

1 (9:00 a.m.)

2 MR. NOSEWORTHY, CHAIRMAN: Good morning, we
3 have a new ventilation and air conditioning system in
4 this building about two months ago that really hasn't
5 operated properly, I think, over, or since that time, and
6 yesterday was a classic example of it, although I think
7 last night they were in here until the wee hours of the
8 morning trying to rectify it, and hopefully it is a little bit
9 better today. I appreciate the stamina, actually, of the
10 witnesses. Not only did they have to endure the heat
11 of the cross-examination, they had to endure the heat
12 of the physical environment as well, so I thank them for
13 their perseverance. Anyway, we'll begin this morning
14 as agreed, with the motion of the Consumer Advocate.
15 What I would propose, I don't know how long that will
16 take but if, indeed, it's completed in advance of the
17 break at 11:00, we will continue on with the cross-
18 examination, and the panel will consider the motion on
19 the break and see where we go from there rather than
20 have a bit of a hiatus after the motion. It's likely to take
21 a little bit of time in any event, and look at it at the break
22 as well, so we will proceed with the motion and see
23 where we finish with that, and if there is some time left
24 before the scheduled break at 11:00, we'll continue on
25 with the cross, okay? Thank you, I'll ask, I guess, Mr.
26 Fitzgerald ... good morning, Mr. Fitzgerald, I'll ask you
27 to speak to the motion initially, please, if that's your
28 proposal?

29 MR. FITZGERALD: Mr. Chairman, this motion arises
30 from CA-87(e), as you know. CA-87(e) made the
31 request, please provide minutes of the company's Board
32 of Directors meetings where the 2003 capital budget
33 was discussed and where corporate approval was
34 granted for the capital budget, and the response from
35 the Applicant, Newfoundland Power, was essentially,
36 no, you can't have that, and their grounds, as I
37 understand it, are quite reasonable, I guess, that there
38 are two previous Board orders that were issued from
39 previous panels on this very similar issue, two
40 procedural orders, one in 1996, I remember that one
41 because I think I argued that motion, and it was denied,
42 and in 1998 there was another similar motion made and
43 it was denied as well, so the question I would think that
44 the panel is asking of themselves, is why are we taking
45 another run at this, and the reason why we are is we
46 believe that the law in Newfoundland regarding
47 disclosure has been changed considerably by the
48 Carter case, which I believe has been circulated to the
49 panel, and in particular, this is a case regarding
50 disclosure under the Rules of Court. I realize this is not

51 court and I'll address the analogous sort of benefit of
52 this decision later.

53 Essentially the Carter vs. Municipal
54 Construction case is a decision of Chief Justice Green,
55 who is our Chief Justice of the Trial Division, dated
56 August 2001, and I might add, this decision has been
57 upheld by our Court of Appeal, and briefly on the facts
58 in the Carter case, there was a litigant seeking
59 disclosure of certain financial documentation of a
60 company, and put the company on notice that they
61 wanted disclosure of this information. The company's
62 response was, no, we want to maintain confidentiality
63 over these documents and we're not obliged to disclose
64 them.

65 Chief Justice Green, in our submission,
66 restated the law on disclosure in Newfoundland in this
67 case. Prior to that, most litigants, I suppose, had
68 understood that relevancy was the test as to whether a
69 document was to be released or not, but I draw your
70 attention, the panel's attention to page 5, paragraph 21
71 of the decision itself, and here I would submit is the
72 actual statement of the law, and Chief Justice Green
73 says, "I would therefore state the rule as to what
74 constitutes a document relating to a matter in question
75 in the proceeding as follows. A document will be said
76 to relate to a matter in question in the proceeding where
77 it is reasonable to suppose it may throw any light on
78 the case in the sense that it contains information which
79 may either directly or indirectly enable the party
80 receiving or seeking the information to advance his or
81 her own case, or to damage the case of his or her
82 adversary, on which it may fairly lead him or her to a
83 train of inquiry which may do so. With all due respect
84 to those who have expressed a contrary view, I do not
85 believe that the test for determining production of
86 documents prior to trial should be tied to the concept of
87 relevance at trial."

88 The court then went on to deal with the issue
89 of confidentiality and I would remind the panel that in
90 the past that is Newfoundland Power's main, as I
91 understand it, their main reason for resistance was this
92 issue of confidentiality. At page 7 of the Carter
93 decision, page, paragraph 30, Chief Justice Green goes
94 on to say this. "Instead, the Defendant's claim that the
95 financial information sought is of a confidential and
96 proprietary nature, and that knowledge of it would
97 provide a competitive advantage to business
98 competitors of the defendant company. While one can
99 sympathize with the concerns of the Defendants in this

1 regard, those considerations do not support a claim of
2 privilege that would in itself justify withholding
3 documents from production. While it is true that Rule
4 32.07(3), provides that an order for production may not
5 be made unless the court is of the opinion that the
6 order is necessary for disposing fairly of the
7 proceeding or for saving costs, generally speaking, the
8 disclosure of a document that might be considered
9 confidential would not amount to an unfair disposition
10 of the proceeding within the meaning of the rule where
11 the document can be said to relate to a matter in the
12 proceeding. On the contrary, if a document relates to a
13 matter in the proceeding, then prima facie, a fair
14 disposition of the proceeding would require its
15 disclosure".

16 Now, certainly that is the law as it relates to
17 Rule 32, which is our disclosure rule in the Supreme
18 Court. Now this is not the Supreme Court, this is the
19 Public Utilities Board, and the next question may arise
20 as to why are we attempting to import this reasoning to
21 this forum. Well, we would suggest that perhaps there
22 is a gap in the procedural regulations. We do know
23 that Regulation 14 allows for information requests,
24 that's quite clear, and Rule 14.2(c) also clearly provides
25 the opportunity for a party to object.

26 However, what direction does the Board take
27 to determine to weigh the issue? What standard is
28 required? And we would suggest that to answer this
29 question you could actually refer to the materials filed
30 by the Applicant, Newfoundland Power, in their
31 materials filed yesterday. There is an excerpt, I'm not
32 sure who the author is actually. It's labelled,
33 "Administrative Tribunals". It appears to be a learned
34 text of administrative law, and at page 12-9 of that text
35 there is a quote which I think the Board might find
36 useful. At the top of the page, the first paragraph, the
37 second sentence, this sentence is included. "One will
38 often find gaps in legislative directions or discover that
39 not all the questions respecting the matter in hand were
40 dealt with. In such cases one looks to the common law
41 requirements of natural justice and fairness to
42 supplement the deficient legislative direction". Well,
43 we are submitting, Mr. Chairman and members of the
44 panel, that there perhaps is, not so much a deficient
45 legislative direction, but there is no direction as to what
46 the Board, what standard the Board should import
47 when deciding these issues.

48 (9:15 a.m.)

49 We're stating that there is a clear standard set
50 out by the Supreme Court in the disclosure rules which
51 now governs the issue of disclosure in that forum, and
52 we would submit that that is a worthy and proper
53 principle that could well be imported here.

54 So essentially we believe the law on disclosure
55 is clearly defined in that forum. We believe that there is
56 room for that standard here. We believe that the
57 resistance, therefore, of Newfoundland Power, while it
58 may have been lawful in the past, we're suggesting now
59 that the law is clear, at least in the Supreme Court, that
60 disclosure, the confidentiality is no defence, or is no
61 reason for resistance. All that has to be at issue is that
62 the document relates to an issue at hand, prima facie.
63 Minutes of the Board of Directors, Newfoundland
64 Power's Board of Directors at their capital budget
65 hearings relate to this hearing, so on that basis, on the
66 reasoning in the Carter case, we would submit that it is
67 fair for Newfoundland Power to have to respond to
68 information request 87(e), and that's essentially our
69 motion.

70 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
71 Fitzgerald. I just have one question, if I may, for
72 clarification, and I probably know the answer but I'll ask
73 it in any event. When you refer here to please provide
74 the minutes of the company's Board of Directors
75 meetings where the 2003 capital budget was discussed
76 and where corporate approval was granted, are you
77 specifically referring to the actual extract of the minute
78 pertaining to the capital budget, or are you seeking the
79 set of minutes per se?

80 MR. FITZGERALD: Actually, I'll ask Mr. Browne, if
81 that's okay, to address that. It was his request.

82 MR. BROWNE, Q.C.: Yes, just the excerpts.

83 MR. FITZGERALD: Yes, the excerpts.

84 MR. NOSEWORTHY, CHAIRMAN: Thank you.
85 Commissioner Finn has a question.

86 COMMISSIONER FINN: Mr. Fitzgerald, your last
87 comment, you indicated that, I think if I paraphrase you
88 correctly, that all that's necessary for the Board to order
89 disclosure in your argument is that the document relate
90 to the matter in question. I'm just wondering how you,
91 how you would relate that comment to the opinion
92 expressed that the Board or the court must also be of

1 the opinion that the document is necessary for
2 disclosing fairly in the proceeding?

3 MR. FITZGERALD: Well, I just accept the Carter
4 decision as, as ... prior to the Carter decision there was
5 much to and fro-ing regarding disclosure of documents
6 and the issue had to be ... the issue was relevance,
7 which was a very narrow view of disclosure. In other
8 words, there was almost a trial within a trial. It's difficult
9 to indicate that a document was relevant if you didn't
10 actually have the document in the first place. You're on
11 the outside looking in to get a document. Judge
12 Green's decision, as I understand it now, has
13 completely broadened that, the rules of disclosure. All
14 that has to be out there on the horizon now is a
15 document that relates to an issue at hand.

16 COMMISSIONER FINN: So are you saying that this
17 particular decision stands to the proposition that if the
18 Board is of the opinion that production is not
19 necessary for disposing fairly of the proceeding, that it
20 should still order production if it feels that the
21 document relates to the matter?

22 MR. FITZGERALD: Commissioner Finn, I'm wondering
23 just which particular extract or ...

24 COMMISSIONER FINN: Paragraph 31, the third line.

25 MR. FITZGERALD: Yes, well I guess that is again in
26 the same context. It's difficult for the court to be of the
27 opinion that disclosure is necessary for disposing fairly
28 of the proceeding or for saving costs. You know, I
29 think what Judge Green is doing there in the following
30 comments is amplifying that restriction that was
31 formally imposed in Rule 32. He's saying, on the
32 contrary, if a document relates to a matter in the
33 proceeding, the prima facie, a fair disposition of the
34 proceeding would require its disclosure. That wording
35 is similar to the previous wording where it says,
36 provides that an order for production may not be made
37 unless the court is of the opinion that the order is
38 necessary for disposing fairly of the proceeding.

39 COMMISSIONER FINN: Thank you.

40 MR. NOSEWORTHY, CHAIRMAN: Thank you,
41 Commissioner Finn. We'll move now to Newfoundland
42 Power's speaking to the motion, please?

43 MS. BUTLER, Q.C.: Thank you, Mr. Chairman, and
44 good morning. I'll start today, if I might, with the

45 reference to the textbook, which is known as McAuley
46 on Administrative Tribunals. My apologies for not
47 giving a copy of the cover sheet. McAuley is spelled
48 M-c-A-u-l-e-y, and the textbook is known as McAuley
49 on Administrative Tribunals, and the underlying
50 principals, first, which the author addresses at page 12,
51 2.6, I think are an important starting point. These are
52 the five basic principals which underlie any hearing.
53 They are a tool to select necessary information. They
54 require structure. They must be fair. The form of the
55 hearings is dictated by the mandate of the Board. And
56 fifthly, and perhaps most important to be relevant to the
57 argument this morning, Mr. Chairman, the role of an
58 agency member is not the same as the role of a judge.

59 I'd like to go now to the page that Mr.
60 Fitzgerald just referred you to, which was 12-9, and
61 following the paragraph that Mr. Fitzgerald read, you
62 will see a second paragraph, my point being that
63 beyond these five general principals which I've just
64 read, the author confirms that having said what he said,
65 the power of Parliament and the Legislature to oust the
66 principles of natural justice and fairness is subject to
67 the guarantees of the Constitution, etcetera, and then
68 following that discussion, onto page 12-10, he
69 concludes with the paragraph starting with the word,
70 "Consequently", in approaching any procedural
71 question such as the one you have today, one first
72 looks to see whether there is a legislative provision
73 dictating the procedure to be followed, and to the
74 extent that that procedure does not conflict with the
75 Charter, (inaudible) or any other paramount provincial
76 statute, one follows that procedure.

77 So let's go back and see what the Board
78 actually has established as its own procedural rule, I
79 wonder if Mr. O'Reilly (*sic*) can put up Regulation 14 ...

80 MR. ALTEEN: Mr. Wells.

81 MS. BUTLER, Q.C.: Sorry, Mr. Wells, Regulation 14.1.
82 We're going to have to, I think, Chris, scroll down
83 please. Is it possible to get 14.1 back? Alright, well
84 let's just read it in this way. Where in any proceeding
85 the Board permits information requests to be directed,
86 which clearly they were, for the purpose of the
87 satisfactory understanding of the matters to be
88 considered, the information requests shall be addressed
89 to the party, numbered consecutively, and I ask you
90 make particular note of this, relevant to the proceeding,
91 and obviously served. So the key words, as
92 Commissioner Finn has already pointed out, in the

1 opening part of Section 14, I'm sorry, Regulation 14.1,
2 for the purpose of the satisfactory understanding of the
3 matters to be considered, but then 14.1(c) in particular,
4 relevant to the proceeding.

5 Newfoundland Power was surprised ... you can
6 keep that on the screen, thank you, Mr. Wells, to
7 receive the, to receive notice that our answer to 87(e)
8 was going to be the subject of a motion, because we
9 were appropriately, we feel in any event, referred the
10 parties to the PU-4 order in giving the answer to CA-
11 RFI-87(e). In other words, the Applicant had been
12 referred back to an order which specifically addressed
13 the issue.

14 In preparing for today's argument we
15 discovered that, in fact, there were two similar, if not
16 identical, orders which had been given following similar
17 procedures, and I'd like to refer you now to the first of
18 these which was PU-4 96/97, and in that order it is page
19 4 which contains the appropriate direction. This Board,
20 perhaps differently constituted, but otherwise the same
21 Board, concluded that the minutes were not public
22 documents and that pursuant to Section 61 of the Act,
23 had been made available to the Board's consultant who
24 reported to the Board on any matter found in the
25 minutes that did not conform. The financial
26 consultant's reports were available to the Consumer
27 Advocate, and as an added assurance, the Board then
28 directed that the Consumer Advocate or its
29 representative could examine the notes of the Board's
30 financial consultants in the presence of the consultant.

31 And then in PU-27, 98/99, at page 5, the
32 appropriate disposition is in relation to what they call
33 DMB-1, where the Board said that it had the
34 responsibility to balance the desire for full disclosure
35 with a requirement to maintain confidential records,
36 such as minutes of meetings of Newfoundland Power's
37 Board of Directors, and therefore consistent with its
38 order, PU-4 96/97, the Board directed its financial
39 consultants to review the minutes identified in DMB-1,
40 and make their notes available to the Consumer
41 Advocate, or his representative, who could examine
42 them in the presence of the consultant.

43 Mr. Chairman, let me say that procedural
44 fairness requires consistency in Board decisions, and
45 that right thinking people will respect rules which are
46 intrinsically right and just, but would not feel the same
47 about rules that were unrighteous or unjust. I ask
48 myself how a departure from a Board's previous

49 position on the identical issue on two prior occasions
50 could be justified when addressing the identical
51 request. The Applicant has not heard any compelling
52 reason for the Board to depart from its previous two
53 rulings on the point, and in fact, in light of these
54 previous two orders, I think it's inappropriate for the
55 Consumer Advocate to make, or to continue to make
56 the same request.

57 I'd like to, again now, to the McAuley text at
58 this time, at page 12-10.

59 COMMISSIONER FINN: Page?

60 MS. BUTLER, Q.C.: 12-10. Should the Board not feel
61 that Regulation 14.1(c) was clear enough, the author
62 indicates that where the legislation is silent or there's a
63 gap to be filled, you can look to common law principles
64 of natural justice and fairness, and in determining the
65 appropriateness of the procedure under the common
66 law, not your regulations, ask yourselves the following
67 questions. What mandate is the agency supposed to
68 be attempting to accomplish through the hearing?
69 Well, clearly you are to determine the appropriateness
70 or reasonableness of Newfoundland Power's capital
71 budget for 2003.

72 Will the procedure contemplated contribute to
73 the accomplishment of this mandate. Newfoundland
74 Power submits that it will not because your duty is to
75 determine the appropriateness of the capital budget for
76 regulatory purposes.

77 Number three, what interests do the
78 participants have? I presume that means the Consumer
79 Advocate, and clearly the Consumer Advocate
80 represents the interests of the consumers. Fourthly,
81 will the procedure contemplated be adequate or will it
82 impede your ability, or Mr. Browne's and Mr.
83 Fitzgerald's ability, to sufficiently know the case to be
84 met and to present their case? Clearly not. Everything
85 that Mr. Browne and Mr. Fitzgerald require to properly
86 present their case is before the Board. The Board of
87 Directors, Newfoundland Power's Board of Directors'
88 approval or discussion of the budget is not relevant to
89 this proceeding, and it's not necessary for the
90 Consumer Advocate's interest.

91 And fifthly, if there was a conflict between the
92 procedure required and for the accomplishment of your
93 mandate and the procedure required for an individual to

1 protect its own interest, then you'd have to balance the
2 two. I conclude myself that there is no conflict.

3 If you look at the paragraph which follows
4 those five principles, you will see, speaking in terms of
5 the tribunal, where one must develop one's own
6 procedures, and quite frankly, I think this Board already
7 has, the key in evaluating the procedural content of the
8 hearing is to determine whether or not the available
9 procedures facilitate or frustrate the opportunity for an
10 informed and effective presentation of a party's case.

11 The Board has developed its own procedures,
12 including information requests. Those information
13 request regulations allowed all parties to ask
14 appropriate questions and to have them answered in an
15 appropriate period of time. This particular application,
16 I conclude, is merely a frustration to the Applicant and
17 to the Board in getting on with its mandate.

18 (9:30 a.m.)

19 I will finally address the case of Carter v.
20 Municipal Construction, which my learned friend
21 addressed this morning, and being mindful first that the
22 role of a judge is different than the role of a Board
23 member, which was the first point that I made this
24 morning from the McAuley text, I would refer you now
25 to paragraph one, which indicates that the Plaintiff had
26 applied for an order pursuant to Rule 32.07. Rule 32.07
27 is one of 50 odd rules which every lawyer in the room
28 knows apply as a bible to the rules of civil procedure in
29 the Supreme Court, Trial Division. They are not
30 applicable to the Provincial Court, not applicable to
31 some degree in the Court of Appeal, and they are not
32 applicable here.

33 Rule 32.07 is very specific, and Judge Green,
34 Chief Justice Greene, at paragraph 6 recites the rule in
35 full for the benefit of those of us who may read his
36 decision and know when it is applicable and when it is
37 not. Rule 32.07, as I suspect Commissioner Finn has
38 already noted in light of his question to Mr. Fitzgerald,
39 says specifically, "The court may order production", so
40 again, it's discretionary, "for inspection by any party of
41 any document relating to any matter in question".
42 Those are the key words, "relating to any matter in
43 question". Then in paragraph 7, he indicates what is
44 necessary in order for the court to exercise its discretion
45 under that rule. Now, our rule which is on the screen
46 says relevance to the proceeding. The rule which
47 Judge Green addressed says ...

