IN THE MATTER OF the *Public Utilities Act* (the "Act") and

IN THE MATTER OF an application by Newfoundland and Labrador Hydro for an Order approving: (1) its 2005 capital budget pursuant to s. 41(1) of the Act; (2) its 2005 capital purchases, and construction projects in excess of $50,000 pursuant to s. 41(3)(a) of the Act; (3) its estimated contributions in aid of construction for 2005 pursuant to s. 41(5) of the Act, and for an Order pursuant to s. 78 of the Act fixing and determining its average rate base for 2003.

INDUSTRIAL CUSTOMERS' SUBMISSION

INTRODUCTION

The existing Industrial Customers of Hydro, Abitibi Consolidated Company of Canada at its Stephenville and Grand Falls divisions, Corner Brook Pulp and Paper Limited and North Atlantic Refining Limited, together with the potential Industrial Customer, Voisey's Bay Nickel Company Limited, continue their participation in the capital budgeting process of Hydro with a view to ensuring that there is some control exercised over the extent to which Hydro can expend funds on capital projects which, experience has shown, inevitably will result in the Industrial Customers paying even greater amounts for the electricity that they need to operate their enterprises within the Province of Newfoundland and Labrador.

Capital expenditures are a necessary part of the operation of any public utility such as Newfoundland and Labrador Hydro. In the best cases, such capital expenditures increase the efficiency of the utility and result in actual cost savings in the operations of the utility, which can tend toward lower rates for the customers. Unfortunately, very few of the capital expenditures

undertaken by Hydro fall within this category, as can be seen from the reply to IC-81 NLH filed in this proceeding. An examination of that response reveals further that most of the savings discussed are "anticipated" and not quantifiable. The inevitable and unfortunate conclusion is that few, if any, of Hydro's capital projects are directed towards saving their customers money and probably fewer actually do so.

The Industrial Customers pay tens of millions of dollars annually to Hydro for the electricity services which they require. Hydro is required by law to manage and operate its facilities in a manner that results in power being delivered to consumers in the province at the "lowest possible cost consistent with reliable service". (*Electrical Power Control Act, 1994*, s. 3(b)). Clearly the management of capital projects falls within this directive and the Public Utilities Board is required to implement the policy stated in s. 3(b) of the Act. Accordingly, the Board must be satisfied in respect of every proposed capital project that it is necessary in the year in which it is proposed to provide reliable service and that it is the least cost alternative for the maintenance of reliable service.

No amount of capital spending can ensure that there will never be an interruption of service to any customer of Hydro. Reasonable and appropriate standards consistent with sound public utilities practice must be established and capital spending can be justified only when necessary to avoid a violation of these standards, except in those few cases where actual cost savings from a project can be established.

Hydro requires the approval of the Board in order to expend capital funds. Accordingly, the onus is clearly upon Hydro to establish, on a balance of probabilities, to the satisfaction of the Board, that the expenditures proposed are necessary in the year in which they are proposed and represent the lowest cost alternative for the provision of electricity services in the province.

PROCESS ISSUES:

A number of issues relative to the manner in which the Capital Budget process works have been highlighted during the course of the hearing. The Industrial Customers acknowledge that a Capital Budget Review Process is ongoing and is the appropriate forum at which to address these issues. That having been said, the Board must nonetheless ensure that the manner in which Hydro presents its Capital Budget allows the Board to make the determinations which it is legislatively required to make in the course of this hearing, and the Board remains free, at this stage, to draw inferences adverse to Hydro in respect of any mode of presentation which does not conduce to full and complete disclosure of the actual plans of Hydro with respect to its Capital Projects, and the thinking behind them.

One matter that the Board does need to address is Hydro's practice relative to when a project is regarded as being valued at over $50,000.00 and, as a result, merits inclusion in Section B of the Application. The cross-examination of Mr. Martin at pp. 85 through 89 tends to indicate that the happenstance of the number of battery banks, for instance, to be replaced in a given year may determine such a project is included only in Section A or is dealt with in Section B. The item for Tools and Equipment on p. A-4, a $90,000.00 project for purchase and replacements of tools and equipment less than $50,000.00, illustrates this issue well. Of perhaps greater concern is the notion of replacement of administrative office equipment on p. A-11, a $114,000.00 project which is grouped with projects less than $50,000.00. A further similar item which was explored at the hearing was the replacement of light duty mobile equipment from p. A-8, a $260,000.00 project which was categorized as less than $50,000.00. The parties should not be required to hunt through the Section A materials in order to find significant projects of a value greater than

$50,000.00, and the Board may need to establish rules to ensure that no one is misled by Hydro's classification practices.

GENERAL CONCERNS:

Since Newfoundland and Labrador Hydro is regulated through its rate base and customer rates can be altered only through the general rate hearing process, there is a natural tendency on the part of Hydro to attempt to obtain authorization to expend further funds through the capital process. The amount that it can take in for application to operating expenses, overheads and profits has been fixed by the Board in the General Rate Hearing. Hydro has, for all intents and purposes, access to unlimited funds through its ability to borrow with the guarantee of the Province of Newfoundland and Labrador. There is no market limitation on Hydro's access to funds.

In the context of the tens of millions of dollars at issue annually for Hydro's capital budgets, any limitation related to damage to the province's credit rating is purely theoretical and of no effect. The existing capital budget hearing process is the only vehicle whereby any real restraint may be exercised in respect of Hydro's capital spending.

Given the nature of the underlying rate base regulation, Hydro will have a natural tendency to attempt to characterize operating expenses as capital expenses in order to apply capital funds to those expenses and free up the operating funds, which would ordinarily be applied for that purpose to cover increased costs or add to the contribution to overhead and profit. This is a tendency that the Board must curb in order to ensure that the intent of the legislation is met.

A further implication of rate base regulation is that the dollar value of Hydro's profit is directly related to the size of its rate base. Capital additions add to the rate base and thereby allow Hydro to earn additional profits. Again, this is a tendency that the Board must control.

A startling difference between a public utility, such as Hydro, and a private company relates to the time value of money. With access to, essentially, unlimited debt financing, an ability to apply for rate increases where interest costs arise and an entitlement to earn a return on all assets put in service, Hydro can grow and expand its asset base at the expense of its customers without any real concern that the savings associated with the deferral of capital expenditures will be lost. Hydro's Vice-President of Production, Mr. James Haynes, conceded on October 18, 2004, at p. 77 of the transcript at line 9 that deferring a project is always the cheapest thing to do. In private industry, that principle becomes an imperative; for Hydro, it is simply an option and one which confers no direct benefit on Hydro but rather tends to benefit customers while delaying the growth of Hydro's asset base and, hence, its profits.

These concerns establish that there is little by way of incentive to Hydro to minimize capital spending. Accordingly, the Board must be ever more vigilant in ensuring that only necessary capital expenditures are undertaken and that all expenditures that can, consistent with reasonable service, be deferred are deferred.

LEVEL OF THE BUDGET:

The proposed 2005 Budget is almost 50% higher than the current forecast for the 2004 Budget. With the exception of 2001, it is the highest amount that Hydro has spent since 1999 (see Application, s. E).

