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<p>1 (2:03 p.m.)</p> <p>2 CHAIRMAN:</p> <p>3 Q. Thank you. Good afternoon. Good afternoon.</p> <p>4 Another nice day for a motions day. Hopefully</p> <p>5 this track record will stay with us throughout</p> <p>6 the deep, dark days of fall and winter</p> <p>7 weatherwise, we won't have to contend,</p> <p>8 hopefully, with very much poor weather during</p> <p>9 the hearing. I suspect there'll be enough</p> <p>10 weather in here during the hearing, let alone</p> <p>11 outside. I'd like to welcome everybody. And</p> <p>12 I don't think, once again, introductions are</p> <p>13 necessary. Although, Mr. Kelly, the gentleman</p> <p>14 with you, I -</p> <p>15 KELLY, Q.C.:</p> <p>16 Q. Mr. Brock Myles, Mr. Chair. He's legal</p> <p>17 counsel with Newfoundland Power in-house.</p> <p>18 CHAIRMAN:</p> <p>19 Q. Good afternoon, Mr. Myles.</p> <p>20 MR. MYLES:</p> <p>21 Q. Good afternoon, sir.</p> <p>22 CHAIRMAN:</p> <p>23 Q. We are here this afternoon, I guess, to hear a</p> <p>24 motion received from the Industrial Customers.</p> <p>25 The application itself is whether or not the</p>	<p>1 issues raised, I guess, in the evidence of EES</p> <p>2 Consulting which I guess is the Board's expert</p> <p>3 and was the subject of the issue at the last</p> <p>4 motions day as to whether or not these issues</p> <p>5 raised in that evidence are to be considered,</p> <p>6 and they are specifically in the application</p> <p>7 itself two items noted, whether the generation</p> <p>8 plant should be classified using the peak</p> <p>9 credit method rather than the load factor</p> <p>10 method, and secondly, whether the transmission</p> <p>11 line and related assets on the Great Northern</p> <p>12 Peninsula should be assigned to Hydro rural or</p> <p>13 to common. And I guess the application itself</p> <p>14 stipulates a related request that if these</p> <p>15 issues are to be considered, the Industrial</p> <p>16 Customers are seeking a postponement of the</p> <p>17 hearing for a period of six weeks to allow for</p> <p>18 preparation of expert evidence on these</p> <p>19 issues.</p> <p>20 We have responses from Newfoundland Power</p> <p>21 and Newfoundland and Labrador Hydro on the</p> <p>22 matter with Newfoundland Power noting in its</p> <p>23 reply, I read, that if either of these issues</p> <p>24 are excluded, the Board should also exclude</p> <p>25 from consideration the issue raised by the</p>
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<p>1 Industrial Customers with respect to</p> <p>2 Newfoundland Power generation credit in the</p> <p>3 Cost of Service Study. It's my understanding</p> <p>4 that we will be treating these as one</p> <p>5 application procedurally in terms of comments,</p> <p>6 is that correct?</p> <p>7 MS. NEWMAN:</p> <p>8 Q. Yes, Chair, Commissioners. The parties have</p> <p>9 agreed that to facilitate the process this</p> <p>10 afternoon all three responses, replies,</p> <p>11 applications will be treated by everyone at</p> <p>12 the same time and follow the usual order. I</p> <p>13 did also want to mention that counsel for</p> <p>14 Labrador City-Wabush was advised of the motion</p> <p>15 day today and has indicated to me orally that</p> <p>16 they weren't going to be participating or</p> <p>17 taking a position on that motion.</p> <p>18 CHAIRMAN:</p> <p>19 Q. Thank you, Ms. Newman. Are there any other</p> <p>20 items before we begin? Ms. Newman, are there</p> <p>21 any other items?</p> <p>22 MS. NEWMAN:</p> <p>23 Q. No. Sorry, Chair.</p> <p>24 CHAIRMAN:</p> <p>25 Q. The order that we'll be proceeding, the</p>	<p>1 Industrial Customers, Newfoundland Power,</p> <p>2 Hydro, the Consumer Advocate and the Board at</p> <p>3 that point in time. I would ask the Panel if</p> <p>4 there are any questions, I won't be asking at</p> <p>5 the end of each presentation or argument but</p> <p>6 if there are any questions throughout the</p> <p>7 course, if you just interject, that would be</p> <p>8 fine. Okay. Good afternoon, Mr. Hutchings,</p> <p>9 are you in a position to introduce your</p> <p>10 motion, please?</p> <p>11 HUTCHINGS, Q.C.:</p> <p>12 Q. Yes, we're prepared to proceed at this time,</p> <p>13 Mr. Chair. It was, I guess, a little over two</p> <p>14 years ago that we sat here at the beginning of</p> <p>15 the 2001 general rate application and talked</p> <p>16 generally about the adversarial nature of</p> <p>17 these particular proceedings, and they are, to</p> <p>18 a large part, adversarial. We discussed, as I</p> <p>19 recall, the notion that as regards to revenue</p> <p>20 requirement issues, for instance, generally</p> <p>21 speaking, the utility applying would be on one</p> <p>22 side of the issues and practically all of the</p> <p>23 intervenors most likely would be on the other</p> <p>24 side. And with regards to cost of service</p> <p>25 issues, often times the utility applying was</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 neutral and the disputes were among the other</p> <p>3 parties who were intervening before the Board.</p> <p>4 And on rate design issues that was sometimes</p> <p>5 the same case, but often times just a single</p> <p>6 intervenor and the utility applying.</p> <p>7 We're now faced with, in our submission,</p> <p>8 should these issues be put before the Board at</p> <p>9 this hearing, moving more toward a situation</p> <p>10 where the parties are, and I think</p> <p>11 unfortunately, facing an additional adversary</p> <p>12 in the proceedings in the person of the Board.</p> <p>13 The Board's previous decision on the</p> <p>14 earlier motion indicated that there was no</p> <p>15 onus on Board counsel to justify filing of any</p> <p>16 evidence. There was no threshold test that</p> <p>17 was required before it was appropriate for</p> <p>18 evidence to be filed on behalf of the Board</p> <p>19 itself. From the point of view of our</p> <p>20 clients, we do regard this as an unfortunate</p> <p>21 circumstance and we have real problems with</p> <p>22 that degree of latitude. I think over the</p> <p>23 long-term the Board may wish to consider</p> <p>24 whether it should state a case to the court to</p> <p>25 get some guidance on that. The alternative</p>	<p>1 would probably be for future applications to</p> <p>2 have to allow a period of maybe six weeks or</p> <p>3 so after the filing of all of the intervenor</p> <p>4 and Board evidence in order that rebuttal</p> <p>5 evidence be filed, if we can be, as we suggest</p> <p>6 we have been here, to some extent ambushed by</p> <p>7 new issues being inserted in the proceeding</p> <p>8 which neither the Applicant nor any of the</p> <p>9 parties have put in issue here.</p> <p>10 There are, as you've said, Mr. Chair, two</p> <p>11 specific issues raised in the EES Consulting</p> <p>12 evidence that we need to address. Hydro in</p> <p>13 its reply has addressed some other issues and</p> <p>14 we feel that Hydro's position in respect of</p> <p>15 those issues is equally valid. They are</p> <p>16 issues that deal with distribution issues that</p> <p>17 don't affect the Industrial Customers at all,</p> <p>18 so we don't take any position on the issues</p> <p>19 themselves, but as a matter of principal and a</p> <p>20 point of practice I think Hydro's position is</p> <p>21 the correct one which mirrors our position on</p> <p>22 the issue of classification of the generation</p> <p>23 plant. That is to say that these--their</p> <p>24 issues, just as that issue were decided</p> <p>25 previously, not raised by any party to the</p>
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<p>1 proceeding and accordingly should not be the</p> <p>2 subject of reconsideration at this hearing.</p> <p>3 The load factor method for classification</p> <p>4 of generation plant was adopted in 1993 after</p> <p>5 the cost of service methodology hearing which</p> <p>6 went on in 1992 and '93 and that decision was</p> <p>7 confirmed by the Board in its order P.U. 7 of</p> <p>8 2002, 2003. At page 105 to 106 of that Order</p> <p>9 the Board dealt with the introductory portion</p> <p>10 of its remarks on the cost of service. And on</p> <p>11 the top of page 106 the Board says, "The Board</p> <p>12 agrees that most of the cost of service issues</p> <p>13 were dealt with in the 1993 generic COS</p> <p>14 hearing and should not be reconsidered here."</p> <p>15 Nothing has changed, Mr. Chair. That should</p> <p>16 still be the position.</p> <p>17 The Application from Hydro to which all</p> <p>18 the intervenors had a chance to respond was</p> <p>19 based upon the use of the load factor method</p> <p>20 which had been adopted in 1993 and confirmed</p> <p>21 in 2002. The Cost of Service Study filed in</p> <p>22 this matter and all the Cost of Service</p> <p>23 Studies and response to RFIs and so on have</p> <p>24 all been filed on that basis. The evidence of</p> <p>25 the parties has been filed on that basis. The</p>	<p>1 issues lists from the parties do not raise</p> <p>2 this question as an issue that anyone need</p> <p>3 spend any time on. And obviously there was</p> <p>4 and would have been no opportunity to consider</p> <p>5 this issue as part of any mediation or</p> <p>6 settlement process since it wasn't an issue</p> <p>7 that any party raised.</p> <p>8 Another significant point here is that</p> <p>9 the cost of service methodology direction, in</p> <p>10 itself, contains a good number of elements.</p> <p>11 The use of the load factor method was part of</p> <p>12 a package and the package that came out of</p> <p>13 that hearing I suspect wasn't 100 percent what</p> <p>14 any particular party to those proceedings</p> <p>15 would have wanted. There were probably any</p> <p>16 number of issues that Hydro would have wished</p> <p>17 decided differently or the Industrial</p> <p>18 Customers would have wished decided different</p> <p>19 or the Consumer Advocate would have wished to</p> <p>20 decide differently. But it came out as a</p> <p>21 package, and the Order stood and people moved</p> <p>22 on, on that basis. Had this one element been</p> <p>23 different there is no way of predicting what</p> <p>24 might have arisen from that 1993 report of the</p> <p>25 Board. There might well have been a request</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 for other proceedings or a review or an appeal</p> <p>3 arising out of that simply because it changes</p> <p>4 the balance of what came out of that Order.</p> <p>5 So, it is necessary to look at whether there's</p> <p>6 any need to pursue that issue again and it's</p> <p>7 necessary to look at what the implications</p> <p>8 would be of reopening that issue. Does</p> <p>9 reopening the peak credit issue raise other</p> <p>10 issues and reopen other issues relative to the</p> <p>11 cost of service, and at this stage it is not</p> <p>12 even possible for us to tell. Obviously there</p> <p>13 are many rules and practices that are built up</p> <p>14 around the cost of service as a result of that</p> <p>15 hearing as regards classification of plant and</p> <p>16 any number of other issues which may give rise</p> <p>17 to a need for reconsideration if this one</p> <p>18 aspect of the order is to be reconsidered.