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<p>1 (9:00 a.m.)</p> <p>2 CHAIRMAN:</p> <p>3 Q. Good morning, ladies and gentlemen. Just to</p> <p>4 make sure everyone is on the right track in</p> <p>5 respect of what's happening this morning and</p> <p>6 the order, the procedural order, I guess, in</p> <p>7 respect of this matter has Hydro going first,</p> <p>8 followed by Newfoundland Power, Industrial</p> <p>9 Customers, Board Counsel, hearing counsel, and</p> <p>10 then clean up by Hydro, I suppose. If there</p> <p>11 are any questions that the Board has of any of</p> <p>12 the counsel, following your presentations,</p> <p>13 we'll ask them after each one is done, and as</p> <p>14 far as breaks are concerned this morning,</p> <p>15 we'll try and work in a break or two,</p> <p>16 depending on how long you people are, so as</p> <p>17 not to interrupt your thought flows. So we'll</p> <p>18 break after someone is finished, on or about</p> <p>19 the time that we'd normally break.</p> <p>20 There's one thing I forgot to mention</p> <p>21 when we closed out the last session, and that</p> <p>22 was to extend the thanks of the Board to Mr.</p> <p>23 O'Reilly. So I wanted to do that before I</p> <p>24 forgot it, and I'm sure you'll pass that on,</p> <p>25 would you, please, Ms. Greene?</p>	<p>1 GREENE, Q.C.:</p> <p>2 Q. Yes, certainly, Mr. Chair.</p> <p>3 CHAIRMAN:</p> <p>4 Q. So anything else by the way of anything</p> <p>5 preliminary?</p> <p>6 MS. NEWMAN:</p> <p>7 Q. No, Mr. Chairman.</p> <p>8 CHAIRMAN:</p> <p>9 Q. Nothing. Very well then. If you're ready,</p> <p>10 Ms. Greene, we'll commence to listen.</p> <p>11 GREENE, Q.C.:</p> <p>12 Q. Yes, thank you, Mr. Chair. Good morning, Mr.</p> <p>13 Chair, Commissioners. On March 28th of this</p> <p>14 year, Hydro submitted its 2004 Capital Budget</p> <p>15 for approval as required by Section 41 of the</p> <p>16 Public Utilities Act. Hydro is requesting</p> <p>17 approval of a Capital Budget of \$34.2 million,</p> <p>18 which is the second lowest Capital Budget</p> <p>19 Hydro has requested approval of since it</p> <p>20 became regulated in 1996. Our actual capital</p> <p>21 expenditures over the same time period have</p> <p>22 averaged approximately \$38.3 million. The</p> <p>23 amount of the evidence that Hydro filed with</p> <p>24 this application, as well as the responses to</p> <p>25 the requests for information and the hearing</p>
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<p>1 process itself has been the most extensive in</p> <p>2 terms of volumes that Hydro has filed to date</p> <p>3 to support a Capital Budget Application.</p> <p>4 I'd like first to look at the legal</p> <p>5 provisions that are applicable in this review</p> <p>6 of the Capital Budget, and I only will refer</p> <p>7 to them briefly as they are referred to and</p> <p>8 outlined in our final written argument.</p> <p>9 The first is Section 37.1 of The Public</p> <p>10 Utilities Act, which requires Hydro to provide</p> <p>11 service and facilities which are reasonably</p> <p>12 safe and adequate and just and reasonable.</p> <p>13 The second relevant legislative section is</p> <p>14 Section 3B of The Electrical Power Control Act</p> <p>15 (1994). This section sets out the policy of</p> <p>16 the Province and it states that: "sources and</p> <p>17 facilities for production, transmission and</p> <p>18 distribution of power are to be managed and</p> <p>19 operated in a manner that results in," and</p> <p>20 here there are three subsections that are the</p> <p>21 most relevant. The first is that it must</p> <p>22 result in the most efficient production,</p> <p>23 transmission and distribution. The second is</p> <p>24 that it must result in consumers having</p> <p>25 equitable access to an adequate supply of</p>	<p>1 power, and the third is that power should be</p> <p>2 delivered at the lowest possible cost</p> <p>3 consistent with reliable service.</p> <p>4 The next relevant section is Section 41</p> <p>5 of The Public Utilities Act, which is the</p> <p>6 section under the which the application is</p> <p>7 grounded. Subsection 1 of this section</p> <p>8 requires Hydro to submit its annual capital</p> <p>9 budget for a succeeding year by December 15th</p> <p>10 in each calendar year. Hydro has filed, in</p> <p>11 the first quarter of this year, and I can</p> <p>12 advise the Board now that based on the</p> <p>13 schedule, we anticipate filing again in the</p> <p>14 first quarter of next year, in order to ensure</p> <p>15 that the regulatory process can be met and</p> <p>16 that we get approval of the budget in a timely</p> <p>17 way. We file in the first quarter, it's</p> <p>18 unlikely we'll get a decision until the end of</p> <p>19 the third quarter or the beginning of the</p> <p>20 fourth quarter.</p> <p>21 The next subsection that's very relevant</p> <p>22 is that Hydro cannot proceed with the</p> <p>23 construction or purchase in excess of \$50, 000</p> <p>24 or a lease in excess of \$5,000 without the</p> <p>25 prior approval of the Board. And of course,</p>

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<p>1 GREEN, Q.C.:</p> <p>2 Q. .... Section 41 also requires Hydro to file a</p> <p>3 report following that year with respect to the</p> <p>4 actual capital expenditures in the year, as</p> <p>5 had been approved by the Board. The last</p> <p>6 section that I'd like to refer to is Section</p> <p>7 54 of The Public Utilities Act, which imposes</p> <p>8 on Hydro an obligation to serve customers.</p> <p>9 Hydro, as a regulated monopoly, must provide</p> <p>10 the service to its customer.</p> <p>11 So those are the relevant legislative</p> <p>12 provisions that the Board must take into</p> <p>13 account in considering Hydro's application,</p> <p>14 and sometimes it's very difficult to apply</p> <p>15 what can be actual theoretical provisions to a</p> <p>16 concrete situation. Fortunately, however, the</p> <p>17 Board has given guidance on how those sections</p> <p>18 are to be interpreted and to be applied to</p> <p>19 Capital Budget Applications, and in fact, we</p> <p>20 have three decisions of the Board that provide</p> <p>21 guidance to this particular panel with respect</p> <p>22 to how those legislative provisions are to be</p> <p>23 interpreted and applied in a Capital Budget</p> <p>24 Application.</p> <p>25 Before getting into those three specific</p>	<p>1 Orders, I would like to point out that Hydro</p> <p>2 does not agree with the submission of the</p> <p>3 Industrial Customers where they appear to</p> <p>4 suggest that each and every project must be</p> <p>5 proven to be lowest cost and that this is what</p> <p>6 is required by the legislation. Hydro submits</p> <p>7 that this is not the correct interpretation</p> <p>8 and it is not the interpretation that has been</p> <p>9 applied by the Board on at least three</p> <p>10 previous occasions where they have dealt with</p> <p>11 this issue. So I would like to refer to the</p> <p>12 three Orders of the Board with respect to</p> <p>13 this.</p> <p>14 The first is the Order of the Board, P.U.</p> <p>15 7 (2002-2003), arising from Hydro's 2001</p> <p>16 General Rate Application. Hydro's 2002</p> <p>17 Capital Budget was considered in the context</p> <p>18 of that General Rate Application. The same</p> <p>19 issues raised by Industrial Customers in this</p> <p>20 hearing were raised at that time, including</p> <p>21 the Capital Budget process itself, the</p> <p>22 standards for justification for capital</p> <p>23 expenditures, and the adequacy of</p> <p>24 documentation provided by Hydro to support</p> <p>25 capital projects. The Board considered the</p>
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<p>1 issues with respect to that and here I would</p> <p>2 like to read from P.U. 7 at page 95 of that</p> <p>3 Order.</p> <p>4 At the top of page 95 is a summary of the</p> <p>5 Board's decision and the previous pages,</p> <p>6 commencing at page 91, deal with some of the</p> <p>7 capital budget issues raised in the hearing,</p> <p>8 as well as the legislative provisions that</p> <p>9 were applicable. And after reviewing the</p> <p>10 issues and the legislation, the Board made a</p> <p>11 decision which states, and I'm reading now</p> <p>12 from the top of page 95, "the Board will</p> <p>13 require NLH, commencing with its 2003 Capital</p> <p>14 Budget Application, to use a net present value</p> <p>15 methodology, together with supporting</p> <p>16 justification, to evaluate projects of a</p> <p>17 material amount. Where a project is not</p> <p>18 evaluated against other acceptable</p> <p>19 alternatives and/or if the project does not</p> <p>20 produce a positive net value, sufficient</p> <p>21 rationale must be provided to justify</p> <p>22 implementation. The Board has set out</p> <p>23 guidelines to be used by NLH in future Capital</p> <p>24 Budget Applications in Schedule 3 attached to</p> <p>25 this decision." And in Schedule 3, the Board</p>	<p>1 did outline twelve conditions which Hydro had</p> <p>2 to comply with in filing its Capital Budget</p> <p>3 Application, including such matters as the</p> <p>4 project description, the project</p> <p>5 justification, the operating history, and</p> <p>6 other matters that are listed in Schedule 3.</p> <p>7 However, what is clear from this decision is</p> <p>8 that a project is to be evaluated when there</p> <p>9 are other acceptable alternatives and even</p> <p>10 then, the Board went on to say if the project</p> <p>11 didn't produce a positive net value,</p> <p>12 sufficient rationale could be provided to</p> <p>13 justify the implementation in any event.</p> <p>14 Having received that direction in P.U. 7,</p> <p>15 Hydro filed its 2003 Capital Budget, and in</p> <p>16 the 2003 Capital Budget hearing, the</p> <p>17 Industrial Customers raised the same issues</p> <p>18 again, dealing with the process and the</p> <p>19 standards of justification required.</p> <p>20 Order No. P.U. 29 (2002-2003) of this</p> <p>21 Board approved Hydro's 2003 Capital Budget as</p> <p>22 submitted. In Appendix 2 to that Order, at</p> <p>23 page 23, the Board found that Hydro had given</p> <p>24 sufficient justification to demonstrate that</p> <p>25 the projects were required to maintain safe,</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... adequate, reliable, least-cost power to</p> <p>3 its customers. So the Board specifically</p> <p>4 found that Hydro had complied with the</p> <p>5 directions given in P.U. 7 and approved the</p> <p>6 Budget.</p> <p>7 The next Order I'd like to refer to</p> <p>8 arises from the Newfoundland Power Capital</p> <p>9 Budget Hearing for 2003, and this is P.U. 36</p> <p>10 (2002-2003), and there are a couple of quotes</p> <p>11 from this Order which are relevant to assist</p> <p>12 the Board in its consideration of the</p> <p>13 legislation and how it has to be applied to a</p> <p>14 Capital Budget Application. And I'm reading</p> <p>15 from the bottom of page 6 of that Order, where</p> <p>16 the Board stated "the Board acknowledges its</p> <p>17 role as one of testing the necessity and</p> <p>18 reasonableness of the utility's capital</p> <p>19 expenditures based on efficient management and</p> <p>20 operations of its assets, as well as equitable</p> <p>21 access to least-cost and reliable (phonetic)</p> <p>22 power, while at the same time maintaining a</p> <p>23 balance between the competing interests of</p> <p>24 consumers and investors in the utility." And</p> <p>25 then they went on, just on page 7, to point</p>	<p>1 out that "while the role of the Board is</p> <p>2 straightforward, the challenge becomes in</p> <p>3 operationalizing that and applying it to a</p> <p>4 Capital Budget Application."</p> <p>5 They did review the issues, and in that</p> <p>6 particular Order, directed that Newfoundland</p> <p>7 Power was to follow the same guidelines with</p> <p>8 respect to Capital Budget Applications as</p> <p>9 Hydro, and they imposed on Newfoundland Power</p> <p>10 the same conditions as have been imposed on</p> <p>11 Hydro in P.U. 7. Having looked at P.U. 7, you</p> <p>12 will see that the Board recognized that a net</p> <p>13 present value methodology should be done only</p> <p>14 where there were acceptable alternatives and</p> <p>15 that even then, there could be justification</p> <p>16 provided to justify a project.</p> <p>17 So Hydro submits that the Board has given</p> <p>18 direction three times now with respect to how</p> <p>19 the legislation is to be implied and</p> <p>20 interpreted with respect to Capital Budget</p> <p>21 Application submitted for approval by the</p> <p>22 Board from a utility.</p> <p>23 (9:17 a.m.)</p> <p>24 The next thing that I would like to look</p> <p>25 at is the actual approval process and the</p>
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<p>1 Capital Budget process itself. The Industrial</p> <p>2 Customers have suggested, in their evidence,</p> <p>3 as well as their participation in the hearing,</p> <p>4 and in their argument, that there should be</p> <p>5 another review of the Capital Budget process</p> <p>6 and that the Board should give new issues, new</p> <p>7 guidance, new directions with respect to the</p> <p>8 Capital Budget process, and do that in the</p> <p>9 midst of this 2004 Capital Budget Hearing.</p> <p>10 Hydro does not agree with this position and</p> <p>11 our position is set out on pages 5 to 9 of our</p> <p>12 final argument. We believe the Board has</p> <p>13 given direction three times on the very same</p> <p>14 issues. The Board also, in P.U. 36,</p> <p>15 acknowledged that there are issues relating to</p> <p>16 the Capital Budget process that would be</p> <p>17 better explored in a technical type of</p> <p>18 conference in which all interested parties</p> <p>19 would be able to have input and to</p> <p>20 participate. So Hydro's submission is that--</p> <p>21 and it is Hydro's certainly very willing and</p> <p>22 eager, looks forward to the participation in</p> <p>23 the technical conference, that it is not fair</p> <p>24 or reasonable for the Board to change the</p> <p>25 rules of the game on Hydro in the midst of a</p>	<p>1 hearing when Hydro has complied with the</p> <p>2 previous directions of the Board on this</p> <p>3 topic.</p> <p>4 The other issue with respect to the</p> <p>5 review of the process that I'd like to comment</p> <p>6 on now is the Industrial Customers' position</p> <p>7 and approach in this hearing. Clearly,</p> <p>8 capital expenditures will impact customers'</p> <p>9 rates when utilities are regulated on a return</p> <p>10 on rate base method. Hydro acknowledges that</p> <p>11 this Capital Budget, if approved for 2004,</p> <p>12 will impact Industrial Customers' rates and</p> <p>13 other customers' rates. Hydro clearly</p> <p>14 acknowledges that the Industrial Customers, as</p> <p>15 does any other party with an interest, has a</p> <p>16 right to participate and seek to raise issues</p> <p>17 with respect to projects. However, Hydro</p> <p>18 submits that certain aspects of the Industrial</p> <p>19 Customers' position in this hearing, and as</p> <p>20 outlined in their brief, are not reasonable.</p> <p>21 There are five particular positions advanced</p> <p>22 by the Industrial Customers that Hydro would</p> <p>23 briefly like to refer to and explain to the</p> <p>24 Board why they feel that this particular</p> <p>25 position and approach is not reasonable in the</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. ... context of this hearing.</p> <p>3 The first is one I've already discussed</p> <p>4 briefly, is that the Industrial Customers are</p> <p>5 raising, for the third time before the Board,</p> <p>6 the second time for the Industrial Customers,</p> <p>7 but also we do have P.U. 36, the issue of</p> <p>8 economic justification for all projects and</p> <p>9 the type of documentation to support a Capital</p> <p>10 Budget. This was raised in Hydro's case in</p> <p>11 two previous hearings in which the Industrial</p> <p>12 Customers participated. The Board again gave</p> <p>13 the very same direction with respect to the</p> <p>14 other utility in this jurisdiction which is</p> <p>15 regulated on the same rules and must apply to</p> <p>16 the same regulator for approval of its Capital</p> <p>17 Budget. The Board indicated in that Order</p> <p>18 that there would be a technical conference in</p> <p>19 the future to discuss general issues relating</p> <p>20 to the Capital Budget process.</p> <p>21 With that background, what do the</p> <p>22 Industrial Customers do this time? They raise</p> <p>23 the very same issues again. They called a</p> <p>24 witness to suggest a classification system,</p> <p>25 and it quickly became clear during the hearing</p>	<p>1 that Mr. Barreca was relying on a</p> <p>2 classification system which he could point out</p> <p>3 was applied by the Manitoba regulator with</p> <p>4 respect to the gas utility. He had no</p> <p>5 knowledge as to whether it was applied with</p> <p>6 respect to the electrical utility or, in fact,</p> <p>7 whether it was applied by any other regulator.</p> <p>8 He also acknowledged that this wasn't the only</p> <p>9 classification system and that there were</p> <p>10 others that could be possible, including the</p> <p>11 one that Hydro uses, which is safety,</p> <p>12 regulatory and legal requirements, reliability</p> <p>13 and then least cost, where are discretionary</p> <p>14 projects.</p> <p>15 So Industrial Customers submitted</p> <p>16 evidence which was vague and not definitive,</p> <p>17 having known the previous direction of the</p> <p>18 Board that this issue was to be addressed in</p> <p>19 the form of a technical conference. In fact,</p> <p>20 one of the issues the Industrial Customers</p> <p>21 raised in the pre-trial brief is that they</p> <p>22 were not told about P.U. 36 by Board counsel</p> <p>23 or by the Board, and I'm going to come back to</p> <p>24 that particular issue and explain why I have</p> <p>25 trouble with that particular position. But</p>
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<p>1 even after being told of P.U. 36, they</p> <p>2 continue with their strategy of trying to get</p> <p>3 these issues explored again, and as a result,</p> <p>4 they extended unnecessarily the time for this</p> <p>5 hearing.</p> <p>6 The first one is with respect to their</p> <p>7 approach on raising the same issues that the</p> <p>8 Board has given direction on. The second</p> <p>9 point is stated on page 5 of their written</p> <p>10 brief, where they state that they were not</p> <p>11 aware, until June of 2003, that there were</p> <p>12 minimum filing requirements for new generation</p> <p>13 and transmission projects on the Island</p> <p>14 Interconnected system. We find it difficult</p> <p>15 to understand how they can take that position</p> <p>16 in light of the evidence. Hydro's 2002</p> <p>17 Capital Budget, which was considered in the</p> <p>18 2001 GRA, of which Industrial Customers</p> <p>19 intervened and fully participated, had a</p> <p>20 Section 3 for projects subject to the minimum</p> <p>21 filing guidelines, just like Section 3 in the</p> <p>22 2004 Budget. In fact, the pre-filed evidence</p> <p>23 of Mr. Reeves, on page 16 of that evidence,</p> <p>24 referred to the minimum filing guidelines and</p> <p>25 the minimum filing projects. In fact, there</p>	<p>1 was cross-examination with respect to the</p> <p>2 minimum filing guidelines on November 9th,</p> <p>3 2001, at page 25 of the transcript, but in</p> <p>4 response to questions from Board counsel, Mr.</p> <p>5 Budgell went through the minimum filing</p> <p>6 guidelines and the projects that were in that</p> <p>7 particular application. Similarly, the 2003</p> <p>8 Capital Budget had a Section 3 minimum filing</p> <p>9 guidelines. With that record, it is difficult</p> <p>10 to see how Industrial Customers can say that</p> <p>11 they were not aware until June of 2003 that we</p> <p>12 have projects subject to minimum filing</p> <p>13 guidelines.</p> <p>14 The other thing they say is that the</p> <p>15 guidelines were set by the utilities. That is</p> <p>16 not correct. There was a report submitted to</p> <p>17 the Board and reviewed by the Board and the</p> <p>18 Board approved the guidelines and set the</p> <p>19 guidelines.</p> <p>20 The third point with respect to the</p> <p>21 position of Industrial Customers in this</p> <p>22 hearing that we would like to point out to the</p> <p>23 Board why we feel that the position is</p> <p>24 unreasonable, in light of the evidence and the</p> <p>25 record, is the position they have taken with</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... respect to the obligation of the Board to</p> <p>3 advise them of Orders coming from hearings in</p> <p>4 which they have not been participating as</p> <p>5 parties. They have taken the position that</p> <p>6 the Board must specifically advise them of an</p> <p>7 Order if they think they may have an interest</p> <p>8 in that Order, when they have not participated</p> <p>9 as a party. That is rather a novel argument</p> <p>10 when I read it for the first time as a lawyer.</p> <p>11 I submit that it is the obligation of legal</p> <p>12 counsel to know issues that are going on in an</p> <p>13 area of practice in which they practice. I</p> <p>14 would submit that here, where they are raising</p> <p>15 issues on the Capital Budget process and the</p> <p>16 justifications to be provided by Hydro for a</p> <p>17 budget, it would have made common sense, if</p> <p>18 not normal legal precedent, for them to have</p> <p>19 looked at Orders for the other utility on the</p> <p>20 very same issues, by the very same Board, in</p> <p>21 the very same jurisdiction. Hydro does not</p> <p>22 agree that the Board or Hydro has an</p> <p>23 obligation to advise any party of Orders, when</p> <p>24 these Orders are publicly available. That's</p> <p>25 the normal obligation of a lawyer to do the</p>	<p>1 research and to know what's going on in an</p> <p>2 area of law in which they practice.</p> <p>3 The next point on which Hydro would like</p> <p>4 to point out why we feel their position has</p> <p>5 been somewhat unreasonable in certain aspects,</p> <p>6 not all aspects, but certain aspects in this</p> <p>7 particular application we believe have been</p> <p>8 unreasonable, is in their written brief, as</p> <p>9 well as in their pre-trial brief, the</p> <p>10 Industrial Customers took exception to the</p> <p>11 fact that Hydro's 2003 Capital Budget was</p> <p>12 approved, despite their participation, and</p> <p>13 they stated that the Board appeared to have</p> <p>14 reversed the burden of proof. I was very</p> <p>15 surprised when I read the pre-trial brief. I</p> <p>16 continued to be surprised when I saw that it</p> <p>17 was included in their final submission. I</p> <p>18 believe that these comments are not</p> <p>19 appropriate. There is an implied inference of</p> <p>20 bias, which the Board did address to</p> <p>21 Industrial Customers at the beginning of the</p> <p>22 hearing. Perhaps the Industrial Customers</p> <p>23 should think that the Capital Budget was</p> <p>24 approved because Hydro had provided all</p> <p>25 justification and had met all previous</p>
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<p>1 direction of the Board. I characterize this</p> <p>2 as sour grapes on the part of the counsel, and</p> <p>3 one is left to wonder why as to why it was</p> <p>4 included in their submission. It is not</p> <p>5 appropriate commentary. It wasn't in the pre-</p> <p>6 trial brief and it continues not to be for</p> <p>7 final argument.</p> <p>8 The last area, and as I said, these are</p> <p>9 the aspects of their participation in this</p> <p>10 case, which we find unreasonable, is that the</p> <p>11 Industrial Customers have continued to object</p> <p>12 to the vast majority of Capital projects that</p> <p>13 Hydro has proposed since 2001. For 2002 and</p> <p>14 3, if you look back, it was the vast majority</p> <p>15 of projects in which they had an interest.</p> <p>16 What about the 2004 Capital Budget? Yes, they</p> <p>17 have not objected to projects that do not</p> <p>18 impact them. Now mind you, they carefully</p> <p>19 point out that they're not consenting to them,</p> <p>20 but they don't take a position on projects</p> <p>21 which do not have a financial impact on them.</p> <p>22 But of the projects that do affect them, they</p> <p>23 are objecting to more than 80 percent of the</p> <p>24 value of the projects. 80 percent.</p> <p>25 Hydro submits that the scatter-gun</p>	<p>1 approach used previously with respect to the</p> <p>2 approach is a reasonable way to describe the</p> <p>3 approach of Industrial Customers to the</p> <p>4 Capital Budget Applications of Hydro. So with</p> <p>5 respect to their participation in this</p> <p>6 particular hearing, we believe that their</p> <p>7 participation has been unreasonable, in</p> <p>8 certain aspects, and I've outlined five of</p> <p>9 them for the Board. And I will come back to</p> <p>10 that when I come to the issue of costs.</p> <p>11 Now I'd like to look at the 2004 Capital</p> <p>12 Budget itself. As I've already mentioned,</p> <p>13 we're seeking approval of \$34.2 million and</p> <p>14 that we have averaged about \$38 million since</p> <p>15 we've been regulated. I noted with interest</p> <p>16 that I received, on Friday, Newfoundland</p> <p>17 Power's Capital Budget for 2004 where they are</p> <p>18 seeking approval of approximately \$54 million,</p> <p>19 and that last year they received approval for</p> <p>20 \$55 million. In our Capital Budget, there are</p> <p>21 four main categories: generation; transmission</p> <p>22 and rural operations; general properties; and</p> <p>23 allowance for unforeseen events. And no party</p> <p>24 objects to the allowance for unforeseen</p> <p>25 events, I will make no additional comment on</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... it this morning, but refer the Board to</p> <p>3 our written argument on it.</p> <p>4 Before looking at the specific projects,</p> <p>5 there are a number of general comments that I</p> <p>6 would like to make because I believe they are</p> <p>7 important for the Board to bear in mind when</p> <p>8 they approach the Capital Budget. I believe</p> <p>9 that the Board should bear in mind certain</p> <p>10 facts about Hydro's system that are relevant</p> <p>11 in the review of capital projects, including</p> <p>12 when the Board must make a determination of</p> <p>13 whether there are acceptable alternatives that</p> <p>14 need to be evaluated using the net present</p> <p>15 value methodology, and there are nine that I</p> <p>16 would just briefly like to mention.</p> <p>17 The first is that Hydro operates in an</p> <p>18 isolated system. We cannot turn to a</p> <p>19 neighbour to buy power in an emergency or a</p> <p>20 shortage. The second is we have a number of</p> <p>21 challenging geographic issues. We have a low</p> <p>22 number of customers, so we have sparsely</p> <p>23 populated areas which we must serve, requiring</p> <p>24 long radial feeders in some cases. The third</p> <p>25 element is weather. We all know our weather</p>	<p>1 can be very challenging and pose unique</p> <p>2 challenges to both electrical utilities that</p> <p>3 are operating in the Province.</p> <p>4 The fourth factor that's relevant is</p> <p>5 Hydro's critical role as the supplier of more</p> <p>6 than 80 percent of the province's energy</p> <p>7 requirements. We also operate the bulk</p> <p>8 transmission grid required to supply that 80</p> <p>9 percent of power.</p> <p>10 So for these reasons, some components of</p> <p>11 our facilities and equipment are absolutely</p> <p>12 critical and Hydro must ensure that they are</p> <p>13 available. We cannot run them to failure</p> <p>14 which seems to be a theme of the Industrial</p> <p>15 Customers. If we did that, we would not be</p> <p>16 complying with our obligation to provide</p> <p>17 reliable service.</p> <p>18 The next point that's relevant to the</p> <p>19 overall approach to the budget is the fact</p> <p>20 that Hydro has experienced professional staff</p> <p>21 who are knowledgeable about the facilities and</p> <p>22 their operation. Hydro has demonstrated in</p> <p>23 the eight Capital Budgets we have brought</p> <p>24 before the Board that our process is rigorous</p> <p>25 and that sound engineering judgment goes into</p>
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<p>1 the preparation of the Capital Budget</p> <p>2 Proposal. We have demonstrated in the past</p> <p>3 and in this hearing for the RFI process and</p> <p>4 during the hearing itself, that questions were</p> <p>5 answered in a forthright, timely and competent</p> <p>6 manner by experienced knowledgeable people who</p> <p>7 know the system and know the issues.</p> <p>8 The next general point about the approach</p> <p>9 of the Capital Budget is that no party called</p> <p>10 any evidence to contradict the specific</p> <p>11 projects for which Hydro has requested</p> <p>12 approval, other than the Industrial Customers</p> <p>13 for four projects and I will deal with those</p> <p>14 when I come to the specifics of the project.</p> <p>15 And the last comment is really just one</p> <p>16 that we've talked about before, which is that</p> <p>17 the Board shouldn't micromanage the utility</p> <p>18 and in fact, the Board shouldn't manage the</p> <p>19 utility at all. That is not the role of the</p> <p>20 Board and everyone recognizes that is not</p> <p>21 appropriate, including the Industrial</p> <p>22 Customers. The challenge to the Board is to</p> <p>23 get the balance between the supervisory and</p> <p>24 legislative requirements, and in this regard,</p> <p>25 I have included some references in the Stated</p>	<p>1 Case of the Newfoundland Court of Appeal which</p> <p>2 I think are relevant about the approach with</p> <p>3 respect to this. So it's not for the Board to</p> <p>4 substitute its judgment on managerial and</p> <p>5 business issues and to get into a detailed</p> <p>6 review of the engineering accounting detail</p> <p>7 that may be supporting the project. And the</p> <p>8 Board has recognized that in the past, as</p> <p>9 well.</p> <p>10 So looking at the specific project, I</p> <p>11 would like to deal first with the category of</p> <p>12 generation. Hydro is requesting approval of 5</p> <p>13 million dollars approximately in 2004 for</p> <p>14 projects in the generation area; and 3 million</p> <p>15 dollars in future years associated with this</p> <p>16 project. This category covers all Hydro and</p> <p>17 Thermal plants which are 8 Hydro plants and</p> <p>18 one Thermal plant with a total capacity of</p> <p>19 just over 1500 megawatts. The Industrial</p> <p>20 Customers have objected to seven projects of</p> <p>21 the ten in this category. There are three</p> <p>22 types of projects which respect to the seven</p> <p>23 they have objected to. The first category I</p> <p>24 will call obsolescence. Hydro has applied for</p> <p>25 approval of four projects on the basis that</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... the equipment is obsolete, is technically</p> <p>3 obsolete. There are no longer spare parts</p> <p>4 available to support that and there is no</p> <p>5 manufacturer support to support the project.</p> <p>6 (9:35 a.m.)</p> <p>7 Here we have the replacement of Unit No. 7</p> <p>8 Exciter at Bay D'Espoir, Section B, page 5;</p> <p>9 replace Unit 2 Governor Controls, Cat Arm,</p> <p>10 page 10 of Section B; replace Unit 2 Exciter</p> <p>11 at Cat Arm, Section B, page 12; and upgrade</p> <p>12 the control system at Holyrood, Section B,</p> <p>13 page 17. When you look at all four of those</p> <p>14 projects, you will see that the equipment</p> <p>15 being replaced is obsolete, critical spare</p> <p>16 parts are unavailable and there is limited, if</p> <p>17 any, manufacturer's support for the equipment.</p> <p>18 You will also see that two of them are</p> <p>19 continuation of programs the Board has already</p> <p>20 approved in similar circumstances. These are</p> <p>21 the exciters where there have been a number of</p> <p>22 exciter replacements at Hydro, and in fact,</p> <p>23 the one proposed here is the last one for the</p> <p>24 Bay D'Espoir plant. You will also see, when</p> <p>25 you look at the project justification, that</p>	<p>1 Unit No. 7 at Bay D'Espoir for which there is</p> <p>2 one project, and Unit 2 at Cat Arm, for which</p> <p>3 there are two, are critical components of</p> <p>4 Hydro's production facilities. They are</p> <p>5 required to meet customer load and Hydro must</p> <p>6 ensure that they are available, which requires</p> <p>7 a proactive preventative maintenance approach;</p> <p>8 you cannot run them to failure. We also have</p> <p>9 pointed out what the cost would be if these</p> <p>10 production facilities are not available and</p> <p>11 increased production from Thermal facilities</p> <p>12 must be obtained. So that's the first</p> <p>13 category which is obsolescence.</p> <p>14 And the last project in there requires a</p> <p>15 little bit of an additional comment and that's</p> <p>16 the upgrade of the control system. Again, the</p> <p>17 control system at Holyrood is obsolete. This</p> <p>18 system manages all three units at Holyrood.</p> <p>19 It controls the boiler, burner management, the</p> <p>20 turbine and generator monitoring and the other</p> <p>21 systems at the plant. Hydro submitted an</p> <p>22 Engineering Report in Section G, Tab 2 of the</p> <p>23 Application to support the replacement of this</p> <p>24 control system. The Industrial Customers are</p> <p>25 suggesting that there should be a phased</p>
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<p>1 approached to this, rather than the</p> <p>2 replacement as proposed by Hydro. We will</p> <p>3 point out that the Engineering Report filed</p> <p>4 with the Application did analyze the phased</p> <p>5 approach as recommended by the manufacturer,</p> <p>6 as stated by Mr. Haynes in the transcript of</p> <p>7 July 9th, at page 2, lines 14 to 19.</p> <p>8 No evidence was submitted by the</p> <p>9 Industrial Customers to contradict Hydro's</p> <p>10 evidence that this is the lowest cost option</p> <p>11 and required to replace an obsolete system.</p> <p>12 We submit that the evidence is clear the</p> <p>13 project should be done at this time.</p> <p>14 The last category in this heading relates</p> <p>15 to the physical condition of the facility.</p> <p>16 Here I include the replacement of Gate Hoist</p> <p>17 No. 2 at Bay D'Espoir at the Ebbe Control</p> <p>18 Structure. The evidence is clear about the</p> <p>19 deteriorated condition of this gate and I</p> <p>20 refer you to the project justification. Mr.</p> <p>21 Haynes in the transcript of July 11th at page</p> <p>22 225 and going on to page 226, explained why</p> <p>23 because of the weight of this gate and the</p> <p>24 operation of the gate it is not possibly of</p> <p>25 carrying on with doing the ad hoc maintenance</p>	<p>1 repairs and why it was not possible to replace</p> <p>2 with a same type of system. An engineering</p> <p>3 judgment was exercised in determining that the</p> <p>4 physical condition of the facility required it</p> <p>5 to be replaced with another type of gate</p> <p>6 hoist. Similarly the other project in this</p> <p>7 category, physical condition, is a civil</p> <p>8 structure at Holyrood which is at Section B,</p> <p>9 page 222. An Engineering Report was submitted</p> <p>10 in Section G, Tab 3, which respect to the</p> <p>11 liner. The Board already approved the</p> <p>12 replacement of the stack liner on Unit 1.</p> <p>13 Unit 2 is in the same condition. The</p> <p>14 Engineering Report attached shows that it is</p> <p>15 the least-cost alternative for the ensured</p> <p>16 continued operation of Holyrood to replace the</p> <p>17 liner. The screens in the pumphouse are also</p> <p>18 in a severely deteriorated condition and</p> <p>19 require to be replaced. No evidence was lead</p> <p>20 by the Industrial Customers to contradict the</p> <p>21 engineering assessment of these facilities.</p> <p>22 The last project in the generation</p> <p>23 category to which the Industrial Customers</p> <p>24 objected was the ambient monitoring system</p> <p>25 enhancement at Holyrood. Here, I would refer</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... you to page 19 of Hydro's argument and</p> <p>3 the only point with respect to the Industrial</p> <p>4 Customers' position where they state that</p> <p>5 because we have not received information, the</p> <p>6 2003 projects, we shouldn't be approved--this</p> <p>7 project should not be approved, is to point</p> <p>8 out that the information to be obtained from</p> <p>9 the 2004 Capital project is information of a</p> <p>10 different environmental nature than the</p> <p>11 previous one. It is to provide for current</p> <p>12 information on the measurement of fine</p> <p>13 particulate and NOx, which has not been the</p> <p>14 subject matter of other projects at Holyrood.</p> <p>15 Moving to TRO which is the next category</p> <p>16 in the 2004 budget, the majority of the</p> <p>17 projects in this category did not impact the</p> <p>18 Industrial Customers and they took no position</p> <p>19 on them. There are two projects, however, to</p> <p>20 which they did object, which I would like to</p> <p>21 briefly refer to and that is the replacement</p> <p>22 of the insulators on TL 233 which is the</p> <p>23 project at Section B, page 27. These are the</p> <p>24 replacement of the defective Canadian Ohio</p> <p>25 brass insulators and I refer you to page 20 of</p>	<p>1 the argument, Hydro's written argument for</p> <p>2 that. The only comment here is Industrial</p> <p>3 Customers in their written brief suggested</p> <p>4 that while the failure rate was increasing, it</p> <p>5 wasn't high enough yet, and arbitrarily out of</p> <p>6 the air they picked another failure rate that</p> <p>7 they said the Board should impose, rather than</p> <p>8 the one that Hydro has put before the Board</p> <p>9 before with respect to how it approaches the</p> <p>10 replacement of the Canadian Ohio brass</p> <p>11 insulators. They are suggesting an arbitrary</p> <p>12 factor which there was no evidence to support</p> <p>13 to substitute for Hydro's sound engineering</p> <p>14 advice and judgment which has been accepted by</p> <p>15 the Board before. The last category in TRO,</p> <p>16 the second one, is the upgrade of 128 kV, 66</p> <p>17 kV protection. There is only certain of the</p> <p>18 lines covered by this project that impact</p> <p>19 Industrial Customers. And here I would just</p> <p>20 refer you to the transcript of July 11th, page</p> <p>21 76, when Mr. Martin explained that we have had</p> <p>22 ten mis-operations of these relays which have</p> <p>23 caused outages in nine years, and that in his</p> <p>24 judgment they must be replaced.</p> <p>25 The last category in the 2004 Budget is</p>
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<p>1 that of general properties. There are two</p> <p>2 types of categories here. One is the vehicle</p> <p>3 and the last one would be the IS&amp;T one.</p> <p>4 Looking at the vehicle, the Industrial</p> <p>5 Customers--by the way, these are projects B81,</p> <p>6 starting up in B81. The first issue the</p> <p>7 Industrial Customers took with respect to</p> <p>8 these is the replacement criteria. They</p> <p>9 stated that there was no basis for the</p> <p>10 replacement criteria that Hydro has put</p> <p>11 forward. I would point out and refer the</p> <p>12 Board to the transcript of July 11th, page 86</p> <p>13 and page 100 of that transcript, where Mr.</p> <p>14 Reeves, in his evidence, explained that there</p> <p>15 had been a review with the other utilities of</p> <p>16 replacement criteria and that Hydro's criteria</p> <p>17 has been developed as a result of that review.</p> <p>18 I would also point out that the same criteria</p> <p>19 will be used in the 2002 Capital Budget where</p> <p>20 the Board approved the replacement using the</p> <p>21 same criteria for Hydro. I would also refer</p> <p>22 the Board to P.U. 36 at page 20 where the</p> <p>23 criteria for Newfoundland Power is set out for</p> <p>24 the replacement of vehicles, and you will see</p> <p>25 that the replacement criteria is very similar</p>	<p>1 to Hydro when you look at the age of the</p> <p>2 vehicle, the number of kilometers driven, the</p> <p>3 maintenance cost and the condition of the</p> <p>4 vehicle. So Hydro submits the replacement</p> <p>5 criteria are valid. The other point</p> <p>6 Industrial Customers have stated is that we</p> <p>7 didn't apply the criteria. We didn't apply--</p> <p>8 if you say it's okay, we didn't apply it and</p> <p>9 they refer to the responses to IC-36 and what</p> <p>10 you must look at is that IC-36, as Mr. Reeves</p> <p>11 also said in the transcript of July 9th on</p> <p>12 page 96, that that was prepared in April of</p> <p>13 2003 and you must account for the extra period</p> <p>14 of time until these vehicles are replaced, and</p> <p>15 when you do that, they will meet the</p> <p>16 replacement criteria of Hydro. You must also</p> <p>17 recognize that the replacement criteria is one</p> <p>18 factor. We also have to look at the age, the</p> <p>19 kilometers, the maintenance, the physical</p> <p>20 condition and that this is done on an</p> <p>21 individual basis and a judgement made with</p> <p>22 respect to each vehicle.</p> <p>23 Now the last category in the 2004 Budget</p> <p>24 are those that are in IS&amp;T and the primary one</p> <p>25 here is the radio and there is no doubt that</p>