A comparison of the Finance Evidence in respect to the budgets for 2004 and 2005 clearly establishes, in our submission, that there has been a change in the guideline which Hydro proposes to use as a target for the capital budget. The explanation offered by Mr. Roberts at p. 116 of the transcript of October 18, 2004, and following cannot disguise the fact that the guideline is being changed to accommodate the extraordinary increase in the capital budget for 2005.

As a matter of principle, the previous target was the correct one, that the capital budget not exceed the amount of depreciation in a given year. Only companies that are in the course of a major capital expansion should even consider devoting all of the net income and other non-cash items on their financial statements to capital works. Hydro is quite clearly not in the midst of a major capital expansion, having just added generation capacity which is intended to meet needs into the 2010-2111 time frame. After consideration of the individual projects put forward, the Board should review the level of the capital budget overall and ensure, except in cases of dire necessity, that the total budget does not exceed the amount of depreciation, which in 2005 is $35.5 million.

INVENTORY ISSUES:

A number of projects in the current proposal are referred to by Hydro as “annual allotments”, and some time was spent discussing the instrument transformer project at p. B 42-43, the surge arrestor project at p. B 44-45 and the meters and equipment at p. B-100.

These items, generally do not meet Hydro’s own definition of capital assets. They are not independently operational, readily separable from the prime asset or useful in their own right. They are relatively insignificant parts of much larger assets, generally transmission lines, and the

notion of tracking individual items of a value of $1,000.00 to $3,000.00 in the case of surge arrestors or $3,000.00 to $15,000.00 in the case of instrument transformers hardly represents a rational use of resources. These are inventory items, essentially indistinguishable from the light bulbs which were discussed with Mr. Roberts in his cross-examination, and have been, in our submission, arbitrarily classified as capital works for the purpose of relieving pressure on Hydro's operating budget. These projects should not be approved and Hydro should be directed to make appropriate allowance for them in the operating budget.

CAPITAL PROJECTS TO WHICH THE INDUSTRIAL CUSTOMERS DO NOT MAKE OBJECTION OR COMMENT:

By the Settlement Report dated October 18, 2005 (Consent #1) the Industrial Customers have indicated that, with respect primarily, but not exclusively, to projects not affecting Industrial Customer costs, namely, those found at pages B-30, B-33, B-36, B-37, B-47, B-48, B-50, B-52, B-54, B-56, B-58, B-65, B-66, B-67, B-70, B-78, B-79, B-82, B-83, B-84, B-88, B-89, B-90, B-96, B-97, B-99, B-102, B-104, B-106, B-107, B-145 and B-151, the Industrial Customers are not making any objection.

In addition, as a result of the information provided in response to Requests For Information and in direct evidence and on cross-examination during the course of the hearing, the Industrial Customers make no objection or comment respecting the projects at pages B-20, B-21, B-25, B-27, B-32, B-40, B-71, B-81, B-105, B-109, B-114, B-139, B-152, B-153, B-154 and B-155.

The Industrial Customers wish to stress that their lack of objection to the above noted projects in the context of the 2005 Capital Budget Application should not be taken as in any way a waiver or concession with respect to any argument or position the Industrial Customers may take on the same or similar projects in other proceedings.

PROJECTS TO WHICH THE INDUSTRIAL CUSTOMERS MAKE OBJECTION OR COMMENT:

The Industrial Customers make objection or comment with respect to the following Projects:

Upgrade Slope Stabilization – Upper Salmon Power Canal	$1,003,000	B-5
Upgrade Controls Spherical Valve No. 6 – Bay D-Espoir	$ 196,100	B-11
Replace Penstock – Snook's Arm Generating Station	$ 115,000	B-13
Dry Ice Cleaning System	$ 59,000	B-15
Upgrade Control System – Holyrood	$1,034,000	B-16
Purch/Inst. Anti-Fouling system for Cooling Water System – Holyrood	$ 704,500	B-19
Install Main Fuel Line Valves – Hardwoods	$ 91,000	B-24
Replace Wood Poles – Transmission	$2,587,600	B-28
Digital Fault Recorder – Bottom Brook	$ 121,500	B-35
Install Motor Drive Mechanisms on Disconnect Switches	$ 182,800	B-38
Replace Instrument Transformers	$ 75,000	B-42
Replace Surge Arrestors	$ 68,400	B-44
Conduit and Control Cables – Bay d'Espoir	$ 60,700	B-46
Installation of Fall Arrest Equipment – Hydro Facilities	$ 206,200	B-77
Purchase Meters & Equipment – TRO System	$ 158,600	B-100
Install Central Air Conditioning – Whitbourne & Stephenville	$ 289,100	B-101
Upgrade Depot/Sheds – Baie Verte, Sop's Arm, Bay d'Espoir	$ 151,000	B-103
Surveys – Distribution Line Right of Ways	$ 50,000	B-108
Replace Mobile Oil Reclamation Unit	$ 530,900	B-110
Replace Doble F2000 Relay Test Equipment	$ 362,200	B-112
Applications Enhancement	$ 310,700	B-120
Secure Remote Access	$ 75,100	B-122
Corporate Applications Environment	$ 274,300	B-124
iSeries Replacement	$1,397,400	B-125
End User Evergreen Program	$ 710,500	B-127
Peripheral Infrastructure Replacement	$ 117,600	B-131
Security Strategy Deployment	$ 99,400	B-132

Server Evergreen Program	$ 211,900	B-134
VHF Mobile Radio System	$2,914,800	B-137
Microwave Site Refurbishing	$ 293,800	B-141
Replace Remote Terminal Unit for Hydro – Phase 6	$ 149,500	B-143
Replace Air Conditioners – Stoney Brook & Deer Lake	$ 55,300	B-144
Vehicles 2004	$ 450,000	B-147
Vehicles 2005	$ 877,600	B-149

OBJECTIONS AND COMMENTS ON INDIVIDUAL PROJECTS:

The individual Projects in respect of which the Industrial Customers make objection or comment, in addition to those referred to under "Inventory Issues" above, are as follows:

Upgrade Slope Stabilization – Upper Salmon Power Canal (p. B-5):

The Project Description for this Project indicated that the engineering study and report being prepared by Acres International Limited ("Acres"), and for which a capital budget expenditure of $102,000.00 had been approved in the 2004 capital budget, had been expected in late August of 2004.

Mr. James R. Haynes, P. Eng. Vice-President of Production, testified that the Acres engineering study and report had not yet been completed, and that Acres and Hydro were still "in the process of defining the solution" with respect to the slope stability issue.[1] Mr. Haynes further testified that it had been anticipated when the 2005 budget proposal had been written that the Acres engineering study and report would have been available for presentation to the Board as part of Hydro's filings for the approval of the second phase of the Project.[2]

In the absence of the Acres engineering study and report, the only evidence before the Board to support the approval of the $1,003,000 proposed capital expenditure for 2005, for an admittedly undefined solution to the slope stability problem, was an excerpt from the Dyke Board Report at page B-7 of Hydro's 2005 capital budget submission and, in response to IC-50, a copy of the October, 1999 report prepared by AGRA Monenco of St. John's, referred to in the Dyke Board Report excerpt.

Based on the above-noted evidence, the Industrial Customers do not dispute that a solution should be found to the slope stability issues referred to in the Dyke Board Report excerpt and in

the AGRA Monenco report. The Industrial Customers, however, do dispute whether Hydro has presented sufficient evidence that it has defined a solution to support the approval of a $1,003,000 capital expenditure for the 2005 capital budget, or that Hydro has demonstrated that there is such urgency to this Project that the capital expenditure should be approved even without evidence of the defined solution to support the expenditure.