</p> <p>19 Clearly, in getting ready for this</p> <p>20 current hearing we would not have requested</p> <p>21 and did not request our experts to review the</p> <p>22 Cost of Service Study at that level in terms</p> <p>23 of going in and reworking some of the basic</p> <p>24 and essential elements that were incorporated</p> <p>25 in 1993 and confirmed in 2002. We are at this</p>	<p>1 stage unprepared to deal with that issue, and</p> <p>2 in these circumstances, Mr. Chair, we cannot</p> <p>3 get a fair hearing on that issue which is an</p> <p>4 issue of considerable significance to our</p> <p>5 clients in that sofar as we can tell it may</p> <p>6 represent an additional imposed cost to the</p> <p>7 Industrial Consumers in the range of \$2</p> <p>8 million per year. And that is not something</p> <p>9 that our clients in the circumstances where</p> <p>10 they are facing very significant increases</p> <p>11 already can allow to be passed or ignored or</p> <p>12 dealt with without serious consideration and a</p> <p>13 full and fair airing of all the issues related</p> <p>14 to it.</p> <p>15 In preparing for hearings of this nature,</p> <p>16 Mr. Chair, as the Board has found out in the</p> <p>17 past in trying to retain expertise to assist</p> <p>18 it in proceedings of this nature there are a</p> <p>19 limited number of consultants, especially</p> <p>20 within Canada, who have the necessary talents</p> <p>21 and abilities to advise on these types of</p> <p>22 issues. We have been very pleased with the</p> <p>23 assistance that we've gotten from our</p> <p>24 consultants, but they are not a huge firm and</p> <p>25 their personnel are limited. We are not in a</p>
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<p>1 position where we have the ability to access</p> <p>2 other individuals within that firm or other</p> <p>3 consultants to deal with these new issues at</p> <p>4 the same time as we proceed forward and</p> <p>5 attempt to deal with the issues that come up</p> <p>6 day by day as the hearing progresses. We use</p> <p>7 our consultants to assist us in cross-</p> <p>8 examination, we're in constant contact with</p> <p>9 them as the hearing proceeds, notwithstanding</p> <p>10 that they're not in the room, and they are</p> <p>11 directing their efforts almost exclusively</p> <p>12 during long periods of time to the assistance</p> <p>13 of ourselves in pursuing the issues in this</p> <p>14 hearing. So, this is not a case where it is</p> <p>15 possible to run another track of consulting</p> <p>16 issues while we try to deal with all the other</p> <p>17 issues that are on the go in the hearing at</p> <p>18 any new point in time.</p> <p>19 (2:18 p.m.)</p> <p>20 This is totally new evidence. The</p> <p>21 consultants that we have were not involved in</p> <p>22 the 1992 hearing and would need to find out</p> <p>23 all of the detail, obviously, from that</p> <p>24 proceeding and prepare additional evidence if</p> <p>25 these issues are to be considered.</p>	<p>1 This is in effect, as we've said in the</p> <p>2 Application, an Application under the Act to</p> <p>3 reconsider a previous decision. And quite</p> <p>4 clearly, all parties who would be affected by</p> <p>5 such a decision, especially to the extent that</p> <p>6 our clients would be, are entitled to adequate</p> <p>7 notice to prepare for any such</p> <p>8 reconsideration.</p> <p>9 But, the initial point that must be</p> <p>10 considered if we are to look at this as an</p> <p>11 application for reconsideration is whether</p> <p>12 there is reason to reconsider. What are the</p> <p>13 changed circumstances that justify now going</p> <p>14 back and reconsidering the change from--</p> <p>15 reconsidering the method used for</p> <p>16 classification of generation plant. And there</p> <p>17 is nothing, with respect, Mr. Chair, on the</p> <p>18 record that indicates any changed circumstance</p> <p>19 which would justify reopening that decision at</p> <p>20 this time.</p> <p>21 As regards the timing of this</p> <p>22 Application, it is recognized to be late in</p> <p>23 the proceedings, especially in sofar as it may</p> <p>24 result, depending upon the Board's</p> <p>25 determination, in the necessity to delay the</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 opening of the hearing. However, it was, as</p> <p>3 the Application points out, only last week in</p> <p>4 the course of the mediation proceedings or</p> <p>5 while the mediation proceedings were going on</p> <p>6 that we were made aware on September 23, 2003</p> <p>7 that this evidence would be received by the</p> <p>8 Board.</p> <p>9 I note in the reply of Newfoundland Power</p> <p>10 there's a suggestion that the evidence was</p> <p>11 obviously available to us prior to that time</p> <p>12 and that is quite factually correct. However,</p> <p>13 from the point of view of our clients, we do</p> <p>14 not and they would not, and would not consider</p> <p>15 asking a consultant to undertake a project</p> <p>16 that may run into the tens of thousands of</p> <p>17 dollars on the chance that some evidence may</p> <p>18 find its way before the Board. Our clients do</p> <p>19 not live in a world where any expense</p> <p>20 associated with this hearing is automatically</p> <p>21 passed through them to those who use their</p> <p>22 services. These are real costs for our</p> <p>23 clients and it would, in my submission, have</p> <p>24 been irresponsible to waste money as soon as</p> <p>25 this--we became aware of this evidence to</p>	<p>1 retain the expertise that would be necessary</p> <p>2 to reply to it. It is only when we know that</p> <p>3 the case is there to be answered that it is</p> <p>4 appropriate to commit to spending monies of</p> <p>5 those types. And all of this, of course,</p> <p>6 reflects on the situation that the Industrial</p> <p>7 Customers find themselves in here as being the</p> <p>8 only party before the Board who's costs are</p> <p>9 not one way or the another recovered from</p> <p>10 those who use electricity in the province.</p> <p>11 So, Mr. Chair, we have brought this</p> <p>12 matter forward at the earliest time that it</p> <p>13 was possible to do so. It is a situation now</p> <p>14 which is singularly unfortunate in that if</p> <p>15 this what we consider to be an application for</p> <p>16 reconsideration is allowed in the sense that</p> <p>17 this issue needs to go before the Board for</p> <p>18 consideration in this hearing, then it will</p> <p>19 not be possible from our point of view to</p> <p>20 reply properly to that evidence by way of</p> <p>21 further expert evidence which would be</p> <p>22 necessary in a manner which would allow the</p> <p>23 hearing to proceed on the date set for next</p> <p>24 week.</p> <p>25 The other issue that is similar, Mr.</p>
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<p>1 Chair, although it has some different</p> <p>2 considerations attached to it, is the issue of</p> <p>3 the transmission line and related assets on</p> <p>4 the Great Northern Peninsula. The Board did</p> <p>5 indicate in P.U. 7 of 2002, 2003 that this</p> <p>6 issue would be reexamined in the current</p> <p>7 hearing. However, the Applicant here in whose</p> <p>8 interest this matter is brought before the</p> <p>9 Board has accepted the recommendation that</p> <p>10 these assets be assigned specifically to Hydro</p> <p>11 rural, and in all of the material that any</p> <p>12 party before the Board has filed there is no</p> <p>13 dissent from that proposition. It is only in</p> <p>14 a brief and almost incidental remark in the</p> <p>15 evidence filed by EES Consulting that this</p> <p>16 whole issue which took a great deal of our</p> <p>17 time, energy and money last time around is</p> <p>18 thrown back, apparently, into the pile of</p> <p>19 issues to be considered at the current</p> <p>20 hearing. If no party before the Board regards</p> <p>21 it as necessary to reexamine this issue at</p> <p>22 this time, and bearing in mind that the days</p> <p>23 during which the cost of service experts are</p> <p>24 present here in this room for the purpose of</p> <p>25 hearing have been estimated by some to cost in</p>	<p>1 the range of \$40,000 a day, it is, quite</p> <p>2 frankly, beyond our understanding why it</p> <p>3 becomes necessary to spend that sort of money</p> <p>4 to deal with an issue that no party has raised</p> <p>5 before the Board and would result in these</p> <p>6 significant hearing costs should it be</p> <p>7 considered at this time. And again, this is</p> <p>8 not an insignificant issue. We are still</p> <p>9 talking about in excess of a million dollars</p> <p>10 per year of additional costs to the Industrial</p> <p>11 Customers associated with this particular</p> <p>12 item. These are not matters that we can allow</p> <p>13 to slide or hope that people will see our way</p> <p>14 on. These are issues that are significant to</p> <p>15 our clients and cost them real dollars and</p> <p>16 need to be addressed accordingly.</p> <p>17 The application that's been filed then by</p> <p>18 Newfoundland Power, which is in the form of an</p> <p>19 application as opposed to a response to our</p> <p>20 own, suggests that there is another issue that</p> <p>21 ought to be set aside, for the purposes of</p> <p>22 this hearing, and that's the treatment of</p> <p>23 Newfoundland Power generation credit. We find</p> <p>24 it difficult to treat this application as</p> <p>25 credible, quite frankly, because it is clearly</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 reactive and perhaps maybe even retaliatory.</p> <p>3 The point here is that it was very clear from</p> <p>4 the time that our evidence in this matter was</p> <p>5 filed that the Newfoundland Power generation</p> <p>6 credit was an issue for this hearing. Months</p> <p>7 have passed and we have received no motion or</p> <p>8 suggestion on the record that this was an</p> <p>9 inappropriate issue to consider, and now, the</p> <p>10 day after we file an application dealing with</p> <p>11 other unrelated evidence, this issue is raised</p> <p>12 by Newfoundland Power.</p> <p>13 That aside, the Newfoundland Power</p> <p>14 application doesn't address the same issues as</p> <p>15 our application, which is now before the</p> <p>16 Board. The question before the Board in 2001,</p> <p>17 which was raised by the Industrial Customers,</p> <p>18 was whether the Interruptible B contract and</p> <p>19 the generation credit should be granted</p> <p>20 similar treatment, and that is the issue which</p> <p>21 the Board dealt with and determined at pages</p> <p>22 114 through 115 of P.U. No. 7. That was not</p> <p>23 an examination of the issue generally as to</p> <p>24 what was the appropriate treatment of the</p> <p>25 Newfoundland Power generation credit. It</p>	<p>1 merely highlighted the apparently</p> <p>2 discriminatory, in our view, treatment of</p> <p>3 Interruptible B vis-a-vis the generation</p> <p>4 credit, and the Board decided that that issue</p> <p>5 did not merit any action on its part to change</p> <p>6 anything at that time.</p> <p>7 The language that the Board used was to</p> <p>8 the effect that the Board accepts NLH's</p> <p>9 treatment of the generation credit for NP and</p> <p>10 the Interruptible B credit for the IC. I</p> <p>11 don't think it is possible, practically, to</p> <p>12 delete the last part of that sentence and</p> <p>13 simply say that the Board has willy-nilly</p> <p>14 accepted everything to do with the generation</p> <p>15 credit for NP. So this is not an issue that</p> <p>16 was decided previously.</p> <p>17 Further, it is quite clear that the</p> <p>18 circumstances have changed significantly as</p> <p>19 regards this issue since 2001. For one thing,</p> <p>20 the Interruptible B contract has expired and</p> <p>21 is not, at the present time, a current</p> <p>22 contract or anything that the Board can make a</p> <p>23 comparison to, in connection with its</p> <p>24 treatment of the generation credit. As</p> <p>25 indicated in 2001, the generality of the</p>