48 MR. NOSEWORTHY, CHAIRMAN: What paragraph
49 are you referring to now?

50 MS. BUTLER, Q.C.: Six.

51 MR. NOSEWORTHY, CHAIRMAN: Six.

52 MS. BUTLER, Q.C.: Relating to the proceeding in
53 question, relating to any matter in question.

54 MR. NOSEWORTHY, CHAIRMAN: I thought you had
55 moved from there to another paragraph, I'm sorry.

56 MS. BUTLER, Q.C.: Oh, I'm sorry, on the screen, our
57 regulation ...

58 MR. NOSEWORTHY, CHAIRMAN: Oh, okay.

59 MS. BUTLER, Q.C.: In comparison ... (c) says ...

60 MR. NOSEWORTHY, CHAIRMAN: Okay.

61 MS. BUTLER, Q.C.: ... relevant to the proceeding, and
62 that's the key difference. It's key, Mr. Chairman,
63 because of paragraph 19 of the decision, because in
64 paragraph 19, the Chief Justice concluded that the
65 notion of "relating to" is broader than the concept of
66 relevance discussed earlier. And in the discussion
67 which follows, he explains why the term used in the
68 Supreme Court Rule 32, is broader than the term which
69 is used in your own Regulation 14. Specifically, I refer
70 the panel to his last sentence in paragraph 21, which
71 you will find at page 6 of 10, right at the top of your
72 page. "With all due respect to those who have
73 expressed a contrary view, I do not believe the test for
74 determining production of documents prior to trial" ...
75 again, if I can just insert his words, because the rule
76 says "relating to", "should be tied to the concept of
77 relevance at trial", so he makes the distinction, that
78 relating to is not the same to the concept of relevance,
79 but in this tribunal, we are guided by the wording of
80 your regulation which is relevant.

81 With respect to Mr. Fitzgerald's submissions,
82 therefore, I would say the decision of Chief Justice
83 Green did not change the law in relation to relevance, it
84 just confirmed that in proceedings before the Supreme
85 Court, Trial Division only, in which Rule 32.07 is the
86 guiding rule, the test is relating to and not relevant, and
87 in the end, the documents which the Plaintiffs sought
88 to preclude from disclosure were required to be
89 disclosed but on condition, and you'll see that at

1 paragraph 40. Specifically, paragraph 40, the numbered
2 paragraph 3, and then the conditions are (a), (b), (c),
3 and (d) ... a result really, despite all of that, which is not
4 a whole lot different from what this Board has ordered
5 in the past in terms of PU-4, and PUB-27, to the extent
6 that the Board did direct the financial consultants to
7 review the minutes and make notes available to the
8 Consumer Advocate.

9 Newfoundland Power seeks a Board order
10 denying the Consumer Advocate's request for
11 production of the minutes of Newfoundland Power's
12 Board of Directors' meetings or any part thereof, but an
13 order similar to PU-4 or PU-27 remains acceptable to
14 Newfoundland Power. Thank you.

15 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.
16 Butler, we'll move on now to Newfoundland and
17 Labrador Hydro, good morning, Ms. Greene.

18 MS. GREENE, Q.C.: Good morning, thank you, Mr.
19 Chair, we have no submission to make on this issue.

20 MR. NOSEWORTHY, CHAIRMAN: Thank you very
21 much. Ms. Newman, do you have any comment to
22 make?

23 MS. NEWMAN: Yes, I think the parties have fairly
24 comprehensively addressed the issues that the Board
25 must consider here. I do wish to raise just one point
26 and that is to emphasize that the Board, in reference to
27 the two decisions that have been filed of the Board, the
28 Board is not bound by those decisions, and I did want
29 to just read two excerpts out of the McAuley text which
30 has been referred to for clarity of the record. One is at
31 page 6-6, and it reads as follows. "Decisions of
32 administrative agencies do not create precedence for
33 anyone including the agency. They are at best
34 persuasive. While agencies should strive for
35 consistency, they are not bound by a mechanistic
36 application of earlier administrative decisions. Rigid
37 adherence to consistency can discredit an agent's
38 ability to improvise or adapt. And further, at page 6-7,
39 the author goes on to say, "Stated otherwise, the
40 notion of (inaudible) is not applicable in the
41 administrative sphere. Agencies are not only at liberty
42 not to treat the earlier decisions as a precedent, they are
43 positively obliged not to do so". So I would suggest
44 that the Board is not bound by the earlier two decisions
45 but may have reference to and consider them. Those
46 are my only comments.

47 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.
48 Newman. Does the panel have any questions before
49 we get back to Mr. Fitzgerald?

50 COMMISSIONER WHALEN: I just have one question
51 for Ms. Butler, if I may. Is Newfoundland Power still
52 claiming confidentiality with respect to these
53 documents at issue, is this your position in terms of the
54 disclosure?

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

56 COMMISSIONER WHALEN: And those, do I
57 understand it correctly that the minutes of the Board of
58 Directors are actually not available to even the
59 shareholders of Newfoundland Power, is that ...

60 MR. ALTEEN: The minutes of the Board of Directors
61 of Newfoundland Power are available only to the
62 Directors and Officers of Newfoundland Power. They
63 are not available to shareholders, and shareholders
64 cannot under the corporate law in this province demand
65 access to those minutes, and they are treated as such,
66 on a confidential basis.

67 MR. NOSEWORTHY, CHAIRMAN: Thank you,
68 Commissioner Whalen, Mr. Fitzgerald?

69 MR. FITZGERALD: Thank you, Mr. Noseworthy. Just
70 as a starting point in response, I should, I may have
71 neglected to mention that it was, in fact, Newfoundland
72 Power who put this issue into play. Mr. Ludlow's
73 evidence at page 3, there is a reference, and Mr. Ludlow
74 is describing the budgetary process, and he says, I
75 don't know if we have to go to it right now, but it says
76 ... this is Ludlow's evidence at page 3, it says the
77 budget is then presented to the company's Board of
78 Directors for corporate approval before being submitted
79 to this Board for regulatory approval. And Ms. Butler
80 has focused in on the aspect of Rule 14 regarding
81 relevancy. However, as I understand the previous
82 orders of this Board, PU-4 and PU-27, in neither case
83 did this Board determine that the minutes were
84 irrelevant. That was not addressed. What the Board
85 addressed was Newfoundland Power's submission that
86 they were confidential. It's different, so when we look
87 at Rule 14, we're not looking at the same section that
88 Ms. Butler is referring to. She is referring to the fact
89 that information requests, the Board permits information
90 requests, (a), (b), (c), that are relevant to the
91 proceeding. Having regard to the fact that Mr. Ludlow
92 has mentioned the minutes, we believe that the test of

1 relevancy has been passed. The Board has never ruled
2 that the minutes are irrelevant, so we look at the Carter
3 decision then regarding the resistance on the grounds
4 of confidentiality, and I think, I won't read Chief Justice
5 Green's comments again, but really, the upshot of it is
6 is that it's no defence that confidentiality is a reason to
7 resist disclosure of documentation, whether it relates to
8 it or whether it's relevant. Yes, surely there can be
9 safeguards put on the release of the information. It is
10 our submission that the safeguards that were put in the
11 past were too stringent. There are other safeguards
12 that the panel could consider if they were inclined to
13 grant the order to release these, the minutes of the
14 Directors' meetings.

15 So, again, just to repeat our earlier submission,
16 we believe the Carter case is reliable, the Board can rely
17 upon it. There is a gap in the legislative direction when
18 it comes to how the Board decides what to do in an
19 issue like this, when one party is claiming
20 confidentiality. They're not claiming relevance ... well
21 they're claiming that, but the Board has not made that
22 determination, as I've already said, so what can the
23 Board look to. We're merely stating that the Carter case
24 is a very clear, reasoned, understandable, appropriate
25 approach to a problem like this, that gives the Board
26 guidance, and again, on that basis, we believe that
27 there is, that the minutes are relevant, and should be
28 disclosed, and the rules do provide for it, combined
29 with the case law, and that's essentially our submission.

30 MR. NOSEWORTHY, CHAIRMAN: Mr. Fitzgerald,
31 you did indicate that safeguards that have been
32 previously put in place by the Board in relation to the
33 order were too stringent, you did indicate as well that
34 there were other conditions that the Board may apply
35 depending on its ... what conditions were you referring
36 to?

37 MR. FITZGERALD: Well, I would think, Mr. Chair, that
38 you know, obviously we don't take lightly
39 Newfoundland Power's interest in confidentiality, and
40 it's not something, you know, we would contemplate
41 non-publicity of it. You know, it's not a media
42 business. It could be in a controlled examination, not
43 necessarily extracts provided, but an opportunity to
44 review in the presence of an officer ... many fold types
45 of safeguards could be, you know, could be imposed.

46 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
47 Fitzgerald. That concludes, I guess ... Commissioner
48 Whalen would like to ask a second question.

49 COMMISSIONER WHALEN: Just in terms of your last,
50 second to last comment, Mr. Fitzgerald, and keeping in
51 mind for me, that the Board, the panel still has Section
52 14.1(c) of the Regulations, I think, as its primary, to use
53 for its primary guidance. You just said that the minutes
54 are relevant, that the Board of Directors' minutes are
55 relevant, that was your submission?

56 MR. FITZGERALD: Yes.

57 (9:45 a.m.)

58 COMMISSIONER WHALEN: Could you expand on
59 that for me? I mean I'm not sure how you, could you
60 expand on how the minutes of the Board of Directors
61 are relevant to what we have before us?

62 MR. FITZGERALD: The ... Mr. Ludlow has described
63 the process of budgetary approval. I guess, the, our
64 approach has been to understand a company that is
65 regulated on rate base. To what extent are the Directors
66 cognizant of their, of their, you know, the world that
67 they're in when they're formulating their budgets.
68 They're not a company like IBM or whatever, like who
69 would have different concerns. We believe that the,
70 since it's an integral part of the budgetary process, it's
71 the signing off, these are the directing minds of the
72 company, that surely what they have to say about this
73 issue would be relevant.

74 COMMISSIONER WHALEN: That's your submission?

75 MR. FITZGERALD: Yes.

76 COMMISSIONER WHALEN: Did the safeguards that
77 the Board put in place in the previous orders, PU-4, and
78 PU-27, the Board directed that you were able to review
79 the minutes of our financial consultant's notes, or the
80 notes that the financial consultant made in reviewing
81 the minutes, in the presence of the financial consultant,
82 did you actually do that?

83 MR. FITZGERALD: I believe that was done,
84 Commissioner Whalen, Mr. Browne has indicated that
85 that was done. That was done, as I understand it.

86 COMMISSIONER WHALEN: And did that assist you
87 at that time in terms of the examination?

88 MR. FITZGERALD: I personally wasn't involved in the
89 review, and perhaps Mr. Browne could ...

1 COMMISSIONER WHALEN: I've got no difficulty in
2 Mr. Browne answering the question if that's ...

3 MR. FITZGERALD: Okay.

4 MR. BROWNE, Q.C.: Yes, on previous occasions we
5 did, your financial consultants did review the notes and
6 did provide to us information in reference to what was
7 in the notes, that was the process that was used.

8 COMMISSIONER WHALEN: What was in the minutes.

9 MR. BROWNE, Q.C.: Yeah, they told us what was in
10 the minutes essentially, which we thought very bizarre,
11 I mean why couldn't we look at the minutes ourselves,
12 so they looked at them and told us essentially what was
13 in the minutes. I think they're not lawyers, they
14 mightn't look at the minute with the same jaundiced
15 view that we might have, so we would like to look at
16 them ourselves in a controlled environment and we're
17 all Officers of the Court, and we all understand
18 confidentiality and the need for confidentiality. We
19 represent clients all of the time, and we respect their
20 confidentiality, so that standard could be imported in
21 reference to this. At the same time, if we see something
22 in those notes that will, that cause us concern, we
23 obviously will have to bring it to the attention of the
24 Board, so it's not just a matter of looking and saying
25 that's all very nice, we're at a ... we're searching for
26 information here which may be relevant and it's part of
27 our due diligence in doing our case here on behalf of
28 the consumer.

29 COMMISSIONER WHALEN: Was there anything of
30 concern in your previous two reviews?

31 MR. BROWNE, Q.C.: I can't recall now if that was or
32 was not the case, but that was the process that was
33 used. He looked at the notes, your financial
34 consultants, and then we met with him and he told us
35 essentially what was in the notes.

36 COMMISSIONER WHALEN: And I understand earlier,
37 that Mr. Fitzgerald confirmed that the extract from the
38 minutes was all you were seeking in reference to the
39 particular ...

40 MR. BROWNE, Q.C.: Yeah, we're not seeking all of the
41 ... this is quite focused, all we're seeking is references in
42 the minutes to the capital budget.

43 COMMISSIONER WHALEN: Okay, thank you, that's
44 what ...

45 MR. NOSEWORTHY, CHAIRMAN: Just one comment,
46 Mr. Browne, on your minutes, or words, certainly the
47 perspective that our financial consultant might put on
48 those words may be entirely different than yours, quite
49 clearly ... but if you're aware of the words you can put
50 your own spin on that, I'm sure.

51 MR. BROWNE, Q.C.: That's why we would like to see
52 the notes ourselves. You might have confidence in
53 your financial consultants from a, from a financial
54 perspective in reviewing matters, but they are not
55 lawyers. We would like to look at the notes from a legal
56 perspective ourselves.

57 MR. NOSEWORTHY, CHAIRMAN: Thank you very
58 much, Commissioner Whalen, Mr. Fitzgerald and Mr.
59 Browne, that concludes the consideration of the motion
60 before us, and as I said, we will undertake at the break
61 to consider that matter as to its disposition. I would
62 ask now if we could continue with the cross-
63 examination, and would the witnesses be prepared to
64 take the stand or do you require a few minutes, Mr.
65 Hughes?

66 MR. HUGHES: I would love a few minutes.

67 MR. NOSEWORTHY, CHAIRMAN: Why don't we just
68 take five minutes if we could do that please and we'll
69 return.

70 *(break)*

71 *(10:00 a.m.)*

72 MR. NOSEWORTHY, CHAIRMAN: At least
73 everybody is more comfortable now, I have great
74 sympathy for the feeling. Good morning, Mr. Hughes
75 and Mr. Perry, I wonder if we could continue with
76 Newfoundland and Labrador Hydro's cross-
77 examination, Ms. Greene?

78 MS. GREENE, Q.C.: Thank you, Mr. Chair. Good
79 morning.

80 MR. HUGHES: Good morning.

81 MS. GREENE, Q.C.: Yesterday we had talked about
82 when an expense is capitalized or treated as an
83 operating expense and we had just then started to talk

1 about what gets included in the cost of a project when
2 it is capitalized, and I wanted to talk a little bit more
3 about with you this morning. When Newfoundland
4 Power files its budget, it only provides the lump sum or
5 the bottom line cost of a project, is that correct, when
6 you file your application?

7 MR. PERRY: Yes.

8 MS. GREENE, Q.C.: So when you look at the total cost
9 of a project, I wanted to explore what goes into that
10 total project cost. Obviously, associated materials
11 costs go into that, is that correct?

12 MR. PERRY: Yes.

13 MS. GREENE, Q.C.: Okay, with respect to labour costs,
14 would there be internal labour costs allocated to a
15 project, and this is what we had started to talk about
16 yesterday.

17 MR. PERRY: It depends on the project, obviously, but
18 like if it's a distribution line that we're building, for
19 example, yes, there is an estimate of internal labour that
20 would be associated with that line.

21 MS. GREENE, Q.C.: And it could also be external
22 labour costs, is that correct?

23 MR. PERRY: Contractor labour, yes.

24 MS. GREENE, Q.C.: So if we could look, please, at
25 NLH-42.

26 MR. PERRY: 42?

27 MS. GREENE, Q.C.: 42, the response to NLH-42. As I
28 understood this answer and your answers yesterday,
29 the amount shown in the second line is employees
30 salary charged to capital in thousands of dollars would
31 be the amount of Newfoundland Power's internal costs
32 for each of those years that were charged to capital, is
33 that correct?

34 MR. PERRY: That is correct, Ms. Greene, what I would
35 like to also add is what you have there is the base
36 salary of employees. It does not include the fringe
37 benefits.

38 MS. GREENE, Q.C.: Okay.

39 MR. PERRY: We also charge fringe benefits on a
40 similar percentage to capital as well, and as I ... I have
41 confirmed since yesterday that we do, in fact, timesheet
42 all the charges, and by a project by project basis, so the
43 labour as well as a portion of each employee's benefits,
44 I believe it's on a ratio of 28 percent of labour costs,
45 gets charged to the capital project, and the only one
46 that doesn't flow that way is pension costs, which
47 comes in through the GEC calculation.

48 MS. GREENE, Q.C.: So the information provided in
49 NLH-42 then is the direct salary costs?

50 MR. PERRY: Yes, if the employee's base salary, for
51 example, is \$40,000, then what we're showing there for
52 2001 forecast is that 26 percent of that employee's
53 salary would have been ... if that was the percentage
54 that that employee work on the project, that's what
55 would be included from the table's perspective, as well
56 the benefits on that \$40,000, 26 percent of those
57 benefits would also have been charged to capital
58 projects.

59 MS. GREENE, Q.C.: With respect to the 2002 forecast,
60 the amount indicated of \$9,870,000 is 23 percent of your
61 total salary direct labour cost, is that correct?

62 MR. PERRY: Yes.

63 MS. GREENE, Q.C.: And I believe in your evidence
64 you've also indicated that your employee complement
65 is 665, including permanent and temporaries, is that
66 correct?

67 MR. PERRY: Well, we have 665 full-time equivalents.

68 MS. GREENE, Q.C.: And is that what this table relates
69 to as well, because that's the way I understood your
70 table, full-time equivalents?

71 MR. PERRY: Yes, this would be total salary costs of
72 the company, the top line of all company temporary and
73 full-time employees for the period in question here.

74 MS. GREENE, Q.C.: So it would be on a comparable
75 basis, a full-time equivalency.

76 MR. PERRY: Yes, I think so.

77 MS. GREENE, Q.C.: The way I understand the table
78 then, if 23 percent of the salary budget is allocated to
79 capital, that would mean that approximately 153

1 employees of Newfoundland Power would be
2 considered to be working full-time on capital projects,
3 23 percent of your numbers would be about 153 full-
4 time equivalents as well?

5 MR. HUGHES: The math works, but what you tend to
6 find is that certain groups would have a higher amount.
7 Say, for example, call centre employees would tend to
8 be more operating, more of accounting work, and so it
9 would vary by what the person was doing. Engineers,
10 the line department technicians, they would have a
11 higher capital component, so it's mathematically correct,
12 it tends to be more, certain groups tend to work on
13 capital more than other groups.

14 MS. GREENE, Q.C.: Yes, of course, but it would be
15 roughly 153 employees would be considered to be, if
16 you just take the math. Now, you also mentioned that
17 in addition fringe benefits would have to be added to
18 these direct labour costs, and you mention that you use
19 a figure of 28 percent. What would be the total amount
20 of fringe benefits as allocated to your capital program
21 in dollar terms?

22 MR. PERRY: Well, you know, it essentially would be,
23 for example, in 2001, \$43 million, I think the way the
24 math would work is that the fringe benefit costs for that
25 period would be 28 percent of \$43 million as a total, and
26 then we would allocate 26 percent of that number to
27 capital, so that's how the math would work, and again,
28 this is not done as an end of year allocation, it's done
29 basically daily as timesheets come in for the projects.

