disappears, it most likely will be because of an in-feed, it's possible there could be because of my local oil-fired generation again, but if it is an in-feed, presumably we will still want to be efficient with our energy, because if that in-feed does occur because of something like the Lower Churchill, presumably the province will want to sell that energy to the market and that market may still be able to bring a reasonable

amount of money to the province. So we would want to use our own energy efficiently to maximize what we could sell to the market.

CHAIRMAN:

Q. Uh-hm.

MR. SMITH:

A. So I think in the long term there is a benefit to our customers of being efficient.

CHAIRMAN:

Q. Because I -- I mean, I've read that energy efficiency is -- did you ever hear of the Jevons Paradox?

MR. SMITH:

A. I don't know the phrase, sir, no.

CHAIRMAN:

Q. That's the -- he's a victorian economist and he said that increased energy use, energy efficiency, would not result in any savings because people would just at a given price consume more, and that seems to be working.

MR. SMITH:

A. Well, I think there's no doubt we will help customers be more efficient with their energy use. If they decide to take that efficiency and that money they're going to save and

spending on consuming more electricity versus --

CHAIRMAN:

Q. That's generally what happens apparently.

MR. SMITH:

A. They may do that, or they may decide to go to another movie every week. I don't know what they will do with their money. Part of me kind of equates it to when the price of gasoline went up a few years ago, in 2008 especially, people tended to buy a lot of smaller cars. That's not to say they didn't drive it more.

CHAIRMAN:

Q. Yes.

MR. SMITH:

A. And ultimately they burned the same amount of gasoline.

CHAIRMAN:

Q. That's apparently what happened, that's kind of what I'm thinking about. People buy a car with better gasoline mileage, they just drive more. So, I mean, the savings are -- plus they die more too because they're driving smaller cars, so that's an economic cost.

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That's true, that's true. I mean, it's no big deal.
MR. SMITH:
A. But we do help provide them with a choice and using their energy efficiently, we believe, is the right place to be.
CHAIRMAN:
Q. Would I be putting you on the spot to ask for your opinion on wind energy? Don't feel constrained to answer it, but --
MR. SMITH:
A. A little bit putting me on the spot. When I was at Maritime Electric there was some wind generation at that time that was constructed and developed. In particular, when I was getting ready to leave in 2004, there was a rather large machine built, kind of a prototype for North America, the biggest of its kind at that particular time. I believe it was a 5 megawatt unit. They had considerable challenges with that unit, in particular with its gear box and its transmission, a lot of difficulties, a lot of problems. So my view of it is the technology that's been used in Europe for a long time,

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yes; but in terms of our local experience with it, I think the jury is still out.
CHAIRMAN:
Q. Yeah, but again, I guess, the advantage we got with wind is that we've still got Holyrood there.
MR. SMITH:
A. There's no doubt you can only bring so much wind onto the system, you need to rely on Holyrood, and we actually had some incidents on our system about two to three weeks ago. In day, in particular, we were a little bit concerned about capacity and we were relying on the wind machines. They were up and running. This was the day we had the tremendous wind about two weeks ago.
CHAIRMAN:
Q. They're running in Ramea, is it, or -- where are they running?
MR. SMITH:
A. Fermeuse and --
CHAIRMAN:
Q. Fermeuse, yeah.
MR. SMITH:
A. Exactly.

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CHAIRMAN:
Q. Yeah.
MR. SMITH:
A. So these two wind farms called us and basically said they may not be able to stay on line, and so the result was we had to bring on an additional gas turbine in our system to help support that. So ourselves and Hydro coordinated that activity very closely. So, yeah, they are able to run, they do provide good energy, but in terms of when the wind is too strong, they may have to come off the system and other means need to be found.
CHAIRMAN:
Q. Or when there's no wind. How long have they been operating in Fermeuse? How long have they been in?
MR. SMITH:
A. Let me see. We would have connected them March, April, May of last year.
CHAIRMAN:
Q. So they've been in a year and a half?
MR. SMITH:
A. I'm sorry, I'll be corrected on that. I think that's when -- we finished our construction to

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allow their interconnection somewhere around June of 2008. Exactly when they came on the line to operate, I think it was more like August/September probably. So somewhere about a year.
CHAIRMAN:
Q. And the only get paid the going rate, don't they?
MR. SMITH:
A. What they receive as payment is a contract arranged between them and Newfoundland Hydro. So the feed into our system, our grid, but the buy and sell relationship is between Newfoundland Hydro and the owners of the wind farm.
CHAIRMAN:
Q. And we don't know that?
MR. SMITH:
A. I certainly don't know that.
CHAIRMAN:
Q. Okay. It's going to be an interesting debate on this wind business. Thank you.
MR. JOHNSON:
Q. Mr. Chairman, I wonder if I could ask a question just on something arising there?

CHAIRMAN:
Q. Sure.
MR. JOHNSON:
Q. Thank you. Mr. Smith, you indicated as part of your response to the questions from the Chairman that more money is going into advertising in 2010 to see if you could get an uptake in interest, customer interest, in these programs, and I'm just wondering -- I think there's something like $900,000.00 or close to a million being expended or anticipated by Newfoundland Power in the test year?
MR. SMITH:
A. Yes, that is correct. It's a number like that for advertising, yes.
MR. JOHNSON:
Q. You know, subject to the check of it. I'm just wondering, I mean, if the whole idea is to have uptake, that's the reason why you'd advertise, I take it?
MR. SMITH:
A. Absolutely.
MR. JOHNSON:
Q. And I'm just wondering wouldn't it be a

cheaper way of achieving uptake to actually just call people? Like, yes, do some advertising, make sure there was some visibility, but then pick up the phone and say we're here from Newfoundland Power, are you interested? Like, you know, going back to the positive approach. Has that been considered in terms of a cheaper way to achieve uptake?
MR. SMITH:
A. As I responded earlier when you mentioned should be call the customers that have a higher consumption of electricity, people with the higher bills, I think as we go forward, those are the more pointed specific things that we will need to do, but certainly right now we need to get a broad spectrum of information out to customers to kind of make them aware of what's out there, but also to educate them on what's out there. So we believe in the early years of this, we certainly need to work with all customers, and, of course, when you have 240,000 customers, you need to really take a broad spectrum of getting that information out to them. To start doing a phone call campaign is

probably the type of things you would do later, once you found out the type of customers that were participating and the ones that weren't. I think a phone out campaign would be probably more useful at that stage.
MR. JOHNSON:
Q. That's the question I had.
CHAIRMAN:
Q. Thank you.
KELLY, Q.C.:
Q. Nothing further, Mr. Chair.
CHAIRMAN:
Q. Now who's next?
KELLY, Q.C.:
Q. This witness is concluded. The next witness, Mr. Chairman, will be Mr. Lorne Henderson. If we can just take a moment for Mr. Smith to stand down. I can say by way of introduction, Mr. Chairman, that we've made Mr. Henderson available because we understand that the consumer advocate may have some questions and the Board may have some questions, but I don't intend to engage in any direct examination except to have Mr. Henderson adopt the pre-filed evidence and make him available for

questioning.
CHAIRMAN:
Q. Okay, sounds good. I always thought with computers we were going to save paper.
KELLY, Q.C.:
Q. Doesn't work for me, sir, either.
CHAIRMAN:
Q. It doesn't work for anybody, boy, from what I can see, especially not for utility regulation. Worse than City Hall.
MR. JOHNSON:
Q. That's benchmarking.
CHAIRMAN:
Q. What?
MR. JOHNSON:
Q. That's benchmarking.
CHAIRMAN:
Q. Yeah, but I guess there's no beta, though, you know.
MR. LORNE HENDERSON (SWORN) EXAMINATION-IN-CHIEF BY
KELLY, Q.C.:
KELLY, Q.C.:
Q. Thank you, Mr. Chairman. Mr. Henderson, you are the Manager of Rates and Regulation with Newfoundland Power?

MR. HENDERSON:
A. Yes, that's correct.
KELLY, Q.C.:
Q. And just explain your responsibilities as Manager of Rates and Regulation?
MR. HENDERSON:
A. My responsibilities are associated with retail and wholesale electricity pricing, the development and operation of the revenue and supply cost regulatory mechanisms, customer revenue forecasting, and regulatory filings. I also provide guidance to the company in the areas of system cost dynamics and how it impacts the justification of various supply side and demand side initiatives, such as conservation.
KELLY, Q.C.:
Q. And could you please summarize your qualifications?
MR. HENDERSON:
A. I graduated from Memorial University in 1985 with a Bachelor of Electrical Engineering, and I'm a professional engineer and a member of the Association of Professional Engineers and Geoscientists of Newfoundland and Labrador.