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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... the radio attracted the most attention in</p> <p>3 this hearing. However, before I get to the</p> <p>4 radio, I would like to refer to the IC</p> <p>5 argument on page 31 where they stated the</p> <p>6 Hydro's evidence was characterized by a</p> <p>7 partial disclosure sometimes having the effect</p> <p>8 of being misleading. Hydro takes great</p> <p>9 exception to this position. Hydro in all</p> <p>10 issues before the Board has been frank, open,</p> <p>11 helpful and co-operative. We assure the Board</p> <p>12 that Hydro's position is always to ensure that</p> <p>13 accurate information is before the Board and</p> <p>14 we take pains to do that at all times. For</p> <p>15 example, in this hearing, in re-direct Mr.</p> <p>16 Haynes explained he wanted to correct what he</p> <p>17 had said about the operation of Gate 2 at the</p> <p>18 Control Structure at Ebbe. Similarly with</p> <p>19 respect to the usage statistics given in the</p> <p>20 consultant's report for the use of mobile</p> <p>21 radios. When it was brought to our attention</p> <p>22 that they didn't appear to be correct, we</p> <p>23 filed the corrected one, even though I use</p> <p>24 both of those examples as issues, neither one</p> <p>25 of those were significant with respect to the</p>	<p>1 project; however, Hydro has always ensured</p> <p>2 that the correct information is before the</p> <p>3 Board and that's part of my role, as counsel,</p> <p>4 that if there is some mis-information, we</p> <p>5 correct it through re-direct. The production</p> <p>6 panel here were composed of Messrs. Haynes,</p> <p>7 Downton, Dunphy and McDonald who gave evidence</p> <p>8 for almost three and a half days on the very</p> <p>9 technical issues. They are all very</p> <p>10 experienced in their area of responsibilities</p> <p>11 and I think it is clear that they answered all</p> <p>12 questions in an open, competent and forthright</p> <p>13 manner.</p> <p>14 The Industrial Customers also said that</p> <p>15 Hydro used terms in an in-house way and not</p> <p>16 with respect to what was generally accepted</p> <p>17 definitions in the industry. They didn't say</p> <p>18 what definitions they were talking about.</p> <p>19 They filed no evidence of what generally</p> <p>20 accepted definitions are in the industry, so</p> <p>21 we submit that that should be discounted by</p> <p>22 the Board.</p> <p>23 (9:47 a.m.)</p> <p>24 Now I would like to spend just a few</p> <p>25 minutes on the radio. I think it's clear, at</p>
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<p>1 least it appears to me from reading the</p> <p>2 argument and having participated in the</p> <p>3 hearing, that the parties have agreed that a</p> <p>4 mobile radio system is required by Hydro, so</p> <p>5 there's no issue that we need a mobile radio</p> <p>6 system. I think it's also clear that the</p> <p>7 condition of the existing system is such that</p> <p>8 it or at least critical parts of it need to be</p> <p>9 replaced. So I think there's no dispute over</p> <p>10 that. The disagreement appears to be how we</p> <p>11 address the condition of the current system.</p> <p>12 Six issues have been raised by the various</p> <p>13 parties on this and I'm going to deal with</p> <p>14 them briefly. The first issue I see as a red</p> <p>15 herring and that is that the Passport type of</p> <p>16 system was not referred to in the consultant's</p> <p>17 report Business Case. Proposition on this was</p> <p>18 clearly stated in the hearing when we said</p> <p>19 that we are not bound or committed to any</p> <p>20 particular type of system at this time. The</p> <p>21 final decision will be made following approval</p> <p>22 by the Board and the call of tenders where we</p> <p>23 will use a functional specification. Once we</p> <p>24 receive the tenders, analysis will be</p> <p>25 completed of the function of technical and</p>	<p>1 cost requirements. At this point, it appears</p> <p>2 the Passport type of system may meet Hydro's</p> <p>3 needs, but we are not committed to it. I</p> <p>4 would also refer you to the consultant's</p> <p>5 report of Hydro in Appendix C to the Business</p> <p>6 Case where he talks about the very rapid</p> <p>7 changing nature of this technology, and</p> <p>8 similarly to Mr. Barreca at the transcript</p> <p>9 July 11, page 30, where he acknowledged that</p> <p>10 technology changes so fast, that this is the</p> <p>11 appropriate type of case to give Hydro that</p> <p>12 type of flexibility.</p> <p>13 The second point that has been raised is</p> <p>14 that detailed engineering had not been done,</p> <p>15 and no, Hydro doesn't do detailed engineering</p> <p>16 at this point in time for this type of</p> <p>17 project. That will be done during the design</p> <p>18 phase when we have more information and</p> <p>19 following the approval by the Board. And here</p> <p>20 I would refer you to the transcript of July</p> <p>21 11th, page 115; and July 9th, page 68 for</p> <p>22 that. The next issue that has been raised is</p> <p>23 the cost of the Passport system, and what</p> <p>24 Hydro is saying is that when Hydro engineers</p> <p>25 looked at and did their estimate, having</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... become familiar with the suppliers of the</p> <p>3 product and what it could do, when they did</p> <p>4 the estimate, it's within the same order of</p> <p>5 range as the other type of trunked radio</p> <p>6 system. So as the cost is in that range, it</p> <p>7 looks like it could be a feasible alternative</p> <p>8 to provide the same level of functionality</p> <p>9 required for the same cost. And therefore,</p> <p>10 because the costs are similar, the results of</p> <p>11 the Business Case are valid for the Passport</p> <p>12 type of radio.</p> <p>13 The second issue raised on the radio was</p> <p>14 whether we should have a trunked radio or a</p> <p>15 conventional radio. And this was raised by</p> <p>16 Newfoundland Power. Hydro has stated that the</p> <p>17 trunked radio offers additional functionality</p> <p>18 over the conventional, even though it has a</p> <p>19 slight--and it does have a slightly higher</p> <p>20 cost. The additional benefits are channel</p> <p>21 efficiency, better re-use of radio channels,</p> <p>22 and it's easier to expand, should we need to</p> <p>23 expand for such things as additional</p> <p>24 requirements. I would refer you to the</p> <p>25 transcript of July 7th, at page 90 and at page</p>	<p>1 12 where the benefits of the trunked radio are</p> <p>2 set out, as well as to the response of NP2,</p> <p>3 the request for information which list these</p> <p>4 additional benefits. So we believe that the</p> <p>5 trunked radio does provide additional</p> <p>6 functionality over a conventional radio.</p> <p>7 However, again, the final decision will be</p> <p>8 made following evaluation of the tenders.</p> <p>9 The third issue raised by Newfoundland</p> <p>10 Power Industrial Customers to question the</p> <p>11 radio was the issue of moving to 12 1/2</p> <p>12 kilohertz channels. Hydro is not relying on</p> <p>13 that as a rationale for this project. The</p> <p>14 primary reason for replacing the system is the</p> <p>15 physical and technical obsolescence of the</p> <p>16 current system. We will use whatever</p> <p>17 appropriate channels is required by Industry</p> <p>18 Canada when we do the final design of the</p> <p>19 system.</p> <p>20 The fourth issue on the radio is that</p> <p>21 some parties have suggested a phased</p> <p>22 replacement. And here I would like to refer</p> <p>23 to the evidence of Mr. Barreca. I wanted to</p> <p>24 point out that in the transcript of July 11th</p> <p>25 at page 51, lines 18 and 19, Mr. Barreca</p>
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<p>1 acknowledged that he was not familiar with VHF</p> <p>2 radio systems, that that was not his area of</p> <p>3 expertise.</p> <p>4 Hydro submitted analysis on July 4th with</p> <p>5 respect to the phase replacement. It did</p> <p>6 include the six new sites where Hydro now</p> <p>7 currently does not have coverage that these</p> <p>8 six new sites would be done at once. It also</p> <p>9 included moving to six Hydro sites from Aliant</p> <p>10 sites. Why? Because the analysis showed it</p> <p>11 was cheaper to be on the Hydro sites. All of</p> <p>12 the other repeater sites were phased. This</p> <p>13 analysis clearly demonstrated that the phased</p> <p>14 replacement of the existing repeater sites is</p> <p>15 not cost effective. The lowest cost</p> <p>16 alternative is the immediate replacement of</p> <p>17 all of the mobile radio system.</p> <p>18 The fifth point raised and it's raised by</p> <p>19 Newfoundland Power is the contribution of</p> <p>20 Works Services. Yes, it is true that we have</p> <p>21 not finalized how Works Services and</p> <p>22 Transportation will contribute and whether it</p> <p>23 will be operating or capital. That, once we</p> <p>24 have approval of this project, there will be</p> <p>25 negotiations with Works Services and when</p>	<p>1 finalized, we will report back to the Board on</p> <p>2 the nature of their contribution and this will</p> <p>3 be done before the project goes into service</p> <p>4 and goes into rate base, the Board will have</p> <p>5 assurances how the appropriate contributions</p> <p>6 from Works Services are treated to the benefit</p> <p>7 of the rate payer. What Hydro has asked</p> <p>8 approval for is what Hydro needs to meet its</p> <p>9 needs. The contribution of Works Services</p> <p>10 will be of benefit to the rate payers.</p> <p>11 The last issue under radio that requires</p> <p>12 comment is the issue raised by Board hearing</p> <p>13 counsel with respect to the potential for</p> <p>14 duplication with Newfoundland Power. Our</p> <p>15 understanding is that Newfoundland Power does</p> <p>16 not require mobile radio system for five to</p> <p>17 ten years. Hydro requires one now.</p> <p>18 The evidence shows that the existing type</p> <p>19 of system can be expanded, however if the</p> <p>20 requirement is not for five or ten years, we</p> <p>21 submit, is not reasonable at this time to</p> <p>22 require Hydro to delay the project until</p> <p>23 Newfoundland Power finalizes its requirements</p> <p>24 for projects and may be five to ten years out.</p> <p>25 We are certainly willing and have already</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... discussed with Newfoundland Power what</p> <p>3 the requirements are and believe these can be</p> <p>4 accommodated with respect to the project.</p> <p>5 The other projects that are abducted to</p> <p>6 by Industrial Customers and I believe it's all</p> <p>7 of the information systems projects, are dealt</p> <p>8 with generally in our final argument and do</p> <p>9 not require additional comment here, with the</p> <p>10 exception of two. The first is the end user</p> <p>11 and server Evergreen program, which is on B-</p> <p>12 66. I would refer the Board to the transcript</p> <p>13 of July 7th at pages 48 and 49, where the four</p> <p>14 main components of this project were outlined.</p> <p>15 Mr. Hutchings, in his cross-examination,</p> <p>16 focused on one of the four main components,</p> <p>17 which was the end user devices, and not the</p> <p>18 other three components. In fact, Mr. Downton,</p> <p>19 in cross-examination, went on and started to</p> <p>20 explain the other three components of the</p> <p>21 project, Mr. Hutchings interrupted him once he</p> <p>22 got to the first one, the end user one, and I</p> <p>23 refer you here to the transcript, page 149 at</p> <p>24 line 2, where it is clear that Mr. Downton was</p> <p>25 going on to explain the other projects. So,</p>	<p>1 with respect to that, we would point out the</p> <p>2 four main components of the project as</p> <p>3 outlined in the transcript and submit adequate</p> <p>4 justification has been provided for them.</p> <p>5 The last project that requires specific</p> <p>6 comment is the energy management system at</p> <p>7 page B 53 of Section B. The Industrial</p> <p>8 Customers have objected to the replacement of</p> <p>9 the energy management system. I would point</p> <p>10 out that our argument on it is brief and it is</p> <p>11 on page 22 of the final argument. I would</p> <p>12 also like to point out that no RFIs were asked</p> <p>13 about this project this year or last year, I</p> <p>14 believe it was the first year of the project.</p> <p>15 There was no cross-examination, not one</p> <p>16 question last year or this year about this</p> <p>17 project. There was no evidence to contradict</p> <p>18 Hydro's evidence with respect to it, contained</p> <p>19 in the justification and the Independent</p> <p>20 Engineering Report that was provided by an</p> <p>21 internationally recognized company KEMA that</p> <p>22 was filed in support of the 2003 Capital</p> <p>23 Budget Application. So, in light of that, it</p> <p>24 is very difficult to understanding the</p> <p>25 Industrial Customers position to object to</p>
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<p>1 this project which is the second of the</p> <p>2 project, that the Board has already approved</p> <p>3 1.2 million dollars in 2003.</p> <p>4 In conclusion, I'll point out that we are</p> <p>5 seeking approval of 34.2 million dollars.</p> <p>6 That it is Hydro's submission that the</p> <p>7 projects are required to provide safe reliable</p> <p>8 least cost power to customers. Hydro has</p> <p>9 complied with the statutory requirement and we</p> <p>10 have complied with the previous Board</p> <p>11 directions with respect to a justification to</p> <p>12 be supplied to support a Capital Project. We</p> <p>13 believe and submit that we have demonstrated</p> <p>14 that we have a vigorous Capital Budget</p> <p>15 Process, that we have engineering expertise</p> <p>16 and sound engineering judgment which has been</p> <p>17 applied to these projects. We therefore</p> <p>18 submit that all of the 2004 Capital Projects</p> <p>19 should be approved as submitted.</p> <p>20 The last topic on which I need to make a</p> <p>21 comment is the issue of cost. I am assuming</p> <p>22 that Industrial Customers will ask for cost as</p> <p>23 they did last year. Our general submission,</p> <p>24 as you are aware, is that Industrial Customers</p> <p>25 should not be awarded their cost of</p>	<p>1 intervening in a hearing, whether it's a</p> <p>2 Capital Budget or a General Rate Application,</p> <p>3 that they represent specific interest groups</p> <p>4 who have the resources to pay for the</p> <p>5 intervention. And this has generally been</p> <p>6 accepted by the Board. The only exception was</p> <p>7 in the General Rate Application where they</p> <p>8 received a nominal amount of the costs they</p> <p>9 had submitted. Well, it was more than</p> <p>10 nominal, but it was a fraction of what they</p> <p>11 had submitted. They asked for, but were not</p> <p>12 awarded costs last year in the 2003 Capital</p> <p>13 Budget. So, Hydro submits that it is not</p> <p>14 reasonable that the Utility and ultimately its</p> <p>15 customers pay for the cost of the intervention</p> <p>16 of the Industrial Customers, as is a general</p> <p>17 principle. In coming back to their</p> <p>18 participation in this hearing, Alvei already</p> <p>19 outlined why Hydro believes that the</p> <p>20 Industrial Customers' approach in this hearing</p> <p>21 has been unreasonable in a number of respects.</p> <p>22 We believe that the Board must take that into</p> <p>23 account and that that reinforces Hydro's</p> <p>24 submission that they should not be awarded</p> <p>25 costs for this hearing. And in fact, Hydro</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... requests that the Board consider awarding</p> <p>3 Hydro a portion of its cost against the</p> <p>4 Industrial Customers.</p> <p>5 Section 90 of the Public Utilities Act</p> <p>6 gives the Board the discretion to award costs</p> <p>7 to either party. Hydro has never asked before</p> <p>8 for costs to be awarded against a party.</p> <p>9 However, for the reasons outlined, we do</p> <p>10 believe that certain elements of the approach</p> <p>11 have been unreasonable and in that regard, we</p> <p>12 believe that the parties must bear the</p> <p>13 consequences when they take, what we believe</p> <p>14 are unreasonable approaches. And if the Board</p> <p>15 should so agree, we do request that the Board</p> <p>16 consider awarding a portion, not all, but a</p> <p>17 portion of Hydro's costs against the</p> <p>18 Industrial Customers. Thank you, Mr. Chair,</p> <p>19 that concludes my submissions at this time.</p> <p>20 CHAIRMAN:</p> <p>21 Q. Thank you, Ms. Greene. Commissioner Martin,</p> <p>22 do you have any questions.</p> <p>23 COMMISSIONER MARTIN, Q.C.:</p> <p>24 Q. No.</p> <p>25 CHAIRMAN:</p>	<p>1 Q. Commissioner Powell, do you have any</p> <p>2 questions?</p> <p>3 COMMISSIONER POWELL:</p> <p>4 Q. No.</p> <p>5 CHAIRMAN:</p> <p>6 Q. No questions, okay. I have a question, Ms.</p> <p>7 Greene. I guess it's probably a question and</p> <p>8 an observation. After I had read the argument</p> <p>9 that you put forward as well as the</p> <p>10 intervenors and Board counsel, I got to</p> <p>11 thinking about the responsibility of the Board</p> <p>12 in respect of Capital Budgets, as opposed to</p> <p>13 the Board's responsibility in respect of</p> <p>14 applications for rates for approval. And</p> <p>15 under the Act, it seems as if, in respect of</p> <p>16 the Board's authority to approve rates, that</p> <p>17 that is somewhat specific in that the Board</p> <p>18 can set the Rate Base of the Company, Rate of</p> <p>19 Return and there's a procedure that the Board</p> <p>20 has adopted in line with what the legislation</p> <p>21 says that gets you to the calculation of a</p> <p>22 rate for rates for customers.</p> <p>23 (10:02 a.m.)</p> <p>24 The process in respect of Capital Budget</p> <p>25 approval is not so clear. It merely says that</p>
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<p>1 the Utility can submit or must submit, I think</p> <p>2 it says, an application for approval of their</p> <p>3 annual Capital Budgets, but "it" meaning the</p> <p>4 Act. The P.U. Act does not outline any</p> <p>5 specific guidelines, parameters or direction</p> <p>6 in respect of how that approval is to be done,</p> <p>7 what makes up the process, like it does with</p> <p>8 respect to rates. Rates, it appears to me, is</p> <p>9 somewhat clearer. And when you look at</p> <p>10 Section 3(a) of the EPCA, again, as I said,</p> <p>11 there isn't any specific reference to Capital</p> <p>12 Budgets, except with respect to management and</p> <p>13 operation of the facilities. Section 4</p> <p>14 requires the Board, in carrying out its duties</p> <p>15 and exercising its powers, to apply tests that</p> <p>16 are consistent with generally accepted sound</p> <p>17 public utility practice, whatever those test</p> <p>18 may be. There aren't any specific tests that</p> <p>19 are contained in the legislation by reference</p> <p>20 or otherwise. So, I guess my question to you</p> <p>21 is, do you see that there's a difference in</p> <p>22 how the Board is empowered to deal with a rate</p> <p>23 application, as opposed to a Capital Budget</p> <p>24 Application? That's question number one. And</p> <p>25 falling from that, is there authority in that</p>	<p>1 section that I referred to, having to do with</p> <p>2 Capital Budgets, for the Board to deny a</p> <p>3 Capital Budget in whole or in part and how</p> <p>4 does that then tie in with the invasion, if</p> <p>5 you like, of the sphere of management of the</p> <p>6 Utility that you referred in your oral</p> <p>7 argument and that you pointed out in your</p> <p>8 written argument and you attached a copy of</p> <p>9 Judge Green's and his comments in that regard</p> <p>10 that are contained in Paragraphs 31, 32, 118</p> <p>11 and 120. Now, if you want some time to think</p> <p>12 about that, we can break now or we can break</p> <p>13 after we hear from Mr. Hayes?</p> <p>14 GREENE, Q.C.:</p> <p>15 Q. Well, I think I'm in a position to respond.</p> <p>16 The questions that you raise are challenging</p> <p>17 questions. Hydro, as you know, as Alvei</p> <p>18 already said, this is our eighth Capital</p> <p>19 Budget and it's clear that the process is</p> <p>20 evolving. And one of the reasons it is</p> <p>21 evolving is because of some of the very</p> <p>22 questions that you have outlined and the</p> <p>23 intervention of intervenors who have raised</p> <p>24 what are significant issues that need to be</p> <p>25 addressed by the Board for the--when they have</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... to balance the interest of the Utility</p> <p>3 and the interest of the consumers.</p> <p>4 So, the challenge that the Board said</p> <p>5 itself in P.U. 36 is often how do they</p> <p>6 actually operationalize and implement those</p> <p>7 legislative provisions in the context of the</p> <p>8 Capital Budget Application. And the answers</p> <p>9 aren't always clearly written in black and</p> <p>10 white. That's one of the challenges of being</p> <p>11 a lawyer, we get to consider legislation and</p> <p>12 argue for different interpretations which is</p> <p>13 what makes the law, I guess, interesting. But</p> <p>14 looking specifically at your question, first,</p> <p>15 your first question was, do you think that</p> <p>16 there is a difference in how the Board is</p> <p>17 empowered to deal with a General Rate</p> <p>18 Application and a Capital Budget Application.</p> <p>19 The Board has been given statutory authority</p> <p>20 with respect to both. With respect to a</p> <p>21 general Rate Application, it is true that</p> <p>22 there is more specific guidance given in</p> <p>23 various sections of the Public Utilities Act</p> <p>24 with respect to how that is to be done. There</p> <p>25 are a number of sections dealing with rate</p>	<p>1 base and how it can be valued, for example.</p> <p>2 There are also other sections dealing with</p> <p>3 what can be rates, rates must be with respect</p> <p>4 to providing services that are required for a</p> <p>5 customer. So, there has been--or that there</p> <p>6 are a number of specific sections that the</p> <p>7 Board must take into account in determining</p> <p>8 such things as rate base. It is also true</p> <p>9 that there have been a number of precedents</p> <p>10 developed through, sometimes, judicial</p> <p>11 authority and sometimes precedents of this</p> <p>12 Board and in other jurisdictions that can give</p> <p>13 guidance to the Board in coming up with</p> <p>14 specific issues dealing with a General Rate</p> <p>15 Application.</p> <p>16 Now, we don't have that same situation</p> <p>17 with respect to Capital Budgets. We only have</p> <p>18 Section 41 of the Public Utilities Act that I</p> <p>19 referred to and I'm sure that other parties</p> <p>20 will, as well, and we have the general</p> <p>21 principles that we refer to in our written</p> <p>22 argument and our oral argument and that</p> <p>23 Industrial Customers referred to. So, you</p> <p>24 have more of a general statement that the</p> <p>25 Board must operationalize and actually</p>
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<p>1 determine how they're going to apply it.</p> <p>2 However, the good news is that the Board</p> <p>3 has addressed their minds to this issue on</p> <p>4 pre-occasions and has also decided that</p> <p>5 because of the nature of the capital budget</p> <p>6 process and how it is changing, that there are</p> <p>7 issues that need to be addressed in a less</p> <p>8 adversarial form in the nature of a technical</p> <p>9 conference. And we believe that's a good</p> <p>10 approach and we look forward, as I said</p> <p>11 earlier, to participating in that because</p> <p>12 there are a number of issues we believe that</p> <p>13 could be introduced to streamline this process</p> <p>14 and to make it more beneficial for rate</p> <p>15 payers, for the Utility, for the Board and for</p> <p>16 Intervenors.</p> <p>17 So, part of the dilemma, I think Mr.</p> <p>18 Chair, comes from the fact that there are</p> <p>19 less, in terms of numbers, of specific</p> <p>20 directions in the legislation with respect to</p> <p>21 Capital Budgets. The other thing that I think</p> <p>22 is also correct is there's less precedent out</p> <p>23 there for how people approach capital budgets</p> <p>24 because the evidence is clear. Nova Scotia is</p> <p>25 the only jurisdiction that requires the annual</p>	<p>1 approval by the Regulator of the Utilities</p> <p>2 Capital Budget. So, us lawyers like to go and</p> <p>3 look for precedent, that's part of our</p> <p>4 training. And in the Capital Budget area,</p> <p>5 there's not a lot. So, I understand your</p> <p>6 dilemma and I think the good news is the Board</p> <p>7 has given direction. And once they give</p> <p>8 direction, the Utility and the Intervenors</p> <p>9 have to rely on that and it shouldn't be</p> <p>10 changed lightly unless there is input, unless</p> <p>11 it's a significant reason to change it. There</p> <p>12 must be some certainty; they can't change</p> <p>13 every year. So, I don't know if that's</p> <p>14 helping, Mr. Chair, but there some of the</p> <p>15 issues that we, at Hydro, had grappled with as</p> <p>16 well over the past, certainly the past three</p> <p>17 to four years.</p> <p>18 CHAIRMAN:</p> <p>19 Q. Thank you, Ms. Greene. I guess, probably if</p> <p>20 there is a dilemma in my mind, it's that Alvei</p> <p>21 probably been around too long in terms of, I</p> <p>22 know what the process, in terms dealing with</p> <p>23 capital budgets was like several years ago and</p> <p>24 then it got to a public hearing process</p> <p>25 eventually where seldom, if ever, any opposing</p>