30 MS. GREENE, Q.C.: And those are the labour, internal
31 labour costs that would be allocated to capital. With
32 respect to people who are full-time on capital, if you
33 have employees who are full-time, would there be other
34 expenses associated with those employees that would
35 be charged to capital that would not appear in the
36 general expenses capital category?

37 MR. PERRY: Sorry, Ms. Greene, could you rephrase, I
38 don't understand your question.

39 MS. GREENE, Q.C.: Okay, when you have internal
40 employees working on a capital program, you charge
41 their labour costs, and I think we just went through
42 that. Now I'm trying to explore that there are other
43 types of costs or expenses associated with an employee
44 other than their direct salary costs including fringe
45 benefits, that also might be charged to a capital
46 program. For example, if someone is a hundred percent

47 working on a capital project for the 12 months of the
48 year, and they occupy an office space, would there be
49 an allocation of rental space to the program not
50 included in your general expenses capital?

51 MR. PERRY: I don't believe so. You know, what we
52 would include is things, if we have a blitz (*phonetic*)
53 program in a certain area where we have all our
54 employees together doing a major rebuild, we would
55 include housing, for example, you know, hotels, things
56 like that for that project would be capitalized as well
57 while we're doing that project, but ...

58 MR. HUGHES: Assuming that the projects are out of
59 their normal base.

60 MR. PERRY: Work area, exactly.

61 MR. HUGHES: So if they've got to spend time away
62 from their base.

63 MS. GREENE, Q.C.: So there would be no other direct
64 expenses charged other than the salary costs
65 associated with internal labour other than through the
66 general expenses capital, is that ...

67 MR. PERRY: That's my understanding. I don't know,
68 the other thing I would add is I'm not so certain, and
69 this is subject to check, that we have an employee that's
70 100 percent charged to capital. I'm not certain that
71 that's the case. I would have to sort of confirm that, but
72 ...

73 MR. HUGHES: As you were asking the question I was
74 trying to think, and I couldn't think of somebody who
75 would be 100 percent. I know we're talking in theory.

76 MS. GREENE, Q.C.: For example, if you had a large
77 upgrade program, Hydro would, just as an example, and
78 I don't know if you have the ... the Avalon upgrades,
79 we would hire engineers. It may be for a term
80 associated entirely with that project.

81 MR. PERRY: Yeah, I ...

82 MR. HUGHES: Again, the example is a good one, I just
83 can't think of a ... I mean the example is good in a
84 theoretical sense and I can understand, say, on
85 something like Granite Canal, that that would occur
86 quite often with Hydro. I just can't think of one, that's
87 not to say that there isn't one.

1 MS. GREENE, Q.C.: And now if we could please turn to
2 NLH-41. We had a little bit of discussion about this
3 yesterday. Mr. Perry, could you please explain again
4 generally what this is intended to cover, general
5 expenses capital, that is?

6 MR. PERRY: General expenses capitalized recognizes
7 the company is a company that both is running a day-
8 to-day operation as well as a company that is carrying
9 out a fairly major capital program, and both those sort
10 of activities are being conducted by, in a lot of cases,
11 the same people, so what general expenses capitalized
12 does is recognizes that a part of your operating
13 expenses can be attributable to capital, but if you
14 weren't doing your capital program you would not have
15 a portion of those operating expenses, so it's really
16 what's been determined to be the incremental operating
17 expenses that you are incurring because you are
18 carrying out that capital program.

19 MS. GREENE, Q.C.: There is no reference here to your
20 engineering department or division when I see the list
21 of categories here.

22 MR. PERRY: Under the direct charges to GEC, there are
23 some engineering costs that would come in through
24 there, but again, we try to have the work that's being
25 done on specific projects charged directly to those
26 projects. We do have project numbers or a project
27 costing process at Newfoundland Power, and where
28 people are working specifically on capital projects, they
29 are charging their time directly to that project. What
30 GEC does is capture a portion of that operating expense
31 that's not specifically assignable to capital projects.

32 MR. HUGHES: I don't know if this is helpful, because
33 of the Board orders and the tax cases, the whole area of
34 GEC has become much more stringent, and you see the
35 orders there and also the tax case, so it's become a very
36 controlled and defined thing.

37 MR. PERRY: And just one other thing I would like to
38 add, as I think I said yesterday, the numbers come
39 down substantially over the years. At one time it was
40 as high as \$10 million. Now we're in, this year it's \$2.8
41 million, it's in the two and a half to \$3 million range is
42 where we are, which again, I think is a fairly reasonable
43 number when you think about the size of our total
44 operating expense budget which is \$50 million, and our
45 total capital budget for 2003, which is \$55.8 million.

46 MS. GREENE, Q.C.: So when I looked and saw there
47 was no engineering component to this, and when you
48 just explained it, there's only a labour cost included
49 directly for other employees who are working, I wonder
50 was there any allocation to capital of what I will call
51 overhead costs associated with such people, of
52 engineering people, where there's their office space,
53 computer usage, or their involvement, engineering
54 management involvement in projects, for example.

55 MR. PERRY: I wouldn't say there's any overhead
56 allocation. Under the direct charge account, my
57 recollection is there was some engineering costs that
58 come in through that account that are charged directly
59 that are not specifically ... you can't sort of allocate
60 them to a specific project, but clearly they're involved
61 with the capital project overall, and there are some
62 charges that come into that \$700,000 number.

63 MR. HUGHES: I believe you used an example
64 yesterday, Mr. Perry, of planning engineers?

65 MR. PERRY: Planning engineers.

66 MS. GREENE, Q.C.: Would that again be only labour
67 costs in that category you're ...

68 MR. PERRY: That's my recollection, there is no
69 allocation of, for example, rent for an office, or costs of
70 facilities, you know, at Kenmount Road or Duffy Place
71 or whatever.

72 MS. GREENE, Q.C.: And if management is involved in
73 the review of the capital, the time spent by the
74 executive management or at the management level is
75 involved in the labour component, is it, as opposed to
76 overhead?

77 MR. PERRY: I don't believe that the executive review or
78 management review at Newfoundland Power, first of all,
79 it's not charged directly to any particular project, that's
80 for certain. I don't, I don't believe it comes in as part of
81 that, no, I don't, but it's subject to check, but I don't
82 believe it does.

83 MS. GREENE, Q.C.: So the full amount of the cost
84 charged by Newfoundland Power to the capital
85 program, so their costs including labour, overhead,
86 rental or whatever, would be the amount for 2002, at
87 least forecast for 2002, shown in NLH-42 for the direct
88 labour of \$9,870,000, is that ... I should have picked 2003

- 1 to make it consistent with 41, for 2003, you are
2 forecasting direct labour costs of \$10,072,000.
- 3 MR. PERRY: Correct.
- 4 MS. GREENE, Q.C.: And then when we go back to
5 NLH-41, you are forecasting a total general expenses
6 capital of \$2.8 million, so we add those two together
7 and we get \$12.8 million, and you've also indicated
8 there would be a percentage of fringe benefits, and
9 when we work out the math, we know it's 28 percent of
10 your \$43 million, and then I take 26 percent of that.
- 11 MR. PERRY: 23 percent if you're using 2003.
- 12 MS. GREENE, Q.C.: But it's 28 percent for your percent
13 of costs overall.
- 14 MR. PERRY: Overall, yes.
- 15 MS. GREENE, Q.C.: And then I take 26 percent.
- 16 MR. PERRY: 23 percent for 2003.
- 17 MS. GREENE, Q.C.: Oh, sorry, 23 percent for 2003,
18 right, and that would give me a number which I should
19 add to the \$12.8 million, which I'm not going to do this
20 morning, but that will give me the total costs charged
21 by Newfoundland Power to their capital program for
22 2003, is that how I understand this?
- 23 MR. PERRY: Yeah, just one clarification, it's not all
24 labour. There is a part of the GEC that is not labour and
25 there is also, obviously, the contract portion.
- 26 MS. GREENE, Q.C.: Yeah.
- 27 MR. PERRY: But internal costs ...
- 28 MS. GREENE, Q.C.: I'm going to come to the external
29 costs, so the internal costs of Newfoundland Power is
30 as I've just described, is it?
- 31 *(10:15 a.m.)*
- 32 MR. PERRY: I would say, yes.
- 33 MS. GREENE, Q.C.: Now the external costs, they would
34 be found in the total project cost you've indicated for
35 each project, is that correct?
- 36 MR. PERRY: Yes.
- 37 MS. GREENE, Q.C.: Alright, would Newfoundland
38 Power object to filing a breakdown of the project costs
39 in the future when they file their capital budget
40 applications?
- 41 MR. PERRY: Can you say that again?
- 42 MS. GREENE, Q.C.: Would you have a problem with
43 filing the breakdown of a project cost when you file
44 your application between material and labour, and
45 internal and external?
- 46 MR. HUGHES: My only concern is I wouldn't want to
47 be stuck that if we said Project X we used no
48 contractors and Project Y we did, and we wanted to
49 switch them over or change the labour of it, you know,
50 and if it is, if the information is for better understanding
51 information purposes, then it's fine, but I wouldn't want
52 it that it was so that it was restricting management's
53 choice to do it efficiently. You know, I think the project
54 is judged whether it's worthwhile and the amount gets
55 assessed whether it's reasonable, but if Mr. Ludlow
56 decides that on Line X, for whatever reasons, he now
57 decides he wants to use slightly more internal labour
58 and slightly less contractors and switch it over, you
59 know, I wouldn't want that kind of restriction, nor
60 would I want, you know, the kind of restrictions that
61 they make a decision and then it got too detailed on the
62 parts or on any sort of make ... you know, so providing
63 it doesn't take away management flexibility, then ... and
64 it's sort of for an understanding, then I think it's fine.
65 You know, I just can't remember a capital order in detail
66 enough to know exactly how it's approved and how it's
67 not, but that would be my concern that there's nothing
68 ... but in terms of understanding the projects, I don't
69 think it's a problem.
- 70 MS. GREENE, Q.C.: No, Hydro has been required to
71 provide a breakdown of its project costs by the Board,
72 so Newfoundland Power wouldn't have difficulty in
73 doing a similar type of thing?
- 74 MR. HUGHES: No, provided, as I said, that if we decide
75 that we want to not use, you know, you said about
76 internal/external labour, providing we've got the
77 flexibility as to how we do it, you know, because it
78 seems to me that we should have the flexibility to,
79 whether it's operating or capital, to do it in a way we
80 think is most efficient as opposed to coming down too
81 far, so if it's how we expect it to be, then I think it's fine.

1 MS. GREENE, Q.C.: And it is that way, I should ... we
2 just give the breakdown of labour and indicate whether
3 it's internal or external, at least at this stage. I want to
4 move now to another topic, and it's to deal with
5 reporting requirements, or when you report, and when
6 you filed your application for approval for the 2003
7 capital budget, you didn't provide information with
8 respect to future years except in Section, Schedule D,
9 and I wonder if we could have Schedule D to the
10 application, and I wonder, perhaps this is for Mr. Perry,
11 if you could indicate what Schedule D shows us?

12 MR. PERRY: Schedule D shows projects that either
13 have been approved by the Board in the past that have
14 a, you know, goal, like continue on over a period of
15 time, like the Aliant pole purchase, which I suppose
16 you could say was a bit of a staggered purchase over
17 five years, and as well, projects in the current capital
18 budget that we're asking the Board to approve that
19 extend beyond the current year, the 2003 year.

20 MS. GREENE, Q.C.: And as I understood Schedule D,
21 you only have a, I'll call it regular routine type projects
22 in your information systems area. I'm considering the
23 Aliant pole purchase to be somewhere out of the
24 normal operating experience.

25 MR. PERRY: That is correct.

26 MS. GREENE, Q.C.: Newfoundland Power doesn't have
27 multi-year projects as a normal rule, a project that starts
28 in one year and continues over subsequent years?

29 MR. HUGHES: We have years, we have projects that
30 could span a year. We tend not to have projects like
31 the Granite Canal that go on for longer, so they tend to
32 be relatively short in duration and I believe I'm right in
33 saying in our filings, we talk about what's work in
34 progress, and what goes over and things like that, but
35 they tend to be fairly short.

36 MS. GREENE, Q.C.: You didn't provide any information
37 with respect to a forecast of future capital expenditures
38 when you filed this application, is that correct, other
39 than what was shown on Schedule D?

40 MR. PERRY: That's correct, except for what's on
41 Schedule D.

42 MS. GREENE, Q.C.: And that is Newfoundland Power's
43 normal practice, is it, as I understood from your
44 answers to Mr. Browne the other day.

45 MR. PERRY: Our normal practice is to ask the Board to
46 approve the budget for the coming year and in the past
47 we have not been required by the Board to provide
48 estimates of future capital expenditures other than
49 obviously when we do, for example, the Lockston
50 Penstock economic evaluation, the penstock is one
51 thing, but when we actually look at the alternative of
52 shutting the plant down and buy, or buying from
53 Newfoundland Hydro, and the cost at Holyrood, we
54 look at the capital that we expect to expend in that
55 Lockston plant over the remaining period of the plant's
56 life, so, or some future period, maybe 10 or 15 years,
57 and that's built into our economic analysis, and that's
58 obviously based on engineering judgement of when
59 certain assets in that plant would be replaced, and I
60 think that's the correct way of comparing the two
61 alternatives of continuing to run the plant versus the
62 Holyrood comparison, so we do that kind of analysis
63 but we do not present to the Board a ten year forecast,
64 for example, of capital expenditures.

65 MR. HUGHES: I think what does happen, and I think,
66 I believe I'm right in saying Mr. Browne asked me about
67 it yesterday, and I don't know whether the Board will,
68 about what we think is likely to happen, and I think
69 that's a very reasonable line of questioning, but we
70 don't actually file it, and obviously that's an opinion as
71 to what you think is going to happen as opposed to a
72 formal forecast.

73 MS. GREENE, Q.C.: And Mr. Browne also asked you
74 about whether you had a five year capital plan, and I
75 believe you indicated that you don't have a five year
76 capital plan was my understanding of your evidence.

77 MR. PERRY: We do not have a five year capital plan.
78 What we do have, what we file obviously with the other
79 application that's before this Board is, the general rate
80 application that includes two years, 2003 and 2004, and
81 that is the sort of horizon that we look at in terms of our
82 capital program. Clearly from time to time I will do a five
83 year forecast, a financial forecast for the company. I
84 can tell you, as I said yesterday, that the validity of the
85 capital program in that forecast, beyond a couple of
86 years, is, is not much, and it's merely for planning
87 purposes, looking at all the factors of our business
88 come together over a five year period, and it's, that's
89 what it's used for. It's not used to determine exactly
90 where we will spend our capital dollars, three, four, five
91 years from now.

1 MS. GREENE, Q.C.: The Board has required Hydro in
2 its capital budget applications to file a ten year record
3 of capital, five years historical, plus the year we're in, so
4 that's the forecast, for now it would have been 2002 is
5 our forecast, 2003, the year we're asking for, plus three
6 additional years of forecast. So Hydro has been
7 required to file that by the Public Utilities Board. I
8 gather that you haven't filed that to date and do I
9 understand from your evidence that you would think
10 that there might be some difficulty or, I guess, there's
11 some issue as to the actual certainty of the numbers
12 beyond possibly two years for a capital program?

13 MR. PERRY: I'm sorry, Philip, I don't want to pre-judge
14 why the Board has asked Hydro to do this. All I can
15 say is from our own management perspective is, you
16 know, we can produce numbers, we can produce a ten
17 year capital forecast, but to me, that's all it will be. I
18 suppose if the Board wanted the company to spend a
19 lot of time figuring out when every asset was going to
20 be replaced, and you know, and try to peg all that, you
21 could go through that process but I don't think it would
22 reflect reality at the end of the day, that's my sense of
23 it, and that's why as management we don't really rely on
24 those kinds of forecasts. Philip, I don't know if you ...

25 MR. HUGHES: I think this is where the company, the
26 two companies' aspects come in. I think in distribution
27 it is much harder to go into the future. I don't know
28 how many of us three or four years ago would have
29 predicted what happened at Stavanger and Pearlgate,
30 and certainly talking to some of the people involved,
31 their plans were fairly vague in that time, so I think on
32 distribution, just by its nature, it will be much more
33 uncertain. Obviously if there is a Board order we will
34 comply with it. I think the accuracy, I think it would be
35 very lucky to be within 15 percent, and it would just be
36 luck. I think when it talks of generation, particularly
37 larger generation, I think it's easier to say on load
38 growth because when you will or won't, for example,
39 we're not predicting any bulk generation for seven
40 years, or whatever the number is, but it's certainly a
41 long time, so it's much easier then to do a generation
42 forecast. Some parts of transmission, Hydro has the
43 230 kV system, in terms of capacity, would obviously
44 be easier to forecast than some other, so I think the
45 different nature ... if we were ordered to do it, obviously
46 we'd do it, but I'm not sure at the end of the day it will
47 be very helpful.

48 MS. GREENE, Q.C.: And I guess your comments would
49 apply even more so to a request for a ten year forecast
50 of expenditures for a particular area?

51 MR. HUGHES: Mr. Perry is right, two years you're
52 starting to stretch it. Anything more than that you just
53 don't know. I mean if you take that the fishing industry
54 ... who would have predicted in the cod moratorium in
55 the early days that the GDP of that sector would be
56 higher in under a decade than it was then? I just don't
57 think people are that good at predicting, but you know,
58 if we're asked to do it, we will do it to the best of our
59 ability. I just don't think it's very meaningful.

60 MS. GREENE, Q.C.: No, I've heard similar opinions
61 expressed from our engineers as well, especially with
62 respect to the, a ten year record looking out to the
63 future for expenditures required for ...

64 MR. HUGHES: Ten years is an awful long time.

65 MS. GREENE, Q.C.: Thank you, that concludes all the
66 questions that I had for the witness.

67 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.
68 Greene, we'll now move to Board Hearing Counsel,
69 good morning, Mr. Kennedy.

70 MR. KENNEDY: Good morning, Chair, Commissioners.
71 Mr. Hughes and Mr. Perry.

72 MR. HUGHES: Good morning, Mr. Kennedy.

73 MR. KENNEDY: Good morning. I have four topic areas
74 I wanted to cover in my examination; reliability is one,
75 definition of service, Section 41 and project definitions,
76 and then just some miscellaneous items, sort of a grab
77 bag, if you will, of topics. The first place I'd like to start
78 ...

79 MR. HUGHES: When ...

80 MR. KENNEDY: Yes, sorry?

81 MR. HUGHES: When you get to Section 41, maybe
82 you can just introduce it, because Mr. Perry and I
83 would find that helpful.