KELLY, Q.C.:
Q. And do you adopt Section 5, the Customer Rate Section of the pre-filed evidence as your testimony in this proceeding?
MR. HENDERSON:
A. Yes, I do.
KELLY, Q.C.:
Q. And are there any changes that you wish to make to any of the pre-filed testimony and exhibits at this time?
MR. HENDERSON:
A. No.
KELLY, Q.C.:
Q. The witness is available for examination, Mr. Chairman.
MR. LORNE HENDERSON - CROSS-EXAMINATION BY MR. JOHNSON:
MR. JOHNSON:
Q. Good morning, Mr. Henderson, how are you?
MR. HENDERSON:
A. Fine, thank you.
MR. JOHNSON:
Q. Good. I just have one question and it pertains to what's going to happen on July 1st of 2010, and so could we turn to CA-NP-77. Specifically what I focused on in this

question was (a) what is Newfoundland Power's expectation as to the impact of the annual review of their RSA, which will take place next July, i.e. July 1st, 2010, and that was, as you can see from the beginning of the question, that was prompted by what was said in the June '09 power connection about, you know, rates in January, 2010, being more or less similar to what they were last year, and, of course, the response was provided that the company's current forecast includes no change in rate stabilization adjustment for July 1st, 2010, and from there I asked a follow-up, which I'll get you to comment on now. That is CA-NP-218. Mr. Henderson, it's in this response that the company gave us the basis for it saying previously in the previous RFI that it was forecasting no change in the rate stabilization adjustment for July 1st 2010, right?
MR. HENDERSON:
A. That's right.
MR. JOHNSON:
Q. And as I read the response there, the one thing that jumps out at me is that in the

third paragraph you're referring to the recovery adjustment factor, which is currently reflect in rates, is providing a refund to customers of approximately 31 million dollars over the period July 1st 2009 to June 30th, 2010. So that is the adjustment that was made of July 1st, 2009, right?
MR. HENDERSON:
A. Yes, that's right. In our July 1st, 2009, RSA, there was two components. There's the fuel rider adjustment and the recovery adjustment factor. The recovery adjustment factor is associated with the outstanding balance that was in Newfoundland Power's portion of the RSP on March, 2009. That translated to a credit to customers of roughly 31 million dollars that needed to get rolled through. The fuel rider component itself was a component that said that over the coming year the expectation is that Hydro is going to incur 35 million dollars extra cost, and as a result they built that into the rate also. So the sum of the two totalled zero, and our RSA adjustment to our customers right now is quite small at .066 cents per kilowatt hour.

(10:00 a.m.)

MR. JOHNSON:

Q. And just to go further at line 16, the company indicates in the response that, "With the conclusion of this refund, the 31 million dollar refund, customer rates would normally be anticipated to increase by approximately 5.7 percent on July 1st, 2010", because if they didn't increase July 1st, 2010, you'd have that refund embedded, if you will, in the customer rates continuing on, and that wouldn't be appropriate?

MR. HENDERSON:

A. That's right, the RSA operates in tandem with Hydro's RSP, and within their RSP, the balance that occurs owing are credited to a customer at the end of, for our circumstances, March, gets amortized or dealt with over a single calendar year. So once July 1, 2010, comes around, that balance of 31 million dollars will effectively be credited back to customers.

MR. JOHNSON:

Q. And, I guess, then your answer goes on to indicate that there are several factors that

had created uncertainty if this normally anticipated rate increase will occur, right, and then we list four there, as the Board can see, and, I guess, Mr. Henderson, I'm not taking issue with the fact that there may be uncertainty as to what will happen on July 1st, 2010, but, I guess, where I'm coming at it from is I'm a bit nervous of assuming because of uncertainty that there will be no increase in rates on July 1st, 2010. I'm wondering if it might be more reasonable to say normally we'd anticipate an increase, but we don't know whether it will happen?

MR. HENDERSON:

A. You know, I guess, just a bit of background on the forecast for the RSP. In developing our load forecast, one of the components that has certainly been on the record is this elasticity effect that's related to price, and as a result, in order to do your forecast to apply projections of rates to customers, there's -- in developing the forecast, I had to look at basically what are all the pressures that exist out there, and I also had a look at or was aware of essentially what

kind of impact it may have on what we're applying for as far as a rate increase. So those two things kind of factor into it. Going through CA-NP-218, there's a number of uncertainties that involve very large amounts of money. As a result, it became clear to me that 5.7 percent increase is probably on the high side. Most of the uncertainty is associated with credits flowing into the account. Some of it can be quite significant, such as this RSP issue with the industrial customers, you know. That's a large amount that could possibly flow back to our customers. So on average, I knew it was going to be significantly less, and it could be actually a reduction this year coming. So there's a big load of uncertainty. So picking a number is almost like trying to predict where the (inaudible, coughing) is going to go. It's very difficult. The other consideration was the fact that this is used for our forecast, it's in behind our rate increase, and trying to get some reasonable sense of, you know, this part of the process, I'll call it, and our load forecast is

relatively insensitive to elasticity itself or change in load. To illustrate that, we're seeking a 7.2 percent increase. The change in sales associated with that is roughly . 8 percent decrease in sales because of the increase. .8 percent decrease in sales will affect our purchase power cost and our revenue, the net of which really affects what we need to seek for as far as a rate increase. There's an RFI, I'd probably like to take you to, which is CA-NP-296. If I could just have a quick look at that. This is an RFI that was asked to give some indication of what kind of impact there would be on our customer rate change for changes in our forecast. Now as I mentioned, the elasticity effect of the 7. 2 percent increase is roughly .8 percent decrease, okay. The change in the RSA will occur in July. It will occur half way through the year, so that reduces the relative impact of that price change in our test year forecast, and also the increase of 7.2 is probably larger than what the impact plus or minus would be for the July 1 next year increase, but if you look at part "B" to this

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question, the 1 percent change in forecast, the last line at 19 and 20, the impact on the customer rate change is an increase of approximately .02 percent. So that's . 02 percent relative to the 7.2 percent overall, and considering the elasticity effect for July 1 rating increase, is likely to be substantially less impact on sales than this 1 percent change, that the decision on what to put into the forecast for our July 1, 2010 forecast does not have much, it's almost not even a really material impact.

MR. JOHNSON:

Q. But that's only if these -- that's only if the other factors, the four factors in CA-NP- 218 all go the right way, type of thing?

MR. HENDERSON:

A. No. Well, if it's -- if you assume that 5. 7 percent increase occurs next July 1 --

MR. JOHNSON:

Q. Yeah.

MR. HENDERSON:

A. Okay, the impact on elasticity will be less than 1 percent on our forecast, right, and where it goes into place half way through the

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year, the forecast will be half again. So the impact on our forecast will be quite low, and as explained -- as I mentioned through CA-NP-296, a 1 percent change in forecast is equivalent to something like a .02 percent change in our customer rate change. This amount would be really not material, you know. Whether it's 5.7 percent increase next summer, or whether it's a 0 percent increase next summer, would really have no material impact on what we're seeking as a rate increase.

MR. JOHNSON:

Q. Okay, I understand that, I'm not quibbling with that, but, I guess, what I'm getting back to is we -- all the ducks would have to line up, or a number of ducks would have to line up, the ducks being, if you will, Clauses 1, 2, 3, and 4 of your reply to CA-NP-218, to avoid the otherwise anticipated 5.7 percent increase on July 1st, 2010? For instance, you know --

MR. HENDERSON:

A. You know, I wouldn't say that all have to line up to go to zero. The RSP -- if we say it's this 31 million dollars that we're trying to

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overcome, in other words, is there going to be an additional 31 million dollars credit built into the Newfoundland portion of the RSP by March of next year, within the next six months. Things I know -- you know, the industrial RSP application which is before the Board is dealing with numbers in the order of 30/40 million dollars, so there's a potential for that there. That would completely and more than offset the 31 million dollars. As I mentioned, the fuel rider is assuming that over the next year there's going to be an additional 35 million dollars in -- Hydro is going to incur 35 million dollars extra in fuel cost than was in their test year. Right now the cost of their fuel in their tanks is roughly 45 dollars a barrel, 46 dollars a barrel. They get to use that this fall, and buy new stuff, arguably at some price, whatever that happens to be right now, and then on average the question is are they going to be spending 35 million dollars of extra fuel. My view on that, at least the way the numbers looks, especially considering the inventory, there's a great deal of uncertainty

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that that's actually going to occur and it's likely to be less. In other words, the amount of extra fuel cost that they incur is going to be less. Similar on that front, with the closure of the Abitibi Grand Falls Mill, there's a net amount of -- and where there's the generation, that's coming on the system. That is reducing production at Holyrood. That's going to tend to reduce the extent to which Hydro's fuel cost is above what was in their test year. That could be in the order of 10 million bucks, is my best estimate of that. One of the items not mentioned in here is another factor. As of the end of June, the balance in Newfoundland Power's reserve was 40 million dollars credit to customers. The recovery adjustment factor is going to give 31 million bucks. There's an extra 10 million bucks that we know is already there for our customers that is going to -- you know, with interest, is going to exist next March. So there's a lot of these elements, if they all aligned, I would suspect next year you could see a material decrease to our customers. So it's really -- you know, if you look at it on average, zero percent is not an unreasonable expectation, that it could be pretty small.

MR. JOHNSON:

Q. I take it that the -- it is still true, though, that the 0 percent was not so much as a forecast as much as it was "we'll call it a zero because it's uncertain"?

MR. HENDERSON:

A. Yes, oh, for sure.

MR. JOHNSON:

Q. Yeah.

MR. HENDERSON:

A. Yeah.

MR. JOHNSON:

Q. Okay, thank you, Mr. Henderson.

(10:15 a.m.)

MR. SIMMONS:

Q. I have no questions for Mr. Henderson. Thank you.

CHAIRMAN:

Q. So you got off easy. Piece of cake. Thank you.

MR. HENDERSON:

A. You're welcome.

KELLY, Q.C.:

Q. That's the evidence for the company, Mr. Chairman.

MR. JOHNSON:

Q. Mr. Chairman, our next witness, Mr. John Todd, is present and he's prepared to start now, if you wish.

CHAIRMAN:

Q. Sure.

MS. GLYNN:

A. A copy of Mr. Todd's CV has already been circulated. We'd like to mark that as Exhibit JDT #1.

MR. JOHN TODD (SWORN) EXAMINATION-IN-CHIEF BY EARLE, Q.C.:

EARLE, Q.C.:

Q. Mr. Todd, having regard to the fact that your CV has been put in as an exhibit, would you give us a brief description of your qualifications to give evidence today, and also your particular experience for the Board?