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<p>1 CHAIRMAN:</p> <p>2 Q. .... parties presented themselves to be heard.</p> <p>3 And then, I guess to put a date on it, we came</p> <p>4 into the age of the Consumer Advocate starting</p> <p>5 in 1996 and since that time, there's been a</p> <p>6 number of processes that have been revised, I</p> <p>7 suppose. One of which is the Capital Budget</p> <p>8 Application and hearing process. But I feel</p> <p>9 that some elements of that whole process have</p> <p>10 moved ahead faster than others. And I'm</p> <p>11 particularly thinking about the, let's say the</p> <p>12 transparency that this forum offers to the</p> <p>13 public and to the customers, if you like, of</p> <p>14 the utilities. And I'm also thinking about</p> <p>15 the elements of the process that fortunately,</p> <p>16 I think, the technical conference schedule for</p> <p>17 '04 is intended to address, at least, in part.</p> <p>18 And so, I guess if there's a dilemma, it's</p> <p>19 that the approval process of the Capital</p> <p>20 Budget seems to me, in the whole ball of wax,</p> <p>21 not to have kept up with the external or</p> <p>22 public hearing process, the transparency, if</p> <p>23 you like and the move to make things more</p> <p>24 transparent and so there's my concern. I</p> <p>25 won't call it a dilemma, although that's</p>	<p>1 probably an apt word, but I thought I would</p> <p>2 throw it out to you and maybe the others might</p> <p>3 take note. And if they have anything helpful</p> <p>4 to offer, I would like to hear from them when</p> <p>5 they do their oral argument. I'd certainly</p> <p>6 like to hear comments, if they have any. And</p> <p>7 I'm not sure Alvei made myself absolutely</p> <p>8 clear and if I haven't, then feel free to ask</p> <p>9 any questions you have of me in terms of what</p> <p>10 it is I'm trying to say here.</p> <p>11 And I guess, basically it boils down to,</p> <p>12 the difference that I see in the legislation</p> <p>13 between the approval process for rates</p> <p>14 compared to that for Capital Budgets. One</p> <p>15 being fairly specific, the other being fairly</p> <p>16 vague and if there's very much differences</p> <p>17 between those two descriptions.</p> <p>18 Now then, it's quarter past ten, Mr.</p> <p>19 Hayes and -</p> <p>20 HENLEY ANDREWS, Q.C.:</p> <p>21 Q. Mr. Chair, could we take a break now?</p> <p>22 CHAIRMAN:</p> <p>23 Q. Sure we could.</p> <p>24 HENLEY ANDREWS, Q.C.:</p> <p>25 Q. Thank you.</p>
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<p>1 CHAIRMAN:</p> <p>2 Q. If you wish, we'll take a break now and come</p> <p>3 back in 15 minutes.</p> <p>4 (BREAK - 10:15 A.M.)</p> <p>5 (10:34 a.m.)</p> <p>6 CHAIRMAN:</p> <p>7 Q. Mr. Hayes, are you ready now to proceed?</p> <p>8 MR. HAYES:</p> <p>9 Q. Yes, I am, thank you, Mr. Chair. Mr. Chair</p> <p>10 and Commissioners, as a purchaser of the bulk</p> <p>11 of the electrical generation generated by</p> <p>12 Hydro, Newfoundland Power has a significant</p> <p>13 stake in Hydro's annual capital expenditures.</p> <p>14 This year from our review of Hydro's Capital</p> <p>15 Budget as filed, it appeared that one project,</p> <p>16 in our judgment, was not justified on the face</p> <p>17 of the record and we intervene for the purpose</p> <p>18 of reviewing the detailed information on that</p> <p>19 project, and that was, of course, the VHF</p> <p>20 Radio Replacement Project at page B71 of the</p> <p>21 Application. We confine our intervention in</p> <p>22 the proceeding to that project and today we</p> <p>23 will again essentially confine our remarks to</p> <p>24 the VHF project.</p> <p>25 As we noted in our written submission,</p>	<p>1 Newfoundland Power's view is that Hydro has</p> <p>2 not justified its proposal to spend 8.8</p> <p>3 million dollars on the VHF radio at this time.</p> <p>4 It is not to suggest that some expenditure on</p> <p>5 Hydro's mobile radio requirements is not</p> <p>6 necessary, but merely that the project as</p> <p>7 currently proposed, it has not been shown</p> <p>8 either to be necessary or to be the least</p> <p>9 cost. All else being equal, it is the Board's</p> <p>10 obligation pursuant to the Electrical Power</p> <p>11 Control Act to approve only those capital</p> <p>12 expenditures that are consistent with the</p> <p>13 provision of least cost electrical service.</p> <p>14 If alternative viable solutions exist to an</p> <p>15 identified capital expenditure requirement, it</p> <p>16 is the utility's obligation to evaluate the</p> <p>17 pros and cons of those alternatives and to</p> <p>18 present those to the Board and the cost</p> <p>19 justifications so that the Board can discharge</p> <p>20 its obligations under the legislation.</p> <p>21 With respect to this particular project,</p> <p>22 it is remarkable in Newfoundland Power's view</p> <p>23 that the system that's currently preferred by</p> <p>24 Hydro, which we all know is the Passport</p> <p>25 system, is not even mentioned in the principal</p>

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<p>1 MR. HAYES:</p> <p>2 Q. .... documentation filed in support of the</p> <p>3 project. Neither the Business Case, nor the</p> <p>4 consultant's report which was attached to it,</p> <p>5 mention the Passport system which Hydro had</p> <p>6 identified almost two years ago, according to</p> <p>7 their testimony, and its first mention on the</p> <p>8 record was during direct examination of the</p> <p>9 Panel on the first day of the hearing. The</p> <p>10 cost information on this system, which was</p> <p>11 provided in response to an Undertaking, was</p> <p>12 acknowledged to be a "order of magnitude"</p> <p>13 estimate only and it was acknowledged not to</p> <p>14 be as detailed as the estimates provided in</p> <p>15 the consultant's report of the other systems</p> <p>16 evaluated. We submit that this level of</p> <p>17 uncertainty with respect to the cost and the</p> <p>18 technology that is to be involved in this</p> <p>19 project is not appropriate in relation to the</p> <p>20 approval of the capital expenditure of almost</p> <p>21 9 million dollars. Further, where a solution</p> <p>22 is proposed that is not least cost,</p> <p>23 Newfoundland Power submits that information</p> <p>24 should be submitted on the record that clearly</p> <p>25 shows why the higher cost solution provides</p>	<p>1 better value to the utility and its customers.</p> <p>2 In relation to the VHF radio project, Hydro</p> <p>3 has chosen to propose a solution that is not</p> <p>4 the least cost. The conventional radio</p> <p>5 technology is the least cost, according to</p> <p>6 Hydro's own estimates. And Hydro has</p> <p>7 acknowledged that conventional technology</p> <p>8 provides all the required functionality. In</p> <p>9 our view there is not compelling evidence on</p> <p>10 the record that Hydro requires the features of</p> <p>11 the newer technology, and this is technology</p> <p>12 that if adopted we must remember forces Hydro</p> <p>13 to throw out the entire existing system,</p> <p>14 repeaters, radios, the works. And it is</p> <p>15 evident from the record that technology</p> <p>16 choices can significantly affect costs. The</p> <p>17 variability among the cost estimates for the</p> <p>18 systems reviewed by the consultant should give</p> <p>19 the Board pause in our view. The</p> <p>20 estimates varied by several million dollars.</p> <p>21 The currently preferred system, the Passport</p> <p>22 system, is estimated at about 5.7 million</p> <p>23 dollars which is the same cost as a system</p> <p>24 recommended by the consultant, but again, this</p> <p>25 is not as detailed an estimate as the ones in</p>
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<p>1 the consultant's report and in our view, there</p> <p>2 also appears to be some uncertainty among the</p> <p>3 witness panel with respect to the specifics of</p> <p>4 the contents of that cost estimate. We submit</p> <p>5 that as the record currently stands there is a</p> <p>6 significant degree of uncertainty with respect</p> <p>7 to what the new VHF radio system will</p> <p>8 ultimately cost. Hydro testified that a more</p> <p>9 detailed process of radio system design has</p> <p>10 yet to take place, and my learned friend said</p> <p>11 this morning that Hydro doesn't do that at</p> <p>12 this stage. Well, it is Newfoundland Power's</p> <p>13 submission essentially that they should. It</p> <p>14 is clear from the cost estimates currently on</p> <p>15 the record and the variability among those</p> <p>16 costs of the various systems that the choice</p> <p>17 of technology or a choice of system can result</p> <p>18 in significant cost variances. And in the</p> <p>19 circumstances, we believe that approval of the</p> <p>20 project at this stage would be premature.</p> <p>21 Newfoundland Power also believes that</p> <p>22 it's appropriate that Hydro address the</p> <p>23 concerns which were implied in our Request</p> <p>24 for Information 93 and reiterated by Mr.</p> <p>25 Barreca in response to the Chair's question at</p>	<p>1 the evidence stage. Before (unintelligible)</p> <p>2 any existing system entirely to the trash</p> <p>3 heap, we believe that Hydro ought to fully</p> <p>4 evaluate to what extent the life of the</p> <p>5 current system might be extended. Merely</p> <p>6 observing that certain components are</p> <p>7 manufacturer discontinued and based on typical</p> <p>8 experience others may not be supported by</p> <p>9 vendors is not sufficient judgment for almost</p> <p>10 a 9 million dollar expenditure.</p> <p>11 Hydro has acknowledged that with the</p> <p>12 exception of some recent failures and in</p> <p>13 particular with the central switch, the system</p> <p>14 has essentially continued to provide adequate</p> <p>15 function, yet the Board is now being asked</p> <p>16 that it is appropriate to reject the current</p> <p>17 technology and essentially throw the entire</p> <p>18 system out. As you will recall, Mr. Barreca</p> <p>19 who admittedly said he doesn't have specific</p> <p>20 experience with VHF systems, but does have</p> <p>21 long experience in the telecommunications</p> <p>22 business, testified that it is not unusual for</p> <p>23 telecommunications equipment to provide</p> <p>24 service well beyond its expected life. In</p> <p>25 response to NP-3, Hydro initially stated that</p>

