

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">LIST OF UNDERTAKINGS</p> <p>1. Undertaking No. 1 ..... Pg. 28</p>	<p>1 (10:40 a.m.)</p> <p>2 CHAIRMAN:</p> <p>3 Q. Good morning. It's good to see some familiar</p> <p>4 faces, I guess, out there, some very familiar</p> <p>5 faces and some not so familiar, but familiar</p> <p>6 nonetheless from a few months ago. It's good</p> <p>7 to see everybody here this morning. And I'd</p> <p>8 like to welcome everybody to the pre-hearing</p> <p>9 conference. Looks like a relatively sparse</p> <p>10 audience, which is understandable for a Friday</p> <p>11 in mid July, I guess. But in any event, we</p> <p>12 will proceed. I'd just like to again welcome</p> <p>13 you. And I'll introduce myself for purposes</p> <p>14 of the record. My name is Bob Noseworthy, I'm</p> <p>15 Chair and CEO of Public Utilities Board and</p> <p>16 the Panel that's been constituted to hear this</p> <p>17 Application here. My colleague on the left is</p> <p>18 Darlene Whalen, who is Vice Chair of the</p> <p>19 Board, and my colleague on my right is Fred</p> <p>20 Saunders, who is a Commissioner with the</p> <p>21 Board. And this, to the best of my knowledge,</p> <p>22 unless things change for some unknown reason,</p> <p>23 will be the Panel that's constituted to hear</p> <p>24 this Application. We are indeed--and also</p> <p>25 take the opportunity, as well, to introduce</p>
<p style="text-align: right;">Page 3</p> <p>1 the staff. On the left here is Cheryl Blundon</p> <p>2 who is the Board Secretary and Director of</p> <p>3 Corporate Services, Dwanda Newman, who is</p> <p>4 legal counsel to the Board, and Mark Kennedy,</p> <p>5 who is Board hearing counsel. The purpose of</p> <p>6 the pre-hearing conference this morning, as</p> <p>7 you're well aware, is to assist us with the</p> <p>8 organization, the planning for the public</p> <p>9 hearing, and that includes such things as the</p> <p>10 schedule for the hearing, Rules of Procedure</p> <p>11 and other matters which hopefully we can come</p> <p>12 to some consensus or agreement on today which</p> <p>13 will make our job much easier in terms of the</p> <p>14 order which would emanate from this hearing</p> <p>15 today. Without any further ado, because I'm</p> <p>16 hoping this will proceed expeditiously, I'll</p> <p>17 ask Ms. Newman, legal counsel, if she could</p> <p>18 enter the matter, to confirm the issuance of</p> <p>19 appropriate public notices and also indicate</p> <p>20 the response to notices of intervention. Good</p> <p>21 morning, Ms. Newman.</p> <p>22 MS. NEWMAN:</p> <p>23 Q. Good morning, Mr. Chairman and Commissioners,</p> <p>24 the parties in the room. I can confirm that</p> <p>25 on May 21st, 2003 the Board received a general</p>	<p style="text-align: right;">Page 4</p> <p>1 rate application from Newfoundland and</p> <p>2 Labrador Hydro for approval, among other</p> <p>3 things, of the rates to be charged as of</p> <p>4 January 1st, 2004 for the supply of power and</p> <p>5 energy to its customers, the rules and</p> <p>6 regulations applicable to the supply of</p> <p>7 electricity to its rural customers and such</p> <p>8 other matters as may appear reasonable at the</p> <p>9 hearing. Notice of this Application and this</p> <p>10 pre-hearing conference was duly published</p> <p>11 beginning on June 4th, 2003 in papers on the</p> <p>12 island and in Labrador. Actually, in Labrador</p> <p>13 it started June 9th. That papers that it was</p> <p>14 published in include The Evening Telegram, The</p> <p>15 Western Star, The Shoreline, The Express, The</p> <p>16 Compass, The Packet, The Souther Gazette, The</p> <p>17 Beacon, The Pilot, The Advertiser, The</p> <p>18 Nor'wester, The Coaster, The Humber Log, The</p> <p>19 Georgian, The Gulf News, The Charter, The</p> <p>20 Aurora, The Labradorian, The Northern Pen.</p> <p>21 There were subsequent press releases issued</p> <p>22 advising of rescheduling of dates on July 9th</p> <p>23 and July 15th. This notice was duly filed by</p> <p>24 the Board Secretary and will form part of the</p> <p>25 record of this proceeding. I can confirm that</p>

Page 5	Page 6
<p>1 MS. NEWMAN</p> <p>2 Q. ... in response to this notice and other</p> <p>3 special notice the Board has received several</p> <p>4 intervenor submissions, one from Newfoundland</p> <p>5 Power Inc., one from the Consumer Advocate, a</p> <p>6 written one from Town of Labrador City and one</p> <p>7 from Abitibi Consolidated, Stephenville and</p> <p>8 Grand Falls division and Corner Brook Pulp and</p> <p>9 Paper Company Limited and North Atlantic</p> <p>10 Refining Limited. In addition, I understand</p> <p>11 that Voisey Bay Nickel Company Limited has</p> <p>12 very recently filed and intervention and I</p> <p>13 understand that this would be recorded by the</p> <p>14 Board Secretary and that they will be, in</p> <p>15 fact, represented by Janet Henley Andrews and</p> <p>16 Joseph Hutchings as part of the group that we</p> <p>17 refer to as the Industrial Customers. So I</p> <p>18 suggest that throughout this hearing they be</p> <p>19 included within that group in any reference.</p> <p>20 I also understand that in addition to the Town</p> <p>21 of Labrador City, Edward Hearn, who represents</p> <p>22 them, will also be representing Wabush. They</p> <p>23 have not filed a formal written intervenor</p> <p>24 submission, but I would propose that the need</p> <p>25 for the filing of a written document be waived</p>	<p>1 and I have canvassed this with the parties and</p> <p>2 they all agree. If Mr. Hearn could just speak</p> <p>3 to his engagement this morning, I think that</p> <p>4 will be adequate for the record and for my</p> <p>5 purposes.</p> <p>6 HEARN, Q.C.:</p> <p>7 Q. Mr. Chair, members of the Board, I can confirm</p> <p>8 that the Town of Wabush intends to intervene,</p> <p>9 as well. What is contemplated is a joint</p> <p>10 submission on behalf of both towns. And I've</p> <p>11 canvassed other counsel, as Ms. Newman is</p> <p>12 aware, and I understand that all counsel, all</p> <p>13 parties consent to the waiving of filing of a</p> <p>14 written intervention, just simply amend our</p> <p>15 filings accordingly to reflect that it</p> <p>16 represents both the Town of Labrador City and</p> <p>17 the Town of Wabush.</p> <p>18 CHAIRMAN:</p> <p>19 Q. Thank you, Mr. Hearn.</p> <p>20 MS. NEWMAN:</p> <p>21 Q. Yes. And that confirms that the matter has</p> <p>22 been duly entered pursuant to the terms of the</p> <p>23 Public Utilities Act.</p> <p>24 CHAIRMAN:</p> <p>25 Q. Thank you, Ms. Newman. Could I just ask, for</p>
Page 7	Page 8
<p>1 purposes of record, if the primary counsels</p> <p>2 could at least introduce themselves and those</p> <p>3 that might be assisting them throughout the</p> <p>4 proceeding and I'll begin with the Applicant.</p> <p>5 Good morning, Ms. Greene.</p> <p>6 GREENE, Q.C.:</p> <p>7 Q. Good morning, Chair and Commissioners. My</p> <p>8 name is Maureen Greene. I will act as counsel</p> <p>9 for Hydro throughout this hearing and assist</p> <p>10 to me to the hearing process will be Mr. Jeff</p> <p>11 Young, who is fortunate enough to be on</p> <p>12 vacation today.</p> <p>13 CHAIRMAN:</p> <p>14 Q. A fortunate man. Good morning, Mr.</p> <p>15 Fitzgerald.</p> <p>16 MR. FITZGERALD:</p> <p>17 Q. Good morning, Mr. Chairman, Commissioners.</p> <p>18 Steve Fitzgerald representing the Consumer</p> <p>19 Advocate, and the Consumer Advocate is also</p> <p>20 enjoying the same indulgence today.</p> <p>21 CHAIRMAN:</p> <p>22 Q. Thank you. Good morning, Mr. Alteen.</p> <p>23 MR. ALTEEN:</p> <p>24 Q. Peter Alteen and Gerard Hayes representing</p> <p>25 Newfoundland Power, Mr. Chairman. We</p>	<p>1 anticipate that Mr. Ian Kelly will be</p> <p>2 attending as lead counsel during the conduct</p> <p>3 of the principal part of the hearing.</p> <p>4 CHAIRMAN:</p> <p>5 Q. Industrial Customers?</p> <p>6 HUTCHINGS, Q.C.:</p> <p>7 Q. Thank you, Mr. Chairman. Joseph Hutchings.</p> <p>8 That fact that I'm speaking should not be</p> <p>9 taken to suggest that I am primary counsel,</p> <p>10 it's just that the microphone was pointed in</p> <p>11 this direction. Myself and Mrs. Henley</p> <p>12 Andrews will be representing the Industrial</p> <p>13 Customer Group, as counsel has indicated, to</p> <p>14 which has been joined now, the Voisey's Bay</p> <p>15 Nickel Company.</p> <p>16 CHAIRMAN:</p> <p>17 Q. Good to see you again. Good morning, Mr.</p> <p>18 Hearn. Perhaps just for purposes of record, I</p> <p>19 know you spoke before, but if you could -</p> <p>20 HEARN, Q.C.:</p> <p>21 Q. Yes, Mr. Chairman. Just to confirm that I'll</p> <p>22 be attending on behalf of the Towns of</p> <p>23 Labrador City and Wabush. Hopefully, I will</p> <p>24 not be attending too much in St. John's. I</p> <p>25 hope to be mainly participating in Labrador.</p>

Page 9	Page 10
<p>1 CHAIRMAN:</p> <p>2 Q. Thank you, very much. I guess again for</p> <p>3 purposes of the record, are any of the parties</p> <p>4 who are present today, I see just a couple of</p> <p>5 strange faces in the back there, who wish to</p> <p>6 give notice of their intention to intervene in</p> <p>7 this proceeding? No. Okay. Thank you. Let</p> <p>8 me just comment, as well, and apologize, I</p> <p>9 guess, for a delay of this pre-hearing</p> <p>10 conference which was scheduled for last</p> <p>11 Thursday. We did receive a direction from</p> <p>12 government on a couple of matters, one in</p> <p>13 relation to the rural subsidy and preferential</p> <p>14 rates, Ms. Newman will speak to that, and as</p> <p>15 well, the treatment of the Wabush rates by way</p> <p>16 of process, Ms. Newman will speak to that, as</p> <p>17 well. We received both of those, I believe it</p> <p>18 was the day before or two days before the</p> <p>19 scheduled date of the hearing. There was no</p> <p>20 public announcement at that time and we felt</p> <p>21 it would be difficult to advise the parties</p> <p>22 and then deal with that by way of process,</p> <p>23 quite frankly, in one day hence. We decided</p> <p>24 to postpone the hearing on that basis to allow</p> <p>25 the proper notice to be given you and the</p>	<p>1 appropriate public announcements to be made.</p> <p>2 That being done, we rescheduled to today and I</p> <p>3 think there is a week lost here, but I didn't</p> <p>4 see any way around that, and I thank you for</p> <p>5 your cooperation in rescheduling and being</p> <p>6 here today on a fairly expeditious basis.</p> <p>7 It's a delay of a week, but I think that's</p> <p>8 probably the best that could be done under the</p> <p>9 circumstances. So I thank you for that. Just</p> <p>10 a couple of, I guess, housekeeping matters</p> <p>11 before we begin. The physical layout that you</p> <p>12 probably see that we have outside of the</p> <p>13 witness box itself, I guess, or stand, which</p> <p>14 is not in here, will be likely what we'll</p> <p>15 maintain throughout the proceeding. I don't</p> <p>16 know if anybody has any difficulty with that.</p> <p>17 They could certainly see the Board Secretary</p> <p>18 and we'll see what could be done, but I think</p> <p>19 it looks pretty reasonable there right now.</p> <p>20 And also with respect to there will be a large</p> <p>21 amount of binders and evidence and what have</p> <p>22 you when we begin the hearing in September and</p> <p>23 likely we'll try and accommodate all your</p> <p>24 requirements in terms of document access and</p> <p>25 storage, and if we fail to do that, certainly</p>
Page 11	Page 12
<p>1 let us know and we'll try and accommodate</p> <p>2 that, as well. The pre-hearing conference, as</p> <p>3 the hearing will be, is being recorded under</p> <p>4 the supervision of the Board Secretary and we</p> <p>5 will endeavour to have the transcription and</p> <p>6 that available, it will likely be early next</p> <p>7 week of this proceeding in particular. The</p> <p>8 hours that we will sit today, I'm going to</p> <p>9 leave for the time being, including any break</p> <p>10 that might be required. We'll proceed on with</p> <p>11 the agenda and we'll see where we are in an</p> <p>12 hour and a half or so, see if a break is</p> <p>13 necessitated and we'll see the need for a</p> <p>14 luncheon break at that point-in-time as well,</p> <p>15 if that's okay. That's about it. Could we</p> <p>16 proceed now, Mr. Newman, with the matter at</p> <p>17 hand, please?</p> <p>18 MS. NEWMAN:</p> <p>19 Q. Yes. Thank you, Mr. Chairman and</p> <p>20 Commissioners. I do want to mention that I</p> <p>21 understand the Town of Labrador City and</p> <p>22 Wabush will be making a motion on costs.</p> <p>23 Submissions have been made by the Town, and I</p> <p>24 guess with the addition of Wabush they will be</p> <p>25 included in that and by that other parties. I</p>	<p>1 propose that we deal with this motion at the</p> <p>2 conclusion of the other matters today, and I</p> <p>3 understand that everybody's prepared to deal</p> <p>4 with it in that way.</p> <p>5 CHAIRMAN:</p> <p>6 Q. Ms. Newman, just before we get started, I</p> <p>7 heard you indicate that the parties had agreed</p> <p>8 with the intervention of Wabush. Have they</p> <p>9 agreed with Voisey's Bay, as well?</p> <p>10 MS. NEWMAN:</p> <p>11 Q. Yes, I understand that they did.</p> <p>12 CHAIRMAN:</p> <p>13 Q. Was there discussion on that? You may have</p> <p>14 commented on that, I just didn't -</p> <p>15 MS. NEWMAN:</p> <p>16 Q. Yes.</p> <p>17 CHAIRMAN:</p> <p>18 Q. Okay. Thank you.</p> <p>19 MS. NEWMAN:</p> <p>20 Q. Okay. So the other--first item that I wanted</p> <p>21 to address on a procedural basis is to address</p> <p>22 the certain directions that the Board had</p> <p>23 received that you, the Chair, had already</p> <p>24 mentioned from government. I want to enter</p> <p>25 those directions, at least excerpts from them.</p>