Page 2 of the 1999 AGRA Monenco report, under the "Results and Discussion" section, states as follows:

> *These results indicate that for the assumed conditions and geometry, the lower slope of the left side of the canal may be prone to shallow failure as the groundwater table approaches the surface. During normal operations, it is estimated that, on average, 70% of this lower slope is submerged. Similarly, for the assumed conditions and geometry, a larger failure involving the upper slope of the left side of the canal appear unlikely unless the groundwater table approaches the surface. Piezometric data collected to date suggest that groundwater levels up slope of the left dike remain below the surface, however there is only one piezometer in this area* **[Emphasis added]**.[3]

While Mr. Haynes testified to his understanding that the Dyke Board would have reviewed additional information gathered in respect of the slope stability since the 1999 AGRA Monenco report, he could not direct the Board to any reference to such assessment of new (post-1999) information in the excerpt to the Dyke Board Report at page B-7 and page B-8 of Hydro's 2005 submission.[4] Indeed, the Industrial Customers note that the excerpt from the Dyke Board Report apparently only refers to the October, 1999 AGRA Monenco report in respect of analysis of data.

Mr. Haynes testified that the additional information gathered since 1999 with respect to the slope stability had been made available to Acres for the purposes of their engineering study.[5]

It is the position of the Industrial Customers that insufficient evidence has been presented to the Board to support Hydro's contention that the subject section of the Upper Salmon Power Canal

is subject to an immediate likely risk of the "larger failure" scenario referred to in the 1999 AGRA Monenco report. The Industrial Customers propose that consideration of this $1,003,000 capital expenditure should be deferred to the 2006 capital budget, at which time the Board would presumably have the benefit of the opportunity to consider the promised Acres engineering study and report.

Upgrade Controls Spherical Valve No. 6-Bay D'Espoir (p. B-11):

Although the testimony of the Hydro witness in respect of this Project was that all six of the valves for the subject Bay D'Espoir Powerhouse No. 1 are used at peak power output, Hydro does have in place the backup of activating a gas turbine to cover off any failure and repair of one or more of the valves.[6]

Moreover the only failure scenario outlined in the Project Justification for this Project which has in fact been experienced at Bay D'Espoir, scenario A, is one where backup generation from a gas turbine is available and has proved sufficient. The other two failure scenarios, B and C, have not been experienced at Bay D'Espoir, notwithstanding that this program for upgrade of the control systems has been ongoing since 2001, and that valve problems have been experienced for the last five years.[7]

The Hydro witness confirmed that there would be no significant disadvantage to replacing the last two of the six spherical valves in Powerhouse in one year, either from the point of view of cost or of disruption of generation while the replacements were being effected.[8]

The Industrial Customers propose that, in a year where Hydro is seeking approval of capital budget expenditures in excess of $42 million, this Project is one that can be reasonably deferred to the 2006 capital budget year.

Replace Penstock – Snook's Arm Generating Station (p. B-13):

The primary objection of the Industrial Customers to this Project, as proposed by Hydro, is that full replacement has been chosen over phased replacement, despite the fact that Hydro's own analysis is that phased replacement would provide the greatest net positive result.[9] Moreover, potential liability concerns arising from the current condition of the penstock would be substantially addressed by a phased replacement option.[10] It was confirmed by Mr. Haynes that no liability or potential liability claims have arisen in respect of the penstock to date.[11]

While Hydro is only seeking approval of a 2005 capital expenditure for the project design for replacement of the penstock, it was confirmed by Mr. Haynes that the project design would only be considering full replacement.[12]

It is submitted that on cross-examination of Mr. Haynes, the characterization by Hydro of the "disadvantages" of phased replacement as compared to the "advantages" of full replacement were called into serious question. Indeed, all of the identified advantages of full replacement were also advantages of the phased replacement option.[13]

The Industrial Customers propose that the proposed capital expenditure for project design based on full replacement is not reflective of the reasonable least cost alternative, phased replacement, and that therefore this Project should not be approved.

Dry Ice Cleaning System (p. B-15):

It appears from the cross-examination of Mr. Haynes at pp. 191 through 195 of the transcript of October 7, 2004, that this is a mobile system which could have been used to deal with this issue at the Granite Canal site as well as the others for which it will now be used. The rate payers have already funded an apparently similar amount for a fixed system at Granite Canal. Proper

planning would have eliminated that cost and provided for only the acquisition of the mobile system to avoid the duplication. As the current acquisition would make the Granite Canal system redundant, the technically correct approach would be to exclude that portion of the capital cost of the Granite Canal system from rate base as not being a used and useful asset given that the new equipment could handle that need. The practical approach at this stage is simply to disallow this capital expenditure and let Hydro fund this project itself without any unnecessary addition to the Rate Base.

Upgrade Control System – Holyrood (p. B16-18):

Hydro's handling of this particular project is troublesome. A review of the cross-examination at pp. 195 – 198 of the transcript of October 7, 2004, reveals that Hydro's assurance last year that the Emerson system was the only alternative has clearly been shown to be incorrect. On the basis of that incorrect assertion, Hydro sought approval of a $1.5 million capital project. Given the current description of the Foxboro system, it is clear that that supplier was in the market place and capable of providing what Hydro now regards as a superior product when Hydro provided its assurances to the Board last year. The Board should give serious consideration to this circumstance in determining what weight to place upon the assurances provided by Hydro in respect of each project.

This having been said, this particular project is now well along, funds having been approved in previous years, and the Industrial Customers would see no benefit in disallowing this project at this time.

Purchase/Installation Anti-Fouling System For Cooling Water Systems – Holyrood Generation Station (p. B-19):

The concern of the Industrial Customers in respect of this Project is that its cost effectiveness is entirely dependent on Hydro achieving improved efficiency of the Holyrood generating plant by reducing fuel use by an estimated approximately 5,250 barrels per year. Otherwise, the Project is expected to be a break even on an annual basis with respect to operating costs.[14]

The estimated annual operation, maintenance and repair costs of the proposed anti-fouling system would be $52,700.00, including its chemical supply. This is in addition to the substantial capital expenditure of $704,500.00 to purchase and install this system.

The present annual cost to Hydro of removing mussels from the cooling water systems is approximately $52,000.00 to $53,000.00, comprising $21,000.00 for diving services, $9,000.00 for vacuum truck removal, and the remainder for Hydro's internal labour and material costs.[15]

In effect, there is no saving in operating costs associated with this substantial capital expenditure, other than the estimated fuel efficiencies, which are entirely dependent upon the anti-fouling system operating as advertised so as to completely eliminate any material effect of mussel migration on the cooling water system. No substantiation of the efficiency of the proposed anti-fouling system has been provided, other than to the extent elicited through the cross-examination of Mr. Haynes.[16]

It is the position of the Industrial Customers that the testimony of Mr. Haynes, while indicating that inquiries had been made as to whether the proposed anti-fouling system had been successfully implemented in other circumstances to remediate similar problems, is not sufficient evidence that it will remediate the problem at the Holyrood generation station to the high level of efficiency which Hydro is estimating, which high level of efficiency is necessary to justify the

project on a cost effectiveness basis. It is submitted that for a $704,500.00 capital expenditure, some more substantive evidence of the inquiries and assessment of the anticipated efficiencies of the proposed anti-fouling system would have been expected. The Industrial Customers therefore propose that this project should not be approved for the 2005 capital budget.