84 *(10:30 a.m.)*

85 MR. KENNEDY: Well, actually that's exactly what I'm
86 about to do is go back to the Acts themselves and

1 bring us through those so that they're, I guess,
2 hopefully fresh in everyone's heads and clearly I won't
3 be asking you for a legal opinion, so if you think I have
4 asked you for a legal opinion, please object, and I'm
5 sure your counsel will as well if I stray. If I could, Mr.
6 Wells, get the Electrical Power Control Act, please, and
7 Section 3 of the Act. You had it. And we're looking at
8 3(b), so I think you just need to scroll. There you go.
9 Gentlemen, Section 3 says it's declared to be the policy
10 of the province that ... and then Section (a) related to
11 that you're to be afforded a sufficient revenue, pursuant
12 to Section 80 and so on, but it's, it's the Section (b) that
13 I'm interested in, and it indicates that all sources and
14 facilities for the production, transmission, and
15 distribution of power in the province should be
16 managed and operated in a manner, (a), or Roman
17 numeral (i), that would result in the most efficient
18 production, transmission, and distribution of power.
19 Roman numeral (ii), that would result in consumers in
20 the province having equitable access to an adequate
21 supply of power. Roman numeral (iii), that would result
22 in power being delivered to consumers in the province
23 at the lowest possible cost consistent with reliable
24 service, and Roman numeral (iv) is not really applicable
25 in our circumstances there. It just relates to ability to
26 sell power, and that continues then, where necessary,
27 all power sources and facilities of the province are to be
28 assessed and allocated and reallocated in the manner
29 that is necessary to give effect to this policy.

30 So as I see it, I guess, Section 3(b), Roman
31 numerals (i), Roman numeral (ii), and Roman numeral
32 (iii), are the three provisions that impose the obligation,
33 if you will, on Newfoundland Power to operate its
34 assets efficiently, to provide equitable access to the
35 consumers in the province to the adequate supply of
36 power, and to provide the lowest possible cost power
37 that's consistent with reliable service, agreed?

38 MR. HUGHES: It seems reasonable.

39 MR. KENNEDY: In regards to the third one of those,
40 the lowest possible cost consistent with reliable
41 service, I guess the definition of, if we break that down
42 a bit, lowest possible cost, that's, we will agree, self-
43 describing, lowest possible cost is the lowest possible
44 cost, and so I want to focus in a minute on the
45 meanings behind reliable and service as it pertains to
46 you carrying on your function as a utility, so I'm going
47 to come back to that in a moment, but while we're
48 looking at the Acts, I just want to set the canvass out,
49 I wonder if we could look to the Public Utilities Act,

50 please, Mr. Wells, and Section 41 of that Act. So
51 Section 41.1 is the capital budget provision of the
52 Public Utilities Act, and it requires that you, as a public
53 utility, submit an annual capital budget of proposed
54 improvements or additions to your property to the
55 Board prior to December 15th, and the budget is to
56 include an estimate of the contributions in aid of
57 construction for those improvements and additions.

58 MR. PERRY: We ask, Mr. Wells, maybe if you could
59 roll up that a little bit so that we can actually read it?

60 MR. KENNEDY: Better?

61 MR. PERRY: Yes, sorry, Mr. Kennedy, your question?

62 MR. KENNEDY: No problem, actually we were just sort
63 of going through the Acts first, so the questions will
64 follow, and the questions relate the Acts themselves, so
65 I just want to put the Acts and the provisions
66 themselves in everybody's heads.

67 MR. HUGHES: You were talking about customer
68 contributions, okay, I've got it now.

69 MR. KENNEDY: Right, and the budget shall include an
70 estimate of the contributions in aid of, toward the cost
71 of improvements, so your CIAC is booked into your
72 budget.

73 MR. HUGHES: I understood the concept, just for a
74 second I couldn't see it in the Act.

75 MR. KENNEDY: Sure, that's why you do it, because it's
76 in the Act (*laughter*). 41.2, the budget shall contain an
77 estimate of future required expenditures on
78 improvements or additions to the property of the public
79 utility that will be not completed in the next calendar
80 year, so this would relate to the question of Ms. Greene
81 just a moment ago, as counsel for Hydro, about the
82 multi-year contracts, so if you have one contract
83 spilling into the ... or one capital budget spilling into
84 another capital budget year, you need to provide notice
85 of that to the Board and that's, again, you're doing that
86 because it's required under the Act.

87 MR. PERRY: Yeah, Schedule D, I think it is, of our
88 application.

89 MR. KENNEDY: 41.3, a public utility shall not proceed
90 with the construction, purchase or lease of
91 improvements or additions to its property where the

1 cost of the construction or purchase is in excess of
2 \$50,000, or the cost of the lease is in excess of \$5,000,
3 without the prior approval of the Board. So that's the
4 provision that we're using for the, if you will, the
5 \$50,000 cut-off for what constitutes the requirement for
6 you to seek approval of the Board for a particular
7 capital expenditure, correct? Okay. I'm wondering if we
8 can go to Section 64, Mr. Wells? Now Section 64 is
9 that the Board may, with the assistance of engineers,
10 accountants, valuers, counsel, and others that it
11 thinks advisable to employ, inquire into and determine
12 the extent, condition and value of the whole or a
13 portion of the property and assets of the public utility
14 used and useful in providing or supplying a particular
15 service to or for the public as of the date to be fixed by
16 the Board. If we could go to Section 78 please, Mr.
17 Wells? Section 78, except as otherwise provided in this
18 Act, the Board may fix and determine a separate rate
19 base for each kind of service provided or supplied to
20 the public by a public utility and may revise the base.
21 Just out of curiosity, have you any knowledge of any
22 time where Newfoundland Power has had a separate
23 rate base established by the Board?

24 MR. ALTEEN: The predecessor company of
25 Newfoundland Power had a separate telephone rate
26 base and a separate electric rate base, United Towns
27 Electric, was once part of the Avalon Telephone
28 Company. That was well before these gentlemen's time,
29 so I thought I might put it on the record.

30 MR. KENNEDY: Thank you very much, Counsel.

31 MR. PERRY: Thank you, Peter.

32 MR. KENNEDY: So 78.2, in fixing a rate base, the Board
33 may, in addition to the value of the property and assets
34 as determined under Section 64, include an allowance
35 for necessary working capital, organizational expenses
36 to the extent of the sum that the public utility
37 establishes to the satisfaction of the Board is
38 reasonable, costs in whole or in part of land, or other
39 property and assets acquired or held in reasonable
40 anticipation of future requirements, costs and expenses
41 of the making or checking of valuations referred to in
42 Section 65.3, but only to the extent not amortized in
43 previous years. So the rate base that's fixed and
44 determined pursuant to Section 78, is based on the
45 valuation that the Board conducts under Section 64,
46 and then added to that valuation are these items, (a),
47 (b), (c), and (d), is that your understanding as well
48 about the operation of ...

49 MR. HUGHES: We can't quote the section ... nothing
50 you've shown us, we're not generally aware of, so I
51 mean to ask us whether 78 does, or 65 does, or
52 whatever the other number is, I don't know, but I mean
53 nothing you've shown us, we're not generally aware of,
54 and if you want to ask a question under that, I think
55 we're happy to do it, but you're over our waders on the
56 law.

57 MR. KENNEDY: Okay, I understand.

58 MR. HUGHES: I have a general, a general
59 understanding. I mean say, for example, obviously the
60 one about the least possible cost, you know, consistent
61 with reliable ... we're very aware of that.

62 MR. KENNEDY: That's the general policy of the ...

63 MR. HUGHES: The high tier provision, so I mean we're
64 aware of it and it's basically just generally good
65 business.

66 MR. KENNEDY: Sure, okay, if we just look at 78.3,
67 please, Mr. Wells, I think if you just scroll, and yeah,
68 just keep scrolling. There we go. In 78.3 for the
69 purpose of this section, the Board from the appraised
70 value of the property of the public utility concerned,
71 (a), shall exclude the value of franchise license,
72 permanent or concession, obtained from a municipality,
73 that's not particularly relevant in our case, and then (b),
74 may exclude contributions in aid of construction or
75 acquisition of property or assets, deferred income taxes,
76 and other amounts which the Board considers it fair
77 and just to exclude, so I guess you recognize that in
78 fixing and determining the rate base, the Board uses the
79 Section 4 valuation, it adds these items pursuant to
80 Section 78, but it has the ability to exclude certain
81 things from that rate base, and that's why you fix and
82 determine it, it's a process, it's not an automatic,
83 correct?

84 MR. HUGHES: That's absolutely right, the Board has
85 judgement and discretion and it's not, I believe one of
86 the counsels used a mechanical process in one of the
87 other arguments, and we understand that the Board has
88 pretty wide discretion.

89 MR. KENNEDY: So in light of those provisions that I
90 just went through ... now Section 80 is the final step in
91 the process, that's the earning of a rate of return on the
92 rate base, correct? You're probably familiar with it?

- 1 MR. HUGHES: Well, we're familiar with what happens.
2 I cannot tell you whether it's Section 80 or not.
- 3 MR. KENNEDY: Okay.
- 4 MR. HUGHES: I mean, we understand how the process
5 works, and Mr. Perry, I believe, took the Board through
6 the calculation of rate base which is obviously shown
7 here, so we're familiar with all the concepts but we're
8 not very good at section numbers.
- 9 MR. KENNEDY: Okay, will you agree with me though
10 that in, I guess, the, in fixing and determining the rate
11 base, one of the, one of the critical questions that must
12 be asked is whether the assets are used and useful?
- 13 MR. HUGHES: That is a very normal regulatory
14 concept and it's a common sense provision. I can't tell
15 you, because I don't remember whether it is or isn't in
16 this Act, but it's a very normal concept.
- 17 MR. KENNEDY: Okay, just taking a sideline for a
18 moment, gentlemen, yesterday in response to some
19 questioning by the Consumer Advocate regarding
20 commentary by Grant Thornton, the Board's financial
21 advisor, in their 2001 annual financial review, there was
22 some discussion about the fixing and determining of
23 the rate base, do you recall? The Consumer Advocate
24 was raising concern, I guess, over a particular
25 commentary of the Board's financial advisor in his
26 report, do you recall that line of questioning?
- 27 MR. HUGHES: Yes, but I also remember that we
28 disagreed with its characterization.
- 29 MR. KENNEDY: Absolutely.
- 30 MR. HUGHES: Because what the ... there's two aspects
31 at play there. The financial consultant agreed that, with
32 the calculation or presentation of the rate base, and he
33 said, on the rate base he was unequivocal in saying
34 that he agreed. There was then a discussion with the
35 Consumer Advocate about return and so on.
- 36 MR. KENNEDY: And do you recall Commissioner
37 Whalen asking you whether the rate base needed to be
38 fixed and determined right now or whether we could
39 wait until the next hearing, the GRA hearing?
- 40 MR. HUGHES: I think she actually asked counsel, but
41 I remember the question.
- 42 MR. KENNEDY: Yes, and I believe your response at
43 the time was, yes, you wanted it fixed and determined
44 now.
- 45 MR. HUGHES: That's correct.
- 46 MR. KENNEDY: Okay, I wonder if we could just
47 refresh our memories. Mr. Wells, if you could pull up
48 the Board's, the 2001 annual financial review, please?
- 49 MS. BUTLER, Q.C.: CA-124, I think.
- 50 MR. KENNEDY: And page 6. Actually, let's go back to
51 page 5, please.
- 52 MS. BUTLER, Q.C.: That's page 6 actually.
- 53 MR. KENNEDY: Yes, page 5, please. Okay, so yeah,
54 that's actually ... your page numbers are off because
55 your cover page got labelled as a one, Mr. Wells, so it's
56 actually the next page, which is actually page 5 of the
57 document, and gentlemen, I believe if I've got it right,
58 what you're indicating or what you just commented on,
59 Mr. Hughes, was that the Board's financial advisor
60 indicated in the bold, as a result of completing these
61 procedures, we can advise that no discrepancies were
62 noted, and therefore conclude that the calculation of
63 rate of return on average rate base included in the
64 company's annual report to the Board is in accordance
65 with established practice in PU-30.
- 66 MS. BUTLER, Q.C.: I wonder if I might interrupt, I
67 thought Mr. Hughes had indicated that his answer was
68 related to the calculation of rate base, which is on the
69 page previous. This is the return on rate base.
- 70 MR. KENNEDY: I beg your pardon, yes, if we could
71 just go back, you're correct, sorry, Counsel.
- 72 MS. BUTLER, Q.C.: And the bold section on that page
73 is the section that he was referring to.
- 74 MR. KENNEDY: Yeah.
- 75 MS. BUTLER, Q.C.: Can you scroll down, Mr. Wells,
76 until you find the conclusion, thank you.
- 77 MR. KENNEDY: Yes, there we go, thank you. Based
78 upon the result of the above procedures, we did not
79 note any discrepancies in the calculation of the average
80 rate base.

1 MR. HUGHES: That's what I was referring to.

2 MR. KENNEDY: Okay, now you'll agree with me
3 though that again, that doesn't end the matter, that the
4 Board is still ultimately the group, if you will, or person
5 as a collective body, in charge of fixing and determining
6 the rate base and has, under that provision that I
7 pointed out, the authority to exclude certain items,
8 regardless of what the financial advisor might have
9 stated in his report?

10 MR. HUGHES: My understanding of the law is that is
11 correct but I would assume that the report of an
12 independent financial consultant would be persuasive.

13 MR. KENNEDY: I wonder if we could just turn to the
14 actual comment of the Board's financial advisor then
15 that gave rise to this issue, and that's on page 6 of the
16 report, Mr. Wells. There you go, it's up on the top half
17 so you can zoom out. So the Board's financial advisor,
18 if I could just give people a moment, perhaps, just to
19 read that top paragraph again instead of me reading it
20 out.

21 *(10:45 a.m.)*

22 MS. BUTLER, Q.C.: Mr. Chairman, I wonder if I might,
23 before we actually get into this discussion, go back to
24 the Board's determination on this issue, and that was
25 that everything that went into the calculation of rate
26 base was relevant to these proceedings, everything that
27 was contained in the capital budget for 2003 was
28 relevant to these proceedings, but once we left that and
29 got into issues of return on rate base, which I think is
30 the heading under which this paragraph falls, was not
31 for this hearing, it was for the GRP.

32 MR. KENNEDY: It wasn't my understanding that's
33 what the panel actually ordered, but I think, I'm not
34 interested in rate of return on rate base, and I think the
35 point I'm trying to make will be amply demonstrated in
36 a moment if I could have the indulgence of the panel.
37 I'm clearly focused on the capital budget, but mostly
38 right here now on the fixing and determining of the rate
39 base which is, the same request is being made pursuant
40 to the capital budget application.

41 MR. NOSEWORTHY, CHAIRMAN: The focus is
42 clearly on the calculation of rate base, but I will allow
43 just a couple of questions, Mr. Kennedy.

44 MR. BROWNE, Q.C.: Mr. Chairman, I didn't hear what
45 you said.

46 MR. NOSEWORTHY, CHAIRMAN: I said the intent of
47 the Board, I think, in terms of the determination was
48 clearly in respect of the calculation of rate base, and
49 what I'm understanding Mr. Kennedy to say is that's
50 where he's specifically headed on this, so I will allow
51 another couple of questions on that.

52 MR. KENNEDY: Thank you, Mr. Chair, so gentlemen,
53 as I understand the Board's financial advisor's
54 commentary here, in trying to explain this apparent
55 spread between the rate of return on equity and rate of
56 return on rate base, the company offered us
57 explanations for why this, there was this diverging, if
58 you will, of the rates of return, that there were
59 favourable tax reassessments, the excess earnings
60 issue, and then the results of the Aliant pole purchase,
61 correct?

62 MR. HUGHES: That's true, but it's not part of the
63 calculation of rate base.

64 MR. KENNEDY: The results of the Aliant pole
65 purchase, would that not affect the calculation of the
66 rate base?

67 MR. HUGHES: The Aliant assets ... maybe if we can
68 look at Schedule F.

69 MR. KENNEDY: Schedule F of the same financial
70 report?

71 MR. HUGHES: No, no, the application. I think
72 everybody has seen this before, but there are two
73 concepts, Mr. Kennedy.

74 MR. KENNEDY: Uh hum.

75 MR. HUGHES: There is earnings or returns, and then
76 there's assets, and in the plant investment line, when
77 you get into the years where Aliant is relevant, those
78 assets will be included. What will not be included, if
79 you, if Mr. Wells can scroll down, there is not earnings,
80 and it's two sides of the balance sheet. You've got
81 essentially rate base, when you put in the working
82 capital and everything else, it's almost like one side of
83 the balance sheet, and you've got all the financing, the
84 equity, debt, preferred shares, on the other side. If the
85 earnings were lower or higher, the other side of it would
86 be in the debt line, so it's not, it's two different parts.

- 1 MR. KENNEDY: Okay, on the, on the reporting of rate
2 of return on rate base, an element of that is the value of
3 the rate base itself, correct?
- 4 MR. PERRY: Yes, which is shown at Schedule F.
- 5 MR. KENNEDY: And the automatic adjustment formula
6 when it was implemented by this Board, is it fair to say
7 that, in effect, is the same methodology that's always
8 been employed by the Board in the sense that the rate
9 of return on rate base is based in part on the rate of
10 return on equity that's determined to be fair and
11 reasonable?
- 12 MR. HUGHES: There is a, when the return on rate base
13 is set, there is a theoretical moment where you know the
14 components, the three components, you know what the
15 return on equity is, the return on the preferred, and any
16 debt, etcetera, so that's why I say ... it's all the financing
17 that goes with the assets, so that's what's ought ... and
18 that's why I say it's like a balance sheet.
- 19 MR. KENNEDY: Sure, and then ...
- 20 MR. HUGHES: Once you then start running, you only
21 have the total, you have the return on rate base, and
22 the actual components then will change, but the limit or
23 the cap is the return on rate base.
- 24 MR. KENNEDY: Sure and the staged ranges put
25 forward by cost of capital experts as being a fair and
26 reasonable rate of return on the company's equity is
27 used to determine what the range is for the rate of
28 return on the rate base.
- 29 MS. BUTLER, Q.C.: I'm sorry, Mr. Chairman, the same
30 objection. These are the issues that ...
- 31 MR. KENNEDY: Counsel, I respect your objection, but
32 if you could just bear with me for a moment please.
- 33 MR. NOSEWORTHY, CHAIRMAN: Could you move
34 fairly quickly to that, I think we are getting into a grey
35 area here as far as I'm concerned.
- 36 MR. PERRY: Mr. Chairman, I would like to add as well,
37 that the entire formula, you know, the Board asked the
38 company to review the operation of the formula. We
39 filed a report in March of 2002. The review of the
40 formula is taking place in the general rate application,
41 that's a major part of the general rate application and the
42 company has complied with the Board's request on that
43 matter, and this is, this, as decided yesterday, this is an
44 issue that is very much a part of our general rate
45 application, and you know, I just ... Mr. Kennedy, I
46 don't know where you're going with it, but ...
- 47 MR. KENNEDY: Well, I guess, if you had a bit of
48 patience as well, perhaps you'd find out. All else ...
- 49 MR. BROWNE, Q.C.: I would ask as well to give
50 counsel some latitude here. I find this entirely very,
51 very troubling and they seem to know what it's all
52 about, I don't know if the financial consultant knows
53 what it's all about ... I looked to speak to him and I
54 haven't had the return call from him, and the Board
55 seems to know, I don't know if the Board knows, but
56 we're in the dark and I wouldn't mind if Mr. Kennedy
57 was given some latitude here.
- 58 MR. KENNEDY: I guess, gentlemen, all else being ...
- 59 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy,
60 could you just address in some sort of explanatory way
61 initially where you're going with this because I'd like
62 just to be made aware before you continue on down the
63 road.
- 64 MR. KENNEDY: I appreciate that, Chair. I guess the
65 calculation of what, of the reported rate of return on rate
66 base, which is what has raised the concern of the
67 financial consultant in its 2001 financial report is
68 affected by two things; the earnings, but then the rate
69 base itself.
- 70 MR. PERRY: Mr. Kennedy, I have to correct you. The
71 financial consultant has not said that the calculation of
72 the rate of return on rate base is a problem. He actually
73 clearly says the calculation of rate of return on rate base
74 is in compliance with the Board orders.
- 75 MS. BUTLER, Q.C.: (inaudible) rate base.
- 76 MR. KENNEDY: I appreciate that, Mr. Perry, but if you
77 could not interrupt and perhaps we might get to the
78 bottom of it because I'm responding to the Chair's
79 question. The reported rate of return is a function of
80 those two things, the earnings and then the actual total
81 of the rate base, the value of the rate base, so if the rate
82 base total is changed materially from what was expected
83 to be the case, from when the automatic adjustment
84 formula got approved, that would be an explanation for
85 why the rate of return on equity and the rate of return
86 on rate base had diverged, and I guess my point is that

1 the calculation is being done correctly for the rate base,
2 I don't know what that means, does that mean the
3 numbers were added up properly? It seems to me that
4 the power company, or the utility, Newfoundland
5 Power, is asking for approval now of fixing and
6 determining its rate base, but that there's a question as
7 to whether the rate base itself is, has everything that it
8 should have in it, or has things in it that it shouldn't
9 have in it, or at least provide an explanation as to why
10 the reported rate of return is different than what was
11 expected, based on the rate of return on equity. So it's
12 a case of, there are potential items, potential
13 explanations for why there's a divergence in the two
14 rates of return that relate not to the earnings, but to the
15 rate base itself, which the power company is asking the
16 Board to approve, to fix and determine at this point in
17 time, and that's the point that I was trying to make, I
18 don't know if that's any clearer.