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<p>1 generation credit was never addressed.</p> <p>2 (2:30 p.m.)</p> <p>3 There are other changed circumstances</p> <p>4 here that makes it fully appropriate that the</p> <p>5 Board address this issue now. First of all,</p> <p>6 there is the suggestion from Newfoundland and</p> <p>7 Labrador Hydro that a demand energy two-part</p> <p>8 rate be used for its sales to Newfoundland</p> <p>9 Power, and quite clearly, once that change is</p> <p>10 made, it becomes necessary to determine, in</p> <p>11 that context, how the generation credit is to</p> <p>12 be dealt with, and I would suggest that most,</p> <p>13 if not all, of the expert reports that have</p> <p>14 addressed the demand energy rate have also</p> <p>15 addressed what happens in respect of the</p> <p>16 generation credit, when that change in rate</p> <p>17 design is made. So the generation credit was</p> <p>18 going to be an issue before this Board in any</p> <p>19 event, as a result of the intention to move to</p> <p>20 the demand energy rate.</p> <p>21 Further, in 2001, this system was</p> <p>22 effectively demand constrained, and it is not</p> <p>23 today. There is, in fact, as the evidence</p> <p>24 shows, a surplus of demand capability,</p> <p>25 capacity, on the system, which makes the</p>	<p>1 treatment of the generation credit a quite</p> <p>2 different issue than it would be in days when</p> <p>3 before Granite Canal and the other purchased</p> <p>4 power. In the purchase power contracts, we</p> <p>5 had concern about additional demand on the</p> <p>6 system.</p> <p>7 And further and beyond that, Mr. Chair, I</p> <p>8 think it still is necessary to recognize a</p> <p>9 fundamental difference between issues raised</p> <p>10 by a party and issues by the Board. Each</p> <p>11 intervenor will take positions and some of</p> <p>12 them will reflect or deny positions that</p> <p>13 Hydro, as the applicant, has specifically</p> <p>14 taken on the record in its evidence. Some of</p> <p>15 them will be new issues that Hydro either saw</p> <p>16 no reason to address, didn't want to address</p> <p>17 or simply didn't think about, in terms of what</p> <p>18 should be decided in determining the</p> <p>19 appropriate rates, which is ultimately what</p> <p>20 this Board must do in the hearing. It is the</p> <p>21 proper function of parties to raise issues of</p> <p>22 that nature. In our submission, that is a</p> <p>23 different thing entirely than having outside</p> <p>24 consultants, not representing a party but</p> <p>25 rather representing the Board, bring new</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 issues to the table that no party has raised.</p> <p>3 So Industrial Customers, as a party to</p> <p>4 these proceedings, and with a specific</p> <p>5 pecuniary interest in these proceedings, have</p> <p>6 raised the issue of the generation credit and</p> <p>7 it is an appropriate issue for the Board to</p> <p>8 consider. However, the issues that--the two</p> <p>9 issues which are identified in the</p> <p>10 application, the transmission plant on the</p> <p>11 Great Northern Peninsula and the method of</p> <p>12 classification of generation plant on the cost</p> <p>13 of service study, are issues that, in our</p> <p>14 submission: have been fully and adequately</p> <p>15 aired previously; in the case of the</p> <p>16 classification issue, has been decided finally</p> <p>17 by the Board and confirmed less than--a little</p> <p>18 bit more than a year ago; and in respect of</p> <p>19 the transmission plant is an issue which no</p> <p>20 party to the proceedings has seen fit to</p> <p>21 challenge from the position that the applicant</p> <p>22 has put.</p> <p>23 In all those circumstances, Mr. Chair,</p> <p>24 and in order to facilitate the timely</p> <p>25 disposition of this application, we are asking</p>	<p>1 the direction of the Board that these two</p> <p>2 issues not be issues for the hearing and that</p> <p>3 we can then proceed with the hearing as</p> <p>4 scheduled for Monday morning coming.</p> <p>5 In the event that those issues are to be</p> <p>6 part of this hearing, and specifically with</p> <p>7 respect to the generation plant issue, we do</p> <p>8 need additional time to prepare appropriate</p> <p>9 evidence to respond to those issues, if the</p> <p>10 Board is to consider them. Those are our</p> <p>11 submissions, Mr. Chair.</p> <p>12 CHAIRMAN:</p> <p>13 Q. Thank you, Mr. Hutchings.</p> <p>14 COMMISSIONER WHALEN:</p> <p>15 Q. Mr. Hutchings, could you just clarify for me</p> <p>16 your position again on the issues raised by a</p> <p>17 party vis-a-vis issues raised by the Board,</p> <p>18 and would I understand your position to be</p> <p>19 that essentially that would preclude the</p> <p>20 Board, I guess, from ever raising any issues,</p> <p>21 unless they come to us from a party or the</p> <p>22 applicant?</p> <p>23 HUTCHINGS, Q.C.:</p> <p>24 Q. No. I would suggest that the appropriate way</p> <p>25 for the Board to proceed, in the event that it</p>
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<p>1 wishes to raise issues of that nature, is to</p> <p>2 proceed by way of a separate proceeding. I</p> <p>3 mean, there's no question that this Board has</p> <p>4 the power to direct matters to come before it</p> <p>5 by its own motion. The Board doesn't have to</p> <p>6 sit and wait for a party to bring an</p> <p>7 application. Should the Board decide that an</p> <p>8 issue needs to get resolved, it is required to</p> <p>9 give appropriate notice to the utility, and</p> <p>10 that's in the Act, but in my submission, it</p> <p>11 would certainly be required, under the rules</p> <p>12 of natural justice, also to give appropriate</p> <p>13 notice to every other party whose interest</p> <p>14 would be significantly affected thereby, and</p> <p>15 that that can then form a separate proceeding</p> <p>16 to be dealt with on that basis.</p> <p>17 But, in connection with an adversarial</p> <p>18 proceeding such as this, where parties are</p> <p>19 identified and parties that have specific</p> <p>20 pecuniary interests have been identified, it</p> <p>21 is not appropriate for witnesses who are being</p> <p>22 called on behalf of the Board, to add to the</p> <p>23 issues list in the way that has been done</p> <p>24 here. If it had been intended by the Board to</p> <p>25 deal with those issues, in my submission, the</p>	<p>1 Board should have given that notice at the</p> <p>2 same time that Hydro filed its application,</p> <p>3 and then everyone could have dealt with it</p> <p>4 appropriately.</p> <p>5 COMMISSIONER WHALEN:</p> <p>6 Q. Even if those issues wouldn't have been before</p> <p>7 the Board until the expert evidence came</p> <p>8 forward?</p> <p>9 HUTCHINGS, Q.C.:</p> <p>10 Q. Well, my point being that the expert evidence</p> <p>11 is or should be subservient to the issue, as</p> <p>12 opposed to vice versa. If the Board has</p> <p>13 concerns about an issue, then, you know, it's</p> <p>14 appropriate for Board counsel to look, in our</p> <p>15 view, to look at what evidence is available</p> <p>16 before the Board to deal with it, and if that</p> <p>17 evidence is found to be insufficient, to</p> <p>18 retain experts and get opinions on the issue.</p> <p>19 But from our point of view, these should not</p> <p>20 be expert-driven issues.</p> <p>21 COMMISSIONER WHALEN:</p> <p>22 Q. Okay. Yes, I understand. I understand that</p> <p>23 difference now. Thank you.</p> <p>24 HUTCHINGS, Q.C.:</p> <p>25 Q. Alternatively, as I said before, you may have</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 to look at a situation where, you know, if the</p> <p>3 Board is going to be introducing issues in the</p> <p>4 same fashion as an intervenor is, then you</p> <p>5 allow the additional time in the schedule to</p> <p>6 make sure that everybody can deal with it.</p> <p>7 CHAIRMAN:</p> <p>8 Q. Mr. Hutchings, am I understanding you</p> <p>9 correctly? I believe you referred to the</p> <p>10 second issue as being one which is only--</p> <p>11 hasn't been raised by any of the parties and</p> <p>12 is only tangentially mentioned in the expert</p> <p>13 evidence. Am I to assume from that, that you</p> <p>14 don't see that second issue in the same light</p> <p>15 as you see the first issue here? That it's</p> <p>16 really a relatively minor--I understand from--</p> <p>17 well, from what you said about the first</p> <p>18 issue, the amount of preparation that's</p> <p>19 required is significant. It's going to be a</p> <p>20 costly venture. You aren't in a position to</p> <p>21 really deal with that evidence, virtually in</p> <p>22 concert with everything else that would be</p> <p>23 going on, if the hearing proceeds on Monday.</p> <p>24 But I didn't detect your same level, and I</p> <p>25 don't want to get confused here, I didn't</p>	<p>1 detect the same level of anxiety, if you will,</p> <p>2 in respect of the second issue.</p> <p>3 HUTCHINGS, Q.C.:</p> <p>4 Q. Well, Mr. Chair, I can't down play the</p> <p>5 importance of the issue because, as I say,</p> <p>6 it's in excess of a million dollars a year for</p> <p>7 our clients. It is one which would be easier</p> <p>8 for our experts to deal with, because they</p> <p>9 have dealt with it before. It doesn't go back</p> <p>10 to the '93 hearing in the same way that the</p> <p>11 first issue does. And you know, that one, in</p> <p>12 and of itself, might not require six weeks to</p> <p>13 prepare for. It is, however, of concern and</p> <p>14 in some sense is of more concern because, you</p> <p>15 know, it's dealt with in like a page and a</p> <p>16 half or two pages in the EES report, and you</p> <p>17 know, a conclusion stated and it's important--</p> <p>18 it is important enough to us that we're not</p> <p>19 prepared to let it be determined on the basis</p> <p>20 of anything other than a complete record. So</p> <p>21 we would need to supplement evidence in that</p> <p>22 regard. It probably wouldn't take us as long</p> <p>23 to get that going as it would with respect to</p> <p>24 the other matter.</p> <p>25 CHAIRMAN:</p>