MR. TODD:

A. Yes, I'm President of Elenchus Research Associates, the predecessor company which was founded in -- I founded in 1980. So I've been a specialist as a consultant in regulatory

matters for thirty years, coming up next year, and part of that was also in the area of regulation generally. I've appeared in or been involved in -- I think it's over 200 regulatory proceedings in various jurisdictions; energy, telecom, as well as other matters, and it's now approaching 100 appearances as an expert witness. I was involved in three, I believe it is, prior proceedings here. I see my CV at page 7, it's actually out of date, it does not mention the 2008 GRA which occurred in 2007, but I was also involved in the Newfoundland Power 2007 amortization and cost deferrals application, and the 2006 accounting policy application.

EARLE, Q.C.:

Q. Mr. Todd, you have prepared a report at the request of the consumer advocate filed August 21st, 2009, and you have supplied answers to request for information, NP-CA-54 to 59. Do you adopt these as part of your evidence?

MR. TODD:

A. Yes, I do.

EARLE, Q.C.:

Q. Thank you. Mr. Todd, what were the issues you

were asked to address with respect to the 2010 GRA evidence of Newfoundland Power?

MR. TODD:

A. The five issues that I was asked to address are listed on page one of the pre-filed evidence. I'll just read that, so everybody is clear on it. Page one, "Number one, the role of the existing and proposed regulatory mechanisms in the context of Newfoundland Power's multi-year regulatory regime; two, Newfoundland Power's proposed Pension Expense Variance Deferral Account, the PEVDA, Newfoundland Power's report on the Demand Management Incentive Account, the DMIA, the regulatory treatment of other post-employment benefits, or OPEBs, and Newfoundland Power's proposed treatment of its gain on sale of the Kenmount Road property.

EARLE, Q.C.:

Q. Thank you. Now your discussion of the regulatory mechanisms that have been approved for Newfoundland Power over the years identifies three distinct purposes for deferral and variance accounts. Could you please recap for the Board those three

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purposes?

MR. TODD:

A. I certainly can. First, in general, a variance or deferral account can be used to ensure that the actual cost incurred during a test year are ultimately recovered from customers. That is done by capturing in the variance account any variances between the actual and forecast test year costs for later disposition to customers. It makes sense to use variance accounts to pass costs that are not controllable by the company through to customers. This approach protects the company from risks associated with its inability to forecast costs exactly, which is inevitable, and it protects customers from having to pay a risk premium to the company for bearing that risk. This reduces cost to customers ultimately. Of course, it does not make sense to use a variance account through controllable costs to customers because doing so would remove an incentive by the company to control this cost at the level that was forecast and ultimately approved by the Board. In essence, a variance account -- this type of variance

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account is used where it is the intent of the regulator to pass through the actual cost incurred by the company to customers. For example, since the cost of power purchased from Newfoundland Hydro is regulated by the Board, the actual cost incurred by Newfoundland Power is deemed to be prudent even though they may vary from the forecast cost of power that's initially included in rates. Variance accounts are not used where it is the intent of the regulator to allow the company to recover only the level of costs that is approved, regardless of the actual cost incurred by the company in the test year. This approach provides an incentive for the company to minimize controllable costs. This use of variance or deferral accounts is not specifically linked to multi-year regimes. The second deferral accounts are sometimes used to defer costs that are incurred in one year for recovery in a different or later year. For example, regulatory costs are often deferred, so they're recovered in the test year for the GRA. For example, this year's costs will be recovered during 2010 or over

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multiple years between GRAs, rather than in the hearing in which the -- rather than in the year in which the hearing is actually held and the costs are actually incurred. Again this use of a deferral account is not necessarily linked to a multi-year regime. The third use of variance of deferral accounts and other regulatory mechanisms is to facilitate a multi-year regulatory regime. When a variance account as described above is used to capture variances in costs from the level of costs that is embedded in rates, and the mechanism is introduced for clearing that account in the absence of a GRA, it may be possible to reduce the frequency of GRAs. In the case of Newfoundland Power, it appears that there has been an effort to introduce regulatory mechanisms that allow the rate adjustments to deal with changes in non-controllable costs without the need of a GRA. Regulatory mechanisms that serve this role include the rate stabilization account, which deals with a number of different factors affecting power purchase costs, including weather, fuel costs, variances, and average unit costs due to

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volume metric variances. Also the automatic adjustment formula serves this purpose, and the PEVDA being introduced this year, and has been included in the settlement agreement furthers this role. This approach is what I would characterize as a win/win/win situation. This use of regulatory mechanisms is a win for Newfoundland Power because it eliminates test year risks associated with cost factors for which there is deferral account. It also eliminates the risk in non-GRA years, hence it reduces the frequency of rate cases, that will inevitably consume the time of management and other staff in preparing materials and participating in the proceeding. We see these as an onerous process for the company. Most of these costs for the company are not reimbursed directly, in that they are accommodated within the job responsibilities of staff included in the revenue requirement. In the absence of a GRA, resources can be devoted to other issues, such as improving productivity. This creates an opportunity for Newfoundland Power to earn return above the AAF midpoint and retain the earnings for

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shareholders. So it's a benefit of the company. It's also a win for customers. When the direct costs are GRAs are avoided, as they are whenever deferral account treatment allows costs to be passed through that would otherwise require a GRA, presumably the lower costs are passed through to customers reflecting the lower cost of capital that would be -- in the normal course, would be associated with the reduced risk faced by the company since the deferral account transfers the risk to rate payers. Therefore, rates are lower. Hopefully, rates are also lower than they would otherwise be since there is a de facto incentive for the company to achieve enhanced productivity gains in the non-GRA years. Any enhanced gains become a new lower base line for subsequent GRAs, provided the regulator ensures the productivity gains are retained, thus customers win from lower rates. It's a win for the Board because less frequent GRAs reduce the effort required to regulate Newfoundland Power, and the implicit incentive mechanism resulting from the usual three year cycle reduces information uncertainty. By

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information uncertainty, I mean that the incentive may encourage the company to find efficiency gains that would never be identified in a hearing. So it's a mechanism for getting beyond the fact that we have imperfect knowledge within the proceeding.

EARLE, Q.C.:

Q. Unlike the formal multi-year regimes that have been adopted by some of the other regulators, Newfoundland Power's multi-year cycle is flexible. What are the benefits and risks associated with flexibility of the multi-year cycle.

MR. TODD:

A. The primary benefit is that it makes it easy to deal with unforeseen variances in costs that are not subject to a regulatory mechanism. Of course, as past experience has shown, Newfoundland Power has really two options for dealing with unforeseen changes in costs. It can either initiate a full GRA, as it has done this year, or it can address specific issues by way of accounting applications, at least for certain types of variances and costs. For example, an

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application can be made to establish deferral account to capture specific costs for review and possible disposition after review at a subsequent GRA. This approach can address the cost issues without necessitating a GRA. The greatest concern associated with this flexibility is the possibility that the flexibility will be used in an asymmetric manner. This will create a problem if the company initiates premature GRA applications when there are -- when there is an unexpected increase in costs, but does not initiate a GRA when there are unexpected decreases in costs. This danger may be referred to as the "heads I win, tails you lose" dilemma. For example, it's difficult to know whether or not Newfoundland Power would have initiated GRA with the primary purpose being to terminate the AAF if it were of the view that the AAF would result in an ROE that was inappropriately high. We do know, however, the actions would be most consistent with the interest of Fortis shareholders.

EARLE, Q.C.:

Q. How does the multi-year regime that is

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involved for Newfoundland Power in this jurisdiction differ from the regulatory regimes in place in other jurisdictions?

MR. TODD:

A. The foundation of Newfoundland Power's multi-year regime is that it makes generous use of regulatory mechanisms that create cost recovery certainty, and, therefore, reduce risk to Newfoundland Power. Essentially, it appears to me the intent of the approach is to reduce the frequency of GRAs by limiting the cost factors that could reduce Newfoundland Power's earnings and cause it to initiate a GRA. Most PBR incentive regulation regimes, which are multi-year regimes in other jurisdictions, set rates using a formula that delinks rates from costs for a fixed period of time. The Newfoundland approach reduces risk, whereas the approach commonly used elsewhere actually increases risk by that de-linking. Asymmetry also reduces risk by increasing the opportunities for upside gains, while reducing the exposure to downside losses. Of course, this low risk environment will ultimately benefit rate payers as well as the company, provided the risk adjusted return equity that is used in setting rates reflects the lower risk to which the company is exposed and the commensurate higher risk that customers face.

EARLE, Q.C.:

Q. You've put this proviso on provided the risk adjusted return on equity that is used in setting the rates reflects the lower risk to which the company is exposed and the commensurate higher risk that customers face. Could you explain for the panel why customers face higher risk?

MR. TODD:

A. In the absence of a variance account, the company bears the uncertainty and risk associated with the cost being unexpectedly higher or lower than the quantum approved by the Board and embedded in rates. When a variance account is in place, it is the customer that bears the uncertainty in risk associated with variances from actual costs, or variances in actual costs from the forecast cost. For example, if power purchase costs turn out to be higher than expected, it's the customer, not the company, that makes up the

difference. Therefore, the customers are at risk for those variances.

EARLE, Q.C.:

Q. Given the regulatory instruments that facilitate a multi-year regime for Newfoundland Power in this jurisdiction, is it appropriate to amortize the 2010 test year regulatory costs over a single year, as has been proposed by Newfoundland Power?