Page 13	Page 14
<p>1 MS. NEWMAN:</p> <p>2 Q. ... I can assure the parties and the record</p> <p>3 that the entire body of each of the directions</p> <p>4 had been included and circulated to the</p> <p>5 parties and is provided to the Board. I will</p> <p>6 attach them as Information Item No. 1, I</p> <p>7 believe, and they'll be all joined as one.</p> <p>8 I did want to briefly just explain what</p> <p>9 each of them is. The first is a direction</p> <p>10 generally with respect to certain aspects of</p> <p>11 the rates of Hydro. The second is a direction</p> <p>12 with respect to a hearing as to the</p> <p>13 appropriate rate calculation methodology for</p> <p>14 Labrador Interconnected System. This</p> <p>15 direction contemplates a complaint having been</p> <p>16 received from Labrador West or another</p> <p>17 interested party. The Board does not yet have</p> <p>18 a complaint, but I am advised that there will</p> <p>19 be one forthcoming. So in the meantime I</p> <p>20 suggest that we all be aware of this and we'll</p> <p>21 try to incorporate it into the schedule as the</p> <p>22 matter develops. The last two pages are a</p> <p>23 direction under two sections of the pertinent</p> <p>24 legislation, one is Section 5.2 of EPCA, 1994</p> <p>25 and the other is Section 4.1 of the Public</p>	<p>1 Utilities Act which relates to the wind power</p> <p>2 demonstration project. Those will all form</p> <p>3 Information Item No. 1.</p> <p>4 The other item that I wanted to address</p> <p>5 it the Rules of Procedure that will be</p> <p>6 followed in this hearing and in this matter,</p> <p>7 in fact. I have provided to the parties and</p> <p>8 the Board copies of the rules which I propose</p> <p>9 be adopted. The parties have spent some time</p> <p>10 reviewing these and have made very helpful</p> <p>11 comments. I think that the rules are evolving</p> <p>12 with each of our proceedings and hopefully</p> <p>13 these will serve us well throughout. I</p> <p>14 understand that there is no issue as to these</p> <p>15 Rules of Procedure from the parties.</p> <p>16 Also, I'd like to suggest that the Board</p> <p>17 require each party to file an Issues List.</p> <p>18 This was done in the recent Newfoundland Power</p> <p>19 general rate application and I think that it</p> <p>20 was helpful to all those involved. In</p> <p>21 relation to that I did want to make a comment</p> <p>22 to clarify the purpose of the Issues List and</p> <p>23 the use of the Issues List. And I'm just</p> <p>24 going to read something into the record that I</p> <p>25 had written that would provide direction to</p>
Page 15	Page 16
<p>1 everyone involved as to the purpose. "Each</p> <p>2 party should make every effort to ensure that</p> <p>3 the Issues List is a thoughtful and</p> <p>4 comprehensive expression of issues of merit in</p> <p>5 the proceeding as they see them. An Issues</p> <p>6 List is intended to provide focus and</p> <p>7 direction to both the Board and the parties,</p> <p>8 but will not serve to strictly define or limit</p> <p>9 the scope of the hearing. An Issues List will</p> <p>10 be filed without prejudice to the parties'</p> <p>11 ability to canvass any issue in the proceeding</p> <p>12 and for clarity any party can present</p> <p>13 evidence, cross-examine witnesses and make</p> <p>14 submissions with respect to any issue, whether</p> <p>15 on that party's list or any other party's</p> <p>16 list." I apologize for reading that in, but I</p> <p>17 didn't want to mis-speak myself and get</p> <p>18 tangled up later on.</p> <p>19 The last item that I want to address</p> <p>20 before we deal with the motion with respect to</p> <p>21 cost is the issue of the pre-hearing date</p> <p>22 schedule. We have, we, being the parties'</p> <p>23 counsel, have spent some time trying to go</p> <p>24 through and set up a schedule of dates that's</p> <p>25 agreeable for everybody. As you can imagine,</p>	<p>1 it's difficult. I haven't gone beyond into</p> <p>2 the hearing dates because it just seemed</p> <p>3 necessary to establish the pre-hearing dates</p> <p>4 and get a start date for the hearing before we</p> <p>5 move on. What I propose to do from here is</p> <p>6 once an order of the Board is issued</p> <p>7 establishing the pre-hearing dates, I will</p> <p>8 immediately begin discussions with counsel to</p> <p>9 ensure expert availability and work towards</p> <p>10 and order of witnesses and a schedule of</p> <p>11 hearing dates. And I would expect that would</p> <p>12 be coordinated also with any issues of travel</p> <p>13 and other aspects of Board coordinating of</p> <p>14 schedule during the hearing which would also</p> <p>15 include the Lab West hearing, if there is one,</p> <p>16 and a complaint is received. What I have</p> <p>17 circulated to the parties and the Board is a</p> <p>18 proposed schedule. I have to say that it's</p> <p>19 not an agreed upon schedule. It is a schedule</p> <p>20 that could be adopted by the Board if it sees</p> <p>21 fit to follow this time-line. And I believe</p> <p>22 that some of the parties may wish to speak to</p> <p>23 it after I explain, basically, what's going on</p> <p>24 here. The RFIs had originally been scheduled</p> <p>25 to be files on July 16th. That was later</p>

1 MS. NEWMAN:

2 Q. ... extended by the Board to July 18th, around  
3 the same time as the pre-hearing postponement  
4 to this week. So the RFIs are due today. I  
5 understand that the parties for the most part  
6 are going to be able to meet that deadline,  
7 but there will be some additional RIFs that  
8 will come in next week. That being the case,  
9 I am proposing that the deadline for the RFIs  
10 be moved to July 25th. And I understand that  
11 the parties may wish to speak to that issue,  
12 in particular. I'd suggest that they be given  
13 an opportunity after I go through the  
14 remainder of the calendar. As a result of  
15 moving the RFI deadline to July 25th, to  
16 ensure that Hydro has adequate time to refile  
17 their application based upon the directions  
18 and also respond to the Requests for  
19 Information we have set a--or I propose a  
20 deadline of August 15th. At that same time  
21 they will file their Issues List. In the next  
22 week there would be a counsel meeting and a  
23 motions day on the 21st of August. And the  
24 next day the Requests for Information on  
25 Hydro's refiling and the responses to the

1 first round of RFI's would be due.

2 (11:00 a.m.)

3 CHAIRMAN:

4 Q. So there's no motion to stay on the 13th?

5 MS. NEWMAN:

6 Q. No. On the 21st.

7 CHAIRMAN:

8 Q. Oh, yes, okay. Sorry. I was looking at  
9 something that I had in my -

10 MS. NEWMAN:

11 Q. Yes.

12 CHAIRMAN:

13 Q. I was looking at a schedule to my file here.

14 Sorry. Go ahead.

15 MS. NEWMAN:

16 Q. And which has probably gone through many  
17 contortions since you last had it. The 21st  
18 would have the motions day, the 22nd would the  
19 second round of RFI's on Hydro's refiling and  
20 their responses on the first round. On the  
21 29th there would be responses to the RFI's.  
22 And then the next week, September 5th, the  
23 expert reports and pre-filed testimony would  
24 be due by the Intervenor and the Board. This  
25 second round of RFI's was introduced, I guess,

1 in response to the necessity of Hydro file--  
2 refiling some evidence and also to ensure that  
3 any follow-up on the first round of RFI's is  
4 taken care of and accounted for in the  
5 schedule. On September 5th also the parties  
6 will file their Issues Lists and Witness  
7 Lists. On September 15th the RFI's on the  
8 Intervenor and Board expert reports and the  
9 pre-filed testimony will be due. I missed a  
10 move date, which is the counsel meeting and  
11 the motion day the week before, September 9th.  
12 On September 25th there will be Intervenor and  
13 Board responses to RFI's and the negotiation  
14 will begin on September 30th. I have, in this  
15 proposed schedule, effectively allowed for two  
16 weeks of negotiation. It's really only seven  
17 or eight days because I felt it necessary to  
18 allow the parties time in advance of the  
19 negotiation days to prepare for the  
20 negotiation and time following the negotiation  
21 days to prepare for the start of the hearing.  
22 October 10th will be the last filing date for  
23 the hearing before the hearing which would  
24 begin on October 15th. And as I said, I  
25 understand that the parties may wish to speak

1 to this schedule on certain points.

2 CHAIRMAN:

3 Q. Okay. Thank you, Ms. Newman. Ms. Greene, if  
4 I could ask you in the first instance to  
5 comment? Could you--before you start on the  
6 schedule, could you just perhaps comment or  
7 enlighten the Board on the proposal in respect  
8 of refiling in relation to the Orders in  
9 Council and that, what you're -

10 GREENE, Q.C.:

11 Q. The direction that requires an adjustment in  
12 rates is with respect to the preferential  
13 rates. Hydro, when it filed in May 21st, had  
14 proposed to commence the five year phase out  
15 of preferential rates paid by certain rural  
16 customers. The one direction that was  
17 received that affects what Hydro has already  
18 filed was the direction that that not be done,  
19 that the preferential rates remain. So, this  
20 impact is very minor, it's about \$450,000 that  
21 would have been recovered from those customers  
22 in 2004 if that phase-in had commenced. So it  
23 means that \$450,000 will have to be allocated  
24 through the rural deficit to Newfoundland  
25 Power and to Labrador Interconnected