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<p>1 Q. Thank you very much. Good afternoon, Mr.</p> <p>2 Kelly.</p> <p>3 KELLY, Q.C.:</p> <p>4 Q. Thank you, Chair. Mr. Chair, Commissioners,</p> <p>5 in the applications and the replies that you</p> <p>6 have before you, five issues are raised as to</p> <p>7 how and whether they should be considered by</p> <p>8 the Board in this application, and I'd like to</p> <p>9 start by pointing out that there is, of</p> <p>10 course, a distinction between the Board and</p> <p>11 Board staff, and I will talk about the role of</p> <p>12 Board staff later in my submissions. This</p> <p>13 Board, in its recent decision, was quite</p> <p>14 careful to point out the distinction between</p> <p>15 the Board itself and Board staff and the</p> <p>16 safeguards which are in place to provide for</p> <p>17 that separation.</p> <p>18 In the decision, P.U. 7, as Mr. Hutchings</p> <p>19 read to you, and I just want to reiterate it</p> <p>20 again, the Board, having dealt with cost of</p> <p>21 service issues in 1993, '92/93, addressed its</p> <p>22 mind to the scope to which it would then</p> <p>23 revisit the cost of service issues in its 2002</p> <p>24 decision. And the Board said, "the Board</p> <p>25 agrees that most of the cost of service issues</p>	<p>1 were dealt with in the 1993 generic cost of</p> <p>2 service hearing and should not be reconsidered</p> <p>3 here." That was the decision that the Board</p> <p>4 rendered in June of 2002.</p> <p>5 Less than a year later, Hydro filed its</p> <p>6 application which is now before the Board. So</p> <p>7 Newfoundland Power proceeded on the</p> <p>8 understanding that the Board, having decided</p> <p>9 cost of service issues in 1993 and in the 2002</p> <p>10 Order, did not intend to revisit decided</p> <p>11 issues. The issues that they would reconsider</p> <p>12 were those that they had expressly indicated</p> <p>13 that they intended to revisit in this</p> <p>14 application, for example, the situation on the</p> <p>15 Great Northern Peninsula. And I would note,</p> <p>16 as well, that the Board made no order</p> <p>17 subsequent to June of 2002, the Board itself</p> <p>18 made no order indicating that it intended to</p> <p>19 revisit previously decided cost of service</p> <p>20 issues. And we, therefore, proceeded on the</p> <p>21 basis that cost of service issues, except as</p> <p>22 having been left open by the Board, were not</p> <p>23 being revisited.</p> <p>24 Regulatory efficiency itself requires</p> <p>25 some degree of finality, at least for some</p>

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<p>1 KELLY, Q.C.:</p> <p>2 reasonable period of time, especially in the</p> <p>3 context of the present situation where the</p> <p>4 Board is moving forward to implement its</p> <p>5 regulation of Newfoundland Hydro.</p> <p>6 So where we take issue here is with the</p> <p>7 Industrial Customers and also apparently with</p> <p>8 Hydro, having read Ms. Greene's reply, is with</p> <p>9 respect to the principle of whether the Board</p> <p>10 staff should be treated differently than a</p> <p>11 party, and that is an important point of</p> <p>12 principle that we think must be addressed and</p> <p>13 considered by the Board. We took from the</p> <p>14 Board's previous decision, just a couple of</p> <p>15 weeks ago, that the Board recognized the role</p> <p>16 of Board staff, its regulatory staff, and its</p> <p>17 interest and ability on behalf of the public</p> <p>18 interest generally to bring issues before the</p> <p>19 Board and to present expert evidence.</p> <p>20 (2:45 p.m.)</p> <p>21 In so doing, the Board staff is in an</p> <p>22 equivalent position as parties. It is neither</p> <p>23 in a preferred position nor is it in a</p> <p>24 subordinate position. And I think that is</p> <p>25 extremely important. We do not share the</p>	<p>1 position put forward by the Industrial</p> <p>2 Customers, and apparently by Hydro, that</p> <p>3 somehow Board staff ought to be in some sort</p> <p>4 of subordinate position. It is important that</p> <p>5 this Board not give any special preference to</p> <p>6 the Board staff and its witnesses, but they</p> <p>7 are neither then in a preferred nor</p> <p>8 subordinate position.</p> <p>9 So when you look at the issues that are</p> <p>10 in this particular case, four of the issues,</p> <p>11 the one that Mr. Hutchings has identified, the</p> <p>12 Newfoundland Power generation credit that I</p> <p>13 have identified and the two raised by Ms.</p> <p>14 Greene, were decided in the original cost of</p> <p>15 service study in 1993 and were dealt with</p> <p>16 again in the 2001 study, and the Board has, on</p> <p>17 those four issues, not given any direction or</p> <p>18 indication that it intended to revisit those</p> <p>19 four issues in this particular hearing. So</p> <p>20 that in our--we started from the position that</p> <p>21 all those four issues should be closed.</p> <p>22 That having been said, if the Board</p> <p>23 wishes those issues to be reopened, then all</p> <p>24 of them should be on the table. That there</p> <p>25 should be no cherry picking, so to speak, by</p>
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<p>1 the Industrial Customers. The Industrial</p> <p>2 Customers, Mr. Hutchings, quite rightly</p> <p>3 pointed out that the Board's determination of</p> <p>4 a cost of service decision in 1993 was in many</p> <p>5 ways a package deal. There were a whole group</p> <p>6 of issues considered. There were aspects that</p> <p>7 were decided in one party's favour versus</p> <p>8 aspects decided in another party's favour.</p> <p>9 Each of the parties then determined how they</p> <p>10 would live with that decision, whether they</p> <p>11 would exercise whatever rights they had, so</p> <p>12 that one looked at the totality in making that</p> <p>13 decision. Mr. Hutchings used the phrase "it</p> <p>14 changes the balance of what came out of the</p> <p>15 Order."</p> <p>16 Now in this particular situation, we</p> <p>17 proceeded on the basis that these issues were</p> <p>18 otherwise closed. Mr. Hutchings, with the</p> <p>19 Newfoundland Power generation credit, wishes</p> <p>20 to put back on the table an issue which has</p> <p>21 been decided previously, and I'll come back to</p> <p>22 where in a moment, but which deals with the</p> <p>23 balance between Newfoundland Power's customers</p> <p>24 and the Industrial Customers. At the same</p> <p>25 time, he wishes to preclude Board staff from</p>	<p>1 bringing forth an issue which shifts that</p> <p>2 balance against the Industrial Customers on</p> <p>3 another issue. And in my respectful</p> <p>4 submission, you cannot have it both ways.</p> <p>5 Either the Board, as a matter of deciding that</p> <p>6 they wish all these issues to be revisited,</p> <p>7 should say fine, allow them all to be</p> <p>8 revisited, or the Board should decide that not</p> <p>9 having made an order that these issues would</p> <p>10 be revisited, they are closed to everybody.</p> <p>11 Where does the Newfoundland Power</p> <p>12 generation credit issue get decided? It was</p> <p>13 decided originally, just like the question of</p> <p>14 the classification of generation, as to</p> <p>15 whether the peak credit method or the lobe</p> <p>16 factor method would be used, in the 1993</p> <p>17 study. If you go back to the 1993 decision of</p> <p>18 the Board, they expressly dealt with</p> <p>19 Newfoundland Power's generation credit issue.</p> <p>20 You'll find that at pages 50 through 51. It</p> <p>21 came back before the Board the last time</p> <p>22 around and was decided. The Industrial</p> <p>23 Customers don't get continual kicks at the cat</p> <p>24 on the preference of that issue over other</p> <p>25 issues, because that is improper.</p>

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<p>1 KELLY, Q.C.:</p> <p>2 So our position to the Board is simply</p> <p>3 this: on those issues, the Board should</p> <p>4 determine whether it wants these issues</p> <p>5 reopened or whether it is satisfied that they</p> <p>6 are closed, and that now, as a matter of</p> <p>7 regulatory efficiency, we need to get on to</p> <p>8 the next group of issues. If the Board</p> <p>9 decides that they wish to have them opened,</p> <p>10 then they should all be opened. They should</p> <p>11 be open then to either party, including Board</p> <p>12 staff, to take whatever position they want.</p> <p>13 But it does not seem to me or to Newfoundland</p> <p>14 Power that the Industrial Customers can be in</p> <p>15 the position of saying "well, we wish to</p> <p>16 reopen this issue, but not that issue."</p> <p>17 And that takes me to the evidence which</p> <p>18 was filed on behalf of the Industrial</p> <p>19 Customers. If you go to the evidence, and in</p> <p>20 particular, their table of contents, you will</p> <p>21 see they had a whole section on cost of</p> <p>22 service. They have another whole section on</p> <p>23 the rate design issue, and they raise this</p> <p>24 question of Newfoundland Power's generation</p> <p>25 credit as Section 6.5 as a revisiting of the</p>	<p>1 cost of service study issues, and if any more</p> <p>2 clarity than that is required to demonstrate</p> <p>3 that that's where the Industrial Customers are</p> <p>4 coming from, one need only read the</p> <p>5 introductory sentence of what they say about</p> <p>6 it in Section 6.5, which is "a key item of</p> <p>7 complication in the cost of service is</p> <p>8 Newfoundland Power's own generation." They</p> <p>9 wish to bring that issue exclusively back, and</p> <p>10 that is an attempt to bring back an issue</p> <p>11 which shifts that balance, as Mr. Hutchings</p> <p>12 described it, without, at the same time,</p> <p>13 allowing other parties, the Board staff, to</p> <p>14 bring back other issues.</p> <p>15 We proceeded on the basis that all these</p> <p>16 issues were now decided by the Board in the</p> <p>17 last hearing, especially since there was only</p> <p>18 a period of approximately a year between the</p> <p>19 Board's decision and the current application</p> <p>20 by Hydro. So, to summarize our position,</p> <p>21 essentially is this, the Board should not base</p> <p>22 its decision in these applications upon</p> <p>23 whether the Board staff or a party down here</p> <p>24 raised the issue. That approach is wrong in</p> <p>25 principle. Secondly, the issue should be</p>