19 MR. NOSEWORTHY, CHAIRMAN: Well, let me say
20 this, that the Board in its, in its focus, I guess, on this
21 matter, clearly considered the purview for cross-
22 examination to be the calculation of rate base itself, so
23 I would ask that you focus solely on that, and because
24 if ... I'm understanding from your comments that really
25 that is the focus of your questions, and to the extent
26 that, you know, return on rate base, or the automatic
27 adjustment formula comes into play here, I really don't
28 want to digress into those areas, even by way of
29 getting to the point, if you will.

30 MR. KENNEDY: I understand, Chair.

31 MR. NOSEWORTHY, CHAIRMAN: Thank you. Can
32 I ask you, Mr. Hughes or Mr. Perry, does
33 Newfoundland Power periodically conduct a thorough
34 review of all of its assets that make up its invested plant
35 to determine whether they are all still used and useful?

36 MR. HUGHES: I'm not sure we do it on that basis, but
37 because electricity flows through the vast majority of
38 assets, you're obviously aware of all those assets. The
39 assets, the assets where the used and useful comes up
40 to play is mainly on something like surface land and I
41 believe that there was some land next to Duffy Place
42 that the Board partially disallowed as on the used and
43 useful concept. In terms of the others, because they're
44 electrical system, I'm not sure we do a used and useful,
45 but on the other assets, we're aware of what's
46 happening and we try and reduce and sell surplus land
47 and other stuff like that and obviously all those
48 proceeds become part of the returns.

49 MR. PERRY: If I could add as well, Mr. Kennedy, that
50 for instance, when we are replacing assets during the
51 course of the year, carrying out our capital budget, we
52 also retire the assets we're taking out of service, so that
53 comes out of plant investment, so you know, that's
54 managing what's in service. As well, when we conduct
55 these five year depreciation reviews, there's a total
56 review of all our asset classes, the lives of the assets,
57 what's in service, and to calculate the new rates for
58 depreciating the plant in service, so there's a fairly
59 comprehensive review of that that occurs on a five year
60 basis.

61 MR. KENNEDY: Chair, this is probably a good
62 opportunity to break.

63 MR. NOSEWORTHY, CHAIRMAN: Thank you very
64 much, we'll adjourn until 11:30.

65 *(break)*

66 *(11:30 a.m.)*

67 MR. NOSEWORTHY, CHAIRMAN: I'd like to ...

68 MS. NEWMAN: Mr. Chairman, before you begin, I'd
69 like to mention that there is a preliminary matter. Mr.
70 Alteen would like to have a few comments.

71 MR. NOSEWORTHY, CHAIRMAN: Absolutely, thank
72 you. Mr. Alteen?

73 MR. ALTEEN: Just to record for the record, Mr.
74 Chairman, that we have just filed the responses to CA-
75 19, 123, 128, and 129, which were RFIs put to us by the
76 Consumer Advocate. There are a total of three or four
77 outstanding RFIs we are currently working on, and
78 obviously the two undertakings given yesterday from
79 the witness stand, and we hope to be in a position to
80 file that on the next hearing day. That's all, Mr.
81 Chairman.

82 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
83 Alteen. Prior to commencing the cross-examination by
84 the Board Hearing Counsel, the Board did deliberate
85 over the break on the motion of the Consumer
86 Advocate, and I'd just like to make a ruling, if I could,
87 verbally at this stage. We do not feel, I guess, bound
88 by the Rules of the Supreme Court. The Board
89 recognizes and acknowledges that. In looking at our
90 own procedures, certainly we're driven in the first
91 instance by our legislation, and secondly, I suppose, in

1 preparing these, or in looking at our policies and
2 procedures, if this Board will be faulted for anything, it
3 will be faulted for applying common sense. In looking
4 at this particular motion, I think what we're striving to
5 do here, and the most important thing from our
6 perspective, is really to try and satisfy the balance and
7 the needs of all the parties that are here, certainly in
8 relation to the needs of the application. There has been
9 expressions in relation to the question of confidentiality
10 and I think that's, that's one of the considerations
11 certainly for this Board.

12 Notwithstanding that, the need of the
13 Consumer Advocate for disclosure and access to the
14 relevant information that would allow the Consumer
15 Advocate to lead evidence on the matter before us, and
16 indeed the need, particularly of the Board, for
17 information on which it can base its decision and
18 consideration, so that's what we're primarily driven by
19 in terms of the consideration of the responsibility to try
20 and balance the needs of all the parties here.

21 With a view to that, and respecting the advice
22 of the, of our Board Counsel, that we are not
23 necessarily obliged to follow the precedent established
24 by the Board, we did feel that in addressing this issue,
25 that indeed, the previous decisions of the Board did
26 reflect this balance and the order that we are indeed
27 disclosing at this point in time is the order which is
28 consistent with the order outlined in PU-4 of 96/97, and
29 PU-27 of 98/99, that the Board will direct its financial
30 consultants to review the minutes identified or sought
31 in the motion of the Consumer Advocate, and to make
32 notes available to the Consumer Advocate or his
33 representative who may examine same in the presence
34 of the consultant, and we understand that
35 Newfoundland Power has, indeed, in their speaking to
36 the motion this morning, consented to that, and that
37 was certainly a consideration of ours.

38 With regard to the financial consultant, we
39 recognize that Grant Thornton has not reviewed the
40 minutes that are referred to in the motion, and we are
41 not inclined as a Board to direct and to do so at this
42 point in time, but certainly if the Consumer Advocate
43 would wish for the financial consultant to adhere to the
44 order in that regard, that he may wish to do that
45 through counsel. That essentially concludes the matter
46 as far as the Board is concerned, and I'd like to move on
47 now with the continuation of Mr. Kennedy's cross-
48 examination, please.

49 MR. KENNEDY: Thank you, Chair. Mr. Hughes, just
50 before I move on to the Section 41 projects, I just want
51 to ask you a question. Can you give me the reason for
52 why Newfoundland Power needs its rate base fixed and
53 determined now as opposed to later on? Is there a
54 business reason for requiring that to be done at this
55 moment?

56 MR. HUGHES: I think that everything has been
57 reviewed, it's past, it's been audited and so on, it
58 completes the record, it gives us certainty. We're
59 running into the period where the tax returns have been
60 filed, they're going to come up to be audited, it's just a
61 normal due diligence way of business. I think to hold
62 them open until the order is given on the GRA would
63 have an undue delay, there's no reason to. It's been
64 very clear what's happening. I think it's just a good
65 way of doing business. Unless there's a reason for a
66 delay, you want to do things in the most efficient, cost-
67 effective, and complete way, and I suppose that's how
68 I view it. You get into, obviously, certainty. You get
69 into, you're discussing things with people, like tax
70 auditors and stuff like that, and you want to get on with
71 life. I mean ...

72 MR. KENNEDY: Okay, just turning to the definition of
73 projects, as we know and we just canvassed, Section
74 41.3 of the Public Utilities Act sets a ...

75 MR. HUGHES: Can I have it in front of me?

76 MR. KENNEDY: Pardon?

77 MR. HUGHES: If you're going to discuss a section ...

78 MR. KENNEDY: No, I was just going to mention again
79 the limit of \$50,000 that ... I don't think we need to
80 actually turn to the Act to remind ourselves of that
81 limit.

82 MR. HUGHES: If you're just doing the \$50,000 that's
83 fine.

84 MR. KENNEDY: Okay, for curiosity, Mr. Perry, what
85 would be considered material in an audit now for the
86 company, a financial audit?

87 MR. PERRY: Obviously, it's probably a question better
88 put to our auditors, but I would say it is in the range of
89 \$1.5 million to \$2 million.

1 MR. HUGHES: The, I don't know whether I'm meant to
2 say this, but I think it's helpful, the audit, the range that
3 Mr. Perry said was correct and most auditors have
4 reduced the range after the Enron/Anderson thing, so
5 this, the range that Mr. Perry talked about was the
6 range discussed at the audit committee, and I believe
7 they've all come down. Sorry, Counsel.

8 MR. KENNEDY: So for the purposes of an audit,
9 somewhere in the million and a half dollar range is
10 what's considered to be material, correct?

11 MR. PERRY: Mr. Kennedy, I have to sort of clarify,
12 there are a lot more things in an audit than a million and
13 a half materiality. If you read today engagement letters
14 presented by auditors to their clients, there are a lot
15 more things that they do than just set materiality and
16 audit you on that basis. Things are changing in our
17 profession, as you know, and things are becoming
18 much more stringent, and you know, our company has
19 gone through a process recently where we've been a
20 part of that sort of change of process, and I just don't
21 want you to oversimplify, you know.

22 MR. KENNEDY: No, no, I'm just trying to get a feel for
23 that \$50,000 limit, if you will.

24 MR. PERRY: Yes.

25 MR. KENNEDY: So I guess judging from the Act itself,
26 the \$50,000 limit has been around for a while, so I just
27 wanted to see how your own business circumstances
28 have changed since then. I wonder if we could turn to
29 CA-2, Mr. Wells, and the first attachment as well, and
30 Mr. Hughes, Mr. Perry, this is just an example of a
31 variance summary.

32 MR. HUGHES: Can you just give us ...

33 MR. KENNEDY: Sure.

34 MR. HUGHES: It will be easier if you go with a cross-
35 reference ... thank you, Mr. Kennedy.

36 MR. KENNEDY: Okay, so this is a, it's just an example
37 of a variance summary for your capital expenditures,
38 and in this case the spreadsheets for 1993. It's actually
39 that same exhibit, you can scroll right through 1993
40 right up to 2002, and the way Newfoundland Power has
41 reported these is by those categories as stated, energy
42 supply, substations, transmissions, and so on. Is it fair
43 to say that those are, from Newfoundland Power's
44 perspective, considered to be categories, not projects?

45 MR. HUGHES: Yes, I'd say that's true.

46 MR. PERRY: Can I just add another point, Mr.
47 Kennedy?

48 MR. KENNEDY: Yeah.

49 MR. PERRY: Those categories, I would say, follow our
50 system of accounts, the major categories which have
51 been approved by the Board in terms of the major
52 categories of plant assets in service at Newfoundland
53 Power, so that's really where the origin of that
54 information comes from.

55 *(11:45 a.m.)*

56 MR. KENNEDY: Okay, and they are the same
57 categories, if you will, that the power company reports
58 on in its quarterly reports to the Board? Maybe if,
59 instead of getting you to just confirm that off the top of
60 your head, we could turn to the quarterly report, I
61 believe they're filed under CA-75, Mr. Wells. And we'll
62 probably need, I don't know how this is arranged in the
63 PDF, yeah, that's fine, March 31. There's a Tab 2, which
64 is capital expenditures progress. It's probably just to
65 scroll in. There you go. Okay, on the second page of
66 that, please. There we go. Okay, and again, when
67 Newfoundland Power reports to the Board in its
68 quarterly regulatory reports, it provides a budget
69 progress report based on those same categories?

70 MR. PERRY: That's correct.

71 MR. KENNEDY: Alright, I wonder if we could just turn
72 to the ... and again, these are not projects though, you
73 don't consider these to be projects that you're
74 submitting approval for to the Board?

75 MR. PERRY: No, they're groups of projects in each of
76 the categories of assets that we have.

77 MR. KENNEDY: Okay, could we just turn to the actual
78 application, Mr. Wells, the Schedule B, and actually I
79 need to look at Schedule A first, sorry. Okay, in your
80 application, Mr. Hughes and Mr. Perry, again, you've
81 got a Schedule A which is your budget summary and as
82 is indicated, that's by the category similar to the
83 variance reports that we just saw in your quarterly
84 regulatory filings, correct?

1 MR. PERRY: Yes, that's correct.

2 MR. KENNEDY: Okay, and if we go to Schedule B, Mr.
3 Wells, and the first one is fine, energy supply, so under
4 energy supply which is one of your categories, you've
5 got then these five, I think, further breakdowns of
6 where the total energy supply budget is being
7 expended?

8 MR. PERRY: That's correct.

9 MR. KENNEDY: Okay, so hydro plants facility
10 rehabilitation, \$2,345,000, so does Newfoundland Power
11 consider that to be a project?

12 MR. PERRY: I think what we're doing here is grouping
13 like things together in one area, so that, you know, it
14 will be helpful, I guess, for the Board's review of the
15 projects that are included in that area.

16 MR. KENNEDY: Okay, so if we turn to that first one,
17 hydro plant facility rehabilitation on page 9, which is
18 one, an exhibit that counsel for Hydro referred to earlier,
19 so if we could go to page 9, yeah. Okay, I guess what
20 we have in this sheet is project costs, \$2,345,000,
21 description and nature of the project, and then the
22 project involves, and then you have the following table
23 lists the projects.

24 MR. PERRY: That's correct.

25 MR. KENNEDY: Plural, so if we could just scroll down
26 there, and then you've got a table there, so are these,
27 like in the first one, the dam rehabilitation, Seal Cove,
28 Blackwoods, and (inaudible) Pond, \$319,000, is that
29 considered to be a project by Newfoundland Power?

30 MR. PERRY: Well, it says project on the top, and
31 there's a list, you know, yes, I would say it's a project.
32 It's something we want to do in 2003. There's a
33 necessity to rehabilitate, Seal Cove, Blackwood, and
34 (inaudible) dam.

35 MR. KENNEDY: Sure, sure, now I think as was pointed
36 out by counsel for Hydro, or actually I think it was in
37 response to a question from counsel at Hydro
38 yesterday, I think, and actually, Mr. Perry, you
39 indicated that in the case of this first one, dam
40 rehabilitation, Seal Cove, Blackwoods, and (inaudible)
41 Pond, that they're actually three different dams on three
42 different systems?

43 MR. PERRY: That is correct.

44 MR. KENNEDY: Okay, I wonder if we could just turn to
45 page 31, Mr. Wells, and this is under rebuild
46 transmission lines, project cost \$4,129,000, the nature of
47 the project ...

48 MR. PERRY: Just give me a second, Mr. Kennedy.

49 MR. KENNEDY: I'm sorry.

50 MR. PERRY: Go ahead.

51 MR. KENNEDY: Okay, and you go ... project cost,
52 \$4,129,000, nature of project, this project is necessary to
53 replace poles, cross arms, conductors, insulators and
54 miscellaneous hardware due to deficiencies identified
55 during annual inspections. And then you go, this
56 project category includes numerous projects, so the
57 rebuild transmission lines \$4,129,000, you would
58 consider to be a project category, and then there's
59 individual projects underneath that, is that correct?

60 MR. PERRY: That's correct, as the table shows.

61 MR. KENNEDY: Sure, so if we could just scroll down,
62 so the individual projects that we see there, Goulds to
63 Mobile, for instance, rebuild 24-L, \$650,000; the
64 replacing of conductors on 302-L, \$2 million, are they
65 the individual projects then that Newfoundland Power
66 is putting forward as seeking approval from the Board
67 under the \$50,000 limit?

68 MR. PERRY: Under the \$50,000 limit?

69 MR. KENNEDY: Above the \$50,000 limit, sorry.

70 MR. PERRY: Well, I think my understanding, Mr.
71 Kennedy, how we have been doing this is that, this is
72 subject to check, but I think the Board itself actually
73 approves the overall balance of \$4,129,000, and the
74 company has disclosed in its budget what that balance
75 comprises of, is comprised of, and as we go through the
76 year, we provide variance reports to the Board as to the
77 progress on the projects contained within that, within
78 that balance, and I think there's actually ... I'm not sure
79 if it's quarterly, but I think at least annually we disclose
80 item by item, a full variance report to the Board. This
81 Goulds to Mobile, rebuild 24-L, \$650,000, what the
82 actual cost was, whether there was a variance, whether
83 the project was delayed or not delayed, all the pluses
84 and minuses that we incur in the normal running of a

1 business, you know. This is a fluid process. You try to
2 establish what you're going to do, there are things that
3 happen as you go through the year that you make some
4 decision changes. There are under-runs, over-runs, you
5 know, those kinds of things that come out of a normal
6 running of the business, but we disclose all that to the
7 Board and, you know, are open to questions, and we
8 have received questions on a regular basis from the
9 Board on various variances that we have, and to explain
10 them further, or just to give more information.

11 MR. KENNEDY: Okay, I wonder if we could just turn to
12 CA-28(k), Mr. Wells. I'll let the witnesses get their ... do
13 you both ... Mr. Perry seems to be still reviewing that.

14 MR. PERRY: Yeah, I'm okay.

15 MR. KENNEDY: You're okay, alright, I'm not about to
16 ask you any questions about specific projects here, I
17 suspect that you'll quickly defer to Mr. Ludlow anyway.

18 MR. HUGHES: I think you're right.

19 MR. KENNEDY: But the question I had, and again, this
20 is in response to an RFI issued by the Consumer
21 Advocate, and Newfoundland Power provided a
22 detailed breakdown of project costs, and I wonder if we
23 could just scroll there a bit, and this goes over to three
24 pages actually, but it provides the individual
25 breakdowns of the different projects, and as you can,
26 some of these, if I can call them minor in nature, a
27 \$10,000 budget item for, for instance, the first one 3-L,
28 engineering design, and maybe upwards of 24-L,
29 rebuilding the section, \$650,000, and if we could just go
30 to the next page, Mr. Wells, and you can just keep
31 scrolling down, you can see the budget items are small
32 except for two on this page, which is the 124-L for half
33 a million, and the 301-L for \$2 million. If you could just
34 go over to the next page, and the total budget
35 \$4,129,000, so that \$4,129,000 is what jives with your
36 project total in your Schedule B, and so I guess we've
37 got right now, three levels if you will, we've got this
38 total budget category of \$4,129,000, and you had a
39 breakdown of six or seven projects for the same
40 amount, and now we have a further detailed breakdown
41 for the individual projects within those projects, so
42 what I'm asking is, for the purposes again of going,
43 applying to the Board for its approval of expenditures
44 above \$50,000, does Newfoundland Power see these as
45 being individual projects on this schedule that we're
46 looking at right now, CA-28(k)?