Install Main Fuel Line Valve – Hardwoods Gas Turbine (p. B-24):

It was confirmed by Hydro's response to IC-10 that the *Provincial Gasoline and Associated Products Regulations* do not require the installation of the two motorized valves in 2005. Mr. Haynes further testified that no specific time frame was imposed by the Certificate of Approval issued by the Department of Environment and Conservation for compliance with this regulation. Mr. Haynes was unable to say for how long this regulation/Certificate of Approval requirement had been outstanding[17].

It is the position of the Industrial Customers that in a year where Hydro is proposing a capital budget of over $42.0 million that this Project is one that can be reasonably deferred to a future capital budget year, as although it may be justifiable, it is neither a necessary nor essential project for the 2005 capital budget year.

Replace Wood Poles – Transmission (p B-28):

The Project Title, "Replace Wood Poles", is a misnomer. The capital expenditure being proposed is in respect of "a more formal wood pole line management program".[18] In the view of the Industrial Customers, it is more accurately described as a continuation, albeit with some modification and enhancement, of existing inspection and maintenance procedures, and as such an operating expenditure.

For five years, between 1998 and 2003, a more selective transmission pole inspection program had been in place. Prior to 1998, Hydro's pole inspection and maintenance practices followed the traditional approach of sounding inspections.[19] Under the "traditional" approach, 20% of each of Hydro's 43 transmission lines were inspected every year.[20] Under the proposed Project, Hydro's "maintenance tactics" have changed so that "now, we basically inspect, instead of every five years, every ten years".[21]

It is acknowledged that pursuant to Hydro's previous and current inspection and maintenance practices, when poles must be replaced, the cost of the pole replacement is capitalized.[22]

However, by this proposed Project, Hydro seeks, by a modifying its inspection and maintenance methodology, to capitalize its inspection and maintenance practices, which have previously been an operating expense.

It is significant that, by this proposed Project, Hydro will be seeking to find ways other than replacement to address poles which are "rejected" on inspection.[23] The costs of identifying poles for what is in effect an overhaul or repair, and the costs of that overhaul or repair, are sought to be capitalized by the proposed Project. Overhaul or repair are usually to be identified as an operating expenditure.[24]

Hydro seeks to support its characterization of pole inspection and maintenance practices as a capital project by arguing that it constitutes the "life extension" of units of property.[25] Presumably, however, such life extension had been the goal of Hydro's previous inspection and maintenance regimes, which had not been capitalized. It is trite to have to say that all maintenance practices have as at least one of their goals the extension of the service life of the

asset. It is noteworthy in this regard that apparently no study of the "life extension" effects of Hydro's previous inspection and maintenance methodologies had been conducted.[26]

While Hydro is to be commended for pursuing new and improved pole inspection and maintenance practices, an enhanced operating practice ought nonetheless to be still considered as an operating practice (and operating expenditure).

The only new practice to be introduced by the proposed Project is the replacement of preservative chemicals in poles over 20 years old.[27] (However, there does not appear to be much hard evidence about the success of such preservative replacement in extending pole life.)[28]

The Industrial Customers submit that two passages from the testimony of Mr. Martin are illuminating on the question of to what extent maintenance practices previously characterized as operating expenditures would in fact change only as a matter of degree, and not of kind:

> *All of these poles are going to be inspected. It's only a matter of how we line them up, priority wise, to inspect them. And again the primary thing in this whole project is not the inspection; it is the treatment. If we are going to extend the life of these assets, it's going to be done in two ways. One is effective, early treatment and the second is analysis that says we don't' have to replace the poles just because the inspection rejects it, looking at where it is in the line, how it is loaded and so on as well as the results of the inspection, we may be able to defer replacement of that pole. We may be able to fix the pole, we may be able to put in other mechanisms such as guying or stub poles or whatever to extend the life.*[29]

> *I think the other thing, Mr. Kennedy and Board, that's worth repeating is that the $36 million we're proposing here is not all new money. Most of the money that we're proposing to spend in this program, we're already spending through inspection, testing and so on. The materials that we actually use to treat each pole costs approximately $30. So we're looking at treating with materials that cost $30 a pole that to replace would cost us $7,000.*
>
> *Q. So the incremental cost of treating the poles, as part of your Wood Management Program, is minimal? Is that –*
>
> *MR. MARTIN*

> *It is. The treatment part is a very small part of it, extremely small part.*[30]
> **[Emphasis added]**

The Industrial Customers submit that the proposed Project is in effect a continuation, albeit with some modification and enhancement, of previous inspection and maintenance programs which were, and are still to be, properly seen as an operating expense. The Industrial Customers propose that this Project ought not to be approved as a capital expenditure.

Digital Fault Recorder – Bottom Brook (p. B-35):

A review of the transcript of October 6, 2004, at pp. 94 through 104, reveals that this line has been operating without this particular diagnostic device for its entire life (p. 96, lines 6-8), its absence will not result in violation of any reliability standard (p. 99, lines 12-13), it is a performance enhancement device (p. 102, line 2) and the existing clearing times for faults are not excessive (p. 104, line 9). In these circumstances, no case is made that this is a necessary expenditure in 2005 and this project ought to be dis-approved.

Motor Drive Mechanisms on Disconnects (p. B-38):

While this is admittedly an enhancement to the safety of the particular operations with which it deals, the risk which this device eliminates seems to have been steadily decreasing with the replacement of many of these mechanisms already and the enhanced inspections designed to ensure that no injury occurs. In the circumstances, this is the project appropriately deferred to a later year.

Conduit and Control Cables – Bay d'Espoir (p. B-46):

The proposed replacement of these cables arises directly from negligence on the part of Hydro employees in inflicting the damage on these cables in the first place. That risk should not be foisted on Hydro's rate payers, but rather borne by the shareholder. It is singularly inappropriate to ask the rate payers, who have provided this cable to Hydro initially, to replace it because Hydro has damaged it.

In any event, this is clearly a case of damage which requires repair and should be an operating expense. The extent of the damage means that replacement of the cables is, presumably, preferable to repair in this instance, but Hydro has not produced any evidence to show that this is a capital asset, is independently operational or readily separable from the prime asset or useful in its own right. Hydro has not demonstrated that this is a separately depreciated item and, to the extent that it is part of the Prime Asset, being the Bay d'Espoir Generating Facility, it is so insignificant as to not be properly regarded as a capital replacement. This project should be disapproved.

Installation of Fall Arrest Equipment – Various Facilities (p. B-77):

As noted in the Project Justification for this Project, provincial legislation requiring fall arrest/travel restraint systems was introduced in 1999. The Industrial Customers note that the legislation in question, confirmed by the Hydro witnesses, is the *Occupation Health and Safety Regulations*, and specifically subsection 60(1) of those Regulations.