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<p>1 determined on whether the Board wishes to have</p> <p>2 these costs of service issues reopened, that</p> <p>3 it has already decided where it has not made</p> <p>4 any order to date that they intended to</p> <p>5 revisit these issues. The third point is</p> <p>6 either all of the issues are open for review</p> <p>7 or none of those issue should be open for</p> <p>8 review. Fourth, the Industrial Customers</p> <p>9 cannot and should not be allowed to pick and</p> <p>10 choose from the cost of service study items</p> <p>11 which they wish to have reopened. And the</p> <p>12 fifth point is the transmission issue on the</p> <p>13 Great Northern Peninsula falls in a different</p> <p>14 category because the Board in its decision</p> <p>15 expressly left open the issue of transmission</p> <p>16 and generation decision for the Great Northern</p> <p>17 Peninsula. And on that issue, the Board staff</p> <p>18 is in the same position as anybody else. It</p> <p>19 is neither preferred nor subordinate in its</p> <p>20 entitlement to raise positions on behalf of</p> <p>21 what it perceives to be in the public</p> <p>22 interest. It is not my job as Newfoundland</p> <p>23 Power's representative to articulate that</p> <p>24 position on behalf of the Board staff, but I</p> <p>25 fear from the lack of submission made by Board</p>	<p>1 staff the last time, that it is important for</p> <p>2 us to do so, because we believe that that is</p> <p>3 the correct principle as to how regulatory</p> <p>4 proceedings should take place. The Board</p> <p>5 staff should neither be subordinate nor</p> <p>6 preferred. Those, Mr. Chair and</p> <p>7 Commissioners, are my submissions, unless you</p> <p>8 have questions.</p> <p>9 I should also say, with respect to the</p> <p>10 question of a delay, we take no position with</p> <p>11 respect to the delay. Once the Board decides</p> <p>12 which issues it is prepared to proceed with,</p> <p>13 we will proceed with whichever time line the</p> <p>14 Board deems appropriate and fair to the</p> <p>15 various parties.</p> <p>16 CHAIRMAN:</p> <p>17 Q. Thank you, Mr. Kelly.</p> <p>18 COMMISSIONER SAUNDERS:</p> <p>19 Q. I have a question. Mr. Kelly, having heard</p> <p>20 you and Mr. Hutchings, I'm somewhat befuddled</p> <p>21 by it all in terms of, this application came</p> <p>22 on from Hydro, was advertised as a general</p> <p>23 rate application. And I think specifically,</p> <p>24 if I recall the notice, it referred to the</p> <p>25 Applicant seeking new rates, new rules and</p>

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<p>1 COMMISSIONER SAUNDERS:</p> <p>2 regulations or amendments to them. And I</p> <p>3 think there's a kind of a catch all at the end</p> <p>4 of that notice saying that the Board would</p> <p>5 consider any other matters that it deems</p> <p>6 relevant. This is the first time that I can</p> <p>7 recall that there's been any issues raised by</p> <p>8 the parties in respect of what can be brought</p> <p>9 forward to the Board at a general rate</p> <p>10 application. And if it's not in your</p> <p>11 interest, as an Intervenor, or in Mr.</p> <p>12 Hutchings' interest as a different intervenor</p> <p>13 or in Mr. Browne's interest or the Applicant's</p> <p>14 interest, it may very well be deemed by the</p> <p>15 Board to be in the general interest of all of</p> <p>16 you and those that aren't represented here.</p> <p>17 So, how do we get into a situation where the</p> <p>18 Board, if it didn't at the outset, say to you,</p> <p>19 certain issues aren't going to be discussed,</p> <p>20 indeed, it said, everything is open, at least</p> <p>21 that's what I read in the notice, then how can</p> <p>22 we sit here this afternoon and try and decide</p> <p>23 what's going to be discussed and what's not</p> <p>24 going to be discussed. You talk about issues</p> <p>25 that are closed as a result of the last order.</p>	<p>1 The last order closed the issue, was rates.</p> <p>2 It said, here are the rates as of today, which</p> <p>3 was the end result of all of the evidence that</p> <p>4 came forward. And if we're going to reopen</p> <p>5 the matter of rates, then how in the name of</p> <p>6 God, can we do that without reopening all of</p> <p>7 the elements that go into the making up of</p> <p>8 those rates? That's what I'm befuddled about.</p> <p>9 KELLY, Q.C.:</p> <p>10 Q. I'll respond to that in -</p> <p>11 COMMISSIONER SAUNDERS:</p> <p>12 Q. I'd like for Mr. Hutchings to as well, when</p> <p>13 you're done.</p> <p>14 KELLY, Q.C.:</p> <p>15 Q. Certainly. I respond to that with two</p> <p>16 comments, Commissioner Saunders. First of</p> <p>17 all, we took what we assumed, perhaps</p> <p>18 incorrectly, from the Board order in June of</p> <p>19 last year that the Board, at least in June of</p> <p>20 last year, did not intend to reconsider the</p> <p>21 cost of service issues. We, therefore, took</p> <p>22 it, correctly or incorrectly, that those</p> <p>23 issues, the Board was giving a message or</p> <p>24 direction that it did not intend on every</p> <p>25 hearing to go back and review again, all of</p>
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<p>1 the cost of service issues because that comes</p> <p>2 from a regulatory efficiency point of view,</p> <p>3 unwielded. That having been said, if, in</p> <p>4 fact, the Board, as you articulate it, wishes</p> <p>5 to have all of these issues on the table, then</p> <p>6 we take no opposition to that. In other</p> <p>7 words, if the Board wishes to have all of</p> <p>8 these issues addressed, then that's fine with</p> <p>9 us from this side of the table. What we</p> <p>10 quarrel with is the position by the Industrial</p> <p>11 Customers that some can be reopened, but not</p> <p>12 others; that the Industrial Customers have</p> <p>13 some right to open the issue or to bring the</p> <p>14 issue forward which does not exist for Board</p> <p>15 staff. That's why in our application, the</p> <p>16 language we attempted to use was quite clear,</p> <p>17 that if the Board intended to limit these</p> <p>18 ones, then that issue should also be limited.</p> <p>19 But we are quite prepared to have it dealt</p> <p>20 with one way or the other, it doesn't matter.</p> <p>21 If the Board believes it would be--it is</p> <p>22 either helpful or desirable or simply as a</p> <p>23 matter of policy, wishes to have all issues</p> <p>24 open in every hearing, then that's fine. We</p> <p>25 will address the matter in that fashion. We</p>	<p>1 take no position in that sense to argue that</p> <p>2 there should be a policy of closing these.</p> <p>3 But what I do say quite strongly is the Board</p> <p>4 staff should be in no different position to</p> <p>5 raise these issues. And secondly, the</p> <p>6 Industrial Customers ought not to be in the</p> <p>7 position of saying, close that one, but keep</p> <p>8 this one open, simply because they're a party.</p> <p>9 Does that assist -</p> <p>10 COMMISSIONER SAUNDERS:</p> <p>11 Q. I understand where you're coming from. Mr.</p> <p>12 Hutchings?</p> <p>13 HUTCHINGS, Q.C.:</p> <p>14 Q. Thank you, Mr. Saunders. I'll respond to you</p> <p>15 now. I'll wait to respond to Mr. Kelly for</p> <p>16 when the proper time arises for that.</p> <p>17 In the broadest possible sense, your</p> <p>18 position is, of course, the correct one that</p> <p>19 any issue can be brought before the Board at a</p> <p>20 general rate hearing. From a practical point</p> <p>21 of view, however, we would be sitting 24 hours</p> <p>22 a day, seven days a week, 365 days a year, if</p> <p>23 nothing ever got decided. So, for reasons as</p> <p>24 my friend has referred to earlier or</p> <p>25 regulatory efficiency, there has to be a</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 definition of what the issues are. And any</p> <p>3 issue can be dealt with provided that all the</p> <p>4 parties are given sufficient notice that these</p> <p>5 issues are going to be dealt with, but it is</p> <p>6 simply impossible for every party to come here</p> <p>7 ready to address every issue that could</p> <p>8 possible arise in this hearing. We come here</p> <p>9 on the assumption that we're using an embedded</p> <p>10 cost of service study, that could be an issue.</p> <p>11 Maybe we shouldn't be using an embedded cost</p> <p>12 of service study. If somebody decides that</p> <p>13 that has to be an issue, then there'd be a lot</p> <p>14 of work done in terms of determining whether</p> <p>15 or not the embedded cost of service is the way</p> <p>16 to go and you'll hear from all sorts of</p> <p>17 experts about that subject.</p> <p>18 Our position is simply one that reflects</p> <p>19 the fact that we need to be able to address</p> <p>20 the issues that are going to determine the</p> <p>21 rates which will impact our clients. We</p> <p>22 haven't picked insignificant things, you know,</p> <p>23 to create issues where they're not there. The</p> <p>24 two points that we've targeted here are big</p> <p>25 ticket items and big ticket items which, from</p>	<p>1 our point of view, were decided previously and</p> <p>2 in respect of which no case has arisen to</p> <p>3 reconsider them. So, given where we are today</p> <p>4 and anticipating starting a hearing on Monday,</p> <p>5 we ask the Board's direction as to whether or</p> <p>6 not we are anticipated to be required to</p> <p>7 respond to these issues in this hearing. If</p> <p>8 these are issues which the Board feels need to</p> <p>9 be addressed, the Board can direct other</p> <p>10 hearings or given postponements or make</p> <p>11 arrangements to have them addressed in the</p> <p>12 appropriate way, but whatever the Board does</p> <p>13 has to be fair to the parties and give the</p> <p>14 parties sufficient opportunity to respond to</p> <p>15 those issues.</p> <p>16 (3:00 p.m.)</p> <p>17 CHAIRMAN:</p> <p>18 Q. Thank you. Good afternoon, Ms. Greene, when</p> <p>19 you're ready, please.</p> <p>20 GREENE, Q.C.:</p> <p>21 Q. Good afternoon, Chair, Commissioners. Hydro's</p> <p>22 perspective is somewhat different than both</p> <p>23 the Industrial Customers and Newfoundland</p> <p>24 Power with respect to the issues before the</p> <p>25 Board this afternoon and hopefully will be</p>