47 MR. PERRY: You're saying the projects above \$50,000
48 that are on the schedule?

49 MR. KENNEDY: Yes.

50 MR. PERRY: Again, I've got to say, subject to check,
51 my understanding of the process we have been
52 following is that in the case of transmission, rebuilding
53 transmission lines here, the company submits to the
54 Public Utilities Board a project description that is
55 shown in our Schedule B, that identifies the projects
56 above \$50,000. That also identifies the total of projects
57 below \$50,000, and I think the total is in this case,
58 \$750,000. What I understand that we ask for approval
59 for is the total of \$4,129,000, and that we report then on
60 the variances based on the original submission to the
61 Board as to the details of the \$4,129,000, we report on
62 the variances as we go through the year, and then
63 there's a year-end report filed with the Board explaining
64 the variances on a full and complete basis.

65 MR. HUGHES: I think there is another thing at play
66 also, we're trying to provide information. I mean, say for
67 example, the guy guards there, you know those yellow
68 sleeves that go on the guy guards, and the cost of them
69 is nominal and the labour is nominal. We're trying to
70 convey that we're going to be doing a lot of them,
71 there's a hundred thousand (inaudible), so yes, there's
72 the \$50,000 legal limit, but we're also trying to provide
73 information and so, I mean I can't ... putting that on
74 Schedule B that we're going to do, if I'm reading it
75 correctly, \$100,000 of work, I view is good information
76 of what the company is going to do. How that legally
77 does or doesn't apply to the \$50,000, because you
78 could say that each pole is separate, I don't know, so I
79 mean, I think ...

80 MR. PERRY: I would add ...

81 MR. HUGHES: I think there's a sort of, there's an onus
82 on the company to try and be helpful and that's what
83 some of this stuff is.

84 (12:00 noon)

85 MR. PERRY: I would add one other thing is that when
86 you do look at the company's system of accounts, and
87 that's what we abide by when we go out and look at the
88 work we're going to do in the field and what has to be
89 capitalized and what's not capitalized. In terms of the
90 transmission, you know, the pole, the transmission
91 tower, even an insulator in that tower is actually a

1 separate unit, so we take one insulator off the tower and
2 replace a new one with that. That is a project, in
3 essence, we're doing that, and that's why you see a lot
4 of these smaller projects show up in the transmission
5 side of the business. In the case of distribution, for
6 example, it's a little different. We have the pole, which
7 is one sort of category, and then we have all of the
8 fittings on top of the pole in another category, so it's a
9 little different, but in transmission cases, in fact, you
10 know, the insulator, the cross arm, the pole, the top of
11 the structure, are different subsets and we're required to
12 actually, you know, record them separately in our
13 system of accounts. This has been developed over
14 many, many, many years and approved by the Board.
15 It's consistent with North American regulatory practice
16 for the last hundred years, I would suspect, because
17 that's how long we've been around, so you know, that's
18 what's driving a lot of this sort of like detailed
19 disclosure of line items in terms of the under \$50,000
20 level.

21 MR. KENNEDY: Okay, so I wonder if we could just
22 turn to PUB-1.4, Mr. Wells?

23 MR. HUGHES: Is it near the back or the front?

24 MR. KENNEDY: 1.4, I was relying on electronics.

25 MR. PERRY: Near the back.

26 MR. HUGHES: Near the back, okay. No, Section 1 is
27 about this thick.

28 MR. PERRY: My copy stopped at Attachment N of
29 PUB-1.2.

30 MR. HUGHES: Thanks.

31 MR. KENNEDY: Do you both have it there in front of
32 you?

33 MR. PERRY: Yes, we do.

34 MR. KENNEDY: Okay, so this was in reply to an RFI
35 issued by the Public Utilities Board, and it's just asking
36 for comparing the original budget for your 2002 items
37 with your forecast 2002, seeing how we've still got part
38 of 2002 to go, and there is, you'll agree with me in
39 certain instances, a significant difference between what
40 was budgeted in 2002 for some of these items and now
41 what you're currently forecasting to spend in 2002 on
42 those same items?

43 MR. PERRY: I agree there are differences, and as I said
44 earlier, you know, when you look at the detail of the
45 projects in our capital budget that we have to carry out,
46 the size of our system, a billion dollar system, 10,000
47 kilometers of transmission and distribution lines, 137
48 substations, 190 transformers, 23 hydro facilities, it's
49 fully expected that when we start out with a capital
50 budget there will be variances, and some will be small,
51 some will be larger. We disclose all of them to the
52 Board and it's a very, I think, thorough process.

53 MR. KENNEDY: No, no, I understand, Mr. Perry, I
54 think you got off on the wrong foot from my first line of
55 questioning, but if we could just ... the Seal Cove one in
56 particular, replace Unit No. 2 governor control and
57 enunciator (*phonetic*), I think is the ... that the original
58 budgeted amount was \$227,000, and then as of the time
59 of replying to this RFI, the forecast budgetary amount
60 for that item is now \$437,000, so a difference of \$210,000
61 in that particular item, so ... and is my, then,
62 understanding right from, I guess, looking at this that
63 Newfoundland Power, yes, it reports on the variances,
64 but that Newfoundland Power takes the approach that
65 within this hydro plants facility rehabilitation budget of
66 \$2,345,000, that it has the discretion, if you will, to be
67 able to move its money around between these
68 individual project items, just as long as the overall
69 budget ... if we could just scroll to the bottom, Mr.
70 Wells, I think you'll have to go to the next page, that
71 the total budget for this category item is pretty close to
72 the total expected budget for this category item.

73 MR. PERRY: Yes, it is, and you know, it's good that
74 that's the case. The, you know, the actual individual
75 variances in each of the categories here, obviously, Mr.
76 Ludlow would be more able to explain to you. I know
77 we had some problems in Seal Cove, for example, where
78 we lost a unit over there, and it's an insurance claim.

79 MR. KENNEDY: Yeah, and I'm not interested in why or
80 ...

81 MR. PERRY: But I would say, yes, for management
82 flexibility in that category of \$2,345,000, you know, we
83 attempt to carry out the projects as we had asked and
84 was approved by the Public Utilities Board, and there
85 will be variances up and down in each of the categories,
86 and there will be decisions, I guess, made based on, if
87 new information becomes available during the year that
88 it does not make sense, for example, to carry out a
89 project because of either a further review once we get
90 the, for example, take the plant down and it wasn't as

1 bad as we expected, and some of the stuff, Mr. Ludlow
2 can give you more better examples, but you know, I
3 think it's just, it reflects the, you know, sort of how it is,
4 how we, you know, how it's got to be in terms of
5 carrying out this number of projects. These are small
6 projects in a lot of cases that are carried out over many
7 different plants, and you know, you do your best to
8 carry out what you asked, what was approved, and
9 there's going to be variances, and I think that's just the
10 nature of the business, frankly.

11 MR. KENNEDY: No, and I understand that, that there
12 will be variances, and in a moment I'm just going to
13 bring you through a couple of those just to give some
14 examples, but just so I ... I guess I'm trying to get an
15 understanding that from Newfoundland Power's
16 perspective, from you as CFO, and you Mr. Hughes as
17 CEO of the company, that you consider approval by the
18 Board of this budget item of \$1,771,000 to be approval
19 of an expenditure in general for these projects, and that
20 as long as that number comes in close to what's been
21 approved, you're okay, but you can have ... if I can call
22 them significant variances on the individual items
23 making up this \$1,771,000?

24 MR. PERRY: I would add a few more layers to that, Mr.
25 Kennedy, like you know, obviously we start out, we ask
26 the Public Utilities Board to approve the capital budget.
27 At that time that's our full expectation, that's what we
28 want to do. As we move into that year, you know, more
29 information could come available, some projects may
30 not proceed, others may, and then there will be
31 variances due to pricing from contractors, weather,
32 those kind of things. What we do is that we track the
33 individual projects as you see here, we report the
34 overall number as well as the detailed variances to the
35 Public Utilities Board, and you know, that's how we
36 manage it. It's really ... yes, we manage the overall
37 number, but we are also focused on every line item in
38 the total to see what we're doing and what's happened.

39 MR. HUGHES: I think there's also some sort of
40 overriding principles. I mean we talked earlier about the
41 used and useful, it's got to be reasonable. We file the
42 reports and there are questions, and at the end of the
43 day the Board has to be comfortable that, you know,
44 what we did is reasonable and it complies with all the
45 legislation so there's, in addition to sort of the line
46 items, there's the overall reasonableness, used and
47 useful, all those ... is it good for customers, did we do it
48 in a way that made sense, all those kinds of things
49 come into play.

50 MS. BUTLER, Q.C.: Mr. Chairman, I wonder if the
51 balance of that kind of a question might more be suited
52 for argument really. I think what we're getting at is what
53 is the intent of Section 41 of the Act.

54 MR. KENNEDY: Well, I didn't think I was getting into
55 what the intent of Section 41 was as much as what the
56 CFO and CEO of Newfoundland Power feel it to be the
57 case, but it's okay, I'm moving on anyway, Chair. I
58 wonder if we can turn to CA-25(g), Mr. Wells. I'm still
59 in the same topic, if you will, gentlemen, but I just
60 wanted to, I guess, hammer home the point, if you will,
61 and Mr. Perry, if this is what you're speaking about ...

62 MR. PERRY: Sorry, Mr. Kennedy, where are you?

63 MR. KENNEDY: I'm CA-25(g), and this one is again in
64 response to an RFI issued by the ...

65 MR. PERRY: If you could give me a second, I just want
66 to flip to Schedule B.

67 MR. KENNEDY: B?

68 MR. PERRY: Of the application.

69 MR. HUGHES: He's going to cross-reference, it's easier
70 if you've got both of them in front of you.

71 MR. KENNEDY: Now just, I guess, I just wanted to
72 make it clear, I understood that ... so in response to this
73 RFI, Newfoundland Power is indicating, well, that in the
74 application it was the approximate number of reclosers
75 and relays and then in response to this RFI,
76 Newfoundland Power is saying, well here is where they
77 will be replaced at each location in 2002, and I'm
78 wondering, so going forward here, it could be the case
79 though that the number of relays at Glendale, for
80 instance, may change, or the number of reclosers at
81 Hare Bay or Gambo may change from what is stated in
82 this document?

83 MR. HUGHES: I don't know the system in that kind of
84 detail.

85 MR. KENNEDY: Okay.

86 MR. PERRY: Mr. Ludlow.

87 MR. KENNEDY: Why don't we go to CA-91 then.
88 Gentlemen, I just, I'm interested in the last line of this
89 reply, CA-91(a), your last paragraph. The company has

1 not yet identified a commercial product that will meet
2 the project requirements at a reasonable cost.
3 Consequently, for budgeting purposes, the cost of this
4 project has been estimated on the basis of migrating the
5 existing applications from the open DMS platform to a
6 new operating system. So is it fair to say that inside the
7 budget application itself that Newfoundland Power has
8 put forward, that there is in a number of instances,
9 estimations made by Newfoundland Power, what it
10 expects it's going to spend in 2002, that that's not fixed
11 and determined, to borrow the phrase from Section 78
12 at this point in time?

13 MR. HUGHES: On this one, what we call the PCLS
14 system, the Problem Call Loading (*phonetic*) System, this
15 has been developed over the last few years and it's
16 been very useful to us in improving our efficiency and
17 so on. Now because, and if you talk about it's
18 migrating, if there was a product on the market that we
19 thought, and it ran on, and this is more your area than
20 mine, Mr. Kennedy, on an operating system that wasn't
21 going to, you know, it was going to be supported, then
22 we would look at it very seriously. I mean this is a key
23 system to us, but in the absence of such a one, then
24 we'd probably migrate it, so that's, that's how it works,
25 but this is one of our key systems in the efficiency of
26 dispatching crews and technicians and response times
27 and things like that.

28 MR. KENNEDY: Sure, and then at this point in time,
29 because of the fact that there's no product on the shelf
30 that you know you can buy for X number of fixed
31 dollars, that you've got to make an estimate of what you
32 expect to be spending in 2003 on this project.

33 MR. HUGHES: Yes.

34 MR. PERRY: Just, I would add, Mr. Kennedy, that I
35 think back to your original question, a budget is a
36 budget. It's a forecast of what you plan to spend. The
37 actual comes in after, as you know, so we have a
38 budget, the first thing you know, you're going to have
39 variances.

40 MR. KENNEDY: Sure.

41 MR. PERRY: So that's just a reality.

42 (*12:15 p.m.*)

43 MR. KENNEDY: I'd like to look at one, CA-35, please,
44 Mr. Wells.

45 MR. PERRY: 35 or ...

46 MR. KENNEDY: 35.

47 MR. PERRY: 35.

48 MR. KENNEDY: No, that's not it. That's the wrong
49 exhibit. Just try 35(b), just on the off chance ... yeah,
50 that's it, 35(b). Now ...

51 MR. HUGHES: Is this meant to have a list attached?

52 MR. KENNEDY: Not 35(b). So gentlemen, this
53 involves a project, a reconstruction, and a project cost
54 of \$2,745,000, and the question was please provide a list
55 of high priority projects and justify the expenditures in
56 each region and area, and the reply was, high priority
57 projects arise as a result of storm damages, operational
58 problems, and line inspections conducted in the budget
59 year, and as such cannot be itemized at budget time.
60 Project cost, therefore, is an estimate based on average
61 historical expenditures related to unplanned
62 reconstruction. So I wonder if you could just provide
63 us with some commentary on that, either Mr. Hughes or
64 Mr. Perry, because this one seems to be a little different
65 than a case of identifying a particular project and then
66 making your best estimate of how much you think that
67 project's going to be to carry out. In this case it's
68 money that you've based on previous years, are
69 expecting to spend in the next year, is that right?

70 MR. PERRY: Yeah, I just go back to my earlier
71 comments. You've got to sort of ... and Mr. Ludlow will
72 give more detail on this, but you've got to look at the
73 nature of the system. It's 10,000 kilometers of lines,
74 substations, you know, all the plant we have, the hydro
75 plants, really you can never predict exactly where
76 you're going to have problems, but you have to have
77 funds available to get to work on those problems, and
78 based on history, we have fairly good information that
79 every year some amount of this will occur. Now this is
80 different than a major blow-up at a hydroelectric plant,
81 for example, or the loss of a transformer, which is
82 something you really can't predict. These are like storm
83 damages, things in Newfoundland you know that are
84 coming your way every year when you have that size of
85 a system.

86 MR. HUGHES: A good example is, say, in 2002 with the
87 lightning storms. That storm, which basically it was
88 three storms in a week. That was a million dollars, 300
89 transformers and so on, and that was just that week,

1 and then when we went through the lines and
2 inspected and did all the transmission, you'd also pick
3 up insulators that hadn't failed but were in danger of
4 failing, so you can go through the money pretty quickly
5 unfortunately.

6 MR. PERRY: And again, once we report on a quarterly
7 basis, we report how we've used these funds, and
8 annually report the details of where these funds were
9 used.

10 MR. KENNEDY: And I guess then, am I correct then
11 that the difference between, for instance, this project
12 category, reconstruction, \$2,745,000, is that you can't
13 identify sub-projects or where that's going to be spent,
14 like you can in the hydro rehabilitation project
15 category, for instance.

16 MR. PERRY: I would say that's correct. We just know
17 that we're going to face some of it, but we don't know
18 where we're going to be hit.

19 MR. KENNEDY: So is it fair to say that from your
20 perspective as CFO, and Mr. Hughes, you as CEO, that
21 when you're seeking approval from the Board on this
22 particular item, reconstruction, \$2,745,000, you consider
23 that to be an expenditure, an item that's being
24 approved.

25 MR. HUGHES: Oh, there's no doubt that this will occur.
26 I mean it will occur every year forever, and obviously
27 we need to restore the service as quickly as we can, and
28 spend the money to get it back up and running, so it's
29 just as much a part of a capital budget as anything else.
30 I mean I think if we were in a place in the world that,
31 say, had bad weather every five or seven years, but
32 unfortunately, you know, we have high winds on a
33 regular basis, and we talked earlier about the ... you
34 have high winds, you have a lot of temperatures
35 between plus one, minus six, and lightning, and so it's
36 going to happen.

37 MR. KENNEDY: Can I ask you, in the budget, budgets
38 that Newfoundland Power has put forward this year
39 and in preceding years, there was always, is a
40 budgetary item called unforeseen allowances, and the,
41 in the most recent number of years, the budget item,
42 unforeseen allowances, was, say, at a set budget of
43 \$750,000. Is my understanding correct?

44 MR. PERRY: I think that's correct, yeah.

45 MR. KENNEDY: Could you tell me what your
46 understanding, Mr. Perry, is of when that unforeseen
47 allowance is to be used by Newfoundland Power, under
48 what conditions it's allowed to access that particular
49 budget item?

50 MR. PERRY: I think, you know, the nature of the
51 description of what it is tells the story. It's unforeseen,
52 if it's something the company, if it happens to our
53 system that we did not foresee, and this is different
54 than I would say storm damages and those kind of
55 things that are included in this \$2.74 million category,
56 but let's use the loss of a transformer, major transformer
57 in a ...

58 MR. HUGHES: In a substation.

59 MR. PERRY: In a substation, we have to get service
60 back to our customers. What the \$750,000 does is allow
61 us to move forward to make those expenditures, to get
62 our customers back on line without having to come to
63 the Board and say we need to apply for X number of
64 dollars so we can put customers back on line, you
65 know, I don't think our business can work that way, so
66 we have this thing called unforeseen items that covers
67 us in those, in emergency situations that we need to
68 move quickly to repair a piece of equipment, to put it
69 back in service, and it's things that we just could not
70 predict, you know, there was no way of predicting, you
71 know, and they happen every five years, or every ten
72 years, or whatever, it's just not possible to predict that
73 they would happen.

74 MR. HUGHES: In respect of power transformers, this is
75 a good example, the failures are happening more often,
76 and there's a study by one of the major manufacturers,
77 and Mr. Ludlow can give the details, that they think it's
78 going to increase, and certainly that's been our
79 experience last year and this year on failures. They
80 tend to run about \$1.2 million. The other thing, Mr.
81 Perry mentioned about the restoration of service. The
82 other thing on power transformers is the delivery is so
83 long, so depending on what the failure is, you need to
84 order it very quickly.

85 MR. PERRY: Yeah, the other thing I would add is that
86 usually what would happen if there's a major issue that
87 even could cost more than \$750,000, I think once we get
88 into it, get the initial problem resolved and customers
89 are coming back on line, you know, if the amounts are
90 much higher than that, we have in the past, I think,
91 come back to the Board, filed a supplemental

1 application to the Board to have approved the
2 expenditures to problems that were happening, so
3 we've done that a couple of times where we've come
4 back in and said we have a major issue in this area, we
5 need to solve it, we've started the process, you know,
6 please hear our application.

7 MR. HUGHES: And when you go back to the previous
8 one, a good example of that is ... I mentioned we went
9 through the 300 transformers. It's (inaudible) we were
10 repairing them, we were out trying to buy every
11 transformer or borrow what we could because it was
12 such a huge amount, it was unprecedented, but I'm sure
13 we were preparing our filings to the Public Utilities
14 Board, but the first thing is to get the equipment in
15 because of the vast numbers, so that would be
16 something, you know, in the storm category, where
17 you've got to react very quickly.

