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1 (10:00 a.m.)  
 2 CHAIR:  
 3 Q. Now, we're going to try this. We're not  
 4 socially distanced up here, so I get to take  
 5 my mask off and the rest have to keep theirs  
 6 on. Good morning, everybody. I'd like to  
 7 welcome everyone to the pre-hearing  
 8 conference for Newfoundland Power's 2022,  
 9 2023 General Rate Application. My name is  
 10 Darlene Whalen, I'm the Chair and CEO of the  
 11 Board and I will be the presiding member for  
 12 this proceeding. Other Board members  
 13 joining me on the panel are, starting from  
 14 my left, your right, Christopher Pike,  
 15 Commissioner with the Board; Dwanda Newman,  
 16 Commissioner and Vice-Chair; and John  
 17 O'Brien, Commissioner. We also have  
 18 assisting us at the side table Maureen  
 19 Greene, our hearing counsel; Jackie Glynn,  
 20 our Board counsel; and Cheryl Blundon, our  
 21 Board secretary sitting at the back. This  
 22 pre-hearing conference is being recorded  
 23 under the supervision of the Board secretary  
 24 and will be transcribed and distributed  
 25 electronically following the proceeding.

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1 Before we move the agenda for this morning,  
 2 I'd like to ask the parties seated before us  
 3 to identify themselves and on whose behalf  
 4 you're appearing for the purposes of the  
 5 record and we will start with the Applicant.  
 6 MR. O'BRIEN:  
 7 Q. Good morning, Madam Chair, Commissioners,  
 8 Liam O'Brien, outside counsel for  
 9 Newfoundland Power and with me is Dominic  
 10 Foley, internal counsel for Newfoundland  
 11 Power.  
 12 CHAIR:  
 13 Q. Welcome Mr. Foley to your first proceeding I  
 14 understand?  
 15 MR. FOLEY:  
 16 Q. Yes, thank you.  
 17 CHAIR:  
 18 Q. You're welcome. Consumer Advocate?  
 19 MR. FITZGERALD:  
 20 Q. Good morning, Madam Chair. It's Steve  
 21 Fitzgerald appearing on behalf of the  
 22 Consumer Advocate, Mr. Dennis Browne.  
 23 BROWNE, Q.C.:  
 24 Q. Dennis Browne appearing as the appointed  
 25 Consumer Advocate.

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1 CHAIR:  
 2 Q. Thank you, sirs. Newfoundland and Labrador  
 3 Hydro?  
 4 MS. WALSH:  
 5 Q. Good morning, it's Shirley Walsh, regulatory  
 6 counsel for Newfoundland and Labrador Hydro  
 7 and with me is Kevin Fagan.  
 8 CHAIR:  
 9 Q. Thank you. Welcome everybody. So the  
 10 purpose of our pre-hearing conference this  
 11 morning is to assist with the organization  
 12 and planning for the public hearing of  
 13 Newfoundland Power's application. This  
 14 includes identifying the intervenors,  
 15 setting the schedule and addressing other  
 16 procedural matters. I'd like to now turn to  
 17 Board counsel to ask that she enter the  
 18 matter and confirm issuance of appropriate  
 19 public notice and any other agenda items you  
 20 wish to proceed with immediately following,  
 21 you can carry on.  
 22 MS. GLYNN:  
 23 Q. Thank you, Madam Chair. Good morning to the  
 24 panel and to the parties. On May 27th, 2021  
 25 the Board received a General Rate

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1 Application from Newfoundland Power to  
 2 establish new rates for its customers.  
 3 Newfoundland Power is requesting that the  
 4 Board approve, among other things, an  
 5 overall average increase in current  
 6 electricity rates of 0.8 percent as of March  
 7 1st, 2022. Notice of the application was  
 8 placed on the Board's website and published  
 9 in newspapers throughout the province  
 10 starting on June 12th, 2021. The notice was  
 11 published in The Telegram and The Westcoast  
 12 Wire. The deadline for filing of  
 13 interventions was June 23rd, 2021 and the  
 14 Board has received notice of two Intervenor  
 15 submissions, one from the Consumer Advocate  
 16 and one from Newfoundland and Labrador  
 17 Hydro. Counsel for these Intervenor  
 18 have just been introduced. We have just reached  
 19 agreement on the schedule of dates.  
 20 Following the process of recent general rate  
 21 reviews the schedule will include two rounds  
 22 of requests for information, filing of  
 23 expert reports, followed by another round of  
 24 request for information on those reports.  
 25 There's also a specified period of time for