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<p>1 helpful to the Board in considering the issues</p> <p>2 before the Board.</p> <p>3 The first thing I'd like to bring us back</p> <p>4 to is the decision of the Board with respect</p> <p>5 to the filing of evidence by Board hearing</p> <p>6 counsel. So, P.U. 32 which was issued</p> <p>7 September 23rd dealt with the issue of whether</p> <p>8 the calling of evidence, specifically the</p> <p>9 evidence of EES Consulting and Mr. Waverman</p> <p>10 raised a reasonable apprehension of bias.</p> <p>11 And, of course, we all know that the Board</p> <p>12 found that it did not and it allowed the</p> <p>13 evidence to be admitted. What we're dealing</p> <p>14 with today is a different issue, now that the</p> <p>15 evidence has been found by the Board not to</p> <p>16 raise a reasonable apprehension of bias and</p> <p>17 that is whether the Board should given</p> <p>18 direction to certain issues raised in the EES</p> <p>19 report should not be considered in this</p> <p>20 hearing. The principle reason relied on by</p> <p>21 both the Industrial Customers and Newfoundland</p> <p>22 Power is that the Board has already decided</p> <p>23 these issues and Hydro agrees with that</p> <p>24 position and I'll explain why. We may come--</p> <p>25 I'll have different positions with respect to</p>	<p>1 specific issues and I'll outline those as</p> <p>2 well.</p> <p>3 The first that has been raised on which</p> <p>4 the Industrial Customers in their application</p> <p>5 sought direction was with respect to</p> <p>6 classification of generation using the load</p> <p>7 factor method. Mr. Hutchings has correctly</p> <p>8 pointed out that this issue was dealt with in</p> <p>9 the 1993 cost of service hearing and confirmed</p> <p>10 again in the 2002 hearing. And both Mr.</p> <p>11 Hutchings and Mr. Kelly having pointed out</p> <p>12 that the Board have not given any indication</p> <p>13 to any of the stakeholders that they would</p> <p>14 like to have this issue revisited.</p> <p>15 The second issue that I'd like to refer</p> <p>16 is the one raised by Newfoundland Power which</p> <p>17 is the appropriate generation credit that</p> <p>18 Newfoundland Power receives in Hydro's cost of</p> <p>19 service study. This was not specifically</p> <p>20 referred to in the Board order, but was</p> <p>21 approved when the Board approved Hydro's cost</p> <p>22 of service methodology as providing a credit</p> <p>23 for thermal and hydraulic generation of</p> <p>24 Newfoundland Power.</p> <p>25 So, again the Board in P.U. 7 did approve</p>

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<p>1 GREENE, Q.C.:</p> <p>2 a generation credit for Newfoundland Power and</p> <p>3 its use in Hydro's embedded cost of service</p> <p>4 study which was approved by the Board for</p> <p>5 staff to the generic hearing in 1993 and</p> <p>6 again, just last year in August of 2002. We</p> <p>7 had the file order with respect to the rates.</p> <p>8 In our application, we pointed that there</p> <p>9 were two additional issues that are raised in</p> <p>10 the EES report that were specifically dealt</p> <p>11 with in the 1993 hearing and again in the 2001</p> <p>12 GRA, that the Board, in its 2002 decision did</p> <p>13 approve, that is the classification of</p> <p>14 distribution system costs using the zero</p> <p>15 intercept method and the use of one CP</p> <p>16 allocator per distribution demand call. So</p> <p>17 there were four issues approved by the Board</p> <p>18 in 2002 that EES, in their report, had raised</p> <p>19 for--with a different position and approved by</p> <p>20 the Board, just last year. The fifth issue</p> <p>21 which has been raised, which is the assignment</p> <p>22 of the GNP transmission assets, is in a</p> <p>23 different category, in my view. It is clear</p> <p>24 from the Board Order--and I just would like to</p> <p>25 read a couple of sentences from page 113 of</p>	<p>1 the Board Order, where the issue of the</p> <p>2 generation and transmission assets on the</p> <p>3 Great Northern Peninsula were addressed. And</p> <p>4 there in, on page 113 in the second full</p> <p>5 paragraph, the Board stated that based on the</p> <p>6 evidence before it at the hearing, the Board</p> <p>7 is not prepared to confirm the change in</p> <p>8 assignment from NLH rural to common of the</p> <p>9 generation and transmission assets on the GNP.</p> <p>10 They then go on to say and I'm quoting again,</p> <p>11 "The Board will reconsider this issue at</p> <p>12 Hydro's next rate hearing." So the Board</p> <p>13 indicated that it did not feel comfortable</p> <p>14 with and wanted additional analysis submitted</p> <p>15 to the Board with respect to the generation</p> <p>16 and the transmission questions with--on the</p> <p>17 Great Northern Peninsula.</p> <p>18 So of the five issues that have been</p> <p>19 raised by the Industrial Customers,</p> <p>20 Newfoundland Power and ourselves, four were</p> <p>21 clearly approved by the Board in the 2002</p> <p>22 decision. One, the Board clearly indicated</p> <p>23 they wished to revisit again at this hearing.</p> <p>24 So the question that is before the Board</p> <p>25 this afternoon is whether evidence with</p>
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<p>1 respect to any of those five issues should be</p> <p>2 excluded from consideration in this hearing.</p> <p>3 And as Hydro stated when it spoke to the</p> <p>4 Industrial Customer's motion with respect to</p> <p>5 the filing of expert evidence, Hydro does</p> <p>6 believe that Board staff have a right to call</p> <p>7 evidence on a number of issues. Mr. Kelly did</p> <p>8 not correctly characterize our position, that</p> <p>9 Board staff is subservient to other parties;</p> <p>10 that is not the nature of our position in our</p> <p>11 Reply. The Board is faced with a difficult</p> <p>12 situation this afternoon with respect to</p> <p>13 whether there should be consideration of</p> <p>14 Issues. We know that the Board has held two</p> <p>15 hearings on these Issues now, the 1993</p> <p>16 hearing, the 2001 hearing when there was an</p> <p>17 order given just over a year ago, where these</p> <p>18 issues were debated. There was a lot of</p> <p>19 evidence, there was a lot of discussion and</p> <p>20 the Board made decisions on four of the five.</p> <p>21 I am not including the issue of the GNP</p> <p>22 transmission line in that. I support the</p> <p>23 comments of both Mr. Hutchings and Mr. Kelly</p> <p>24 that in the interests of regulatory</p> <p>25 efficiency, there has to be some clarity and</p>	<p>1 some certainty for the parties who are</p> <p>2 involved in this very time consuming,</p> <p>3 expensive process, as to when the Board will</p> <p>4 revisit issues. The Board Order clearly</p> <p>5 indicated in 2002 that it was not</p> <p>6 reconsidering the cost of service methodology,</p> <p>7 with very limited exceptions and one of those</p> <p>8 was the GNP generation and transmission</p> <p>9 assets.</p> <p>10 So in response to Mr. Saunders' questions</p> <p>11 to the other counsel, yes, of course the Board</p> <p>12 can revisit any issue at any time, but first</p> <p>13 the Board obviously would have to consider</p> <p>14 whether it is appropriate to do so, and then</p> <p>15 they would have to give appropriate notice.</p> <p>16 In this particular place (sic.), the clear</p> <p>17 direction to the parties in the last order was</p> <p>18 that the cost of service methodology was</p> <p>19 approved. The parties all filed evidence with</p> <p>20 respect to that and on that basis. When we</p> <p>21 received the expert evidence of the parties</p> <p>22 and Board counsel, it was one of the very few</p> <p>23 issues on which all the parties agreed, which,</p> <p>24 in this hearing, is quite a challenge and a</p> <p>25 feat in itself, I've discovered. So we were</p>

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<p>1 GREENE, Q.C.:</p> <p>2 very pleased that the other parties had not</p> <p>3 raised issues with the cost of service,</p> <p>4 because as like Hydro, they accepted the</p> <p>5 direction that the Board had given last year</p> <p>6 with respect to the cost of service.</p> <p>7 So where the Board is today, they must</p> <p>8 look at it from--as we talked about at the</p> <p>9 last motion day, the Board has a broader role,</p> <p>10 it has a role to act in the public interest,</p> <p>11 which may not coincide with the vested</p> <p>12 interests of each of the parties that you have</p> <p>13 before you today. And what you must ask</p> <p>14 yourself is whether it is in the public</p> <p>15 interest for all of these issues to be</p> <p>16 revisited again, at tremendous expense, when</p> <p>17 we have already had two hearings on the</p> <p>18 matters. Now the issues that I think are in</p> <p>19 that category are the classification of the</p> <p>20 generation using the load factor method, and</p> <p>21 the two that we raised in our Application. I</p> <p>22 have already indicated why we do not believe</p> <p>23 that the Great Northern Peninsula assets are</p> <p>24 in the same category because the Board had</p> <p>25 clearly indicated its view that it wished to</p>	<p>1 revisit. So from the public interest</p> <p>2 perspective, the Board had already indicated</p> <p>3 that it wished to have further analysis.</p> <p>4 Hydro has filed that further analysis and</p> <p>5 Hydro has, in its application, proposed that</p> <p>6 the line remain assigned to Hydro rural, but</p> <p>7 that the generation assets be assigned to</p> <p>8 common. So that analysis has been filed as</p> <p>9 the Board directed last year.</p> <p>10 With respect to the generation credit,</p> <p>11 while the Board did approve that in P.U. 7,</p> <p>12 the issue does arise again as a result of the</p> <p>13 demand charge, which has been raised in this</p> <p>14 hearing. If the Board, and again, the Board</p> <p>15 asked Hydro to file evidence with respect to</p> <p>16 the demand energy rate structure for</p> <p>17 Newfoundland Power, and Hydro has filed a</p> <p>18 report as ordered by the Board. The other</p> <p>19 parties have clearly indicated that that also-</p> <p>20 -it's in Hydro's evidence as well, the demand</p> <p>21 charge also would require a revisiting of the</p> <p>22 generation credit. It must be looked at</p> <p>23 again. So there is a change in circumstance,</p> <p>24 in our view, with respect to the generation</p> <p>25 credit. There has been no change in factual</p>
