

1 (11:05 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Good morning,
3 everybody. I'd like to welcome everybody who is in
4 attendance here today. My name is Bob Noseworthy
5 and once again I'm Chairman, and CEO of the Public
6 Utilities Board, and Chair of the panel, and I have with
7 me today on my right, Commissioner Fred Saunders,
8 who has participated as a commissioner on the panel
9 throughout the (inaudible) in this matter, and on my
10 immediate left is Darlene Whalen who is also a
11 commissioner who has participated on the panel as
12 well. Don Powell, who is the fourth commissioner on
13 this panel, is not with us today due to, he had some
14 emergency surgery since our last meeting and certainly
15 he couldn't be here today. Counsel for the panel
16 requested yesterday (inaudible) Mr. Powell from this
17 panel today. I want to thank you very much for your
18 agreement on that matter, (inaudible), Mr. Browne, for
19 your agreement on that matter, and I understand that
20 Janet Henley Andrews is not with us today for health
21 reasons as well and we certainly wish her a speedy
22 recovery and a quick return to the proceeding.

23 MR. HUTCHINGS: Thank you, Mr. Chair, we'll pass
24 that on.

25 MR. NOSEWORTHY, CHAIRMAN: Thank you. Just
26 a housekeeping matter, I suppose, with regard to the
27 timing of the proceedings. We will be breaking, I
28 understand Mr. Kennedy has discussed this matter
29 with you, at 11:30 today, and reconvening at two
30 o'clock this afternoon as necessary and proceeding on
31 to 4:30 if that's required.

32 I have no opening statement as such this
33 morning and I would propose to go right to the
34 proceedings. The agenda I think has been circulated.
35 The first item on the agenda is the (inaudible 360)
36 counsel which (inaudible) earlier this morning, and I'll
37 be asking Mr. Kennedy to comment on that shortly.

38 We do have an update as well on the, on our
39 web server and I'd like to pass that information along,
40 and we have three motions before us today. The first
41 motion for Newfoundland Power, seeking an order of
42 the Board regarding certain requests for information
43 received by it from the Consumer Advocate; the second
44 motion that's before us from the Consumer Advocate
45 seeking an order of the Board concerning the settings
46 of dates and locations outside of the City of St. John's,
47 and the third motion we have before us is from the

48 Industrial Customers seeking an order from the Board
49 concerning the responses received by it from Hydro to
50 specific information requests, and we'll deal with those,
51 if everybody is in agreement, in that order. I would
52 again proceed right on to the agenda and I'd ask Mr.
53 Kennedy to report on the meeting that was held earlier
54 this morning.

55 MR. KENNEDY: Thank you, Chair, members of the
56 panel. Following the meeting of counsel there was, the
57 agenda, which was the agenda distributed to the
58 counsel for the purposes of that meeting, had the
59 proposed dates for travel outside the City of St. John's,
60 those dates being in the week of October the 14th,
61 travel to St. Anthony and specifically Plum Point for
62 October the 15th, October 16th and the 17th, Lab City,
63 and October the 18th and 19th would be used for travel
64 to and the conducting of hearings for the purposes of
65 public presentations in Goose Bay, and in turn public
66 presentations in Lab City and Plum Point. The
67 immediate week following, October the 21st, for the
68 same purpose of convening for public presentations,
69 that on the date of October the 22nd the Board would
70 travel to Stephenville. It was proposed that the Board
71 travel to Gander on October the 23rd. Counsel for the
72 Consumer Advocate has requested that Grand Falls be
73 switched out for Gander and, if I may, the Consumer
74 Advocate's position was that the interests of Grand
75 Falls being a paper town, if you will, were perhaps more
76 sensitive to the Hydro application and the impact it
77 could have on that specific industrial customer. So
78 that's something that the Board may want to, or should,
79 I guess, take into account when it finally reaches its
80 decision on the dates and the locations. That the
81 parties were advised that October the 24th would be
82 used for Board matters, which is a change from PU-7,
83 because right now PU-7 uses October 26th for Board
84 matters, but that October the 25th and 26th instead
85 would be used for the purposes of public presentations
86 here in the City of St. John's.

87 There was one request of, to provide the
88 parties with notice about whether their views, whether
89 they would be asked to express their views at the
90 beginning of these public presentations, in other
91 words, the positions of Hydro, Newfoundland Power
92 and the Consumer Advocate regarding the Hydro
93 application itself, whether they would be called upon to
94 provide brief statements concerning their positions in
95 that regard. As far as I'm aware, it's not the intention of
96 the industrial customers to travel to any of the
97 locations in Labrador. I don't know whether it's their

1 intention to travel to Stephenville or Gander or Grand
2 Falls, if it's in fact both or either or both locations.

3 MR. HUTCHINGS: I expect we will be represented at
4 the island locations.

5 MR. KENNEDY: Okay.

6 MR. HUTCHINGS: Other than St. Anthony or Plum
7 Point of course but if ... Stephenville and ... Stephenville
8 definitely and if Grand Falls is on the agenda, I expect
9 we'll be there.