Subsection 60(1) of the *Occupation Health and Safety Regulations* provides as follows:

> *60. (1) Where it is impracticable to provide adequate work platforms or staging, the employer shall ensure that fall protection systems are used by all workers employed over pits, shafts or moving machinery and by all workers working at elevations greater than 3.05 metres above grade or floor level in accordance with current standards of the C.S.A Code with respect to fall protection and fall protection systems.*

The Hydro witnesses did not provide any evidence as to how the fall arrest systems proposed to be installed were as required by the above-referenced Regulation and the C.S.A. Code referenced in the Regulation, other than to confirm that all 310 locations to be addressed by the proposed Project represented areas where workers would be working at elevations greater than three metres above the next lower level,[31] and by information provided by Hydro's response to IC-19, which only provided the example of vertical fuel storage tanks as being locations where permanent installations of fall arrest equipment would be required.[32] Other than this, there were only general assurances that engineering assessments have been or will be performed to prioritize the riskiest sites.[33]

The concern of the Industrial Customers in respect of this Project is not to dispute that permanent installations of fall arrest equipment may be required at some Hydro locations, and that temporary or shared equipment may be required for other locations, but rather the failure of Hydro to provide, in the context of a Project which is calling for a capital expenditure of $206,000 in 2005 and steadily increasing amounts in subsequent years, any detail as to the number of permanent fall arrest installations versus shared and/or temporary equipment. This is of concern to the Industrial Customers given that the average per location cost will apparently be $3,000 (the estimated $992,900 capital expenditure over the projected term of the Project for 310 locations) and that pursuant to the response to IC-74, Hydro estimates a range of cost of $1,000 to $5,000 per location. While the Industrial Customers can accept that such relatively high costs

may be required for permanent fall arrest installations, they do not accept that there is sufficient evidence to justify such level of expenditure for shared or temporary fall arrest equipment.

The Hydro witness ended his testimony on cross-examination in respect of this Project by stating the following:

> *And I don't mean to try and pre-empt Mr. Holden by any means, but basically what we're asking the Board for this year is approval for the $206,000 that we would anticipate spending in 2005. We know there are enough locations out there now within the 310 that will require some level of fall arrest travel restraint system, whether it be a permanent installation on horizontal or vertical fuel storage tanks, the tops of power transformers, if you will, and all of our terminal stations that we have to get up and work on, control buildings and other buildings around the system. I guess what we're saying is, and what Mr. Holden was explaining is that we have looked at these. We've got them prioritized based upon the risk involved, the height of the building, the frequency of access, and what we would intend to do is, as part of this program, throughout the remainder of this year and 2005, work on the details of this, again working on the priority sites, spend up to the $206,000 to address those sites that we know we have to address to be compliant with the legislation, and then in future years, bring back to the Board whatever adjustments we felt were necessary to the outer years, 2006 and beyond, and what expenditures will be required at that time. We're not asking for approval of the one million dollars. The one million dollars is an order of magnitude estimate, if you will, put together for future years to address what we think the program might cost us. We do know, and we are very comfortable that we need to spend at least $206,000 next year to address the priority sites, again to be compliant with legislation and provide the level of safety required of our employees under that legislation.*[34]

The Industrial Customers are prepared to accept that if by prioritization Hydro means that the proposed 2005 capital expenditures will be focused upon permanent fall arrest installations, such as fuel storage tanks, that the proposed 2005 capital expenditure of $206,200 for such priority purposes may very well be supportable. However, the Industrial Customers feel it is appropriate to note that it is their view, in respect of this year's 2005 capital expenditures and projected future year capital expenditures for this Project, that some substantiation by Hydro of the level of expenditure per installation site could and should be provided. With that comment, the Industrial

Customers make no further objection with respect to the proposed 2005 capital expenditure for fall arrest equipment.

Install Central Air Conditioning – Whitbourne & Stephenville (p. B-101):

With reference to the response to IC-21, Hydro is proposing this $289,100 capital expenditure for 2005 due to an unspecified of complaints (not formally documented) having been made by staff with respect to elevated temperatures at these sites during summer months.[35]

The Hydro witness testified that the ASHRAE standard referred to in IC-21 is not a regulatory requirement, but rather represents recommendations of temperature and relative humidity levels for human occupancy.[36]

The Hydro witnesses were unable to say that all Hydro facilities are in conformance with the subject ASHRAE standards.[37]

The number of office staff using these sites as their primary work space is in the order of a half dozen people at each site.[38]

While the Industrial Customers have some sympathy for the occasional discomfort no doubt felt by office workers on those occasions in the summer when elevated temperatures and relative humidity are experienced, the Industrial Customers do believe that the Board could take notice that workers in this Province cannot be said to be typically provided with centrally air conditioned work environments, as might be a more reasonable expectation in jurisdictions where elevated temperatures and relative humidity can be expected to be more prolonged through the year. Given that these conditions appear to impact on only approximately a dozen office workers who use these spaces as their primary work space, the Industrial Customers propose that in a capital budget year when Hydro is seeking approval of total expenditures of

over $42 million that this $289,100 capital expenditure can be reasonably deferred to a future capital budget year.

Upgrade Depot/Sheds (p. B 103):

The information provided in U-Hydro-3 shows a building extension at Bay d'Espoir and construction of two new storage sheds at Baie Verte and Sop's Arm. These are properly regarded as capital works and we leave it to the Board to determine whether the evidence before it establishes that these expenditures are necessary. The amounts of $24,100.00 and $19,900.00 for upgrading of line depots is repair work which should be characterized as an operating expense. Hydro, in addition to responding to the request for information in U-Hydro-3, took the opportunity to advance arguments in respect of these parts of the project, adding indications that the buildings had been fully depreciated and the work extends the life. The board should rule clearly that the mere extension of the life of an asset by repair work does not constitute that expenditure as capital expenditure. Whether or not the building is fully depreciated is irrelevant. Rate payers have paid for that asset and Hydro should, in its operating budget, allow for necessary and appropriate repairs from time to time. Clearly, the replacement of a window which had reached the end of its useful life or had been damaged, does not constitute a capital renovation of a building. The window is not a unit of property, nor is a door, a roof or the siding, as these are clearly not independently operational, separable from the principal asset or useful in their own right. This is a clear attempt to reclassify operating expenses as capital work and, to that extent, this project should be disallowed.

Surveys – Distribution Lines Rights of Way (B 108):

It is clearly not shown that Hydro has pursued any less costly method of resolving the issue presented by this Project. While this is a $50,000.00 project in 2005, the total cost, as revealed in IC-26 NLH, is in the neighborhood of $160,000.00. These surveys all relate to existing lines and their absence arises directly from Hydro's status as an agent of the Crown. Accordingly, there is a simple solution to vest the necessary right-of-ways in Hydro by statute, a solution which is wholly appropriate given how the issue arose in the beginning.

In any event, this is not a Capital Project as it produces no capital asset when the project is concluded. To the extent that this work needs to be undertaken, it is an operating expense of Hydro.

Purchase Mobile Oil Reclamation Unit – TRO Central (p. B-110):

The Industrial Customers do not dispute that an oil regeneration plan for Hydro's 161 power transformers on its bulk electrical system is justifiable.

