

1 (9:30 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Thank you and good  
3 morning everybody. It's a beautiful morning out there  
4 again. I guess as agreed among all the parties, we have  
5 scheduled this time today to hear argument on Hydro's  
6 revised application, which is dated November the 20th of  
7 2001, concerning its 2002 capital budget, which indeed is  
8 before us as a component, part of the main application  
9 which was submitted on May the 31st, 2001, and on which  
10 we are all aware we've been deliberating for the past  
11 number of weeks, so essentially this is sort of an  
12 application, I guess, within an application and the revised  
13 application before us addresses the fact that we all  
14 acknowledge that the Board will not be in a position to  
15 review matters raised in the main proceeding and issue an  
16 order prior to December the 31st, 2001.

17 Hydro for their part in this application is  
18 proposing, one, that the rates now charged industrial  
19 customers pursuant to Order No. 25 for 2000/2001 be  
20 extended until such time as the Board issues a new order in  
21 this proceeding revising the rates charged industrial  
22 customers, and, two, that the application for approval of  
23 the 2002 capital budget be separated from the other matters  
24 raised in the May 31st, 2001, application, and be addressed  
25 at this time. And I guess Hydro is further proposing that  
26 any agreement to proceed at this time to seek approval for  
27 those 2002 capital projects to which no party objected  
28 would be without prejudice to the other parties' right to  
29 address argument on one, the sufficiency of the  
30 documentation supplied to support a capital project  
31 generally or the principles and procedures applied to the  
32 capital budget process, and, two, an adjustment to reflect  
33 the Applicant's past capital spending experience. So that's  
34 the nature of the application, at least as I understand it and  
35 read it in any event, and I'd ask Mr. Kennedy to address  
36 any preliminary matters of record before we begin, please,  
37 Mr. Kennedy.

38 MR. KENNEDY: Thank you, Chair. There's two matters,  
39 just one of note. As was indicated on a previous hearing  
40 day, it was felt to be in order that a response be provided  
41 to Mr. Dave Porter, Vice-President, Human Resources, for  
42 the Iron Ore Company of Canada regarding correspondence  
43 that we had received by way of letter of comment and that  
44 there may have been some confusion on the part of Mr.  
45 Porter regarding the procedures of the Board, and I can  
46 confirm that the reply has been sent to IOCC from the  
47 Secretary of the Board, so that's been done and if, certainly  
48 if any replies are in turn received by IOCC, then we'll be  
49 advising the panel.

50 The second preliminary matter relates to a letter  
51 received from Mr. Ed Roberts, who has indicated in his  
52 letter of December 10, 2001, which has been distributed to

53 the parties, that they wish to make a submission on behalf  
54 of Five Wing Goose Bay, that they've been retained by  
55 Five Wing Goose Bay in this regard, and is suggesting that  
56 Monday, the 17th of December, would be appropriate for  
57 them. It's my intention to contact Mr. Roberts, hopefully  
58 later today after we're finished this motion, and ascertain  
59 exactly what Mr. Roberts proposes to do when he appears,  
60 is it for the purposes of making just a submission or is it the  
61 purposes of providing further evidence to put on record,  
62 and that once I've ascertained that, hopefully today, then  
63 I could report on that tomorrow morning and then the panel  
64 would be in a position to be able to solicit the views of the  
65 other counsel regarding Mr. Roberts' proposal and then a  
66 determination could be made of whether to give them leave  
67 or not and what the conditions might be attached to that  
68 be, so that's the proposed process for this aspect anyways.  
69 And that's the only two matters, Chair.

70 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
71 Kennedy. Good morning, Ms. Greene. How are you this  
72 morning?

73 MS. GREENE, Q.C.: Good morning.

74 MR. NOSEWORTHY, CHAIRMAN: Could I ask you to  
75 introduce the, your revised capital budget application  
76 dated November the 20th, 2001, please?

77 MS. GREENE, Q.C.: Thank you, Mr. Chair. You have  
78 correctly summarized Hydro's application. The application  
79 dated November 20th asks for two matters to be considered  
80 by the Board at this time. The first concerns the industrial  
81 rates that are charged the industrial customers and the  
82 second concerns Hydro's proposed 2002 capital budget. I  
83 believe that hopefully this will be fairly short this morning.  
84 It is my understanding that this is a consent application,  
85 that the other parties have consented to it. That is my  
86 understanding from the replies they have filed as well as  
87 the discussions I have had with each of the counsel.

88 I'd like to deal with the first matter, which is the  
89 rates charged industrial customers. The first relevant order  
90 here that I wanted to refer to was the **Order of the Board,**  
91 **No. 23, of 1999 to 2000.** That order revised the rates then  
92 charged industrial customers to remove the rural deficit and  
93 stated that the new rates were to apply until November 30th  
94 of this year. This was later varied by **Order No. PU-25 of**  
95 **2000/2001,** and that order, among other things, extended  
96 the industrial rates until December 31st of this year. The  
97 problem of course is as referred to by the Chair. It is now  
98 obvious that we will not have an order on the main rate  
99 application prior to year end and the order approving the  
100 existing industrial rates is time limited to December 31st of  
101 this year. So Hydro is requesting that the Order, PU-25 of  
102 2000 be extended and that the rates currently charged  
103 industrial customers be extended until such time as an

1 order is issued in this current application.

2 **Under Section 70 of *The Public Utilities Act***, a  
3 utility is not allowed to charge a rate until approved by this  
4 board. As I've already mentioned, there was a time limit on  
5 the existing order so it will expire as of December 31st and  
6 we need something in place to allow a rate to be charged to  
7 industrial customers.

8 In the replies that have been filed by the parties,  
9 it should be noted that the industrial customers have  
10 consented to the order as requested by Hydro,  
11 Newfoundland Power in its reply has consented to this  
12 order on industrial rates as requested by Hydro. The  
13 Consumer Advocate did not respond to that part of the  
14 application and Board counsel suggested that the views of  
15 the parties be sought.