10 MR. KENNEDY: There was also discussions held
11 concerning the calendar dates for experts, and
12 following discussions and looking at various conflicts
13 for the experts' schedules themselves, the following
14 seemed to be resolved, that the cost of capital experts
15 would be called to testify commencing on October the
16 29th and running through until November the 2nd, so
17 that week, October the 29th, Monday, through to that
18 Friday, being November the 2nd. Then because of the
19 conflict in one of the expert's schedules, there would be
20 a week break in the cost of capital experts and that they
21 would re-convene for the purposes of providing their
22 expert testimony again on November the 13th with the
23 objective being of completing that process by no later
24 than November the 16th, November the 12th being a
25 holiday. The preceding week of November the 5th
26 through to November the 9th would be used just for the
27 normal course of events of whatever Hydro witness
28 was last left off on October the 12th, if in fact they were
29 a hold-over from the 12th, and, if not, just the next
30 Hydro witness. The cost of service experts would be
31 called upon to testify commencing on November the
32 26th and that process, it is hoped, will take no more
33 than two weeks to complete and therefore would be
34 concluded on December the 7th.

35 The counsel were also provided with an
36 update on the status of the web site, on the
37 implementation of a system for universal displays, on
38 the changes to be made to the room set-up itself
39 concerning tables, sound system and the witness
40 stand. Counsel were also provided with information
41 concerning the completion of a glossary and that that
42 glossary would be passed to counsel in due course for
43 their vetting and confirmation that there's nothing
44 contained which they have an objection to, and in turn
45 then to be adopted as the formal glossary for the
46 purposes of this hearing on definitions of technical
47 terms.

48 The only other business that was raised in
49 addition to discussions concerning the motions
50 themselves was the fact that the transcripts from each
51 day's hearing would be emailed to the respective
52 counsels as soon as it's completed and that that would
53 be done by the transcriber directly, and counsel seemed
54 to prefer this route as opposed to any other one.

55 And I believe that's the material or substantive
56 parts of the discussion in the meeting of counsel and I
57 think that that completes that insofar as what I need to
58 report on there, Chair, and brings you to the motions
59 themselves, I believe.

60 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
61 Kennedy. Before we start on the motions themselves
62 I would seek any comments from the parties in relation
63 to Mr. Kennedy's report or any clarifications or
64 comments to be made and I'll begin with Hydro.

65 MS. GREENE, Q.C.: Mr. Chair, there is one comment
66 that I would like to make and it's with respect to the
67 location of hearings outside of St. John's. As I
68 indicated at the pre-hearing conference and now at two
69 meetings of counsel, Hydro questions the number of
70 the hearings on the Island of Newfoundland. The
71 suggestion is that there be three. We have reservations
72 that the added value to the hearing process of having
73 three separate hearings around the island justifies the
74 cost and the expense of having the three hearings. We
75 note that a consumer advocate has been appointed to
76 represent consumers and that any party who wishes
77 may come to the hearing process in St. John's. As you
78 know, we did agree with the hearings, to have two
79 hearings in Labrador because of the significant changes
80 that Hydro is proposing to the manner in which rates
81 are set on the Labrador interconnected system, and we
82 believe that is appropriate, however, I do want to note
83 for the record, as I have in the past, at the pre-hearing
84 and at the meetings with counsel, that Hydro does
85 question the appropriateness or the added value to this
86 hearing process of having three separate public
87 hearings on the island portion.

88 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.
89 Greene. Newfoundland Power, do have any further
90 comment (inaudible)?

91 MR. ALTEEN: We have no comment on counsel's
92 report and in terms of the proposed travel we are
93 comfortable with the two weeks of travel more or less as
94 proposed.

1 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.
2 Hutchings?

3 MR. HUTCHINGS: Thank you, Mr. Chair. We have no
4 concerns at this time relative to the proposed travel
5 schedule as has been indicated. Given that the
6 Labrador trip will be dealing with Labrador issues that
7 don't impact the industrial customers, we would not
8 intend to participate in those hearings, if in fact the
9 Board sits in Stephenville and perhaps in Gander, the
10 Company, the industrial customers may well simply be
11 represented there. We are aware obviously that the
12 employees, one of our clients, have asked that the
13 Board will hear them in Stephenville and we certainly
14 support their ability to do that, but our participation will
15 not be there in Labrador or in St. Anthony and we may
16 choose to be represented in Stephenville and Gander if
17 those go ahead, but we're satisfied so that the Board
18 determine the schedule.

19 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
20 Hutchings. Consumer Advocate, Mr. Browne?

21 MR. BROWNE, Q.C.: Yes. We agree with having a
22 hearing in western Newfoundland and in central
23 Newfoundland and our preferences of the hearing in
24 central Newfoundland be in Grand Falls because there
25 are overriding issues for that community. In terms of
26 other locations, in terms of St. Anthony and Plum Point,
27 the Board has decided to go there and we don't take
28 exception to that. I guess in any location you'd give
29 notice of a hearing, wouldn't you, and if people on a
30 certain date didn't respond or say they would like for
31 you to come or they have something to say, you
32 wouldn't go there, we wouldn't be all in a hotel room in
33 Plum Point trying to draw someone out from the street
34 to come in and speak to us. I hope that wouldn't be the
35 case.