Page 21	Page 22
<p>1 GREENE, Q.C.:</p> <p>2 Q. ... customers. There will be no impact from</p> <p>3 the revised rural rates on Industrial</p> <p>4 Customers and the impact on Newfoundland Power</p> <p>5 will be insignificant, less than--I'll have to</p> <p>6 get my zeros right and my decimals right, but</p> <p>7 it's approximately .15 percent of an increase</p> <p>8 and a slightly higher increase for Labrador</p> <p>9 Interconnected. So that is what the direction</p> <p>10 with respect to the rural rates entails. Does</p> <p>11 that answer your question, Mr. -</p> <p>12 CHAIRMAN:</p> <p>13 Q. And you'll be refiling on that basis?</p> <p>14 GREENE, Q.C.:</p> <p>15 Q. We will be filing revised rural rates to</p> <p>16 indicate what the--and it's only certain--it's</p> <p>17 only a limited number of rural customers who</p> <p>18 are affected by that, and that's who they are.</p> <p>19 CHAIRMAN:</p> <p>20 Q. And your schedule for refiling is?</p> <p>21 GREENE, Q.C.:</p> <p>22 Q. The one proposed by Board counsel is the 15th</p> <p>23 of August.</p> <p>24 CHAIRMAN:</p>	<p>1 Q. Okay. Okay. Could you proceed on with your</p> <p>2 comments on the schedule, please?</p> <p>3 GREENE, Q.C.:</p> <p>4 Q. Before actually I talk on the specifics of the</p> <p>5 schedule I do want to provide some general</p> <p>6 comments with respect to Hydro's position in</p> <p>7 this particular Application that I think will</p> <p>8 put our comments on the schedule in come</p> <p>9 context for the Board. As we all know, the</p> <p>10 rates that are currently in effect--the rates</p> <p>11 that are currently in effect came into effect</p> <p>12 September of 2002, less than one year ago.</p> <p>13 Hydro filed an application to increase the</p> <p>14 rates on May 21, 2003 of this year and the</p> <p>15 primary reason that required the rate</p> <p>16 Application is the increased cost Hydro is</p> <p>17 incurring as a result of new sources of supply</p> <p>18 to meet customer load. Hydro has entered into</p> <p>19 two new power purchase contracts which in 2004</p> <p>20 will be an additional \$18 million in expenses</p> <p>21 for Hydro which Hydro must pay the sellers of</p> <p>22 that power and which Hydro requires to meet</p> <p>23 the requirements of its customers. The other</p> <p>24 source of power which is coming into</p> <p>25 commercial service this month--is coming into</p>
Page 23	Page 24
<p>1 service this month is Granite Canal which will</p> <p>2 impose an approximate \$11 million additional</p> <p>3 cost to refinance Granite Canal. So Hydro is</p> <p>4 faced with significant expenditures not now</p> <p>5 included in the rates to meet the new sources</p> <p>6 of supply. Because we had to file to adjust</p> <p>7 to for those new expenses, there are always,</p> <p>8 of course, other issues that have to be dealt</p> <p>9 with in a rate application such as the most</p> <p>10 recent forecast of No. 6 fuel, such as the</p> <p>11 issue of the direction we had received on</p> <p>12 rural rates, such as the issue for Labrador</p> <p>13 Interconnected and the appropriate rate of</p> <p>14 return. There's a whole--there are numerous</p> <p>15 issues that also have to be addressed, but the</p> <p>16 primary reason is as a result of these</p> <p>17 increased expenditures which are not now in</p> <p>18 the rates that became effective last</p> <p>19 September. The record that was filed</p> <p>20 indicates that Hydro in 2003 will not recover</p> <p>21 its expenses on its regulated activities.</p> <p>22 Hydro is forecasting a loss on its regulated</p> <p>23 activities in 2003 because these expenditures</p> <p>24 are commencing in 2003 and we don't have them</p> <p>25 in the revenue requirement and they are very</p>	<p>1 significant expenditures. So Hydro was faced</p> <p>2 with the prospect of having to file for</p> <p>3 another rate increase less than a year after</p> <p>4 the previous rates became effective. In</p> <p>5 filing for those increases, Hydro had</p> <p>6 anticipated that the new rates would become</p> <p>7 effective January 1, 2004 and that is the</p> <p>8 basis on which the Application was filed.</p> <p>9 Obviously, if the rates aren't changed, the</p> <p>10 loss for Hydro becomes greater, the loss that</p> <p>11 I'd indicated for 2003 is based on these</p> <p>12 expenditures coming in part way through the</p> <p>13 year but they will be in for the full year in</p> <p>14 2004. So Hydro has filed an application which</p> <p>15 indicates it is not recovering its expenses,</p> <p>16 that it is entitled to recover in providing</p> <p>17 service to its customers.</p> <p>18 Hydro finds itself in a very difficult</p> <p>19 financial position. The timing for this</p> <p>20 hearing is critical to Hydro. When we filed</p> <p>21 the application we had anticipated, based on</p> <p>22 our recent 2001 GRA, that we would be</p> <p>23 commencing the hearing in early September.</p> <p>24 When we filed in May of 2001 at the end of May</p> <p>25 after ten years, and I'm sure the</p>

Page 25	Page 26
<p>1 GREENE, Q.C.:</p> <p>2 Q. ... Commissioners will recall that I was</p> <p>3 assured at that time one of the reasons for</p> <p>4 the length of the hearing was the period of</p> <p>5 time from our last filing. We had started the</p> <p>6 hearing around September 20th. In this</p> <p>7 particular case we have filed May 21, just a</p> <p>8 bit earlier than the last time and the</p> <p>9 schedule that Board counsel has proposed this</p> <p>10 morning has the hearing starting after</p> <p>11 Thanksgiving.</p> <p>12 So for Hydro, the timing for this hearing</p> <p>13 is extremely critical from a financial</p> <p>14 perspective and for other reasons as well.</p> <p>15 But primarily this time, the financial</p> <p>16 position of Hydro is different than at the</p> <p>17 last hearing. With respect to the schedule,</p> <p>18 there has been a lot of discussion about the</p> <p>19 schedule. I had agreed to a schedule that I</p> <p>20 saw yesterday, was presented with a different</p> <p>21 schedule when I arrived this morning, which I</p> <p>22 find somewhat troubling because I have not had</p> <p>23 the opportunity to receive firm directions</p> <p>24 from my client.</p> <p>25 I wanted to outline to you the context of</p>	<p>1 Hydro's application so you will understand</p> <p>2 that our concern on timing is driven by a</p> <p>3 financial requirement. If it is obvious that</p> <p>4 new rates cannot become effective January 1,</p> <p>5 Hydro obviously will have to pursue some other</p> <p>6 course of action, whether it's through an</p> <p>7 application for an interim increase. And as</p> <p>8 of this point today, until we confirm and</p> <p>9 discuss the schedule further, I cannot make a</p> <p>10 firm commitment to that. However, it would</p> <p>11 appear to me at this point in time that this</p> <p>12 schedule would not allow a conclusion of the</p> <p>13 hearing with deliberation of the results to</p> <p>14 allow an effective implementation. And that</p> <p>15 is of concern to the Utility. We filed in May</p> <p>16 and the question that arises for us is how</p> <p>17 long does it take for an issue of this matter</p> <p>18 to be dealt with. One of the issues that</p> <p>19 always comes up during a GRA is the timeliness</p> <p>20 of the data. But it's becoming clearer that</p> <p>21 it's taking longer and longer to have these</p> <p>22 issues dealt with. So we are very concerned</p> <p>23 on the timing.</p> <p>24 Coming to the specifics of what was</p> <p>25 presented to me this morning, which was</p>
Page 27	Page 28
<p>1 different than what I had seen yesterday, it</p> <p>2 does provide for the actual hearing to start</p> <p>3 after Thanksgiving, and we have had no</p> <p>4 discussion as to the order of witnesses or the</p> <p>5 length of time anticipated by the parties for</p> <p>6 the cross-examination of witnesses and at this</p> <p>7 time we're not even sure what witnesses we</p> <p>8 have to call. I don't know if we all have to</p> <p>9 call someone from ACRES (phonetic) with</p> <p>10 respect to the hydraulic report, for example.</p> <p>11 So I'm left in a very difficult situation in</p> <p>12 terms of this. I know that the timing for the</p> <p>13 rate change is critical to Hydro, I have no</p> <p>14 real knowledge as to how long the hearing will</p> <p>15 be or how it will be impacted and I was</p> <p>16 presented with a schedule that is different</p> <p>17 than what I had as of yesterday.</p> <p>18 So Hydro is very troubled by the proposed</p> <p>19 start date by Board counsel which I gather has</p> <p>20 been agreed to by the other parties, I</p> <p>21 gathered when I arrived this morning. And I</p> <p>22 did want to place those comments on the</p> <p>23 record. And we are very troubled that this is</p> <p>24 the way the hearing is beginning. With those</p> <p>25 comments in mind, I have to leave it to the</p>	<p>1 Board. We had proposed another schedule which</p> <p>2 we had thought was workable which we had</p> <p>3 agreed to yesterday and I believe it did</p> <p>4 require, for example, this request of the</p> <p>5 extension of the RFIs. I was only asked for</p> <p>6 that today. We did consent to the extension</p> <p>7 last week to the 18th. Today I was asked for</p> <p>8 another extension for another week. So the</p> <p>9 concern is on the firmness of the schedule and</p> <p>10 the commencement of a hearing which is</p> <p>11 critical to Hydro from Hydro's financial</p> <p>12 perspective. And with those comments in mind,</p> <p>13 obviously, we'd prefer the schedule that we</p> <p>14 had consented to yesterday, which is not, I</p> <p>15 believe--I'm not sure if it is before the</p> <p>16 Board and I can go through it in detail if</p> <p>17 that is what the Board wishes. Those are my -</p> <p>18 COMMISSIONER WHALEN:</p> <p>19 Q. What start dates would that have constituted?</p> <p>20 GREENE, Q.C.:</p> <p>21 Q. The actual hearing would have started on</p> <p>22 September 23rd, if my memory--yes, that's</p> <p>23 correct. I'm sure you have another copy of</p> <p>24 that schedule, that is the one that I had</p> <p>25 yesterday and dealt with with my client.</p>

Page 29

Page 30

1 COMMISSIONER SAUNDERS:

2 Q. That's the one you had there.

3 CHAIRMAN:

4 Q. Well I guess we're here talking about  
5 schedule, if you wanted to speak to that Ms.  
6 Greene, it's just as well to do it now I  
7 guess.

8 GREENE, Q.C.:

9 Q. Well on the schedule we would propose the one  
10 that had been agreed to yesterday. However,  
11 obviously we leave it to the discretion of the  
12 Board and we're willing to work with whatever  
13 time the Board sets because I think it's  
14 essentially that it's Hydro's position once  
15 the Board makes the decision we will  
16 accommodate the schedule, we would like an  
17 earlier start date.

18 (11:15 a.m.)

19 MS. NEWMAN:

20 Q. Mr. Chairman, I can undertake to get copies to  
21 the Panel. (Undertaking) The parties were  
22 provided with a copy of that proposed  
23 schedule. I did want to clarify that I have  
24 not to date got any agreement on any schedule.  
25 There have just been several floating around.

1 And my apologies, Ms. Greene's comment is duly  
2 noted on her being surprised by this this  
3 morning. It's true, I was not able to contact  
4 her yesterday. So this morning is the first  
5 time that she did have a look at the schedule.  
6 I did try but I wasn't able to.

7 CHAIRMAN:

8 Q. So my understanding is that the schedule that  
9 we have before us this morning is agreed to by  
10 all parties with the exception of Hydro, is  
11 that correct?

12 MS. NEWMAN:

13 Q. Yes, I understand it is.

14 CHAIRMAN:

15 Q. And the proposal from yesterday is agreed--has  
16 at least received the concurrence of Hydro, is  
17 that what my understanding -

18 MS. NEWMAN:

19 Q. And perhaps other parties as well.

20 CHAIRMAN:

21 Q. Could we move on then, Mr. Fitzgerald with  
22 your comments.

23 MR. FITZGERALD:

24 Q. Thank you, Mr. Chairman. I guess essentially  
25 we do prefer the schedule that's been

Page 31

Page 32

1 circulated this morning. We note Ms. Greene's  
2 comments about her pessimism regarding the  
3 completion of the hearing, but that's  
4 something that we can't really foresee. I  
5 don't know if necessarily starting on the 15th  
6 of October means the hearing would not be  
7 completed in a timely fashion. When we spoke  
8 with counsel this morning, yes, we did  
9 indicate our consent to pushing off at least  
10 the RFIs for a week. What comes with pushing  
11 off the RFIs for a week, of course, is this  
12 deferral of the hearing. There are two weeks  
13 that are scheduled for a settlement or a  
14 negotiated exercise commencing 30 September.  
15 Just going from the experience that we had at  
16 the recent Newfoundland Power GRA, I think all  
17 parties present who were present for that,  
18 recognize that that did shorten that hearing  
19 to a certain extent. So we would prefer that  
20 the RFIs be pushed off for a week. If the  
21 result is that, you know, that the hearing  
22 doesn't start until the date as indicated this  
23 morning, then we don't think that's an undue  
24 prejudice to Hydro.

25 Also, from our perspective, our RFIs are

1 in fact going to be ready today, the bulk of  
2 them. And the only ones we anticipate as  
3 stragglers are those that would arise from  
4 Hydro's refiling based upon the Order in  
5 Council. So there will be a fair bit of  
6 information that Hydro will be able to deal  
7 with forthwith. And so, you know, we think  
8 the schedule as presented is reasonable.

9 CHAIRMAN:

10 Q. Okay, Mr. Fitzgerald. Mr. Alteen.

11 MR. ALTEEN:

12 Q. Newfoundland Power can meet the schedule which  
13 indicates a start-up date for the hearing of  
14 September 23rd and Newfoundland Power can meet  
15 the schedule that anticipates a start-up date  
16 of October 15th, Mr. Chairman.