16 So on the first point it is our submission or our  
17 request to the Board that the Board extend the current  
18 industrial rates until such time as an order is given by this  
19 board on the general rate application now before the Board.

20 Turning to the second matter of the application,  
21 which is the 2002 capital budget, Hydro has an obligation  
22 to provide service to its customers that under (inaudible) of  
23 *The Public Utilities Act* are reasonably safe and adequate.  
24 In order to do this, capital improvements and additions are  
25 required each year. Under **Section 41 of *The Public***  
26 ***Utilities Act***, Hydro is required to submit its annual capital  
27 budget to the Board for approval no later than December  
28 15th of each year. A utility is not allowed to proceed with  
29 any project in excess of \$50,000 or a lease in excess of  
30 \$5,000 without the prior approval of the Board, so we are  
31 not allowed to do anything without the prior approval of  
32 the Board.

33 The 2002 capital budget, which is now before the  
34 Board, is the sixth one that Hydro has submitted since it  
35 became fully regulated in 1996, and as the Chair has already  
36 mentioned, it was submitted on May 31st as part of the  
37 general rate application. The total amount being requested  
38 for 2002 for approval as of the October 31st revision is \$43.1  
39 million.

40 It became clear in early November that this hearing  
41 wouldn't be complete, including argument, to allow the  
42 Board to consider the proposed capital budget for 2002 and  
43 to issue an order by year end. At that time I approached  
44 counsel for the other parties and initially requested that the  
45 whole 2002 capital budget be dealt with prior to year end to  
46 allow the Board to issue an order on the whole 2002 capital  
47 budget. In discussion with the other counsel, it was  
48 determined that by proceeding with the total budget at this  
49 time, it would interfere with the schedule for the general  
50 rate application, as the parties indicated that they would  
51 need time to prepare for argument and to address the issues

52 and that this would adversely affect the overall schedule  
53 for the main rate application.

54 In view of that, Hydro determined to proceed at  
55 this time with those projects to which no party objects, and  
56 this also was discussed with the other counsel. So it was  
57 deemed to be a prudent or expedient, rather, to deal with  
58 those capital budget proposals that no party objects to at  
59 this time. This will allow the Board to deal with this in an  
60 uncontested way and to allow the Board to consider the  
61 matter and hopefully issue an order by year end which  
62 would allow the Hydro staff to start working as soon as  
63 possible in the new year on at least a portion of the capital  
64 budget which is roughly about 60 percent of the capital  
65 budget. So we agreed to move forward with what I  
66 anticipate is a consent application on the basis that it  
67 would be without prejudice to the right of the parties to  
68 make submission in final argument in January on four  
69 things.

70 One is the project to which a party does wish to  
71 make an objection; number two is the sufficiency of the  
72 documentation that must be filed by a utility to support a  
73 capital project in the future; number three, the principles  
74 and procedures to be applied in the capital budget process;  
75 and number four, the appropriateness of an adjustment, if  
76 any, to reflect Hydro's past capital spending experience.

77 The parties have now advised the Board of the  
78 projects that they may wish to make argument on in  
79 January and which are not part of the current application  
80 before the Board today. The industrial customers first had  
81 advised Hydro before Hydro filed its application on  
82 November 20th of the projects that they wished to submit  
83 argument on or might wish to submit argument on in  
84 January, and in their reply dated December 3rd, the  
85 industrial customers have listed these projects which are  
86 not to be included as part of the application today.

87 I would point out, and I'm sure Ms. Henley  
88 Andrews will advise the Board, that subsequently to that  
89 I was advised that there had been two projects  
90 inadvertently included in the list which they do not object  
91 to, and those are B-8, the replacement of unit one exciter at  
92 Cat Arm, and B-73, replacement telephone isolation  
93 equipment. So subsequent to the filing of their reply on  
94 December 5th, I was advised that those two projects had  
95 been inadvertently included in the list of projects to which  
96 they objected.

97 Newfoundland Power similarly advised Hydro  
98 before our application was filed on November 20th that it  
99 did not wish to add any projects not already listed by the  
100 industrial customers, and in their reply dated December 7th  
101 they confirmed this position and consented to an order  
102 approving those capital budgets (*sic*) to which no party

1 objected.

2 The Consumer Advocate filed a reply on  
3 December 5th which lists certain projects in paragraphs six  
4 and seven of the reply to which they would like to submit  
5 argument, and these also are included in the list of projects  
6 listed in the reply of the industrial customers. In addition,  
7 the Consumer Advocate made submissions in paragraphs  
8 four and five of the reply concerning a test with respect to  
9 duplication to be applied to both utilities and in paragraph  
10 six refer to joint purchasing arrangements for both utilities.  
11 It is my understanding, and I'm sure the Consumer  
12 Advocate will speak to it this morning, that he is  
13 suggesting that these be, a test to be applied in the future,  
14 (inaudible) will be submitting that argument in January, and  
15 I would point out that Newfoundland Power has already  
16 had its 2002 capital budget approved.

17 Finally, the Board counsel recently filed his reply  
18 on Sunday afternoon where he advised of additional  
19 projects, that we had not been aware of before, that he was  
20 suggesting be deferred, and these are listed in his reply.

21 So in conclusion on the second part of the  
22 application, Hydro is requesting an order of the Board  
23 today, is requesting today that the Board consider and  
24 issue an order approving those 2002 capital budget items  
25 included in Hydro's application that no party objects to.  
26 This will allow, as I mentioned earlier, the Hydro staff to  
27 begin work as soon as possible in the new year on at least  
28 a part of the capital budget process.

29 The projects that would be exempt from approval  
30 at this time, as I have just outlined, are mentioned or stated  
31 in the reply of the industrial customers' application, the  
32 reply of the Consumer Advocate and the reply of Board  
33 counsel. Those projects that a party has listed as possibly  
34 having an objection to will be dealt with in final argument  
35 in January as well as other issues relating to the capital  
36 budget process, including those things that we have  
37 specifically exempted such as the documentation to be filed  
38 to support a project.

