

1 (9:30 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Good morning
3 everyone. My name is Bob Noseworthy and I'm the
4 Chair and CEO of the Public Utilities Board. And I
5 guess for purposes of this pre-hearing conference here
6 this morning I'm acting as the Chair of the Panel. And
7 I'll take the opportunity to introduce my fellow panel
8 members later on. But I would like to welcome
9 everybody here this morning, the parties, interested
10 members of the public and any media that might be in
11 attendance. I will have some opening remarks later on,
12 but the intention of the hearing here this morning, the
13 pre-hearing conference, is really to consider procedural
14 matters in relation to Newfoundland and Labrador
15 Hydro's general rate review application. As I said, I'll
16 have some opening comments later, but for the time
17 being I'm going to ask Mark Kennedy, who's been
18 retained as the Board's counsel, to enter the matter.

19 MR. KENNEDY: Thank you, Mr. Chairman. It's an
20 application of Newfoundland and Labrador Hydro filed
21 to the Board on May 31, 2001 in the matter of the Public
22 Utilities Act and in the matter of an application by
23 Newfoundland and Labrador Hydro for approvals of:
24 One, under Section 70 of the Act, changes to the rates
25 and charges to supply power and energy to its retail
26 customer, Newfoundland Power, its rural customers and
27 its industrial customers. Two, under Section 71 of the
28 Act, the rules and regulations applicable to the supply
29 of electricity to rural customers. Three, under Section
30 71 of the Act, contracts setting out the terms and
31 conditions applicable to provide electricity to its
32 industrial customers. And four, under Section 41 of the
33 Act, its 2002 capital budget. And I would note that the
34 application is filed appropriately.

35 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mark.
36 Would counsel also confirm the appropriate notices
37 were issued, please?

38 MR. KENNEDY: Mr. Chairman, the notice of the pre-
39 hearing conference of Newfoundland and Labrador
40 Hydro's general rate review, the notice stated that on
41 May 31, 2001 the Board received an application from
42 Newfoundland and Labrador Hydro for approval of,
43 and the same items that I just listed in the application
44 itself, as well as such matters as may appear just and
45 reasonable upon hearing the application. And I can
46 confirm that the public notice was provided to the and
47 produced by the Telegram twice on June 20 and 23 of
48 2001; the Western Star twice, June the 20th and 23,

49 2001; the Herald once on the week of June 18th to the
50 25th, 2001; and two insertions in the following papers
51 commencing on June the 18th, the Express, St. John's;
52 the Compass, Carbonear; the Packette, Clarenville;
53 Sunday Gazette, Marystown; in Gander; Pilot,
54 Lewisporte; the Advertiser, Grand Falls-Windsor; the
55 Norwester, Springdale; the Coastal Harbour ... the
56 Coaster, Harbour Breton; Humber Lodge, Corner Brook;
57 (inaudible) in Stephenville; Gulf News, Port aux
58 Basques; Charter, Placentia; the Aurora, Labrador City;
59 the Labradorian, Happy Valley; and the Northern Kent,
60 St. Anthony.

61 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
62 Kennedy. I would like to, once again, welcome
63 everybody here this morning. I would like to, first of all,
64 take the opportunity to introduce my fellow Panellists.
65 On my immediate right is Darlene Whalen who is vice-
66 chair of the Board. On my far right is Don Powell, who's
67 a commissioner with the Board, and Don hails from the
68 west coast, Stephenville area. And to my immediate left
69 is Fred Saunders, a commissioner with the Board who
70 hails from St. John's. Joining us, as well, from the staff,
71 this morning, is Cheryl Blundon. Cheryl is Director of
72 Corporate Services, and for the purposes of the hearing
73 this morning will act as Board secretary.

74 There are a couple of housekeeping matters
75 which I'll probably deal with at the beginning. The pre-
76 hearing conference is being recorded under the
77 supervision of the Board's secretary and will be
78 transcribed, and indeed, distributed following the
79 proceedings here this morning. If there are no
80 particular objections I'm proposing that the hours for
81 the sitting today will be from 9:30 this morning until
82 12:30 and from 2 until 4:30 this afternoon, if, indeed, that
83 is necessary. I would also consider going beyond that
84 if it's a matter of concluding the proceedings today in
85 order to do that. We'll also take a break, roughly 15
86 minute duration, and we'll try and do that, if possible,
87 around 10:45 and 3:15 this afternoon, if we're continuing
88 through. I would hope that this may be satisfactory to
89 everybody. Are there any particular comments
90 associated with that? Okay. Thank you.

91 (9:45 a.m.)

92 MR. NOSEWORTHY, CHAIRMAN: It is the Board's
93 intention to deal with the issues of schedule and
94 procedures to be used for the conduct of the hearing,
95 indeed, on the application of Hydro here today. There
96 is no swearing in of witnesses, I understand, and

1 speakers may, indeed, speak from their seated
2 positions. Unfortunately, space has dictated the
3 arrangement that we have. If this is not a suitable
4 arrangement we can certainly discuss that. You can
5 make your comments known to the Board secretary and
6 for the public hearing itself we can certainly try and
7 arrange matters in a more conducive way, if, indeed,
8 that is practical and possible.

9 Counsel of the Board, who, I believe, has
10 spoken to most of the other counsel regarding these
11 issues has tabled a proposal for consideration and
12 which we will deal with in the order as presented. And
13 I'll comment a little bit more in detail on that later on. I
14 will provide one counsel for each of the intervenors
15 with an opportunity to speak to each of the issues that
16 are presented in that proposal in the form of an agenda
17 which is outlined in the proposal itself.

18 First, however, I would like to make a few
19 comments concerning the conduct of the hearing. It is
20 the Board's intention to proceed with the hearing into
21 Hydro's application filed with the Board on the last day
22 of May. I am sure it is recognized by all parties,
23 however, that there are many complex issues raised by
24 the application and it will require a significant amount
25 of time to complete the process. I believe this is
26 evidenced by the schedule we will discuss a little later
27 on this morning. In considering the matter, I am
28 reminded there are half a dozen or more major issues
29 contained in the application. There are six or more
30 parties, to date, besides the Board. There are seven or
31 more expert witnesses with more to come. And there
32 ten lawyers representing the current parties. Somebody
33 referred to this as the mother, or if you wish, the father
34 of all hearings. As the new Chair I don't know, indeed,
35 if that's true or not, but certainly it is a substantive
36 hearing in terms of time, and consequently, resources.
37 So bearing this in mind, I am hopeful that counsel for
38 each of the parties will strive here today and indeed, in
39 the public hearing itself, to stay focused on the issues
40 presented by the application and we, as a Panel, will
41 also work to that end.

42 The second point I would like to make is that
43 the application presents significant potential for public
44 impact throughout the Province. While the hearings
45 will be conducted according to the normal Rules and
46 full participation will be encouraged, the Board's
47 proposed schedule does include provision for travel
48 outside St. John's, and in particular, Labrador. And I
49 would especially welcome comments from the parties,

50 when we reach that point in the proceedings,
51 concerning this aspect of the proposal and any other
52 options to promote public participation and
53 consultation in relation to the application.

54 I would now call upon counsel to confirm the
55 Notice of Intervention that was received by the Board,
56 the Notices of Intervention received by the Board prior
57 to the July the 3rd, 2001 deadline.

58 MR. KENNEDY: Thank you, Mr. Chairman. There were
59 five, six, sorry, Notices of Intervention received. One
60 received by counsel for Newfoundland Power; one
61 received from counsel for the group of industrial
62 customers of Hydro; one received from the consumer
63 advocate; one received from counsel for Labrador City;
64 and one received from the mayor of the Town of Happy
65 Valley-Goose Bay. I'd also note, Mr. Chairman, that
66 there were, received by the Board, three notices from
67 persons who wished to make oral presentations to the
68 Board, and they are the Mayor Scott Hurley of the
69 Town of Stephenville; Fred Pottle who is the President
70 of Bay St. George Chamber of Commerce; and Don
71 Power, who is the President of Local 1093 of the
72 Communications Energy and Paper Worker's Union of
73 Canada. I also note that there was letters and comment
74 received by the Board already, one from Judy Pardy,
75 Executive Director of the Southeastern Aurora
76 Development Corporation; and, as well, from Ruth
77 Flowers, the mayor of the Makkovik town council; and
78 Dean Coombs, the mayor of the town council of
79 Hopedale. Finally, there was an expression of interest
80 by one person, Robert Sexty of 92 Old Topsail Road, St.
81 John's, Newfoundland.

82 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
83 Kennedy. I would, indeed, to begin the proceedings,
84 ask the parties to stand and introduce themselves and
85 who they represent. I'd like to begin with the
86 Applicant, Hydro, please.

87 MS. GREENE:

88 My name is Maureen Greene, I am counsel for
89 Newfoundland and Labrador Hydro. With me this
90 morning is (inaudible).

91 MR. NOSEWORTHY, CHAIRMAN: Thank you.
92 Newfoundland Power?

1 MS. BUTLER, Q.C.: My name is Gillian Butler, and I'm
2 representing Newfoundland Power and with me is
3 (inaudible).

4 MR. NOSEWORTHY, CHAIRMAN: Thank you. The
5 industrial customers, please?

6 MS. HENLEY ANDREWS: Good morning, Mr.
7 Chairman. My name is Janet Henley Andrews and with
8 me is Joseph Hutchings and Meg Gillies.