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<p>1 circumstances which would give rise to the</p> <p>2 Board, in its public interest role, to revisit</p> <p>3 the other issues.</p> <p>4 So we believe and offer to the Board what</p> <p>5 we believe is a reasonable approach to deal</p> <p>6 with the issues before the Board this</p> <p>7 afternoon. We believe that there must be some</p> <p>8 regulatory certainty and stability. We only</p> <p>9 had one year since the last hearing, so if the</p> <p>10 Board does wish to revisit the cost of service</p> <p>11 methodology, I agree with Mr. Kelly and Mr.</p> <p>12 Hutchings that the Board should give notice of</p> <p>13 that to all of the parties well in advance.</p> <p>14 And of course, that is the Board decision to</p> <p>15 make; however, we would point out that we have</p> <p>16 had two hearings on this issue now. One most</p> <p>17 recently concluded just over a year ago. And</p> <p>18 the Board has, at no point since then, given</p> <p>19 any indication that it would like to revisit</p> <p>20 and in fact, P.U. 7 gives the contrary</p> <p>21 indication.</p> <p>22 (3:15 p.m.)</p> <p>23 So we believe we have outlined a</p> <p>24 reasonable approach to the Board in dealing</p> <p>25 with the issues that they have facing them</p>	<p>1 today, which would be to give direction that</p> <p>2 three of the issues raised should not be</p> <p>3 considered in the hearing. We believe the</p> <p>4 generation--the GNP transmission line, because</p> <p>5 of the way the Board had left it in P.U. 7,</p> <p>6 should the Board so decide, reconsider it.</p> <p>7 With respect to the generation credit, we</p> <p>8 believe that that also, because of the change</p> <p>9 in circumstance with respect to the proposed</p> <p>10 demand energy rate, there would have to be</p> <p>11 need to look at the generation credit in the</p> <p>12 context of the new demand energy rate</p> <p>13 structure in any event. However, if the Board</p> <p>14 decides not to give direction to exclude any</p> <p>15 of these issues, we believe that it is not</p> <p>16 appropriate to grant the postponement that's</p> <p>17 requested by the Industrial Customers.</p> <p>18 The tentative schedule or the schedule</p> <p>19 that has been agreed upon by the parties has</p> <p>20 the cost of service evidence starting on</p> <p>21 November 13th. We believe there is adequate</p> <p>22 time for the Industrial Customers to file, if</p> <p>23 they believe necessary, supplementary evidence</p> <p>24 to address those issues prior to when we</p> <p>25 addressed the cost of service issues. We will</p>

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<p>1 GREENE, Q.C.:</p> <p>2 point out that in Hydro's view, it will be</p> <p>3 prejudicial to delay the hearing for Hydro.</p> <p>4 The evidence discloses that the current rates</p> <p>5 do not allow Hydro to recover the cost it is</p> <p>6 incurring in providing this service. If the</p> <p>7 hearing is delayed so that it cannot be</p> <p>8 concluded in a timely way, this will</p> <p>9 exacerbate the position for Hydro. We</p> <p>10 expressed that concern to you at the pre-</p> <p>11 hearing conference with respect to our concern</p> <p>12 on the schedule, and to grant the delay</p> <p>13 requested by the Industrial Customers, would,</p> <p>14 we submit, be prejudicial to Hydro's financial</p> <p>15 position and that there is no prejudice to the</p> <p>16 Industrial Customers who would have adequate</p> <p>17 time if the Board determines that these issues</p> <p>18 should be considered, to file supplementary</p> <p>19 evidence to address the issues.</p> <p>20 That concludes our comments. Thank you.</p> <p>21 CHAIRMAN:</p> <p>22 Q. Thank you very much, Ms. Greene. Thank you.</p> <p>23 Good afternoon, Mr. Browne. When you're</p> <p>24 ready.</p> <p>25 BROWNE, Q.C.:</p>	<p>1 Q. Good afternoon, Mr. Chairman, members of the</p> <p>2 Board. We share in a lot of the comments that</p> <p>3 have been made already. We believe that</p> <p>4 there's sufficient time, if a party wishes to</p> <p>5 make or file supplementary evidence, there's</p> <p>6 sufficient time in the schedule as is for a</p> <p>7 party to do that now, without any prejudice</p> <p>8 because the cost of service people aren't</p> <p>9 testifying for a month yet. And we can all</p> <p>10 read their supplementary evidence, put</p> <p>11 questions to them and yet they can appear</p> <p>12 before the Board to have further questions put</p> <p>13 to them on the various issues.</p> <p>14 Having said that, the complicating factor</p> <p>15 seems to be in the EES Consulting Report. It</p> <p>16 was a complicating factor, from our</p> <p>17 perspective, from the beginning and we took</p> <p>18 the position that it shouldn't have been</p> <p>19 allowed in. The Board saw otherwise and we're</p> <p>20 here and stuck with it. And because they</p> <p>21 raised issues no other party raised to the</p> <p>22 proceeding, it has put everyone in a bit of a</p> <p>23 dilemma. So I think it's incumbent upon the</p> <p>24 Board to state the issues the Board wishes to</p> <p>25 hear in reference to these matters, so that we</p>
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<p>1 can all file the appropriate supplementary</p> <p>2 evidence. If the Board wishes to go back and</p> <p>3 revisit the use of the one CP allocator, tell</p> <p>4 us, please. If the Board wishes to use--go</p> <p>5 back and look at the zero count intercept</p> <p>6 method for classification and distribution</p> <p>7 systems, tell us; or the classification of the</p> <p>8 generation plant using the load factor method,</p> <p>9 we'd like to know so we can file supplementary</p> <p>10 evidence. These are issues our own experts</p> <p>11 thought were long dealt with. I think the</p> <p>12 Board should--the people appearing before the</p> <p>13 Board should be able to rely upon what the</p> <p>14 Board has stated previously in orders. It</p> <p>15 can't be like a "turkey trot", one step</p> <p>16 forward and two steps back. Some progress has</p> <p>17 to be made here.</p> <p>18 I should also add that these applications</p> <p>19 would not be before you if the EEC (sic.)</p> <p>20 Report had not been imposed in the mediation</p> <p>21 efforts. The mediation has failed miserably</p> <p>22 because people did not know what issues the</p> <p>23 Board would deal with as a result of the EEC</p> <p>24 (sic.) Report. That's what has happened here,</p> <p>25 and therefore, left little position for anyone</p>	<p>1 to bargain when we didn't know if the Board</p> <p>2 wanted to address again the one CP allocator,</p> <p>3 or whether the Board did not. And I think</p> <p>4 it's incumbent upon the Board to tell the</p> <p>5 parties what's in issue from that report, so</p> <p>6 we can respond accordingly. There's plenty of</p> <p>7 time to respond. We do not need to delay the</p> <p>8 hearing; the hearing should go ahead as</p> <p>9 scheduled. I don't think anyone is</p> <p>10 prejudiced. If we had to put our experts on</p> <p>11 this week, we would be prejudice, but we're</p> <p>12 not putting them on until sometime in</p> <p>13 November. They work independently and I don't</p> <p>14 see how anyone could--and if anyone needs to</p> <p>15 be recalled from Newfoundland Power following</p> <p>16 their findings on any particular matter, that</p> <p>17 could be done to address that particular</p> <p>18 concise issue. That's our position. Thank</p> <p>19 you.</p> <p>20 CHAIRMAN:</p> <p>21 Q. Thank you, Mr. Browne. Good afternoon, Ms.</p> <p>22 Newman. Do you have any comments?</p> <p>23 MS. NEWMAN:</p> <p>24 Q. Yes, I thought it might be helpful to address</p> <p>25 the delay issue and just at the context of the</p>

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<p>1 MS. NEWMAN: 2 timing that surrounded this EES Report. This 3 report was in fact provided to the parties, 4 while it wasn't filed with the Board, but on 5 September 2nd, a copy of it was provided to 6 the parties. At that time, there was some 7 arrangements made that the parties could have 8 this and the process could proceed so that 9 RFIs could be generated and responses 10 generated, so as not to delay the hearing, and 11 the parties were well aware and agreed with 12 this sort of secondary process that was 13 ongoing. While it wasn't filed with the 14 Board, the parties continued to work towards 15 getting an October 6th start and I think that 16 was clear throughout. There was nothing ever 17 said to me that the issues that were 18 surrounding this report were, in any way, 19 going to lead in a delay in the start of this 20 hearing, and in fact, it was contrary to that, 21 the parties did accept that we were all 22 working towards October 6th, to the extent 23 that that is possible. 24 Counsel for the Industrial Customers has 25 now advised that they might have some</p>	<p>1 difficulty in moving towards that October 6th 2 start. I would indicate that they have asked 3 for six weeks. Should the Board see fit to 4 grant any sort of delay, I would like to 5 indicate that any sort of delay, whether it be 6 a week or six weeks, would likely or possibly 7 lead to difficulties in scheduling and might 8 very well lead to this hearing being somewhat 9 protracted because of the difficulties 10 associated with travel and the scheduling of 11 experts throughout, it's been somewhat 12 difficult. So, any sort of delay might cause 13 more than what you would think in terms of 14 difficulties in moving this matter forward. 15 What I would suggest as an alternate position, 16 if the Board decides, it doesn't want to delay 17 the hearing, but wants to give additional time 18 to the parties to address these items, if 19 they're left as items to be considered, the 20 Board can allow the parties to October 15 to 21 file additional evidence in response to this 22 EES report. And then a period of a further 23 couple of weeks until October 29 for reply 24 evidence to the additional evidence. It is 25 noted that this cost of service evidence is</p>
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<p>1 not to be presented in the hearing until 2 November 17. So, this time line that I 3 suggest allow several weeks from now, a couple 4 of weeks and then a couple of weeks after that 5 time before the cost of service testimony. 6 On the issue of the exclusion of the 7 evidence or exclusion of those issues that are 8 identified in the EES report, I think the 9 parties have fully canvassed the issues 10 surrounding that and I guess, as Board 11 counsel, I would suggest that it is certainly 12 within the realm of the discretion of the 13 Board today to decide that it is not 14 interested in hearing those issues during this 15 hearing and that's the issue before you today. 16 Also, I would like to address 17 the issue of the timing of this order. 18 Obviously, we're to start on October 6 and 19 perhaps, we could look to having a break at 20 the end of this, once we have counsel for the 21 Industrial Customers have their reply, perhaps 22 the Panel could have a break and decide if 23 they could, perhaps, give an oral decision, 24 and if not, some indication as to when they 25 might, in fact, be able to offer a written</p>	<p>1 decision. Those are all my comments. 2 CHAIRMAN: 3 Q. Thank you, very much. Mr. Kennedy, do you 4 have any comments? 5 MR. KENNEDY: 6 Q. No, Chair, only in that if there's a specific 7 question that the Panel has regarding an issue 8 from a technical perspective, certainly, I 9 would do my best to provide that to the 10 counsel. 11 CHAIRMAN: 12 Q. Okay. Thank you very much. Mr. Hutchings, if 13 you could reply, please, I'd appreciate it. 14 HUTCHINGS, Q.C.: 15 Q. Just by way of clarification, I don't know 16 whether Mr. Kelly wants to reply on his 17 application, they're really two. 18 CHAIRMAN: 19 Q. Mr. Kelly - 20 KELLY, Q.C.: 21 Q. I have no problem with going first, if you 22 wish, Mr. Chairman. 23 CHAIRMAN: 24 Q. Yes, I'd appreciate that.</p>