39 The next point, I guess, is a heads-up that in  
40 January when we submit final argument we will be asking  
41 the Board to consider first the remainder of the capital  
42 budget that is not being dealt with in the application today.  
43 This will allow, if the Board agrees that the remainder of the  
44 capital budget be dealt with in advance of the order on the  
45 whole application, which we expect may take a longer  
46 period of time, again to allow staff to get on with the  
47 necessary capital projects. We would point out that this is  
48 the latest time that we have had our capital budget dealt  
49 with in the past six years that we have been fully regulated  
50 and that by agreeing to move forward in the consent way  
51 today we are hoping to get approval of approximately 60

52 percent of the budget and that 40 percent of the budget still  
53 remains outstanding which we will be asking, as I just  
54 mentioned, that in January that the Board deal with the  
55 remaining 40 percent as soon as possible prior to  
56 consideration of the other issues in the general rate  
57 application. Thank you and that concludes my comments  
58 at this time.

59 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
60 Greene. Will you be calling any witnesses, anything like  
61 that?

62 MS. GREENE, Q.C.: No.

63 MR. NOSEWORTHY, CHAIRMAN: Thank you very much.  
64 We'll move now to presentation of argument by parties, if  
65 there would be any, and I'd ask Newfoundland Power to  
66 comment first. Good morning, Mr. Alteen, I guess.

67 MR. ALTEEN: Our comments will be brief, Mr. Chair.  
68 Firstly, I'll deal first with the capital expenditure part of the  
69 request of Hydro in the application of November 20th and  
70 then with the rates part of it. On the 2002 capital  
71 expenditure, Mr. Chairman, we agree generally with Ms.  
72 Greene's analysis that Hydro has an obligation under *The*  
73 *Public Utilities Act* to provide service and it's necessary  
74 for them to expend capital to fulfill that obligation. I'd go a  
75 step further and I'd say it's this board's duty to approve  
76 within the statutory framework of *The Public Utilities Act*  
77 such reasonable capital expenditures as are necessary for  
78 Hydro to fulfill its obligation to serve its customers.

79 In this general rate proceeding Hydro has  
80 appropriately sought approval under Section 41 for its 2002  
81 capital expenditures. Given the length of the hearing,  
82 Hydro now finds itself in a difficult position of having to  
83 enter into 2002 practically without an order from the Board,  
84 being disabled from making the capital expenditures  
85 necessary to fulfill its obligation to serve, and that really  
86 serves no one's best interest, so if the order sought by  
87 Hydro is granted, this board will only be enabling Hydro to  
88 do what it statutorily must do, and I think I'd lay that  
89 context out there in terms of our view of Hydro's  
90 application on the capital expenditure side.

91 Ms. Greene has rightly indicated that for our part  
92 we take no objection to any of the projects not listed in the  
93 replies of the industrial customers and the Consumer  
94 Advocate, though the Consumer Advocate's are largely all  
95 within the industrial customers' objection. That's that part  
96 of the application.

97 We intend at the conclusion of the proceeding, in  
98 our submissions, to make submissions on appropriate  
99 standards for regulatory reporting and justification of  
100 capital projects, and that has been kindly exempted from  
101 this process by the terms of the application of Hydro.

1 Secondly on the interim industrial rates, Mr.  
2 Chairman, Newfoundland Power raises no objection to the  
3 continuation of the interim industrial rates until the Board's  
4 order in this general proceeding. From a practical  
5 perspective ... and I note that the, as Ms. Greene has noted,  
6 the Board's counsel has solicited the views of the parties  
7 on the issue. From a practical perspective I don't think  
8 there's much else that you can do, and that's our view of  
9 this. There has to be a rate in place. This rate is the rate  
10 that's currently paid, and the Board is not really in a  
11 position right now to set a final rate in relation to this  
12 matter because Mr. Brushett and a number of other  
13 witnesses have not even been heard, so practically that  
14 course is, seems to be the only legitimate one open to the  
15 Board given the circumstances that we're currently in, and  
16 given the industrial customers' view of the matter and  
17 consent, I suggest that's probably no penalty, no foul, in  
18 terms of your approving or extending the interim rates for  
19 a three or four-month period to enable you to do your final  
20 order on 2002 rates, and of course prior years' rates which  
21 would naturally be the nature of interim rates since they are  
22 rebatable under the terms of *The Public Utilities Act*.

23 Those in essence are the submissions on the two  
24 points, Mr. Chairman. We're certainly prepared to take any  
25 questions if the Board has any questions.

26 MR. NOSEWORTHY, CHAIRMAN: I think I'll defer any  
27 particular questions till later on that the Board might have  
28 directed at any party, if that's okay. I'll proceed now to the  
29 Industrial Customers. Ms. Henley Andrews, good  
30 morning.

31 (9:45 a.m.)

32 MS. HENLEY ANDREWS, Q.C.: Good morning, Chairman.  
33 As Ms. Greene correctly pointed out, there are two  
34 additional projects which the Industrial Customers do not  
35 object to, and those are project B-8 and B-73. They should  
36 have been deleted from the list of those to which we had  
37 objection. From the Industrial Customers' perspective, we  
38 do have some difficulties with the capital budget as a  
39 whole, in particular with the substantiation that has been  
40 provided for many of the projects, and also some of the  
41 practices and procedures relating to dealing with the capital  
42 budget, however, we do recognize that what Hydro has  
43 submitted reflects past practice before the Board. We have  
44 carefully examined each item in the capital budget and the  
45 supporting documentation to the extent that there is  
46 supporting documentation, and although we do have  
47 concerns with the sufficiency of the information and the  
48 practices and procedures on which we will give detailed  
49 argument in January, we are satisfied that those projects to  
50 which we have agreed are reasonable and prudent and that  
51 Hydro ought to be authorized to proceed with those.  
52 Thank you.