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1 negotiation discussions before the hearing.  
 2 The dates and the order of the witnesses for  
 3 the hearing will be determined at a later  
 4 date once the issues are explored and  
 5 discussed further. As I just mentioned we  
 6 do have agreement on the schedule of dates  
 7 and that will be entered in the procedural  
 8 order.  
 9 The Rules of Procedure have been  
 10 circulated to the parties and discussed by  
 11 counsel. They are consistent with the rules  
 12 that have been used by the Board on its most  
 13 recent hearings. The Consumer Advocate has  
 14 proposed a change to Section 6(e) which  
 15 Newfoundland Power, I understand, does not  
 16 agree with, so I would ask that counsel  
 17 provide their position on this suggested  
 18 change to the panel and we would start with  
 19 the Consumer Advocate, please.  
 20 MR. FITZGERALD:  
 21 Q. Thank you. Where would we be without a bit  
 22 of controversy to start. Yesterday I had  
 23 communicated with Board counsel regarding  
 24 the proposed change to the information  
 25 request format. This topic has come up in

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1 the past, I believe we discussed it with  
 2 Newfoundland Power’s previous counsel, Mr.  
 3 Hayes, sometime ago at a technical  
 4 conference and it’s also reappeared  
 5 somewhat, this issue in the Midgard Report,  
 6 which I know relates to capital budget  
 7 hearings, but pursuant to their  
 8 jurisdictional scan, it appears that, you  
 9 know, there is an identification of a party  
 10 who is providing response to an RFI and just  
 11 for example, this morning, not to clutter  
 12 you up too early, I have procedural rules  
 13 from B.C., I’d like to just refer to these  
 14 briefly.  
 15 CHAIR:  
 16 Q. Thanks, Steve. Cheryl can take the ones for  
 17 the panel.  
 18 MR. FITZGERALD:  
 19 Q. And I’m just providing this for illustrative  
 20 purposes. This is, these are the rules that  
 21 were referred to in a Fortis B.C. Energy  
 22 case back in 2016. I understand these are  
 23 the current rules that BCUC employs and if  
 24 you look at Section 14, it’s at page 10,  
 25 these are the rules of practice and

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1 procedure, very similar to the rules that  
 2 this Board uses, except if you see at—or  
 3 you’ll see at Section 14(d) it says, “A  
 4 response to an information request must  
 5 identify the appropriate individual in the  
 6 cover letter who can be contacted for  
 7 information related to the information  
 8 request responses and where a response to an  
 9 individual question is responded to by  
 10 persons other than the party to whom the  
 11 information request is directed, i.e.  
 12 consultant expert or other third party, as  
 13 part of the response identify where the  
 14 appropriate person responding to that  
 15 question.” So I don’t think that’s a big  
 16 leap of change, I don’t think, you know, if  
 17 the Board adopted a similar identification  
 18 process that it would inflict any hardship  
 19 on Newfoundland Power or Hydro in the case  
 20 of their applications. You know, the  
 21 situation that we’ve encountered in the past  
 22 is if we’re at a, once the hearing commences  
 23 on the 23rd and we ask a question of a  
 24 witness and that witness indicates, oh well,  
 25 so and so is better off answering that than

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1 I, then we’re in a situation where, you  
 2 know, the hearing is already commenced, we  
 3 have so and so may not be available. It  
 4 would be better, I think, we’d submit, to  
 5 have full disclosure of who the proponents  
 6 are going to be of the evidence prior to the  
 7 hearing starting. Now, I’m assuming that  
 8 for every issue that Newfoundland Power sets  
 9 forward, every segment of their evidence, if  
 10 you will, it’s organized, obviously, and  
 11 there’s, I’m assuming, a team that puts the  
 12 information together and I’m assuming  
 13 there’s a team leader, so that fact exists,  
 14 I’m assuming and I don’t think it would be  
 15 great hardship from the outset for the  
 16 person who is proposing the evidence,  
 17 identify themselves. So that’s essentially  
 18 our submission this. I don’t think it  
 19 deviates from any sort of accepted practice  
 20 in other jurisdictions and I think the B.C.  
 21 example is pretty clear. So that’s our  
 22 submission, we think that that should be an  
 23 adjustment made to the Rules of Procedure.  
 24 MS. GLYNN:  
 25 Q. Thank you. Did you guys have any questions

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1 or the panel have any questions?