MR. TODD:

A. No, I do not think so. The approach proposed by Newfoundland Power seems to be inconsistent with the desire to have GRAs on a three year cycle when possible. At the present time, the forecast 2008 regulatory costs are being amortized over years. That means that one-third of the forecast cost for 2008 will be included in 2010 rates. If 2010 GRA costs are also included in the 2010 rates fully, there will essentially be 133 percent of GRA costs included in 2010 rates, part of the cost from 2008, 100 percent of the cost from 2010. Second, if Newfoundland Power ends up not initiating a GRA for 2011, the rates in 2011 carrying forward will implicitly include the

same 133 percent of the cost of a single GRA, as well any subsequent years until there's another GRA. This recovery will correspond to costs that were not actually incurred. It would seem to make more sense to me to consistently amortize GRA costs over three years, as a matter of policy. If that approach is adopted, the recovery of GRA costs will be smooth and the cost of burden on rate payers will never exceed three-thirds of typical GRA costs. For example, by that approach, 2010 rates would embed the one-third of regulatory cost from the 2008 GRA, plus one-third of the cost of the current GRA, which is, in effect, a total of two-thirds of your typical regulatory costs. If there is another GRA in 2011, the 2008 cost would no longer be in. You'd have the one-third of the cost of 2010, plus one-third of the cost in 2011, which would be two-thirds of sort of a normal GRA cost. If you end up with GRAs every year, the one-third, plus one-third, plus one-third always being amortized over three years means that each year ultimately you'd be bearing the equivalent of one year of

GRA costs. Every time you skip a GRA, there would be three years in which you end up with lower than three-thirds of the cost. That creates smoothness. It also ensures that there's not an over-recovery of costs.

EARLE, Q.C.:

Q. Okay, if we could turn now to the second issue which you were asked to address, and that's the pension expense variance deferral account. You, in your report, recommended acceptance, which is consistent with the settlement agreement, and I wonder if you could comment on the pension expense variance deferral account for the Board?

MR. TODD:

A. Yes, with agreement, I can comment more briefly on this issue, obviously. My evidence on the issue concludes as follows; assuming the Board reconfirms its commitment to maintaining a multi-year regulatory regime, it would be consistent to accept Newfoundland Power's proposal to introduce the PEVDA. I would just note that the introduction of the PEVDA is further evidence of the highly favourable approach taken in Newfoundland to minimize Newfoundland Power's risk. The implication of the introduction of the PEVDA is that the risk associated with variances in pension cost is transferred to customers. This is consistent with the view that customers are compensated for protecting the company from these and other risks in two ways. First, the frequency, complexity, and cost of regulatory hearings should be reduced by the total array of regulatory instruments that are in place. Second, lower risk for Newfoundland Power implies a lower risk adjusted cost of capital than would be permitted a more risky utility, all other things being equal. Both of these factors should reduce the cost embedded in rates which benefit customers.

EARLE, Q.C.:

Q. Mr. Todd, then if we could turn to the third issue you were asked to address, which was the demand management incentive account. It was also resolved and included in the settlement agreement. I believe the settlement agreement is again consistent with your recommendations. Could you comment, please?

MR. TODD:

A. Yes, given the next GRA after the introduction of the DMA has occurred a year earlier than originally expected, my concern was that it is premature to assess the DMI at this time. We don't have much experience with it. My evidence concludes as follows; it is, therefore, recommended that the Board direct Newfoundland Power to include at the time of its next GRA, next GRA from this one, after this one, to 2011 or later, an updated report on the operation of the DMI, that not only summarizes the amounts of the transfers and savings, which was done in the current filing, but also examines the incentive effects of; one, the DMI itself; two, all other existing regulatory mechanisms related to power purchase costs; three, possible alternative mechanisms with respect to the effectiveness and the efficiency of the incentives to reduce power purchase costs, which are ultimately borne by customers. This analysis should address both the energy and the demand components of power purchase costs.

EARLE, Q.C.:

Q. The fourth issue you were asked to address was Newfoundland Power's proposal to move from the cash method to the accrual method of recognizing other post-employment benefits for regulatory services. Do you disagree with Newfoundland Power's view that the accrual method is the predominant approach used to recognize OPEBs by Canadian regulators?

MR. TODD:

A. No, I do not disagree.

EARLE, Q.C.:

Q. Why then do you not consider it appropriate to convert to the accrual method for the accounting of OPEBs at this time?

MR. TODD:

A. In my view, there are at least three considerations that differentiate Newfoundland Power's current circumstances and justify deferring this issue to the next GRA. The first consideration is the high priority that is given to minimizing Newfoundland Power's risk associated with variances from forecast in its uncontrollable costs. These are uncontrollable costs. In this regard, I would note that the purpose of introducing the PEVDA

at this time is to reduce Newfoundland Power's risk related to variances in pension costs due to unforeseeable changes in asset values, the discount rate, and other factors. The move from the cash method to the accrual method for recognizing OPEBs for rate setting purposes will significantly increase the volatility in OPEBs costs. While there are differences in scale and in the factors causing variances between pension and OPEBs costs, when recognized by the accrual method, the OPEB costs will be buffeted by uncontrollable changes in the discount rate and other factors would cause volatility in both the pension costs and OPEBs, very similar types of factors. We're eliminating those risks with the pension, and a move to the accrual method would essentially introduce those risks for the OPEBs. It seems curious to be introducing the PEVDA to address volatility while simultaneously moving to the accrual method for OPEBs, thereby introducing similar types of risk problems. Second, it's my understanding that future OPEBs coverage is the subject of imminent negotiations that could alter Newfoundland Power's future OPEBs costs. This adds to the uncertainty in the correct quantum of OPEBs costs that should be included in rates. Increasing the quantum OPEBs costs embedded in rates for 2010 through moving to the accrual method may well result in an overstatement of these costs until the next GRA, whenever that occurs. This is just one further element of NP's proposed revenue requirement, along with a one year amortization of regulatory costs, and the possibly temporarily elevated cost of capital, that could result in overstatement of cost going into the 2011 test year. Establishing a base year with overstated cost does not seem to me to be the appropriate way to seek to avoid a GRA in 2011. Third, in my view, it is appropriate to consider the change in the accrual method and the transitional obligation as a package. While adopting the accrual method is consistent with inter-generational equity, any method of recovering the transitional obligation violate inter-generational equity principles, since it will be recovering costs that were more properly

attributable to past years being recovered from future customers. While these two intertwined issues have conflicting implications in terms of inter-generational equity, they both have the same directional impact on rates; that is, they both increase them. By examining all aspects of the transition on an integrated basis, it should be possible to develop a more equitable approach that has known and appropriate rate impacts. For example, it may be possible to use the inherent volatility of the OPEBs costs under the accrual method as a basis for handling a transitional obligation, or assisting to, with minimal rate impact. For example, perhaps by phasing in an amount of OPEBs recovery that combines the impact of the accrual method and the transitional obligation, with the recovery of the transitional obligation being linked to changes in the level of OPEBs accruals. The appropriate analysis is not on the record to consider options that would mitigate both risk for the company and rate impacts for the customers. So the possible option to explore

is looking at the inevitable fluctuations in OPEBs costs, which could have a rate impact up and down, bouncing around essentially year to year, and use that as a mechanism for over time recovering the transitional obligation without having rate shock or significant rate impacts on customers. Just a hypothetical, but those kinds of issues could only be explored by looking at the transition to the accrual method and the traditional obligation as a package. Without a doubt, the Board should not feel that there is an pressure to implement the change in the 2010 test year. The 2008 GRA decision specifically contemplated addressing this issue in 2011 GRA. Based on Newfoundland Power's evidence, it appears that a 2011 GRA is likely. Also based on my comments earlier, the primary factor that might remove the necessity of the 2011 GRA would be extremely favourable decisions on the various issues before the Board at this time that could have the effect of building in a cost cushion for the company as it considers its financial position for 2011. It may imply there should be a GRA in

any case in 2011. By cost cushion, I'm referring to the cost factors the company is seeking include in rates until the next GRA, but would be costs no longer borne after 2010, such as regulatory cost amortized over one year, as I've mentioned, with the remaining 2008 regulatory costs included, possibly temporarily high cost of equity, and so on.

EARLE, Q.C.:

Q. Now, Mr. Todd, we also asked you to look at the issue of a gain on the sale of property of Newfoundland Power on Kenmount Road, a property associated -- close to its head office. What are your comments on the treatment of the gain on the sale?

MR. TODD:

A. This is a complicated issue with a complex history. My evidence concludes with the following point; it is recommended that the Board consider the appropriateness of recognizing a portion of the gain on sale of Kenmount Road property as other revenue, in light of the specific facts surrounding the purchase and sale of this property, the inclusion of this property in rate base in past years. The resolution of this issue should be consistent with regulatory principles espoused by the Board in Order PU-19 2003, pages 15 to 16, in particular, the sixth principle end result which is, in compliance with the legislation, the end result must be fair, just, and reasonable from the perspective of both the consumer and the utility. How you do that is not obvious, but in particular, it may be appropriate to remove from rate base an amount that is equal to the original cost of the property, plus all related costs, including the carrying costs that have included in rates over the years, as reflected in the return on rate base since the land was acquired. Under the circumstances, this calculation may provide the appropriate approach to determine the sort of equity salvage value for this asset that would be removed from rate base.

EARLE, Q.C.:
Q. Thank you, Mr. Todd. Those are our questions of Mr. Todd.
CHAIRMAN:
Q. Do you have extensive cross-examination?