17 CHAIRMAN:

18 Q. Mr. Hutchings.

19 HUTCHINGS, Q.C.:

20 Q. Thank you, Mr. Chairman. Just to put the  
21 position of the Industrial Customers in  
22 context, as Ms. Greene, did with respect to  
23 Newfoundland and Labrador Hydro, our clients  
24 are facing a proposed increase in this  
25 application of 30 percent and in some cases



Page 33	Page 34
<p>1 HUTCHINGS, Q.C.:</p> <p>2 Q. ... due to other changes that are being made</p> <p>3 in excess of 30 percent with respect to their</p> <p>4 electricity rates. And this has to be</p> <p>5 described as truly frightening for our</p> <p>6 clients. This is a situation where the</p> <p>7 Industrial Customers here must ensure that</p> <p>8 every step is taken to be confident that any</p> <p>9 issue that needs to be explored, to try to</p> <p>10 mediate this increase if at all possible and</p> <p>11 to any extent, has to be looked at. I guess</p> <p>12 the test and the approach should really be the</p> <p>13 same in any hearing, no matter what the</p> <p>14 proposed increase is. But increases of this</p> <p>15 nature, inevitably focus a great deal of</p> <p>16 attention on what's happening and it is vital</p> <p>17 to the interests of the continuing and</p> <p>18 potential businesses represented by this group</p> <p>19 that they are ensured that they're paying the</p> <p>20 least possible amount as required by the</p> <p>21 Electrical Power Control Act for the power</p> <p>22 that they must have in order to continue to do</p> <p>23 business in this province. With that in mind,</p> <p>24 we need to ensure that we have the time that</p> <p>25 is necessary to examine the documentation and</p>	<p>1 consult with the necessary experts and put the</p> <p>2 appropriate evidence before the Board to</p> <p>3 ensure that all of these issues are fully</p> <p>4 explored. We do consent to the schedule</p> <p>5 proposed by Board counsel which would see the</p> <p>6 hearing commencing on the 15th of October</p> <p>7 2003. We did not consent to the previously</p> <p>8 proposed schedule which would see the hearing</p> <p>9 commence on the 23rd of September. We had a</p> <p>10 number of problems with that. One, from the</p> <p>11 point of view of principle, I guess, is that</p> <p>12 that schedule contemplated opening the hearing</p> <p>13 and sitting for a couple of weeks and then</p> <p>14 going into negotiation days which I think</p> <p>15 would have been a problem in terms of both the</p> <p>16 flow of the hearing itself and dealing with</p> <p>17 the mediation in such a fashion that it would</p> <p>18 be most effective. I think we have high hopes</p> <p>19 for this mediation process and I think it's a</p> <p>20 valuable step forward that the Board has</p> <p>21 chosen to go this way. But I think it's going</p> <p>22 to be most valuable if it can be started and</p> <p>23 finished prior to getting into the hearing</p> <p>24 setting, which, inevitably, is designed as a</p> <p>25 somewhat more adversarial type of proceeding.</p>
Page 35	Page 36
<p>1 I think if we have a different atmosphere, if</p> <p>2 you will, in the negotiation sessions in the</p> <p>3 beginning,</p> <p>4 HUTCHINGS, Q.C.:</p> <p>5 before we get to the adversarial portion we'll</p> <p>6 have a better chance of success. That's a</p> <p>7 point of principle there.</p> <p>8 On the issue of the RFIs, I'm not sure</p> <p>9 whether Mr. Fitzgerald intended to suggest</p> <p>10 that it was the extra week for RFIs that was</p> <p>11 delaying the hearing a week. As I understood</p> <p>12 it and from discussions with Board counsel</p> <p>13 this morning, the Board had a problem with</p> <p>14 availability in the week prior to October 15th</p> <p>15 in any event. So that whether or not the RFIs</p> <p>16 were due today or next Friday, wasn't going to</p> <p>17 change whether or not the hearing could</p> <p>18 commence prior to the 15th of October. But in</p> <p>19 any event, with respect to the so called</p> <p>20 deadline for RFIs, it has been our</p> <p>21 understanding and I think it was the general</p> <p>22 understanding of counsel, that the deadline</p> <p>23 was intended to be a deadline in the sense</p> <p>24 that RFIs filed by that date would be</p> <p>25 responded to by the response date that was in</p>	<p>1 the schedule. It wasn't intended to be a date</p> <p>2 beyond which no RFI could be filed. We have</p> <p>3 run into some difficulties with respect to</p> <p>4 RFIs. Now we do anticipate, depending on how</p> <p>5 long we're here today, quite frankly, having a</p> <p>6 large number of RFIs ready to file today. We</p> <p>7 have had some difficulty which arose partly I</p> <p>8 will admit, from failure of communication</p> <p>9 within the group, but part which arose out of</p> <p>10 the change in the Board's procedure whereby</p> <p>11 the date for filing RFIs was set prior to the</p> <p>12 pre-hearing conference. Those who are</p> <p>13 participating in these things are used to the</p> <p>14 notion that you come to the pre-hearing</p> <p>15 conference and the date for filing of RFIs has</p> <p>16 been set. So we had that difficulty. We also</p> <p>17 had the difficulty which arose from the fact</p> <p>18 that the capital budget hearing turned out to</p> <p>19 be a larger affair, as Mr. Saunders well</p> <p>20 knows, than perhaps we had anticipated. We</p> <p>21 had fond hopes that we would fully complete</p> <p>22 that at least within the week that was</p> <p>23 scheduled and we used up that week and we</p> <p>24 still have to deal with argument. And, you</p> <p>25 know, from our point of view, we're dealing</p>

1 HUTCHINGS, Q.C.:

2 Q. ... with some of the same consultants and so  
3 on, on that and there is only so much time  
4 that can be available.

5 In any event, we are in a position where  
6 we can get those RFIs filed not later than  
7 Friday next and in any event, as I say, I  
8 don't think that's going to ultimately affect  
9 the actual start date of the hearing. But  
10 from the point of view of our clients, it is  
11 an appropriate schedule which the counsel for  
12 the Board has now proposed. It is still a  
13 tight and it's a good schedule, but I think  
14 it's a workable schedule and we would suggest  
15 that the Board not attempt to make the  
16 schedule so tight that in the end we end up  
17 taking more time because by the time we come  
18 to sit down here and commence the hearing, we  
19 don't have the information we need as  
20 information. I mean, inevitably, there will  
21 be bits of information coming in throughout  
22 the hearing that will be required in order for  
23 the Board to exercise its jurisdiction. But  
24 if we can minimize that, I think the hearing  
25 will flow much better. I think it's much

1 necessary to ensure that they can be convinced  
2 that any increase that's being sought is fully  
3 justified. So, in summary, Mr. Chair, we do  
4 have difficulty with yesterday's schedule, we  
5 are quite prepared to live with the current  
6 proposed schedule and we would suggest that  
7 the Board approve that one. Thank you, sir.

8 CHAIRMAN:

9 Q. Okay, Mr. Hutchings, one question. Did you  
10 indicate that the bulk of the RFIs would be  
11 depending on what the length of the  
12 proceedings here today would be, would be  
13 filed today, is that my understanding?

14 HUTCHINGS, Q.C.:

15 Q. We have a large number of them not finally  
16 formatted to the appropriate form to file but  
17 depending on when Ms. Henley Andrews gets back  
18 to the office, those will be available to file  
19 today. It is difficult for us to say that  
20 this will be the bulk of them, although I  
21 expect it will be, because we need to have  
22 input from one of our consultants and one  
23 representative of our client in order to know  
24 exactly how many more there will be. But  
25 there will be a large number available today

1 better to have the negotiation sessions  
2 started and finished before we start the  
3 hearing itself. It is still our view that the  
4 hearing itself in this matter could be quite  
5 considerably shorter than the hearing which  
6 commenced in September of 2001. So I don't  
7 have the same degree of pessimism, if you  
8 will, that Ms. Greene has of a danger of not  
9 having the matter concluded by year end.

10 GREENE, Q.C.:

11 Q. Not even after the capital budget.

12 HUTCHINGS, Q.C.:

13 Q. I'm sorry?

14 GREENE, Q.C.:

15 Q. I say not even after the capital budget  
16 hearing.

17 HUTCHINGS, Q.C.:

18 Q. No, the capital budget hearing of this year I  
19 think was a unique one in the sense that there  
20 was expert evidence called on behalf of an  
21 Intervenor which I don't think probably has  
22 ever occurred before. And that also perhaps  
23 is a reflection of my opening comments that  
24 our clients are facing increases to the extent  
25 that they need to invest the resources

1 and hopefully in the right format by the end  
2 of the day.

3 CHAIRMAN:

4 Q. That's my understanding, Mr. Fitzgerald, from  
5 you as well, that the most of your RFIs will  
6 be filed by today with some -

7 MR. FITZGERALD:

8 Q. That's correct, Mr. Chairman.

9 CHAIRMAN:

10 Q. Okay, move on. Mr. Hearn. Thank you, Mr.  
11 Hutchings.

12 (11:30 a.m.)

13 HEARN, Q.C.:

14 Q. Mr. Chairman, I'll be very brief. The towns  
15 of Labrador City and Wabush expect to play a  
16 very limited role in this hearing. We expect  
17 that the issues that affect us will be dealt  
18 with in the separate sub hearing or hearing to  
19 be held in Labrador. We have to date, filed  
20 all, or most all, of our Requests for  
21 Information from Newfoundland and Labrador  
22 Hydro. There may be a few small  
23 supplementaries to be done next week. Our  
24 understanding is that the sub hearing for  
25 Labrador would be held towards the end of the

1 HEARN, Q.C.:

2 Q. ... process so we really don't have any  
3 objection to whatever starting date is  
4 proposed between the 23rd of September of the  
5 15th of October and leave it to the Board's  
6 discretion.

7 CHAIRMAN:

8 Q. Thank you. Ms. Newman, are there any comments  
9 that you'd like to make at this point?

10 MS. NEWMAN:

11 Q. Yes, Mr. Chairman. We did make a couple of  
12 minor modifications to the schedule this  
13 morning and one of them was to put a motion's  
14 day on September 9th with a counsel meeting.  
15 And my learned friend next to me here has just  
16 reminded that we may be busy with the  
17 Newfoundland Power Notice of Appeal leave  
18 application item which will be proceeding on  
19 that day. Some of the counsels will be busy  
20 with that so I just propose that we move that  
21 off to the 10th or 11th--the 10th, is that  
22 fine?

23 MR. KENNEDY:

24 Q. One would have thought Newfoundland Power  
25 would have-

1 MR. ALTEEN:

2 Q. Newfoundland Power can meet that schedule.

3 CHAIRMAN:

4 Q. Okay, I'll return to you, Ms. Greene, is there  
5 any final reply that you'd like to make on  
6 this matter?

7 GREENE, Q.C.:

8 Q. Not really on the schedule but with respect to  
9 the comments of Mr. Hutchings and their  
10 overall position, I just want the record to be  
11 clear that what Hydro has asked for in this  
12 application is a 14 percent adjustment in the  
13 base rates to Industrial Customers. It's a 14  
14 percent increase. The other increase that Mr.  
15 Hutchings must have included is the RSP  
16 adjustment which arises from the existing  
17 Board order in any event. With respect to the  
18 RFIs, it would appear that generally those  
19 RFIs will be available today except for some  
20 from Industrial Customers. That's my  
21 understanding. So with respect to the need  
22 for extending the date, I don't know how  
23 critical that actually is. All the other  
24 parties have indicated they can file today and  
25 Industrial Customers have indicated they can

1 file a portion of theirs today. With respect  
2 to his comment about they were taken by  
3 surprise by the date of July 15th first for  
4 filing RFIs, I would point out that that was  
5 in the pre-hearing notice and I understand  
6 counsel were advised of that requirement, so  
7 they should not have been surprised. Those  
8 are my only comments in reply.

9 CHAIRMAN:

10 Q. Thank you, Ms. Greene. Are there any  
11 questions from my colleagues?

12 COMMISSIONER SAUNDERS:

13 Q. Just one, I guess. I wonder maybe if Ms.  
14 Newman can answer this. In the schedule I  
15 notice there are approximately ten negotiation  
16 days set aside, 10 or 12 in your new schedule.

17 MS. NEWMAN:

18 Q. In the new schedule there's actually seven, it  
19 spans two weeks but there's seven negotiation  
20 days because -

21 COMMISSIONER SAUNDERS:

22 Q. Seven days.

23 MS. NEWMAN:

24 Q. A day or two in advance of the negotiations to  
25 prepare and a day or two after to get back

1 into hearing mode. So it's two weeks, but -

2 COMMISSIONER SAUNDERS:

3 Q. Starting on the 30th?

4 MS. NEWMAN:

5 Q. Yes, starting on the 30th.

6 COMMISSIONER SAUNDERS:

7 Q. Of September.

8 MS. NEWMAN:

9 Q. Yes.

10 COMMISSIONER SAUNDERS:

11 Q. And going through to the 10th--I'm sorry, the  
12 9th.

13 MS. NEWMAN:

14 Q. Yes, the 8th actually is the last day. The  
15 9th is a motion's day, counsel meeting and  
16 motion's day in October then.