9 MR. NOSEWORTHY, CHAIRMAN: Thank you.
10 Consumer advocate?

11 MR. FITZGERALD: Good morning, Mr. Chairman,
12 Panel members. My name is Steve Fitzgerald, I'm
13 counsel for the consumer advocate who is present here,
14 as well.

15 MR. NOSEWORTHY, CHAIRMAN: And others, I
16 understand, Mr. Hearn is here?

17 MR. KIRBY: Good morning, Greg Kirby. I'm appear
18 (inaudible) Mr. Hearn.

19 MR. NOSEWORTHY, CHAIRMAN: Thank you, very
20 much. Does counsel have any other comments to
21 make? Okay. Are there any other parties here this
22 morning who, indeed, would wish to give notice of their
23 intention to intervene in the hearing who haven't
24 already stood and introduced themselves? Okay.
25 Having heard none, I guess are there any other
26 comments that you would wish to make before we
27 continue on?

28 MR. KENNEDY: Just that the Town of Happy Valley-
29 Goose Bay filed a letter with the Board stating that they
30 were seeking intervenor status. I haven't had an
31 opportunity to contact them to just determine how
32 much interest they intend to have in the hearing
33 process itself. That I'll do as soon as possible after this
34 pre-hearing conference and advise counsel accordingly
35 about the nature of the intervention.

36 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you,
37 Mr. Kennedy. We will now proceed, then, to the
38 agenda itself. The objectives of the hearing here this
39 morning were, indeed, contained in the notice and I'll
40 just review those for the benefit of everybody. The
41 primary objectives of the pre-hearing conference here
42 this morning to identify intervenors and other
43 interested parties, to provide some focus to the issues,

44 to set specific dates and locations for the public
45 hearings which may include setting of dates in
46 Labrador and other areas serviced by Hydro's
47 customers may be affected by the application. Fourth,
48 to establish procedures to be followed during the
49 hearing. And finally, to finalize a time table for the filing
50 of evidence, information requests and other
51 submissions to the Board.

52 Those objectives, I suppose, have been
53 consolidated and, indeed, as I referred to earlier, there
54 have been some discussions with most of the counsel
55 here this morning concerning these items and, indeed,
56 these matters are contained in a proposal which had
57 been presented to each of you. It is my plan today to
58 deal with that proposal in an agenda format. The
59 agenda, as outlined on the first page of the proposal
60 itself, there are items listed there, one through five. Just
61 to review those for you, schedule of important dates,
62 number one; the order of witnesses, two; three, the
63 procedures for presentation of evidence and cross-
64 examination of witnesses; four, protocol and procedure
65 for filing; and five, under other business I think it's
66 mentioned there would be motions. I'm hoping that
67 some of the discussion that has occurred will facilitate
68 the proceedings here today, but I guess that remains to
69 be seen. The first order of business, indeed, as
70 outlined, is the schedule of important dates. And I'll
71 ask counsel to introduce this matter initially.

72 MR. KENNEDY: Thank you, Mr. Chairman. The
73 purposes of the proposal on the dates is to provide for
74 an orderly process between the pre-hearing day
75 (inaudible) and the actual commencement of the hearing
76 which is, as per the proposal, called to be September
77 the 24th. In the proposal it tends to provide reasonable
78 periods of time between when questions are asked and
79 when answers are expected to be provided to those
80 questions, the filing of expert evidence by the
81 intervenors in response to the application and so on.
82 I think most of it is self-explanatory and perhaps can be
83 dealt better by hearing from the positions of the actual
84 applicant and the intervenors. But I would draw
85 attention to three things.

86 First of all, you'll note that there are two days
87 being provided, the 18th and August 21, (inaudible)
88 which are set aside as motion days. First of all, that
89 was an error on my part, the August 21, that should
90 August 28th. The purpose of the motion day is to,
91 while not exclusive to those days, that those days will
92 be used in this pre-hearing period to deal with issues

1 that arise between counsel that are (inaudible).

2 The second thing I would point out is that the
3 (inaudible) that's a date set for travel to, I have it down
4 as Labrador, and that would be really travel to outside
5 of the City of St. John's. And I understand that the
6 Panel intends to raise that issue specifically with the
7 parties so that this can be addressed and so that you
8 hear submissions on that.

9 The third thing is the schedule from the
10 hearing date on September 24th to the estimated time to
11 complete the hearing. I haven't provided details during
12 that period because much of it will be dependent on the
13 order of witnesses that's agreed to and how counsel
14 perceives this flowing from the point of the hearing
15 (inaudible). And so, that being developed at a further
16 point, and perhaps dealt with in one of the motion days
17 that have been reserved when it will be certainly
18 determined perhaps as early as the 18th of July on that
19 motion. I think that that's all I need to say in regards to
20 the schedule itself, Mr. Chairman.

21 *(10:00 a.m.)*

22 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
23 Kennedy. My proposal would be to entertain positions
24 from each of the parties on the items, whether we will be
25 reviewing in the order of the agenda that's outlined
26 there. I would be asking the Application, Hydro, to
27 comment first, followed by Newfoundland Power, the
28 industrial customers, the consumer advocate, and
29 finally, Mr. Kirby, representing Labrador City. So I
30 would ask Hydro to comment, first on item number 1,
31 which is the schedule of important dates which is
32 presented.

33 MS. GREENE: Thank you, Mr. Chairman. With respect
34 to the schedule, it's obviously very difficult to come up
35 with the finite schedule concerning this hearing. And
36 with that general comment, I would say that Hydro is
37 generally accepting (inaudible) schedule (inaudible)
38 hearing.

39 We obviously have concerns with respect to
40 some of the dates. For example, the information
41 requests or demands for particulars (inaudible) by July
42 14th. The schedule requires us to respond to all of
43 those by July 30th. While that is just over two weeks
44 it is difficult for us to make a full commitment to
45 (inaudible) all of those questions without knowing the
46 volume of the questions or the complexity of the
47 questions. But certainly, we will do our best efforts to

48 respond to all that is possible by that date and if we
49 have difficulty we shall provide (inaudible). But that is
50 one general comment, and I'm sure the other parties will
51 have that, as well.

52 Another date that causes some concern is with
53 respect to the information request for questions due
54 from Hydro to the other party (inaudible) upon their
55 evidence (inaudible). Again, we do not know what
56 evidence the other parties will be filing. None of the
57 parties and the intervention that they filed have
58 indicated, other than the (inaudible). So we don't know
59 at this time the volume of evidence that will be filed or,
60 in fact, if all the parties will be filing expert evidence, as
61 well as other evidence. But it appears that nine days to
62 provide all of the information (inaudible) when we don't
63 have any evidence, is a very short period of time. But
64 again, we will do our best based on the volume to do
65 that (inaudible).

66 In terms of the other dates, again, they may
67 seem (inaudible) very short. We haven't (inaudible).
68 So, I am hoping and being optimistic that there will be
69 hearings in December, but of course, that's not up to me
70 and (inaudible).

71 So with those overall general comments I
72 would say that Hydro (inaudible) accepts this as a
73 reasonable proposal of the dates, subject to the
74 comment made.

75 There is one question that we had, and I
76 understand this will be dealt with later and that is the
77 issue of travel outside St. John's. We have some
78 comments about the dates of that (inaudible).

79 MR. NOSEWORTHY, CHAIRMAN: Thank you.
80 Newfoundland Power, please?

81 MS. BUTLER, Q.C.: Thank you, Mr. Chairman.
82 Newfoundland Power (inaudible) Mr. Kennedy's efforts
83 to (inaudible) and generally the schedule (inaudible).
84 However, in relation to the issue that Newfoundland
85 Power has identified flowing from the application, we
86 feel that there are some that are not covered in the
87 application (inaudible).

88 MR. BROWNE, Q.C.: Excuse me, we're having difficulty
89 hearing up here.

90 MS. BUTLER, Q.C.: Sorry. The questions that will be
91 filed on July the 13th will be in volume (inaudible). So

1 in terms of giving Newfoundland Hydro the
2 opportunity to respond the current schedule allows for
3 seven days. (inaudible) delays in responding to that,
4 then obviously August (inaudible) It's very easy,
5 therefore, for a schedule (inaudible). Having said that,
6 we fully agree (inaudible).

7 MR. NOSEWORTHY, CHAIRMAN: Thank you.
8 Industrial customers, please?

9 MR. HUTCHINGS: Thank you, Mr. Chairman. Again,
10 we do appreciate Mr. Kennedy's efforts in trying to
11 facilitate the order, the progression of this hearing. It
12 is, in fact, a huge hearing that could easily get off rails
13 and we put ourselves in the hands of Mr. Kennedy and
14 the Chair to keep us on the straight and narrow
15 throughout this whole procedure.