KELLY, Q.C.:
Q. I'll be more than fifteen minutes, Mr. Chairman, but I won't be -- I expect to be half an hour to three-quarters of an hour probably. So if you wish to take the break now, that's fine.
CHAIRMAN:
Q. Would that be better if we take the break now, say, and come back at 11:15. Is that good?
KELLY, Q.C.:
Q. Well, that's fine. We'll finish Mr. Todd, in any event, today, we're all agreed.
CHAIRMAN:
Q. Okay.
(RECESS)
(11:20 a.m.)
CHAIRMAN:
Q. I think now we're at the stage of cross-examination, and, Mr. Kelly, I guess you're the man.
KELLY, Q.C.:
Q. Thank you, Mr. Chairman.
MR. JOHN TODD - CROSS-EXAMINATION BY KELLY, Q.C.:
KELLY, Q.C.:
Q. Mr. Todd, I guess we'll agree that in

Newfoundland and Labrador what we have is a cost of service regulatory model?
MR. TODD:
A. That's correct.
KELLY, Q.C.:
Q. And that's unlike other jurisdictions that you mentioned which have a performance based regulatory model or a PBR, for short?
MR. TODD:
A. That's correct. Some PBR regimes are essentially multi-year cost of service regimes. They're all cost of service in that they do periodic rebasing with a cost of service proceeding, and then run out for usually a predefined number of years, although, for example, in BC, that three year period can be extended to five or six, has been in the past.
KELLY, Q.C.:
Q. And that's a different regulatory type structure than what we -- than what we have here, and in our structure there's no mandatory period, one way or the other, in terms of the time between GRAs?
MR. TODD:

A. That's correct, there's no mandatory time.
KELLY, Q.C.:
Q. In fact, you make that point at page five of your report. I'm not going to take you there in any detail. Now within our regulatory structure, you talked about a number of mechanisms which exist, and one of the ones you didn't talk about was the excess earnings account. Like, there's an excess earnings provision.
MR. TODD:
A. Yes.
KELLY, Q.C.:
Q. And you're familiar with that?
MR. TODD:
A. Yes. I didn't review it for this proceeding, but I did review it. I think it was at the time of the 2008 GRA.
KELLY, Q.C.:
Q. And so you're aware that any earnings which the company makes above 18 basis points in its rate of return on rate base, in fact, goes into that excess earnings account. So its upside potential gain is limited under the current regulatory regime?

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MR. TODD:
A. Yes, there's a cap on the amount by which the company goes above or below.
KELLY, Q.C.:
Q. Right, and some of the other regulatory mechanisms that you talked about, for example, the RSA, they work both ways, don't they? In other words, as we heard from Mr. Henderson this morning, if there's an additional cost, it will get passed through to customers. On the other hand, if there are reductions in costs because if the price of oil goes down or it rained all October and we got tons of water for the hydraulic system, then those savings get passed on to customers, correct?
MR. TODD:
A. Exactly, and that's what -- the concept of risk and uncertainty is a two-sided concept.
KELLY, Q.C.:
Q. Exactly my point. In other words, there's a benefit that flows to customers, it's not simply just a risk transfer to customers?
MR. TODD:
A. No, the risk goes two ways. The risk transfer is a transfer of both potential costs and

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potential benefits. What you're transferring is uncertainty. It is uncertainty that attracts a higher return, a compensation for risk.
KELLY, Q.C.:
Q. And as long as we make that point clear that these mechanisms work both ways, both in terms of benefits to customers and costs, then we're on the same page.
MR. TODD:
A. Absolutely.
KELLY, Q.C.:
Q. Okay, and, in fact, PEVDA will work that way, won't it?
MR. TODD:
A. Yes.
KELLY, Q.C.:
Q. Yes. In fact, if we just take the PEVDA example for a minute and we say currently before this Board the discount rate is 6 and a half percent to be in the test year, if that turns out to be 7 percent, then there will be a benefit that will flow back to customers?
MR. TODD:
A. Agreed, yes.

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KELLY, Q.C.:
Q. Right, and as part of the regulatory mechanisms, there's also a mechanism, the demand management incentive account, in particular, which actually incents the company to do something, i.e. to control peak?
MR. TODD:
A. Yes.
KELLY, Q.C.:
Q. Right. So these mechanisms have a number of different functions within our regulatory process, essentially intended in one way or the other to ensure that the system works appropriately?
MR. TODD:
A. Yes, and that's one of my points around these accounts is the incentive effect, which is inherent in a multi-year regime. It's an important design feature, as I understand it, of the approach taken here, and anywhere else where there's a multi-year regime, is that it's trying to -- it has the effect of influencing the company's behaviour over a period of time.
KELLY, Q.C.:

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Q. Right, and so if we put the whole package together, unlike, for example, our PBR regimes, we have a very limited upside gain because of the excess potential or the excess earnings account, and there are these various mechanisms which operate both to pass costs on if they rise, but to pass on savings to customers if they go down?
MR. TODD:
A. Well, I would say that is similar to other regimes which have upside and downside.
KELLY, Q.C.:
Q. Okay.
MR. TODD:
A. And other regimes -- some other regimes include earning sharing mechanisms, or other collars, and similar mechanisms which may limit the exposure of the company or the exposure of customers in the event of the variances that occur from year to year.
KELLY, Q.C.:
Q. Can I show you Exhibit EAL #1, and, Michael, just put that on the screen there. I take it we are essentially agreed that these are the principle components, which are the drivers in

the 7.2 percent application before the Board here?

MR. TODD:

A. Yes, and those numbers are the same numbers as the Grant Thornton Report.

KELLY, Q.C.:

Q. But they're presented a little bit differently than the Grant Thornton Report. So if you want to have a look at that, by all means.

MR. TODD:

A. Yeah, similar, okay.

KELLY, Q.C.:

Q. Yeah, because what this table shows is essentially what the components are adjusting from an 8.95 percent return on equity?

MR. TODD:

A. Under the proposal of the company, yes.

KELLY, Q.C.:

Q. Okay, that's fine. Now let me take you next to CA-NP-43, to Attachment "A". I'm just wondering whether you've looked at this document before. You can just go to page 1 of 9.

MR. TODD:

A. And you are looking at the revised?

KELLY, Q.C.:

Q. Yes, certainly the first revision.

MR. TODD:

A. Yes.

KELLY, Q.C.:

Q. Okay, have you examined this document before?

MR. TODD:

A. I've reviewed it. I've not analyzed it in any way.

KELLY, Q.C.:

Q. Okay, let me take you down to the bottom of the document, and in particular, I want to take you to the -- take you down to line 43.

MR. TODD:

A. The revenue shortfall line?

KELLY, Q.C.:

Q. Yes, okay, and you'll see on that line as you come across to 2011 and then out to 2012, that the company is facing a revenue shortfall after this test year as you get out into 2011?

MR. TODD:

A. That calculation is based on 11 percent return on equity and other forecast figures, yes.

KELLY, Q.C.:

Q. And it will change a little bit depending on

what an allowed ROE turns out to be, but it's that order of magnitude?

MR. TODD:

A. I don't know that -- it'll change a little bit. I mean, it'll change however much it changes.

KELLY, Q.C.:

Q. It'll change how much it changes, fine, okay. Now are you aware that between 2010 and 2011 there will be a number of expiring amortizations?

MR. TODD:

A. Yes, that's in the evidence.

KELLY, Q.C.:

Q. And deferrals?

MR. TODD:

A. Yes.

KELLY, Q.C.:

Q. So they will expire?

MR. TODD:

A. Yes.

KELLY, Q.C.:

Q. Because one of the items you talked about is the 2010 GRA cost, and when you were talking about OPEBs, you made an interesting

observation. You said you understand there will be a 2011 GRA. Have you taken it --

MR. TODD:

A. Not that there will be, but that the company has indicated -- I think there's a flip note, that it expected to have one.

KELLY, Q.C.:

Q. That it could be, okay.

MR. TODD:

A. It could be, but that depends on the numbers in 2011, and I'm sure the company will not initiate a GRA if it's not justified in terms of required rate increase.

KELLY, Q.C.:

Q. And nevertheless, one of the factors that may have to get dealt with next year are these various expiring amortizations?

MR. TODD:

A. Agreed.

KELLY, Q.C.:

Q. And if the 2010 cost -- if all those are then dealt with together, there will be asymmetry around those expiring amortizations that enable them all to be dealt with the one time. Do you agree with that?

MR. TODD:
A. Well, there are many puts and takes in every year, so, I mean, that's -- are you suggesting that if the 2010 regulatory costs are amortized over one year, that if the benefit of the amortization ends in the same year as some of the other amortizations?
KELLY, Q.C.:
Q. They will all end within the same year, therefore, giving the Board an ability to deal with that issue at one point in time as opposed to, which I understand to be your proposal, to amortize them over an extended period of time during which it appears there will be other regulatory costs?
MR. TODD:
A. There may be. As we heard from the witness this morning, what happens next year is uncertain. It will unfold as it does. My comments on the amortization period of the regulatory cost was designed to say the costs are smoothed, they're fully recovered, but they are smoothed, and they never exceed three-thirds of regulatory cost by a mechanism that is not dependent upon a future hearing

happening at the time it was intended. The current hearing is not happening at the time it was expected. I would not make a decision today based on the assumption that a hearing will occur in any particular future year. We have to wait and see.
KELLY, Q.C.:
Q. Let me turn next to the discussion of OPEBs. Now I think we agree from the discussion you had with Mr. Earle that it's now standard accepted practise in must jurisdictions that the accrual method is the method used?
MR. TODD:
A. Yes, I agree.
KELLY, Q.C.:
Q. And the basic reason for that is it affords a better matching of cost and expense, so that what you are incurring in customer rates most reflects the cost associated with providing that service today?
(11:30 a.m.)
MR. TODD:
A. Subject to the uncertainties that are flagged in my evidence, which suggest that based on the current best estimate of those future

costs and current discount rates and so on, yes, the accrual approach, putting aside the transitional obligations, the accrual approach provides the best matching.
KELLY, Q.C.:
Q. Okay, and the last time we were here in 2007 with the 2008 test year, at that stage there had been a substantial run-up in electricity costs because of the high price of fuel at that point in time related to the operation of Holyrood. Do we agree on that much?
MR. TODD:
A. Yes, that's correct.
KELLY, Q.C.:
Q. And since that point in time oil prices have come down?
MR. TODD:
A. Yes.
KELLY, Q.C.:
Q. And on -- this issue has been before the Board on a number of occasions as to what the Board should do with the accrual accounting issue, correct?
MR. TODD:
A. Correct.