17 COMMISSIONER SAUNDERS:

18 Q. How did you determine the number of days  
19 required?

20 MS. NEWMAN:

21 Q. It was a shot in the dark and in fact some of  
22 the parties don't agree that that much time is  
23 necessary. On consultation with Dr. Wilson,  
24 who is the Board appointed mediator, we had  
25 originally thought a week and when he saw

Page 45	Page 46
<p>1 MS. NEWMAN:</p> <p>2 Q. ... that, he thought a week wouldn't been</p> <p>3 adequate. Having gone through the</p> <p>4 Newfoundland Power mediation experience where</p> <p>5 there was fewer parties and fewer or less</p> <p>6 complex issues, that took just about a full</p> <p>7 week, it was thought that a better estimate of</p> <p>8 dealing with these issues was probably two</p> <p>9 weeks, especially in light of the fact that we</p> <p>10 know one of the issues is going to be cost of</p> <p>11 service, that's been put on the agenda. And</p> <p>12 that could take--that's seen as having the</p> <p>13 potential of taking up a full week. So that's</p> <p>14 where it came from but of course at this stage</p> <p>15 we haven't identified the issues, it's really</p> <p>16 hard to know.</p> <p>17 COMMISSIONER SAUNDERS:</p> <p>18 Q. The other question I had relating to that is,</p> <p>19 is there any reason--I can think of one--but</p> <p>20 is there a compelling reason to wait until</p> <p>21 October 30 to commence those negotiation</p> <p>22 dates?</p> <p>23 MS. NEWMAN:</p>	<p>1 Q. September 30?</p> <p>2 COMMISSIONER SAUNDERS:</p> <p>3 Q. I'm sorry, September 30.</p> <p>4 MS. NEWMAN:</p> <p>5 Q. Yes, because there won't be complete flow of</p> <p>6 information until that time. So, what will</p> <p>7 happen is that after exchange of all the</p> <p>8 information, requests and responses, the</p> <p>9 parties will actually bring their experts in</p> <p>10 and as it's expensive and intensive, it was</p> <p>11 thought better to be fully informed than to</p> <p>12 try to do it while some more information is</p> <p>13 still flowing. So, the 25th of September is</p> <p>14 the last date of responses for RFIs and that's</p> <p>15 why a couple of days later we're into</p> <p>16 negotiation.</p> <p>17 COMMISSIONER SAUNDERS:</p> <p>18 Q. Okay. Those are all the questions I had Mr.</p> <p>19 Chairman.</p> <p>20 CHAIRMAN:</p> <p>21 Q. Thank you, Mr. Saunders. I guess we've heard</p> <p>22 the issues in relation to that and we'll</p> <p>23 certainly take everybody's views into</p> <p>24 consideration in our decision. It would</p> <p>25 appear that the major factor here would be the</p>
Page 47	Page 48
<p>1 start date as opposed to some of the</p> <p>2 scheduling within the hearing, that seems to</p> <p>3 be capable of being accommodated. It's a</p> <p>4 matter of deciding on when the appropriate</p> <p>5 start date is given parties' views on the</p> <p>6 matter and we'll take that under</p> <p>7 consideration. Ms. Newman, just one question,</p> <p>8 in relation to because I didn't hear again</p> <p>9 what discussion occurred this morning on the</p> <p>10 matter of the Labrador portion of the hearing</p> <p>11 as per the Order in Council, is there anything</p> <p>12 that was discussed or agreed to on that? It</p> <p>13 seems to me there is two issues; one is the</p> <p>14 fact of whether it would be contained within</p> <p>15 the context of the GRA hearing and the</p> <p>16 parties' vies on that; and alternatively, the</p> <p>17 appropriate timing for that in relation to the</p> <p>18 hearing itself.</p> <p>19 MS. NEWMAN:</p> <p>20 Q. Mr. Chairman, that issue did come up, however,</p> <p>21 it's my view that as we have not received a</p> <p>22 complaint from Lab West, it's difficult for us</p> <p>23 to know exactly--to do much with it at this</p> <p>24 stage. It seems a bit premature. What I</p> <p>25 propose to do is once we have these dates</p>	<p>1 established and I understand there will be a</p> <p>2 complaint coming in in the next number of days</p> <p>3 and as soon as that comes in, then I propose</p> <p>4 that the parties enter into discussions as to</p> <p>5 the best way in which to manage this as to</p> <p>6 whether it's part of the GRA or if we can get</p> <p>7 it done at some other more convenient time</p> <p>8 within the constraints of what was set down in</p> <p>9 the direction. So, I guess, effectively, no,</p> <p>10 we haven't dealt with that, I think it's</p> <p>11 premature and hopefully in the next week or</p> <p>12 two, we will.</p> <p>13 MR. CHAIRMAN:</p> <p>14 Q. Sounds reasonable, thank you. The next item?</p> <p>15 MS. NEWMAN:</p> <p>16 Q. That concludes my items other than the motion</p> <p>17 that I understand that Mr. Hearn would like to</p> <p>18 make on behalf of the Intervenors.</p> <p>19 MR. CHAIRMAN:</p> <p>20 Q. Okay, thank you. Mr. Hearn, I'd ask you to</p> <p>21 introduce the motion, please?</p> <p>22 HEARN, Q.C.:</p> <p>23 Q. It's the request of the towns of Labrador City</p> <p>24 and Wabush that these towns be granted their</p> <p>25 cost of their intervention in the hearing. As</p>

Page 49	Page 50
<p>1 HEARN, Q.C.:</p> <p>2 Q. ... I've mentioned, it's our intention to</p> <p>3 intervene in the focus manner to address</p> <p>4 simply the issues that relate to the Labrador</p> <p>5 interconnected system and the customers and</p> <p>6 towns of Labrador West, Labrador City and</p> <p>7 Wabush. In order to properly participate in a</p> <p>8 hearing of this nature, as is obvious from</p> <p>9 comments of all parties here, it's a</p> <p>10 complicated and expensive process requiring</p> <p>11 the input of people with specialized</p> <p>12 expertise. It's our view that to properly</p> <p>13 present our views in this hearing, that we</p> <p>14 will require the expenditure of considerable</p> <p>15 funds and the services of experts. With that</p> <p>16 in mind, it's important that we can do some</p> <p>17 forward planning to see what the applicable</p> <p>18 rules are that relate to the towns. We note</p> <p>19 that there is an Order in Council directing</p> <p>20 that there be a hearing or a sub hearing into</p> <p>21 the issues that directly concern us and we</p> <p>22 take some solace and appreciation that such an</p> <p>23 order exists. We also note that the Board</p> <p>24 itself, under Section 90 of the Public</p> <p>25 Utilities Act has the discretion to award</p>	<p>1 costs and it's our view that the direction in</p> <p>2 relation to costs can actually be given at the</p> <p>3 commencement of a hearing and does not have to</p> <p>4 simply wait until the end of the hearing. And</p> <p>5 we therefore, request that we be granted our</p> <p>6 cost, this intervention. We point out that in</p> <p>7 previous considerations of this nature, it's</p> <p>8 been a consideration that the Consumer</p> <p>9 Advocate is present in the proceedings and the</p> <p>10 issue of whether or not there's any necessity</p> <p>11 of an intervention on behalf of customers in</p> <p>12 Labrador West. And I think what became</p> <p>13 obvious in the previous hearing and it should</p> <p>14 be obvious again, is that the issues for the</p> <p>15 Labrador interconnected customers are</p> <p>16 divergent for the customers in Labrador West</p> <p>17 and those in Happy Valley/Goose Bay. And as a</p> <p>18 result, I think this is a conundrum for the</p> <p>19 Consumer Advocate and I think quite fairly, it</p> <p>20 wouldn't be reasonable to expect the Consumer</p> <p>21 Advocate to speak for either particular group</p> <p>22 and that separate representation is required</p> <p>23 and ought to be reflected in an order of</p> <p>24 costs. And we make this request at the</p> <p>25 present time out of an abundance of caution</p>
Page 51	Page 52
<p>1 given, with all due respect, our past</p> <p>2 experience before the Board where we attempted</p> <p>3 to make a focus presentation and I must say,</p> <p>4 the eventual award of no costs was a subject</p> <p>5 of considerable disappointment to the</p> <p>6 consumers in the towns of Labrador City and</p> <p>7 Wabush. And so we would hope to know the</p> <p>8 ground rules as we go in and hope that those</p> <p>9 ground rules could be set so that we could add</p> <p>10 meaning and credibility to the whole process</p> <p>11 by properly participating. Counsel for</p> <p>12 Newfoundland and Labrador Hydro has been kind</p> <p>13 enough to present us with a number of cases</p> <p>14 that she would be relying on in responding to</p> <p>15 our position. We've had an opportunity to</p> <p>16 review the three cases that are mentioned and</p> <p>17 note that the cases are in support of the</p> <p>18 proposition that costs ought to be awarded at</p> <p>19 the end of a hearing rather than direction</p> <p>20 given at the start.</p> <p>21 We would point out that neither of those</p> <p>22 cases is directly binding on this Board; none</p> <p>23 of them are from this jurisdiction and that we</p> <p>24 think in the unique set of circumstances that</p> <p>25 we have here where there's a direction to have</p>	<p>1 a focused hearing dealing with issues for the</p> <p>2 Labrador interconnected system, that that's a</p> <p>3 significant distinction from the factual</p> <p>4 circumstances that underpin the cases that are</p> <p>5 relied on. And in our view, Section 90 gives</p> <p>6 the Board very wide discretion to make an</p> <p>7 order with respect to costs and that there's</p> <p>8 nothing to limit the authority of the Board to</p> <p>9 give such direction at the present time and we</p> <p>10 would respectfully ask for it. Thank you, Mr.</p> <p>11 Chairman and the Board.</p> <p>12 MR. CHAIRMAN:</p> <p>13 Q. Thank you, Mr. Hearn. Ms. Green, please?</p> <p>14 GREENE, Q.C.:</p> <p>15 Q. Thank you, Mr. Chairman, Commissioners.</p> <p>16 Hydro's position with respect to the</p> <p>17 application or the motion is that it is</p> <p>18 premature and that consideration for an award</p> <p>19 of costs should follow the conclusion of the</p> <p>20 hearing. In fact, it's Hydro's submission</p> <p>21 that the Board does not have jurisdiction to</p> <p>22 award what, in effect, is Intervenor funding</p> <p>23 at the commencement of a hearing. And there</p> <p>24 are a number of authorities I would like to</p> <p>25 rely on to support that position. In the</p>