16 Generally speaking, within the time frame that
17 we are allowed the dates are acceptable. We have some
18 similar concerns that others do have. It is notable that
19 the July 13th date refers to first round of questions to
20 Hydro and (inaudible). In our experience there is often
21 times requirements for supplementary questions when
22 the answers are received, and that's not specifically
23 built into the schedule, but I assume it will be part of
24 the procedure as previously followed. There is a real
25 problem, I think, with the time between the 30th of July
26 when, hopefully, we will have answers to the
27 information request of Hydro and the filing of the expert
28 reports on the 7th of August. Obviously the number of
29 the information requests will, in fact, originate with the
30 experts themselves, who will require certain information
31 in terms of putting together their evidence. And that is
32 a very narrow window there. And we would expect that
33 we will meet difficulties in trying to comply with that
34 particular date.

35 By way of suggestion and certainly it would
36 be our intention to try to do this, and I'd invite
37 comments from counsel from Hydro, obviously, if
38 Hydro are prepared to accept questions in small
39 bunches as opposed to waiting until the last date and
40 filing all of them, I think that may well be helpful. And
41 we have done that in the past too. And it may be that,
42 you know, within a week or within a few days we might
43 be in position to put the first of our questions and
44 knowing full well that there will be others coming at or
45 about the deadline. And that may, in fact, give Hydro
46 a head start to try to generate some material at an earlier
47 date. We can certainly discuss that. But, these are the
48 major concerns, is the second round of questioning

49 which will probably arise out of the answers to the first
50 ones and the very narrow window, as we see it, for the
51 filing of the expert reports after we get the answers to
52 the questions. And I think that August 7th date may
53 need to be (inaudible) Thanks.

54 MR. NOSEWORTHY, CHAIRMAN: Thank you.

55 MS. GREENE: Mr. Chair, if I may respond to that.

56 MR. NOSEWORTHY, CHAIRMAN: Sure.

57 MS. GREENE: With respect to Hydro's position on
58 questions before July 13th. Yes, that would expedite
59 for Hydro. If we could receive the questions as early as
60 possible it would obviously assist us in getting the
61 answers (inaudible). Our experience has been that we
62 don't normally get them until at the close of business
63 on the date in June. But if we can have them early it
64 would be really helpful to Hydro and I think to the
65 Board (inaudible) process.

66 MR. NOSEWORTHY, CHAIRMAN: Thank you. The
67 consumer advocate, please?

68 MR. BROWNE, Q.C.: We are just in the process of
69 retaining experts, so I don't know if the expert will be in
70 a position to (inaudible) on August 7th. With reference
71 to the first round of questions, I would suggest some
72 flexibility (inaudible) date is pretty close. (inaudible)
73 represent consumers. So we won't be able to meet that
74 particular deadline. However, if we were to say June
75 13th, first round of questions, then (inaudible)
76 questions anytime after that date. And maybe if we had
77 (inaudible) parties going to direct the questions to each
78 other. There was some time frame to respond. I think
79 that's addressed in the Rules (inaudible)

80 With reference to motions day, this is a
81 concept that's not in the Rules. (inaudible). If a motion
82 is to be made (inaudible) notice of the motion prior to
83 coming here, so that the parties are not caught by
84 surprise. I think with the notice of any preliminary
85 matters that are raised on the so called motions day.
86 And indeed, I guess it doesn't (inaudible) on various
87 matters as required (inaudible).

88 With reference to September, I find that the
89 late starting date of commencement of hearing
90 September 24th, I don't believe that it's realistic that we
91 will finish December the 20th. I don't know what the
92 Board has in mind in terms of people who already have

1 dates set by Courts and require the lawyers to be
2 present on these dates. (inaudible) I find myself
3 scheduled during the latter part of September.
4 (inaudible) during the fall. So I would prefer an earlier
5 starting date or indeed, we will be here until December
6 (inaudible). Recognizing that Hydro has requested
7 (inaudible) next calendar year. (inaudible). So we
8 probably need to be further (inaudible) in reference to
9 the schedule (inaudible) to assist each other.
10 (inaudible) accommodating those who are scheduled
11 already into the fall. (inaudible).

12 (Inaudible) travel to Labrador. I recognize
13 (inaudible).

14 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.
15 Kirby?

16 MR. KIRBY: Thank you, Mr. Chair. (inaudible) my
17 learned friends pretty much expressed all the concerns
18 (inaudible) other than if we could be more specific in
19 terms of the travel outside of St. John's, particularly to
20 Labrador (inaudible).

21 MR. NOSEWORTHY, CHAIRMAN: Thank you. Are
22 there any other specific points from the parties that
23 would be ... they would like to make in respect of the
24 Labrador travel, or indeed, travel outside of St. John's
25 and organization around that? Starting with Hydro.

26 MS. GREENE: Thank you, Mr. Chair. Hydro's
27 application (inaudible) and, of course, all of our rural
28 customers. And we believe it is important for the
29 purpose of (inaudible) to have hearings (inaudible)
30 where our customers will have the opportunity to make
31 (inaudible) with respect to the application. (inaudible)

32 MR. NOSEWORTHY, CHAIRMAN: Thank you.
33 Newfoundland Power, on the specific Labrador issue?

34 MS. BUTLER, Q.C.: Mr. Chairman, Newfoundland
35 Power accepts that the Board should be sitting in
36 Labrador. And otherwise, we have no specific
37 submissions to make in relation to travel (inaudible).
38 What would be of interest to Newfoundland Power
39 (inaudible) that experts would not travel to Labrador
40 and the expert evidence only be heard here in St.
41 John's. That being the case (inaudible) scheduling
42 problems (inaudible).

43 MR. NOSEWORTHY, CHAIRMAN: Okay. Industrial
44 customers, please?

45 MR. HUTCHINGS: Thank you, Mr. Chair. Far be it for
46 me to discourage anyone from travelling out of St.
47 John's. Certainly, from the point of view of the
48 industrial customers to the extent that the rural rates are
49 involved and there is no longer (inaudible) it is likely
50 that the industrial customers would not participate in
51 hearings (inaudible). It's certainly a reasonable step to
52 take, given the nature of application that you have. We
53 have no specific requests for hearings outside of the
54 Province .. . of St. John's, notwithstanding that all of
55 our clients are, in fact, located outside of St. John's.
56 (inaudible) and deal with the Board here. Again, I'd
57 echo the concerns of counsel for Newfoundland Power
58 that the hearings which are held outside St. John's be
59 (inaudible) better linked to the rural (inaudible). And
60 certainly, I think, the general (inaudible).

61 MR. NOSEWORTHY, CHAIRMAN: Thank you. Any
62 further comment from the consumer advocate? I think
63 you had initially commented on the Labrador situation.
64 Any further comment on that.

65 MR. BROWNE, Q.C.: We would suggest Goose Bay
66 and Labrador City, as well as Corner Brook and Grand
67 Falls.

68 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.
69 Kirby, any final remarks on the Labrador?

70 MR. KIRBY: No.

71 MR. NOSEWORTHY, CHAIRMAN: No. Thank you.
72 Does counsel have any comments to make on this
73 issue?

74 MR. KENNEDY: Just a couple, Mr. Chairman. One, I
75 note that in the letter received from the ... from Goose
76 Bay's counsel it was indicated that they expressly asked
77 for the Board to consider travelling to Happy Valley-
78 Goose Bay to conduct hearing or what have you. I
79 think clearly trickling out of the questions (inaudible)
80 dates is appropriate. (inaudible) on or before dates, as
81 being suggested, counsel being counsel, they often
82 wait until the on rather than before, but clearly, if the
83 questions are available to be issued then if Hydro has
84 no objection, then that would make sense.

85 And in regards to the procedures on the
86 motions themselves, that's something I think that can
87 be further developed with counsel for all parties in
88 making sure that the appropriate notices are provided
89 to counsel on the motions themselves. You'll see later

1 that we'll deal with the actual distribution of
2 documentation, and so if there is a formal motion being
3 filed then that would presumably be treated the same as
4 any other document that's being filed with the Board
5 and the parties will be responsible for distributing that
6 to all the other intervenors and the Board itself, and so
7 on. That's all the (inaudible)

8 MR. NOSEWORTHY, CHAIRMAN: Thank you. Are
9 there any final comments from the parties, any of the
10 parties?

11 MS. GREENE: Mr. Chair, with respect to the location of
12 the (inaudible) hearings in Labrador. With respect to
13 the hearings on the island (inaudible) in the Grand Falls
14 area (inaudible).

15 With respect to the process, (inaudible). And
16 I would like some direction from the Board as to
17 (inaudible).

18 MR. NOSEWORTHY, CHAIRMAN: Okay. Any final
19 ...

20 MS. BUTLER, Q.C.: Mr. Chair, I wonder if I could just
21 readdress the issue of the filing of the questions
22 (inaudible).

23 MR. NOSEWORTHY, CHAIRMAN: Sure.

24 MS. BUTLER, Q.C.: Newfoundland Power is, in fact, in
25 position to file early. And it's not our intention to be
26 anything but helpful to the Board. (inaudible). So we
27 will file questions early. However, in light of that, I do
28 ask that if Newfoundland Hydro is still going to file by
29 the date indicated (inaudible) and still maintain a seven
30 day (inaudible) filing expert reports which will be
31 developed on the basis of the answers that we will be
32 getting (inaudible).