KELLY, Q.C.:
Q. It goes all the way back to 2003, and back again in 2007, and from the last time, it was deferred to this GRA, correct?
MR. TODD:
A. Correct.
KELLY, Q.C.:
Q. And I understand from your evidence you're not proposing it be deferred further out into the future, correct?
MR. TODD:
A. I would cast it differently. The starting point is not the deferral. The starting point is how the issue is addressed, and so the starting point is, number one, that in my view it is appropriate to deal with the transitional obligations and the change to the accrual method as a package in terms of looking at the rate impacts. It may be helpful to the Board to fully appreciate what is going to be done with the transitional obligation in making its decision around the treatment of the shift to the accrual method. In addition, we should be sure that we are accruing the actual OPEBs that will be an

obligation of the company in the future. So the premise I'm coming from is having some certainty about the package, and since we do not have the information on the record to address it in that manner at the time, I'm suggesting that the company be directed to bring back what I would suggest would be a complete proposal at the next GRA.

KELLY, Q.C.:

Q. The net effect, though, is that -- from your evidence, is to defer it for another period of time? That's the bottom line in the result, isn't it?

MR. TODD:

A. Agreed, and if the panel would like to deal with the issue once and for all, and recognizing that it can only deal with the switch from the cash to the accrual method, and deal with the transitional obligations as a separate matter, that certainly would be appropriate for the Board to do that as well.

KELLY, Q.C.:

Q. So the approach before the Board to deal with the accrual accounting now is an appropriate approach, but what I'm a little bit puzzled

about, though --

MR. TODD:

A. I'd say there's two appropriate approaches, but, yes.

KELLY, Q.C.:

Q. Okay, but what I'm a little bit puzzled about is the company filed its evidence back in May, and this issue has been before the Board a number of times over, yet in your report you didn't bring forward any other alternative methodology to deal with this other than simply to defer it again, so that, I take it, the consumer advocate did not ask you to formulate other approaches or other methodologies because the first time that this discussion has taken place is now with you on the stand here today, and I must say that surprises me a little bit, Mr. Todd. Can you help the Board with some understanding of that?

MR. TODD:

A. That is a correct characterization. I would suggest it's the case for two reasons First of all, my evidence does contain suggestions on establishing certainty, dealing with the

issues as a package. In addition, frankly, as my experience in working with intervenors as opposed to companies, typically the proposals of intervenors are not implemented, but are put to the company to say please come back next time with this approach because it has to be worked through from the company's perspective. So the evidence is put forward as suggestions, frankly, to the Board to give a direction to the company to come back with different proposals as opposed to attempting to say here is the way to deal with the transitional obligation and the move to the accrual method as a package, and expecting that to be accepted, despite objections from the company.

KELLY, Q.C.:

Q. But it doesn't seem to me that's terribly effective to have the -- to have a methodology to deal with it out there now for some considerable period of time, after three or four deferrals of this issue already, and then to say, well, okay, I haven't put forward anything else, but let's have it deferred again so it can be further studied. There's

some point surely at which a decision has to be made and the Board needs to move forward. Do you not agree with that proposition?

MR. TODD:

A. At some point the decision will be made, I agree, it will be made. The question is in the Board's view, do they want to make a package decision, do they want to have some of the outstanding issues resolved, or do they want to go ahead now and then readdress those issues at a later time. The issue is not going to be put to bed in this proceeding, no matter what happens.

KELLY, Q.C.:

Q. I'm going to take you to page 14 of your evidence because there's just one point on this issue I want to explore a little bit further, and that's the second bullet on that page, and you say, "It may not be in the public interest to adopt the accrual method for accounting for OPEBs cost for regulatory purposes, given that the additional revenue that would be received by Newfoundland Power as a result of this change in accounting methodology provides no benefit to customers".

Now can I just pick you up there a little bit. I take it we agree that the money that comes in between the difference between cash accounting and accrual accounting goes to reduce rate base?
MR. TODD:
A. Agreed, and the quote, of course, is from my evidence for the 2008 year rate, but, yes.
KELLY, Q.C.:
Q. But that proposition that I just put to you would have been true then, and it's still true now, the difference between cash and accrual goes to reduce rate base?
MR. TODD:
A. The reference in the evidence at the time, and without going back and referencing the full context, but certainly the intent was that it is not paying for a service being provided to customers.
KELLY, Q.C.:
Q. But the reduction in rate base -- if, for example, we say rate base reduces by this difference by 6 million dollars a year, just to give it a context, over three years you'd have a substantial reduction. You'd have 6

times 3, which reduces the rate base, which is several millions of dollars which is then not financed by customers, agreed?
MR. TODD:
A. Agreed.
KELLY, Q.C.:
Q. So there is a benefit in the accrual accounting in the sense of its reduction in rate base, quite apart from the inter-generational equity issues that we talked about?
MR. TODD:
A. Well, there's a difference in the timing that customers pay for expenses. That's what the accrual approach is all about. It's saying you pay up front rather than later, and I agree, that's what -- that's what accrual methods are all about as opposed to cash methods.
KELLY, Q.C.:
Q. Okay. One last area just to touch on very briefly, the Kenmount Road property. You will acknowledge, I take it, that the money has been applied on Kenmount Road, the sale of that piece of property in accordance with the

usual practises and procedures of the Board?
MR. TODD:
A. I think that's straying to a legal question. When you say it's applied in the standard practises and procedures, I'm not sure of the precedent on the exact circumstances being dealt with here.
KELLY, Q.C.:
Q. Yeah, and if you don't know, I'm happy - if you don't know I'm happy to leave it there, that's fine.
MR. TODD:
A. There's reference to another situation, which is the Board -- I think an issue that's been deferred, the dam, is it, that -- or the dispute that any resolution of the matter would require prior approval of the Board.
KELLY, Q.C.:
Q. Um.
MR. TODD:
A. So there may be some prior approval issues here or potential approval issues here.
KELLY, Q.C.:
Q. And I'm going to leave that one because I don't think that issue is really before the

Board at this particular time. Mr. Chairman, those are my questions. Thank you very much.
MR. JOHN TODD - CROSS-EXAMINATION BY MR. DAN SIMMONS:
MR. SIMMONS.:
Q. Mr. Todd, I've got a few questions for you. First of all, about the multi-year regime, and the concept of risk and how that fits in. First of all, apart from any deferral mechanisms or any of these regulatory mechanisms that you've described, the basic method of setting rates is that the Board will look at the forecast for a test year and set rates based on what the forecasted revenues and expenses are, but that those revenues and expenses when actually incurred by the company may be different, and -- correct?
MR. TODD:
A. Correct.
MR. SIMMONS.:
Q. And apart from any mechanisms that are put in place to adjust for variances for those, the company bears the risk of revenues being lower, costs being higher, but stands to reap the benefit of expenses being lower and revenues being higher?

MR. TODD:
A. Yes, that's using risk in the sense of being negative as opposed to the technical concept of risk and cost of capital discussions where risk means variance in two directions.
MR. SIMMONS.:
Q. So when you speak of transferring a risk, for example, for the utility to the customers, you're not limiting yourself to those things that might occur that would hurt the financial bottom line of the company. You're referring to the upside as well as the downside when you say that a risk is passed on?
MR. TODD:
A. I'm referring to risk in the finance sense.
MR. SIMMONS.:
Q. Yes.
MR. TODD:
A. Of the transfer of the uncertainty that there may be higher or lower impacts on the company. When you transfer the risk to the customer, the customer may bear higher or lower costs in the future due to variances.
MR. SIMMONS.:
Q. Right, so you've also used the term

"uncertainty" a little while ago to say that really it's a transfer of the uncertainty about whether the actual revenues and expenses will match the forecast revenues and expenses?
MR. TODD:
A. Right, and this is -- that's the concept of risk in financial markets where a riskier investment has both greater upside potential and downside possibilities, and the risk that is embedded in a higher return for higher risk relates to the fact that there's more uncertainty that goes in both directions.
MR. SIMMONS:
Q. And would it be fair to say that the two principal features of the multi-year regime that's used here in this jurisdiction are the regulatory mechanisms, such as the rate stabilization account, and now the PEVDA, that have the effect of lessening the exposure of the company to those uncertainties about whether actual expenses will match forecast expenses? That's one feature.
MR. TODD:
A. Yes, and the existence of those types of mechanisms is not unique to this regime. They

seem to be used more extensively here.
MR. SIMMONS:
Q. And the automatic adjustment formula, is that also a feature of the multi-year regime? Would you consider that part of the multi-year regime too, an element of it?
MR. TODD:
A. Yes, and by saying it's an element of it, I'm referring to these mechanisms, remove what would normally be drivers of GRAs, and enable the company to go for several years between GRAs in many circumstances.
MR. SIMMONS:
Q. Does the use of an automatic adjustment formula play any role in the transfer of risk from the utility to the customers? Does it have that effect, in your view?
MR. TODD:
A. It allows -- it allows for some variance. Therefore, yes, it plays a role. At the same time, as I've mentioned, there are benefits to customers, compensating benefits, for example, if through that mechanism you do not have a GRA every year, there are reduced costs which must be embedded in rates.