2 CHAIR:

3 Q. So you're proposing that where a party

4 directs an RFI to Newfoundland Power, so for

5 example CAMP, Owen (phonetic).

6 MR. FITZGERALD:

7 Q. Yes.

8 CHAIR:

9 Q. And Newfoundland Power responds to that

10 information request, you would like to have

11 the identification of the person that's

12 answering that specific information request?

13 MR. FITZGERALD:

14 Q. Yes, and I'm assuming it would be either the

15 leading of that particular segment of the

16 evidence or whomever, I don't know who it

17 will be, but yes.

18 CHAIR:

19 Q. And you put forward BCUC, so that E where it

20 says "where a response to an individual

21 questions is responded to by persons other

22 than the party to whom the information

23 request is directed, i.e. a consultant,

24 expert", I read that as, for example if

25 there's an information request filed, put to

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1 Newfoundland Power which is responded to by

2 one of their experts or someone who is not

3 within the company, does that –

4 MR. FITZGERALD:

5 Q. That's the way I read it as well.

6 CHAIR:

7 Q. Okay. And the person responding to that

8 question within—from that outside, from that

9 other party other than someone within

10 Newfoundland Power, is that the way that –

11 MR. FITZGERALD:

12 Q. Yes, I guess in the case, I suppose if it

13 was, for example, the cost of capital

14 expert, well then we would know who that is,

15 but if it was like Liberty or a Midgard or

16 something like that, than that type of

17 consultant, then we would –

18 CHAIR:

19 Q. I would assume, for example, cost of capital

20 questions posed on the cost of capital in

21 Newfoundland Power's application would be

22 responded to, perhaps, by Mr. Aucoin who is

23 their –

24 MR. FITZGERALD:

25 Q. Right, in that case, yes.

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1 CHAIR:

2 Q. So you want that identification, yes. Any

3 questions or –

4 COMMISSIONER O'BRIEN:

5 Q. No.

6 CHAIR:

7 Q. Newfoundland Power, would you like to give

8 us your –

9 MR. O'BRIEN:

10 Q. I would. Just to pick up on that last

11 point, I would assume that would be the case

12 anyway, any question that's responded to by

13 someone other than Newfoundland Power,

14 Newfoundland Power would identify who is

15 responding to that and Newfoundland Power

16 wouldn't necessarily adopt that response

17 without notifying the parties as to who

18 prepared that response. But in the normal

19 course of things, I think what's being

20 requested here is a little bit different

21 than what I heard yesterday and what I heard

22 yesterday was to provide the individual's

23 names, whoever prepared the RFI so they can

24 be subject to cross-examination and to me,

25 that's something a little bit different than

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1 what I am hearing today in terms of

2 providing a name as to who prepared the RFI

3 as a team leader, that's somewhat different

4 in that Newfoundland Power, the GRA itself

5 has a number of components and Newfoundland

6 Power will present witnesses on each

7 component as essentially a team leader for

8 each component to adopt the evidence put

9 forward, there's pre-filed evidence and the

10 RFIs, so as far as notification, the parties

11 will receive notification when they hear the

12 names of the witnesses to testify and I

13 mean, there's no subterfuge here when it

14 comes to that and I think each, like the

15 Consumer Advocate is aware of how these

16 things proceed and have proceeded in the

17 past. The idea of naming the individuals

18 makes it a little bit difficult where

19 responding to a RFI is a process, it's not

20 just one individual responding to it.