33 MR. NOSEWORTHY, CHAIRMAN: Okay.

34 MS. HENLEY ANDREWS: Mr. Chairman, with respect
35 to the same issue we really feel that saying that the
36 window (inaudible) information requests for seven days
37 is too narrow, that our experts are going to need many
38 of those answers, if not all of them, in order to finalize
39 their evidence and there's not enough time there. And
40 I'm just wondering about people have talked about
41 flexibility on the July 13th date and they're asked to get
42 their information requests in by that date. We have one

43 expert who hasn't yet be formally retained, so
44 (inaudible) to get (inaudible), as well.

45 MR. NOSEWORTHY, CHAIRMAN: Thank you.

46 MS. GREENE: (Inaudible).

47 MR. NOSEWORTHY, CHAIRMAN: Any final, final
48 remarks on this matter?

49 MR. HUTCHINGS: (Inaudible) if we were to have today
50 an electronic version of the pre-trial evidence that
51 would speed things up.

52 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you.

53 MR. FITZGERALD: Mr. Chairman, just before, if I may.

54 MR. NOSEWORTHY, CHAIRMAN: Sure.

55 MR. FITZGERALD: I guess our general comment on
56 the protocol and procedure is, of course, it makes sense
57 what Hydro's counsel (inaudible) because there has to
58 be structure here. But we want to be assured that, you
59 know, what the sanctions would be, perhaps, if the
60 structure or these dates aren't met. I think the fairest
61 way is, I suppose, is to have an (inaudible), prior to the
62 hearing which is scheduled for the 24th of September.
63 But we would like to see some flexibility throughout or
64 during the interim period (inaudible). We would have
65 some objection, I guess, (inaudible) too hard and fast.
66 (Inaudible).

67 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you.
68 Any of the panel members wish to ask any questions of
69 the parties? Mr. Powell?

70 MR. POWELL: No.

71 (10:30 a.m.)

72 MR. NOSEWORTHY, CHAIRMAN: Counsel has no
73 final comments on this matter? Okay. Just probably a
74 couple of comments. Quite clearly, I guess, from the
75 nature of the discussion here this morning surrounding
76 schedule and dates, this is likely to translate into a very
77 difficult problem to try and meet everybody's
78 expectations surrounding schedules and dates and
79 exchange of information. Clearly, as anyone can
80 recognize, this is going to be a protracted hearing at the
81 very best, I would think. If we exchange information, if
82 we set dates and we proceed with issues as

1 expeditiously as possible it will still be a fairly
2 protracted hearing. I think there has to be, certainly, a
3 balance applied between allowing due process to occur,
4 accommodating everybody's schedule, and indeed,
5 getting the hearing and, indeed, the order issued in an
6 expeditious fashion, there's no question about that.
7 And we will be taking the comments here today into
8 account and trying to come up with a schedule that,
9 indeed, will satisfy everybody, but ultimately will get
10 the proceeding over with within a reasonable period.
11 As counsel pointed out, we don't have some of the
12 details worked out, certainly between September the
13 24th and December the 20th. And I respect Mr.
14 Browne's comments that there are pre-commitments
15 likely during that time frame. What I will ask is that we
16 will certainly take all the comments here today into
17 consideration in issuing our order. And I will also ask
18 counsel, prior to the next motions day, to meet with the
19 parties and see if we can try and accommodate the
20 requests that are before us in terms of the schedule
21 itself, be it the information requests time frame, and be
22 it any particular commitments that others would have,
23 within reason, throughout that period. And hopefully,
24 we will be able to come up with something that I'm sure
25 will satisfy most, but quite likely not everybody. So if
26 that's acceptable we'll certainly consider the comments
27 here in relation to the matter before us. And again, I
28 would ask counsel over the next little while, prior to
29 motions day to have some further discussions. Is that
30 appropriate? Okay.

31 MS. GREENE: (Inaudible).

32 MR. NOSEWORTHY, CHAIRMAN: I was thinking of
33 the time frame between, basically between September
34 and in terms of trying to accommodate individual
35 requirements and what have you, yes.

36 MS. GREENE: (Inaudible).

37 MR. NOSEWORTHY, CHAIRMAN: Yeah. No, I think
38 counsel pointed out initially that the time frame
39 between the 24th and the 20th, indeed, we hadn't
40 worked out much in the way of detail at that point in
41 time, including sitting days and that sort of thing and
42 we'd be prepared to consider that, and also travel to
43 Labrador, in light of the comments here this morning.

44 MR. BROWNE, Q.C.: Mr. Chair, just on that point
45 (inaudible) are you stating that the July date is ... July
46 13th date is (inaudible) at this point?

47 MR. NOSEWORTHY, CHAIRMAN: No. I think the
48 purpose of this pre-hearing conference is really to hear
49 the comments from the parties. And certainly, we will
50 be issuing an order very expeditiously on the schedule.
51 But quite clearly, we're not in the position ... the
52 purpose we will need to consider the comments,
53 discuss with my fellow Panellists and we would
54 certainly be addressing the issue of schedule in the
55 order.

56 MR. BROWNE, Q.C.: Because we haven't seen the
57 schedule (inaudible) last night. We haven't had an
58 opportunity to discuss with our experts whether or not
59 they are in a position (inaudible). And certainly, we are
60 not in a position to (inaudible).

61 MR. NOSEWORTHY, CHAIRMAN: Your comments
62 are noted and certainly will be taken into account in
63 issuing the order and setting the schedule.

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

65 MR. NOSEWORTHY, CHAIRMAN: Are there any ...
66 okay. Well, thank you. I'd like to move on to the
67 second matter now in terms of the order of witnesses.
68 And I'll call upon counsel to make ... to introduce this
69 item.

70 MR. KENNEDY: Thank you, Mr. Chairman. Again, on
71 page 3 of the proposal that was tabled it should be,
72 again, self-explanatory. The objective was to provide
73 for an orderly running of the hearing itself, but set the
74 order of witnesses now so that parties could anticipate
75 roughly when their witnesses may be expected to be
76 called during the hearing period itself. And again, the
77 details of that will be refined as we move along towards
78 September the 24th. In keeping with past practice and
79 also as a cost saving measure and just efficiencies
80 overall, I've attempted to bundle, if you will, the experts
81 so that they testify sequentially. And they first start
82 with Kathleen McShean (phonetic) and Douglas Hall,
83 who are the cost of capital and access to market experts
84 of Newfoundland and Labrador Hydro. And then you'll
85 see I have set toward the cost of capital experts of the
86 intervenors to then testify right afterwards, and then
87 the Board's expert, Dr. Morin. And I've done the similar
88 with Newfoundland and Labrador Hydro again, experts
89 John (inaudible) and (inaudible) Hamilton, who are the
90 cost of service methodology experts. And so I've
91 provided for the intervenors cost of service experts in
92 the case where I knew who they were, I've put their
93 names in and in some cases I've don't know who they

1 are, and perhaps the intervenors might be able to speak
2 to that and be able to provide confirmation if they've
3 retained their expert and if they have, who the expert is.
4 And then the Board's cost of service methodology
5 expert, Dr. Wilson. And then the presentation, if any,
6 of the case of Newfoundland Power, the industrial
7 customers and consumer advocate if they, indeed,
8 intend to call any witnesses in addition to the experts
9 that would have already testified. And that would
10 bring it, obviously, to the conclusion of the hearing
11 following the Board's own witnesses, which will be Bill
12 Brushett principally, retained by the Board as the
13 financial analyst. And I think that's all I need to say at
14 this point, Mr. Chairman.

15 MR. NOSEWORTHY, CHAIRMAN: Thank you.
16 Comments on this proposal beginning with Hydro,
17 please?

18 MS. GREENE: Thank you, Mr. Chair. (Inaudible)
19 presentation of our case to allow (inaudible) allow the
20 other parties experts to be present why our experts are
21 testifying and (inaudible).

22 MR. NOSEWORTHY, CHAIRMAN: Thank you.
23 Newfoundland Power, please?

24 MS. BUTLER, Q.C.: Thank you, again, Mr. Chair. The
25 order of witnesses (inaudible) Newfoundland Power's
26 stage. And I can tell you that in relation to the cost of
27 capital expert we are not (inaudible) at that moment that
28 we may indeed call cost of capital expert, but we may.
29 However, we may also want to call somebody to
30 address regulatory accounting. There may be a witness
31 on our list that will deal with Newfoundland Hydro's
32 (inaudible). So I need some assistance in terms of
33 where, in fact, these people might fall. As in perhaps a
34 more broad based concern that I've have, which I've
35 expressed to Mr. Kennedy in our previous meeting, I
36 don't understand why it is that Newfoundland Power is
37 being asked to (inaudible) or, in fact, present their case
38 first. And if this is the appropriate time to make a
39 decision on that, Mr. Chairman, I'll do so, or if you want
40 me to delay that (inaudible). But from our perspective
41 we feel that Newfoundland Power (inaudible) most of
42 the questions (inaudible) perhaps as early as tomorrow
43 and to present its case in an orderly fashion what we're
44 trying to avoid here, for the Board's benefit and
45 everybody else's is the examination and reexamination
46 of witnesses on the same types of questions and
47 (inaudible) like to go last. (inaudible).