36 MR. NOSEWORTHY, CHAIRMAN: No, sir, that's not
37 our intention.

38 MR. BROWNE, Q.C.: So if no notice is given by a
39 certain date, I think that we would state that in your ...
40 I'm sure you would state that when, that if no notice is
41 given, you won't be there. So these could be subject to
42 change as well. I don't know if that assists Ms. Greene
43 and her concerns.

44 MR. KENNEDY: Mr. Chair, just one clarification The
45 court clerk just advised me, it's actually apparently just
46 St. Anthony, not Plum Point, so instead of travelling to

47 Plum Point and St. Anthony, we'll just have the hearing
48 for the purposes of public presentations right in St.
49 Anthony.

50 MR. NOSEWORTHY, CHAIRMAN: Thank you. Are
51 there any further comments on that matter? Okay.
52 Thanks very much. What we would propose to do is to
53 incorporate the schedule and the other matters where
54 it's appropriate into a, amendment or revision to the
55 procedural order. We would undertake to do that in
56 due course but as quickly as possible, and subject to
57 the consideration of the comments that have been made
58 and discussions during counsel meetings, we will be
59 issuing that revised order. We have not heretofore
60 attempted to incorporate every change in the
61 procedural order because we did not want to confuse
62 the issue (inaudible) change in the procedural order
63 every week or ten days, but we'll undertake to do a
64 comprehensive revision (inaudible) matters after today
65 and certainly (inaudible) a final and complete version of
66 the matter (inaudible).

67 Proceeding on, I guess the next item on the
68 agenda, given that the web server and matters relating
69 to the glossary have been dealt with in terms of meeting
70 of counsel, we'll proceed directly onto the motions.
71 The first motion before us is the Newfoundland Power
72 motion seeking an order of the Board regarding the
73 requests for information received by the Consumer
74 Advocate, and in the first instance I will ask
75 Newfoundland Power to ...

76 MR. ALTEEN: It's a pleasure, Mr. Chair, to say that
77 there really isn't much for the Board to decide. In
78 discussions with the Consumer Advocate over the past
79 couple of days, we've reached a mutually acceptable
80 resolution of the issues raised in the application of
81 August 8th. That application dealt with a total of six
82 questions, being CA-156 through to CA-161, which
83 have been filed as requests for information in this
84 proceeding.

85 Just to briefly indicate to the Board the
86 resolution reached between counsel, on RFI CA-156,
87 counsel for the respective parties agree that that's been
88 answered in the evidence (inaudible) which has been
89 filed in the proceeding. Questions CA-157 and 158
90 have been re-asked by the Consumer Advocate
91 recently. They are not answered on the record yet,
92 however, Newfoundland Power will be filing answers to
93 those questions. CA-159 is a request for information
94 for data with respect to distribution costs principally

1 and system operations on Newfoundland Power's
2 system for five historical years and five forecast years.
3 We have agreed with the Consumer Advocate that we
4 can file a five-year historical data to the year 2000
5 because this is available or relatively readily calculable.
6 Forecasts for this data is not available and we cannot
7 file that. And for requests for information CA-160 and
8 161, the Consumer Advocate has indicated that he is
9 prepared to withdraw those in consequence of our
10 agreement on the other matters. On the basis of this
11 agreement, Mr. Chairman, we'll be withdrawing our
12 application.

13 MR. NOSEWORTHY, CHAIRMAN: Are there any
14 comments, Consumer Advocate?

15 MR. BROWNE, Q.C.: We concur there is agreement.
16 These questions had originally been put forward by our
17 cost of service expert, Mr. Doug Bowman who had
18 required this knowledge to prepare his own evidence
19 and we have, as Mr. Alteen has said, reached an
20 agreement and the matter is no longer an issue.

21 MR. NOSEWORTHY, CHAIRMAN: Thank you very
22 much. Any comments from Hydro?

23 MS. GREENE, Q.C.: No, Mr. Chair, not on this matter.

24 MR. NOSEWORTHY, CHAIRMAN: The industrial
25 customers?

26 MR. HUTCHINGS: Nothing, thank you, Mr. Chairman.

27 MR. NOSEWORTHY, CHAIRMAN: Thank you very
28 much. Moving on I guess to the second motion that's
29 before us today, it's from the Consumer Advocate
30 seeking an order of the Board concerning setting the
31 dates and locations for travel outside St. John's. I
32 would assume, Mr. Browne, that based on your
33 previous comments and discussion this morning,
34 agreement on the schedule, that that would be
35 satisfactory?

36 MR. BROWNE, Q.C.: Yes. It appears the Board is
37 prepared to put a schedule to paper now and I think the
38 parties would agree that will be timely. Thank you.