However, as acknowledged by the Hydro witnesses, Hydro did not entertain the idea of making a request for proposals to the private sector with respect to an oil regeneration program for all 161 power transformers. Given that the idea was not even entertained, the Industrial Customers are not persuaded by the evidence of the Hydro witnesses that it is self-evident that such a request for proposals would be impractical, as has been suggested by at least one Hydro witness.[39]

Given the relative magnitude of this proposed capital expenditure of $530,900, the Industrial Customers do not see it as unreasonable to suggest that Hydro should be expected to entertain and consider whether a request for proposals could produce a more cost effective solution,

consistent with Hydro's plan for regeneration of its power transformers. The Industrial Customers propose that this project not be approved for the 2005 capital budget.

Replace Doble F2000 Relay Test Equipment – Bishop's Falls, Whitbourne, Stephenville & Bay D'Espoir (p. B-112):

It was determined, by Hydro's response to IC-30, that the manufacturer's support of the present equipment would extend to the end of 2006, rather than to the end of 2004 as submitted by the Project Justification.

The new digital test equipment proposed to be purchased under this Project would be more compatible with Hydro's newest digital equipment. However, Hydro's witness confirmed that not all of the equipment to be tested is up to the standard of the state of the art test equipment being proposed. Moreover, it is not the case that there is any digital equipment that is not being currently tested as a result of Hydro not having the state of the art test equipment. The Hydro witness could provide no detail of any problems which have been encountered by Hydro's technicians as a result of having to use the current test equipment.[40]

Given the clarification that the manufacturer's support for the current test equipment will run to the end of 2006, the Industrial Customers propose that this Project should not be approved for the 2005 capital budget and should be deferred to a future capital budget year.

Applications Enhancements (B120-121):

Despite extensive cross-examination, it is still difficult to reach a full understanding on the intent of this project. Four marginally related items are combined to make a single project. As regards the various minor enhancements, these are stated to be unforeseen modifications, enhancements and additions, yet Hydro was able, in IC-31 NLH, to break down this "unforeseen" expenditure

by category of material supply, labour, project management and overhead etc. Clearly, if this breakdown is possible, the items to be acquired are not "unforeseen".

It is also needs to be borne in mind that, according to Mr. Roberts, Hydro's policy for software is to capitalize only items over $25,000.00. Even for a system as sophisticated as Hydro's, a $25,000.00 expense on a single piece of software should hardly be regarded as a "minor" enhancement.

The enhancements to the Intranet would also appear to be, more properly, operating expenses. These are annual amounts and would appear to be continuing indefinitely into the future. A detailed examination to determine if last year's enhancements are being further enhanced this year, is likely beyond the proper scope of review by the Board of an item that is costing, in 2005, less than $70,000.00. The key performance indicator item seems similar to the Intranet and should be treated similarly.

As regards the first three parts of this Project, the Industrial Customers submit that these are not proper capital expenditures and ought to be disallowed. The Facility's failure model would appear to be a legitimate capital project, but the evidence does not establish that this enhancement cannot be deferred to a future period and, accordingly, should be disallowed.

Secure Remote Access (p. B-122):

It appears from the cross-examination on October 18th at pp. 2 through 5, that there would be no specific detriment to Hydro in deferring the second year of this work. There is no evidence of any pressing need to proceed in 2004, and the project should accordingly be deferred.

Corporate Applications Environment (p. B-124):

The aspects of this Project dealing with the Metaframe Server and the Network Management Tools would appear to be required to allow these systems to continue to function at a reasonable level. No case is made for the additional modules for CiscoWorks and the amount identified by Mr. Downton at p. 12 of the transcript of October 18, 2004, at line 23 of $69,000.00 in that regard should be disallowed.

i Series Replacement (p. B-125):

The discussion relative to this project and status of the JD Edwards System was troubling. The Industrial Customers are not satisfied that a sufficient degree of planning and investigation has occurred to ensure that the costs of providing this type of computer service to Hydro on a ongoing basis will be minimized. We would suggest that Hydro be directed to study on a longer term basis its plans for future requirements before committing to a particular brand name of computer which may limit Hydro's ability to access a variety of options for its future requirements, and accordingly disallow this project at this time.

End User Evergreen Program/Server Evergreen Program (p. B 127-130 and p. 134-136):

Hydro admits in its evidence at p. 43 of the transcript of October 18, 2004, at line 8 that there is no independent standard with respect to the service life of the end user devices referred to in these Projects. The level of information being put before the Board in this regard is characterized by the response at line 12 of p. 44 of that transcript as follows:

> *"I guess if I were to look at local companies, I mean Newfoundland Power basically follows the same sort of guidelines, the same sort of analysis when they replace their server infrastructure*".

This answer implies that Hydro has not even determined whether Newfoundland Power does follow similar guidelines and leaves the Board in doubt as to whether Hydro's research in this area can be relied upon to justify these huge annual expenditures. Given the situation which arose in connection with the upgrade of the control system at Holyrood and Hydro's apparent lack of knowledge of alternative suppliers for computer equipment, little weight can be put on the vague generalities that have been offered in terms of supporting the guidelines that Hydro has adopted. This project should be totally disallowed in the current year, which will likely amount to no more than a deferral of some expenditures and giving Hydro the opportunity to justify its practices in this regard.

Peripheral Infrastructure Replacement (p. B 131):

The evidence at pp. 53 through 56 of the transcript of October 18, 2004, in this regard does not establish any pressing need to replace the items in question. There is no analysis of the increase in maintenance costs on the photocopy device being replaced and little justification for acquiring a new multi-functional device at the Hydro Place warehouse. Admittedly some of these devices are small-ticket items, but the accumulation of items of this nature is of serious concern and the Board should be sending a message to Hydro that ever dollar should be scrutinized and unjustified expenditures should not be brought before the Board.

Security Strategy Deployment (p.B-132)*:*

This project raises concern with respect to the scarcity of information provided in the Explanation. A much different picture of this Project appears after review of the cross-examination on October 18, 2004, which begins on p. 55 and continues through to p. 64 of the transcript. With this additional information, the potential for some cost saving is, at least,

identified, but actual savings are still somewhat speculative. The Industrial Customers would suggest that this Project be given conditional approval with a further filing requirement from Hydro to demonstrate cost savings when bids are received before final approval is given for the expenditure funds.

VHF Mobile Radio System (p. B 137 – 138):

The concerns that this Project raises are more related to process, at this point, than to substance. Industrial Customers concede that an adequate communication system is required for Hydro's operations and it seems unlikely that a better technical alternative than a VHF mobile radio system can be found.

The Industrial Customers are concerned that Hydro gave a blanket assurance in 2001 that this project needed to be proceeded with in 2002, then failed to put forward the project (after it had been disallowed) in 2003 and again assured the Board in respect of 2004 that the project had to proceed in that year. There have been no adverse consequences arising from the deferral of this Project from 2002 to 2005. While Hydro does not concede that 2005 is a typical year in that revenue requirement would increase by 5% of the capital assets put in service in that year, assuming that percentage for the purpose of argument, the deferral of a project of $8.4 million represents an annual saving of $420,000.00 to rate payers and a four year deferral would amount to almost $1.7 million in savings. Had the Board accepted Hydro's assurances in 2001 that the project had to proceed in 2002, rate payers would have paid significant amounts of money in respect of this Project well in advance of the time that those expenditures were required.

The Industrial Customers concede that these are properly characterized as issues of engineering judgment. The Board must consider what weight to put upon Hydro's judgments in this regard in light of the manner in which the facts have developed in connection with this project.