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<p>1 MR. HAYES:</p> <p>2 Q. .... they didn't consider trying to extend the</p> <p>3 life of the system because of industry</p> <p>4 requirement to Industry Canada requirement to</p> <p>5 move from 25 kilohertz to 12 kilohertz</p> <p>6 channels and because the repeaters had been</p> <p>7 manufacturer discontinued. However, during</p> <p>8 the hearing, Hydro acknowledged that the radio</p> <p>9 channel issue was--counsel acknowledged this</p> <p>10 morning is not really an issue at this time</p> <p>11 and it would not, certainly not be an issue if</p> <p>12 they were to stick with the old system. And</p> <p>13 in addition, Hydro now is aware that a</p> <p>14 capital, a compatible repeater equipment can</p> <p>15 be obtained and that equipment would have</p> <p>16 manufacturer vendor support. So it may be the</p> <p>17 case that the life of the current system can</p> <p>18 be extended by a program of replacement based</p> <p>19 on a detailed condition assessment of the</p> <p>20 system or the various components of the</p> <p>21 system. And Mr. Barreca has testified that</p> <p>22 this may be the least cost solution of Hydro's</p> <p>23 requirements for radio, for mobile radio. If</p> <p>24 it turns out after a detailed examination of</p> <p>25 extending the life of the current system is</p>	<p>1 not viable, then Hydro has to bring forward a</p> <p>2 solution which is either least cost</p> <p>3 or failing that, which provides demonstrated</p> <p>4 additional value. And in Newfoundland Power's</p> <p>5 view, the record now before that Board doesn't</p> <p>6 meet that standard.</p> <p>7 Before closing, I would like to briefly</p> <p>8 address an issue that was raised in the</p> <p>9 closing submission of Board hearing counsel.</p> <p>10 First paragraph 34 of Board hearing counsel's</p> <p>11 written submission has a reference of an</p> <p>12 expenditure of \$383,000.00 on</p> <p>13 telecommunications in Newfoundland Power's</p> <p>14 2003 Capital Budget. I want to point out for</p> <p>15 the Board's information that most of that</p> <p>16 expenditure relates to line protection and</p> <p>17 only a small portion of that expenditure</p> <p>18 relates directly to mobile radio requirements</p> <p>19 and voice radio communication. In paragraph</p> <p>20 43 of Board hearing counsel's submission</p> <p>21 contains the statement that Newfoundland Power</p> <p>22 has avoided making any meaningful or</p> <p>23 enforceable commitments about sharing in the</p> <p>24 cost and subsequently using a new VHF system.</p> <p>25 While that's technically true, I want to point</p>
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<p>1 out that there is nothing on the record to</p> <p>2 suggest that Newfoundland Power has been less</p> <p>3 than cooperative in relation to the</p> <p>4 possibility of sharing telecommunications</p> <p>5 facilities with Hydro. In fact, it is Hydro's</p> <p>6 evidence that discussions had taken place with</p> <p>7 Newfoundland Power and information has been</p> <p>8 exchanged. This is not an issue of</p> <p>9 cooperation between the utilities. It is</p> <p>10 simply a question of what is least cost for</p> <p>11 Newfoundland Power's customers. Mr. Hughes</p> <p>12 testified during Newfoundland Power's Capital</p> <p>13 Budget Application last year that Newfoundland</p> <p>14 Power made a determination following</p> <p>15 discussions with Hydro that our participation</p> <p>16 in VHF system is not a cost effective</p> <p>17 proposition at this time. He testified that</p> <p>18 Newfoundland Power's management disagreed with</p> <p>19 Hydro's decision to replace the VHF system.</p> <p>20 And it was more than Newfoundland Power was</p> <p>21 willing to pay. Ultimately Newfoundland Power</p> <p>22 has the obligation to assess what is the least</p> <p>23 cost telecommunication system for our</p> <p>24 customers. Having reviewed all of the</p> <p>25 evidence on the record in this proceeding,</p>	<p>1 Newfoundland Power is still of the view that</p> <p>2 the proposed VHF radio system is simply too</p> <p>3 rich for us. And with the introduction of a</p> <p>4 different system architecture, it would</p> <p>5 appear, as Board hearing counsel notes in</p> <p>6 paragraph 38 of their submission, that</p> <p>7 previous estimates of Newfoundland Power's</p> <p>8 cost participation may be outdated (phonetic)</p> <p>9 with the uncertainty of both technology and</p> <p>10 price that are now apparent on the record, we</p> <p>11 must be conscious of the fact that the costs</p> <p>12 may become even less favourable to</p> <p>13 Newfoundland Power. Newfoundland Power's</p> <p>14 radio system has been in place since the early</p> <p>15 80's and is still providing good service.</p> <p>16 Hydro has testified that Newfoundland Power</p> <p>17 has told them that our system has five to ten</p> <p>18 years of remaining useful life. With that in</p> <p>19 mind, I submit and agree with counsel for</p> <p>20 Hydro that the suggestion that Newfoundland</p> <p>21 Power become involved in the detailed way of</p> <p>22 developing Hydro's system to the extent</p> <p>23 suggested by Board hearing counsel in</p> <p>24 paragraph 48 of their submission, is not</p> <p>25 really necessary. Further, the Board will</p>



<p style="text-align: right;">Page 65</p> <p>1 MR. HAYES:</p> <p>2 Q. .... soon be hearing Newfoundland Power's 2004</p> <p>3 Capital Budget Application and the Board will</p> <p>4 also hear from Newfoundland Power's management's</p> <p>5 view of Hydro's VHF radio system and</p> <p>6 the likelihood of Newfoundland Power's</p> <p>7 participation I'm sure they would be more than</p> <p>8 happy to provide whatever information is</p> <p>9 required.</p> <p>10 REPORTER:</p> <p>11 Q. Excuse me, I have to interrupt the hearing,</p> <p>12 I'm having a problem here with one of the</p> <p>13 decks.</p> <p>14 (10:45 a.m)</p> <p>15 Note:</p> <p>16 Hearing Recorder requested hearing stoppage,</p> <p>17 he advised the proceeding that he was</p> <p>18 experiencing problems with the recording of</p> <p>19 evidence that has been presented by the</p> <p>20 speaker, Mr. Gerard Hayes, since the end of</p> <p>21 the break at 10:35 a.m.</p> <p>22 Mr. Hayes advised that his oral comments</p> <p>23 have not deviated very much from his speaking</p> <p>24 notes - (really only in delivery).</p> <p>25 All parties were canvassed and it was</p>	<p style="text-align: right;">Page 66</p> <p>1 agreed to the suggestion that Mr. Hayes submit</p> <p>2 a summary of his oral comments at the</p> <p>3 conclusion of the hearing.</p> <p>4 Hearing recorder changed tapes and</p> <p>5 hearing recording reconvened at 10: 55 a.m.</p> <p>6 (10:55 a.m.)</p> <p>7 MR. HAYES:</p> <p>8 Q. I'm quite happy to file a written summary of</p> <p>9 this. I mean, essentially it really follows</p> <p>10 and perhaps just reiterates or emphasizes</p> <p>11 certain aspects of our written submission.</p> <p>12 CHAIRMAN:</p> <p>13 Q. I've written down almost everything you said,</p> <p>14 anyway.</p> <p>15 MR. HAYES:</p> <p>16 Q. Thank you, chair, I'm very flattered. But -</p> <p>17 CHAIRMAN:</p> <p>18 Q. As long as you do that within the next couple</p> <p>19 of days and circulate copies to the parties.</p> <p>20 MR. HAYES:</p> <p>21 Q. That won't be a problem, Mr. Chair.</p> <p>22 CHAIRMAN:</p> <p>23 Q. Okay. So you're going to use Deck A, Mr.</p> <p>24 Transcriber, and we'll -</p> <p>25 MR. MOSS:</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Yes. Deck A is now -</p> <p>2 CHAIRMAN:</p> <p>3 Q. I have a question, but do you have any</p> <p>4 questions of Mr.--are you finished, by the</p> <p>5 way?</p> <p>6 MR. HAYES:</p> <p>7 Q. Not quite.</p> <p>8 CHAIRMAN:</p> <p>9 Q. No, I didn't think you were. So we'd better</p> <p>10 let you finish first.</p> <p>11 MR. HAYES:</p> <p>12 Q. Thank you.</p> <p>13 CHAIRMAN:</p> <p>14 Q. And you're on Deck A, I hope. Carry on, Mr.</p> <p>15 Hayes.</p> <p>16 MR. HAYES:</p> <p>17 Q. I'm on deck. Who's on first? We don't know.</p> <p>18 I'd just like to sum up by saying that we'd</p> <p>19 like to reiterate the submissions in our</p> <p>20 written brief and simply ask the Board to, at</p> <p>21 this stage, withhold its approval of the VHF</p> <p>22 radio proposal and to require that Hydro</p> <p>23 refile its proposal with a more detailed</p> <p>24 evaluation of the radio system they intend to</p> <p>25 build and a better explanation of why the</p>	<p style="text-align: right;">Page 68</p> <p>1 proposed expenditures, and in particular,</p> <p>2 expenditures above least cost are necessary</p> <p>3 and what benefits they do provide to the</p> <p>4 Hydro--to the utility.</p> <p>5 Mr. Chair, I guess I'd just briefly like</p> <p>6 to address your question of Ms. Greene before</p> <p>7 the break with respect to how the Board ought</p> <p>8 to be looking at capital expenditures and the</p> <p>9 difference between capital expenditures, I</p> <p>10 guess, and rates.</p> <p>11 Rates, as we know, is a very fine art or</p> <p>12 science, depending on how you look at it, and</p> <p>13 I think it's appropriate that very, very</p> <p>14 detailed provisions be contained in the</p> <p>15 legislation to deal with rates. Of course,</p> <p>16 rates are probably the most sensitive issue</p> <p>17 for customers, as well.</p> <p>18 With respect to capital expenditures, as</p> <p>19 Ms. Greene said, it is very clear that there</p> <p>20 is a much more general approach to it in the</p> <p>21 legislation. But we do have the benefit of</p> <p>22 the Board's experience over time, whether that</p> <p>23 actually constitutes a precedent or not in</p> <p>24 this particular form, I would suggest that it</p> <p>25 probably does not, but it provides certainly</p>

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<p>1 MR. HAYES:</p> <p>2 Q. .... guidance as to how the Board can address</p> <p>3 and can consider capital expenditures.</p> <p>4 With respect to filing requirements and</p> <p>5 documentation which have been made an issue,</p> <p>6 in particular, by the Industrial Customers, we</p> <p>7 agree that this is evolving. Now, whether</p> <p>8 we've found the right balance of information</p> <p>9 and of level of information and volume of</p> <p>10 information is a question, I think, that's</p> <p>11 still open, and hopefully we will address that</p> <p>12 in some sort of generic proceeding in the next</p> <p>13 little, as has been ordered by the Board.</p> <p>14 With respect to the standard, however, I</p> <p>15 believe it's a little more straightforward and</p> <p>16 really based on guidance of past Board</p> <p>17 decisions in this area, and I would submit,</p> <p>18 based on Newfoundland Power's philosophy with</p> <p>19 respect to what is required of capital--before</p> <p>20 capital expenditure can be approved and that</p> <p>21 is essentially this, we believe that a capital</p> <p>22 project must be shown to be necessary for the</p> <p>23 least cost and reliable provision of power to</p> <p>24 customers. And the Board must somehow satisfy</p> <p>25 itself that the project is necessary and that</p>	<p>1 it is least cost, in most cases, least cost of</p> <p>2 viable alternatives, and if it's not the least</p> <p>3 cost, and this is particularly apropos with</p> <p>4 respect to the VHF project, why is it</p> <p>5 necessary to proceed with a project or with an</p> <p>6 alternative that is not least cost. And we</p> <p>7 believe that the evidence should be fairly</p> <p>8 compelling in that regard. It's not enough to</p> <p>9 list a number of additional benefits. I think</p> <p>10 it's incumbent on the utility to show why</p> <p>11 those particular features are necessary to</p> <p>12 improve service or improve reliability. It</p> <p>13 has to benefit customers.</p> <p>14 So, those are my comments with respect to</p> <p>15 what I acknowledge what is a bit of a dilemma</p> <p>16 and a bit of a challenge for the Board.</p> <p>17 Hopefully that's helpful. Thank you.</p> <p>18 CHAIRMAN:</p> <p>19 Q. Thank you, Mr. Hayes. Mr. Martin? Mr.</p> <p>20 Powell?</p> <p>21 COMMISSIONER POWELL:</p> <p>22 Q. No.</p> <p>23 CHAIRMAN:</p> <p>24 Q. Just one question I have for you, Mr. Hayes,</p> <p>25 and that is throughout your written argument</p>
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<p>1 and as well throughout your oral argument you</p> <p>2 used the term "least cost". You seldom,</p> <p>3 except in your last comment, used the term</p> <p>4 "reliable service" in connection with it. And</p> <p>5 if you look at the relevant section of the</p> <p>6 Act, and Ms. Greene has alluded to it as well</p> <p>7 in her argument, and coming from a</p> <p>8 representative of a utility I'd like to hear</p> <p>9 what you have to say about least cost and</p> <p>10 reliable service and how the Board is to weigh</p> <p>11 that?</p> <p>12 MR. HAYES:</p> <p>13 Q. Well, I guess least cost--I mean, reliable</p> <p>14 service is certainly another issue entirely.</p> <p>15 And I think to some extent you have guidance</p> <p>16 from the -</p> <p>17 CHAIRMAN:</p> <p>18 Q. You say it's another issue. Is it another</p> <p>19 issue or is it the same issue, I guess, is the</p> <p>20 question I'm asking. Can you talk about least</p> <p>21 cost without also considering reliable service</p> <p>22 in the context of how it's used in the Act?</p> <p>23 MR. HAYES:</p> <p>24 Q. Well, I don't think so. I think ultimately</p> <p>25 reliable--safe and reliable electrical service</p>	<p>1 is the goal that we are attempting to achieve.</p> <p>2 In fact, it's the goal that we are legally</p> <p>3 obliged to achieve for our customers. So</p> <p>4 that, I think, provides the context. The</p> <p>5 least cost issue is somewhat separate but it</p> <p>6 is--it has to be considered in the context of</p> <p>7 what reliability of service is required. And</p> <p>8 least cost itself, well, you have to determine</p> <p>9 what are the viable options, and to some</p> <p>10 extent you may find some variability with</p> <p>11 respect to how they contribute to reliable</p> <p>12 service. But, I think you have to evaluate</p> <p>13 each of those things independently and perhaps</p> <p>14 bring them together at the end. Least cost is</p> <p>15 essentially an economic judgment and it</p> <p>16 essentially, I think, means cumulative present</p> <p>17 worth analysis, at least that's been accepted</p> <p>18 by the Board, either in that present value or</p> <p>19 cumulative present worth. Once you've</p> <p>20 determined which is the least cost in terms of</p> <p>21 what the system is--what costs are going to be</p> <p>22 imposed on the system, then I think that's</p> <p>23 probably enough if you determine that that</p> <p>24 particular alternative contributes</p> <p>25 sufficiently to reliable safe electrical</p>

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<p>1 MR. HAYES:</p> <p>2 Q. .... service. However, there may be</p> <p>3 situations, as I've already indicated, where</p> <p>4 another alternative which is not least cost</p> <p>5 does provide real benefits to the system and</p> <p>6 to customers. These may be service benefits.</p> <p>7 There may be some possible reliability</p> <p>8 benefits, as well, but not necessarily proven</p> <p>9 to the extent that you can prove what the</p> <p>10 costs will be. So there's a little bit more</p> <p>11 of an art to that, I think. But I do think</p> <p>12 you have to consider both. One is more of a</p> <p>13 mechanical exercise, the least cost exercise,</p> <p>14 the other provides the context.</p> <p>15 CHAIRMAN:</p> <p>16 Q. Do you have any suggestions as to how we're to</p> <p>17 determine which of the alternatives is going</p> <p>18 to give reliable service down the road, whose</p> <p>19 evidence do we accept on that?</p> <p>20 MR. HAYES:</p> <p>21 Q. Well, you know, I think this is the dilemma of</p> <p>22 the judge in all cases. At some point you're</p> <p>23 thrown back on yourself, aren't you? And in</p> <p>24 some respects you won't have any competing</p> <p>25 evidence or evidence that controverts the</p>	<p>1 evidence in chief that's provided by the</p> <p>2 utility, in some cases, you will. In those</p> <p>3 cases you've got a couple of choices, who</p> <p>4 sounds more credible or whose case is more</p> <p>5 compelling. In other instances you will</p> <p>6 simply have the cross-examination of counsel</p> <p>7 which will challenge some of the proposals or</p> <p>8 assertions of the witness, and that will</p> <p>9 hopefully give you some sense of whether what</p> <p>10 you're hearing is compelling. And I don't</p> <p>11 know if there's any easy answer to that. I</p> <p>12 mean, at the end of the day this is all about</p> <p>13 not how many pages you file, but what's the</p> <p>14 substance of those pages.</p> <p>15 CHAIRMAN:</p> <p>16 Q. Um-hm.</p> <p>17 MR. HAYES:</p> <p>18 Q. And that's really when I come back to the VHF</p> <p>19 radio project, that's one of the problems, I</p> <p>20 guess, Newfoundland Power had with it, you've</p> <p>21 got a business case that's 20 odd pages long,</p> <p>22 you've got a consultant's report that goes</p> <p>23 into intimate detail, but yet, Hydro turns</p> <p>24 around and says we haven't done detailed</p> <p>25 engineering on this yet, we haven't really</p>
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<p>1 sized the system, we're not sure of the</p> <p>2 technology we're going to use, and this is all</p> <p>3 in the context of systems that even on the</p> <p>4 public service systems, the lower standard of</p> <p>5 systems varied by approximately \$2 million.</p> <p>6 That's a lot of variability in cost. It is</p> <p>7 Newfoundland Power's view that those decisions</p> <p>8 ought to be made at an earlier stage, before</p> <p>9 you come in and ask for the full price tag.</p> <p>10 So it's really a question about, as I say, the</p> <p>11 substance of the filing, not the weight of the</p> <p>12 paper. And it's not an easy thing, it's not</p> <p>13 an easy job; your job is a difficult one.</p> <p>14 CHAIRMAN:</p> <p>15 Q. Um-hm.</p> <p>16 MR. HAYES:</p> <p>17 Q. And I don't think I can provide more than</p> <p>18 that.</p> <p>19 CHAIRMAN:</p> <p>20 Q. Thank you, Mr. Hayes. We've spent a lot of</p> <p>21 time during this hearing talking about least</p> <p>22 cost. We haven't spent a lot of time talking</p> <p>23 about reliable service in terms of the</p> <p>24 alternatives. And if you take the VHF system</p> <p>25 as an example, we've talked about least cost,</p>	<p>1 we've talked about whether or not it's</p> <p>2 required in the present circumstances that we</p> <p>3 have within Hydro, whether or not the system</p> <p>4 needs to be replaced in whole or in part. By</p> <p>5 using that only as an example I don't recall</p> <p>6 in my reading of the evidence and the argument</p> <p>7 any suggestion with respect to whether or not</p> <p>8 that's going to provide reliable service down</p> <p>9 the road, or turn it around, whether or not</p> <p>10 it's not going to provide reliable service</p> <p>11 down the road. We seem to have taken a lot of</p> <p>12 time talking about the cost is what my point</p> <p>13 is.</p> <p>14 MR. HAYES:</p> <p>15 Q. Well, I think perhaps from the utility's and</p> <p>16 other utility's perspective that's perhaps our</p> <p>17 role in these proceedings is to challenge</p> <p>18 those -</p> <p>19 CHAIRMAN:</p> <p>20 Q. Points.</p> <p>21 MR. HAYES:</p> <p>22 Q. The assumptions of the case for the Board's</p> <p>23 benefit. And in many cases it comes down to</p> <p>24 engineering judgment, in many cases</p> <p>25 Newfoundland Power will be satisfied. And at</p>

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<p>1 MR. HAYES:</p> <p>2 Q. .... the end of the day the answer, I mean,</p> <p>3 you probably can't be absolutely certain, but</p> <p>4 you can be reasonably comfortable that what</p> <p>5 the engineering judgment is telling you,</p> <p>6 because these people are professional people,</p> <p>7 is reasonable and that it is justified in</p> <p>8 terms of reliable service. You probably won't</p> <p>9 get it dead on in all cases, but over time I</p> <p>10 think you get a sense of it. And you said</p> <p>11 you've been at it a long time, and I think</p> <p>12 that helps. I wouldn't envy you if this was</p> <p>13 your first proceeding.</p> <p>14 CHAIRMAN:</p> <p>15 Q. Yeah, when I said that there hasn't been a lot</p> <p>16 of discussion on the element of reliable</p> <p>17 service, I didn't mean to imply that Hydro's</p> <p>18 application avoided that issue, because it</p> <p>19 didn't. But the challenge to the application</p> <p>20 is in the area of cost, in my opinion, more so</p> <p>21 than in the area of reliability. And I can't</p> <p>22 help but read that section in whole and that</p> <p>23 is in terms of the amalgamation, if you like,</p> <p>24 of the reliable services aspect with the least</p> <p>25 cost aspect. And when I see the argument, and</p>	<p>1 I've noticed it in other arguments as well, by</p> <p>2 the Industrial Customers that least cost is</p> <p>3 used in talking about some of the projects but</p> <p>4 there's no emphasis, at all, on reliable</p> <p>5 service, and you've done the same thing</p> <p>6 throughout your argument. And I'll point you</p> <p>7 to page 1, I think it was--let me find it. If</p> <p>8 you go to page 1 of 13 at line 19, you said</p> <p>9 that "The Hydro's proposals is not the least</p> <p>10 cost of the alternatives presented." Now,</p> <p>11 while I might agree with that, I also in the</p> <p>12 back of my mind have to insert reliable</p> <p>13 service there and I say, well, Mr. Hayes</p> <p>14 forgot to include that.</p> <p>15 MR. HAYES:</p> <p>16 Q. And I guess if I had added the words</p> <p>17 "alternatives consistent with reliable</p> <p>18 service", I think it would still, I think,</p> <p>19 would address your concern that I didn't</p> <p>20 mention it, but I think it's implied in any</p> <p>21 event, you know, by the whole of our</p> <p>22 submission.</p> <p>23 CHAIRMAN:</p> <p>24 Q. Were you -</p> <p>25 MR. HAYES:</p>
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<p>1 Q. I don't believe there was a suggestion that</p> <p>2 the lower cost alternative was not consistent</p> <p>3 with reliable service. It was acknowledged</p> <p>4 that it did provide the functionality that was</p> <p>5 required.</p> <p>6 CHAIRMAN:</p> <p>7 Q. No, I guess I may have anticipated that you</p> <p>8 would have spent more time on reliable service</p> <p>9 mainly because of the fact you rely on Hydro</p> <p>10 to provide you with what, 70 percent of your -</p> <p>11 MR. HAYES:</p> <p>12 Q. I think it's higher than that, yes.</p> <p>13 CHAIRMAN:</p> <p>14 Q. Well, 80 percent or whatever it is, it's a</p> <p>15 substantial number. And I would think that</p> <p>16 reliable service is an important a factor, if</p> <p>17 not more important, than what least cost is.</p> <p>18 Is that--am I off on the wrong tangent?</p> <p>19 MR. HAYES:</p> <p>20 Q. No. I certainly wouldn't want to suggest,</p> <p>21 though, that one is more important than the</p> <p>22 other. I think they're both important, but I</p> <p>23 think you have to strike a balance. That's</p> <p>24 always a challenge with utilities and it's a</p> <p>25 challenge for the Board, but I think you do</p>	<p>1 have to balance those two. I would suggest to</p> <p>2 you that if Newfoundland Power thought or was</p> <p>3 convinced based on the record before the Board</p> <p>4 that the VHF radio system was not going to</p> <p>5 provide reliable service tomorrow, we would</p> <p>6 not be contesting this proposal.</p> <p>7 CHAIRMAN:</p> <p>8 Q. Okay. Anything else?</p> <p>9 MR. HAYES:</p> <p>10 Q. No.</p> <p>11 CHAIRMAN:</p> <p>12 Q. Thank you. Are we ready to proceed with the</p> <p>13 Industrial Customer?</p> <p>14 (11:04 a.m.)</p> <p>15 HENLEY ANDREWS, Q.C.:</p> <p>16 Q. Yes, Mr. Chairman.</p> <p>17 CHAIRMAN:</p> <p>18 Q. Okay. Ms. Henley Andrews, are you going</p> <p>19 first?</p> <p>20 HENLEY ANDREWS, Q.C.:</p> <p>21 Q. Yes, Mr. Chairman. I do apologize for running</p> <p>22 out a little while ago, but that was</p> <p>23 unavoidable.</p> <p>24 CHAIRMAN:</p> <p>25 Q. That's fine. I was about to run out myself.</p>

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<p>1 HENLEY ANDREWS, Q.C.:</p> <p>2 Q. Mr. Chairman, the Industrial Customers look at</p> <p>3 the capital budgets quite differently than</p> <p>4 Hydro and to some extent look at it</p> <p>5 differently from Newfoundland Power. The</p> <p>6 issue for the Board, as far as we are</p> <p>7 concerned, is whether the Board has enough</p> <p>8 information before it to make a decision as to</p> <p>9 whether proposed projects are at the lowest</p> <p>10 possible cost consistent with reliable</p> <p>11 service. And I note in your comment before to</p> <p>12 Mr. Hayes that you were focusing on the</p> <p>13 reliable service issue as well as the lowest</p> <p>14 possible cost. And I would point out that if</p> <p>15 a detailed reading of our own submission would</p> <p>16 indicate that at the end of most of the</p> <p>17 submissions, for example, page 13, with</p> <p>18 respect to the Excitor at Bay d'Espoir, page</p> <p>19 17 with respect to the Governor controls, page</p> <p>20 18 with respect to the unit 2 Excitor at Cat</p> <p>21 Arm and a variety of other places we refer not</p> <p>22 only to the least possible cost alternative,</p> <p>23 but we do also refer to consistent with</p> <p>24 reliable service. And I think you'll probably</p> <p>25 recall from the 2001 hearing that the evidence</p>	<p>1 from our own customers at that hearing</p> <p>2 indicated that reliability of service was</p> <p>3 something that was of great importance to the</p> <p>4 Industrial Customers, in particular, to North</p> <p>5 Atlantic Refining.</p> <p>6 So, what we have to look at in dealing</p> <p>7 with the capital budget is whether the</p> <p>8 evidence that's been presented meets the tests</p> <p>9 set out in the relevant legislation and the</p> <p>10 relevant regulations. And when you look at</p> <p>11 that, you'll find a discussion of the capital</p> <p>12 budget framework starting at page 2 of our</p> <p>13 submission. And like Hydro we refer to</p> <p>14 Section 3(b) of the Electrical Power Control</p> <p>15 Act, 1994. And we agree with you, chairman,</p> <p>16 that there's nothing in the Public Utilities</p> <p>17 Act specifically dealing with how to go about</p> <p>18 evaluating a Capital Budget Application like</p> <p>19 there is with respect to a Rate Application.</p> <p>20 However, there is guidance provided to the</p> <p>21 Board to some extent in Section 3(b) of the</p> <p>22 Electrical Power Control Act, and that is that</p> <p>23 all sources and facilities for the production,</p> <p>24 transmission and distribution of power in the</p> <p>25 province should be managed and operated in a</p>
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<p>1 manner that will result in the most efficient</p> <p>2 production transmission and distribution, but</p> <p>3 will result in consumers in the province</p> <p>4 having equitable access to an adequate supply</p> <p>5 of power and that will result in power being</p> <p>6 delivered to customers in the province at the</p> <p>7 lowest possible cost consistent with reliable</p> <p>8 service. And we've emphasized the lowest</p> <p>9 possible cost consistent with reliable service</p> <p>10 in bolding it and underlining it on page 3 of</p> <p>11 our submission.</p> <p>12 In looking at the criteria that are set</p> <p>13 out in Section 3(b) of the EPCA make no doubt</p> <p>14 that some of those criteria require a level of</p> <p>15 judgment on the part of the Board. For</p> <p>16 example, "efficient" in subsection 1,</p> <p>17 "efficient" is a relative term. Efficient can</p> <p>18 have different meanings to different people.</p> <p>19 And "equitable" in subsection 2 is also a</p> <p>20 subjective standard to some degree.</p> <p>21 Similarly, reliable service in subsection 3 is</p> <p>22 expressed in terms that could basically be</p> <p>23 described as subjective. In most situations</p> <p>24 in interpreting legislation of this nature,</p> <p>25 and you will find it, in fact, in back of the</p>	<p>1 Electrical Power Control Act itself or in the</p> <p>2 Public Utilities Act, and I can't remember</p> <p>3 which right off the top of my head, but</p> <p>4 there's a provision there as well as in the</p> <p>5 Interpretation Act in the province that</p> <p>6 legislation to be given its broadest possible</p> <p>7 meaning, etcetera, etcetera. And in most</p> <p>8 cases where there's a level of subjectivity</p> <p>9 implied by the legislation the test is one of</p> <p>10 reasonableness. In this case, when you look</p> <p>11 in subsection 1 it says "most efficient", so</p> <p>12 the reasonableness test is quantified to some</p> <p>13 extent by the fact that you are to look at the</p> <p>14 most efficient. Equitable access means fair,</p> <p>15 if you look at the dictionary definition. You</p> <p>16 probably have to say in judging it reasonably</p> <p>17 fair, what is reasonably fair. And similarly,</p> <p>18 when you're looking at reliable service,</p> <p>19 because different customers will have</p> <p>20 different expectations with respect to</p> <p>21 reliability the issue becomes one of what is a</p> <p>22 reasonably reliable service, and that can be</p> <p>23 looked at in the context of what different</p> <p>24 customers need and it can also be looked at in</p> <p>25 the context of what are the standards that</p>