39 MR. NOSEWORTHY, CHAIRMAN: Any other
40 comments on this matter from other parties?

41 COMMISSIONER SAUNDERS: I have a question on
42 that, if I might ...

43 MR. NOSEWORTHY, CHAIRMAN: Sure.

44 COMMISSIONER SAUNDERS: ... to Mr. Browne. In
45 giving consideration to your proposal to substitute
46 Grand Falls for Gander, I'm trying to get my head
47 around the reasons, and I think we discussed it at an
48 earlier sitting, but the reason for Gander, I don't know if
49 Mr. Kennedy explained it, was that it was central for the
50 eastern part of the island in respect of the Bonavista,
51 Burin Peninsulas, Clarendville area, as well as Grand Falls
52 and central, if you were to choose just one location.
53 You mentioned Abitibi in Grand Falls as being a reason
54 for sitting there. Were there any other reasons that you
55 had?

56 MR. BROWNE, Q.C.: No. I believe having reviewed
57 the initial part of the evidence there seems to be a
58 concern for the paper companies concerning their
59 viability if they paid too much more for electricity. It
60 seems to be a concern. I note that these communities,
61 particularly the community of Grand Falls, would be
62 totally dependent on the mill as everyone here would
63 know, and for the people of Grand Falls to have to
64 travel to Gander to discuss what is a very local problem
65 may be just beyond the pale for them. Now we all might
66 be surprised when you put the notice in, if you choose
67 to put Grand Falls, we might get no, we may get no
68 representation at all. Now, making these comments, I
69 don't presume to usurp the role of Mr. Hutchings or
70 Ms. Gillies, who's here this morning, who are
71 representing these industrial customers, but it just
72 seemed to me, recognizing what you're stating as well,
73 that given the overriding issue there that pertains to
74 that Grand Falls mill, that there may be a lot of local
75 concern there.

76 COMMISSIONER SAUNDERS: Okay, thank you.

77 MR. BROWNE, Q.C.: Thank you.

78 MR. NOSEWORTHY, CHAIRMAN: Thank you very
79 much. The final motion before us is the industrial
80 customers' motion, concerning the request received by
81 Hydro regarding specific information requests. I'd ask
82 (inaudible), Mr. Hutchings (inaudible).

83 MR. HUTCHINGS: Yes, thank you, Mr. Chair, and I'm
84 equally pleased to advise that this should not delay the
85 Board any longer than the other two motions this
86 morning. In discussions with Ms. Greene we've been
87 able to resolve understandings with respect to the
88 various questions that were at issue. Just to outline

1 briefly for the record, as regards IC-1, which asked for
2 a number of cost of service studies, we have agreed
3 that Hydro will be filing the actual 2000 cost of service
4 by September 10th and the 1997 actual and 2001
5 forecast by September 30. We have reached an
6 understanding that, given the state of the data, the 1996
7 and 1998 cost of services cannot be produced in a
8 meaningful fashion that would be, represent useful
9 information to us, so that, their agreement to file these
10 three which we have identified resolve the issues
11 relative to IC-1.

12 Then with respect to further cost of service
13 studies which were requested and under different
14 methodologies, we have reached an understanding that
15 Hydro will within a week or, say, by Monday of next
16 week, file what is called the generic cost of service for
17 2002 and 1999, that's the cost of service under the
18 generic methodology, and will file similar cost of service
19 under the generic methodology for 1997, 2000 and 2001
20 within two or three days of their filing of the actuals
21 and, or forecast cost of service for those particular
22 years. This allows us to get some information that we
23 can use for the purpose of what the intent of IC-18 was
24 in terms of making our comparisons, and I'm speaking
25 in terms of our discussion with respect to so-called
26 interim generic and proposed methodologies for the
27 cost of service, and I understand that Hydro will be
28 specifically defining those three methodologies in due
29 course, but we have an understanding as to what they
30 will involve.

31 As regards IC-86, and this was directed toward
32 access to a particular document referred to in the
33 evidence of Ms. McShane (phonetic), Hydro has
34 proposed that they will file, I understand today with the
35 Board, one copy of the particular publication which is
36 proprietary but they will be filing one copy with the
37 Board and that will be accessible to all parties. On that
38 basis we're satisfied to proceed without having to put
39 Hydro through the necessity of purchasing an
40 enormous number of these at a significant cost in US
41 dollars, and other parties may wish to speak to that
42 particular issue.

43 IC-103 was the final question which was at
44 issue, and I have actually received today a revised
45 response to that inquiry which satisfies our concerns,
46 so with a little cooperation between the parties we seen
47 to have resolved all the outstanding issues in respect
48 of that application.

49 MR. NOSEWORTHY, CHAIRMAN: Thank you very
50 much, Mr. Hutchings. Any comments from Hydro?

51 MS. GREENE, Q.C.: Mr. Chairman, Mr. Hutchings has
52 adequately explained the agreement reached between
53 the parties. I only have two very minor comments. One
54 relates to IC-86 and the other relates to IC-103. With
55 respect to IC-86, which concerned a request for what
56 was considered to be proprietary information, I do have
57 a copy of the documentation that was requested and at
58 the conclusion of motions this morning I will leave a
59 copy with the Clerk of the Board.

60 With respect to IC-103, Mr. Hutchings
61 indicated he has just received a copy this morning and
62 our intent is to file a copy with all of the parties to the
63 hearing today. It may already have been done in my
64 absence from the office, but if it hasn't been, it will be
65 by the close of business today.