At this time, the Industrial Customers have no submission to make with respect to the approval of the VHF mobile radio system project.

Microwave Site Refurbishing – Mary March Hill (p. B-141):

The work being proposed under this Project is in the view of the Industrial Customers in the nature of inspection and maintenance, and more properly to be considered as an operating expenditure.

In this regard, it is noteworthy that the Hydro witness described an aspect of the work, the tower painting, to be necessary to avoid what Hydro considers a "premature life".[41] The painting, as well as the galvanizing of anchor heads and the replacement of the guys at level four, are all attributable to corrosion and the risk of corrosion arising from ordinary wear and tear.[42]

Similarly, the Industrial Customers submit that the evidence supports the view that the proposed detailed electrical system assessment is more properly to be characterized as an inspection, and where necessary repair or replacement, of electrical components, and that such work is more properly considered as an operating expenditure.[43]

With reference to Hydro's response to IC-86[44], the Industrial Customers take the position that the work proposed by this Project as a capital expenditure does not constitute a replacement or betterment of a unit or portion of a unit of property, but rather normal and prudent overhaul or repair, to avoid "premature life". The Industrial Customers propose that this Project not be approved as a capital expenditure for the 2005 capital budget.

Replace Remote Terminal Units for Hydro – Phase 6 – Bay D'Espoir Plant and Bay D'Espoir Terminal Station (p. B-143):

The Project Justification for this Project is in part that spares are no longer available for these systems. However, it was confirmed by the Hydro witness that spares have been salvaged from other RTUs which have been decommissioned in earlier phases of this Project. It was confirmed that these spares, while admittedly not expected to be as reliable over the longer term as new spares would be from the manufacturer, have been able to be used to maintain in operation the RTUs which have not yet been replaced under this Project.[45]

Hydro typically has maintained that all the RTU units are of the "same priority". However the Industrial Customers believe it is reasonable to infer a comparatively lower priority for this 2005 Project from the fact that, in a program to replace a total of thirty two RTUs, the replacement of these two RTUs was postponed to phase 6.[46] Given this implicit prioritization of the replacement of these two RTU units, together with the availability of spares from previously decommissioned RTUs, the Industrial Customers propose that the replacement of the two RTUs sought to be approved for the 2005 capital budget could be reasonably deferred to a future capital budget year.

Replace Air Conditioners – Stoney Brook & Deer Lake (p. B-144):

It should be noted that although the Project Description is that this Project consists of the replacement of air conditioning systems in communications rooms at these sites, it was clarified on cross-examination that the Deer Lake space is actually of mixed use, comprising office space and space for communication systems, and that what is being sought to be replaced are air conditioning units, as opposed to central air conditioning systems.[47]

With respect to the Stoney Brook air conditioner unit, it was confirmed that the air cooling function remains functional (in the case of the Stoney Brook unit, the space air conditioned is a communications room only). It is this air cooling function which is of importance in maintaining the functionality of the communications equipment.[48]

With respect to the Deer Lake air conditioning unit sought to be replaced, it is functioning but is being deemed inadequate by Hydro. The current air conditioning unit was only installed two or three years ago.[49] The air quality assessment identifying poor air quality in this office space was performed prior to the installation of the purportedly inadequate air conditioning unit.[50]

While the proposed purchase and installation of new air conditioning units may be justifiable in the longer term, the Industrial Customers propose that this Project can be reasonably deferred to a future capital budget year.

Vehicles 2004/Vehicles 2005 (p. 147-148 and 149-150):

The continuing concerns of the Industrial Customers have been exacerbated rather than diminished by the evidence that has been heard in this hearing relative to Hydro's management of its vehicles.

The parties were made aware in previous hearings that there was pending a review of Hydro's fleet requirement in this regard, and an expectation was created that this process would allow the parties and the Board to reach some conclusions as to whether Hydro's fleet was at or near a level which was appropriate to the provision of reliable service at the lowest possible cost. We are now told that Hydro's Manager of Transportation was directed to review the fleet, but Hydro has been unable to produce a single piece of paper indicating the mandate given to this individual, the direction as to how he was to proceed, the steps actually taken in the course of the

review or any conclusions with respect to any particular vehicle or vehicles generally to which this review led. As appears from pp. 162 through 165 of the transcript, the review is credited by Hydro with producing a reduction of 7 – 8 units per year over the three year period from 2004 to 2006, while historical information shows that, without any review, there was a reduction of 9 units from 2002 to 2003. One possible conclusion is that the review has actually decelerated the process of reducing the size of Hydro's fleet.

The actual figures produced with respect to numbers of vehicles assigned particular locations do not lead to the conclusion that there is a rational distribution of vehicles, let alone an efficient one. In 2003, there are 21 vehicles assigned to St. John's, an operation which from 1999 through to 2002 had between 11 and 14 vehicles, and there is no explanation for this 50% increase in vehicle requirements at St. John's.

It does not appear that the criteria for replacement of vehicles has been reviewed recently but it does appear that the evidence which was adopted under oath by Hydro's witnesses was factually incorrect as appears from lines 9 through 17 at p. 73 of the transcript of October 7, 2004.

The state of the record is such that the Board cannot be satisfied that the amounts sought in respect of these two projects are necessary and appropriate expenditures in the year 2005. Clearly, the Project at p. B 147 cannot justify a $140,000.00 contingency in respect of a budget of $300,000.00.

The Industrial Customers suggest that the Replace Vehicles 2004 Project be reduced to $300,000.00 and that the Replace Vehicles 2005 Project be reduced to $500,000.00 as an interim step pending completion by Hydro of an external independent review of its vehicle requirements and management, a report of such review to be filed with the Board at its next Capital Budget

hearing. Where Hydro fails to produce evidence to allow the Board to make a reasoned decision on an issue such as vehicle replacement, it is not appropriate for the Board to totally disallow the Project given that there are presumably some vehicles which need to be replaced and reliability of service could be threatened if Hydro is unable to act in that regard.

While the suggested figure is somewhat arbitrary, it should allow Hydro to deal with the most urgent items and provide it with the opportunity to provide complete justifications in a future year.

FIXING OF RATE BASE

Hydro proposes in this Application a total abandonment of the well-established process of fixing the rate base of Newfoundland and Labrador Hydro only at the time of general rate hearings.

Generally speaking, the rate base of Newfoundland and Labrador Hydro will be increasing year over year, although admittedly there are unusual circumstances which can result in a decrease in the rate base. Given the general effect, the annual approval of the rate base will increase the amount of earnings which Newfoundland and Labrador Hydro is permitted to make and retain, as will become clear when the Board finalizes its position on a cap on return on rate base and excess earnings of Hydro.

Hydro pleads regulatory consistency in this regard, but there is only one other utility at issue, and the Board needs to address the point as a matter of principle rather than blindly following a practice established for the one other utility of a similar nature which the Board regulates. It is not clear that alternative positions were argued prior to the decision to fix a rate base annually for Newfoundland Power.

It is singularly inappropriate for Hydro to by-pass the pending capital budget review process and attempt to make this fundamental change in the current hearing. The issue requires appropriate consideration and should be deferred until the Review Process has been concluded.

COSTS:

The Industrial Customers request that the Board order Hydro to pay the full amount of costs reasonably incurred by the Industrial Customers in presenting their intervention in this proceeding.