Page 53	Page 54
<p>1 GREENE, Q.C.:</p> <p>2 Q. ... consideration of costs, the obvious</p> <p>3 starting point is Section 90 of the Public</p> <p>4 Utilities Act. Section 90 of the Act does</p> <p>5 provide that the Board has the discretion with</p> <p>6 respect to costs related to a proceeding and</p> <p>7 the Board has the discretion to either fix</p> <p>8 costs in a definite amount or they may be</p> <p>9 taxed and the Board may further order by whom</p> <p>10 they are to be taxed and to whom they are to</p> <p>11 be allowed. So, the Board does have</p> <p>12 discretion to award costs under Section 90 of</p> <p>13 the Act. The question arises as to when is it</p> <p>14 appropriate to exercise that discretion. And</p> <p>15 on Wednesday I circulated three cases that are</p> <p>16 very relevant and that are on point with</p> <p>17 respect to this issue and I would like to</p> <p>18 refer to them at this time.</p> <p>19 The first is the decision of the Manitoba</p> <p>20 Society of Seniors Inc. v. Greater Winnipeg</p> <p>21 Gas which was a decision of the Manitoba Court</p> <p>22 of Appeal in 1982. In that particular case,</p> <p>23 at a hearing before the Public Utilities</p> <p>24 Board, one of the Intervenor's made a similar</p> <p>25 request to have funding in advance. Turning</p>	<p>1 to page two of that decision which has been</p> <p>2 circulated, you will see in paragraph eight,</p> <p>3 the section of the Public Utilities Board Act</p> <p>4 in Manitoba with respect to costs. I won't</p> <p>5 bother to read it, but you'll see it's very</p> <p>6 similar to Section 90. In paragraph five, on</p> <p>7 page two, you see the issue is stated and by</p> <p>8 reading the paragraph you will see it is the</p> <p>9 very same issue that's before the Board today.</p> <p>10 I would like to read the last paragraph under</p> <p>11 number eight where the Court of Appeal in</p> <p>12 Manitoba said that the section in the Manitoba</p> <p>13 Act related to an award of cost after the</p> <p>14 hearing. And they went on--and I'm reading,</p> <p>15 this is a quote, "it is my view that the</p> <p>16 preliminary demand for costs could not be met</p> <p>17 by the Board under existing legislation. One</p> <p>18 can understand why the legislation does not</p> <p>19 provide for the Board to make a preliminary</p> <p>20 award in costs", and then they go on; I won't</p> <p>21 read the rest.</p> <p>22 (11:45 a.m.)</p> <p>23 GREENE, Q.C.:</p> <p>24 Q. So, we do have a decision of the Manitoba</p> <p>25 Court of Appeal on very similar wording in the</p>
Page 55	Page 56
<p>1 Manitoba Legislation where the Court of Appeal</p> <p>2 found that the Board did not have the</p> <p>3 jurisdiction to make a preliminary award at</p> <p>4 the commencement of the hearing.</p> <p>5 The second case that I would like to</p> <p>6 refer to was also circulated on Wednesday and</p> <p>7 is the decision of the Ontario Divisional</p> <p>8 Court re: Regional Municipality of Hamilton</p> <p>9 Wentworth and Hamilton Wentworth Save the</p> <p>10 Valley Committee. In that particular case, it</p> <p>11 was not a Public Utilities Board case, but it</p> <p>12 was a hearing under the Consolidated Hearings</p> <p>13 Act and again it was a question of whether</p> <p>14 there could be an award at the commencement of</p> <p>15 a hearing as Mr. Hearn as requested here</p> <p>16 today. On page 361 of the case that was</p> <p>17 circulated, you'll see that there is the</p> <p>18 reference to the Manitoba Society of Seniors</p> <p>19 case that I just referred to. And then I'd</p> <p>20 like to turn to page 364 where at the bottom</p> <p>21 of the page, the court discusses what is meant</p> <p>22 by costs which is what you have as well in</p> <p>23 Section 90. And looking at the bottom there</p> <p>24 at page 364 going over to 365--and I'm reading</p> <p>25 now, "a point of commencement must be that</p>	<p>1 costs as used in the legal sense is a word</p> <p>2 having a well defined meaning from the</p> <p>3 earliest times it has been recognized that the</p> <p>4 power to award costs must be found in a</p> <p>5 statute". Now, the Board does have that in a</p> <p>6 statute, they do have the discretion to award</p> <p>7 the cost. And then they went on to say, "what</p> <p>8 are the characteristics of the costs" and</p> <p>9 that's before they list there on the top of</p> <p>10 the page at 365. And the first one is very</p> <p>11 important, the first one is that there is an</p> <p>12 award to be made in favour of a successful or</p> <p>13 deserving litigant, payable by the loser. You</p> <p>14 don't know that until the hearing is over.</p> <p>15 You don't know who is the winner and who is</p> <p>16 the loser. Sometimes we still don't know at</p> <p>17 the end of a hearing depending on the</p> <p>18 complexity, but generally we don't know until</p> <p>19 the conclusion of the hearing.</p> <p>20 Second point, of necessity, the award</p> <p>21 must await the conclusion of the proceeding as</p> <p>22 an assessment of entitlement cannot be</p> <p>23 determined before that time.</p> <p>24 Third point, the costs are payable by way</p> <p>25 of indemnity for allowing expenses and</p>

Page 57	Page 58
<p>1 GREENE, Q.C.:</p> <p>2 Q. ... services incurred relevant to the case</p> <p>3 proceeding.</p> <p>4 And the last point, they are not payable</p> <p>5 for the purposes of assuring participation in</p> <p>6 the proceeding.</p> <p>7 So, those were the characteristics of</p> <p>8 costs as defined by the Ontario Divisional</p> <p>9 Court. If you look to page 376 of that case</p> <p>10 which is the actual decision of the Court,</p> <p>11 you'll see again the reference to the Manitoba</p> <p>12 Seniors case that I just referred to and bear</p> <p>13 conclusion that that was the correct decision.</p> <p>14 And just reading there, the first sentence</p> <p>15 under the heading, Conclusion, the Court</p> <p>16 stated, "having considered the matter</p> <p>17 carefully, I am of the opinion that the Board</p> <p>18 had no jurisdiction to make the impugned</p> <p>19 orders as its discretion to award costs does</p> <p>20 not extend that far". And that was, there was</p> <p>21 no ability to award costs at the commencement</p> <p>22 of the hearing.</p> <p>23 The last case that I would like to refer</p> <p>24 to which was also circulated by me on</p> <p>25 Wednesday is the decision again of the Ontario</p>	<p>1 High Court of Justice Divisional Court in re:</p> <p>2 Ontario Energy Board. And this arose as a</p> <p>3 result of a stated case by the Ontario Energy</p> <p>4 Board as to whether it could make the</p> <p>5 preliminary award of costs at the commencement</p> <p>6 of a hearing which, in effect, is Intervenor</p> <p>7 funding. And you'll see on page four of that</p> <p>8 case, that the Court referred to the Hamilton</p> <p>9 Wentworth case that I just referred to and</p> <p>10 said that that decision applied equally to the</p> <p>11 issue before them in the Ontario Energy Board</p> <p>12 case and stated that the Board cannot lawfully</p> <p>13 order interim costs to be so paid. And you'll</p> <p>14 see on page 4 as well, the Section of the</p> <p>15 Ontario Energy Board Act which deals with</p> <p>16 costs which is very similar to Section 90</p> <p>17 which gives the Board discretion to award</p> <p>18 costs.</p> <p>19 Finally, I would like to refer to two</p> <p>20 orders of this Board where this issue has been</p> <p>21 dealt with before. The first arises from</p> <p>22 Hydro's GRA 2001 where the Industrial</p> <p>23 Customers made the same application as Mr.</p> <p>24 Hearn has made today to have an order at the</p> <p>25 commencement of the hearing. Hydro took the</p>
Page 59	Page 60
<p>1 same position on that particular motion</p> <p>2 because in Hydro's view, it is clear the Board</p> <p>3 does not have the jurisdiction to make the</p> <p>4 preliminary award of costs. And you will see</p> <p>5 Order No. P.U. 8, 2001-2202 which I circulated</p> <p>6 on Wednesday, that the Board agreed and did</p> <p>7 not award costs as requested by Industrial</p> <p>8 Customers.</p> <p>9 The last document that I would like to</p> <p>10 refer to is another decision of the Board</p> <p>11 which Ms. Noseworthy was kind enough to</p> <p>12 circulate to all the parties along with P.U.</p> <p>13 8. And this arose from a Newfoundland Power</p> <p>14 hearing in 1998 where Ms. Andrews, again,</p> <p>15 applied for her first, I guess, first time</p> <p>16 applied for funding at the commencement of the</p> <p>17 hearing. And you will see that the Board, on</p> <p>18 page 2, found that Section 90 of the Act does</p> <p>19 not provide for funding to be awarded prior to</p> <p>20 the hearing, but only provides for the</p> <p>21 provision of costs at the discretion of the</p> <p>22 Board which is to be exercised after the</p> <p>23 completion of the hearing which is in line</p> <p>24 with the three cases that I have referred to.</p> <p>25 So, in conclusion, the authorities are</p>	<p>1 that the Board does not have the jurisdiction</p> <p>2 to award costs at the commencement of the</p> <p>3 hearing under Section 90 of the Act. And that</p> <p>4 has been the Board's previous decisions in two</p> <p>5 prior applications where the same issues were</p> <p>6 raised. So, for those reasons, Hydro submits</p> <p>7 that the application is premature and should</p> <p>8 not be dealt with by the Board at this time.</p> <p>9 Thank you, Mr. Chair, that concludes my</p> <p>10 comments.</p> <p>11 MR. CHAIRMAN:</p> <p>12 Q. Thank you, Ms. Greene. Mr. Fitzgerald,</p> <p>13 please?</p> <p>14 MR. FITZGERALD:</p> <p>15 Q. Mr. Chairman, on behalf of the Consumer</p> <p>16 Advocate, we really take no position in</p> <p>17 relation to this issue.</p> <p>18 MR. CHAIRMAN:</p> <p>19 Q. Thank you. Ms. Henley Andrews or Mr.</p> <p>20 Hutchings?</p> <p>21 HENLEY ANDREWS, Q.C.:</p> <p>22 Q. It's me, Mr. Chairman. The Industrial</p> <p>23 Customers support the application of Labrador</p> <p>24 City and Wabush to have a ruling at this time</p> <p>25 in favour of awarding them their costs at the</p>

Page 61	Page 62
<p>1 HENLEY ANDREWS, Q.C.:  2 Q. ... end of the hearing. We believe and agree  3 that proper participation in the hearing  4 process is costly and it does require expert  5 advice. It's not reasonable to spend money  6 and take the risk that later you can't recover  7 it, particularly when the amounts of money for  8 experts are so high. Hydro has a monopoly on  9 the providing of generation to a large extent.  10 Whether by its own generation or as a reseller  11 or other generation, that the parties  12 including Labrador City and Wabush have no  13 choice as to where they buy their electricity.  14 The amount to be charged with respect to  15 electricity can be a critical factor whether  16 it's in setting tax rates for town, whether  17 it's in attracting business to the town or  18 whether it is for providing, dealing with the  19 costs of manufacturing. Hydro's costs are  20 recoverable in the rates and they know that up  21 front and they know that if they want to, they  22 can include their own costs as well as their  23 witness' costs in their rates. The same is  24 true for Newfoundland Power. And the Consumer  25 Advocate by legislation is entitled to its</p>	<p>1 costs and has certainty with respect to its  2 ability to recover its reasonable costs in  3 connection with calling expert testimony and  4 participation in the hearing. That provides a  5 considerable advantage to all three of those  6 parties. In the 1980s, the Federation of  7 Municipalities was regularly awarded its  8 costs, albeit at the end of a hearing, but it  9 was, according to Mr. Hutchings who  10 participated at that time, well known and  11 accepted that they would get their costs at  12 the end of the hearing. In hearing since 1990  13 in which I have been involved, the one thing  14 that has been certain has been that Hydro will  15 object to Intervenors getting their costs,  16 whether the application is made at the  17 beginning of the hearing or at the end. And  18 the Federation of Municipalities didn't have  19 that problem, they had a pretty good  20 understanding that they were going to get  21 their costs. The Labrador issues are  22 distinct, at least, many of the issues are  23 distinct and because so much of the focus of  24 the hearing is on the Island Interconnected  25 System, it is easy for the Labrador Issues to</p>
Page 63	Page 64
<p>1 get lost and the ability to call evidence and  2 to have experts would obviously a considerable  3 factor for them if they knew in advance that  4 they had a reasonable opportunity to recover  5 those costs. I note that in the Order from  6 the Government in Item 2, the Lieutenant  7 Governor in Council directs the Public  8 Utilities Board to provide full opportunity  9 for Labrador West being Labrador City, Wabush  10 and/or the Iron Ore Company of Canada and  11 Wabush Mines et cetera, to present arguments  12 and evidence before the hearing. I think that  13 the failure to have information with respect  14 to costs could be argued on an appeal that it  15 does not provide that full opportunity to  16 participate and they ultimately put the result  17 of the whole process in question. Hydro has  18 referred to a number of cases which I will get  19 to, but also to the idea that the norm in  20 courts is that costs are awarded to the winner  21 at the end of the day and while costs are in  22 the discretion of the court in the same way  23 that they are, or they are in the discretion  24 of the court as they are in the discretion of  25 the Board, the courts do, as a general rule,</p>	<p>1 award costs to the winner. Well, then you  2 have to look at this process because can you  3 really say when you participate in a rate  4 hearing that there are winners and losers. At  5 the end of the day, usually the Applicant has  6 lost something and the Intervenors had gained  7 something, nobody is likely to be happy, but  8 you know, I haven't yet participated in a  9 hearing where the Applicant, whether it be  10 Hydro or Newfoundland Power got absolutely  11 everything they were looking for. And neither  12 have I participated in a hearing where the  13 Intervenors have gotten everything that they  14 were looking for. So, it's not a situation  15 where at the end of the day, there's going to  16 be a winner and a loser. You could argue that  17 everybody will be winners or that everybody  18 will be losers, but that depends on your point  19 of view. So, I think that that's different  20 than a court proceeding where the issue is  21 usually one of liability and the court finds  22 either there is liability or there is not  23 liability.  24 (12:00 p.m.)  25 Q. So then you have to take that into context in</p>