66 MR. NOSEWORTHY, CHAIRMAN: Thank you very
67 much.

68 MR. HUTCHINGS: Well on the basis of our agreement,
69 we can withdraw our application and need not ask the
70 Board to make an order, Mr. Chair.

71 MR. BROWNE, Q.C.: Is everyone getting a copy of
72 that?

73 MR. HUTCHINGS: Nobody is getting a copy of it.

74 MS. GREENE, Q.C.: This ... that was ...

MR. HUTCHINGS: Just the Board.

76 MS. GREENE, Q.C.: The reference or the request in IC-
77 86 was to this document which is a published document
78 by Regulatory Research Associates. We requested
79 permission from the publisher to provide copies to all
80 the parties to the hearing. The publisher in the letter
81 that we have attached in our reply refused to provide
82 that saying it was proprietary, and we, our suggested
83 solution is that that one copy that we can, have
84 purchased, and the publisher has consented that we
85 would file that with the Board and that other parties
86 could review it, so that is our agreement with the
87 industrial customers as a solution to their request for
88 the document, so it would be available to all the parties
89 to be reviewed here at the Board offices.

- 1 MR. NOSEWORTHY, CHAIRMAN: Is that
2 satisfactory, Mr. Browne?
- 3 MR. FITZGERALD: Mr. Chairman, I guess it's slightly
4 problematic if we can't copy it, if that's the message. It's
5 apparently an important document, going to be an
6 important document relating to the cost of capital, it's
7 going to be an important document for cross-examining
8 Ms. McShane, I would think. It's a document that is
9 not going to be part of the evidence because it's a
10 document in response to an information request, yet it
11 seems to be an exception. There isn't going to be 25
12 copies of it produced. Just thinking this through here,
13 it's an oddity. Is the fact that it's cost prohibitive? Is
14 that the reason why we aren't being provided copies of
15 it as other documents?
- 16 MS. GREENE, Q.C.: As stated in the reply, the cost to
17 purchase each one of these is \$500 US. The information
18 that's contained in there is a compilation of regulatory
19 reports in the United States. I would believe that any of
20 the experts of the other parties would have access to
21 that document as well. It's a factual document
22 recording decisions made by regulatory boards in the
23 United States. It's not expressing an opinion or any
24 matter like that. I also understand from the publisher
25 that this is the way it has been handled where it has
26 been an issue in other jurisdictions, that they do not
27 consent to having it copied and made part of the record
28 for all of the parties because they are losing in their
29 copyright to material. So perhaps if the Consumer
30 Advocate counsel could review the documentation and
31 they satisfy themselves as to what it is, it's like a DLR
32 report. It's just a report of the decisions of regulatory
33 boards in the United States.
- 34 COMMISSIONER SAUNDERS: Well if he chooses to
35 pay \$500, he can have a copy.
- 36 MS. GREENE, Q.C.: He can have it, yes. He can make
37 his own arrangement with the publisher.
- 38 COMMISSIONER SAUNDERS: That's what you're
39 saying.
- 40 MS. GREENE, Q.C.: Yes.
- 41 COMMISSIONER SAUNDERS: Yeah.
- 42 MR. BROWNE, Q.C.: Yeah, that's fair enough, I guess.
- 43 MS. GREENE, Q.C.: And as I said, I will be surprised if
44 his expert didn't have access to it already.
- 45 MR. FITZGERALD: That's fine, Mr. Chairman.
- 46 MR. NOSEWORTHY, CHAIRMAN: Mr. Alteen ...
- 47 MR. ALTEEN: I have nothing to add, Mr. Chairman.
- 48 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you
49 very much. Are there any final comments from the legal
50 counsel?
- 51 MR. KENNEDY: No, Mr. Chair.
- 52 MR. NOSEWORTHY, CHAIRMAN: Well, first of all I'd
53 like to express my sincere thank you to all parties here
54 today (inaudible) cooperation I guess and willingness
55 to work with one another to resolve these matters. It
56 certainly makes our job much easier here and I think
57 facilitates the efficiency of this process. I'd just like to
58 thank everybody for dealing, meeting with one another
59 and (inaudible) willingness to resolve these matters in
60 the way in which they have been handled, and certainly
61 thank you to our counsel for his contribution in
62 facilitating that. Just a couple of comments finally. As
63 I indicated earlier, we will be issuing a revised amended
64 procedural order, possibly, I would hope next week, and
65 we'll get back to you very, very quickly, taking into
66 account the matters that have been agreed upon and
67 indeed the comments that have been made on these
68 issues by the parties as well.
- 69 With regard to the schedule itself, there are no
70 further motion days allotted in the calendar (inaudible)
71 beginning of the public hearing itself on September
72 24th. I have no doubt that between now and then there
73 may very well be issues that will arise and as far as this
74 Board is concerned we have to deal with those issues
75 as they come forward and see what sense there might
76 be for a further motion day or a further meeting.
77 Hopefully that will not be the case but we'll have to
78 reserve the right to do that and set up a schedule
79 accordingly. But anyway, we'll cross that bridge when
80 we come to it.
- 81 Once again I would like to thank you. The
82 timing (inaudible) ...
- 83 MR. BROWNE, Q.C.: Before you wind down, I do have
84 one issue, Mr. Chairman.