As has been pointed out on any number of occasions, Hydro includes the costs of these hearings in its operating expenses and is permitted to set rates to recover those costs in full. Newfoundland Power treats their expenses of intervention in a similar way and sets its rates to recover its full cost of participation in proceedings of this nature from its customers.

The Industrial Customers do not live in a cost plus world; they do not have the opportunity to ask anyone to adjust the price of their products to recover any particular cost they may incur. The costs of this intervention represent a sunk cost for the Industrial Customers coming straight from their respective bottom lines.

In our submission, it is the presence of the Industrial Customers in this proceeding which has rendered this a credible and useful process. The presence of our clients has moved Hydro, since 2001, to improve considerably its justifications and explanations for capital projects and to bring presentations before the Board which can allow the Board to make reasoned decisions on most of their requests. There are still some deficiencies, as have been noted, but the quality of Hydro's presentation is improved remarkably since 2001. The Industrial Customers have undertaken the bulk of cross-examination in this hearing and clearly much valuable information has been

produced for the Board as a result. As noted in the opening remarks of counsel, it is unfortunate that the Consumer Advocate did not participate and scrutinize those projects which do not affect Industrial Customers to the same extent as we have scrutinized the projects that do impact industrial rates.

The Board made a partial award of costs in respect of the 2004 Capital Budget Hearing in favour of Industrial Customers and an award in respect of the 2003 General Rate Hearing. In the absence of reasoned and professional interventions such as those brought forward by the Industrial Customers, there is a danger that the capital budget approval will become a rubber stamp, that capital funds will be expended unnecessarily or unwisely and that the legislative intent of the Public Utilities Act will be defeated.

The Industrial Customers pay about 20-22% of the regulated revenues of Hydro. To the extent that they address projects that are categorized as common for the purpose of Cost of Service, (which are the vast majority, if not all, of the projects addressed) the benefit accrues to the entire ratepayer population. Indeed, residential and general service customers of Newfoundland Power and Hydro receive four times the benefit that the Industrial Customers themselves receive to the extent that revenue requirement is reduced by disallowing or deferring capital works. The efforts of the Industrial Customers should not be provided to other ratepayers as a gift; a full cost award, which Hydro will include in its operating expenses for future rates, allows the cost to be spread equitably among all ratepayers, similar to the treatment of other common expenses.

Basic fairness requires that a full cost award in favour of Industrial Customers be made and such an award is clearly within the power of the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at St. John's, in the Province of Newfoundland and Labrador, this day of October, 2004.

STEWART MCKELVEY STIRLING SCALES

per: _____
Paul L. Coxworthy

POOLE ALTHOUSE

per: _____
Joseph S. Hutchings, Q.C

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ENDNOTES

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[1] Transcript, October 7, 2004, page 137, lines 12 to 21

[2] Transcript, October 7, 2004, page 138, lines 2 to 12

[3] IC-50, AGRA Monenco Report, October 27, 1999, page 2

[4] Transcript, October 7, 2004, page 145, lines 10 to 25; page 146, lines 1 to 25; page 147, lines 1 to 20

[5] Transcript, October 7, 2004, page 147, lines 21 to 25; page 148, lines 1 to 4

[6] Transcript, October 7, 2004, page 158, lines 9 to 25; page 159, lines 1 to 11

[7] Transcript, October 7, 2004, page 160, lines 4 to 25; page 161, lines 1 to 14

[8] Transcript, October 7, 2004, page 163, lines 6 to 19

[9] 2005 Capital Budget Application, Section G, Appendix 1, page 17

[10] 2005 Capital Budget Application, Section G, Appendix 1, page 12; Transcript, October 7, 2004, pages 172 to 177

[11] Transcript, October 7, 2004 , page 168, lines 22 to 25; page 169, lines 2 to 11

[12] Transcript, October 7, 2004, page 164, lines 5 to 6

[13] 2005 Capital Budget Application, Section G, Appendix 1, page 17; Transcript, October 7, 2004, pages 181 to 189

[14] IC-81, page 1, line 6

[15] Transcript, October 7, 2004, page 197, lines 9 to 20; page 198, lines 20 to 25; page 199, lines 1 to 2

[16] Transcript, October 7, 2004, page 199, lines 12 to 25; pages 200-206

[17] Transcript, October 7, 2004, page 212, lines 10 to 25; page 213

[18] 2005 Capital Budget Application, page B-28, "Operating Experience"

[19] 2005 Capital Budget Application, page B-28, "Operating Experience"

[20] Transcript, October 6, 2004, page 182, lines 4 to 19

[21] Transcript, October 6, 2004, page 182, lines 24 to 25; page 183, lines 1 to 13

[22] Transcript, October 6, 2004, page 187, lines 8 to 23

[23] Trancript, October 6, 2004, page 202, lines 15 to 25; page 203, lines 1 to 6

[24] IC-86, page 2, lines 1 to 3

[25] Transcript, October 6, 2004, page 186, lines 5 to 19

[26] Transcript, October 6, 2004, page 186, lines 20 to 25; page 187, lines 2 to 6

[27] Transcript, October 6, 2004, page 187, lines 8 to 25; page 188, lines 1 to 24

[28] Transcript, October 7, 2004, pages 56 to 57

[29] Transcript, October 6, 2004, page 202, lines 15 to 25; page 203, lines 1 to 6

[30] Transcript, October 7, 2004, page 57, lines 15 to 25; page 58, lines 1 to 6

[31] Transcript, October 6, 2004, page 215, lines 8 to 16

[32] IC-19, page 1, lines 6 to 10

[33] Transcript, October 6, 2004, pages 215 to 220

[34] Transcript, October 6, 2004, page 219, lines 10 to 25; page 220, lines 1 to 23

[35] IC-21, page 1, lines 6 to 18; Transcript, October 7, 2004, page 18, lines 1 to 12

[36] IC-21, page 1, lines 20 to 24; Transcript, October 7,2004, page 17, lines 13 to 22

[37] Transcript, October 7, 2004, page 18, lines 22 to 25

[38] Transcript, October 7, 2004, page 20, lines 3 to 25; page 21, lines 2 to 3

[39] Transcript, October 7, 2004, page 40, lines 4 to 25; page 41; page 42, lines 1 to 10

[40] Transcript, October 7, 2004, pages 52 to 54

[41] Transcript, October 8, 2004, page 139, lines 17 to 25

[42] Transcript, October 8, 2004, page 143, lines 24 to 25; page 144, lines 1 to 6

[43] Transcript, October 8, 2004, page 145, lines 22 to 25; page 146; page 147, lines 1 to 12

[44] IC-86, page 2, lines 1 to 3

[45] Transcript, October 8, 2004, page 154, lines 19 to 25; pages 155 to 156; page 157, lines 2 to 17

[46] Transcript, October 8, 2004, page 150, lines 22 to 25; page 151; page 152, lines 1 to 23

[47] Transcript, October 8, 2004, page 158, lines 2 to 25; page 159, lines 1 to 7

[48] Transcript, October 8, 2004, page 159, lines 8 to 22; page 162, lines 23 to 25; page 163, lines 1 to 14

[49] Transcript, October 8, 2004, page 164, lines 3 to 8

[50] Transcript, October 8, 2004, page 165, lines 23 to 25; page 166, lines 1 to 21