Page 65	Page 66
<p>1 HENLEY ANDREWS, Q.C.:</p> <p>2 Q. ... looking at the decisions that Hydro has</p> <p>3 put before you. And the first of those</p> <p>4 decisions is the one relating to the Manitoba</p> <p>5 Society of Seniors. And I think that that</p> <p>6 decision has to be looked at specifically with</p> <p>7 respect to what was happening on the appeal.</p> <p>8 In that particular case, the Manitoba Board</p> <p>9 had denied the costs application and you can</p> <p>10 see that in paragraph five which is on page</p> <p>11 two. And it says that when proceedings began</p> <p>12 before the Public Utilities Board, the</p> <p>13 Manitoba Society of Seniors requested that the</p> <p>14 Board make a preliminary award of costs in</p> <p>15 favour of the society to enable it to retain</p> <p>16 the services of experts, which in turn would</p> <p>17 enable the society to participate more</p> <p>18 effectively. The Board declined to make such</p> <p>19 an award. So the Board exercised its</p> <p>20 discretion and declined.</p> <p>21 In an appeal, there are rules with</p> <p>22 respect to what a court can overturn when a</p> <p>23 discretionary order has been made. So the</p> <p>24 question that you have to ask yourself and the</p> <p>25 question that is legitimate is that if the</p>	<p>1 Manitoba Public Utilities Board had awarded</p> <p>2 the costs, had exercised its discretion in</p> <p>3 favour of the Applicant, the seniors group,</p> <p>4 would the result on appeal, have been</p> <p>5 different. And it could very well have been</p> <p>6 different. The judge in the Manitoba Court of</p> <p>7 Appeal in paragraph eight does refer to the</p> <p>8 section of the Public Utilities Board Act,</p> <p>9 Section 56, in Manitoba. And while the</p> <p>10 language is similar, it is not exactly the</p> <p>11 same as the Newfoundland legislation, but I</p> <p>12 will concede that it is very similar. But I</p> <p>13 would point out that the decision of the</p> <p>14 Manitoba Court of Appeal is not binding on the</p> <p>15 Newfoundland Court of Appeal or on the</p> <p>16 Newfoundland courts, nor is it binding on this</p> <p>17 Board. So Newfoundland can in fact have an</p> <p>18 entirely different result if this matter</p> <p>19 proceeded through to the Court of Appeal on</p> <p>20 the issue of costs than Manitoba. The</p> <p>21 Manitoba Court of Appeal decision is binding</p> <p>22 on the Manitoba Queen's Bench division, it is</p> <p>23 not binding in any other province.</p> <p>24 The other aspect that has to be looked at</p> <p>25 then is the decision of the Ontario High Court</p>
Page 67	Page 68
<p>1 of Justice. And one of the problems in that</p> <p>2 particular case is that there is different</p> <p>3 legislation. The legislation with respect to</p> <p>4 costs is again quite similar to Section 90 of</p> <p>5 the Public Utilities Act in Newfoundland.</p> <p>6 However, what's different is that in that</p> <p>7 particular case, the Board had set up criteria</p> <p>8 and procedure for ordering interim costs to be</p> <p>9 paid. Now, it is not my understanding and Mr.</p> <p>10 Hearn can correct me if I'm wrong, it's not my</p> <p>11 understanding that the town of Wabush and the</p> <p>12 town of Labrador City are looking to have</p> <p>13 their costs paid up front. It is my</p> <p>14 understanding that they are looking for ruling</p> <p>15 now as to whether they will be entitled to</p> <p>16 recover their costs at the end of the hearing.</p> <p>17 In the Ontario case, the rules that were being</p> <p>18 proposed and that were in question, were rules</p> <p>19 with respect to an interim award of costs so</p> <p>20 that the parties would actually have the money</p> <p>21 up front. And that is, I would suggest, a big</p> <p>22 distinction than what I understand is being</p> <p>23 sought in the present case.</p> <p>24 So from the Industrial Customer's</p> <p>25 perspective and we've argued this in the past,</p>	<p>1 but the Act does specifically grant the Board</p> <p>2 discretion to award costs. There is a very</p> <p>3 real question as to whether a party has full</p> <p>4 opportunity to participate if it is at a</p> <p>5 disadvantage with respect to other parties.</p> <p>6 And in this particular case, we would submit</p> <p>7 that Wabush-Labrador City ought to have their</p> <p>8 costs because they can demonstrate that</p> <p>9 interests and their issues are not covered by</p> <p>10 any of the other parties participating in the</p> <p>11 hearing. Thank you.</p> <p>12 HEARN, Q.C.:</p> <p>13 Q. Mr. Chairman, arising out of Ms. Henley</p> <p>14 Andrews' comments -</p> <p>15 CHAIRMAN:</p> <p>16 Q. Before you begin, could I just ask if there</p> <p>17 are any -</p> <p>18 HEARN, Q.C.:</p> <p>19 Q. Oh, I'm sorry.</p> <p>20 CHAIRMAN:</p> <p>21 Q. - comments here?</p> <p>22 MR. KENNEDY:</p> <p>23 Q. No comments -</p> <p>24 CHAIRMAN:</p> <p>25 Q. Pardon?</p>

Page 69	Page 70
<p>1 MR. KENNEDY:</p> <p>2 Q. - from myself. I believe Newfoundland Power</p> <p>3 has been -</p> <p>4 CHAIRMAN:</p> <p>5 Q. Yes, sorry, Mr. Alteen.</p> <p>6 MR. ALTEEN:</p> <p>7 Q. Mr. Chairman, we advised everyone of our</p> <p>8 position yesterday. It is substantially</p> <p>9 similar to Hydro's position, that an Order for</p> <p>10 costs prior to the commencement or prior to</p> <p>11 the conclusion of the hearing is premature and</p> <p>12 it's not authorized under the statutes. I was</p> <p>13 going to briefly draw your attention to a</p> <p>14 couple of statutory provisions that haven't</p> <p>15 been spoken to. One is Section 28(1 ) of the</p> <p>16 Electrical Power Control Act. The direction</p> <p>17 for the Labrador hearing is under the</p> <p>18 Electrical Power Control Act. Now the cost</p> <p>19 provisions under Section 28(1 ) are</p> <p>20 substantially the same as under Section 90(1),</p> <p>21 so it doesn't change the argument, it just</p> <p>22 changes the reference. But you should</p> <p>23 consider that in your deliberations. The</p> <p>24 second point is reference has been made to the</p> <p>25 Consumer Advocate. The Consumer Advocate's</p>	<p>1 costs are the subject of a specific statutory</p> <p>2 provision which is Section 117 of the Public</p> <p>3 Utilities Act and that specifically provides</p> <p>4 that the cost of the Consumer Advocate in</p> <p>5 Subsection 3 are to be recovered from the</p> <p>6 Board. So they had authorization and that</p> <p>7 security is legislatively mandated. When you</p> <p>8 sit down and try to conclude what that tells</p> <p>9 you, it probably tells you that had the</p> <p>10 government intended with the order that's been</p> <p>11 directed to you with the Labrador hearing,</p> <p>12 that you provide for cost, it would have said</p> <p>13 provide for the cost. So I don't think that</p> <p>14 the fact that the order has come out changes</p> <p>15 the water on the beans. The case law is</p> <p>16 persuasive for this Board, the provisions</p> <p>17 considered by the Manitoba Court of Appeal and</p> <p>18 the Ontario Divisional Court deal with</p> <p>19 provisions substantially the same to Section</p> <p>20 90(1 ) of the Public Utilities Act and Section</p> <p>21 28(1 ) of the Electrical Power Control Act.</p> <p>22 So that is very persuasive logic. Thirdly, or</p> <p>23 the third point of support is the practice of</p> <p>24 the Board even back into the '80s when the</p> <p>25 Federation of Municipalities intervened, has</p>
Page 71	Page 72
<p>1 been that these orders are made and quite</p> <p>2 properly made at the conclusion of a hearing.</p> <p>3 So the statute indicates that this is</p> <p>4 premature and should be considered at the end</p> <p>5 of the hearing. The case law supports that</p> <p>6 and the practice of this Board supports it.</p> <p>7 Mr. Chairman, there's no need to make the</p> <p>8 order requesting now, but the City of Labrador</p> <p>9 should have every right to apply at the</p> <p>10 conclusion of the hearing. Thank you very</p> <p>11 much.</p> <p>12 CHAIRMAN:</p> <p>13 Q. Thank you, Mr. Alteen. Again, my apologies,</p> <p>14 I'll blame it on the humidity in here stemming</p> <p>15 that--no fault of the brain. It may have</p> <p>16 nothing to do with the humidity. Thank you</p> <p>17 once again. Any comment, Ms Newman?</p> <p>18 MS. NEWMAN:</p> <p>19 Q. No, Mr. Chairman and Commissioners, I think</p> <p>20 that the issues have been canvassed fully, I</p> <p>21 don't have any additional comments to make.</p> <p>22 CHAIRMAN:</p> <p>23 Q. Thank you. Mr. Hearn.</p> <p>24 HEARN, Q.C.:</p> <p>25 Q. Thank you, Mr. Chairman. Just in response to</p>	<p>1 some of the comments of Ms. Henley Andrews I</p> <p>2 would confirm and clarify that the ruling</p> <p>3 we're seeking is asking that we get our costs</p> <p>4 at the end of the hearing, that we have a</p> <p>5 direction to that effect at the present time.</p> <p>6 The other comment that I would make in reply,</p> <p>7 the case is referred to by Newfoundland Hydro</p> <p>8 and adopted by Newfoundland Power deal with</p> <p>9 characteristics of costs that are applicable</p> <p>10 in court situations where there is an award to</p> <p>11 be made in favour of a successful or deserving</p> <p>12 litigant payable by the loser and I would</p> <p>13 reiterate the comments that were made by Ms.</p> <p>14 Henley Andrews in that regard and point out</p> <p>15 that that's never been the tradition of costs</p> <p>16 before this Board. When we look around the</p> <p>17 room we see that virtually every party with</p> <p>18 the exception of us, either has its costs or</p> <p>19 has almost an implicit understanding that it</p> <p>20 would get its costs and that's certainly true</p> <p>21 of the Federation of Municipalities when they</p> <p>22 were here before the Board. And it seems to</p> <p>23 be true of virtually all of the parties here.</p> <p>24 And we make this because of our past</p> <p>25 experience. We have no such implicit</p>

Page 73	Page 74
<p>1 HEARN, Q.C.:</p> <p>2 Q. ... understanding and we say that the costs</p> <p>3 that were discussed in these cases, deserving</p> <p>4 litigant payable by the loser, is not part of</p> <p>5 the public utilities process as the tradition</p> <p>6 has developed in this province. Therefor we</p> <p>7 repeat our request. Thank you, Mr. Chairman,</p> <p>8 members of the Board.</p> <p>9 CHAIRMAN:</p> <p>10 Q. Mr. Hearn, I'll ask my colleagues now if they</p> <p>11 have any questions. Mr. Saunders.</p> <p>12 COMMISSIONER SAUNDERS:</p> <p>13 Q. Yes, just one comment you made, Mr. Hearn.</p> <p>14 You made reference to, I think you called it a</p> <p>15 conundrum for the Consumer Advocate in respect</p> <p>16 of representation of Labrador customers.</p> <p>17 Would you want to explain or to expand on</p> <p>18 that?</p> <p>19 HEARN, Q.C.:</p> <p>20 Q. Well the setting of rates for the Labrador</p> <p>21 Interconnected Customers involves a question</p> <p>22 of whether the rates should be equalized</p> <p>23 between Labrador west customers and Happy</p> <p>24 Valley-Goose Bay and we see that as a question</p> <p>25 of whether or not with our lower cost</p>	<p>1 structure, we should in effect be subsidizing</p> <p>2 consumers in Happy Valley-Goose Bay and</p> <p>3 whether that's in accordance with regulatory</p> <p>4 principles and ought to be so applied by this</p> <p>5 Board. As we understand it, the Consumer</p> <p>6 Advocate in the last hearing and I don't know</p> <p>7 if it has changed at this time, took no</p> <p>8 position on that issue. And I think logically</p> <p>9 you would not expect that the Consumer</p> <p>10 Advocate would represent one particular group</p> <p>11 of consumers to the potential detriment of</p> <p>12 another group of consumers. And that's what I</p> <p>13 regard as a conundrum, if the two interests</p> <p>14 involved are the consumers in Happy Valley-</p> <p>15 Goose Bay and the consumers in Labrador west,</p> <p>16 and if these interests are incompatible or</p> <p>17 divergent, then--and if the Consumer Advocate</p> <p>18 speaks for either particular group, then it's</p> <p>19 necessary that we have all participation and</p> <p>20 that we have separate representation from the</p> <p>21 Consumer Advocate.</p> <p>22 COMMISSIONER SAUNDERS:</p> <p>23 Q. Would it be fair, Mr. Chair, to ask if Mr.</p> <p>24 Fitzgerald has any comment on that?</p> <p>25 MR. FITZGERALD:</p>
Page 75	Page 76
<p>1 Q. In response I guess what Mr. Hearn is saying</p> <p>2 is an obvious problem. To get into the</p> <p>3 reasons why we would or would not support the</p> <p>4 application of Labrador City right now would</p> <p>5 really be getting into the substantive part of</p> <p>6 the divergent interests which we're not</p> <p>7 prepared to get into this morning. But as a</p> <p>8 general rule, I guess, you know, if you look</p> <p>9 at it from an overall point of view, are Mr.</p> <p>10 Hearn's clients, consumers, the province or</p> <p>11 consumers of electricity in the province, yes,</p> <p>12 they are. Do they have divergent interests</p> <p>13 from other consumers, yes, they do.</p> <p>14 Therefore, is it fair for them to segregate</p> <p>15 themselves and seek independent representation</p> <p>16 having regard to their very different</p> <p>17 circumstances. It probably is fair for them</p> <p>18 to seek separate counsel. Is it a conundrum,</p> <p>19 probably, yes. I mean I don't know how else</p> <p>20 to address that.</p> <p>21 HUTCHINGS, Q.C.:</p> <p>22 Q. Mr. Chair, I don't know whether this is</p> <p>23 helpful at all but I recall in the 1980s, I</p> <p>24 was for a couple of hearings, appointed myself</p> <p>25 as Consumer Advocate, appointed by Order of</p>	<p>1 the Board. And in discussion with the Board,</p> <p>2 there was a clear understanding that the Order</p> <p>3 appointing me at that time would indicate that</p> <p>4 I was to represent the general interests of</p> <p>5 consumers and specifically not the particular</p> <p>6 interests of particular groups of consumers.</p> <p>7 I mean that's a conundrum that's been there</p> <p>8 forever in the sense that there are particular</p> <p>9 groups of consumers that have particular</p> <p>10 interests but really, if you only have one</p> <p>11 Consumer Advocate, you can only represent the</p> <p>12 general interests of consumers. I mean</p> <p>13 consumers generally have interests in, you</p> <p>14 know, lower rates and particular interests in</p> <p>15 rate of return and different issues but there</p> <p>16 are inevitably going to be groups of consumers</p> <p>17 that will have particular interests. And as</p> <p>18 Mr. Fitzgerald says, I don't think it's</p> <p>19 possible for a single Consumer Advocate to</p> <p>20 represent every particular interest. I just</p> <p>21 thought as a historical note because I don't</p> <p>22 believe any of the Commissioners now sitting</p> <p>23 were on the Board at the time that I was doing</p> <p>24 those things back in the 80's.</p> <p>25 CHAIRMAN:</p>