1 MR. NOSEWORTHY, CHAIRMAN: Okay. Well, you
2 may as well introduce that now because I'm (inaudible).

3 MR. BROWNE, Q.C.: It's the same issue I raised
4 previously. Board records, you're telling me in a letter
5 again yesterday that anything you have or anything
6 that the Board has which is a matter of public record
7 must be subject to an information request. I made two
8 requests of the Board. I requested the transcripts and
9 the application pertaining to the Aliant pole structure
10 case which was held recently, and I made that request
11 on August 23rd, and yesterday or the day before I made
12 another request. I requested a copy of the application
13 which Newfoundland Power have made pertaining to
14 their 2002 capital budget, and last night I received a
15 letter from the Board stating that has to be part of the
16 formal information request process. I thought we had
17 dealt with that in a previous hearing. I know I had the
18 concurrence of Ms. Janet Henley Andrews, and we
19 argued that the Board is not a party to the proceeding.
20 You are the decision-maker, and why you are
21 subjecting yourself to information requests I think is
22 wrong in law. It certainly is not anticipated in your own
23 rules and regulations that you will be subject to
24 information requests. Mr. Wilson, who has been
25 appointed by the Board, could be subject to
26 information requests, but the Board itself surely as an
27 administrative tribunal, should not be subjecting itself
28 to information requests. And given that and the fact
29 that these are public documents, these, any citizen has
30 a right to come and look at it ... in fact, if you look at
31 your own notice, if anyone took the trouble to read it,
32 your own notice in reference to the Newfoundland
33 Power application, "How to see the application." This
34 was in Wednesday, August 22nd edition of The
35 Evening Telegram. "Copies of the application are
36 available to the public by contacting the Board's
37 secretary between the hours of 8:30 and 12:30 p.m., 1:30,
38 4 p.m., by telephone at (709) 726-8600. The application
39 can also be reviewed by the, at the applicant's regional
40 offices throughout the Province."

41 Now, why can't I get a copy of that application
42 without having to go through an information request?
43 Any citizen in the province can. It seems bizarre that I
44 should be given a letter telling me to file an information
45 request to get that. I ask you to re-visit that and
46 reconsider it.

47 It's also the issue of, which seems to have
48 been little concern, if that is your position, of just
49 duplicating these things for other parties and other

50 parties already have them in most instances. I can't
51 imagine Newfoundland Hydro wouldn't have a copy of
52 Newfoundland Power Inc.'s 2002 capital budget
53 application, because there are rate, they deal with the
54 rate of return there and expansions to the rate base, so
55 I can't imagine Newfoundland Power would not have
56 given Newfoundland Hydro a copy of it because of the
57 issues in reference to domestic customers in the
58 province and how that might affect Hydro's customers
59 and its revenues.

60 But I just find that absolutely bizarre and I
61 would ask the Board to look at it again. I followed the
62 procedure as outlined in the paper. I called the Clerk
63 and asked could I have a copy of it.

64 COMMISSIONER SAUNDERS: Do you have that letter
65 there?

66 MR. BROWNE, Q.C.: And this is the response that I
67 get. And I cast no aspersions on the Clerk. She's been
68 absolutely professional and as she always is in
69 reference to all of these matters, but she seems to be
70 stopped somewhere. Somewhere along the line
71 someone is stopping, saying he has to put that in an
72 information request. I don't think I do. I think I have a
73 right to come in here and get any copy of a transcript
74 that's a matter of public record, as you would at any, to
75 any administrative tribunal in the province. Sure, you
76 can go down to the Supreme Court and get a file and
77 request copies of it. It's just bizarre, your position on
78 that.

79 COMMISSIONER SAUNDERS: Mr. Browne, I think I
80 saw the request come in. I just have a question for
81 clarification. How did the request get worded in respect
82 of the letter you sent? It seems to me that when you
83 sent the request it was in reference to this hearing.

84 MR. BROWNE, Q.C.: Maybe the "Re" on it may have
85 been ...

86 COMMISSIONER SAUNDERS: Reference
87 Newfoundland Power, Newfoundland Hydro hearing.

88 MR. BROWNE, Q.C.: Yeah. I might have had the "Re"
89 on it in reference to that and (inaudible) pertaining to
90 the Aliant pole structure application, but in terms of the
91 other request, that was a verbal request. I followed the
92 direction on the paper and called the Clerk and asked
93 for a copy of it as we were told to do in the paper, but
94 that aside, I don't think I was making ... it was not in the

1 format of an information request. It's our position that
2 the Board, as the administrative tribunal, should not be
3 subject to information requests. You are the trier of
4 fact. You have to decide according to law. You are not
5 a party. Only parties ...

6 COMMISSIONER SAUNDERS: We can't guess what
7 your capacity is when you approach us on the matter of
8 this hearing. We assume that you're approaching us as
9 the Consumer Advocate appointed by the order-in-
10 council which empowers you. If you come forward as
11 Dennis Browne, Q.C., to request any other matter here
12 without making reference to this hearing, then I think
13 you're right, you have every right to receive copies of
14 applications or whatever is here in the way of public
15 documents, but once you identify yourself as the
16 Consumer Advocate appearing in the matter of this
17 hearing, we can only treat you and treat your request
18 the way we treat every other RFI that comes in. Isn't
19 that fair enough?