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<p>1 HENLEY ANDREWS, Q.C.:</p> <p>2 Q. .... other utilities apply in looking at the</p> <p>3 reliability of their service and the level of</p> <p>4 reliability that they provide. But I think we</p> <p>5 would all have to agree that when it comes to</p> <p>6 the issue of cost, the legislature has been</p> <p>7 extremely specific. It not only says "lowest</p> <p>8 cost", it says "lowest possible cost</p> <p>9 consistent with reliable service".</p> <p>10 In looking at Hydro's capital projects</p> <p>11 and its evidence, not only its direct evidence</p> <p>12 and pre-filed evidence, but also the evidence</p> <p>13 that has been given on cross-examination one</p> <p>14 of the questions that you should ask</p> <p>15 yourselves is whether there is any evidence</p> <p>16 that the alternatives to the particular</p> <p>17 options preferred by Hydro have been shown to</p> <p>18 be unreliable or potentially to result in</p> <p>19 unreliable service. Now, there is two</p> <p>20 projects that are really good example of that.</p> <p>21 If you look at our submission starting at page</p> <p>22 10 and dealing with the replacement of the</p> <p>23 unit No. 7 Excitor at Bay d'Espoir, we object</p> <p>24 to that project and we object to it on the</p> <p>25 basis that the testimony. If you go to page</p>	<p>1 12, is that Hydro has not investigated the</p> <p>2 cost of a re-engineered field temp simulation</p> <p>3 card, nor has it attempted to get a spare</p> <p>4 field temp simulation card from other sources.</p> <p>5 And in this particular case we say that Hydro</p> <p>6 has not provided information to establish that</p> <p>7 replacing the No. 7 Excitor at Bay d'Espoir is</p> <p>8 the least possible cost option for reliable</p> <p>9 service.</p> <p>10 But when you look at our position with</p> <p>11 respect to the gate hoist at Ebbegunbaeg which</p> <p>12 is the next item, we acknowledge that there is</p> <p>13 a problem with the gate hoist. We agree that</p> <p>14 Hydro has provided sufficient evidence to</p> <p>15 indicate that the gate hoist as it presently</p> <p>16 exists may not be consistent with reliable</p> <p>17 service. Our objection when you look at the</p> <p>18 discussion is--starts at page 14, and we state</p> <p>19 at page 14 that the Industrial Customers don't</p> <p>20 question that high reliability with respect to</p> <p>21 the operation of the gate is important, but</p> <p>22 that notwithstanding that we have difficulty</p> <p>23 with the proposal because there has been no</p> <p>24 information provided with respect to the cost</p> <p>25 of maintaining the gate over the next three to</p>
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<p>1 five years and Hydro hasn't investigated the</p> <p>2 cost of replacing the existing gate hoist with</p> <p>3 another screw stem hoist, although there is</p> <p>4 evidence from Hydro's witnesses that screw</p> <p>5 stem hoists are still in use. And that--it's</p> <p>6 the inability to evaluate whether what Hydro</p> <p>7 has put forward is the least possible cost</p> <p>8 option consistent with reliable service is our</p> <p>9 objection to the gate at Ebbegunbaeg whereas</p> <p>10 in some of the other projects to which we have</p> <p>11 objected we don't believe that there has been</p> <p>12 evidence provided to indicate that there is a</p> <p>13 reliability issue.</p> <p>14 So, when you look at the statute, the use</p> <p>15 by the legislature of lowest possible cost</p> <p>16 consistent with reliable service, in our</p> <p>17 submission, indicates that there are two</p> <p>18 tests: The project has to be consistent with</p> <p>19 reliable service required for reliability, and</p> <p>20 it has to be at the lowest possible cost</p> <p>21 consistent with that reasonable level of</p> <p>22 reliability.</p> <p>23 I don't want to address each project in</p> <p>24 detail, because we've already done that in our</p> <p>25 submission. What we propose to address is the</p>	<p>1 fundamental issues raised by many of the</p> <p>2 projects. The Board does have to strike a</p> <p>3 balance when addressing capital budgets and</p> <p>4 the Board has to be cognisant of the fact that</p> <p>5 capital budgets have real costs for consumers.</p> <p>6 But if the Board is satisfied that Hydro has</p> <p>7 met the test set out in the EPCA so that the</p> <p>8 customer is getting the least possible cost</p> <p>9 imposed upon it and that that cost is</p> <p>10 consistent with providing a reasonable level</p> <p>11 of reliability to the customer, then in those</p> <p>12 circumstances the project should generally be</p> <p>13 approved.</p> <p>14 We disagree with the submission by</p> <p>15 Newfoundland Power that sometimes you don't</p> <p>16 have to take the lowest possible cost</p> <p>17 alternative. That's not what the Act says.</p> <p>18 It doesn't say sometimes. It's the lowest</p> <p>19 possible cost alternative consistent with</p> <p>20 reliable service.</p> <p>21 There's no doubt that the capital budget</p> <p>22 process over the last number of years has been</p> <p>23 an evolving process. And when it comes to</p> <p>24 Hydro, which serves the Industrial Customers,</p> <p>25 Hydro's capital budgets weren't subject to</p>

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<p>1 HENLEY ANDREWS, Q.C.:</p> <p>2 Q. .... approval until legislative change in</p> <p>3 1996. The Industrial Customers, through their</p> <p>4 participation in the 2001 rate hearing which</p> <p>5 dealt with both rates for 2002 and the 2202</p> <p>6 capital budget developed concerns with respect</p> <p>7 to Hydro's capital budget process, and it is</p> <p>8 that issue which has caused the Industrial</p> <p>9 Customers to become more involved in the</p> <p>10 capital budget process, because the capital</p> <p>11 budgets have to meet the legislative standard,</p> <p>12 and we are concerned that what is being put</p> <p>13 forward to the Board does not always meet that</p> <p>14 standard.</p> <p>15 The counsel for Newfoundland and Labrador</p> <p>16 Hydro has suggested that when it comes to</p> <p>17 things like the Technology Conference, that</p> <p>18 this is something of which the Industrial</p> <p>19 Customers ought to have been aware.</p> <p>20 (11:20 a.m.)</p> <p>21 Generally in law there is a fixed</p> <p>22 understanding that a party not involved in a</p> <p>23 particular piece of litigation is not bound by</p> <p>24 the decision in that litigation. Our concern</p> <p>25 with respect to the technical conference was</p>	<p>1 that it was presented to us during the</p> <p>2 Settlement Conference that we ought to be</p> <p>3 bound by the decision of the Board in the</p> <p>4 Newfoundland Power matter to drop the issues--</p> <p>5 I can't say that we ought to be, but whether</p> <p>6 we should consider dropping our issues with</p> <p>7 respect to Hydro's capital budgeting process</p> <p>8 in favour of waiting for the outcome of a</p> <p>9 technical conference, and that was of concern</p> <p>10 to us. I don't think that there's any</p> <p>11 obligation on any counsel to read every single</p> <p>12 procedural order that comes out of a preceding</p> <p>13 matter, and we weren't aware of it and we felt</p> <p>14 that if it was the intention of the Board to</p> <p>15 have the issue of process be dealt with at the</p> <p>16 technical conference and to ask us to</p> <p>17 participate in that, it would have been better</p> <p>18 had we been asked at the very beginning of the</p> <p>19 hearing process and not after we had hired a</p> <p>20 witness and filed written testimony with</p> <p>21 respect to the issues.</p> <p>22 Now, Ms. Greene suggested this morning in</p> <p>23 her argument that what--that when it comes to</p> <p>24 the burden of proof, that we are suggesting</p> <p>25 that the Board is biased. And in fact, that</p>
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<p>1 is not what we are suggesting. What we are</p> <p>2 suggesting is that perhaps the Board has been</p> <p>3 applying the wrong burden of proof and that it</p> <p>4 is our feeling and our observation as we look</p> <p>5 at the process and read the decisions that the</p> <p>6 assumption is that Hydro must be right unless</p> <p>7 it's proven otherwise. And yet, the role of</p> <p>8 the Board, as defined in the Public Utilities</p> <p>9 Act and as defined in the EPCA, is to approve</p> <p>10 or disapprove Hydro's Capital Budget because</p> <p>11 Hydro is not permitted to proceed with a</p> <p>12 capital project over \$50,000 without the prior</p> <p>13 approval of the Board. So if the Board</p> <p>14 doesn't give the approval, Hydro can't proceed</p> <p>15 with it. And if Hydro did proceed with it,</p> <p>16 then presumably one of us would be here at the</p> <p>17 next rate hearing arguing that the costs</p> <p>18 associated with that particular project</p> <p>19 shouldn't be included in rate base.</p> <p>20 So the issue for us is the issue with</p> <p>21 respect to burden of proof, and the normal</p> <p>22 civil test for burden of proof is on the</p> <p>23 balance of probabilities. Is it more likely</p> <p>24 than not that Hydro has provided evidence to</p> <p>25 satisfy the Board, and that is, in fact, what</p>	<p>1 you're there to determine. We wanted to raise</p> <p>2 the issue because we felt that it is a</p> <p>3 legitimate legal question, the issue of the</p> <p>4 burden of proof, and we also raised the issue</p> <p>5 because it is our submission that the burden</p> <p>6 is not on the intervenors to disprove Hydro's</p> <p>7 case. The burden is on Hydro to prove, on the</p> <p>8 balance of probabilities, that each individual</p> <p>9 project meets the test, and that its Capital</p> <p>10 Budget, as a whole, meets the test. The</p> <p>11 intervenors' role is to raise questions and</p> <p>12 ask questions relative to Hydro's position to</p> <p>13 determine or to help the Board determine the</p> <p>14 reasonableness of Hydro's position, not to</p> <p>15 disprove any particular project.</p> <p>16 Now it is totally irrelevant that this is</p> <p>17 Hydro's second lowest capital budget, and it</p> <p>18 is totally irrelevant that Hydro's average</p> <p>19 capital budget has been \$38.3 million. It is</p> <p>20 also irrelevant that this is the most</p> <p>21 extensively documented capital budget to date.</p> <p>22 We are not concerned with having volumes and</p> <p>23 volumes of justification. It's just as much</p> <p>24 trouble and expense for our clients as it is</p> <p>25 for anybody else. Our issue is with respect</p>

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<p>1 HENLEY ANDREWS, Q.C.:</p> <p>2 Q. .... to the quality, not the quantity, of the</p> <p>3 information that is provided to the Board.</p> <p>4 The Board has given some guidance with</p> <p>5 respect to capital budgets, and that guidance</p> <p>6 is given, as Hydro's pointed out, in P.U. 7</p> <p>7 and in P.U. 29. However, the fact that the</p> <p>8 Board has given some guidance to Hydro doesn't</p> <p>9 let Hydro off the hook. It also doesn't</p> <p>10 transfer the burden to the Board. And you</p> <p>11 will recall that Mr. Barreca raised some</p> <p>12 concerns with respect to the legislative</p> <p>13 process itself, which is where the Board</p> <p>14 approves on the basis that it effectively</p> <p>15 shifts responsibility from Hydro to the Board</p> <p>16 and that it becomes a real problem if somebody</p> <p>17 is saying well, this is a reliability issue or</p> <p>18 this is safety issue or this is an</p> <p>19 environmental issue, and then the Board</p> <p>20 doesn't approve the project, and there is a</p> <p>21 problem, who's going to take the blame. And</p> <p>22 that's unfortunate, but that's the way the</p> <p>23 legislation is written. In other</p> <p>24 jurisdictions, as was pointed out, in most</p> <p>25 other jurisdictions, there isn't pre-approval</p>	<p>1 of the Capital Budget, but Capital Budgets or</p> <p>2 major capital items, depending on the</p> <p>3 circumstances, are dealt with in the context</p> <p>4 of the rate hearings and as to whether they</p> <p>5 will be--whether all or a portion will be</p> <p>6 included in rate base.</p> <p>7 But having said that, it's not enough for</p> <p>8 Hydro to say "this is a reliability issue."</p> <p>9 Hydro has to tell you how it's a reliability</p> <p>10 issue, to what extent it's a reliability issue</p> <p>11 and whether it's a real liability issue or</p> <p>12 only a theoretical, improbable one. So that</p> <p>13 the Board can make a reasoned determination of</p> <p>14 the nature of the risk.</p> <p>15 Now the fact that the Board has issued</p> <p>16 some guidance doesn't mean that Hydro doesn't</p> <p>17 have to meet the legislative requirements.</p> <p>18 Hydro still has to meet the legislative</p> <p>19 requirements. And one of the things that is</p> <p>20 important is that viable alternatives be</p> <p>21 evaluated. Now viable alternatives are</p> <p>22 alternatives that are consistent with reliable</p> <p>23 service. So it's not every alternative that</p> <p>24 has to be evaluated. It's the alternatives</p> <p>25 that are consistent with reliable service.</p>
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<p>1 And in most of the projects, there are</p> <p>2 alternatives that have been acknowledged by</p> <p>3 Hydro's witnesses as consistent with reliable</p> <p>4 service, and the answer that you get, if you</p> <p>5 look carefully through the transcript with</p> <p>6 respect to most of the objections, is well,</p> <p>7 the other alternative is not acceptable to</p> <p>8 Hydro. And why? Why is it not acceptable to</p> <p>9 Hydro? We don't get very much of an</p> <p>10 explanation as to what the problem is with</p> <p>11 reliability. What we get, time and time</p> <p>12 again, is an assertion that Hydro has</p> <p>13 competent, qualified staff who are capable of</p> <p>14 making a decision, and we don't disagree that</p> <p>15 Hydro has competent, qualified engineering</p> <p>16 staff. But the option that they prefer is not</p> <p>17 necessarily the least possible cost option,</p> <p>18 consistent with reliable service, and they</p> <p>19 have to demonstrate that it is.</p> <p>20 One of the greatest red herrings that has</p> <p>21 come up in the last three Hydro Capital Budget</p> <p>22 hearings is the issue of micromanaging. The</p> <p>23 first thing we have to do when we talk about</p> <p>24 micromanaging is define what we mean by it,</p> <p>25 because the Board has the job to oversee</p>	<p>1 Hydro's Capital Budget process and as Hydro</p> <p>2 pointed out in its review of the legislation,</p> <p>3 Section 4 of the EPCA imposes that obligation</p> <p>4 specifically upon the Board and to do it in</p> <p>5 accordance with generally accepted accounting</p> <p>6 practices within the utility industry. Now if</p> <p>7 the Legislature directed the Board to oversee</p> <p>8 and to have final word with respect to</p> <p>9 approval of capital projects, then clearly the</p> <p>10 Legislature contemplated that the Board could</p> <p>11 question, to some degree, the management of</p> <p>12 the utility, and that goes without saying,</p> <p>13 both with respect to rate review, as well as</p> <p>14 with respect to capital.</p> <p>15 (11:34 a.m.)</p> <p>16 Now micromanaging, by its nature, by</p> <p>17 terminology, is very different from managing.</p> <p>18 So when we are talking about, an example would</p> <p>19 be operating costs associated with let's say</p> <p>20 personnel costs, micromanaging would be the</p> <p>21 Board getting in there and saying you should</p> <p>22 have this particular person and you shouldn't</p> <p>23 have that particular person, and you should</p> <p>24 have this, but not that person. But the Board</p> <p>25 can certainly say to Hydro, as it did in the</p>



1 HENLEY ANDREWS, Q.C.:

2 Q. .... decision out of the 2001 hearing, "we're  
3 going to give you a productivity allowance and  
4 you manage your business, you make the  
5 decisions within the framework of what we have  
6 approved as to who's the most important, so  
7 that you come in line with that budget."  
8 Well, micromanaging, I would submit, in the  
9 Capital Budget process is getting into it to  
10 the level that you're saying how many screws,  
11 how many bolts, and I'm bringing it down--I'm  
12 exaggerating, I will acknowledge on that. But  
13 there is, I think, a big distinction to be  
14 drawn between the Board's role and being  
15 distracted by the use of the term  
16 'micromanaging'.

17 Hydro referred to changing the rules of  
18 the game or the ever-changing rules of the  
19 game. The statute has not changed since 2001.  
20 The legislation concerning the Capital Budget  
21 has not changed. The rules haven't changed.  
22 The guidelines have changed to some degree.  
23 But that's to be expected because when there  
24 is a Capital Budget with no intervenors,  
25 you're going to have a very different dynamic

1 than a Capital Budget Application when there  
2 are intervenors.

3 With respect to the technical conference,  
4 the Industrial Customers have no objection at  
5 all to having a technical conference. But,  
6 having said--that deals with the issues of  
7 standards and those types of things. But  
8 having said that, this hearing still has to be  
9 dealt with on the basis of what's contained in  
10 the legislation and the guidelines or tests  
11 that come out of a technical conference still  
12 have to comply with the legislative framework.

13 This is the second time that Hydro has  
14 referred in its closing argument to the  
15 position of the Industrial Customers being the  
16 scatter-gun approach, and we take great  
17 offence to that. Mr. Hutchings and I have  
18 been in the litigation area for a long time,  
19 and never have I been accused before of taking  
20 unnecessary or an unreasonable position in any  
21 piece of legislation or any piece of  
22 litigation. It's a personal attack on Mr.  
23 Hutchings and on me, which is unwarranted. In  
24 addition, the concept of public hearings is  
25 that the parties have the opportunity to

1 explore the issues and to get answers. If  
2 Hydro doesn't like the public hearing process,  
3 then it should talk to its shareholder and try  
4 and get the legislation changed. But the  
5 bottom line here is that we believe that we  
6 have participated in what we hope is a  
7 constructive and productive way to improve the  
8 processes employed by Hydro and to help our  
9 customers remain viable in this Province.

10 The question before--we called expert  
11 evidence in this hearing at considerable cost,  
12 and we called that expert evidence because we  
13 were concerned that our message was not  
14 getting through, with respect to the  
15 appropriate tests and with respect to the type  
16 of material that Hydro has been submitting.  
17 The fact that Hydro has experienced  
18 professional staff doesn't mean that they  
19 always choose the least-cost alternative,  
20 consistent with reliable service. And when  
21 you look at the budget, you have to take it in  
22 that context.

23 And I'm now going to pass the microphone  
24 over to Mr. Hutchings, who's going to deal  
25 specifically with the argument in the context

1 of the IS&T projects and also, some of the  
2 transmission.

3 CHAIRMAN:

4 Q. Okay. I'm just trying to think when we had  
5 the last break. I think it was around 10:15.  
6 We have to hear from Mr. Hutchings, Mr.  
7 Kennedy and back to Ms. Greene. Yes, I think  
8 if everyone is okay with it, we'll go ahead  
9 with Mr. Hutchings now before the break.

10 HUTCHINGS, Q.C.

11 Q. That's fine with me, Mr. Chair. Thank you.

12 CHAIRMAN:

13 Q. Okay. Thank you. Carry on, Mr. Hutchings.

14 HUTCHINGS, Q.C.:

15 Q. Thank you, sir. Mr. Chair, obviously we don't  
16 need to repeat everything that's in the  
17 written argument that has been filed in  
18 respect of the particular projects and subject  
19 matters that I've dealt with. I'd just  
20 highlight a couple of points and largely in  
21 relation to items that counsel for Hydro has  
22 referred to earlier.

23 Very briefly, with respect to the  
24 replacement of insulators in B-27, this item  
25 is dealt with at page 30 of our submission,