MR. SIMMONS:
Q. So then the benefit you see from the automatic adjustment formula, I'm gathering from you, is more -- it's reduction in the overall expenses that are incurred by reducing the regulatory expenses than any particular transfer of risk, because if I understand correctly, transferring risk from the utility to the customer has the effect of reducing the return on equity that the company needs because their exposure to those risks are reduced. Do I have that right?
MR. TODD:
A. Yes, I agree, and with respect to the AAF, I would view that as the primary benefit is the incentive for efficiency gains, which clearly efficiency gains are primarily accrued to the company in the short run, but they should accrue to the customers in the long run. Therefore, it is in the interest of all parties to build into any regulatory mechanism incentives for the company to increase its productivity.
MR. SIMMONS:
Q. So does the presence or absense of an

Automatic Adjustment Formula then have any bearing on the consideration of what an appropriate return on equity is, in the way that these other regulatory mechanisms, if they're present, seem to have a bearing in that they suggest that a return on equity would be an appropriate return on equity, a fair return on equity, would be lower with those mechanisms present than without it. Does the presense of an Automatic Adjustment Formula work the same way?

MR. TODD:

A. If the Automatic Adjustment Formula had no constraint, no up and lower bounds on it, right, then all of the variances from forecast would flow to the company. By having a range built into the AAF, that means that if there are unexpected events which create a very low--would otherwise create a very low return for the Company or a very high return for the Company, those get stipped off and in effect are transferred over to the customer. So it is a mechanism where there is a sharing of the risk, as opposed to a different sort of AAF with no limits would leave the risk totally in

the hands of the Company.

MR. SIMMONS:

Q. An alternative to having an Automatic Adjustment Formula would simply be to fix the rates for a test year and for argument sake, say those rates would continue to apply for a fixed number of years.

MR. TODD:

A. Yes, which is the approach in some jurisdictions and unless there's a mechanism for looking at the return, it leaves the Company totally at risk, and again, risk cutting two ways, for earning higher or lower returns and retaining those higher or lower returns fully, themselves.

MR. SIMMONS:

Q. Okay, so when you say that the use of an Automatic Adjustment Formula apportions some of the risk between the utility and the customer, is what you're referring to then the fact that the Automatic Adjustment Formula will, to some extent, follow changes in the equity market so that the Company is at less risk of volitility in the equity market with an Automatic Adjustment Formula than if rates

were fixed for a test year and continued to apply without adjustment for a fixed period of time?

MR. TODD:

A. Yes, if capital markets shift sufficiently, that would trigger a change in the mid point allowed return and that means that the Company is avoiding risk in relation to those changes until the next GRA.

MR. SIMMONS:

Q. Now one of the things you said is that here we have what you described as a flexible multi-year cycle and I presume other jurisdictions have a fixed multi-year cycle where a utility comes back every three years or at some fixed interval, is that the distinction?

MR. TODD:

A. That's the typical arrangement in jurisdictions with PBR, performance based regulation or incentive regulation regimes.

MR. SIMMONS:

Q. And you said that one concern about the flexible multi-year cycle is that there is some asymmetry in it, which I understood to mean that the utility can trigger when a GRA

takes place, effectively ending the cycle and starting it new again based on its own analysis and considerations of its costs and revenues?

MR. TODD:

A. Yes, there is potential asymmetry of the mechanism, the AF mechanism that exists corrects for that, in terms of large variances in the returns driven by certain factors, but basically if the cost of capital stays the same but there is high or low returns, the Company can choose to trigger a GRA or not.

MR. SIMMONS:

Q. Okay, and how might that concern about the asymmetry be addressed? I guess one alternative is you just fix the cycle for a specific number of years so that the company no longer has the ability to trigger a GRA, but are there other ways out there that the concern about asymetry can be addressed?

MR. TODD:

A. In theory, the Board or intervenors could be in a position to trigger GRAs if, you know, in the opposite asymetry. In practice, that's not a very practical element because of who

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has information. Certainly the intervenors in the absence of proceeding don't have good information on what's happening. The Board is reviewing things, I'm not sure of the legalities of this jurisdiction, what the Board can do on its own account, whether it can direct the company to bring an application. I know that is within the authority of some regulatory boards, it does not have to be the company that initiates it. Assuming it is the authority, if it has adequate access to the information to make that determination, that could be practical, but clearly they're not as closely attuned to, on a timely basis to the company's prospects as the company is itself. I think the primary protection is that excessive swings in the return are ultimately returned to the ratepayers. So given that there's a collar on what the company can earn, in terms of higher return or lower return, perhaps that is sufficient, shall we say protection against extremes to say we are not going to worry about it in this jurisdiction. I'm not saying the assymetry is something which is a serious

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evil that must be corrected, I'm just saying that's a part of the regime that's in place.

MR. SIMMONS:

Q. Just a couple of questions about your comments on the OPEBs. One of the reasons that you gave for deferring a decision to move to the accrual method, which by all accounts sounds inevitable, it has to happen at some point, was that there's an intergenerational aspect to bringing the transitional obligation into the current accounts in that the transitional amount represents expenses incurred for the benefit of ratepayers in the past and that is now going to be charged off to current ratepayers once the transitional obligation is brought into accounts, and my question is, the longer we wait to deal with the transitional obligation, does that not increase the intergenerational inequity?

MR. TODD:

A. It increases the magnitude of the transitional obligation and therefore, yes, it increases the problem, if you want, although the amount by which it increases depends on various factors driving the OPEBs account. And that

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was the same case in the 2008 case, of course.

MR. SIMMONS:

Q. Yes, but I understand the idea behind intergenerational equity to be that you want to match costs as closely as possible in time to the benefits that are received by ratepayers as a result of incurring those costs, and the longer we wait to deal with the transitional obligation, does that not move that matching out farther and father and father away from the ratepayers who actually got the benefit?

MR. TODD:

A. Yes, and if that were the only consideration, I would say, you know, move ahead immediately. There's a balancing of concerns. I think that when we're dealing with the transitional obligation, the big concern there is the rate impact, you know that whatever you do with that, other than write it off, which would be a hardship to the company, obviously, the company is in a different position than Newfoundland and Labrador Hydro in that it is not a Crown Corporation, but absent a write-off, you are going to be imposing a rate

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burden on customers for something that they are getting no benefit from, other than the concept that Mr. Kelly pointed out if it's going to reduce furture rate base. But getting rid of the transitional obligation, that obligation is not related to service they're receiving in the current year. One must be concerned about the rate impact of that. One of the issues in the 2008 GRA was this is a bad time because you're talking about a large rate increase in any case. That problem is not as severe as the present time, so that's a reduced concern. At the same time what I've identified as a concern is that both the move to the accrual method and the resolution of the transitional obligation will push rates up. Moving for 2010 to the accrual method forces the timing of the transitional obligation, it would be extremely difficult not to move on to dealing with the transitional obligation in the next GRA. I mean, it's sort of a--it follows naturally, how do you not deal with it in the next GRA, and what the Company is proposing in effect, as far as I'm concerned, is that they're saying let's look at what I would consider to be the small piece of the problem, the move from the cash method to the accrual method in this GRA, without knowing what the fallout is going to be in terms of the transitional obligation, and all I'm saying is that maybe we should see the full picture before we start down that path.

MR. SIMMONS:

Q. Would one of the effects, though, of moving from cash to accrual in 2010 be that at least it fixes the size of the transitional amount so that it doesn't continue to grow into the future and become a larger problem to be dealt with in the future?

MR. TODD:

A. Agreed.

MR. SIMMONS:

Q. Now in your report you didn't address it, but in your evidence here today you did make a suggestion of a way to think about approaching dealing with the move from cash to accrual and the transitional obligations as a package and I just wanted to make sure I understood what you had suggested. And if I understand

correctly, you're saying that you could in effect forecast an amount or fix an amount to be included in expenses for a test year, which is designed to be large enough to include the current OPEB expense on an accrual basis, plus some amount on top of that for, to reduce the transitional amount and that you would maintain in future years that expense at a relatively even level to reduce the volitility up and down. Within that amount, the current accrual may change up and down and what the difference was between the current accrual and your total expense is the amount that you pull off your transitional obligation each year, is that the effect of what I understood you to be suggesting?

MR. TODD:

A. You explained it far better than I did, thank you very much.

MR. SIMMONS:

Q. Okay, so the effect of that would be you wouldn't know how long it would take to reduce the transitional amount to zero, but you would reduce it by whatever room was available within your fixed amount each year?

MR. TODD:

A. Agreed, that would be placing, having a smooth impact or a fixed rate impact on customers as a higher priority than having a fixed term for amortizing it.

MR. SIMMONS:

Q. Okay, good, thank you very much. I don't have any other questions.

(12:00 p.m.)

VICE-CHAIR:

Q. No questions, welcome back, Mr. Todd.

MR. TODD:

A. Glad to be here.

CHAIRMAN:

Q. Mr. Johnson, do you have any--oh, I'm sorry, Mr. Earle, forgive me, sir, for not -

MR. JOHN TODD, EXAMINATION BY RANDY EARLE, Q.C.

EARLE, Q.C.:

Q. Just on the last question from Board hearing counsel, Mr. Todd, what do you see as being the appropriate regulatory process for dealing with the transitional obligation which, as I understand your evidence, you say should be dealt together with the move from cash accounting to accrual accounting on an annual

basis, how would you see the process going? You've thrown out a suggestion in your evidence today, is that the basis from which we make these kinds of decisions?

MR. TODD:

A. My recommendation to the Board would be to direct the Company to bring back a proposal for resolving the transitional obligation and moving to the accrual method in a manner that mitigates the rate impact and addresses intergenerational equities as effectively as possible. That proposal could be developed in conjunction with consultation with the consumer advocate, certainly it would be something which would be subject to a future settlement agreement and ideally a messy issue, such as that one, would actually be settled by agreement. If it's not, then it would become a subject of a future proceeding. The bottom line of my evidence is not simply that let's defer this issue again, it's let's make sure that the issue and all its implications are being dealt with in a rational and consistent manner.