Page 77	Page 78
<p>1 Q. Thank you, Mr. Hutchings, any further</p> <p>2 questions? Anybody else wish to comment on</p> <p>3 that particular question I guess and I'll</p> <p>4 afford other parties the opportunity. Okay.</p> <p>5 Ms. Whalen has a question, I believe.</p> <p>6 COMMISSIONER WHALEN:</p> <p>7 Q. Yes, Mr. Hearn, I have just a question and it</p> <p>8 really relates to Ms. Newman's earlier comment</p> <p>9 to the Board relating to the issue of the</p> <p>10 pending complaint on discriminatory rates and</p> <p>11 the decision as to whether we're going to have</p> <p>12 a separate hearing or if that hearing is going</p> <p>13 to be subsumed into the GRA hearing. Did I</p> <p>14 understand from your earlier comment that if</p> <p>15 the Board decides, makes a decision to sit in</p> <p>16 Labrador west and deal with your issues in a</p> <p>17 separate hearing, that your participation in</p> <p>18 this process would be limited, if at all?</p> <p>19 HEARN, Q.C.:</p> <p>20 Q. That's certainly true, Mr. Whalen. We</p> <p>21 certainly don't intend to be present when</p> <p>22 there are issues that are peripheral to our</p> <p>23 interests and largely unrelated to our</p> <p>24 interests. It's our intention to attempt to</p> <p>25 be focused on issues that are relevant to the</p>	<p>1 customers and towns that I represent. So, you</p> <p>2 know, to be participating in St. John's adding</p> <p>3 to the costs to the clients when hopefully</p> <p>4 those issues would be dealt with in a focused</p> <p>5 fashion in Labrador west would seem to be the</p> <p>6 most effective way and most efficient way to</p> <p>7 properly present our views to the Board.</p> <p>8 COMMISSIONER WHALEN:</p> <p>9 Q. I guess my next point then would be if the</p> <p>10 Town of Labrador City is intending to make a</p> <p>11 complaint of discriminatory rights to the</p> <p>12 Board with a request for the hearing that</p> <p>13 we've been directed to hold in any event, but</p> <p>14 it's just really a decision as to how we do</p> <p>15 it, would your request for cost, not</p> <p>16 withstanding the arguments made today be more</p> <p>17 appropriately made at that time and put into--</p> <p>18 the Board can consider them in the context</p> <p>19 then of the way we're going to deal with that</p> <p>20 issue in terms of the sub hearing or a</p> <p>21 separate hearing.</p> <p>22 HEARN, Q.C.:</p> <p>23 Q. Oh we certainly would reiterate our request at</p> <p>24 that time. I mean the direction that was</p> <p>25 issued by the Lieutenant-Governor in Council</p>
Page 79	Page 80
<p>1 only came to my attention yesterday and I was</p> <p>2 already in St. John's. I wouldn't want us to</p> <p>3 get unduly delayed because of the failure of a</p> <p>4 complaint at the present time. We're trying</p> <p>5 to be constructive in terms of the use of this</p> <p>6 time. If we'd had any inkling that that was</p> <p>7 required prior to this session here today, it</p> <p>8 would have been made and it just hasn't been</p> <p>9 physically possible because I've been out of</p> <p>10 my office since the time this has come</p> <p>11 forward. But it's our intention as soon as I</p> <p>12 returned on Monday or Tuesday, depending on</p> <p>13 the flights that I would make certain that the</p> <p>14 complaint is actually filed. So I think any</p> <p>15 deliberations right not ought to be done on</p> <p>16 the assumption that that complaint will be</p> <p>17 coming forthwith and I've certainly undertaken</p> <p>18 to do that. So I think it would be not a</p> <p>19 proper use at this time if we didn't consider</p> <p>20 these issues because simply we don't have the</p> <p>21 formal complaint. You know, I can certainly</p> <p>22 undertake you will have the formal complaint</p> <p>23 and you'll have it Monday or Tuesday but we'll</p> <p>24 not then be before the Board to address it so</p> <p>25 I think this is the appropriate time to place</p>	<p>1 the issues before the Board for its</p> <p>2 consideration and decision.</p> <p>3 COMMISSIONER WHALEN:</p> <p>4 Q. And the Board has already made two orders</p> <p>5 saying that it doesn't have the jurisdiction</p> <p>6 to make such an award under Section 90.</p> <p>7 Nothing has changed and I think I was part of</p> <p>8 the last two motions where I heard the similar</p> <p>9 arguments and on form PU-8 that's been</p> <p>10 circulated. So it is the Town of Labrador</p> <p>11 City's position that we do have the</p> <p>12 jurisdiction under Section 90 to make such an</p> <p>13 order that you're requesting.</p> <p>14 (12:15 p.m.)</p> <p>15 HEARN, Q.C.:</p> <p>16 Q. Certainly it is and I think that the Board--</p> <p>17 two things, Ms. Whalen; one, I don't think the</p> <p>18 Board is bound its previous decisions and</p> <p>19 secondly, that those decisions have not been</p> <p>20 in the context or a direction to provide a</p> <p>21 full opportunity for Labrador West, Labrador</p> <p>22 City/Wabush and Iron Ore Company of Canada and</p> <p>23 Wabush Mines and the residents and</p> <p>24 representatives thereof and other interested</p> <p>25 parties to present arguments, evidence before</p>

Page 81	Page 82
<p>1 HEARN, Q.C.:</p> <p>2 Q. ... such hearing and provide, et cetera, the</p> <p>3 basis for a full informed decision by this</p> <p>4 Board. So, you're using your discretion, I</p> <p>5 would say with respect, in a circumstance</p> <p>6 where there's a direction to provide a full</p> <p>7 opportunity. And that full opportunity can</p> <p>8 only occur if we have some understanding that</p> <p>9 at the end of the process, we will recover our</p> <p>10 costs.</p> <p>11 COMMISSIONER WHALEN:</p> <p>12 Q. I guess, notwithstanding the jurisdiction</p> <p>13 issue which obviously is most important before</p> <p>14 the Board, but I wonder if it would be more</p> <p>15 helpful perhaps to the Town of Labrador City's</p> <p>16 case if the issue was brought forward as part</p> <p>17 of your complaint and done in the context of</p> <p>18 this direction from the LJOC (phonetic) as</p> <p>19 opposed to be done in the context of the full</p> <p>20 GRA request which we're not sure how you're</p> <p>21 going to be participating, if we're going to</p> <p>22 be having a separate hearing in any event.</p> <p>23 I'm just wondering if our order might be</p> <p>24 premature. I'm not prejudice and -</p> <p>25 HEARN, Q.C.:</p>	<p>1 Q. I wouldn't think so. With respect, we're</p> <p>2 asking for a reasonable cost of intervention,</p> <p>3 you know, so that--at the end of the</p> <p>4 intervention, so there'll always be an</p> <p>5 opportunity of scrutiny. We're not asking for</p> <p>6 any loose open ended order that would allow</p> <p>7 any extraneous or irrelevant costs and we're</p> <p>8 asking in the context where we're here today.</p> <p>9 You know, I really don't see that awaiting the</p> <p>10 formal complaint is going to change. This is</p> <p>11 an opportunity to present the argument and</p> <p>12 where all counsel had an opportunity to</p> <p>13 comment. So, I think with respect, it would</p> <p>14 be unduly technical to say that the award</p> <p>15 shouldn't deal with it because it doesn't have</p> <p>16 the formal complaint before it now.</p> <p>17 COMMISSIONER WHALEN:</p> <p>18 Q. That wasn't my point, that we shouldn't deal</p> <p>19 with it and I guess, I just leave it at that.</p> <p>20 Would you also agree that the town of Goose</p> <p>21 Bay should be afforded a similar right?</p> <p>22 HEARN, Q.C.:</p> <p>23 Q. Oh, I certainly would have no objection to</p> <p>24 that.</p> <p>25 MR. CHAIRMAN:</p>
Page 83	Page 84
<p>1 Q. Thank you, Ms. Whalen. I'll afford other</p> <p>2 parties the opportunity to comment on</p> <p>3 questions. No.</p> <p>4 HENLEY ANDREWS, Q.C.:</p> <p>5 Q. I'd like to make one comment and that's with</p> <p>6 respect to the previous decisions of the Board</p> <p>7 and that is that, the Board has made previous</p> <p>8 decisions. Courts often, over the term of</p> <p>9 years change their minds as to what they wish</p> <p>10 to do and the law changes as a result. We've</p> <p>11 always felt that the Board's decisions on the</p> <p>12 two previous with respect to jurisdiction were</p> <p>13 wrong and as a result, if you made a different</p> <p>14 decision this time, the Industrial Customers</p> <p>15 were think that you are now making the right</p> <p>16 decision. You're not bound by your two</p> <p>17 previous decisions and it is largely a</p> <p>18 question of law, the issue of jurisdiction.</p> <p>19 And the other thing that just comes to mind is</p> <p>20 that in response to your question, my</p> <p>21 understanding and the discussions that counsel</p> <p>22 have had is that one of the things that is</p> <p>23 under consideration by the Board is having the</p> <p>24 Labrador hearing, if a complaint is made and</p> <p>25 we know that it will be made, done as a, sort</p>	<p>1 of, sub-hearing or a part of this process.</p> <p>2 And in those circumstances, this costs</p> <p>3 application would be relevant to this specific</p> <p>4 proceeding.</p> <p>5 COMMISSIONER WHALEN:</p> <p>6 Q. Would be also expect similar applications on</p> <p>7 the Industrial Customers, Ms. Henley Andrews?</p> <p>8 HENLEY ANDREWS, Q.C.:</p> <p>9 Q. Yes, we had always planned to do that.</p> <p>10 MR. CHAIRMAN:</p> <p>11 Q. Anything else? Okay. Thank you very much.</p> <p>12 We will take these matters under consideration</p> <p>13 and will be issuing a written decision</p> <p>14 forthwith as expeditiously as possible. Any</p> <p>15 other matters, Ms. Newman?</p> <p>16 MS. NEWMAN:</p> <p>17 Q. No other matters, Mr. Chairman.</p> <p>18 MR. CHAIRMAN:</p> <p>19 Q. Having heard no other matters, we will, on</p> <p>20 both items, I'll reiterate, be providing</p> <p>21 direction as quickly as possible both on the</p> <p>22 Board's schedule and the matter of costs in</p> <p>23 respect of Labrador City/Wabush. And the</p> <p>24 matter for the time being is adjourned and we</p> <p>25 will, I guess, reconvene, based on the</p>

Page 85

1 MR. CHAIRMAN:  
2 Q. ... schedule at the call of the Chair. Thank  
3 you very much.  
4 Upon concluding at 12:25 p.m.

Page 86

1 CERTIFICATE  
2 I, Judy Moss, do hereby certify that the  
3 foregoing is a true and correct transcript in the  
4 matter of Newfoundland and Labrador Hydro Pre-  
5 Hearing Conference into 2003 General Rate  
6 Application heard before the Board of Commissioners  
7 of Public utilities, Prince Charles Building, St.  
8 John's, Newfoundland and Labrador on the 18th day  
9 of July, 2003 and was transcribed by me to the best  
10 of my ability by means of a sound apparatus.  
11 Dated at St. John's, NL this  
12 18th day of July, 2003  
13 Judy Moss  
14 Discoveries Unlimited Inc.