48 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy, do
49 you have any observations?

50 MR. KENNEDY: Well, the issue of the cross-
51 examination order is item 3 in the agenda. You could
52 (inaudible) if you wanted to.

53 MR. NOSEWORTHY, CHAIRMAN: Would that be
54 acceptable?

55 MS. BUTLER, Q.C.: Yes.

56 MR. NOSEWORTHY, CHAIRMAN: Okay.

57 MS. BUTLER, Q.C.: (Inaudible) you see on the order
58 list you have there now you have Newfoundland
59 Power's case going before the industrial customers.

60 MR. NOSEWORTHY, CHAIRMAN: Yes.

61 MS. BUTLER, Q.C.: Same type of issue.

62 MR. NOSEWORTHY, CHAIRMAN: Yes.

63 MS. BUTLER, Q.C.: (Inaudible).

64 MR. NOSEWORTHY, CHAIRMAN: Thank you.
65 Industrial customers, please?

66 MS. HENLEY ANDREWS: Mr. Chairman, there are two
67 issues and one is we note the reference to Dr. Moran.
68 And we are assuming that the Dr. Moran who the Board
69 is proposing to retain as its expert is the same Dr.
70 Moran who testified at the last hearings on behalf of
71 Newfoundland Power on cost of capital (inaudible).
72 And if that is the case, then we have a significant
73 objection to Dr. Moran to be an expert on behalf of the
74 Board. And I don't know whether that issue should be
75 discussed at this time or should be deferred until later
76 in the agenda. And the second thing is that ...

77 MR. NOSEWORTHY, CHAIRMAN: It's just to
78 comment on that, I certainly wasn't here at that point in
79 time, but somebody may need to at least confirm for me,
80 but I believe it is the same individual.

81 UNKNOWN SPEAKER: That's correct, Mr. Chairman.

82 MR. NOSEWORTHY, CHAIRMAN: It is, yes.

83 UNKNOWN SPEAKER: He's a leading consultant for
84 the Board as well as (inaudible).

1 MS. HENLEY ANDREWS: That isn't the point, and I'll
2 get to my point.

3 MR. NOSEWORTHY, CHAIRMAN: Okay.

4 MS. HENLEY ANDREWS: Do it now?

5 MR. NOSEWORTHY, CHAIRMAN: No, I'd like to ...
6 probably we could defer that to item 3, as well, is that
7 satisfactory?

8 MS. HENLEY ANDREWS: The second thing is that
9 there's a reference under the heading of intervenors that
10 Newfoundland Power (inaudible) and then there's a
11 blank and it says (inaudible). And I'm wondering who
12 that ... is that supposed to be somebody for the
13 industrial customers, because we've never heard of him.

14 MR. KENNEDY: And I apologize for that. I (inaudible)
15 my handwriting. (Inaudible) indicated that you had
16 essentially two cost of service methodology experts
17 (inaudible). And I couldn't make out my handwriting
18 (inaudible).

19 MS. HENLEY ANDREWS: Patrick Bowman.

20 MR. KENNEDY: Oh, that one was pretty close. Thank
21 you, counsel.

22 MS. HENLEY ANDREWS: And he may not, in fact,
23 testify at all. (inaudible). With respect to the general
24 format, we don't have any great objection. We'll deal
25 with the issue of order of presentation (inaudible).

26 MR. NOSEWORTHY, CHAIRMAN: Thank you.
27 Consumer advocate, please?

28 MR. BROWNE, Q.C.: The order of witnesses is fine
29 from our perspective. We agree that the various experts
30 should come and testify at the same time. (inaudible).
31 Concerning the cost of capital, I don't know (inaudible)
32 experts on the cost of capital should be first or last.
33 We're into a lengthy hearing. I think what you'll find is
34 that we'll come back for supplementary evidence if
35 markets change between, say, September when they
36 give evidence and December when the hearing
37 concludes. So, we might ... or time might be best spent
38 if cost of capital experts came on in the latter part of the
39 hearing so that the evidence is up to date and so we
40 don't have repeat performances. That's just a caution.

41 In terms of the Board retaining Dr. Moran, we
42 too would be objecting to that at the noted time and
43 state the nature of our objection, this would come
44 under other business (inaudible).

45 MR. NOSEWORTHY, CHAIRMAN: Thank you.

46 (10:45 a.m.)

47 MR. BROWNE, Q.C.: In fact, Mr. Chair, I would go this
48 far as to say that I don't know why the Board is calling
49 evidence. I think that comes from a time in which
50 parties didn't regularly appear before the Board. I think
51 the proponent and the Board sat down between
52 themselves and called evidence and decided what the
53 rate of return should be for the proponent under the
54 guise of a public hearing. But, there were a few
55 advocates before the Board. But sure, that's changed
56 now. And if you notice, all the intervenors here are
57 calling evidence on the cost of capital. So why is the
58 Board calling evidence? I don't really understand that.
59 I can see the Board having a (inaudible) to advise the
60 Board as to technical matters, but why to bring to the
61 Board (inaudible).

62 MR. NOSEWORTHY, CHAIRMAN: Thank you. I may
63 have some comment on that later on when we discuss
64 the matter under other business. Mr. Kirby?

65 MR. KIRBY: Mr. Chairman, no real comment, other than
66 maybe I'm missing something, but on page 4 there
67 seems to be specific provisions for (inaudible)

68 MR. NOSEWORTHY, CHAIRMAN: I would believe
69 that's the case. Counsel, is that ...

70 MR. KENNEDY: Yes.

71 MR. NOSEWORTHY, CHAIRMAN: Any further
72 comment?

73 MS. GREENE: Excuse me. (Inaudible).

74 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you.
75 It is a little bit beyond 10:45 now. I'd like to try and
76 keep to the schedule, if we possibly can. So could we
77 break now for 15 minutes and we'll reconvene at a
78 couple of minutes after 11. Thank you.

79 (break)

80 (11:15 a.m.)

- 1 MR. NOSEWORTHY, CHAIRMAN: Thank you. I
2 would like to conclude on item two, if that's possible,
3 on the basis that Newfoundland Power's concern in
4 terms of the order of cross-examination would be
5 addressed in the next item, and the Consumer
6 Advocate's concern around Dr. Morin and the Board
7 will be addressed under other business. Is that
8 satisfactory? Counsel, are there any other final
9 comments on this matter?
- 10 MR. KENNEDY: No, Mr. Chairman.
- 11 MR. NOSEWORTHY, CHAIRMAN: Okay, are there
12 any questions which the ...
- 13 MR. SAUNDERS: No questions.
- 14 MR. KENNEDY: I would add one thing, Mr. Chairman,
15 if the parties when they do confirm the retention of their
16 experts, that if they could furnish that information to
17 myself and to other intervenors, that would be helpful
18 as opposed to waiting until the expert filing date,
19 whenever that is according to the final schedule.
- 20 MR. NOSEWORTHY, CHAIRMAN: Sure, okay, thank
21 you. The next item then we'll proceed to immediately is
22 the procedures for presentation of evidence and cross-
23 examination of witnesses, and I'll ask Ms. Greene to
24 start off the discussion on this please?
- 25 MS. GREENE, Q.C.: Thank you, Mr. Chair. We agree
26 with the proposal (inaudible).
- 27 MR. NOSEWORTHY, CHAIRMAN: Thank you.
28 Newfoundland Power?
- 29 MS. BUTLER, Q.C.: (inaudible).
- 30 MR. NOSEWORTHY, CHAIRMAN: Please, yes, and
31 the point is noted and we'll take ... all we can do is take
32 that into consideration, and I guess my previous
33 comment was the fact that counsel would try and work
34 out something between those, certainly between those
35 dates that hopefully will address everybody's needs if
36 at all possible.
- 37 MS. GREENE, Q.C.: Mr. Chair, (inaudible), we
38 obviously are very concerned about the (inaudible).
39 We really are concerned about the schedule (inaudible)
40 and the flexibility in the schedule to accommodate
41 (inaudible).
- 42 MR. NOSEWORTHY, CHAIRMAN: Absolutely, yes,
43 and that's ...
- 44 MS. GREENE, Q.C.: (inaudible).
- 45 MR. NOSEWORTHY, CHAIRMAN: Right, right, and
46 that's the clear intent here of any meetings that counsel
47 would, would proceed with in this matter, that all parties
48 would certainly be involved in that discussion.
- 49 MS. BUTLER, Q.C.: Thank you, Mr. Chair. In relation
50 to item number three on the agenda, Newfoundland
51 Power has no difficulty with (inaudible).
- 52 MR. NOSEWORTHY, CHAIRMAN: We can certainly
53 do that, yes. Are there any other comments on this
54 item? Okay. The Industrial Customers please?
- 55 MR. HUTCHINGS: Thank you, Mr. Chair.
- 56 MR. NOSEWORTHY, CHAIRMAN: Excuse me, could
57 I ask you in your comments to address any concerns
58 that you might have to this matter to see to what degree
59 we need it introduced.
- 60 MR. HUTCHINGS: (inaudible).
- 61 MR. NOSEWORTHY, CHAIRMAN: Yes, yes.
- 62 MR. HUTCHINGS: Yes, Mr. Chair, in terms of the
63 scheduling issue, I think we can accommodate whatever
64 the (inaudible). I'll leave that to other counsel
65 (inaudible).
- 66 MR. NOSEWORTHY, CHAIRMAN: Excuse me, I was
67 also referring to Newfoundland Power's interest in
68 going later on in the schedule. If, indeed, that was a
69 cause for concern for the parties, I would ask
70 Newfoundland Power to address that in full.
- 71 MR. HUTCHINGS: Yes, I had intended on (inaudible).
- 72 MR. NOSEWORTHY, CHAIRMAN: Thank you.
- 73 MR. HUTCHINGS: I think it's fair to say that we have
74 no particularly strong position relative to the order of
75 cross-examination (inaudible) ... insofar as they
76 translate (inaudible) residential and non-industrial
77 customers are (inaudible), and it would be appropriate,
78 I think, that Newfoundland Power and the Consumer
79 Advocate be (inaudible).