21 There's a number of people involved and it's

22 an iterant process and to say here's the

23 group of individuals that responded to it,

24 take your pick and you chose who you put on

25 the stand, I don't think that's appropriate

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1 and Newfoundland Power would certainly be in  
 2 a position to tell the Consumer Advocate who  
 3 is going to testify and provide evidence and  
 4 adopt those RFIs in each component, so I  
 5 don't see why there's any necessity to make  
 6 a change and to say there's a jurisdictional  
 7 scan that suggests that this is what's done  
 8 out there, I don't think that's the case  
 9 either. That's not really consistent with  
 10 what we understand to be consistent  
 11 practice, regulatory practice. There may be  
 12 technical conferences where an individual is  
 13 provided as a project leader on a particular  
 14 component where it's appropriate to have  
 15 them come forward and provide answers to  
 16 questions, that sort of thing, but I think  
 17 it's in the hands of the applicant to put  
 18 forth their witnesses and I don't think the  
 19 naming of individuals on that RFI provides  
 20 any source of assistance to the Board or the  
 21 parties. If there's a response that's  
 22 lacking and there's no further RFI process  
 23 to delve into that, there's a Motions Day to  
 24 address that kind of thing, if that's a  
 25 concern. So I really don't think there's a

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1 need for a change in the procedure as being  
 2 requested here.  
 3 CHAIR:  
 4 Q. Thank you. Does Hydro wish to weigh in on  
 5 this one?  
 6 MS. WALSH:  
 7 Q. Sure. Similar to Newfoundland Power, our  
 8 view with respect to RFIs is that it is a  
 9 process where a number of people within the  
 10 organization, you know, have input into  
 11 those RFIs. In terms of the subject matter,  
 12 it could be across a number of teams  
 13 depending on the question that's being asked  
 14 and then through the review process, so we  
 15 view the RFIs as being responses from the  
 16 organization as a whole. And we would view,  
 17 as Newfoundland Power said, our witness  
 18 lists to be the people who could speak to  
 19 all of the issues that we have provided  
 20 evidence upon in an application. With  
 21 respect to the rules, the B.C. rules, the  
 22 way I read these, I think this is what we  
 23 are already doing. So for example, in (d)  
 24 to identify the appropriate individuals in  
 25 the cover letter who can be contacted for

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1 information related to the information  
 2 request responses, that will be, I think  
 3 what we do normally which is a singular  
 4 contact person. If there are questions with  
 5 respect to the RFI responses, they can then  
 6 be processed through that person; and in (e)  
 7 if the response to an individual question is  
 8 responded to by persons other than the  
 9 party, and we view the party as being either  
 10 Newfoundland Power or Newfoundland Hydro, as  
 11 the case may be, identifying if there is  
 12 somebody other than that organization that's  
 13 answering, and we have done that. I think,  
 14 for example in our cost of service  
 15 proceeding we had some RFIs, we had an  
 16 external consultant who was answering some  
 17 of them and we identified that the answer  
 18 was from that external consultant. So I  
 19 think we already do comply with the rules as  
 20 B.C. has set out and I think it would be  
 21 onerous and I'm not sure much of a value add  
 22 if we were to provide the identity of all  
 23 the people who contributed to an RFI  
 24 response. I think that the witness lists  
 25 and the issues lists are certainly

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1 transparent for that purpose.  
 2 (10:15 a.m.)  
 3 CHAIR:  
 4 Q. Thank you, Ms. Walsh. Mr. Fitzgerald, do  
 5 you want to –  
 6 MR. FITZGERALD:  
 7 Q. Yes, it wasn't suggested that we would need  
 8 the names of all those who are collaborating  
 9 on a response, it's just the person who is  
 10 going to adopt and be responsible for the  
 11 information. You, as for the jurisdictional  
 12 scan, I think we're all familiar with the  
 13 Midgard Report to a certain extent, but one  
 14 of the questions that they had asked each  
 15 jurisdiction was are information requests  
 16 and responses sworn into evidence and  
 17 subject to cross-examination? That was a  
 18 question that was put to Utilities. B.C.  
 19 said yes, IR responses go into evidence, and  
 20 can be cross-examined. Alberta, same thing,  
 21 all hearings, intervenors are able to cross-  
 22 examine evidence. Manitoba information  
 23 requests are sworn into evidence, are  
 24 subject to cross-examination. Ontario  
 25 information requests are placed on the