20 MR. BROWNE, Q.C.: No, it's not clear at all, Mr. ...

21 COMMISSIONER SAUNDERS: Saunders.

22 MR. BROWNE, Q.C.: ... Commissioner. I know how to
23 make up an information request, I think I've made
24 enough before this Board over the years, and I know
25 how to put PUB-4 or whatever it is has to go on it. I
26 have no difficulty with that.

27 COMMISSIONER SAUNDERS: Do you have a copy of
28 the one you made there?

29 MR. BROWNE, Q.C.: I have difficulty with something
30 that was addressed in the previous hearing, which I
31 thought that the Board hadn't ruled on it at all, but I had
32 asked in the previous hearing that the Board not
33 consider these formal information requests because, for
34 the reasons I stated previously, and in reference to
35 what hat I'm wearing, I guess I could wear any hat I
36 want. If you look at the, I guess I'm going to be tongue
37 in cheek, Wednesday, August 22nd, notice in the
38 paper, it doesn't say copies are available to the public,
39 then put in parenthesis, except the Consumer
40 Advocate, but I think that I have a right to that as
41 anyone does. I don't believe that these are information
42 requests. I believe the Board is wrong in interpreting
43 its own, what it has within its own library of documents
44 as information requests specific to any hearing. Now,
45 if the Board takes a different view, I think you should

46 spell that out, but I thought it had been addressed in
47 the last hearing.

48 MR. KENNEDY: Mr. Chair, maybe I can assist here. I
49 think my recollection of what was agreed upon was that
50 all parties would be given notification of what
51 documentation was being passed to any other party,
52 that for all intervenors and the applicant, that it was
53 essential that the Board not be placed in the position
54 where it was passing information directly to somebody
55 who was involved in this hearing and that the other
56 parties not be aware that that information had been
57 provided to them. I think the compromise, if you will,
58 was the recognition that in some instances this
59 documentation that was being requested was already in
60 the possession of some of the parties like Hydro and
61 Newfoundland Power, and that to save on paper it
62 would be clearly indicated to the respective parties that
63 this information had been passed on to one of the
64 intervenors and that if they wanted another copy for
65 whatever reason, then to let the Clerk know and another
66 copy would be provided, but the hard and fast rule was
67 that any requests for information being made by any
68 intervenor would have to be done in a formal process to
69 ensure that when the Board replied that the proper
70 procedure was followed as per PU-7 and formal
71 notification given to all other parties that that
72 information had been sent, and as far as I'm aware, there
73 was no exception made to that or compromise made to
74 that rule and unless Hydro or Newfoundland Power has
75 a different recollection of what the understanding
76 reached was.

77 MR. BROWNE, Q.C.: Is that written somewhere, Mr.
78 Kennedy, the hard and fast rule?

79 MR. KENNEDY: The hard and fast rule is PU No. 7, Mr.
80 Browne. That's the hard and fast rule.

81 MR. BROWNE, Q.C.: Because I did copy everyone
82 concerning that request. I wasn't ... I recognize that
83 other parties may want the same information and I did
84 copy everyone with the request but ...

85 COMMISSIONER SAUNDERS: But how are we to ...

86 COMMISSIONER SAUNDERS: I'm sorry.

87 MR. NOSEWORTHY, CHAIRMAN: I guess the
88 concern was with regard to the distribution of material,
89 that everybody would be ensured they would receive
90 the same information. Clearly I would agree with Mr.

1 Saunders that if you are requesting the material as
2 Dennis Browne, Q.C., within the ambit of the
3 advertisement, that you (inaudible) receive that, but as
4 the Consumer Advocate and intervenor, which I seem
5 to recall the request crossing my desk in any event,
6 clearly was stationery reflecting a request coming from
7 the Consumer Advocate and I guess one of the things
8 that would be of concern in the circulation, not
9 everybody is aware, the request, is that everybody
10 receive the same documentation notwithstanding the
11 fact they may have it in their file. That would be at least
12 a consideration, it seems to me, of the Board.

13 COMMISSIONER SAUNDERS: I was just going to
14 say, we can't guess in what capacity you're
15 approaching us with respect to any request, Mr.
16 Browne. We've been advised that you've been
17 appointed as the Consumer Advocate in the matter of
18 this Hydro hearing. If you come forward to us during
19 this process, we can assume only that you're coming
20 forward in that capacity. If you're coming forward in
21 some other capacity which of course is your right to do,
22 I think you have to clarify that. Otherwise, you leave
23 us to guess, and if we guess, we're going to guess on
24 the side of caution, and that is to provide copies to all
25 of the parties that are present. That's all I was ... can
26 you see our dilemma in that?

27 MR. BROWNE, Q.C.: Yes. Anyway, but to be told to
28 put it ... anyway, I'll just be repeating myself. There's
29 no point, I guess. We're not at one on that but I think
30 that it's wrong in law where you're subjecting yourself
31 to an information request.