53 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
54 Henley Andrews. Good morning, Mr. Browne.

55 MR. BROWNE, Q.C.: Good morning, Mr. Chairman. In  
56 reference to the Industrial Customers and the extension of  
57 PU-25, we consent to the application for the extension as  
58 requested by Hydro. In reference to the other items in the  
59 capital budget, what we would like to see over time, as is  
60 stated in our application, we believe there's an obligation in  
61 law to ensure that electricity is delivered to consumers in  
62 the province at the lowest possible cost, consistent with  
63 reliable service, and if it's to be delivered at the lowest  
64 possible cost, implicit in that is that there be no duplication  
65 in what's granted in certain instances to both Hydro and  
66 Power. We recognize of course there will always be  
67 duplication in some administrative costs and in personnel.  
68 We recognize that there are two bargaining, there are  
69 different bargaining units there, recognize the realities, but  
70 nothing can be so clear to us as the issue of the VHF  
71 communications issue where the two utilities recognize  
72 themselves the necessity to get together to avoid  
73 duplication, as is there in the evidence.

74 We're dealing with a multi-million dollar  
75 expenditure, \$8.6 million. We have the evidence of the  
76 Joint Coordination Steering Committee Report dated May  
77 5, 1999, and we know, despite the fact that the scope of the  
78 review was to review the needs and practices with respect  
79 to the coordination activities related to the cooperation and  
80 extension of the VHF mobile radio system for both utilities,  
81 with a view to enhance customer service and reduced  
82 operating costs, and furthermore there's a letter there from  
83 Newfoundland Power, **NP-180**, dated December 18th, 2000,  
84 and again in that letter we find that the, are all agreed in the  
85 Tuesday meeting, we see a need for greater collaboration  
86 between Newfoundland and Labrador Hydro and  
87 Newfoundland Power with respect to telecommunications  
88 issues to ensure we are not duplicating infrastructure and  
89 that our overall expenditures are consistent with supplying  
90 our respective customers with reliable electric service at the  
91 lowest cost.

92 We brought out in evidence, the evidence of Mr.  
93 Hubert Budgell, in reference to this particular item, and it's  
94 but one example, and he testified to the matter on  
95 November 8th, 2000. We'll get into his evidence more  
96 particularly in the January submission. But we submit that  
97 both utilities recognize that avoidance of duplication could  
98 provide some economies, however, there does not appear  
99 to be any will to follow through with a joint effort on even  
100 this particular issue.

101 As a result, we're asking the Board to take action  
102 to establish policies in reference to duplication. We're also  
103 asking the Board to take specific action in reference to joint  
104 purchasing agreements to determine what economies of

1 scale may be recognized in such joint purchases, because  
2 there is reference to those efforts in the various committees  
3 which we brought out into evidence earlier.

4 I guess from the ratepayers' perspective,  
5 ratepayers should only be paying for one VHF radio and  
6 there should be no money granted for the maintenance of  
7 another. This is one example, we'll deal with others, but I  
8 guess the message to the utilities from the ratepayers is  
9 this, the store is closed. They couldn't do it themselves,  
10 now it's up to the Board to ensure that the law is followed  
11 so that electricity is provided to consumers at the lowest  
12 possible cost.

13 So with those caveats, we agree to the interim  
14 measures that counsel for Hydro has submitted here today.  
15 Thank you.

16 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
17 Browne. Mr. Kennedy, would you have any comments,  
18 please?

19 (10:00 a.m.)

20 MR. KENNEDY: Thank you, Chair. Chairman, in regard to  
21 the capital budget items that's proposed, I think that there  
22 doesn't seem to be at least any issue as between the parties  
23 themselves regarding the process that Hydro has employed  
24 which I think is a very good one, having already built in, if  
25 you will, the without prejudice basis upon which people are  
26 agreeing to not object or to certain projects, and as I at  
27 least hear and read the argument, the positions of the  
28 counsel, and hear their presentations, there hasn't been any  
29 caveats or add-ons made to the specific positions in their  
30 written arguments, and in that regard, I think the panel can  
31 take the positions of counsels as stated in their written  
32 arguments, that they accept the basis upon which Hydro  
33 has proposed for this motion to proceed, that all of course  
34 being subject to the panel's independent assessment of all  
35 the capital projects that have not been objected to, that  
36 there is a duty incumbent upon the panel itself to review all  
37 the capital projects that Hydro has in its budget application  
38 and determine the appropriateness, regardless of the  
39 positions of the parties concerning them.

40 In regards to the extension of the interim rates,  
41 Chair, the section of the Act ... I wonder, Mr. O'Rielly, if  
42 you could pull up *The Public Utilities Act, Section 75*?  
43 Section 75(1) states, "The Board may make an interim order  
44 unilaterally and without public hearing or notice approving  
45 with or without modification scheduled rates, tolls and  
46 charges submitted by a public utility upon the terms and  
47 conditions that it may decide." It clearly provides the panel  
48 with the jurisdiction to provide interim rates and clearly as  
49 well would allow the panel to provide an extension to those  
50 interim rates that have already been approved pursuant to  
51 PU-25, 2000/2001, and initially PU-23 of, I believe it was ...

52 just so I get the correct ... I had it.

53 MR. ALTEEN: 99/2000?

54 MS. GREENE, Q.C.: 99/2000.

55 MR. KENNEDY: 99/2000. Thank you. And under **Section**  
56 **75(2)**, states that, "The schedules of rates, tolls and  
57 charges approved under Subsection 1 are the only lawful  
58 rates, tolls and charges of the public utility until a final  
59 order is made by the Board under **Section 70**." So clearly  
60 that's what's being contemplated here, that the interim rates  
61 would be extended until the final order is provided by the  
62 panel pursuant to the general rate application that's before  
63 it.

64 **Section 3**, however, states, "The Board may order  
65 that the excess revenue that was earned as a result of an  
66 interim order made under Subsection 1 and not confirmed  
67 by the Board be (a) refunded to the customers of the public  
68 utility, or (b) placed in a reserve fund for the purpose that  
69 may be approved by the Board."