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. .... and counsel for Hydro refers to, you</p> <p>3 know, again, lack of evidence having been led</p> <p>4 on the subject by the Industrial Customers and</p> <p>5 questioning and so on. It's perhaps a useful</p> <p>6 little illustration of the point that we're</p> <p>7 trying to make here. At page 75 of the</p> <p>8 transcript of July 11th, 2003, I asked Mr.</p> <p>9 Reeves if Hydro had worked out the probability</p> <p>10 of there being two defective insulators in a</p> <p>11 string, because that's the only time--there</p> <p>12 have to be at least two, and my impression</p> <p>13 from Mr. Reeves' evidence was that usually you</p> <p>14 had to have more than two before you really</p> <p>15 got to a problem. And Hydro had not worked</p> <p>16 out, and he said that they had not worked out</p> <p>17 the probability of there being more than two</p> <p>18 insulators defective in a single string. So</p> <p>19 we propose then a logical response. Six</p> <p>20 percent doesn't mean anything. Six percent of</p> <p>21 the insulators that were tested were found to</p> <p>22 be defective. Is that an enormous problem or</p> <p>23 is that not really a problem at all? You need</p> <p>24 to have the additional information in order to</p> <p>25 know whether, at this stage, you need to</p>	<p>1 replace those insulators in order to ensure</p> <p>2 reliable service. There isn't a least-cost</p> <p>3 issue with respect to these things. I mean,</p> <p>4 we didn't get into, you know, whether you can</p> <p>5 get an insulator that costs four cents more</p> <p>6 here or there.</p> <p>7 The issue is do these things need to be</p> <p>8 replaced, and for Hydro simply to come in and</p> <p>9 say "well, six percent of them are defective."</p> <p>10 If six percent of defibrillators being used in</p> <p>11 heart surgery are defective, I think we got a</p> <p>12 big problem. If six percent of the bubble gum</p> <p>13 machines in drug stores are defective, I don't</p> <p>14 think anybody much cares. What we've got to</p> <p>15 do is bring this down to something realistic</p> <p>16 that the Board can make a decision on. It's</p> <p>17 not sufficient, as we've said, for Hydro to</p> <p>18 look at this and say "well, this is our</p> <p>19 decision, this is our judgment." The Board</p> <p>20 has to have evidence before it in this</p> <p>21 particular legal proceeding, the way we're set</p> <p>22 up here, which will allow it to make a</p> <p>23 judgment, and we have made what we suggest is</p> <p>24 a logical interpretation of the evidence</p> <p>25 that's before us, that the probability is very</p>
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<p>1 small that we're going to have a problem with</p> <p>2 these things. When it gets to the point where</p> <p>3 the probability is such that there is a real</p> <p>4 danger, a real threat to reliability</p> <p>5 associated with it, we can deal with the</p> <p>6 subject.</p> <p>7 And this comes back to another theme</p> <p>8 which governments and governmental</p> <p>9 organizations generally have, in my</p> <p>10 experience, a bit of a problem in dealing</p> <p>11 with, and that's the time value of money. If</p> <p>12 you or I go out today to spend money, that</p> <p>13 money costs us more than if we can defer that</p> <p>14 expenditure for another year, except in the</p> <p>15 bargain basement sale type of situation where</p> <p>16 you can get a bargain today, you may be better</p> <p>17 off to spend your money today. But generally</p> <p>18 speaking, the later you can spend your money,</p> <p>19 the less over overall cost is going to be, and</p> <p>20 that principle needs to be applied, in our</p> <p>21 submission, in respect of any rational capital</p> <p>22 budgeting process. Can we defer? Because if</p> <p>23 we defer, we save, and by saving, we comply</p> <p>24 with the mandatory provisions of the</p> <p>25 legislation, relative to lowest possible cost,</p>	<p>1 assuming always that reliability of service,</p> <p>2 at the appropriate level, is not threatened.</p> <p>3 Generally in respect of the information</p> <p>4 systems and technology projects, Mr. Chair,</p> <p>5 you address in your questions, and</p> <p>6 particularly in discussion with Mr. Hayes, a</p> <p>7 problem which is common to all adjudicative</p> <p>8 tribunals in dealing with expert evidence.</p> <p>9 For a long time, there was great concern in</p> <p>10 all Courts and tribunals that experts would</p> <p>11 simply overwhelm the trier of fact, whether it</p> <p>12 be a jury or a judge or a board like this,</p> <p>13 that an expert would simply come in and, with</p> <p>14 all the knowledge and experience at his or her</p> <p>15 disposal, just wow the Board and say "well,</p> <p>16 we've heard from the greatest expert in the</p> <p>17 world. What can we possibly do?" That's a</p> <p>18 concern that has diminished over the years and</p> <p>19 there was a great debate, I'm sure that Mr.</p> <p>20 Martin is familiar with, of whether or not an</p> <p>21 expert was allowed to give an opinion on the</p> <p>22 ultimate decision which was before the trier</p> <p>23 of fact in any situation. Sometimes--there</p> <p>24 was a time when that wasn't permitted, but</p> <p>25 we've come around and the decisions--the</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. .... problem that you face in respect of</p> <p>3 evaluating this expert testimony is the same</p> <p>4 as in evaluating the testimony of a medical</p> <p>5 expert in a malpractice case or a crime lab</p> <p>6 individual in a criminal case. There are</p> <p>7 basic tests that you look for, in terms of the</p> <p>8 reliability.</p> <p>9 There are experts give opinions based</p> <p>10 upon certain facts, and those facts are like</p> <p>11 any other facts. They can be right or they</p> <p>12 can be wrong. They can be proven or they can</p> <p>13 be not proven. And if the underlying facts</p> <p>14 upon which the opinion is based are not</p> <p>15 proven, then the opinion is of no value.</p> <p>16 Equally, you have to evaluate the witnesses</p> <p>17 that come before you, in terms of their own</p> <p>18 credibility and creditability in the sense of</p> <p>19 are they being completely upfront with you?</p> <p>20 Are they really trying to convey all of the</p> <p>21 specialized knowledge that they have to you?</p> <p>22 Are they answering questions directly? Are</p> <p>23 they helpful to the Board or are they trying</p> <p>24 to control the information that the Board is</p> <p>25 getting? And that is the real issue that I</p>	<p>1 think you have to confront here.</p> <p>2 We've dealt with that at pages 31 through</p> <p>3 32 and on through with specific references</p> <p>4 from pages 32 through 34 of the submission</p> <p>5 that's before you, and I note that nothing in</p> <p>6 Hydro's submission specifically addresses the</p> <p>7 particular examples that have been highlighted</p> <p>8 here. Indeed, in the submission made this</p> <p>9 morning by counsel for Hydro, there is an</p> <p>10 acknowledgement that the issue dealt with at</p> <p>11 the very bottom of page 33 and onto the top of</p> <p>12 page 34, the twelve and a half kilohertz</p> <p>13 requirement, is now not an issue. Hydro</p> <p>14 believes that it is not an issue,</p> <p>15 notwithstanding that their evidence was of a</p> <p>16 new channel requirement and of Hydro being</p> <p>17 required by Industry Canada to use 12.5</p> <p>18 kilohertz radio channels. This is a matter of</p> <p>19 concern if Hydro puts forward certain items as</p> <p>20 being requirements and ultimately</p> <p>21 acknowledges, well, no, they are not actually</p> <p>22 requirements at all. The Board needs to be</p> <p>23 concerned about the quality of the evidence</p> <p>24 that it is receiving.</p> <p>25 And there are other examples. I will</p>
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<p>1 refer you briefly to the transcript of July</p> <p>2 the 9th of 2003, and at page 88 of that</p> <p>3 transcript, from the production panel, I was</p> <p>4 asking if Hydro had looked at any other system</p> <p>5 that does not use a central switch, other than</p> <p>6 Passport, and this question was at line 16 and</p> <p>7 17 of page 88 of the July 9th, 2003</p> <p>8 transcript. The answer was, "no, I'm not</p> <p>9 aware of any other." "You're not aware of any</p> <p>10 other?" "No." Then the question, "have you</p> <p>11 ever heard of a radio access control system</p> <p>12 produced by Zetron?" and the acknowledgement</p> <p>13 of yes, is then that the panel was aware of</p> <p>14 that system. And then when you go to page 129</p> <p>15 of the same transcript, we find out, not only</p> <p>16 was Hydro aware of it, that they had visited</p> <p>17 the factory, that they had visited a customer</p> <p>18 and had a great deal of information about this</p> <p>19 alternative. But the initial answer was that</p> <p>20 the witness was not aware of any other such</p> <p>21 system.</p> <p>22 The concern is, and it is understandable</p> <p>23 sometimes that witnesses may not want to</p> <p>24 overburden the Board with more information</p> <p>25 than the Board needs or can handle. But, when</p>	<p>1 a specific question is asked, "did you look at</p> <p>2 any other systems?" and the answer is no, and</p> <p>3 it is only when a specific system is raised</p> <p>4 that we find out that there was a considerable</p> <p>5 investigation into this other system, the</p> <p>6 Board has to have a concern about the</p> <p>7 reliability and completeness of the</p> <p>8 information that its getting, and this is the</p> <p>9 point toward which our remarks at page 34 and</p> <p>10 following were directed, and we stand by those</p> <p>11 remarks, notwithstanding the exception that</p> <p>12 Hydro's counsel took to them this morning.</p> <p>13 In our position as counsel to our</p> <p>14 clients, we have a duty to bring these points</p> <p>15 to the attention of the Board. This is an</p> <p>16 adversarial legal proceeding and it is our</p> <p>17 duty to put our clients' position to the Board</p> <p>18 in the hope that the Board will have the best</p> <p>19 available information before it and good</p> <p>20 guidance, in terms of how it should resolve</p> <p>21 the conflicts that are presented to it. And</p> <p>22 it is for that reason, and for no other</p> <p>23 reason, that we raise and press before this</p> <p>24 Board or clients' interest in ensuring that</p> <p>25 its electrical service is both reliable and</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. .... provided at least cost. This is a</p> <p>3 legitimate position which arises directly from</p> <p>4 the statute which governs us and Hydro and the</p> <p>5 Board.</p> <p>6 In respect of the evidence of Dr. Barreca</p> <p>7 which was given before the Board, we have</p> <p>8 submitted that he has carefully restricted</p> <p>9 himself to his area of expertise and has</p> <p>10 provided evidence upon which the Board can</p> <p>11 feel comfortable in relying. There is a</p> <p>12 reference made by Ms. Greene to the transcript</p> <p>13 of July the 11th and specifically, Mr.</p> <p>14 Barreca's answer in dealing with his</p> <p>15 familiarity with the mobile radio systems.</p> <p>16 The question was put, I believe, by</p> <p>17 Commissioner Powell, and at line 11 of page 51</p> <p>18 of the transcript of July the 11th, the</p> <p>19 question is "well then, that we're on the</p> <p>20 subject, in relation to the project, and</p> <p>21 bearing in mind what your expertise has been,</p> <p>22 do you have any comment in respect of the age</p> <p>23 of the system that Hydro has in place right</p> <p>24 now and the condition of it? Have you any</p> <p>25 familiarity with that at all?" And the answer</p>	<p>1 was not, as one might conclude from Ms.</p> <p>2 Greene's submission this morning, no. It was</p> <p>3 yes and no. "I'm not familiar with" the</p> <p>4 reference here is VHS mobile radio systems.</p> <p>5 Obviously it's intended to be VHF. And the</p> <p>6 questioning goes on then, you know, "yes, you</p> <p>7 haven't done any examination of the system out</p> <p>8 of what's taken place here in this room?" The</p> <p>9 answer, "No, sir, I haven't. It's a</p> <p>10 telecommunications system with switching</p> <p>11 equipment, controllers, repeaters. It's not</p> <p>12 totally foreign to me. You'd be surprised how</p> <p>13 common the life cycles are between this type</p> <p>14 of equipment and other types of</p> <p>15 telecommunications equipment," and that's</p> <p>16 directed specifically at the question, "do you</p> <p>17 have a comment on the age?" And Mr. Barreca</p> <p>18 says, "let's talk about life cycles. So</p> <p>19 insofar as the age, the equipment is aged,</p> <p>20 there's no doubt about that. It's near its</p> <p>21 average life expectancy. As I've noted, that</p> <p>22 doesn't mean that you need to replace the</p> <p>23 whole thing. But then, it doesn't mean that</p> <p>24 you don't need to replace the whole thing.</p> <p>25 Certainly, you have to take a look at that."</p>
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<p>1 So this actually provides, and it's</p> <p>2 useful that Ms. Greene made the reference, an</p> <p>3 illustration of a direct and balanced, and in</p> <p>4 our submission, fair answer by an expert</p> <p>5 witness with respect to a specific question</p> <p>6 put to him in that regard.</p> <p>7 As indicated, Mr. Chair, I will leave</p> <p>8 much of the balance of the specific projects</p> <p>9 to stand upon the detailed submissions that we</p> <p>10 have made in writing. I would correct the top</p> <p>11 line on the bottom paragraph of page 37, where</p> <p>12 we say "Hydro is apparently paying over</p> <p>13 \$200,000 for one Citrix server." I think the</p> <p>14 reference to the transcript at page 154 of, I</p> <p>15 believe it is the July 9th transcript, will</p> <p>16 show that that number should actually be</p> <p>17 193,000 and odd. So the point remains. I</p> <p>18 just want to make sure that the reference is</p> <p>19 familiar to you.</p> <p>20 The issue of the mobile radio system, I</p> <p>21 think has been dealt with very directly and</p> <p>22 properly by Mr. Hayes in his submissions and</p> <p>23 in the written submission that we have put</p> <p>24 before you.</p> <p>25 In respect of the replacement of the</p>	<p>1 Energy Management System, my recollection, I</p> <p>2 unfortunately don't have the transcripts of</p> <p>3 the last year's Capital Budget, but my</p> <p>4 recollection was that there had been some</p> <p>5 issue there, but whether or not that is in</p> <p>6 fact the case or whether there had been</p> <p>7 questions raised about the Energy Management</p> <p>8 System at the last hearing, it is simply</p> <p>9 impractical for persons in the position of the</p> <p>10 Industrial Customers here to attempt to put</p> <p>11 themselves in a position to provide specific</p> <p>12 expert evidence on something as purely Hydro</p> <p>13 related as the Energy Management Control</p> <p>14 System. Mr. Barreca didn't speak to that, nor</p> <p>15 would he be expected to. And really, it would</p> <p>16 be only--I mean, these are one-of-a-kind</p> <p>17 systems, so that it would be only a specific</p> <p>18 person delegated to examine the specific</p> <p>19 alternatives and having the necessary</p> <p>20 expertise who could offer an opinion to this</p> <p>21 Board which would be useful in that</p> <p>22 connection.</p> <p>23 The issue the Board has to decide though</p> <p>24 is does it have enough information to make a</p> <p>25 balanced judgment about this multimillion</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. .... dollar project when what it has is the</p> <p>3 written record that appears before it at this</p> <p>4 stage. If the Board does, as in our</p> <p>5 submission, it should have some concerns about</p> <p>6 the completeness of the information that is</p> <p>7 being put forward by Hydro in the absence of</p> <p>8 specific cross-examination and background</p> <p>9 information that can draw out additional</p> <p>10 information. It is worthwhile for the Board</p> <p>11 to consider, given the value of that project,</p> <p>12 whether it should direct a specific and</p> <p>13 independent evaluation of it.</p> <p>14 The other issue, Mr. Chair, that I need</p> <p>15 to deal with is the issue of costs in this</p> <p>16 proceeding, and Ms. Greene's assumption is</p> <p>17 correct that the Industrial Customers are</p> <p>18 seeking their costs of participation in this</p> <p>19 hearing. The costs of the hearing are in the</p> <p>20 discretion of the Board under Section 90 of</p> <p>21 the Public Utilities Act and in your</p> <p>22 submission it is appropriate for the Board to</p> <p>23 consider the contribution made by a specific</p> <p>24 party to the proceeding in determining whether</p> <p>25 or not to award costs.</p>	<p>1 The fact of whether or not a particular</p> <p>2 intervening party can or cannot independently</p> <p>3 finance those costs, I think, is of minor</p> <p>4 importance. This Board has, quite clearly,</p> <p>5 held on any number of occasions in the past</p> <p>6 that when it goes to set rates for utilities,</p> <p>7 it doesn't consider the ability to pay.</p> <p>8 Equally in our submission, the ability to</p> <p>9 independently fund as regards costs is not--if</p> <p>10 not a wholly inappropriate criteria and it is</p> <p>11 certainly not a criteria that should be given</p> <p>12 any significant weight in the Board making its</p> <p>13 decision.</p> <p>14 What does need to be considered is the</p> <p>15 Board's duty to act fairly. And that is a</p> <p>16 technical legal phrase that has, sort of,</p> <p>17 taken over the Lexicon from the Rules of</p> <p>18 Natural Justice. Everyone else in this room,</p> <p>19 Mr. Chair, will have their costs recovered out</p> <p>20 of the electricity rates. Our clients do not</p> <p>21 live in a cost plus world. They have nowhere</p> <p>22 to pass costs on. They are price takers in</p> <p>23 their markets and their investment in this is</p> <p>24 coming out of their own pockets. The fairness</p> <p>25 of that situation, I think, must weigh heavily</p>
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<p>1 on the Board in exercising its discretion</p> <p>2 under Section 90 of the Act.</p> <p>3 It is suggested by Ms. Greene that the</p> <p>4 Board ought to consider making an award of</p> <p>5 costs against the Industrial Customers in</p> <p>6 respect of this proceeding. And I guess we do</p> <p>7 have to address that as a serious suggestion.</p> <p>8 Mr. Chair, as you have indicated, these</p> <p>9 hearings have evolved and the procedures for</p> <p>10 dealing with Capital Budgets have evolved</p> <p>11 considerably over time. In my submission,</p> <p>12 that evolution has made these hearings better,</p> <p>13 has made the process better, has made the</p> <p>14 process, as you have said, more transparent</p> <p>15 and more balanced for many years in different</p> <p>16 types of public utilities hearings. There was</p> <p>17 a real danger that the Board or the Board's</p> <p>18 counsel would be cast in the role of</p> <p>19 representing consumers and users of electrical</p> <p>20 services simply because there was nobody else</p> <p>21 there to do that. The Industrial Customers</p> <p>22 have come forward here and have invested time</p> <p>23 and money and effort. The benefits of that do</p> <p>24 no solely accrue to the Industrial Customers.</p> <p>25 On a very broad brush sort of scale, if a</p>	<p>1 particular project that's going to get</p> <p>2 assigned to common costs here is not approved,</p> <p>3 20 percent of the savings will go to the</p> <p>4 Industrial Customers and 80 percent will go</p> <p>5 elsewhere.</p> <p>6 In our submission and this is not a time</p> <p>7 for us to be unduly modest, we are making a</p> <p>8 contribution here and a contribution that</p> <p>9 deserves to be recognized. Mr. Barreca</p> <p>10 doesn't come here for nothing, anymore than</p> <p>11 myself or Ms. Henley Andrews do. And our</p> <p>12 clients are making a very real contribution to</p> <p>13 this process. We are, in my submission,</p> <p>14 making it a more balanced process, making it</p> <p>15 the type of process that is contemplated by</p> <p>16 the legislation where the Board has more</p> <p>17 evidence to consider, has cross-examination,</p> <p>18 has submission, which, in our submission, has</p> <p>19 been made in a reasoned and professional</p> <p>20 manner to the Board. We cannot accept the</p> <p>21 suggestion of counsel for Hydro that our</p> <p>22 participation has been, in any way,</p> <p>23 unreasonable. We have put to the Board legal</p> <p>24 positions on issues such as burden of proof</p> <p>25 and such as the level of information that the</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. .... Board ought to be looking at in terms of</p> <p>3 making its decisions. And we have not gone on</p> <p>4 an un-focused attack on Hydro. As I said at</p> <p>5 the beginning of the 2001 Rate Hearing, our</p> <p>6 clients are bottom line people. They will not</p> <p>7 invest in these proceedings simply for the</p> <p>8 joy, if there is any joy in throwing mud at</p> <p>9 anyone.</p> <p>10 (12:04 p.m.)</p> <p>11 These are intended to be serious</p> <p>12 interventions in which the interests of our</p> <p>13 clients coincide with the provisions of the</p> <p>14 legislation. That is to say the provision of</p> <p>15 reliable service at the least possible cost.</p> <p>16 That's why we're here. It is, in our view,</p> <p>17 inappropriate for Hydro to suggest that our</p> <p>18 participation has been in any way,</p> <p>19 unreasonable and, therefore, inappropriate for</p> <p>20 the Board to consider any award of costs</p> <p>21 against the Industrial Customers. And in our</p> <p>22 view, with respect, Mr. Chair, it is entirely</p> <p>23 appropriate for the Industrial Customers to</p> <p>24 join with Newfoundland Power and when he is</p> <p>25 here, the Consumer Advocate, in having its</p>	<p>1 valuable contribution to these proceedings</p> <p>2 compensated by all of the rate payers of the</p> <p>3 province who, in our submission, do obtain a</p> <p>4 benefit there from. Unless you have further</p> <p>5 questions, Mr. Chair, those are the</p> <p>6 submissions on behalf of the Industrial</p> <p>7 Customers.</p> <p>8 CHAIRMAN:</p> <p>9 Q. Thank you, Mr. Hutchings. Ms. Henley Andrews,</p> <p>10 Commissioner Martin, Commissioner Powell?</p> <p>11 COMMISSIONER POWELL:</p> <p>12 Q. I just have one issue with the Industrial</p> <p>13 Customers. I'd like a little clarification</p> <p>14 on--it's a subject that came up in your final</p> <p>15 submission and a prior submission that, I</p> <p>16 guess, if you turn to page five of your</p> <p>17 submission, you talked about the--the second</p> <p>18 paragraph--the Industrial Customers not being</p> <p>19 aware of guidelines and things. It's been</p> <p>20 talked about a number of times, but I haven't</p> <p>21 heard anybody propose a solution if you</p> <p>22 perceive that there's some injury to the</p> <p>23 Industrial Customers. I mean, how do you,</p> <p>24 yourselves, you're just legal counsel, you're</p> <p>25 employed for a point in time. As a Board,</p>
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<p>1 there is no standing, you fellows will</p> <p>2 disappear. So, the Industrial Customers are</p> <p>3 one of many customers Hydro have had. You're</p> <p>4 only representing four of the Industrial</p> <p>5 Customers and plus there's all these retail</p> <p>6 customers. So, how do you propose if we were</p> <p>7 to think that you were treated unfairly to</p> <p>8 correct that?</p> <p>9 HENLEY ANDREWS, Q.C.:</p> <p>10 Q. I think there's a couple of things. For</p> <p>11 example, I can perhaps given an illustration.</p> <p>12 In our office, a number of years ago, we came</p> <p>13 to the conclusion that when we hired students,</p> <p>14 articling students, they weren't always</p> <p>15 getting the same information as to what</p> <p>16 various policies were on various things. And</p> <p>17 so we put together a handbook and now every</p> <p>18 articling student, when they come to us,</p> <p>19 they're given a handbook and so they know what</p> <p>20 the various policies are and it's consistent.</p> <p>21 The problem faced by the Industrial</p> <p>22 Customers is probably even worse when you look</p> <p>23 at other intervenors who often participate in</p> <p>24 the Rate Hearing process without any counsel</p> <p>25 at all. I mean, these minimum filing</p>	<p>1 requirements aren't published anywhere, as an</p> <p>2 example. So, we realize that the system is</p> <p>3 not going to be perfect, but you know, when</p> <p>4 there are relevant decisions or relevant</p> <p>5 guidelines, things like that developed, if</p> <p>6 they were centralized somewhere so that--and a</p> <p>7 list of them there, so that an intervenor can</p> <p>8 be provided with a list of, you know, things</p> <p>9 adopted by the guidelines and decision adopted</p> <p>10 by the Board that might be relevant, let's</p> <p>11 say, to a Capital Budget Hearing, then that</p> <p>12 will, sort of, raise the awareness level. And</p> <p>13 at that point in time, it would be a question</p> <p>14 of whether you've made the effort to actually</p> <p>15 go in and review it or not.</p> <p>16 So, you know, there are ways to do it,</p> <p>17 but we have to acknowledge that the best</p> <p>18 processes in the world are still going to</p> <p>19 occasionally miss something. The reason why</p> <p>20 we raised the issues was because there seemed</p> <p>21 to be so many at one time. And so that really</p> <p>22 becomes the issue.</p> <p>23 COMMISSIONER POWELL:</p> <p>24 Q. Every order of the Board is listed on the web</p> <p>25 site. So any of the Industrial Customers, if</p>