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<p>1 KELLY, Q.C.:</p> <p>2 Q. I'll be very brief. The one point I wish to</p> <p>3 respond on is with respect to the generation</p> <p>4 credit and Ms. Greene's comments and perhaps</p> <p>5 to some extent, Mr. Hutchings' comments in</p> <p>6 respect of that. The thrust of what Ms.</p> <p>7 Greene had to say was that the generation</p> <p>8 credit arises in the context of the demand</p> <p>9 energy rate. Well, that is true, but only in</p> <p>10 part. First of all, it arises only</p> <p>11 incidentally. Hydro's evidence itself</p> <p>12 proposes to maintain the generation credit in</p> <p>13 its existing form. But to the extent that the</p> <p>14 generation credit arises incidentally to the</p> <p>15 demand rate issue, in other words, how it</p> <p>16 should be structured if a demand rate were to</p> <p>17 be raised, that's an incidental issue. Where</p> <p>18 (sic.) I take issue with Mr. Hutchings on is</p> <p>19 the more fundamental issue. As I indicated</p> <p>20 earlier, he has a specific section on cost of</p> <p>21 service, section 6.05, separate from the rate</p> <p>22 design issue, separate from any of that</p> <p>23 incidental discussion saying, look Board,</p> <p>24 revisit this issue. He wants to revisit it on</p> <p>25 the thermal credit issue. Indeed, going all</p>	<p>1 the way back to 1993, thermal issue was the</p> <p>2 issue addressed in 1993. And I say that it is</p> <p>3 wrong for Mr. Hutchings to be able to raise</p> <p>4 that as a separate issue, regardless of what</p> <p>5 the energy rate, wholesale rate structure is</p> <p>6 intended to be and to say to this Board,</p> <p>7 revisit that component of the cost of service</p> <p>8 and not others. And that's, I think, the</p> <p>9 important distinction. That's why I say, this</p> <p>10 particular position put forward by the</p> <p>11 Industrial Customers, if the other points are</p> <p>12 to fall, that particular aspect should fall as</p> <p>13 well. That's my reply.</p> <p>14 CHAIRMAN:</p> <p>15 Q. Thank you, Mr. Kelly. Mr. Hutchings?</p> <p>16 (3:30 p.m.)</p> <p>17 HUTCHINGS, Q.C.:</p> <p>18 Q. Thank you, Mr. Chair. Mr. Kelly states a nice</p> <p>19 bright line, sort of, test to say that one</p> <p>20 just doesn't deal with issues that are already</p> <p>21 resolved and one can't cherry pick, as he</p> <p>22 says, particular issues out of the cost of</p> <p>23 service without putting everything on the</p> <p>24 table. That is the nice bright line, but</p> <p>25 there is not such bright line in the real</p>
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<p>1 world, Mr. Chair. And that's reflected in</p> <p>2 what Mr. Kelly, himself, has already referred</p> <p>3 to from PU-7 of 1 of 6, at page 1 of 6 in the</p> <p>4 2002/2003 Order. After the Board says, it</p> <p>5 agrees most of the cost of service issues were</p> <p>6 dealt with and shouldn't be reconsidered, it</p> <p>7 says, "accordingly the Board will only comment</p> <p>8 on those issues raised with respect to the</p> <p>9 cost of service methodology and the interim</p> <p>10 recommendations noted above, are those issues</p> <p>11 that represent a change from that intended by</p> <p>12 the Board's 1993 generic cost of service</p> <p>13 report".</p> <p>14 So, it's quite clear that there are</p> <p>15 circumstances under which the Board will</p> <p>16 consider particular items within the heading</p> <p>17 of cost of service and it has to be able to do</p> <p>18 that. It doesn't need to reinvent the wheel</p> <p>19 every time, but there can be identifiable</p> <p>20 items such as the generation credit which the</p> <p>21 Board can deal with in some degree of</p> <p>22 isolation. And it is necessary, in our view,</p> <p>23 that this issue be dealt with, not only</p> <p>24 because the circumstances have changed</p> <p>25 relative to the imposition of a demand energy</p>	<p>1 rate on Newfoundland Power, but also the</p> <p>2 circumstances have changed relative to the</p> <p>3 capacity of the system and whether or not the</p> <p>4 value provided to Newfoundland Power by use of</p> <p>5 this generation credit at this point in time</p> <p>6 and given the way the system is configured</p> <p>7 today, as opposed to the way it was configured</p> <p>8 previously, represents a fair allocation of</p> <p>9 costs or whether it produces an unjust and</p> <p>10 discriminatory effect on other customers of</p> <p>11 the system.</p> <p>12 As regards to the issues of postponement,</p> <p>13 Mr. Chair, I think it's become obvious that</p> <p>14 Mr. Browne has a different relationship with</p> <p>15 his consultants than we have with ours. It</p> <p>16 would not be reasonably possible at all for us</p> <p>17 to think that we could be engaged in the</p> <p>18 hearing through the weeks starting on October</p> <p>19 6 and yet, expect our consultants to be able</p> <p>20 to file new material by October 15 or any such</p> <p>21 other date that is suggested. If we're into</p> <p>22 this generation classification issue, this is</p> <p>23 going to involve imparting a great deal of</p> <p>24 information from ourselves to our consultants,</p> <p>25 the analysis of that information, the analysis</p>

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<p>1 HUTCHINGS, Q.C.:</p> <p>2 of the EES material in the context of that,</p> <p>3 the preparation of draft testimony, the review</p> <p>4 of that by ourselves as counsel with the</p> <p>5 consultants and the involvement of those</p> <p>6 persons within our client group who have</p> <p>7 information and expertise in that regard as</p> <p>8 well. It is simply not something that we can</p> <p>9 do and keep this hearing running from our</p> <p>10 point of view at the same time. If that issue</p> <p>11 needs to get dealt with, there is a scheduling</p> <p>12 problem, I can appreciate the magnitude of it</p> <p>13 as Ms. Newman has indicated, but that's where</p> <p>14 we are and either from the point of view of</p> <p>15 those concerns or the concerns that Mr. Greene</p> <p>16 raises in that connection, we would simply</p> <p>17 have to say that Hydro's position would likely</p> <p>18 be more unfavourably affected in the event</p> <p>19 that this Board were to proceed. And it was</p> <p>20 ultimately found that the Board had departed</p> <p>21 from its jurisdiction by failing to provide</p> <p>22 the fair hearing that the parties were</p> <p>23 entitled to and we all had to go back to</p> <p>24 square one and start over. I think this is an</p> <p>25 issue that should be faced immediately and</p>	<p>1 resolved such that we can get on with this at</p> <p>2 the earliest possible time. Thank you, Mr.</p> <p>3 Chair.</p> <p>4 CHAIRMAN:</p> <p>5 Q. Thank you, Mr. Hutchings.</p> <p>6 COMMISSIONER WHALEN:</p> <p>7 Q. Mr. Hutchings, is scheduling still an issue if</p> <p>8 the Board rule that the classification of</p> <p>9 generation plant was not to be considered, but</p> <p>10 still proceeded with the consideration of the</p> <p>11 GNP assignment? Is that still a -</p> <p>12 HUTCHINGS, Q.C.:</p> <p>13 Q. I'm trying to consider the discussions we've</p> <p>14 had with the consultants about that. It is</p> <p>15 obviously quite a bit less of an issue than it</p> <p>16 would be. Whether or not--it's possible that</p> <p>17 we could attempt to live with the current</p> <p>18 schedule, were that issue off the table, but I</p> <p>19 wouldn't rule out the necessity of perhaps</p> <p>20 seeking some other relief during the course of</p> <p>21 the proceedings in the event that it became a</p> <p>22 problem for us.</p> <p>23 CHAIRMAN:</p> <p>24 Q. Thank you. The Board will recess for</p> <p>25 hopefully a short time as possible, but I'm</p>
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<p>1 not sure at this point in time how long that</p> <p>2 will be. We'll ask your indulgence at least</p> <p>3 probably for ten minutes or so, at which time</p> <p>4 we'll report back if there's a necessity to go</p> <p>5 any longer than that and what that time might</p> <p>6 be. Thank you.</p> <p>7 (RECESS - 3:36 p.m.)</p> <p>8 (RESUME - 3:59 p.m.)</p> <p>9 CHAIRMAN:</p> <p>10 Q. Thank you for your indulgence. We are</p> <p>11 prepared to issue an oral decision on some</p> <p>12 issues this evening. There will be one item</p> <p>13 which we would like some further consideration</p> <p>14 and we will reserve on for a written decision</p> <p>15 or an oral decision at a later date.</p> <p>16 With regard to the five issues that are</p> <p>17 before the Board, coming from the parties, I</p> <p>18 guess, various parties arguing for certain</p> <p>19 issues to be excluded, the Board has decided</p> <p>20 that with regard to the zero interest for</p> <p>21 classification of the distribution system</p> <p>22 costs, the use of one CP allocation for</p> <p>23 distribution demand costs, and the</p> <p>24 classification of the generation plant on load</p> <p>25 factor versus peak credit method, that these</p>	<p>1 items will not be revisited by the Board in</p> <p>2 this hearing.</p> <p>3 With regard to the GNP, the Board feels</p> <p>4 there was adequate notice in PU-7 that this</p> <p>5 matter would be before the Board during this</p> <p>6 hearing and that will be heard.</p> <p>7 With regard to the generation credit, the</p> <p>8 Board would like to reserve upon that matter</p> <p>9 at this point in time, but we will have a</p> <p>10 decision on that at the latest, early next</p> <p>11 week.</p> <p>12 A hint there that you've probably derived</p> <p>13 by now, the hearing itself will not be</p> <p>14 delayed. We don't feel it is justified on the</p> <p>15 basis of the decisions in relation to the</p> <p>16 issues. We will be proceeding as scheduled on</p> <p>17 Monday.</p> <p>18 That brings to a conclusion this. We</p> <p>19 will try, as I say, to address that generation</p> <p>20 credit as quickly as possible, it would be</p> <p>21 tomorrow, but I think I promised the last one</p> <p>22 within a day and when we got into the</p> <p>23 evidence, quite frankly, there were more</p> <p>24 issues that required discussion. So, I'm</p> <p>25 reluctant to say tomorrow, but certainly at</p>

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1 the earliest opportunity. Thank you very
2 much.
3 Upon conclusion at 4:02 p.m.

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1 CERTIFICATE
2 I, Judy Moss Lauzon, hereby certify that the
3 foregoing is a true and correct transcript in the
4 matter of a motion by the Industrial Customers and
5 Newfoundland Power relative to Issues at the
6 Hearing and request for postponement, heard on the
7 2nd day of October, A.D., 2003 before the Board of
8 Commissions of Public Utilities, Prince Charles
9 Building, St. John's, Newfoundland and Labrador and
10 was transcribed by me to the best of my ability by
11 means of a sound apparatus.
12 Dated at St. John's, Newfoundland and Labrador
13 this 2nd day of October, A.D., 2003
14 Judy Moss Lauzon