70 It's a, I would suggest, an accepted convention of  
71 statutory interpretation that without more, the expressly  
72 providing of a right under a provision such as this can be  
73 deemed to implicitly prevent the converse. There's a latin  
74 term, which I won't even try to pronounce, which tries to  
75 give credence to that position. In effect it would mean that  
76 without more, Section 75(3), since it provides the Board  
77 with the jurisdiction to order that excess revenue that was  
78 earned as a result of these interim rates can be handled a  
79 certain way, that implicitly that the shortfall in revenue is  
80 with, is outside the jurisdiction of the Board, and so that it  
81 raises the possibility that there could be a jurisdictional  
82 issue regarding the extension of the interim rates into the  
83 test year, that if a final order for rates is not granted by this  
84 Board, for argument's sake let's say on March the 1st, then  
85 we have interim rates that are ostensibly approved for a  
86 three-month period of a test year, and if there was, as a  
87 result of the determination by the panel at the end of the  
88 day, an approval to Hydro for rates that are higher than the  
89 interim rates, then in effect the approving in the interim  
90 rates for that three-month period has created a revenue  
91 shortfall for the first three-month period, and ostensibly  
92 that may need to be taken into account when the Board  
93 issues its final order.

94 Now in previous instances when Newfoundland  
95 Power, for instance, was not given its final approval on  
96 rates until partway through the test year, there was a  
97 recalculation done where the revenue requirement, which  
98 is approved based on the whole test year, is then  
99 recalculated so that it's, that extra revenue over and above  
100 the previous revenue is configured so that it's collected  
101 over that stub period. In that case it was an eleven-month  
102 period. So in other words, the extra revenue requirement

1 recalculated to provide a certain percentage increase in the  
2 rates so that the total revenue requirement for the test year  
3 was obtained as a result of the increased rates in the  
4 eleven-month period to which the rates applied.

5 If Hydro finds itself in the same position, then the  
6 rates ostensibly may have to be further adjusted in order  
7 for those rates to provide Hydro with its full revenue  
8 requirement for the test year 2002 as gained in rates from  
9 March 1, 2002, to December 31, 2002. The potential wrinkle  
10 is that without more, if the Board just simply approves the  
11 extension of rates, it's possible that it could find itself in a  
12 procedural snarl, if you will, come the implementation of  
13 those final rates by virtue of the fact that it doesn't have  
14 the ability under Section 75(3), if you were to accept the  
15 convention of statutory interpretation, to collect back a  
16 shortfall in revenue during that first three-month period,  
17 that it can only deal with excess revenue.

18 Now, that all being said, I would point out to the  
19 Board **Section 118 of the Act**, and I wonder if, Mr. O'Rielly,  
20 you could go to Section 118? This is a general enabling  
21 provision of your act and it does have some provisions  
22 which may provide some assistance in this regard. 118(1)  
23 says, "This act shall be interpreted and construed liberally  
24 in order to accomplish its purposes, and where a specific  
25 power or authority is given the Board by this act, the  
26 enumeration of it shall not be held to exclude or impair a  
27 power or authority otherwise in this act conferred on the  
28 Board." Now, if they hadn't said "otherwise in this act," I  
29 think that that provision would be, would provide complete  
30 comfort for the possible dilemma that I was speaking about,  
31 but for some reason the words "otherwise in this act" are  
32 included and there's nothing otherwise in this act that I  
33 could find that would apply specifically to the extension of  
34 rates because they're only covered under Section 75, so I'm  
35 not sure if Section 118(1) actually provides the assistance  
36 that you would need in this regard.

37 "Two, the Board has, in addition to the power  
38 specified in this act, all additional implied and incidental  
39 powers which may be appropriate or necessary to carry out  
40 all the powers specified in this act." That provision being  
41 more general again in nature than Section 118(1), may  
42 provide you with the specific jurisdictional ability to be  
43 able to provide caveats to this order extending the interim  
44 rates that would prevent the pitfall in the implementation of  
45 the final rates.

46 And the third, "A substantial compliance with the  
47 requirements of this act is sufficient." The Section 118(3)  
48 is not applicable in this regard.

49 Clearly, however, the Board also has within its act  
50 the general power to be able to do and pass orders, rescind  
51 and amend orders as it deems necessary in order to carry

52 out its mandate under the Act, and Section 118 provides  
53 assistance in that regard. So my suggestion to the panel is  
54 that you may want to solicit the specific views of the  
55 parties concerning this small sort of jurisdictional or  
56 procedural issue and that you may, if it's deemed  
57 appropriate to extend the rates for the, charged to the  
58 industrial customers beyond the December 31, 2001, date,  
59 that specific provision be made in your order that it not be  
60 on a, or that it be on a without prejudice basis to the ability  
61 to collect the overall revenue requirement that is ultimately  
62 allotted to the industrial customers for the stub of the 2002  
63 test year.

64 I hope that all made sense and provided the  
65 assistance to the panel, which was my intention at the start.

66 *(10:15 a.m.)*

67 MR. NOSEWORTHY, CHAIRMAN: I guess perhaps what  
68 I would do is ask for any further comment on that item at  
69 this point in time for the benefit of the Board. I realize this  
70 is not specific. If you would wish to take a five or ten-  
71 minute break to deliberate on that issue, be prepared to do  
72 so. If not, we'll just ... Ms. Greene, I notice you're shaking  
73 your head and I don't see anybody ...

74 MS. GREENE, Q.C.: I don't think we need five minutes.

75 MR. NOSEWORTHY, CHAIRMAN: ... who's desirous ... I  
76 just ask if, I'll go around, with any particular comments on  
77 that item, please. Ms. Greene?