EARLE, Q.C.:

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Q. Assuming that Newfoundland Power goes forward as suggested and is engaged in a review with its unions on the costs of group benefits, both for active employees and retirees, and there is a significant change in cost of those benefits on a cash basis, what would be the effect on the accrual debate?

MR. TODD:

A. There would be a similarly large, proportionately large impact on the accural method on a going forward basis which would be taking into account in the numbers that are brought forward as part of any proposal and would be addressed in any case in any future GRA.

EARLE, Q.C.:

Q. Thank you, Mr. Todd.

CHAIRMAN:

Q. You're finished, sir. Now where are we? We've got -

MR. SIMMONS:

Q. Well Mr. Chairman, the only remaining witness we'd plan to hear from on the schedule is Mr. Bill Brushett from Grant Thornton and we've had some discussions with other counsel and I

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think we are in agreement that the Board can accept Mr. Brushett's original and supplementary report without the necessity for us to put him on the stand and have him adopt it and I understand that neither other party wishes to cross-examine him. That being the case, it wouldn't be necessary for us to convene next week in order to hear from Mr. Brushett. I think the other parties are in agreement with that.

CHAIRMAN:

Q. Okay, good.

MR. SIMMONS:

Q. And I have one other item, Mr. Chairman, and I've spoken to Mr. Kelly about this, there is one additional piece of information that we would like Newfoundland Power to undertake to provide, which I think they will agree to do and that is that normally if the Automatic Adjustment Formula were to operate in 2010, the Board would need to get the long-term Canada bond rates for the last five business days in October and the first five in November, so just for information, I've asked Mr. Kelly if Newfoundland Power can provide

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that information when it's available.

KELLY, Q.C.:

Q. I certainly have no problem in providing the information, Mr. Chairman. I would observe that the normal practice of the Board in a test year is to look at the evidence presented by the witnesses, but that having been said, I have no problem in providing the information requested by Mr. Simmons.

CHAIRMAN:

Q. Okay.

MR. SIMMONS:

Q. And, Mr. Chair, the other item is counsel may want, I think want to have some discussion about the timing for submissions, written submissions and oral argument.

CHAIRMAN:

Q. Yes, and that was my next question. In view of the fact that we're, I guess we're pretty well ending a week early, aren't we, with Mr. Brushett not testifying, so do we back up the submission of written arguments a week too, or -

MR. JOHNSON:

Q. Well we haven't really nailed down where they

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are going to be with Mr. Brushett and I guess from out point of view, we were going to use the break between now and Mr. Brushett to start getting going on the argument, we were going to wait for him now to start that. So that plan is contining on and so that's going to take a period of time to bring all this together and then I presume the Board is not going to wait--I can't presume, but I think the Board will probably want to have the written material for a bit of time to review before actually hearing us on our oral submissions. So, you know, I think we're probably still pretty well on track with that thinking, are we Mr. Kelly?

KELLY, Q.C.:

Q. Certainly from the Company's point of view the sooner we can get the written submissions filed, we would prefer to do so and to have any oral argument that the Board wishes to hear soon after that as is comfortable for the Board. With Mr. Brushett coming next--having anticipated Mr. Brushett next Tuesday, we were certainly hoping that all parties would be in agreement that we could file the written submissions at a minimum very shortly after that and maybe even conclude written argument next week and it would still be a very strong preference to do that, especially since we've now shortened up the time period. Mr. Brushett is not coming, we've finished probably a day or so earlier this week than originally anticipated, so we would be ready to file at whatever direction the Board gives us as to when you would like to have written submissions in, and then oral argument to follow shortly after that as the Board considers appropriate.

CHAIRMAN:

Q. Because I thought I saw on the schedule that we adopted about a week after Mr. Brushett finished, that was the deadline, was that right, madam -

MS. GLYNN:

Q. That was the original thinking.

CHAIRMAN:

Q. The 13th was the deadline for the submission of the written arguments, did I read that in the original schedule?

KELLY, Q.C.:

Q. No, because that would go way out to the following--the 13th would take us way out to -

CHAIRMAN:

Q. No, no, but I mean, that was before -

MS. GLYNN:

Q. The 13th is actually for the oral submissions, I believe, yes.

CHAIRMAN:

Q. Oral submissions. The 6th was for the written, is that correct?

MS. GLYNN:

Q. The 10th.

CHAIRMAN:

Q. The 10th. Okay, so what are we saying now then? We've saved a week is basically what you are saying, so we should back everything up a week, is that what you're saying?

KELLY, Q.C.:

Q. We're in the hands of the Board. The sooner we can get it done, Mr. Chairman, the better off we will be. One of the complications which arises, of course, is to give the Board--we're anxious to give the Board enough time to deliberate on the matter, get its decision done and out as quickly as possible and if we

turn past the end of the year, that poses all kinds of difficulties in terms of interim rates, interim rate applications and that's, for those who have any involvement with it, it's a complication to be avoided if at all possible.

VICE-CHAIR WHALEN:

Q. The Company is still seeking January 1st.

KELLY, Q.C.:

Q. If it all possible, Commissoner.

MR. JOHNSON:

Q. November, Mr. Chairman, I think you said November 10th was the original written deadline, right?

CHAIRMAN:

Q. Is it, November 10th?

MR. JOHNSON:

Q. What's the 3rd, what's the day that that falls on?

MS. GLYNN:

Q. Tuesday.

MR. JOHNSON:

Q. If we could have, say, towards the--say the end of next week to file and then the Board has it for a few days and we could argue the

following week, how would that be?

CHAIRMAN:

Q. Can you live with that?

KELLY, Q.C.:

Q. We're in your hands, certainly.

CHAIRMAN:

Q. I mean, we can make a ruling, but I like to be nice, you know. Not something I'm used to, but it's a new role I got, apparently.

KELLY, Q.C.:

Q. I'm not sure exactly what date is being proposed, but if it's suggested we have it filed by Thursday or Friday -

MS. GLYNN:

Q. Thursday the 5th.

KELLY, Q.C.:

Q. Thursday the 5th.

MR. JOHNSON:

Q. Or Friday, the 6th.

CHAIRMAN:

Q. Do you want Friday, Mr. -

MR. JOHNSON:

Q. I would want Friday, yes.

CHAIRMAN:

Q. Give him Friday, we can even give him Monday

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if you want to, and then you got the weekend to work, do you want to do that?

MR. JOHNSON:

Q. That would be fine too.

KELLY, Q.C.:

Q. The advantage of having it filed Friday, Mr. Chairman, is that it then gives the Board an opportunity if we are going to argue then on the following Tuesday or is it Monday?

MS. GLYNN:

Q. The following Tuesday, I believe, would be a holiday, would it not?

CHAIRMAN:

Q. You've got November 11th in there somewhere.

KELLY, Q.C.:

Q. I think Wednesday is the holiday, the 11th.

MS. GLYNN:

Q. Mr. Kelly is correct, if we have our written submissions coming on Monday and we have the holiday on Wednesday, that really only gives the Board members a couple of days.

CHAIRMAN:

Q. Okay, so we'll make it Friday then, is that fair?

MR. JOHNSON:

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Q. That's fine.

KELLY, Q.C.:

Q. For filing and then the argument on, are we thinking the Monday or the Tuesday, Mr. Chairman? Either is fine.

CHAIRMAN:

Q. I don't care, what -

COMMISSIONER NEWMAN:

Q. Tuesday.

CHAIRMAN:

Q. My two colleagues say Tuesday, so their wish is my command. Okay, I guess we're adjourned, are we, anything else?

MR. JOHNSON:

Q. Just one small point, I guess the development with Mr. Brushett sort of happened yesterday and we weren't really focussing on him and I had explained to Mr. Simmons there was a woman who was an executive director of the Seniors Resource Centre I've been in touch with and to be honest with you, I probably fell down on the job a bit because I was saying, look, we're into technical witnesses now, I'll be back to you and I think--I'd like to touch base with her to see whether or not she's

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interested in having a word before the Board. She may well want to do it in writing, but I wouldn't think it would interfer with the oral submission, because she could just do it prior to. I wouldn't want to frighten her to death by bringing her in here and she'd be the only one, you know, for that. So I'll get back to Mr. Simmons on that.

CHAIRMAN:

Q. So if there is anybody in that category, they could do it before we do the oral--hear the oral arguments, is that what you're saying?

MR. JOHNSON:

Q. That's right.

CHAIRMAN:

Q. Sure, why not.

MR. JOHNSON:

Q. What time would we do the argument on Tuesday, Mr. Chairman?

VICE-CHAIR WHALEN:

Q. 9:30.

CHAIRMAN:

Q. 9:30 the Vice-Chairman said and I don't argue with her either.

VICE-CHAIR WHALEN:

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Q. That's my daughter's birthday, I have to have breakfast with her.

CHAIRMAN:

Q. That's a good reason. Okay, anything else? If not, we're--thank you very much.

MS. GLYNN:

Q. Mr. Chair, there's just two--well one small item that there is two undertakings outstanding from the Board's witness, Mark Cicchetti. We do have those in our possession, we just have to format them and we'll get them out to the parties hopefully later today.

CHAIRMAN:

Q. Is Elenchus a Greek name?

MR. TODD:

A. Yes, it is as in "lenkus" which makes the "ch" a "k" sound. I think that's a meaningful, logical reputation which I hope I've provided today.

CHAIRMAN:

Q. All right, I read it somewhere, okay. Good for you. Okay, I guess we're adjourned. Thank you very much, I think it went pretty good, pretty well.

Adjourned at 12:11 p.m.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of Newfoundland Power's 2010 General Rate Application heard on the 27th day of October, A.D., 2009 before Commissioners of the Public Utilities Board, Prince Charles Building, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 27th day of October, A.D., 2009.

Judy Moss

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