32 COMMISSIONER SAUNDERS: That's another point.

33 MR. BROWNE, Q.C.: Yeah. The other thing is the
34 waste, which doesn't appear to be of anyone's concern
35 here, the constant waste of paper to ... I might take care
36 of that myself. I guess I'll come up and view the
37 documents and see if there's anything in particular I
38 might want because I don't know if someone got shares
39 in Copy Canada or Print Three or something, but there
40 seems to be an awful waste of time because I would
41 like, as part of my due diligence, to just take a look
42 through a transcript that all of a sudden you got to
43 print 25 or, copies of it, and I guess everyone got to
44 send it to their experts, so the costs go on and on. But
45 anyway, it doesn't seem to be a concern of anyone
46 here, so I guess I'll drop it. Costs should be a
47 consideration, I would think.

48 COMMISSIONER SAUNDERS: Why are you
49 suggesting it's not the concern of anyone here, Mr.
50 Browne? Have you seen all of the questions that have
51 come forward in terms of the so-called wastage that
52 you're talking about?

53 MR. BROWNE, Q.C.: Well, Mr. Saunders, I'm not going
54 to get argumentative with you now.

55 COMMISSIONER SAUNDERS: Well you ...

56 MR. BROWNE, Q.C.: It's just that I ...

57 COMMISSIONER SAUNDERS: You've suggested that
58 there is some wastage that we are not taking notice of
59 and I'm wondering what it is.

60 MR. BROWNE, Q.C.: My point is that if I asked for the
61 transcripts, if I decide to look at the transcripts of the
62 rural application that went on some years ago, just as
63 part of my due diligence, to see what was said there,
64 and that went on for a considerable period of time,
65 because I say I would like to view those or see them or
66 get a copy of them, all of a sudden everyone gets
67 copies of them, they mightn't be interested in them. I
68 don't know.

69 COMMISSIONER SAUNDERS: We've been ...

70 MR. BROWNE, Q.C.: Maybe the other parties could let
71 me know if they're interested or maybe we could put a
72 ... I did copy the other parties to let them know that I
73 was looking for this material but I think I have a right as
74 Consumer Advocate or as an individual to get any of
75 the records of this Board without a formal request. I
76 think I can come up and look at them.

77 COMMISSIONER SAUNDERS: Just make yourself
78 clear to us when you come to us, Mr. Browne.

79 MR. BROWNE, Q.C.: Thank you, Mr. Saunders. I will.

80 MR. NOSEWORTHY, CHAIRMAN: I can assure you,
81 Mr. Browne, certainly we are concerned about both the
82 costs and the amount of paper that is being produced.
83 I can tell you I have a personal concern. I have 50
84 binders in my office there and I'm very concerned about
85 it in terms of volume of information, no question about
86 that, and in terms of the costs (inaudible) the waste of
87 paper in terms of copying, but I think on the other hand
88 we have to balance that with transparency and fairness.
89 I wouldn't want to get into these proceedings and

1 somebody claiming that we provided copies to certain
2 parties and not to others, so I think there's a balance
3 that has to be struck there and unfortunately, as Mr.
4 Saunders pointed out, (inaudible) inclined to be
5 (inaudible) be concerned with in terms of ensuring that
6 transparency and fairness exists and that may at times
7 bring in some added costs, but I can assure you
8 (inaudible) concern.

9 I think your point is that we would reconsider
10 this matter and we will undertake to do that within the
11 context, the consideration of the, of an amended PU-7.

12 MR. BROWNE, Q.C.: Surely you can at least send me
13 the application of Hydro, one that you advertised in the
14 paper anybody could get.

15 MS. GREENE, Q.C.: Just for clarification, that would be
16 the Newfoundland Power application?

17 MR. BROWNE, Q.C.: Yes.

18 MS. GREENE, Q.C.: You said Hydro.

19 MR. BROWNE, Q.C.: Sorry, Newfoundland Power
20 application.

21 MS. GREENE, Q.C.: You meant Newfoundland Power
22 2002 capital budget application.

23 MR. NOSEWORTHY, CHAIRMAN: Okay. Are there
24 any other comments?

25 MR. FITZGERALD: One other point, Mr. Chairman,
26 and I'm just looking at procedural order PU-7 again.
27 Getting back to IC-86, I assume then that the original
28 procedural order will be amended. I'm looking at
29 subparagraph (f). It says, "Number of copies of filings
30 and other documents. Unless otherwise ordered by the
31 Board, parties filing documents with the Board shall
32 adhere to the following guidelines. (1) File with the
33 Board's secretary one original, provide 17 copies of the
34 original documents." I'm assuming now that this order
35 will be amended for the exception of this document. IC-
36 86 will not have to be in compliance with procedural
37 order 7.

38 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you
39 very much. This motion today has come to an end.
40 Right now our schedule is that we would convene the
41 public hearing on September 4th (sic).

42 COMMISSIONER SAUNDERS: 24th.

43 MR. NOSEWORTHY, CHAIRMAN: 24th, excuse me.
44 And I look forward to seeing you then if not sooner in
45 relation to other matters. Thank you very much.

46 (hearing adjourned)