78 MS. GREENE, Q.C.: Thank you, Mr. Chair. Are you asking  
79 for comments just now on that or ...

80 MR. NOSEWORTHY, CHAIRMAN: Yes.

81 MS. GREENE, Q.C.: ... in my right of reply to everybody?

82 MR. NOSEWORTHY, CHAIRMAN: No. I'm just asking for  
83 comments on that and I'll come back to you in terms of  
84 other comments later on redirect.

85 MS. GREENE, Q.C.: The issue raised by Board counsel,  
86 which is, as he has pointed out, has arisen in the past. If  
87 the order comes later than January 1, the issue is you  
88 collect the same revenue requirement used in the test year  
89 over a shorter period than 12 months. That issue will have  
90 to be addressed in the overall Board order at the end of the  
91 day because obviously we're not getting it on January 1  
92 and obviously the revenue requirement having planned to  
93 be recovered over 12 months, so that's an issue the Board  
94 will have to take into account in considering the final view  
95 with respect to our general application, and in the past that  
96 has been the practice.

97 The issue specifically that is raised, because we  
98 have an interim order now, with respect to the industrial  
99 rates, the problem the Board has is there is no alternative.

1 That's the case, the decision becomes easier. We do need  
2 something approving rates past December 31st. We are not  
3 allowed to charge a rate without Board approval, the  
4 existing order is time limited. So the Board must do  
5 something and frankly the only alternative is to extend the  
6 current rates. While I would like to ask you to impose the  
7 rates that Hydro has asked for in the general rate  
8 application, I think that Ms. Henley Andrews might have  
9 some problem with that at this point, so there is no  
10 alternative. The issue of whether you can recover a  
11 shortfall is something I think that we can deal with in final  
12 argument once we've had the opportunity to look at  
13 appropriate case law, etcetera, and I don't think you need  
14 that answer this morning to assist you in making that  
15 decision. Thank you.

16 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
17 Greene. Mr. Alteen, do you have any comments?

18 MR. ALTEEN: Mr. Chairman, I think from our perspective  
19 it's the length of the hearing that creates a snarl, not the  
20 order for the interim rates. I think those are two distinct  
21 types of things. We're going to be into next year and the  
22 Board will have to assess the revenue requirement of  
23 Hydro and allow them a reasonable means by which to  
24 recover that revenue requirement as you determine in your  
25 final order. Balancing the revenue requirement with a stub  
26 period is a challenge. I think Board counsel is correct in  
27 saying you won't have the option of going back and  
28 charging the industrial customers more on an interim rate  
29 because an interim rate is only subject to rebate, it's not  
30 subject to increase and you can't ask future rates to recover  
31 past cost. That's fundamental regulatory principle, but  
32 there are far more tools at the Board's disposal to deal with  
33 that in a test year, in achieving that balance. In  
34 Newfoundland Power's case there was a creation of a  
35 reserve in which that one month's increased revenue was  
36 placed in that reserve in their last general rate order for the  
37 January 1999 period, and Mr. Brushett and others, certainly  
38 in a position, will be able to advise you as to how that  
39 balance is achieved, but I don't think the interim rate order  
40 extension is creating the snarl of that balance. That  
41 balance is created and is before us anyway, so I don't think  
42 that should unduly deter the Board.

43 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
44 Alteen. Ms. Henley Andrews, please.

45 MS. HENLEY ANDREWS, Q.C.: Yes, Mr. Chairman. There  
46 are several points. The first is that we agree with the  
47 interpretation of Section 75 of the Act and agree that  
48 interim rates can be set so that if there is too much paid by  
49 the industrial customers there will, the amount will have to  
50 be refunded and that, from our position, reflects the rates  
51 since January 1st of 2000, because the rates have been set  
52 as interim rates since January 1st of 2000. We agree that

53 there is no authority under the Act for the Board to order  
54 any shortfall in the revenue to be collected by, from the  
55 industrial customers and we would object to a rider of the  
56 nature that Mr. Kennedy proposed, which is a without  
57 prejudice to the ability to recover additional amounts. We  
58 wish to point out that Newfoundland Power's rates are fixed  
59 at the present time and the Board does not have the ability  
60 to recover additional amounts from Newfoundland Power  
61 pursuant to its fixed rates and neither under the Act does  
62 it have any authority to recover additional amounts from  
63 the industrial customers pursuant to Section 75, and we  
64 don't feel that the industrial customers should be in any  
65 worse position than Newfoundland Power with respect to  
66 rates proposed in this hearing on a go-forward basis.

67 That having been said, with respect to the ability  
68 to recover, if we assume that the rates set by this board in  
69 this hearing go into effect, for the sake of argument, on  
70 April 1st, the ability to recover the first, the whole test year  
71 revenue in the remaining nine months of the year is an  
72 issue that we will have to deal with for argument. While it  
73 may very well have been Board practice in the past, it's  
74 certainly not an issue on which I have ever heard any  
75 argument and it's something we would have to research  
76 before taking a firm position.

77 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
78 Henley Andrews. Mr. Browne, please.

79 MR. BROWNE, Q.C.: Yes. Of course the only authority  
80 the Board has is the authority that the legislature decided  
81 to give to the Board. There's no plenary authority in the  
82 Board as such. All the sections of the Act specify for the  
83 Board what the legislature intended its authority to be. The  
84 Board also has the benefit of the Court of Appeal decision  
85 which reviewed various sections of *The Public Utilities Act*  
86 and provided interpretations. I don't have the decision in  
87 front of me but it's my understanding that the Court of  
88 Appeal gave a very liberal interpretation to the Act when  
89 it comes to the Board conducting itself within its legislative  
90 framework.

91 We believe that the Board does have the authority  
92 to effect interim rates. I don't believe that they can go back  
93 and recover past costs, however, once they do that. I think  
94 that the application as put forward is consistent with the  
95 Act and the application should effectively be granted.

96 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
97 Browne. I'll move now to any Board questions of the  
98 parties and then I'll come back to Ms. Greene after that.  
99 Commissioner Powell, do you have any questions at all?