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1 public record and are subject to cross-  
 2 examination; same thing in New Brunswick,  
 3 PEI, Nova Scotia, so it's not a foreign  
 4 practice. Practically speaking, I suppose  
 5 we can do it this way, we can ask an RFI and  
 6 then in the RFI say, "Please identify the  
 7 individual within your organization who can  
 8 best speak to this." And I mean, at that  
 9 point, what is the answer going to be?  
 10 Would the answer from the utility be, "No,  
 11 sorry, we're not going to tell you who that  
 12 is right now." Because if we ask it, why  
 13 wouldn't we be entitled to know. So, you  
 14 know, we're not trying to be complicated  
 15 here at all, we're trying to streamline the  
 16 process. These RFIs or the responses aren't  
 17 orphans, they're owned and someone has to  
 18 own them and the Board maintains  
 19 jurisdiction to allow cross-examination or  
 20 not, we have to not forget that, so you  
 21 know, any kind of abuse of utility witnesses  
 22 wouldn't occur; there's a check on that. SO  
 23 what is the, again, I don't think the  
 24 hardship has been addressed. I don't see  
 25 this as creating any difficulty whatsoever

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1 for the Utilities.  
 2 CHAIR:  
 3 Q. I'm still a bit confused on what your  
 4 specific ask is, Mr. Fitzgerald.  
 5 MR. FITZGERALD:  
 6 Q. If there is some information, say on –  
 7 CHAIR:  
 8 Q. No, I understand—what are you asking the  
 9 change, what are you asking to be the change  
 10 that we make to the procedural rules? You  
 11 wish us to specifically have Newfoundland  
 12 Power, in this case, specifically identify  
 13 who drafted the RFI, who would be  
 14 responsible for it when it gets to hearing  
 15 stage or, I mean, I'm not hearing that you  
 16 suggest the RFIs are not part of the  
 17 evidence.  
 18 MR. FITZGERALD:  
 19 Q. No.  
 20 CHAIR:  
 21 Q. Okay.  
 22 MR. FITZGERALD:  
 23 Q. I guess, you know, I was asked yesterday,  
 24 you know, what some proposed wording would  
 25 be and my suggestion was, it was just a

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1 suggestion, was that, you know, that section  
 2 would change to say a party providing  
 3 response to an RFI shall identify the person  
 4 or persons who can speak to the information  
 5 provided in the response, in the response  
 6 itself, and where directed by the Board, the  
 7 party shall make that person or persons  
 8 available for cross-examination. So it's a  
 9 very simple request. If we ask, you know,  
 10 what are the, you know, load forecasts or,  
 11 you know, how is this determined and who is  
 12 the best person within the utility can  
 13 answer this. And I'm assuming there would  
 14 be a team of people who would come up with  
 15 that, but there would be one person who  
 16 would finally sign off and say, "yes, that's  
 17 correct, we can stand by this evidence."  
 18 MR. O'BRIEN:  
 19 Q. Madam Chair, I would like to address that.  
 20 CHAIR:  
 21 Q. Sure.  
 22 MR. O'BRIEN:  
 23 Q. In terms of talking hardship, we do have to  
 24 look at efficiencies here as well, I think,  
 25 and if we're going to have, for example,

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1 under the finance heading a hundred RFIs and  
 2 you have 18 people as part of that  
 3 responding to different RFIs, if we respond  
 4 by saying "yes, in answer to your questions  
 5 here are the 18 people who did it, each one  
 6 responded to a different RFI". Is it now  
 7 that they be subject to cross-examination on  
 8 each of their RFIs? If that's what is being  
 9 suggested, I think there's an efficiency  
 10 problem here that we run into. The normal  
 11 course is to allow the utility to present  
 12 its case and to put forth an individual who  
 13 can speak to the components of the case and  
 14 adopt the pre-file evidence and the RFIs and  
 15 if need be, have a panel that can do that,  
 16 but that's the choice, should be the choice  
 17 of the utility, not the choice of the  
 18 Consumer Advocate.  
 19 MR. FITZGERALD:  
 20 Q. To that, I mean, I'm assuming that the  
 21 witness list that the utility is going to  
 22 present is developed at some point and that  
 23 witness list must derive, I would think,  
 24 from the information gathering process that  
 25 they have established. So when is the