1 MR. NOSEWORTHY, CHAIRMAN: So I can register
2 the Industrial Customers having no objection to
3 Newfoundland Power's request at this point in time?

4 MR. HUTCHINGS: We have no objection.

5 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you.
6 The Consumer Advocate please?

7 MR. BROWNE, Q.C.: We like the order that way it's
8 presented, Mr. Chairman, (inaudible).

9 MR. NOSEWORTHY, CHAIRMAN: Uh hum.

10 MR. BROWNE, Q.C.: (inaudible) ... Hydro's application,
11 they're prepared, and they've been preparing a long
12 time (inaudible) application, and they're ready to go
13 obviously (inaudible). Newfoundland Power
14 (inaudible). They have the experience and the expertise
15 (inaudible) to deal with this application, and I would
16 assume they've been preparing for some time now, so
17 they are (inaudible). The Industrial Customers, we'd
18 like to hear what they have to say (inaudible), but we'd
19 like to hear the complete rationale for where everyone
20 is headed before (inaudible). And they can argue well
21 we're paying the bill (inaudible). But realistically
22 though, we all know who is paying the bill here, the
23 consumers of this province, you and I, and having
24 (inaudible) we think that it would be advantageous
25 certainly to allow those who are (inaudible) to go first
26 (inaudible), and the other parties, we'll have to see
27 exactly where Newfoundland Power ... we'd like to know
28 where Newfoundland Power is headed in reference to
29 this application and having gotten their admission that
30 they're prepared already with 200 questions, I think
31 (inaudible), because we're paying the bill. Thank you,
32 Mr. Chairman.

33 MR. NOSEWORTHY, CHAIRMAN: Ms. Butler, I'll
34 come back to you because I think there's no other
35 alternative now but really to have you speak to the
36 matter in full. Mr. Kirby?

37 MR. KIRBY: Mr. Chair we have no objection to the
38 present structure that's there or do we have any real
39 objection to Newfoundland Power's position being
40 moved (inaudible).

41 MR. NOSEWORTHY, CHAIRMAN: Thank you very
42 much. Ms. Butler, I'll ask you to speak to the matter
43 now in greater detail please?

44 MS. BUTLER, Q.C.: (inaudible).

45 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.
46 Browne, are there any other comments that you would
47 wish to make?

48 MR. BROWNE, Q.C.: (inaudible).

49 MS. BUTLER, Q.C.: (inaudible).

50 MR. NOSEWORTHY, CHAIRMAN: Thank you.

51 MR. HUTCHINGS: Mr. Chair ... (inaudible).

52 MR. NOSEWORTHY, CHAIRMAN: Thank you.

53 MS. GREENE, Q.C.: (inaudible).

54 (11:30 a.m.)

55 MR. NOSEWORTHY, CHAIRMAN: Thank you, and I'll
56 conclude, bring a conclusion to that discussion with
57 the comments of the applicant. Counsel, do you have
58 any further comments? Are there any particular
59 questions from the panel in this matter? Clearly there is
60 an impasse, it seems to be here. I will be asking counsel
61 to perhaps have a further discussion with the parties on
62 this matter. I don't see much hope of a satisfactory
63 outcome in that and certainly the panel will have to take
64 into account the comments of the parties and make a
65 decision at the point when we issue the order. Thank
66 you. Moving along, I'd like to deal next with the fourth
67 item which is the protocol and procedure for filing, and
68 as followed previously, I'd ask the Applicant, Hydro, to
69 comment on this matter.

70 MS. GREENE, Q.C.: Under the heading of protocol
71 (inaudible).

72 MR. NOSEWORTHY, CHAIRMAN: Thank you.
73 Newfoundland Power please?

74 MS. BUTLER, Q.C.: Mr. Chairman, Newfoundland
75 Power has no objection whatsoever (inaudible).

76 MR. NOSEWORTHY, CHAIRMAN: Industrial
77 Customers?

78 MR. HUTCHINGS: We have no difficulty.

79 MR. NOSEWORTHY, CHAIRMAN: Consumer
80 Advocate please?

1 MR. BROWNE, Q.C.: (inaudible). Now we have rules
2 that have been approved by the Lieutenant Governor in
3 Council (inaudible).

4 MR. NOSEWORTHY, CHAIRMAN: I'll be asking
5 counsel to comment, if he has any comments in a
6 moment. Mr. Kirby?

7 MR. KIRBY: No objection.

8 MR. NOSEWORTHY, CHAIRMAN: Counsel, would
9 you have any comments on this matter?

10 MR. KENNEDY: Mr. Chairman, there are rules
11 obviously for the (inaudible). Clearly, if there's a
12 conflict between the, ultimately what the Board
13 (inaudible).

14 MR. NOSEWORTHY, CHAIRMAN: Consumer
15 Advocate, any final comment?

16 MR. BROWNE, Q.C.: No, no final comment, Mr. Chair.

17 MR. NOSEWORTHY, CHAIRMAN: Thank you, any
18 questions? Does the Applicant have any final
19 comment in this matter?

20 MS. GREENE, Q.C.: (inaudible).

21 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you.
22 No final ... counsel, final comments?

23 MR. KENNEDY: Well I'm at the point, the purpose of
24 the electronic filing direction is that the electronic file
25 would be filed (inaudible), and so each party (inaudible)
26 from the Public Utilities Board server, and that would,
27 I guess, prevent, if you will, the necessity of every
28 party filing with every other party and electronic copies
29 and ... (inaudible) one electronic copy to be filed.

30 MS. GREENE, Q.C.: I would suggest (inaudible).

31 MR. NOSEWORTHY, CHAIRMAN: Sure.

32 MR. HUTCHINGS: (inaudible).

33 MR. NOSEWORTHY, CHAIRMAN: Understood.
34 Okay, are there ...

35 MR. BROWNE, Q.C.: Mr. Chair, (inaudible).

36 MR. NOSEWORTHY, CHAIRMAN: I'm going to ask
37 counsel maybe to comment. I haven't been here
38 previously. I see no reason to change that but I may
39 not be the best person to respond to that in the
40 meantime.

41 MR. KENNEDY: I think the past practice, Mr.
42 Chairman, is that during the hearing itself, perhaps if
43 the witness would testify, and there's questions that
44 arise for additional documentation that the witness may
45 not have either ready or need to conduct further
46 analysis in order to be able to provide, and that
47 undertakings are provided at the time by the
48 appropriate parties, in all likelihood Hydro could
49 provide that documentation forthwith, (inaudible), so
50 that would provide for a fairly orderly running of the
51 hearing itself as opposed to break and everyone sit
52 around for a couple of days and wait for the documents
53 to roll in, so I would expect, unless some of the parties
54 have an objection, that the more convenient (inaudible).

55 MR. BROWNE, Q.C.: That's not what I'm talking about.
56 There are undertakings, but the Board (inaudible).

57 MR. KENNEDY: And clearly, Mr. Chairman, the
58 direction of one panel and one chair is not binding on
59 another, so that would be decided by the panel
60 (inaudible).

61 MR. NOSEWORTHY, CHAIRMAN: And we'll take that
62 ...

63 MR. HUTCHINGS: (inaudible).

64 MR. NOSEWORTHY, CHAIRMAN: Certainly that is
65 the purpose of the pre-hearing conference to consider
66 these matters and the points are noted and we'll
67 consider them under the order. I believe Mr. Saunders
68 had a question.

69 MR. SAUNDERS: I did but it's been answered since.

70 MR. NOSEWORTHY, CHAIRMAN: Okay, any other ...

71 MR. SAUNDERS: I'll stay out of the fray here.

72 MR. NOSEWORTHY, CHAIRMAN: Okay. Thank you,
73 moving along to the next item before we get into the
74 motions, I'm going to entertain comment under other
75 business on the matter raised by the Consumer
76 Advocate before, and I believe Newfoundland Power in
77 terms of concern expressed about Dr. Morin, and that

1 was expanded upon by the Consumer Advocate in
2 relation to the role, I think, of the Board. With your
3 agreement, Ms. Greene, as the Applicant, I'll ask the
4 Consumer Advocate to kick off the discussion on this
5 matter, if that's okay.