100 COMMISSIONER POWELL: Chair, I don't really have  
101 anything. It's interesting, it's clear.

102 COMMISSIONER SAUNDERS: No questions, Mr. Chair.

1 MR. NOSEWORTHY, CHAIRMAN: Thank you.  
2 Commissioner Saunders? Commissioner Whalen?

3 COMMISSIONER WHALEN: No questions.

4 MR. NOSEWORTHY, CHAIRMAN: I have no questions.  
5 Ms. Greene, do you have any redirect comments, I guess,  
6 if that's ... I'm not sure I'm describing that properly. Forgive  
7 me if I ...

8 MS. GREENE, Q.C.: Reply. My right of reply.

9 MR. NOSEWORTHY, CHAIRMAN: Reply.

10 MS. GREENE, Q.C.: Not really, Chair. I just wanted to  
11 thank all counsel for their cooperation in reaching this  
12 agreement to allow us to move forward. I have no  
13 additional comments to make at this time. Obviously I look  
14 forward to January and responding to the comments of the  
15 Consumer Advocate, Ms. Henley Andrews and Mr. Alteen  
16 at that time with respect to the capital budget process but  
17 it is not necessary to respond today for the purpose of this  
18 application. Thank you.

19 MR. NOSEWORTHY, CHAIRMAN: Thank you very much,  
20 Ms. Greene. Thank you. I'd like to thank everybody for  
21 their cooperation as well on this matter. We'll take this  
22 under advisement now and indeed given the schedule this  
23 week, I would anticipate that we'll be in a position to issue  
24 an order by early next week, and I think based on your  
25 preliminary comments, that will be satisfactory, Ms. Greene.  
26 Thank you everybody and we'll adjourn until 9:30 tomorrow  
27 morning at which time I understand it's Mr. ... pardon? Oh,  
28 we have JD Edwards. *(laughter)*

29 MS. GREENE, Q.C.: Remember, Mr. Chair ...

30 MR. NOSEWORTHY, CHAIRMAN: I left out the ...

31 MS. GREENE, Q.C.: ... the panel expressed interest in that.  
32 *(laughter)*

33 MR. NOSEWORTHY, CHAIRMAN: Certainly. Not to  
34 diminish the panel's interest. I'm just confused with the  
35 day. When would you be in a position to do that, Ms.  
36 Greene?

37 MS. GREENE, Q.C.: Mr. Chair, Mr. Banfield will be making  
38 a presentation on behalf of Hydro. We're prepared to start  
39 now, or if you wanted to take a five-minute break while we  
40 get ready for it ...

41 MR. NOSEWORTHY, CHAIRMAN: Yes, sure. I think we'll  
42 take a ten-minute break now and we'll return at around 20  
43 to. Thank you.

44 *(break)*

45 MR. NOSEWORTHY, CHAIRMAN: Thank you, it's just for  
46 matters of clarification. I think it's generally been agreed  
47 that as the Board envisages in any event, and I think it's

48 agreed by most that this is just simply a demonstration for  
49 information purposes and certainly it won't complete, or  
50 won't be part of the ... and I guess the transcription  
51 services are not transcribing it either at this point, so just  
52 for clarification as well. Ms. Greene, if you could?

53 MS. GREENE, Q.C.: Thank you, Mr. Chair. Before we  
54 started with the presentation I wanted to speak to two  
55 documents that were distributed over the break. The first  
56 is a letter from the Deputy Minister of Municipal and  
57 Provincial Affairs, relating to Great Harbour Deep. You will  
58 recall that the Consumer Advocate had requested that we  
59 communicate with the Department and file later in the  
60 hearing process, or later from the time that he made his  
61 request, an update on the Government's position. This  
62 letter is dated yesterday. It's addressed to me from the  
63 Deputy Minister. It's very short. It basically says that the  
64 Government has not made any decision on the request of  
65 the residents of Harbour Deep for financial support to  
66 assist with the relocation of the community. So we are  
67 filing this letter in response to that undertaking to the  
68 Consumer Advocate.

69 MR. KENNEDY: I'm just waiting for a number to be  
70 allotted. U-Hydro No. 34, Chair.

71 **U-HYDRO NO. 34 ENTERED**

72 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.  
73 Kennedy.

74 MS. GREENE, Q.C.: And the second document that was  
75 distributed during the break is the 2002 revised capital  
76 budget which I had mentioned here before. It had nothing  
77 to do with the application earlier this morning, so that's  
78 why I didn't file it with respect to that ... prior to the  
79 application. You will recall that I had told the Board and  
80 the parties of our decision to defer the acquisition of the  
81 new computers because of JD Edwards decisions to  
82 continue its support of the current product. This  
83 application reflects that decision and very briefly, if you'd  
84 look at the first pages on the budget which is the second  
85 page of the document, page A-1, what we tried to do was  
86 summarize on that page the changes that arise in this  
87 revision. You will see the summary of the capital budget as  
88 of October 31, there halfway down the page, of \$43,112,000,  
89 and below that are the three changes being made by this  
90 revision. I'd like to speak to the last two first. The first is  
91 the replacement of the AS-400 computers, \$2.1 million, and  
92 that is the amount that had been in the 2002 budget  
93 originally filed to purchase the new computers to support  
94 the move to One World, so that is a deletion.

95 The last item there, the purchase of the existing  
96 AS-400 computers and additional disk space is an addition  
97 of \$143,000, and the reason for that you will find explained  
98 in the second last page, which is a revised page B-64,



1 which explains that the lease on the current computers  
2 expires in April of this year, and because of that we are  
3 required to make a purchase under the lease if we are to  
4 continue with the existing computers, and there's also a  
5 requirement to add additional disk space and that is  
6 explained on page B-64. Both of those items arise because  
7 of the decision to defer the purchase of the new computers.