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1 witness list—if the witness list is provided  
 2 at the end, presumably that witness list  
 3 came from the organizational efforts to  
 4 identify which individual, in which  
 5 department, is coming forward. So I guess  
 6 we’re asking for, you know, can we know who  
 7 the witnesses are prior to the witness list  
 8 being presented?  
 9 MR. O’BRIEN:  
 10 Q. So you want the witness list ahead of the  
 11 RFIs then? There’s a schedule for that, I  
 12 think.  
 13 MR. FITZGERALD:  
 14 Q. No, well I guess, I think that, you know,  
 15 far be it for me to understand the inner  
 16 workings of Newfoundland Power when they’re  
 17 preparing for a GRA, but I’m assuming that  
 18 there would be a team meeting on a  
 19 particular issue and a response would be  
 20 forthcoming from that team, someone, someone  
 21 in a leadership role would say “Yes, this is  
 22 the correct information, we are going with  
 23 this. This is the information.” Now,  
 24 whether there is 18—I’d be surprised if  
 25 there’s 18 leaders on that, but maybe there

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1 are, but I would think in the general chunks  
 2 of information that comes forward, there  
 3 would be one point person and in the RFI if  
 4 we ask, you know, what is the justification  
 5 for this load forecast, who is the best to  
 6 speak to it? You know, anyway, I leave it  
 7 to you.  
 8 MR. O’BRIEN:  
 9 Q. I would just have to say the witness list  
 10 itself is an itinerant process as well, I  
 11 think, and ultimately that’s dependent on  
 12 how many RFIs, what types of questions, who  
 13 is best to put up to respond to all of those  
 14 and who is best to familiarize them with all  
 15 of the responses, so to say that upfront I  
 16 think is difficult and I think the way the  
 17 suggested wording reads suggests that what  
 18 may happen here is that each time there’s an  
 19 RFI that the Consumer Advocate wishes to  
 20 speak to a particular individual on, we’re  
 21 going to have an application to the Board to  
 22 have that individual testify and I think  
 23 that that’s an efficiency issue that the  
 24 Board will run up against.  
 25 CHAIR:

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1 Q. Well all hypothetical, I guess. Does either  
 2 one of counsel sitting here from the Board’s  
 3 perspective want to weigh in or you will  
 4 leave it with us?  
 5 MS. GLYNN:  
 6 Q. We can leave it with the panel. I would  
 7 just state that it is certainly an issue  
 8 that has been raised in the guideline review  
 9 which is currently under consideration by  
 10 the panel as well.  
 11 CHAIR:  
 12 Q. Okay. I think I understand your ask, Mr.  
 13 Fitzgerald. We have the transcript as well,  
 14 so we will be able to read back through that  
 15 as well. Does anyone else want to weigh in  
 16 on this before we close that matter? All  
 17 done, good. Is there anything else that we  
 18 need to deal with today, Ms. Glynn?  
 19 MS. GLYNN:  
 20 Q. No, we are ready to proceed with the  
 21 application. We have the Intervenors  
 22 identified, we have the schedule agreed to  
 23 and the Rules of Procedure with one slight  
 24 request made, so we are ready to go.  
 25 CHAIR:

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1 Q. Okay, so we will issue the procedural order  
 2 shortly in the next couple of days, I would  
 3 expect. We will have to wait to get the  
 4 transcript to make sure that we are clear on  
 5 the Consumer Advocate’s ask and the  
 6 responses. Thank you. If there is nothing  
 7 else, we will adjourn for today and Motions  
 8 Day is October 2nd, might be the earliest we  
 9 see you unless something comes up in the  
 10 interim. Thank you so much.  
 11 Upon conclusion at 10:25 a.m.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of Newfoundland Powe Inc. 2022 – 2023 General Rate Application, Pre-hearing Conference, heard on the 6th day of July, 2021 before the Board of Commissioners of Public Utilities, St. John’s, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John’s, Newfoundland and Labrador this 7th day of July, 2021

Judy Moss

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