6 MR. BROWNE, Q.C.: Mr. Chairman, (inaudible) to the
7 matter first (inaudible).

8 MS. BUTLER, Q.C.: (inaudible).

9 MR. NOSEWORTHY, CHAIRMAN: Oh, I'm sorry,
10 would you like to speak to the, I guess in the matter
11 that I've been dealing with, certainly the preference
12 would rest with you at this point in time, the Industrial
13 Customers.

14 MS. HENLEY ANDREWS: I don't mind whether I go
15 first, or whether the Consumer Advocate (inaudible).

16 MR. NOSEWORTHY, CHAIRMAN: Mr. Browne?
17 You've picked the short straw here.

18 MR. BROWNE, Q.C.: (inaudible).

19 *(11:45 a.m.)*

20 MR. NOSEWORTHY, CHAIRMAN: Thank you. Any
21 comment by the Industrial Customers?

22 MS. HENLEY ANDREWS: Mr. Chairman, there are two
23 issues. One is the application by (inaudible), and the
24 smell test, but I think that when you look at it there is
25 also a question of unfair advantage, and that is that
26 Newfoundland Power has had extensive dealings with
27 Dr. Morin and they have presumably spent extensive
28 periods of time meeting with him in putting his
29 testimony together, preparing for examination, cross-
30 examination, when he was their witness (inaudible)
31 months ago. (inaudible) they know him very well. Now
32 they indicated this morning that Newfoundland Power
33 might not call a rate of return/capital structure expert,
34 but why would they. They're already there. You know,
35 they have a tremendous advantage in (inaudible),
36 strategically, they know precisely how Dr. Morin reacts
37 in these types of (inaudible). There's no question Dr.
38 Morin is an expert. There's no question in that.
39 (inaudible), and there is obviously, in terms of our
40 perception of bias, when each of the intervenors, each
41 of the parties comes in and brings in an expert, those
42 experts (inaudible) are pretty well on an equal footing.
43 The Board has to listen to the evidence and cross-
44 examination of each of those experts and make a
45 decision as to what elements of their testimony they
46 accept, what they reject, how they interpret (inaudible)
47 ... has an advantage over ours (inaudible), because
48 once the hearing is over, presumably the Board can
49 (inaudible) making a final decision, so (inaudible), so
50 there's an unfair advantage issue vis a vis
51 Newfoundland Power, and there's a perception of bias
52 as well.

53 MR. NOSEWORTHY, CHAIRMAN: Thank you. Are
54 there any other comments, and I'll start in the order,
55 with Hydro, that we've been dealing with.

56 MS. GREENE, Q.C.: (inaudible).

57 MR. NOSEWORTHY, CHAIRMAN: Thank you.
58 Newfoundland Power?

59 MS. BUTLER, Q.C.: Mr. Chairman, we have no
60 (inaudible).

61 MR. NOSEWORTHY, CHAIRMAN: Thank you. Mr.
62 Kirby?

63 MR. KIRBY: And we take no position, Mr. Chairman.

64 MR. NOSEWORTHY, CHAIRMAN: Okay, Counsel, do
65 you care to comment?

66 MR. KENNEDY: Mr. Chairman, I guess what needs to
67 be ascertained is does the Consumer Advocate or Mr.
68 Hearn, or the Industrial Customers, intend to file a
69 formal motion before the Board claiming bias or a
70 perception of bias, or somehow an unfair advantage
71 (inaudible). There were some issues raised by the
72 Industrial Customers concerning the, and the Consumer
73 Advocate concerning the Board's protocol in dealing
74 with an expert, but there's no evidence before the Board
75 about the experts so we have no, nothing on record
76 about who Dr. Morin has testified for and so I think
77 that in the absence of a formal motion and the
78 supporting evidence and argument, law, it's very
79 difficult for the Board to make a decision on it at this
80 point and I think that it should be left open to the
81 parties to formalize that objection if, in fact, (inaudible).

82 MR. NOSEWORTHY, CHAIRMAN: Any questions
83 from the panel on this matter?

84 MS. HENLEY ANDREWS: Mr. Chairman?

1 MR. NOSEWORTHY, CHAIRMAN: Sure.

2 MS. HENLEY ANDREWS: If I might reply to two
3 things.

4 MR. NOSEWORTHY, CHAIRMAN: Yes.

5 MS. HENLEY ANDREWS: With respect to Ms.
6 Greene's comments on the availability of other experts,
7 we have a list of probably six or seven other extremely
8 well qualified experts on rate of return and capital
9 structure but we do (inaudible).

10 MR. BROWNE, Q.C.: I would agree with Ms. Henley
11 Andrews' comments. I note that Newfoundland Power
12 takes no exception now (inaudible). Thank you, Mr.
13 Chairman.

14 MR. NOSEWORTHY, CHAIRMAN: Any other
15 comments on this matter? Mr. Kennedy? Any
16 questions from the panel? I have just a couple of
17 comments, I guess, and certainly I, as Chair of this
18 panel am very concerned about the perception, I
19 suppose, that could be portrayed here of the Board, if
20 you will, hiring somebody who would indeed give one
21 of the parties an unfair advantage. I understand that
22 this is a small group of experts out there. Admittedly,
23 it may be from one perspective larger than ... from one
24 party's perspective, more than a couple of people, but
25 it's my understanding that it's a small group. I certainly
26 respect the comments ... the previous hearing was 36
27 months ago and I acknowledge the comments in
28 relation to the sniff test, I think it was called, the
29 question being how much aroma is around that matter,
30 and I don't mean to be frivolous about it. Certainly, I
31 think there's a question in terms of the role of the Board
32 that has been raised in relation to the proceeding and
33 its actual engagement of expert witnesses. That's been
34 raised, I think, previously as well. I am concerned
35 about these matters, and certainly while the Board will
36 employ common sense on the basis of the comments
37 here today and the remarks here today, I would indeed
38 encourage parties to at least consider this as a motion.
39 I'm not convinced that I've heard enough here today to
40 be honest with you, to make a decision on this matter.
41 Certainly we will do that, we will deliberate on that, we'll
42 deliberate on the comments but I am very concerned
43 about this issue from the Board's perspective, and I
44 indeed feel that it may be a matter depending on the
45 perspective of the parties and how vehement you are
46 on this issue that we might consider it by way of a
47 formal motion, and I just ask you to take that under
48 consideration and certainly we will do that on the other
49 side. Are there any other final points on this?

50 MR. BROWNE, Q.C.: Mr. Chair, what's the ruling. Are
51 you advising that we make a formal ...

52 MR. NOSEWORTHY, CHAIRMAN: I'm not making any
53 ruling today at all. I'm saying that we will deal with this
54 issue on the basis of the comments and the discussion
55 and the evidence that we have heard today, but I am
56 saying that this is a serious matter as far as the panel
57 and the Board is concerned at this point in time and I
58 would ask that you, depending on your position on this
59 and how strong it might be, that you would consider
60 that for further discussion on a motion (inaudible)
61 perhaps. Thank you. I think that would conclude the
62 matter under other business. I'd like to proceed now
63 into the motions part of the agenda, and there is a
64 motion before the Board from the Industrial Customers
65 which is dated June the 29th, with reference to cases in
66 support of their application for costs, and before,
67 perhaps, turning to that motion I would first ask
68 counsel for the Applicant, and indeed each of the
69 intervenors, whether there are any other motions that
70 they intend to make here today.

71 MS. GREENE, Q.C.: I have no other motions.

72 MR. NOSEWORTHY, CHAIRMAN: Okay.

73 MS. BUTLER, Q.C.: (inaudible).

74 MR. NOSEWORTHY, CHAIRMAN: Having heard
75 none ...

76 MS. HENLEY ANDREWS: Mr. Chairman, it's not really
77 a motion, but one really minor procedural matter I'd just
78 like to raise.

79 MR. NOSEWORTHY, CHAIRMAN: Sure.

80 MS. HENLEY ANDREWS: The actual (inaudible) of the
81 tables here in the room.

82 MR. NOSEWORTHY, CHAIRMAN: Yes.

83 MS. HENLEY ANDREWS: If there could be some way
84 to have more a horseshoe shape or something like that
85 because when we're sitting here we can see, depending
86 on where Ms. Greene moves, I would not be able to see
87 a witness in the witness stand, and it's also very
88 difficult to hear although most of the people in this

1 room are not normally regarded as soft spoken
2 (inaudible) very difficult to hear and so if some kind of
3 accommodation on set up could be made and Mr.
4 Hutchings and I have been discussing the table we're
5 sitting at and it's fine for today, but it lacks a certain
6 amount of depth and with the amount of paper that
7 would be involved in a hearing, we'd be hard-pressed to
8 function efficiently with this set up.

9 MR. NOSEWORTHY, CHAIRMAN: Okay, certainly,
10 again, I'll ask counsel, with the secretary, to deal with
11 this issue in terms of the configuration of the tables,
12 and certainly the size of the tables. Unfortunately we
13 have to deal with the space that's contained in this
14 room. We did have, only yesterday, and I think it
15 followed through to this morning, engaged a technical
16 consultant on the sound system. We acknowledge and
17 recognize that that may need some improvement and
18 certainly we'll work on that and hopefully we can
19 accommodate through that process everybody's
20 requirements for the hearing itself. We recognize based
21 on the schedule that the creature comforts need to be
22 in place for an eight to ten to twelve week hearing, no
23 question.