8 The third item that I wanted to address, which is  
9 the first change item noted there on the bottom, is the  
10 feasibility study for the wind proposal, and in review we've  
11 determined that that was included in error previously. The  
12 agreement with the developer provides that if the project  
13 goes ahead the developer will receive the purchase cost for  
14 the energy we purchase from him. If the project does not  
15 go ahead, the developer is responsible for the cost of the  
16 feasibility study, so in that sense there's no cost to Hydro  
17 so it should not have been included in the budget. It does  
18 not mean that we are not proceeding with the project. We  
19 are proceeding with the project, but there are no capital  
20 budget implications of it. So that was just a very brief  
21 outline for you what the changes are and obviously the  
22 budget will be addressed in the January argument now.  
23 Thank you.

24 The last point actually is that as I mentioned last  
25 week, there are some other documents that we intend to file  
26 as the wrap-up for the hearing. As I said last week, the end  
27 is in sight now.

28 MR. NOSEWORTHY, CHAIRMAN: That's right.

29 MS. GREENE, Q.C.: So we are trying to conclude those  
30 outstanding matters. One outstanding matter is the up-to-  
31 date forecast for No. 6 fuel and for diesel fuel. I will be  
32 filing supplementary evidence from Robert Henderson to  
33 give that update forecast and what the impact is on the RSP  
34 balance. I'm anticipating that that evidence will be ready to  
35 be filed tomorrow, Wednesday. If not Wednesday,  
36 certainly Thursday morning, and in light of that we will  
37 have to recall Mr. Henderson to adopt his evidence, but  
38 that should be very short. It's a factual thing, an update of  
39 the forecast.

40 The next item that we still have outstanding is the  
41 response to an undertaking in the, to file the 2001 customer  
42 survey. I hope to have that ready to be filed by tomorrow.

43 The next item is the, to file when completed the IT  
44 architectural strategic plan. That isn't ready this week. I'm  
45 hoping it will be next week, but I'm not quite sure about that  
46 one. And there are two other items concerning the  
47 Industrial Customers. One is the industrial contracts. You  
48 will recall that when we filed the application there had been  
49 attached the draft contracts with the industrial customers  
50 for approval. Since that time discussions have been  
51 ongoing with the industrial customers. We believe that we

52 have reached agreement and that we will be in a position to  
53 file a revised draft for the industrial contracts in the near  
54 future. There may be one outstanding issue, and that we're  
55 hoping to resolve as well this week, but, so we're hoping to  
56 be able ... we will be filing the revised industrial contracts  
57 before the conclusion of the hearing which is scheduled for  
58 next week, for the evidence part.

59 And the last item I wish to advise the Board on,  
60 that is a clue-up item, is that we recently have been advised  
61 by Abitibi Consolidated in Grand Falls that they will be  
62 completing their conversion from 50 hertz cycle power by  
63 the first quarter of this year, which means that the  
64 frequency converter will no longer be required in Grand  
65 Falls to support Abitibi's operations, so I will be filing  
66 something in writing to confirm that with you, but we only  
67 received the faxed notice of that late last week, Thursday,  
68 I forget the exact date, but it was late last week, so that in  
69 the cost of service as filed, we had assumed that that  
70 frequency converter would be in existence for the year with  
71 the charges specifically assigned to Abitibi, but now it  
72 appears it will be ceasing operations as of the end, I think  
73 it's the first quarter in 2002, but we will confirm that for you  
74 as well. So I think that concludes, that very brief overview  
75 concludes the list of outstanding items and what you  
76 should expect from us by the end of next week to be filed.  
77 Thank you.

78 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
79 Greene. I'd ask you now if you could introduce the JD  
80 Edwards presentation please.

81 MS. GREENE, Q.C.: Thank you, Mr. Chair. The  
82 presentation will be given by Sam Banfield, who is the  
83 Director of Customer Service. In that role Sam is also  
84 responsible for rates and financial planning at Hydro and  
85 he was selected to give the presentation on JD Edwards  
86 because of his familiarity as the director with the various  
87 modules in the program, and also, as Mr. Osmond has  
88 explained to the Board, Mr. Banfield was the project  
89 manager for P-2000 and was seconded from his position to  
90 that project for a period of time to ensure that it was  
91 brought in on schedule and he is very familiar with the  
92 modules, so what we thought is that Mr. Banfield would  
93 actually sit at the witness table, and it might assist where  
94 the parties could see Mr. Banfield, and he will be able to  
95 take us through some of the information he has prepared.

96 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.  
97 Greene.

98 *(presentation re. JD Edwards system)*

99 MR. NOSEWORTHY, CHAIRMAN: Thank you, Sam, very  
100 much, I enjoyed the presentation and found it to be very  
101 informative, it gives me somewhat of a road map, I think, for  
102 the JD Edwards system and an appreciation that I didn't

1 have before, similar to the little picture on the screen, that  
2 I'm not sure what the stars are at the end. I can only  
3 imagine.

4 MR. BANFIELD: That's probably what you're seeing these  
5 days (*laughter*).

6 MR. NOSEWORTHY, CHAIRMAN: Any other comments,  
7 Ms. Greene? No? Any other comments?

8 MR. BROWNE, Q.C.: Thank you very much, this has been  
9 very worthwhile, thank you.

10 MR. NOSEWORTHY, CHAIRMAN: It has been very  
11 worthwhile, thank you again, Sam. We would have copies  
12 of that presentation as well for distribution?

13 MS. GREENE, Q.C.: Yes, I do have copies of that to  
14 distribute.

15 MR. KENNEDY: Is that filed electronically?

16 MR. O'RIELLY: Yes, it is.

17 MR. NOSEWORTHY, CHAIRMAN: Excuse me, Mr.  
18 Kennedy, could you just confirm our schedule for  
19 tomorrow? I think it's Mr. Drayson, is it?

20 MR. KENNEDY: Yes, Chair, the schedule calls for Mr.  
21 Drayson to take the stand at 9:30 tomorrow morning, and  
22 that's the only thing that's scheduled for tomorrow.

23 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you  
24 again, and we'll reconvene at 9:30 in the morning.

25 *(hearing adjourned to December 12, 2001)*