18 MR. KENNEDY: So how is, how is then the
19 reconstruction budget of \$2,745,000, which is for ...

20 MR. HUGHES: Can you just give us one minute?

21 MR. KENNEDY: Oh, sure.

22 MR. HUGHES: Thank you, Mr. Kennedy.

23 MR. KENNEDY: No problem, I'm curious then, how is
24 the reconstruction budget of \$2,745,000, seeing how it's
25 being spent on items that you can't readily identify for
26 the next year, are items that you expect to have to
27 replace due to just damage and what have you, that's
28 just a normal part of your business, how is that
29 different than the unforeseen allowance, which is also
30 to address unexpected events?

31 MR. PERRY: I think it's just the nature. We know we're
32 going to get, in the case of the \$2,745,000, we know
33 every year we're going to have problems in that
34 category, and operational or storm related, we're going
35 to have problems in that category. The unforeseen,
36 some years we will not use, other years we will, you
37 know, it's depending on whether we have an
38 unforeseen event, like the loss of a power transformer,
39 or a major smash up in a hydroelectric plant, for
40 example, those one-of events that was just not
41 predictable. That's ... you know, I suppose, you know,
42 one is predictable, the other is not predictable.

43 MR. HUGHES: And that's, what happens as well is that
44 when the actual item is identified and happens, then we

45 report exactly what it is, so you actually have a real
46 item. It doesn't become sort of a no-name item.
47 Something has happened, we then have it in our reports
48 to the Board, and the Board then judges, do they view
49 that as reasonable, and really that's the sort of process.

50 MR. KENNEDY: So why, can I ask then, taking your
51 transformer example, that would be in your distribution
52 budget, like for instance if you scheduled a transformer
53 switch out, that's in your distribution budget.

54 MR. HUGHES: Well, substations.

55 MR. KENNEDY: Substations.

56 MR. HUGHES: Power transformer ...

57 MR. KENNEDY: So if, for instance, next year,
58 unexpectedly you have to repair a transformer, replace
59 a transformer, why wouldn't you just absorb that inside
60 your distribution budget and reallocate funds inside of
61 that budget like you seem to do in instances where we
62 just pointed out?

63 MR. HUGHES: Well, I think there's a couple of things,
64 I mean as Mr. Perry mentioned, the \$750,000 is kept
65 there. I mean unfortunately the storms are increasing,
66 as the utilization of things like power transformers gets
67 greater, their life, or their ... they get used up at a
68 quicker rate, because obviously, depending on what
69 factor you've got a power transformer out depends on
70 their life. You can have some power transformers
71 because they haven't been greatly utilized will have a
72 huge life, whereas others will have a much shorter life,
73 and as our energy sales have grown, you're obviously
74 utilizing the equipment at a greater rate, and so I think
75 the money will be spent, whether, you know, we should
76 think about for a future capital budget, changing some
77 of the categories, or changing some of the amounts,
78 then maybe we should do that, I don't know, but you
79 know, to make it more clear as to the categories. From
80 a running the business point of view with storms and
81 failures and stuff like that, I would be surprised if this
82 money wasn't spent because of some of those events.

83 MR. PERRY: I think you have to be careful though
84 because if you go to a process where for the kind of
85 things we're talking about here, especially in the
86 \$2,745,000 where that's not in our budget, we would
87 spend just about the entire year back in front of the
88 Board asking for approval for this little bit, this little bit,
89 this little bit. This process has been developed over

1 time, previous capital budgets have been submitted on
2 the same lines, been approved by the Board, for it's
3 management, the flexibility to maintain the system, to
4 operate it for the benefit of customers, and it's worked
5 very well, so, you know, I'm not so certain that it's
6 something that needs fixing. I think it's working fairly
7 well at this point in time.

8 MR. KENNEDY: Mr. Ludlow is on record during the
9 2002 capital budget as saying that the unforeseen
10 allowance is an amount that provides Newfoundland
11 Power with the opportunity to start quick repair in
12 massive unforeseen circumstances, so is that a
13 definition that you would agree with?

14 MR. HUGHES: Pretty close.

15 MR. KENNEDY: The other question I have actually,
16 Mr. Perry, as is indicated in, I think, some of the
17 responses to the RFIs, that Newfoundland Power has
18 had a significant reduction in the FTEs over the last
19 number of years.

20 MR. PERRY: Yes, that's correct, we're down from 1,005
21 to 665, 33 percent.

22 MR. KENNEDY: So a 33 percent reduction in the
23 number of FTEs?

24 MR. PERRY: Absolutely.

25 *(12:30 p.m.)*

26 MR. KENNEDY: And as in comparison to your
27 budgets, capital budgets in the first half of the 1990s, is
28 it a fair statement to say your capital budgets now, and
29 particularly in 2002 are significantly higher than what
30 the capital budgets were in that period?

31 MR. PERRY: No, I think what we've said is that what
32 levels we're at today is on average where we've been
33 over the last 20 years. In a nominal dollar perspective,
34 '92, you know, I think back in 1990, for example, we
35 spent \$68 million, so you know, you can't just ... you
36 can't just pick and choose the periods you're looking at.
37 You know, I think 1990, around there, we spent \$68
38 million. We haven't spent \$68 million in either year
39 since that time, I can tell you that. We spent \$66 million
40 in 2001. 20 odd million in that was the Aliant pole
41 purchase, which is an extraordinary transaction
42 approved by the Board, but, you know, so the level that

43 you're looking at, we believe is fairly consistent with
44 the average over the last 20 years.

45 MR. KENNEDY: Because there was a comment made
46 by Mr. Hughes on his first day that Newfoundland
47 Power may have in response to slower growth as a
48 result of the cod moratorium in the early nineties, may
49 have underspent on its capital budgets for a few years.

50 MR. HUGHES: That's true, I mean I think ... yeah, I
51 think you've got to be fair to the people at the time
52 though. I mean it was a traumatic, it just changed
53 everything. They reacted. With hindsight we can look
54 back and say they probably should have spent more on
55 the system, but that's knowing what happened to
56 reliability since then. I mean, certainly with hindsight
57 looking back, it would have been better if the hydro
58 generation and the electrical system hadn't been
59 starved of upgrades. I mean there's no doubt about
60 that, but I think in fairness, they reacted to the situation
61 as they saw it. I'm making that judgement looking back,
62 and I'm making that judgement based on in '97, we
63 realized that the reliability wasn't very good, our
64 operating costs were rising and we were fixing a lot of,
65 you know, outages, so that's how we make the
66 judgement.

67 MR. KENNEDY: So I guess the point I'm making is that
68 the budgets of the last couple of years are higher than
69 the budgets in the beginning of the 1990s, is that ...

70 MR. PERRY: On a nominal basis, yes.

71 MR. KENNEDY: Okay, and that the number of FTEs, as
72 we just established, dropped by 33 percent in a number
73 of years, so I guess the question I had was does
74 Newfoundland Power feel it appropriate to conduct a
75 review of its general expenses capitalized formula to
76 take into account these changes in both the level of the
77 capital budget and then the number of employees that
78 it has on staff to actually carry out these capital
79 budgets?

80 MR. PERRY: In fact, the company is actually
81 complying with the Board's order on that issue. We
82 have come down over the last five or six years, Mr.
83 Kennedy, from some \$10 million to \$2.8 million.

84 MR. KENNEDY: That's while the GEC was being
85 phased in.

86 MR. PERRY: No, phased out.

1 MR. KENNEDY: Well, as I understand it, the amount
2 that was being ...

3 MR. PERRY: We were capitalizing \$10 million.

4 MR. KENNEDY: Correct, and now you're capitalizing
5 \$2.8 million.

6 MR. PERRY: That's correct.

7 MR. KENNEDY: And this is a result of the introduction
8 of this GEC.

9 MR. PERRY: No, it was GEC when it was \$10 million.

10 MR. KENNEDY: I'm sorry, okay, so the amount that
11 you're sending to capital is decreasing.

12 MR. PERRY: Absolutely.

13 MR. KENNEDY: Your capital budgets are increasing.

14 MR. PERRY: I think we just went through that, but I'll
15 give you that anomaly from the period in early nineties
16 to now, there's increases in the capital budget.

17 MR. KENNEDY: And the number of employees to
18 carry out those capital budgets is decreasing.

19 MR. HUGHES: In nominal numbers, the GEC has gone
20 from \$10 million down to \$2.5 million, but it was GEC, it
21 was always GEC. The capital budgets, if you pick ...
22 this is nominal ... if you take out Aliant and you go into
23 sort of the mid-nineties, are increasing in nominal
24 dollars, and yes, it's true that the number of people
25 have come down, so those three things are true.

26 MR. PERRY: I think, Mr. Kennedy, if I could put some
27 things in perspective for you. When We look at all that
28 stuff, you know, capital and operating expenses, we
29 look at it in an overall balance, we look at total costs,
30 capital costs and operating costs. Over the last ten
31 years the company spent over \$400 million in capital.
32 Rates have only changed one percent, base
33 Newfoundland Power rates, excluding the flow
34 throughs from our friends, Newfoundland and Labrador
35 Hydro, have changed just one percent. In the same
36 period our operating costs have declined 22 percent.
37 On an inflation adjusted basis, it's down like 34 percent.
38 Now if I move to more current periods, for the last five
39 years we've spent in excess of \$250 million on cap ex.
40 Our rates, our base rates have gone down .8 percent,

41 and our operating costs are down eight percent, and if
42 you compare us, for example to a company very close
43 to our territory, Nova Scotia Power, on a like to like
44 basis, they're up 13 percent for the same period, so no
45 one can question how Newfoundland Power has been
46 balancing capital and operating costs and being very
47 successful in driving costs down for the benefit of our
48 customers. You know, I think we've been doing ...

49 MR. KENNEDY: I think everyone should question it,
50 Mr. Perry, I think that's the whole purpose of the
51 hearing is to question Newfoundland Power's
52 operations, and I guess I didn't ask you anything about
53 the overall ability of Newfoundland Power to provide
54 lowest possible cost. I was just asking you a very
55 simple question that in light of the changing
56 circumstances between the growth in your capital
57 budgets, the reduction in the number of FTEs, whether
58 Newfoundland Power feels that the formula that it's
59 applying in assessing how much it should send to
60 capital from operating should be reviewed, or are you
61 comfortable with the way it is right at this moment?

62 MR. PERRY: We're very comfortable with the level of
63 the GEC, you know, as I said earlier, when you look at
64 our operating expenses at the \$50 million level, \$2.8
65 million of that, you know, \$50 odd million of operating
66 expenses being allocated to capital, it seems like a very
67 reasonable amount of money, given that we're a
68 company that's carrying out capital budgets in the \$50
69 to \$60 million range on an annual basis, and that's a
70 distinct part of our business.

71 MR. KENNEDY: Okay, I'd like to move on to reliability,
72 and I wonder if we could pull up PUB-21.

73 MR. HUGHES: PUB-21?

74 MR. KENNEDY: PUB-21, and actually all five of them,
75 PUB-21.1 to PUB-21.5. Mr. Hughes, Mr. Perry, this is a
76 series of questions asked of Newfoundland Power
77 concerning its use of standards for measuring reliability
78 of its distribution system, and pursuant to 21.1 it was
79 indicated Newfoundland Power is not aware of any
80 industry standard as described in the request for
81 information, and then refers the reader to CA-85(b),
82 which we can look at in a moment because I think that
83 provides some qualitative information regarding how
84 you view reliability so if you feel like you need to refer
85 to that please let me know, but I'd just like to go
86 through each of the PUB-21's first, just so we can see
87 the full reply. 21.2 was using industry standard ...

1 MR. HUGHES: We've just got to go to 85(b).

2 MR. KENNEDY: 21.2, using industry standard what
3 percentage would be considered to be an appropriate
4 level of reliability for a generation utility and does this
5 vary according to the level and type of generation
6 provided. The reply, Newfoundland Power is not aware
7 of any industry standard as described in the request for
8 information. 21.3, what's the company's realistic target
9 for an acceptable level of system reliability and upon
10 what standard is this target based. While
11 Newfoundland Power is committed to improving service
12 reliability, it does not attempt to do so by setting target
13 levels or levels of reliability in comparing the cost of
14 meeting that level or those levels. Newfoundland
15 Power believes such an approach would be impractical.
16 21.4, what role if any does climate, environment, and
17 geographic isolation play in the determination of an
18 appropriate level of reliability. Answer, climate,
19 environment, and geographic isolation play significant
20 roles in determining an acceptable or reasonable level
21 of reliability. Reliability statistics should be interpreted
22 with due regard for such factors in assessing the
23 reasonableness of reliability levels, please see CA-
24 85(b), and then we already looked at 21.5. And Mr.
25 Hughes, if I gathered you correctly from your testimony
26 yesterday, in response to questions concerning
27 reliability, you indicated that Newfoundland Power had
28 no target, that you have to be within a reasonable
29 range, is that, is my understanding correct there?

30 MR. HUGHES: Yes, what I was talking ... two things
31 and I'm trying to bring it together. We don't have a
32 target, other than we think that it needs to be improved.
33 The range I was trying to talk about is that I believe
34 that all customers should be within a reasonable range.
35 I'm not sure it is the correct thing to do to try and have
36 everybody having the same standard of reliability, and
37 you got into a discussion about radial lines and so on.
38 However, I do believe that rural Newfoundland should
39 have a decent level of service, not just from the
40 residential, which is very important, but also a lot of the
41 fish plants, you know, we talked about Old Perlican
42 yesterday, with the Quinlan plant up there. I've been
43 through that plant. There's a lot of electronics and
44 microprocessors. I think they need to be within a
45 decent range.

46 *(12:45 p.m.)*

47 MR. KENNEDY: Right, and that was when we were
48 going through Section 3 of the Electrical Power Control

49 Act, there was one of the provisions that obligates
50 Newfoundland Power to provide equitable access to
51 power to all consumers, so that would be consistent
52 with that, I would suggest to you. I have a few
53 curiosities then in light of your position. One is
54 evidence given by Mr. Evans during the 2001 capital
55 budget application, and I've got copies of that
56 transcript that, if I could ask the Clerk to ... gentlemen,
57 picking up Mr. Evans at line 78, and I'll just read it out
58 and I was going to ask you to comment on it if you
59 could. This was under a response to a question from
60 Commissioner Crosbie regarding would he, Mr. Evans,
61 happen to know what the Canadian Electrical
62 Association recommended numbers might be for the
63 SAIFI and SAIDI column. Mr. Evans, there's no such
64 thing, it's an unfair question. There are no
65 recommended numbers for SAIDI and SAIFI by the
66 Canadian Electrical Association, you know, my desire
67 is to get those as close to zero as possible, those
68 numbers are higher than most Atlantic Canadian
69 utilities, and most utilities in Canada, so we don't have
70 the numbers for the, we'd like to have them, yes, but
71 there is no industry standard per se. He goes on to talk
72 about the ice storm, and over on the, it's actually a run-
73 on sentence, picking up on line 93, but the answer to
74 the question directly, there aren't set standards but from
75 my perspective I want them as close to zero as I can get
76 them.

77 MR. PERRY: Sorry, Mr. Kennedy, the second
78 reference?

79 MR. KENNEDY: Oh, sorry, line 93, still on page 24, and
80 it continues over to page 25.

81 MR. HUGHES: Are you talking about, "but to answer
82 the question correctly", is that where you are?

83 MR. KENNEDY: That's right, but to answer the
84 question directly, there aren't set standards, but from
85 my perspective I want them as close to zero as I can get
86 them. Can I ask you, is that, would that be taken as the
87 official policy of Newfoundland Power regarding
88 reliability targets?

89 MR. HUGHES: I wouldn't say so. I mean Mr. Evans is
90 probably a bit more ambitious than I would be in this
91 regard. I mean he's right, I mean John is a fabulous
92 engineer and he is trying to get the system to perform
93 so that there are no outages, and he obviously is right
94 in his thrust and his enthusiasm to try and get it down
95 there. Personally, I think it would be very difficult to, in

1 Newfoundland, without something radically changing,
2 to get it below a SAIDI of, down to an overall SAIDI,
3 rural and urban, on a company-wide basis, I think it
4 would be tough to get it below one and a half, one and
5 quarter. I think it would be very tough. Now what I can
6 tell you in answer to your question is that it's
7 absolutely true, there are no recommended numbers,
8 but if you asked most, or you could ... most of the CEOs
9 of Canadian utilities are trying to get four nines, or five
10 nines, and what that means is that they want to see the
11 power on either 99.99 or 99.999, and that's what they are
12 trying to do, and 99.99 is about an hour or less,
13 something ... it's minuscule. I'm not sure, and this is
14 just my personal opinion, that that is possible to get to,
15 four nines level, and five nines. You know, we're at the
16 five or six range. I think in a couple of years time we
17 will see where we are and then we'll have a better idea.
18 I suspect in a few years time we will be about four-ish,
19 that's my estimate, and I think we'll be better able to
20 answer the question of how far and reasonable cost,
21 etcetera, etcetera, do you think you can get. So to sort
22 of trying and sum it up, we do not have an official
23 position or target. My opinion is that we should not
24 try, given our weather and isolated, stand-alone
25 system, and all the long radial lines and the disparation
26 of our customers, to try and get the reliability to
27 compete with Metro Toronto, I don't see it. However,
28 I think that being below the average for Atlantic
29 Canada, which is pretty comparable, I don't think it cuts
30 it, and I don't think that five and six and a SAIFI of
31 about five as well, I don't think it's good enough. I
32 think we need to move it up. I do a lot of customer
33 visits and I talk to a lot of customers, and the ones you
34 hear it from the most that it needs to be better is
35 business, because of what it does to them, and
36 depending on how long the outages are, residential
37 customers will have various opinions, but the tolerance
38 for outages is far less, so I think we need to take it
39 bigger, but do we have official numbers, no. Does the
40 CEA have official numbers, no, but if you got into a
41 conversation with the CEOs, most of them would talk
42 about four or five nines.

43 MR. KENNEDY: Just before I go to the next document,
44 when you refer to this 99.99, is that what is sometimes
45 referred to as system availability statistic?

46 MR. HUGHES: Yes, if you took ... I don't know why
47 they tend to talk about it that way, but I mean it's ... I
48 suppose in some way it's a little cute way of talking
49 about it. I mean if you multiply the 99.99 by 365 and 24,
50 and you took it from 100, you get the SAIDI.

51 MR. KENNEDY: Mr. Wells, I wonder if we could turn
52 to CA-61, Schedule D. Schedule D as in dog, Schedule
53 D, and I'm looking at the media release of October the
54 9th, 2001.

55 MR. PERRY: Could you give us a second, Mr.
56 Kennedy?

57 MR. KENNEDY: Yeah, the one, two, three, fourth main
58 paragraph, it starts with "improvements and system
59 reliability".

60 MR. HUGHES: I'm sorry, Mr. Kennedy, which one is it
61 we're looking for?

62 MR. KENNEDY: It's CA-61, Schedule D.

63 MR. HUGHES: Got it.

64 MR. KENNEDY: And then into that is a medial release
65 dated October 9th, 2001.

66 MR. HUGHES: It's Attachment E (*sic*).

67 MR. PERRY: It's not in the ... no wonder I was
68 struggling.

69 MR. HUGHES: I've got the release in front of me,
70 October 9th, 2001.

71 MR. KENNEDY: Yes, and paragraph four of that
72 release, Mr. Hughes, it says improvements in system
73 reliability continue to contribute to customer
74 satisfaction with Newfoundland Power service. On a
75 year to date basis, overall system reliability stands at
76 99.99 percent.