24 MS. HENLEY ANDREWS: Thank you.

25 MR. NOSEWORTHY, CHAIRMAN: Okay, having
26 heard no further motions, does Counsel for the Board
27 have anything to add in relation to the motion that we
28 have before us?

29 MR. KENNEDY: Mr. Chairman, there is Counsel for the
30 Industrial Customers, for Abitibi Consolidated
31 (inaudible) Stephenville and Grand Falls, and Corner
32 Brook Pulp and Paper Company Limited, North Atlantic
33 Refining Limited, have filed an application before the
34 Board. It was filed on Friday, I believe, June the 29th,
35 2001, and the purpose of this application and the
36 intervenor's submission is seeking an order from the
37 Board relating to the costs to be incurred by the
38 Industrial Customers by intervening in the application
39 itself, and the first thing that the Board needs to
40 determine is whether, in fact, it proceeds with this
41 application at this time, or whether it reserves the
42 application, holds it over for another date. I note that
43 Newfoundland Power is the only party that filed a
44 formal reply in respect to the motion which was
45 received on July the 4th by the Board with an attached
46 decision of the Ontario High Court of Justice. As far as
47 I'm aware, that's the only party that's had a, filed an
48 official reply to the motion of the Industrial Customers.

49 I suspect that's because in the case of the Consumer
50 Advocate only having been retained and only recently
51 back in the province, would not have had an
52 opportunity to really review the application of the
53 Industrial Customers, and I think all in all I don't know
54 if the parties themselves are in a position to be able to
55 address this (inaudible), so perhaps that's the first thing
56 that needs to be determined.

57 MR. NOSEWORTHY, CHAIRMAN: Perhaps on that
58 basis I'll just ask the parties if they have any position
59 on this matter. Ms. Greene, I'll begin with you, I guess.

60 MS. GREENE, Q.C.: Mr. Chair, (inaudible).

61 MR. NOSEWORTHY, CHAIRMAN: Newfoundland
62 Power, please. Thank you.

63 MS. BUTLER, Q.C.: Mr. Chairman, Newfoundland
64 Power's position (inaudible). However, if the Board
65 decides that if (inaudible).

66 MR. NOSEWORTHY, CHAIRMAN: The Industrial
67 Customers? I just ask you to confine your comments to
68 today versus the motion day, please.

69 MS. HENLEY ANDREWS: Perhaps, since it is my
70 application, perhaps I might hear what the other parties
71 feel about proceeding.

72 MR. NOSEWORTHY, CHAIRMAN: That's fine. Fine.
73 Fine, thank you. The Consumer Advocate please?

74 MR. FITZGERALD: (inaudible).

75 MR. NOSEWORTHY, CHAIRMAN: Industrial
76 Customers, would you ...

77 MS. HENLEY ANDREWS: Well, Mr. Chairman, we're
78 obviously ready to proceed today.

79 MR. NOSEWORTHY, CHAIRMAN: I understand.

80 MS. HENLEY ANDREWS: (inaudible) of comments.

81 MR. NOSEWORTHY, CHAIRMAN: Okay, counsel, so
82 we're all in agreement that we'll deal with that item on
83 the 18th. That's the extent of the items that I would
84 have on the agenda. I will introduce back on the table
85 one final time any other business, or any issues that
86 anybody would wish to raise before we conclude, and
87 I'll begin with the, I'll begin with the Applicant.

1 MS. GREENE, Q.C.: Thank you, Mr. Chairman. No, we
2 have no further (inaudible).

3 MR. NOSEWORTHY, CHAIRMAN: Thank you.
4 Newfoundland Power?

5 MS. BUTLER, Q.C.: Mr. Chairman, I wonder whether I
6 might be bold enough to ask when we might expect an
7 order on the (inaudible).

8 MR. NOSEWORTHY, CHAIRMAN: Well, that would
9 certainly aid the process as far as we're concerned.
10 Counsel, is there any comment on that?

11 MR. KENNEDY: Well, I'm sure, Mr. Chairman,
12 (inaudible) within the appropriate timeframe.

13 *(12:00 noon)*

14 MR. NOSEWORTHY, CHAIRMAN: Right, quite clearly
15 from the panel's perspective, we would like to have the
16 matters that we've agreed to discuss with counsel done
17 as quickly as possible. Certainly tomorrow if that's ...
18 and I think there's a relative degree of consensus
19 around the proposal and hopefully the issuance of an
20 order will not take long at all. I don't want to commit to
21 a date because it would be based on convening a
22 meeting, I guess, over the next little while. You'll have
23 to bear with me, I'm new at this, so I'm trying to find my
24 way. Ms. Whalen just mentioned that Newfoundland
25 Power have some other issues that are not in the
26 application that you would wish to raise? Is that the
27 nature of ...

28 MR. KENNEDY: I believe, Mr. Chairman, they were
29 issues that are not in Hydro's application but which
30 Newfoundland Power intends to raise during the
31 hearing.

32 MR. NOSEWORTHY, CHAIRMAN: Okay.

33 MR. KENNEDY: Such as depreciation.

34 MS. GREENE, Q.C.: (inaudible).

35 MS. BUTLER, Q.C.: (inaudible).

36 MR. NOSEWORTHY, CHAIRMAN: Yes, absolutely.
37 Okay, if there are no other items, I would ...

38 MR. KENNEDY: Mr. Chairman, I think you still have
39 two more parties to ask if there is other business, the
40 Consumer Advocate and the Industrial Customers.

41 MR. NOSEWORTHY, CHAIRMAN: My sincere
42 apologies. I am new to this and I ...

43 MR. HUTCHINGS: (inaudible), Mr. Chair, you've been
44 around a few times, it's (inaudible) dizzy.

45 MR. NOSEWORTHY, CHAIRMAN: The Industrial
46 Customers.

47 MR. HUTCHINGS: And it's not a matter of great
48 moment, Mr. Chair, but it might be useful if the Chair
49 would indicate a deadline with respect to filing of
50 motions that are to be heard on the 18th.

51 MR. NOSEWORTHY, CHAIRMAN: Okay, do you care
52 to comment?

53 MR. KENNEDY: I think that's again something that we
54 would (inaudible) and all counsel are happy with
55 (inaudible).

56 MR. NOSEWORTHY, CHAIRMAN: The Consumer
57 Advocate, my apologies to you as well.

58 MR. FITZGERALD: Mr. Chairman, one general
59 comment, and again, I guess it's not very general, but
60 specifically referring to our discussion this morning
61 regarding the information requests and our (inaudible),
62 then we have a situation where there could be
63 unfairness creeping into the procedure, (inaudible) ...
64 the hearing is started and then completed and the fact
65 that there was no time limitations on the information
66 requests didn't detract from the procedure. If you
67 overlay this now, if the Board overlays this with time
68 limitations on the information requests, then you're
69 really creating another rule (inaudible) something else
70 to argue about, but (inaudible) that there could be a
71 situation where whatever (inaudible), and the party may
72 have a real legitimate good faith information request
73 that they have a time limitation on and (inaudible). So
74 it would be our submission that the rules are fine they
75 way they are, (inaudible) cause difficulty and may in
76 fact slow the hearing down so the purpose of the
77 (inaudible).

78 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy, do
79 you any comment on that?

1 MR. KENNEDY: Only so far, Mr. Chairman, that clearly
2 under the rules, it's in the Board's jurisdiction to set the
3 procedures for a hearing (inaudible), so what went on
4 in the past is clearly not binding on this panel, and I
5 would suggest (inaudible) this panel could learn by
6 some of the things that were done in the past that may
7 not have worked well and that if the Board (inaudible),
8 it's clearly within their jurisdiction to do that and I
9 would (inaudible).

10 MR. NOSEWORTHY, CHAIRMAN: I think clearly from
11 our perspective we would be, we would be considering
12 the comments here today. I would not want to feel
13 bound or obliged to necessarily the rules as they have
14 applied in the past. Clearly, I'd like to consider them
15 with a view to sort of the efficiency and effectiveness
16 of the hearing and there's some fundamental criteria,
17 and we will certainly do that to the best of our ability
18 and take into account the comments here today. Okay,
19 are there any other final items by anybody? The,
20 having heard none, the July the 18th date, I understand
21 is appropriate for everybody, it would appear as, as the
22 motions day, and I just comment on that now because
23 we could work toward that date for a 9:30 start. That
24 will be confirmed, I'm sure and will be, will be dealt with
25 in the order, but just so that everybody is at least
26 thinking along those lines now might be appropriate as
27 far as our next interface would be concerned. Okay,
28 having ... Counsel, are there any other final items?

29 MR. KENNEDY: No, Mr. Chairman.

30 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you
31 for your attention here today on this matter and the
32 matter is adjourned and the Board certainly be issuing
33 it's order as expeditiously as possible with a view to
34 everybody's concern about a schedule. Thank you
35 very much.

36 *(hearing adjourned)*