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<p>1 they want to keep abreast of things -</p> <p>2 HENLEY ANDREWS, Q.C.:</p> <p>3 Q. The orders of the Board are listed, but that's</p> <p>4 a fairly recent thing. The minimum filing</p> <p>5 requirements don't appear anywhere on the web</p> <p>6 site.</p> <p>7 COMMISSIONER POWELL:</p> <p>8 Q. So, it's really that it's a much more narrow</p> <p>9 or focused that what we were led to believe or</p> <p>10 implied.</p> <p>11 HENLEY ANDREWS, Q.C.:</p> <p>12 Q. Well, it can be, but not necessarily. You</p> <p>13 see, the thing is that in a Newfoundland Power</p> <p>14 hearing, the ultimate--like, take Newfoundland</p> <p>15 Power hearing--the ultimate decision in the</p> <p>16 Newfoundland Power hearing is something that</p> <p>17 we would, as a matter of course, take a look</p> <p>18 at. But there are six, seven, sometimes</p> <p>19 twenty other minor rulings during the course</p> <p>20 of any rate hearing. And unless your web site</p> <p>21 indicates the context, like the issue, which</p> <p>22 we do find, for example, in legal cases when</p> <p>23 we go to do our research, we don't have to</p> <p>24 read every single case decided by the Supreme</p> <p>25 Court of Newfoundland. We can go and do a</p>	<p>1 search by topic and find the cases that are</p> <p>2 relevant to the specific topic. And the</p> <p>3 technical conference issue, for example, was</p> <p>4 not something--first of all, the whole concept</p> <p>5 of technical conferences only came up in, sort</p> <p>6 of, the second last set of rules or the third</p> <p>7 last set of rules. And so that, it wouldn't</p> <p>8 have been something that we would have been</p> <p>9 looking for.</p> <p>10 COMMISSIONER POWELL:</p> <p>11 Q. But how do we separate, as a Board, you as a</p> <p>12 lawyer, going to represent the Industrial</p> <p>13 Customers, as opposed to looking beyond you to</p> <p>14 the Industrial Customers because we have no</p> <p>15 knowledge, next time we're at a hearing, there</p> <p>16 may be one or two different people</p> <p>17 representing the Industrial Customers. So,</p> <p>18 therefore, we have to look beyond you.</p> <p>19 HENLEY ANDREWS, Q.C.:</p> <p>20 Q. Exactly and in one sense that was the point</p> <p>21 that I was making at the very beginning which</p> <p>22 is that, you know, the Industrial Customers at</p> <p>23 this point in time are represented by people</p> <p>24 who have been involved in the process. But if</p> <p>25 the Federation of Municipalities wants to make</p>
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<p>1 a presentation or anybody else wants to make a</p> <p>2 presentation, they are at a considerable</p> <p>3 disadvantage if the most relevant things</p> <p>4 aren't brought to their attention because how</p> <p>5 else would they find out about them. And I</p> <p>6 don't think you're going to make it perfect,</p> <p>7 but I think you can make it better.</p> <p>8 COMMISSIONER POWELL:</p> <p>9 Q. It becomes very difficult in terms of Hydro</p> <p>10 and both the Board trying to anticipate a</p> <p>11 problem of a person who, we anticipate, may</p> <p>12 have an interest in the hearing.</p> <p>13 HENLEY ANDREWS, Q.C.:</p> <p>14 Q. I agree.</p> <p>15 COMMISSIONER POWELL:</p> <p>16 Q. Thank you.</p> <p>17 CHAIRMAN:</p> <p>18 Q. Thank you, Mr. Powell. Just one question I</p> <p>19 wanted to put to both of you, whoever wants</p> <p>20 to, can answer it. And I'm getting back to my</p> <p>21 initial question, I guess, to Ms. Greene and</p> <p>22 that is about the evolving process. My</p> <p>23 question is, is it sufficient for the</p> <p>24 Industrial Customers to question the projects</p> <p>25 without bringing forward alternatives? And</p>	<p>1 I'll refer you to three quotes that I picked</p> <p>2 up during both your arguments. One was by Ms.</p> <p>3 Henley Andrews who said that viable</p> <p>4 alternatives have to be evaluated. She said</p> <p>5 that at about 11:30. I don't have any other</p> <p>6 reference. And then Mr. Hutchings said, we</p> <p>7 have to consider the best available</p> <p>8 information and that was at 11:52. And</p> <p>9 thirdly, a few minutes after that, Mr.</p> <p>10 Hutchings, you said it's difficult for the</p> <p>11 Industrial Customers to provide expert</p> <p>12 evidence on some projects. I grant you that.</p> <p>13 But if you take this case as an example, we</p> <p>14 have the evidence of Hydro, we have the</p> <p>15 argument of Hydro, we have some evidence from</p> <p>16 the Industrial Customers in respect of an</p> <p>17 element of Hydro's budget and we have argument</p> <p>18 of the Industrial Customers. I'm leaving</p> <p>19 Newfoundland Power out of it just to keep it</p> <p>20 simple. Is there a hole here in respect of</p> <p>21 the evidence that presents the alternative to</p> <p>22 the Board and that would be evidence, let's</p> <p>23 say, contrary to what Hydro has presented.</p> <p>24 HUTCHINGS, Q.C.:</p> <p>25 Q. Mr. Chair, you're facing, to some extent, a</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. .... situation that a court faces when a</p> <p>3 defendant chooses not to call evidence. In</p> <p>4 many cases and this is something that lawyers</p> <p>5 decide day by day, one hears the Plaintiff's</p> <p>6 case and one concludes at the end of the</p> <p>7 Plaintiff's case that it's not proven. I</p> <p>8 don't need to answer this case because they</p> <p>9 have not proven on the balance of</p> <p>10 probabilities what they need to prove in order</p> <p>11 to satisfy the court that they're entitled to</p> <p>12 the relief that they're looking for. And</p> <p>13 that's the first point that any tribunal gets</p> <p>14 to, okay. Is there a case to be met? I mean,</p> <p>15 there are some cases where even on the face of</p> <p>16 it, no matter, you know, that a litigant will</p> <p>17 put forward a case, say, you know, even if you</p> <p>18 prove everything you say, you still haven't</p> <p>19 made your case because as a matter of law,</p> <p>20 you're not entitled to this. That's the</p> <p>21 unusual case, but there are many cases where</p> <p>22 you don't have evidence on the other side, but</p> <p>23 the test that you have to apply remains the</p> <p>24 same in that you have to be satisfied on the</p> <p>25 balance of probabilities that the project is</p>	<p>1 necessary in order to produce reliable service</p> <p>2 and be that it is the least cost alternative.</p> <p>3 And what's a little bit different, I</p> <p>4 guess, in this context, but it's similar in</p> <p>5 many other sorts of legal proceedings is that</p> <p>6 there is, in our submission, an onus given the</p> <p>7 wording of the legislation on Hydro to show</p> <p>8 what the alternatives are and that they are of</p> <p>9 higher costs than the one that is being</p> <p>10 suggested.</p> <p>11 Where a piece of legislation says least,</p> <p>12 obviously it's being compared to something.</p> <p>13 There's least and there's more and there's</p> <p>14 more and there's most. So, in this situation,</p> <p>15 in our submission, there is a burden on Hydro</p> <p>16 to come in and say, this is what we're</p> <p>17 proposing to do. We need to do this because</p> <p>18 if we don't do this, then our reliability</p> <p>19 indices will not be met and so on and so on.</p> <p>20 Now, this is, in our judgment, the least</p> <p>21 cost alternative. We've looked at B, C and D</p> <p>22 and B might be cheaper for the first three</p> <p>23 years, but then it goes to heck in a hand</p> <p>24 basket. D is out to lunch altogether and</p> <p>25 ultimately, in terms of least cost on the</p>
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<p>1 basis of the tests that we put in place, this</p> <p>2 is the least cost alternative. There may be,</p> <p>3 in some cases, a situation where Hydro come in</p> <p>4 and say, listen, there are no alternatives to</p> <p>5 this. The stack at Holyrood was struck by</p> <p>6 lightning and we've got to put one up and</p> <p>7 this is the only kind that works. Fine.</p> <p>8 They, nonetheless, have to prove that on the</p> <p>9 balance of probabilities by evidence. And</p> <p>10 that's the situation that every litigant faces</p> <p>11 and that's the burden that's on every</p> <p>12 litigant. And in making that decision, of</p> <p>13 course, as to whether that initial burden has</p> <p>14 been met, you can take into account the cross-</p> <p>15 examination. There may be suggestions put to</p> <p>16 a witness in the course of cross-examination</p> <p>17 which the witness is not able to dispel, that</p> <p>18 might cast some doubt on the initial</p> <p>19 expression of opinion from that witness. What</p> <p>20 about this issue? What about the possibility</p> <p>21 of doing X or Y? And why haven't you</p> <p>22 investigated this possibility? I mean, maybe</p> <p>23 there's a perfectly reasonable explanation why</p> <p>24 no one would every investigate the possibility</p> <p>25 or it may be that the witness will say, that</p>	<p>1 might be worth looking at or it's a--well, we</p> <p>2 really haven't looked at that and I can't rule</p> <p>3 it out. Maybe that's the answer. And if</p> <p>4 you're left in that situation, you've got to</p> <p>5 weigh on the balance of probabilities whether</p> <p>6 or not the test has been made, has been met.</p> <p>7 It will only be occasionally and with</p> <p>8 respect to specific types of items that</p> <p>9 expertise will be available externally, that</p> <p>10 is going to be of help to the Board by way of</p> <p>11 expert evidence such as we were able to give</p> <p>12 on the telecommunication projects from Mr.</p> <p>13 Barreca. A lot of these are very specific</p> <p>14 Hydro based projects that the greatest expert</p> <p>15 in the world is not going to be able to give</p> <p>16 you a useful opinion on, unless he actually</p> <p>17 goes into Hydro's system and checks it out and</p> <p>18 sees what has to get done and what's the best</p> <p>19 way to do it.</p> <p>20 And that highlights our point, I suggest,</p> <p>21 that you need to be very careful in terms of</p> <p>22 evaluating the reliability of the expert</p> <p>23 testimony that you're getting. I don't know</p> <p>24 if that's helpful to you, sir.</p> <p>25 (12:20 p.m)</p>



<p style="text-align: right;">Page 129</p> <p>1 CHAIRMAN:</p> <p>2 Q. Thank you, Mr. Hutchings. It's twenty after</p> <p>3 12. Mr. Kennedy, do you have any idea how</p> <p>4 long you'll be?</p> <p>5 MR. KENNEDY:</p> <p>6 Q. Twenty minutes.</p> <p>7 CHAIRMAN:</p> <p>8 Q. Ms. Greene, you're going to be the last we're</p> <p>9 going to hear from, so do you have any</p> <p>10 indication in your own mind as to how long you</p> <p>11 may be?</p> <p>12 GREENE, Q.C.:</p> <p>13 Q. I will be some time. I would like the</p> <p>14 opportunity to discuss it with the people.</p> <p>15 So, I can't be definitive at this point.</p> <p>16 CHAIRMAN:</p> <p>17 Q. Why don't we hear from Mr. Kennedy now, if</p> <p>18 he's only going to be twenty minutes and then</p> <p>19 that will give you an opportunity to see where</p> <p>20 you are and it may be that we can cut a few</p> <p>21 minutes off your time, who knows?</p> <p>22 GREENE, Q.C.:</p> <p>23 Q. It may be, usually I find that with</p> <p>24 discussion, I do tend to get shorter. I'm</p> <p>25 certainly agreeable to that if Mr. Kennedy is</p>	<p style="text-align: right;">Page 130</p> <p>1 and if the other parties in the room are.</p> <p>2 CHAIRMAN:</p> <p>3 Q. If everyone is still in shape to continue for</p> <p>4 20 minutes, if not, well then, we'll adjourn.</p> <p>5 How do we feel? Okay.</p> <p>6 MR. KENNEDY:</p> <p>7 Q. Chair, five minutes might help actually just</p> <p>8 for me to gather my own thoughts as -</p> <p>9 CHAIRMAN:</p> <p>10 Q. Good, twenty down to five, that's -</p> <p>11 MR. KENNEDY:</p> <p>12 Q. I hate to rain on your parade, but -</p> <p>13 CHAIRMAN:</p> <p>14 Q. Okay, well, Mr. Kennedy, if you're ready,</p> <p>15 let's hear from you.</p> <p>16 MR. KENNEDY:</p> <p>17 Q. No, I -</p> <p>18 CHAIRMAN:</p> <p>19 Q. Oh, five minutes, oh, okay, I'm sorry.</p> <p>20 MR. KENNEDY:</p> <p>21 Q. - was wondering if we could take a five minute</p> <p>22 break.</p> <p>23 CHAIRMAN:</p> <p>24 Q. I thought you said you were going to be five</p> <p>25 minutes. I couldn't pass up that.</p>
<p style="text-align: right;">Page 131</p> <p>1 (RECESS - 12:21 P.M.)</p> <p>2 (12:32 p.m.)</p> <p>3 CHAIRMAN:</p> <p>4 Q. Okay, Mr. Kennedy, when you're ready.</p> <p>5 MR. KENNEDY:</p> <p>6 Q. Thank you. Chair, I thought I would start</p> <p>7 first with just some comments regarding the</p> <p>8 test to which Hydro is expected to meet in</p> <p>9 putting forward its Capital Budget, and</p> <p>10 really, there's a number of sources that the--</p> <p>11 of both legislation and the Board's own</p> <p>12 pronouncements on procedures and policies and</p> <p>13 the like that have an impact on how the Board</p> <p>14 assesses individual Hydro projects. As</p> <p>15 counsel for one party or another or all of</p> <p>16 them have already pointed to you, obviously</p> <p>17 Section 41, which is the triggering provision</p> <p>18 under The Public Utilities Act that requires a</p> <p>19 utility to seek approval of the Board prior to</p> <p>20 extending an amount in excess of \$50,000 on a</p> <p>21 project. And as rightfully pointed out by</p> <p>22 yourself, Chair, however Section 41 doesn't</p> <p>23 actually provide much in the way of direction</p> <p>24 to the panel about exactly how it's to go</p> <p>25 about assessing these capital budgets. But I</p>	<p style="text-align: right;">Page 132</p> <p>1 would suggest to you that clearly Section 41</p> <p>2 implies that there is to be a test, otherwise,</p> <p>3 why have the provision in there? If it's just</p> <p>4 a case of rubber-stamping a Capital Budget,</p> <p>5 just by virtue of it being filed, that's</p> <p>6 nonsensical. So the requirement of the</p> <p>7 utility to file and seek approval of the Board</p> <p>8 implies that the Board then would assess that</p> <p>9 Capital Budget against some rational test or</p> <p>10 procedure in deciding whether it's reasonable.</p> <p>11 Section 3 of The Electrical Power Control</p> <p>12 Act clearly also provides some input into this</p> <p>13 process. However, I'm not so sure I would</p> <p>14 agree with all of the statements of some of</p> <p>15 the counsel regarding how Section 3 should be</p> <p>16 interpreted, in light of in particular Capital</p> <p>17 Budget Applications. Generally, what I mean</p> <p>18 by this is the fact that Section 3 of The</p> <p>19 Electrical Power Control Act, and the</p> <p>20 particular provision that we're dealing with,</p> <p>21 reads "it is declared to be the policy of the</p> <p>22 Province that," and then "(b) all sources and</p> <p>23 facilities for the production, transmission</p> <p>24 and distribution of power in the Province</p> <p>25 should be managed and operated in a manner:" A</p>

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<p>1 MR. KENNEDY:</p> <p>2 Q. .... is "that would result in the most</p> <p>3 efficient production, transmission and</p> <p>4 distribution of power." Roman number two,</p> <p>5 "that would result in consumers of the</p> <p>6 Province having equitable access to an</p> <p>7 adequate supply of power," and Roman number</p> <p>8 three, "that would result in power being</p> <p>9 delivered to consumers in the Province at the</p> <p>10 lowest possible cost, consistent with reliable</p> <p>11 service." Roman numeral four and five are</p> <p>12 really germane to any of the matters at hand.</p> <p>13 And then it closes off by saying "and where</p> <p>14 necessary, all power sources and facilities of</p> <p>15 the Province are to be assessed and allocated</p> <p>16 and reallocated in a manner that is necessary</p> <p>17 to give effect to this policy."</p> <p>18 Again, it's just a policy. It's not an</p> <p>19 actual test per se. And it's been suggested</p> <p>20 to you, by some counsel, that this provision,</p> <p>21 and in particular, the requirement that the</p> <p>22 result--that this policy will result in power</p> <p>23 being delivered to consumers in the Province</p> <p>24 at the lowest possible cost, consistent with a</p> <p>25 reliable service, would apply to a project-by-</p>	<p>1 project analysis. That each and every project</p> <p>2 that's put forward as part of a capital budget</p> <p>3 would require this panel to fix in its mind</p> <p>4 whether that project is the lowest possible</p> <p>5 cost, consistent with reliable service.</p> <p>6 Now that's not what Section 3 of the EPCA</p> <p>7 says. Section 3 of the EPCA says just simply</p> <p>8 that the policy of the Province is that all</p> <p>9 facilities and sources for the transmission</p> <p>10 and distribution of power shall be managed and</p> <p>11 operated in a manner that would result in</p> <p>12 power being. So for instance, you could take</p> <p>13 it from the sublime to the ridiculous and say</p> <p>14 that "well, do we have to make sure that every</p> <p>15 bolt that Hydro buys is the lowest cost bolt?"</p> <p>16 or do we say that the entire transmission pole</p> <p>17 and cleaning all the bolts is the lowest</p> <p>18 possible cost or do we say the project as</p> <p>19 described in the Capital Budget for the</p> <p>20 upgrading of TL214 has to be conducted in the</p> <p>21 lowest possible cost? Or do we say that the</p> <p>22 overall provision of electrical service</p> <p>23 forwarded by Hydro has to be at the lowest</p> <p>24 possible cost, consistent with reliable</p> <p>25 service? So it's a graduated scale up, and I</p>
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<p>1 think the Board has got to grapple with how</p> <p>2 far down into the trenches, so to speak, do</p> <p>3 you apply Section 3 of The Electrical Power</p> <p>4 Control Act.</p> <p>5 Now in addition to Section 41 of The</p> <p>6 Public Utilities Act and Section 3 of</p> <p>7 Electrical Power Control Act, there is the</p> <p>8 Stated Case, as its known, and Hydro has</p> <p>9 pointed out specific provisions of the Stated</p> <p>10 Case that would, I think, provide the Board</p> <p>11 with some further input, and I think it's</p> <p>12 quite important that the Court of Appeal, in</p> <p>13 the Stated Case, went out of its way, so to</p> <p>14 speak, to point to the fact, and this is at</p> <p>15 page 15 of Hydro's final argument, that there</p> <p>16 will normally be a presumption of managerial</p> <p>17 good faith and a certain latitude given to</p> <p>18 management in their decisions with respect to</p> <p>19 expenditures. Now they're not just words that</p> <p>20 the Court of Appeal put in there for the sake</p> <p>21 of them. They're a clear indication by the</p> <p>22 Court of Appeal that there's this element of</p> <p>23 good faith afforded to the utility. It's a</p> <p>24 necessary part of the equation when this panel</p> <p>25 goes to regulate the utility. Otherwise, it</p>	<p>1 would involve, without that presumption of</p> <p>2 managerial good faith, your requiring to make</p> <p>3 sure that every single project has been</p> <p>4 analyzed fully, independently of Hydro, that</p> <p>5 you couldn't trust Hydro in its good faith and</p> <p>6 that you would require an independent</p> <p>7 examination or expert's report on every single</p> <p>8 project that they put forward. So I think</p> <p>9 that that's an important thing, important</p> <p>10 statement that the Court of Appeal made.</p> <p>11 In addition to those factors, if you</p> <p>12 will, or considerations that the panel need to</p> <p>13 take into account when assessing a Capital</p> <p>14 Budget, there's also the language that this</p> <p>15 Board has already used in relation to P.U. 7</p> <p>16 and in relation to P.U. 36 and in relation to</p> <p>17 the actual wording of Schedule 3, which is the</p> <p>18 schedule that Hydro is meant to adhere to,</p> <p>19 pursuant to the Order of this Board coming out</p> <p>20 of P.U. 7.</p> <p>21 So as has been stated previously, it's</p> <p>22 the balancing between the not wanting to</p> <p>23 micromanage the utility versus the general</p> <p>24 regulatory oversight that's required of the</p> <p>25 Board, and I think that, you know, on the</p>

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<p>1 MR. KENNEDY:</p> <p>2 Q. .... polar sides of that debate, you might get</p> <p>3 consensus from all the parties. For instance,</p> <p>4 the Board stepping in and designing a dam</p> <p>5 that's going to be erected, it's got to be</p> <p>6 this height, got to be this width, that's</p> <p>7 clearly micromanaging, and everyone would</p> <p>8 agree with that, I'm going to suggest.</p> <p>9 Conversely, on the regulatory oversight, if</p> <p>10 the Board were just to say anything up to \$40</p> <p>11 million is approved. Well, that would be</p> <p>12 abdication of its role and therefore, you say,</p> <p>13 well that's right over on the other side of</p> <p>14 the equation. Clearly though, there is a big</p> <p>15 grey area, the grey area of where does the</p> <p>16 Board strike the balance. And in answering</p> <p>17 the question of where is that inflection</p> <p>18 point, I would suggest that it's right where</p> <p>19 you are standing. Ultimately, as long as</p> <p>20 you're within that zone of reasonableness, if</p> <p>21 you're not down in the polar ends of either</p> <p>22 side, this Board's pronouncement on where the</p> <p>23 balance is stuck is where the balance is</p> <p>24 struck. It's somewhat tautological, but it's</p> <p>25 nonetheless a fact that there is no solid</p>	<p>1 piece of evidence or predetermined strike</p> <p>2 point. The Board has to arrive at that strike</p> <p>3 point, and it has to arrive at that strike</p> <p>4 point comfortable with the result that will</p> <p>5 follow about the level of detail, the level of</p> <p>6 justification, the level of documentation, the</p> <p>7 level of the filing requirements that are</p> <p>8 dictated by this Board are what will be</p> <p>9 reasonable, because that's what you determine</p> <p>10 them to be.</p> <p>11 The other thing I wanted to comment on</p> <p>12 was some questions from the panel regarding</p> <p>13 the least cost versus the least cost</p> <p>14 consistent with reliable service, and it's</p> <p>15 actual lowest cost, but we use least as</p> <p>16 synonymous with, but the lowest possible cost</p> <p>17 versus the lowest possible cost consistent</p> <p>18 with reliable service. And it's been</p> <p>19 suggested that that language, lowest possible</p> <p>20 cost consistent with reliable service, means</p> <p>21 that each project has to be assessed in</p> <p>22 relation to whether it furthers the</p> <p>23 reliability of the system along somehow. If</p> <p>24 that was what was being suggested, then I'm</p> <p>25 not so sure I agree with that proposition</p>
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<p>1 because you could argue that the tag of</p> <p>2 consistent with reliable service was added by</p> <p>3 the Legislature as a backstop, if you will.</p> <p>4 Read that provision without consistent with</p> <p>5 reliable service. It would mean that all</p> <p>6 sources and facilities for the production,</p> <p>7 transmission and distribution of power in the</p> <p>8 Province should be managed and operated in a</p> <p>9 manner that would result in power being</p> <p>10 delivered to consumers in the Province at the</p> <p>11 lowest possible cost. Well, we all know how</p> <p>12 you could get the lowest possible cost, as</p> <p>13 long as we don't mind the power going out</p> <p>14 every day. So the fact of the matter is that</p> <p>15 putting in consistent with reliable service,</p> <p>16 you could argue that it's almost not the case</p> <p>17 of putting a burden on Hydro to ensure that</p> <p>18 projects further reliability, but almost</p> <p>19 putting a burden or an obligation on the</p> <p>20 utility to not trim out from underneath and</p> <p>21 threaten reliability in the opposite</p> <p>22 direction. It's a perfectly reasonable</p> <p>23 interpretation of how that provision should be</p> <p>24 read.</p> <p>25 So in other words, the legislation, the</p>	<p>1 Legislature may have wanted to ensure that the</p> <p>2 Section 3, lowest possible cost, was not</p> <p>3 applied in a vacuum. That it was--that the</p> <p>4 Board could properly take into account the</p> <p>5 impact that cheaper solutions may have on</p> <p>6 system reliability. So that where there might</p> <p>7 actually be a lower cost alternative, but wait</p> <p>8 a minute, is that going to have an impact on</p> <p>9 reliability. And so it could be used in that</p> <p>10 sense as well.</p> <p>11 We also recognize that not every project</p> <p>12 is tied to reliability, every capital project.</p> <p>13 For instance, safety oriented projects, ones</p> <p>14 involving the safety of workers of Hydro has</p> <p>15 been traditionally considered to be a</p> <p>16 perfectly legitimate capital expenditure to</p> <p>17 make. If there is an unsafe condition that</p> <p>18 threatens to injure or worse to an employee of</p> <p>19 Hydro, then no one seems to take issue with</p> <p>20 the fact, yes, that's a proper expenditure to</p> <p>21 make, if there is a true safety issue. Well,</p> <p>22 that's got nothing to do with reliability and</p> <p>23 it's got nothing really to do with the lowest</p> <p>24 possible cost consistent with reliable</p> <p>25 service. As long as when the project is</p>

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<p>1 MR. KENNEDY:</p> <p>2 Q. .... approved, the solution is a reasonable</p> <p>3 solution. So it's necessary and it's</p> <p>4 reasonable, but doesn't have much to do with</p> <p>5 reliability per se.</p> <p>6 Similarly, there's other projects which I</p> <p>7 would suggest don't fall into the rubric of</p> <p>8 how do they impact on reliability, and that</p> <p>9 would be projects more equivalent to like</p> <p>10 corporate stewardship. One of those would be</p> <p>11 the ambient air monitoring project of Hydro.</p> <p>12 I think the Industrial Customers were correct</p> <p>13 in pointing out that this project's not</p> <p>14 required per se by legislation, and the</p> <p>15 project's not required per se by safety. It's</p> <p>16 not going to do much in the way of</p> <p>17 reliability. But clearly, as is the evidence</p> <p>18 of Hydro, it's being put forward as part of a</p> <p>19 corporate stewardship that this is--they have</p> <p>20 fumes, exhaust and particulates and effluent</p> <p>21 coming out of Holyrood that they would like to</p> <p>22 monitor to ensure that they behave as a good</p> <p>23 corporate citizen.</p> <p>24 (12:47 p.m.)</p> <p>25 Well, if you accept that corporate</p>	<p>1 stewardship is an important part of being a</p> <p>2 company, then that's a project that would need</p> <p>3 to be assessed by this Board, independent of</p> <p>4 whether it's the lowest possible cost, whether</p> <p>5 it's going to provide the lowest possible cost</p> <p>6 electricity service, because it won't, just by</p> <p>7 virtue of the fact that you're spending the</p> <p>8 money, nor does it have anything to do with</p> <p>9 reliability per se. It's got to do with</p> <p>10 things entirely different from that. So while</p> <p>11 Section 3 provides some input, I don't think</p> <p>12 that you can answer every question about</p> <p>13 whether a capital project should be approved</p> <p>14 or not, based on that language in Section 3</p> <p>15 regarding lowest possible cost and reliable</p> <p>16 service.</p> <p>17 I would point out as well that in regards</p> <p>18 to reliable service, having said all that, I</p> <p>19 would suggest that there is some concern here</p> <p>20 with the lack of tying some of the capital</p> <p>21 projects to the reliability of the system.</p> <p>22 There's no clear, in anywhere I could see, no</p> <p>23 clear indication by Hydro, in this Capital</p> <p>24 Budget, of what its corporate reliability</p> <p>25 target is, whether that's an overall system</p>
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<p>1 reliability factor or whether it's a factor</p> <p>2 based on individual aspects of its operation,</p> <p>3 and then how these capital projects will</p> <p>4 address those reliability factors one way or</p> <p>5 the other. What's the target level of</p> <p>6 improvement that Hydro hopes to obtain by</p> <p>7 spending X millions of dollars on a particular</p> <p>8 project.</p> <p>9 I would point out PUB-1, which was an</p> <p>10 RFI, and the question was "Does Hydro use a</p> <p>11 system reliability target when assessing its</p> <p>12 capital program? If so, was is the</p> <p>13 reliability target and how is that target</p> <p>14 index monitored in relation to specific</p> <p>15 capital projects, as well as the capital</p> <p>16 program overall?" And Hydro's answer was:</p> <p>17 "Hydro does establish annual reliability</p> <p>18 targets related to delivery point performance</p> <p>19 and the under frequency load shedding</p> <p>20 (phonetic) events on an overall system basis.</p> <p>21 These may be used when assessing the capital</p> <p>22 program; however, typically it is through the</p> <p>23 analysis of various lines and plants that the</p> <p>24 'worst performers' are identified. These</p> <p>25 analyses also indicate what the root problems</p>	<p>1 are and form the basis for the justification</p> <p>2 of specific capital projects." So it's not</p> <p>3 something that you could really grab ahold of,</p> <p>4 in the sense that well, there's the</p> <p>5 reliability target that Hydro's shooting for.</p> <p>6 Here's the project that, or projects, that</p> <p>7 they hope to improve reliability through, in</p> <p>8 marching towards that reliability target. And</p> <p>9 so that that would give something for the</p> <p>10 Board to subsequently assess capital</p> <p>11 expenditures to see if it had the affect that</p> <p>12 was intended.</p> <p>13 I indicated as well that an approach by</p> <p>14 the Board of saying well, anything up to \$40</p> <p>15 million would be approved would be abdication</p> <p>16 of your duties to assess a capital project for</p> <p>17 its necessity and reasonableness, as is</p> <p>18 indicated is the test under P.U. 7 and P.U. 36</p> <p>19 or P.U. 36 in particular. And in relation to</p> <p>20 that, there was some evidence led by Hydro</p> <p>21 regarding its use of some financial indices to</p> <p>22 determine what an appropriate level of capital</p> <p>23 expenditures would be in a given year, and</p> <p>24 there's an RFI that specifically requested</p> <p>25 some more information regarding that, and</p>

<p style="text-align: right;">Page 145</p> <p>1 MR. KENNEDY:</p> <p>2 Q. .... that's PUB-3. And it relates in</p> <p>3 particular to the direct testimony of Mr. John</p> <p>4 Roberts and the question was, "is the</p> <p>5 guideline detailed therein (capital programs</p> <p>6 should not normally exceed cash flow from</p> <p>7 operations and be kept to the level of</p> <p>8 depreciation) used by other Canadian</p> <p>9 utilities? If so, please provide details. If</p> <p>10 not, please provide details on why Hydro uses</p> <p>11 this guideline." And the answer was: "Hydro</p> <p>12 is not aware of what guidelines that may be</p> <p>13 used by other Canadian utilities. Hydro</p> <p>14 considers that a capital program that equates</p> <p>15 to cash flow from operations will not present</p> <p>16 difficulties related to financing. It is only</p> <p>17 guideline and would, at times, be exceeded by</p> <p>18 significant costs for multi-year projects</p> <p>19 related to reliability improvements, new</p> <p>20 sources of generation and requirements of</p> <p>21 specific projects."</p> <p>22 Nonetheless, clearly at least some</p> <p>23 overall general indices tied to the utility's</p> <p>24 finances, whether it's a measure of the</p> <p>25 existing depreciation or net income plus</p>	<p style="text-align: right;">Page 146</p> <p>1 depreciation or what have you, what I think</p> <p>2 assists a panel a great deal in being able to,</p> <p>3 at least from that 30,000-foot view on a</p> <p>4 capital application by capital application</p> <p>5 basis, determine whether it's a capital budget</p> <p>6 exceeding normal expenditure levels in a given</p> <p>7 year, as you could expect a certain amount to</p> <p>8 come year over year in any event.</p> <p>9 Now these are issues that may be best</p> <p>10 dealt with during the generic hearing, as is</p> <p>11 mentioned. There's quite a bit of evidence</p> <p>12 that would need to be led for this panel to</p> <p>13 make a solid determination of what financial</p> <p>14 indices, on the first view, might be one that</p> <p>15 would assist this Board in that manner.</p> <p>16 There's clearly some room for rationalizing</p> <p>17 the process and bringing together a single</p> <p>18 pronouncement of the objectives and the tests</p> <p>19 that the Board would employ in assessing</p> <p>20 capital budgets and that would be an</p> <p>21 amalgamation or taking language from or</p> <p>22 direction from Section 41 of The Public</p> <p>23 Utilities Act, Section 3 of the EPCA, the</p> <p>24 previous Board decisions, the Stated Case, and</p> <p>25 so on, and that that can be brought together</p>
<p style="text-align: right;">Page 147</p> <p>1 in a rational process as well, and I think</p> <p>2 that that's something that might be ideally</p> <p>3 suited to be dealt with in a thorough manner</p> <p>4 through the generic hearing.</p> <p>5 But ultimately, for this Capital Budget</p> <p>6 Application, as is corrected pointed out by</p> <p>7 counsel for the Industrial Customers, just the</p> <p>8 fact that there is a generic hearing in the</p> <p>9 offing doesn't preclude this Board or remove</p> <p>10 this Board from having to exercise its</p> <p>11 jurisdiction for this application. And I</p> <p>12 think ultimately, the law that--the test that</p> <p>13 Hydro has to meet is the test that this Board</p> <p>14 put out for it in P.U. 7, and as subsequently</p> <p>15 elaborated upon in P.U. 36, which although was</p> <p>16 the decision relating to Newfoundland Power's</p> <p>17 Capital Budget, does contain general</p> <p>18 pronouncements of what would be expected of a</p> <p>19 utility when it puts forward its Capital</p> <p>20 Budget Application. And those general</p> <p>21 directions apply equally to Hydro as they do</p> <p>22 to Newfoundland Power. Ultimately, the test</p> <p>23 is whether there's been sufficient evidence</p> <p>24 led before this Board of a project, as</p> <p>25 proposed, and whether its necessary and</p>	<p style="text-align: right;">Page 148</p> <p>1 reasonable. That's the ultimate test that</p> <p>2 this panel has indicated that it will go by.</p> <p>3 Just dealing with the VHF project in</p> <p>4 particular, there's two points I wanted to</p> <p>5 make. One was in Hydro's closing arguments,</p> <p>6 at page 25, it's the first main paragraph of</p> <p>7 that page, first complete paragraph, and it's</p> <p>8 a sentence about mid ways through and after</p> <p>9 discussing the trunk type of design, Hydro</p> <p>10 writes "the final decision whether to use a</p> <p>11 central switch or distributed type of</p> <p>12 architecture will be made following tender</p> <p>13 evaluation." Now one would wonder why Hydro,</p> <p>14 in this instance, didn't apply for--which is a</p> <p>15 question I asked some of the witnesses of</p> <p>16 Hydro, and I don't know if there was an</p> <p>17 entirely satisfactory answer provided, about</p> <p>18 why they wouldn't have done, in this instance,</p> <p>19 conducted themselves in a fashion similar, in</p> <p>20 this instance, to what they've done in the</p> <p>21 past, where they sought approval of the Board</p> <p>22 for an expenditure to conduct detailed</p> <p>23 engineering work. And then once that detailed</p> <p>24 engineering work was completed and they've got</p> <p>25 themselves fairly fashioned to what they plan</p>

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<p>1 MR. KENNEDY:</p> <p>2 Q. .... to do, by way of a capital project, that</p> <p>3 they would then come in with more detailed and</p> <p>4 harder numbers, if you will, about the cost of</p> <p>5 a project.</p> <p>6 As I think Mr. Barreca agreed with, when</p> <p>7 I was crossing him on the stand, there is a</p> <p>8 further degree of latitude that needs to be</p> <p>9 afforded to the utility when they are</p> <p>10 contemplating a project that's very technology</p> <p>11 based, simply because the technology is moving</p> <p>12 so fast. You're trying to hit a moving</p> <p>13 target. You need to provide--it's reasonable</p> <p>14 to expect to provide the utility with an extra</p> <p>15 degree of latitude to be able to respond to</p> <p>16 market conditions and get the best price per</p> <p>17 performance ratio that they can get at a given</p> <p>18 moment in time. Less of a consideration when</p> <p>19 you're talking about upgrading a transmission</p> <p>20 line like TL214, simply because that is not</p> <p>21 new technology. That's existing technology</p> <p>22 that they should be able to provide very hard</p> <p>23 numbers for right now, if they plan to do the</p> <p>24 project next year.</p> <p>25 As hopefully can be gleaned by my closing</p>	<p>1 submission, however, my greatest concern with</p> <p>2 the VHF project is the possible duplication</p> <p>3 that may be created by virtue of having two</p> <p>4 communication systems operated independently</p> <p>5 by the two utilities. As is indicated by</p> <p>6 counsel for Hydro, it's Hydro's position that,</p> <p>7 as far as they're aware, Newfoundland Power is</p> <p>8 five to ten years out from a replacement of</p> <p>9 its existing VHF system. But I don't think</p> <p>10 there was any solid evidence provided to this</p> <p>11 panel by any of the Hydro witnesses of exactly</p> <p>12 how far Newfoundland Power is from replacing</p> <p>13 its VHF system. Is there two years left in</p> <p>14 the life with a three-year possible extension</p> <p>15 by upgrading portions of it? Or is it a full</p> <p>16 five years as is with just normal O&amp;M to keep</p> <p>17 it going? They are two completely different</p> <p>18 scenarios. And I think that there's a great</p> <p>19 deal more evidence that would need to be led</p> <p>20 about Newfoundland Power's VHF, existing VHF</p> <p>21 system and its present worth, in order for</p> <p>22 this Board to know whether, in fact,</p> <p>23 Newfoundland Power should be directed to</p> <p>24 participate in this project.</p> <p>25 My learned friend for Newfoundland Power</p>
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<p>1 took exception to some of my comments in the</p> <p>2 closing brief regarding this point, and in</p> <p>3 particular, he pointed out paragraph 38, but I</p> <p>4 wanted to just go to paragraph 39. And this</p> <p>5 is a statement in my paragraph 39 of my</p> <p>6 closing brief, from the report of Joint</p> <p>7 Coordination between Newfoundland and Labrador</p> <p>8 Hydro and Newfoundland Power, which was filed</p> <p>9 with the Board, so it's a public document.</p> <p>10 And working group 10 was in particular</p> <p>11 responsible for trying to get a meeting of the</p> <p>12 minds between the two utilities on a VHF</p> <p>13 project. And paragraph 39 says, the report</p> <p>14 also notes that "Newfoundland Power has agreed</p> <p>15 to provide Hydro with input to ensure the</p> <p>16 design of the new system does not</p> <p>17 unnecessarily or unreasonably preclude the</p> <p>18 possibility of Newfoundland Power utilizing</p> <p>19 the system in the future". Now, that to me,</p> <p>20 got lawyer all over it. It's got more</p> <p>21 cushions that a couch. I don't think that</p> <p>22 there's anything there that you could grab a</p> <p>23 hold of and enforce to show how clearly worded</p> <p>24 this is the couch side. We could easily have</p> <p>25 rewritten that sentence if Newfoundland Power</p>	<p>1 wanted to, by saying Newfoundland Power has</p> <p>2 agreed to provide Hydro with input to ensure</p> <p>3 the design of the new system will allow</p> <p>4 Newfoundland Power to utilize the system in</p> <p>5 the future. That's an entirely different</p> <p>6 statement than saying ensure the design of the</p> <p>7 new system does not unnecessarily or</p> <p>8 unreasonably preclude.</p> <p>9 So, there's a lot of dancing going on</p> <p>10 between the two utilities on this project.</p> <p>11 Why? I don't know, but clearly there has not</p> <p>12 been a meeting of the minds between the two</p> <p>13 utilities. There has not been a legitimate</p> <p>14 discussion between the two utilities about how</p> <p>15 they're going to share this system in the</p> <p>16 event Newfoundland Power needs to upgrade its</p> <p>17 own VHF system.</p> <p>18 To allow Hydro to just proceed ahead with</p> <p>19 the project on the basis that needs it and</p> <p>20 hoping against hope that Newfoundland Power</p> <p>21 would participate in some meaningful way in</p> <p>22 the future is, I think, it would be a sad</p> <p>23 development because it would be another case</p> <p>24 of where duplication may have been avoided and</p> <p>25 an opportunity missed and this is certainly</p>

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<p>1 MR. KENNEDY:</p> <p>2 Q. .... one of them.</p> <p>3 I've tried to provide the Panel with some</p> <p>4 sort of clear suggestion about how they could</p> <p>5 actually get the two utilities' heads together</p> <p>6 and that's mostly by, I think, in the</p> <p>7 circumstances, knocking their heads together.</p> <p>8 (1:02 p.m.)</p> <p>9 And I provided, under Paragraph 48 of my</p> <p>10 closing brief, some specific conditions that</p> <p>11 the Board could attach to the VHF project if</p> <p>12 they were to approve that project, pursuant to</p> <p>13 Hydro's application with specific dates about</p> <p>14 who would provide what. And the whole purpose</p> <p>15 of it is to ensure that this NHF project, if</p> <p>16 it was to go ahead as proposed, goes--or at</p> <p>17 least as Hydro's thinks it's going to go</p> <p>18 ahead--goes ahead in a manner that will</p> <p>19 certainly ensure that Newfoundland Power</p> <p>20 participates in the project both by capital</p> <p>21 cost and subsequently by the participating in</p> <p>22 the operating and maintenance costs of the</p> <p>23 system.</p> <p>24 And the last comment I was going to make</p> <p>25 regarded some commentary between Hydro and the</p>	<p>1 Industrial Customers concerning what is being</p> <p>2 perceived by Hydro to be a scatter gun</p> <p>3 approach by the Industrial Customers and I</p> <p>4 guess related to that is their issue of costs.</p> <p>5 To my mind, there's been no evidence that the</p> <p>6 Industrial Customers have caused the process</p> <p>7 to be unnecessarily prolonged or that they've</p> <p>8 acted unreasonably in the process. There's no</p> <p>9 evidence of any high-handedness or</p> <p>10 obstrufication (phonetic) by Hydro. There's</p> <p>11 no evidence that they acted in any way other</p> <p>12 than in the best interests of their own</p> <p>13 clients which is clearly what you would expect</p> <p>14 of counsel hired by the Industrial Customers</p> <p>15 to do. I think some of the levels of</p> <p>16 frustration that are experienced by some of</p> <p>17 the parties in this hearing is borne in part</p> <p>18 from the transitory nature of the process.</p> <p>19 We're caught up in the middle of trying to</p> <p>20 change everything. And some parties are</p> <p>21 frustrated over the level of documentation or</p> <p>22 the level of justification. But ultimately, I</p> <p>23 think it's a case of Hydro's level of</p> <p>24 comfortableness with being regulated. I would</p> <p>25 suggest that Hydro should almost look forward</p>
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<p>1 to being able to prove its case and justify</p> <p>2 its projects and generally to be afforded an</p> <p>3 opportunity to demonstrate its success in</p> <p>4 managing the assets of the utility</p> <p>5 efficiently. It shouldn't view the process as</p> <p>6 an irritant or something that it should just</p> <p>7 need to get past on the way back to its normal</p> <p>8 course of business. So, ultimately, it's one</p> <p>9 of attitude and that entirely is one in</p> <p>10 Hydro's own control. And Hydro must recognize</p> <p>11 that it is a monopoly and as such, the normal</p> <p>12 pressures brought to bear on its operations</p> <p>13 which are namely competition, aren't present.</p> <p>14 And therefore, the normal break that's</p> <p>15 there on a company's decision to spend money,</p> <p>16 is not present. It's absent. And that's why</p> <p>17 we regulate them. And everyone is marching</p> <p>18 towards the same spot of trying to strike the</p> <p>19 fairest balance between Hydro and its</p> <p>20 customers to ensure a low cost electrical</p> <p>21 rates consistent with reliable service.</p> <p>22 Thank you, that's all the comments that I</p> <p>23 have.</p> <p>24 CHAIRMAN:</p> <p>25 Q. Thank you, Mr. Kennedy. Any questions that</p>	<p>1 you have for Mr. Kennedy? No? We're back to</p> <p>2 you, Ms. Greene. Now do you want to proceed?</p> <p>3 Do you need a break?</p> <p>4 GREENE, Q.C.:</p> <p>5 Q. No, thank you, Mr. Chair. I'm ready to</p> <p>6 proceed if that's convenient for the Panel.</p> <p>7 CHAIRMAN:</p> <p>8 Q. Yes.</p> <p>9 GREENE, Q.C.:</p> <p>10 Q. There were a limited number of issues that</p> <p>11 were raised that I would like to address in</p> <p>12 reply. The first relates to the questions put</p> <p>13 by the Chair which is the role of reliability</p> <p>14 and how you balance the cost of a project with</p> <p>15 respect to a liability. From Hydro's</p> <p>16 perspective, it is a balance, obviously. And</p> <p>17 I think that was also referred to by hearing</p> <p>18 counsel, that you can't look at cost in</p> <p>19 isolation. That the issue of reliable service</p> <p>20 for customers is a very valid issue and that</p> <p>21 is why Hydro, in its written argument and in</p> <p>22 oral argument this morning, did outline a</p> <p>23 number of factors we think are important that</p> <p>24 must be taken into account by Hydro and by the</p> <p>25 Board in assessing what is reliability.</p>

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<p>1 GREENE, Q.C.:</p> <p>2 Q. The difficulty however, sometimes comes and is</p> <p>3 not a one-to-one relationship where you've can</p> <p>4 specifically show each projects and how it</p> <p>5 will impact on reliability, where those</p> <p>6 projects do affect reliability. Because as</p> <p>7 Mr. Kennedy rightly pointed out, not all</p> <p>8 projects do.</p> <p>9 So, what we have found is that</p> <p>10 engineering judgment is required in some cases</p> <p>11 and based on the nature of Hydro's system,</p> <p>12 that engineering judgment requires Hydro to</p> <p>13 take action where it may not be able to</p> <p>14 specifically state that this particular</p> <p>15 project will improve reliability by Y percent</p> <p>16 or by plus 1 percent or whatever. And I</p> <p>17 believe you'll find that that's the same with</p> <p>18 respect to Newfoundland Power. So, even when</p> <p>19 it comes to reliability, it is not absolute in</p> <p>20 terms of what reliability means. And there</p> <p>21 have not been standards established with</p> <p>22 respect to each and every element. There may</p> <p>23 be some elements with respect to distribution</p> <p>24 feeders for example. And Hydro has adopted</p> <p>25 standards with respect to its expectations for</p>	<p>1 the operation of generation facilities and</p> <p>2 thermal facilities, but these are specific to</p> <p>3 particular pieces of equipment. So, that is a</p> <p>4 balance the Board must take into account in</p> <p>5 looking at the element of reliability and how</p> <p>6 that gets determined in the unique situation</p> <p>7 that we face here in Newfoundland. That's the</p> <p>8 first point, that we do believe it is a</p> <p>9 balance, we cannot look at it in isolation.</p> <p>10 The next point deals with the</p> <p>11 legislation. Here Mr. Kennedy has helped me</p> <p>12 and has shortened my reply because he has</p> <p>13 repeated essentially what we said in our</p> <p>14 written argument and in oral argument this</p> <p>15 morning. Now, we do not believe that the test</p> <p>16 is applied to each and every project as had</p> <p>17 been suggested. The legislation does set out</p> <p>18 what, in a very general way, what the</p> <p>19 standards are. The Board has given direction</p> <p>20 to Hydro in PU 7, PU 29 as well, when they</p> <p>21 found that we had interpreted PU 7 correctly</p> <p>22 and in PU 36, we submit that we have met the</p> <p>23 legislative burden, we have responded to the</p> <p>24 directions. We're not asking the Board to</p> <p>25 accept what we're saying on blind faith, it</p>
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<p>1 has been suggested by the Industrial</p> <p>2 Customers. We have supplied economic</p> <p>3 justification for each and every project. And</p> <p>4 we do believe the Board has a right to ask</p> <p>5 questions. Hydro fully understands that it is</p> <p>6 regulated and that--well, there may be times</p> <p>7 that we wonder about the timing. This has</p> <p>8 been a heck of a July at Hydro, this year, but</p> <p>9 we certainly do understand about being</p> <p>10 regulated. And we do appreciate the</p> <p>11 opportunity to demonstrate to the Board and to</p> <p>12 our public that we are proceeding in an</p> <p>13 efficient way so that we can satisfy all of</p> <p>14 the people in Newfoundland. We are meeting</p> <p>15 our mandate of lowest cost reliable power</p> <p>16 because that's what we are all about.</p> <p>17 The level of frustration doesn't come</p> <p>18 with the fact of regulation. Because if there</p> <p>19 is a level of frustration in the Capital</p> <p>20 Budget process, is that we are being asked the</p> <p>21 same questions for, in this particular case,</p> <p>22 three years in a row and having thought the</p> <p>23 Board had given direction to which we had</p> <p>24 responded correctly as the Board told us last</p> <p>25 year. It is somewhat frustrating to find the</p>	<p>1 very same issues arising again, knowing that</p> <p>2 there is also a generic hearing to be held on</p> <p>3 the issue. When is there any certainty with</p> <p>4 respect to the rules we must meet before we</p> <p>5 file the application? That's where the level</p> <p>6 of frustration is coming from with this</p> <p>7 particular hearing, not certainly with the</p> <p>8 regulatory process.</p> <p>9 The next comment really just goes to how</p> <p>10 you assess credibility of witnesses. And I</p> <p>11 believe that the Board must look at it in the</p> <p>12 overall context of the evidence and not one</p> <p>13 isolated statement. And this is particularly</p> <p>14 true when you're talking about a technical</p> <p>15 area where there may not be the same level of</p> <p>16 understanding between the examiner and the</p> <p>17 witness. We've talked about length of time</p> <p>18 and I was reflecting--I've been involved in</p> <p>19 the regulatory process at Hydro one way or</p> <p>20 another, mostly as counsel for all of the</p> <p>21 hearings since 1985. That's almost 18 years</p> <p>22 and I won't tell you how long I practised</p> <p>23 before that, but it's a significant number of</p> <p>24 years. And what I found during that process,</p> <p>25 that when you get into a very technical area,</p>



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<p>1 GREENE, Q.C.:</p> <p>2 Q. .... there is some a mis-communication between</p> <p>3 a witness and a cross-examiner. I've seen it</p> <p>4 many times. So that when you look at</p> <p>5 something, you must look overall at the</p> <p>6 context of the questions. And I'll use one</p> <p>7 example which Mr. Hutchings used, the Zetron</p> <p>8 system. You'll have to look at the fact that</p> <p>9 Mr. Downton did explain what the Zetron system</p> <p>10 was, part of the problem is that the Zetron</p> <p>11 system is not a pure distributed architecture</p> <p>12 system. It can be made to work that way. So,</p> <p>13 what I am suggesting to the Board, that you</p> <p>14 must look at the overall context of the</p> <p>15 witnesses and how they presented themselves</p> <p>16 during the week. And as I've already</p> <p>17 explained, if at any time it appears that</p> <p>18 there is misinformation, no matter how minor,</p> <p>19 on the record, that's part of our role, is</p> <p>20 always to ensure that the Board has full</p> <p>21 accurate information so they can make a proper</p> <p>22 decision. That's what makes the process work</p> <p>23 and that's how Hydro has done it, certainly</p> <p>24 for the last, since it's been regulated.</p> <p>25 The next comment is with respect to Ms.</p>	<p>1 Andrews' comments with respect to personal</p> <p>2 attack. It certainly was never intended to be</p> <p>3 a personal attack. During those years of</p> <p>4 practice, I personally believe that it is not</p> <p>5 helpful to the process to engage in personal</p> <p>6 attack whether it by one counsel to another or</p> <p>7 with a witness; it doesn't assist the process.</p> <p>8 What we were trying to determine was what we</p> <p>9 believe is a fair comment and a strategy or a</p> <p>10 position that has been adopted with respect to</p> <p>11 this particular matter. And I won't bore you</p> <p>12 with how long my relationship is with Mr.</p> <p>13 Hutchings or Ms. Andrews which goes back to</p> <p>14 law school days, practising together,</p> <p>15 attending each other's weddings, et cetera, to</p> <p>16 assure the Board it is not a personal attack</p> <p>17 and was never intended to be that way, but it</p> <p>18 is a fair commentary, in my submission, as to</p> <p>19 a strategy they may have adopted on behalf of</p> <p>20 a client. Then again, it may deal with some</p> <p>21 of the frustration we see for the last three</p> <p>22 years that this particular intervenor objects</p> <p>23 just about every project that impacts them.</p> <p>24 The next comment is with respect to the</p> <p>25 radio, the actual specific radio project.</p>
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<p>1 There are two issues with respect to the radio</p> <p>2 that I'd like to address and I think that I</p> <p>3 would like to suggest something that I believe</p> <p>4 will address some of the issues that appear to</p> <p>5 have arisen which we have had difficulty in</p> <p>6 trying to understand why some of the issues</p> <p>7 have arisen to be honest. With respect to</p> <p>8 this particular project, everyone has agreed</p> <p>9 we need a radio system. Everybody has agreed</p> <p>10 we need to do something with the radio system.</p> <p>11 There have been various issues raised which</p> <p>12 have been addressed in written argument and in</p> <p>13 oral argument this morning, so I won't repeat</p> <p>14 them. The ones--but what Hydro is prepared to</p> <p>15 propose at this time is what I would suggest</p> <p>16 is a conditional approval to address some of</p> <p>17 the issues because indeed Hydro does want to</p> <p>18 satisfy the Board and the parties of what we</p> <p>19 are proposing is required for this system and</p> <p>20 we believe that it is part of our role and</p> <p>21 that it is the most reasonable project.</p> <p>22 I'm not sure if this is the correct</p> <p>23 adjective, but I would call it a conditional</p> <p>24 approval, that Hydro would, if receives</p> <p>25 approval from the Board, proceed to do as it</p>	<p>1 has said, the detailed engineering work that</p> <p>2 is required to do the tender evaluation and to</p> <p>3 report back to the Board after the results of</p> <p>4 the tender evaluation before proceeding</p> <p>5 further to award any specific elements of the</p> <p>6 work.</p> <p>7 Thank you, Mr. Chair, that concludes the</p> <p>8 comments that I wish to make at this time.</p> <p>9 CHAIRMAN:</p> <p>10 Q. Okay, thank you, Ms. Greene. So, we're done.</p> <p>11 I'd like to thank you all for your</p> <p>12 contributions. We will certainly try and get</p> <p>13 to a decision on these matters at the earliest</p> <p>14 possible date with no promises as to when,</p> <p>15 seeing it's July. But we do understand the</p> <p>16 schedule and the urgency of some of these</p> <p>17 matters being attended to and all of it being</p> <p>18 attended to, I guess, before we get into the</p> <p>19 GRA. So, again, thank you for your co-</p> <p>20 operation, enjoy the rest of the summer.</p> <p>21 Upon conclusion at 1:17 p.m.</p>

## 1 CERTIFICATE

2 I, Judy Moss, hereby certify that the foregoing is  
3 a true and correct transcript in the matter of  
4 Newfoundland and Labrador Hydro, 2004 Capital  
5 Budget Application, heard before the Board of  
6 Commissioners of Public Utilities, Prince Charles  
7 Building, St. John's, Newfoundland and Labrador on  
8 the 28th day of July, A.D., 2003 and was  
9 transcribed by me to the best of my ability by  
10 means of a sound apparatus.

11 Dated at St. John's, Newfoundland and Labrador  
12 this 28th day of July, A.D., 2003  
13 Judy Moss