77 MR. HUGHES: Uh hum, so I would suspect that you
78 might want to look at that number with SAIDI and
79 SAIFI, I'm not sure it's on a like-to-like basis.

80 MR. KENNEDY: So we can't use the 99.99 percent
81 system availability statistics as a target then?

82 MR. HUGHES: Which year were we in, 2001?

83 MR. KENNEDY: Yeah, well this media release was
84 issued in 2001, yeah.

85 MR. HUGHES: I've got 3.73 for the year.

86 MR. KENNEDY: That's your SAIFI number, you mean?

- 1 MR. HUGHES: SAIDI.
- 2 MR. KENNEDY: SAIDI number, sure, no, what I'm
3 trying to get is you indicated that, yesterday, that 99.99
4 percent would be a target of many utilities.
- 5 MR. HUGHES: Uh hum.
- 6 MR. KENNEDY: And then according to the media
7 release in 2001, it's already at 99.99 percent, so I guess
8 I'm just looking for an explanation.
- 9 MR. HUGHES: We can check the numbers, I believe
10 99.99 works out to about an hour, and for the year it
11 was 3.73 hours, and if you do it in the 99 category, 2001
12 was 99.96.
- 13 MR. PERRY: For the full year.
- 14 MR. HUGHES: For the full year, so it's three nines.
- 15 MR. KENNEDY: Okay, so something must have
16 happened between October 9 or when this, when those
17 numbers were compiled for the purpose of the media
18 release.
- 19 MR. HUGHES: I haven't got it, all I know is that for the
20 entire year, if you do it in the 99 version, it's 99.96 for
21 2001. It was 99.93 in 2000, and 99.89 in '99.
- 22 MR. KENNEDY: Okay.
- 23 MR. HUGHES: And '96 works out to three and a half
24 hours, and I think that other SAIDI number I did was
25 3.73, so it works both ways.
- 26 MR. KENNEDY: Okay, Mr. Wells, I wonder if we could
27 turn to CA-75, and I need attachment ...
- 28 MR. HUGHES: I just need to do a little bit of moving.
- 29 MR. KENNEDY: Attachment A, Mr. Wells.
- 30 MR. HUGHES: I'm just getting rid of binders, Mr.
31 Kennedy, I'll be with you in two seconds.
- 32 MR. KENNEDY: And on page 5 of that report.
- 33 MR. HUGHES: I'm sorry, which one?
- 34 MR. KENNEDY: We're on CA-75, Attachment A.
- 35 MR. HUGHES: Uh hum.
- 36 MR. KENNEDY: Page 5, this is your quarterly
37 regulatory report for March 2002, so your first quarter,
38 and this is the section on reliability in that report, and
39 there's some commentary about the duration of outages
40 for the first quarter as comparable to the previous year,
41 but the frequency of outages has increased.
- 42 MR. HUGHES: Uh hum.
- 43 MR. KENNEDY: And then you blame Hydro, and if we
44 could just scroll down there a little bit, Mr. Wells, and
45 there's this paragraph here, Newfoundland Power and
46 Newfoundland Hydro continue to join efforts to
47 improve reliability of service to customers of both
48 utilities in the first quarter. It was agreed that both
49 companies will target their annual reliability measures
50 for interruption duration, SAIDI, and outage
51 frequencies, SAIFI, as it pertains to Newfoundland
52 Power's customers. In 2002 each utility is targeting to
53 improve their respective annual reliability measures by
54 10 percent over the average for the past five years. So
55 is that the target that Newfoundland Power has set for
56 reliability, going forward?
- 57 MR. HUGHES: What you have is, between ourselves
58 and Hydro we set some targets as we've described here,
59 and there are also targets in the ... there's also targets in
60 the short-term incentive, so there are annual targets.
61 We were answering the questions in that is there a
62 target we want to get to. There were targets set
63 between us and Hydro and there were targets on an
64 annual basis, which is all filed with the Board, and the
65 financial consultant looks at and reports, and I think are
66 even in his reports, but it's not a target where you want
67 to get to.
- 68 MR. KENNEDY: This is not a target?
- 69 MR. HUGHES: There's target as in what you're trying
70 to achieve in a year. The target, and maybe I answered
71 the question wrong ... I thought the questions were,
72 where would you like reliability to be. I think Mr.
73 Browne had some questions (inaudible), how much is
74 enough, or something along those lines, and I thought
75 that's how we got into the thing, what is, what is
76 reliability that is reasonable and enough, and that's
77 what I was answering the questions in. If your
78 question was do we ever have a target, as we do in the
79 short-term incentive, or as we set here with Hydro, then
80 the answer is yes, so if I confused you, I'm sorry, but I

1 was trying to answer was there a target, and how much
2 is enough question.

3 (1:00 p.m.)

4 MR. KENNEDY: Okay, well let's turn to the SAIFI and
5 SAIDI issue then. I wonder if we could look at CA-
6 17(g), Mr. Wells, and I want to run just through two
7 examples, and we're going to need CA-22(g) right after
8 that.

9 MR. HUGHES: 17 and 22, was it?

10 MR. KENNEDY: Yeah, that's right, and they both
11 happen to be the GE question.

12 MR. HUGHES: 17(g) and 22(g)?

13 MR. KENNEDY: And 22(g), yeah. I just want to try to
14 establish, if you can, the capabilities of Newfoundland
15 Power, Mr. Hughes, to provide evidence regarding,
16 detailed evidence regarding outages, and I'm using
17 these two responses, 17(g) and 22(g), I guess, to
18 illustrate the difference.

19 MR. HUGHES: There's been one other reference
20 because I think this cross-references 20.

21 MR. KENNEDY: It cross-references a project, yeah, at
22 page 20, and I'm not interested in the project if that's of
23 any help to you.

24 MR. HUGHES: Okay.

25 MR. KENNEDY: I'm just interested in the style of the
26 reporting, if you will, the level of information that's in
27 each of these replies. In the case of 17(g), the question
28 was regarding, provide the SAIFI and SAIDI for the
29 diesel generators that the project had to do with, the
30 portable diesel generation, and the SAIFI and SAIDI
31 statistics were provided for Grand Bay substation, and
32 then the company average, and then both SAIDI and
33 SAIFI.

34 MR. HUGHES: I think you're too deep for us, Mr.
35 Kennedy.

36 MR. KENNEDY: Oh yeah?

37 MR. HUGHES: Once you're getting down to portable
38 diesels and SAIFI and SAIDI.

39 MR. KENNEDY: Sure, okay. So, well as CEO of the
40 company in trying to improve the reliability of your
41 electrical system for the customers, you look to the
42 SAIDI and SAIFI statistics that you're gathering in
43 order to determine whether you're actually making
44 progress, is that a fair statement?

45 MR. HUGHES: That's true, and you also look at the
46 slices. As I was trying to explain yesterday, you try
47 and look at the various slices, there's loss of supply,
48 and then you've got generation, transmission, you've
49 also got the various distribution levels, and so you try
50 to look at slices. You look at the overall amount, but
51 then you look at the slices to see what is causing the
52 number to be where it is and that's where you analyze
53 it.

54 MR. KENNEDY: So if we can put 22(g), Mr. Wells ...

55 MR. PERRY: Are we finished with 17(g)?

56 MR. KENNEDY: Yes, yeah, are these the slices that
57 you're referring to, Mr. Hughes, if we could scroll down
58 on the chart please, Mr. Wells?

59 MR. HUGHES: Well, you are in the ...

60 MR. KENNEDY: This is right down to the rodents, you
61 know, that are ...

62 MR. HUGHES: It certainly is in the rodents ...

63 MR. KENNEDY: Birds (*phonetic*), not being the same as
64 a rodent.

65 MR. HUGHES: I mean different people look at it
66 different ways. Obviously, at my level, I'm looking at
67 the different slices, and I also want to know in
68 discussions with Mr. Ludlow, what areas it is of the
69 province, if there's particular feeders, if there's a
70 particular cause, and it could be that we feel that we
71 need to improve maintenance, we need to change this,
72 or we need, we've got a common problem where there's
73 deteriorating conductors, deteriorating breakers or
74 whatever it is, so I'm trying to ... my discussions, I'm
75 looking for sort of common causes and direction. Mr.
76 Ludlow is not only looking for that, but he's also at a
77 substation, he's on these three substations, and so on,
78 so it's different levels as to what makes the difference.

79 MR. KENNEDY: So when the company is pursuing
80 increased reliability, it would take into account that

1 there are certain things beyond its control that affect
2 reliability?

3 MR. HUGHES: Yes, I mean there's an interesting debate
4 at the moment in the company about lightning, and
5 that's a quite a good example, is the ... where does it
6 make sense to add protection, where does it not, and
7 you know, are there patterns, is lightning improving, is
8 the technology changing, so that would be a very good
9 example of something that is part of debate, it isn't black
10 and white, and Mr. Ludlow and the engineering and
11 operations would try and grapple with what technology
12 is effective, how much we would have saved, and some
13 things you look at the hindsight, sometimes on
14 predictions, so some things you can't do much about,
15 some things you can, and some things that you
16 couldn't, you may now be able to. I mean say, for
17 example, the speed of clearing a fault now is so much
18 faster than it ever was because of electronics as
19 opposed to mechanical and so on, so it changes, but
20 you're right, there can ... say, for example, if you go to
21 the extremes, the ice storms, you can build a system so
22 that it is better able to withstand, but there will always
23 be storms where nature will humble us. I mean there
24 just will be, but ... and I believe we've shown the maps
25 many times here that shows what ice loading, and how
26 to construct the structures, and the diameter of the ice,
27 so you build to certain standards and then try and
28 predict it, so you try and do as much as you can, but
29 you're not trying to withstand the one in a hundred
30 year, you know, or one in a thousand year, whatever
31 the engineering standard is, occurrence.

32 MR. KENNEDY: You've a number of times used the
33 word "quality of power", and I'm wondering if you see
34 that as being synonymous with reliability or is it
35 something different?

36 MR. HUGHES: I use quality in an imprecise way. I
37 probably shouldn't but there is the electronic definition
38 of quality, and you know, whether it's 60 cycle or
39 something to stop it and so on, so there's that
40 definition. There's also, you get into various other
41 technical things, and you also get into what I call, and
42 this is ... I lump this into quality, momentary blitz, and
43 the reason I view this as quality is that for the, for a
44 customer, it can be, have a huge effect if it's off five
45 seconds. It's an eternity in electricity times. Whereas,
46 for some customers it makes a huge difference, to some
47 it doesn't really other than the resetting of the clocks,
48 but momentary disturbances, you know, if the lights
49 dim or whatever, personally I count as quality. Mr.

50 Ludlow would have much more precise definitions but
51 I suppose I look at it from a customer point of view, and
52 I characterize them all as quality, in addition to, you
53 know, the more electrical engineering things, as well as
54 it's exactly 60.0.

55 MR. KENNEDY: So we know that the, as we've seen in,
56 as is stated in CA-17(g), the exhibit just previous to this
57 one, where we have the SAIDI and, SAIFI and SAIDI
58 numbers for Grand Bay, that those bare bones, if you
59 will, statements of the SAIFI and SAIDI figures can
60 highlight a multitude of sins, a whole range of causes
61 contributing to that SAIFI and SAIDI index, some of
62 which are under the control of Newfoundland Power,
63 and some of which are not under the control of
64 Newfoundland Power, is that a fair statement?

65 MR. HUGHES: I think this is the one that we're talking
66 SAIDI and SAIFI in relation to stand-by generation, if
67 I remember correctly?

68 MR. KENNEDY: Yes, it was the SAIFI and SAIDI for
69 your Grand Bay substation.

70 MR. HUGHES: And wasn't it in relation to stand-by?

71 MR. KENNEDY: And it was in response to why you
72 were looking for portable diesel generation.

73 MR. HUGHES: Yeah, and that's why I said, if you're
74 into the relationship and what effect portable
75 generation does or doesn't have on SAIDI and SAIFI,
76 you're at a very low level.

77 MR. KENNEDY: And I'm not asking you that. I'm
78 asking you whether you agree with the general
79 proposition that when a SAIFI or SAIDI number is
80 given, as is the case here in that table, that that SAIFI
81 and SAIDI number represents all of the causes, ones
82 that are both in the control of Newfoundland Power and
83 ones that are beyond the control of Newfoundland
84 Power to effect.

85 MR. PERRY: That's because it doesn't really matter to
86 the customer who (inaudible), you know, on a total
87 basis, the customer doesn't really care on what caused
88 the outage. The fact is is there was an outage, you
89 know, that's, you can't start, you know, saying, well our
90 SAIDI was X, but if you didn't include A, B, C, D, and
91 E, you know, it's ... the customer only sees the lights go
92 off.

1 MR. HUGHES: Which is why I say that, I mention that
2 in the nineties, Newfoundland Power didn't measure as
3 well as it should have done outages under 15 minutes,
4 or in major storms. You know, for a major storm it just
5 said it's a major storm. We now try and keep the
6 statistics, as Mr. Perry says, so that it actually records
7 how long customers were without power and how many
8 times it happened.

9 MR. KENNEDY: It's interesting you mention that, and
10 also, Mr. Perry, and I'll come back to you, Mr. Perry, on
11 your customer comment, but Mr. Hughes, just on that
12 point regarding the tracking the storms and every
13 minute, Mr. Ludlow in the 2002 capital budget testified
14 that Newfoundland Power had tightened its reporting
15 of, in this case, reporting of outages, and he gave the
16 example that now such that if a single transformer is
17 open anywhere in our service territory, it is cached
18 down to the minute and put into these numbers.

19 MR. HUGHES: And that's how it should be.

20 MR. KENNEDY: And so I guess is it fair to say then
21 that Newfoundland Power has been getting better and
22 better at tracking its outages and including those
23 numbers in its SAIFI and SAIDI statistics, and that that,
24 in turn, could affect the reported SAIFI and SAIDI
25 statistics?

26 MR. HUGHES: Yes, I mean what we ... I don't know
27 when it happened, but I know from talking to people,
28 and I've been told that Mr. Pinhorn, who is an ex-VP of,
29 whatever he was, engineering or something, actually
30 talked about, had a discussion with this Board about
31 the measuring of things like that, but we decided that
32 we wanted to know, and Mr. Ludlow can tell you what
33 it is, but my recollection is certainly for the last four or
34 five years, that the stats are pretty consistent.
35 Obviously you want them as good as they can be, but
36 you want to know what the customers are experiencing,
37 and it's, and that's what we try and do.

38 MR. KENNEDY: Okay, let's just go to your customer
39 issue. I wonder if we could turn to CA-76, and let's go
40 with the most recent one, the Attachment D. Now you
41 will need to just scroll page by page, Mr. Wells, until
42 you get to one entitled, "how well are we doing", and
43 there was no page numbers on these, so just flip two
44 thirds of the way through. There you go.

45 MR. PERRY: Is it Schedule D?

46 MR. KENNEDY: Yes, D as in dog again.

47 MR. HUGHES: So you're in the third quarter, 2002?

48 MR. KENNEDY: Yeah, it's your last 2002, the most
49 recent filing of those reports.

50 MR. PERRY: Five from the back.

51 MR. HUGHES: Five from the very back?

52 MR. PERRY: Yes.

53 *(1:15 p.m.)*

54 MR. KENNEDY: Mr. Hughes, if I'm reading this chart
55 correctly, it would seem to say to me that from your
56 customers' perspective, your customers are more
57 satisfied with reliability than they are with any other
58 aspect of your operation. For instance, much more
59 satisfied with your reliability than they are with your
60 ability to read your meters accurately, their meters
61 correctly, so I'm just wondering if you could provide a
62 comment on that that in this pursuit of reliability, surely
63 you're doing this for the benefit of the customers
64 ultimately, and so how does that jive with this chart, or
65 is this chart an overly simplistic comment on it?

66 MR. HUGHES: Well, I think they're both right. We are
67 making progress on reliability, and as Mr. Ludlow
68 shows in his evidence, what we're trying to do is the
69 feeders that are outside, you know, what we do is the
70 range, you know, that are unacceptable, we're trying to
71 bring up, so there's some customers in, say for example,
72 the ... I haven't got the number, but the SAIDI in St.
73 John's, even with load shedding, would be a lot higher
74 than it is in rural Newfoundland, and anywhere where
75 you've got it looped. We view that because the overall
76 average is below the Atlantic Canada and Canadian
77 average, that we need to improve, and those areas on
78 an individual customer basis where it is not what we
79 consider a reasonable standard, those we're addressing.
80 I believe in the evidence, or certainly in an RFI, Mr.
81 Ludlow lists a lot of feeders that have got not as good
82 reliability, so for those customers I suspect they
83 wouldn't give us such a good mark in that category as
84 they would in something else. On the meter reading, as
85 Mr. Perry said yesterday, I mean nobody likes a bill,
86 and people associate meters with bills, and so I don't
87 find it surprising that meter reading is less than
88 reliability.

1 MR. KENNEDY: Mr. Chair, I have about another ten
2 minutes, fifteen minutes of questions. The only thing
3 is the Board has questions possibly and then there
4 would be matters arising and rebuttal if, or redirect, if
5 there is any from Newfoundland Power, so I'm
6 wondering whether there's any point in me rushing
7 ahead here, or whether, before I start a new topic area,
8 we'd break now and start again Tuesday morning. I
9 think it's going to take an hour. I mean we could take ...
10 I was going to suggest a five minute break and come ...
11 a five or ten minute break and come back and finish the
12 witnesses off.

13 MR. NOSEWORTHY, CHAIRMAN: Well, I'll just get
14 a sense, I think you're saying, Mr. Kennedy, ten
15 minutes or so?

16 MR. KENNEDY: Ten minutes, yeah, I'm just wondering
17 ...

18 MR. NOSEWORTHY, CHAIRMAN: I believe the Board
19 has a limited number, if any, questions. I started out
20 with three or four pages I've got there, three days ago,
21 but I think I went over them this morning and I was
22 down to a couple, and I think they've been answered
23 this morning, so I think we will have a very short couple
24 of minutes possibly and that's it. Redirect, did you ...

25 MS. BUTLER, Q.C.: There's no redirect at the moment,
26 Mr. Chairman.

27 MR. NOSEWORTHY, CHAIRMAN: And matters
28 arising, is there a lot there?

29 MR. BROWNE, Q.C.: We have a question or two, Mr.
30 Chairman.

31 MS. BUTLER, Q.C.: I think matters arising only arise
32 from the Board's questions.

33 MR. NOSEWORTHY, CHAIRMAN: Is that the
34 agreement? Okay.

35 MR. BROWNE, Q.C.: I'll save them for Mr. Ludlow in
36 that case, Mr. Chairman.

37 MR. NOSEWORTHY, CHAIRMAN: Okay, well I think
38 for the benefit of the witnesses, they might wish to be
39 free and clear by Tuesday, so if you could indeed
40 expedite in whatever fashion you can, Mr. Kennedy,
41 and we'll move on through the redirect and the
42 questions from the Board, from what I'm understanding

43 it will be a short period of time. Do we wish to take five
44 minutes before that?

45 MR. ALTEEN: The witness would wish to take five
46 minutes, Mr. Chairman, I'm getting that signal, if it
47 pleases the Board.

48 MR. NOSEWORTHY, CHAIRMAN: So we'll take five
49 minutes and return.

50 *(break)*

51 *(1:35 p.m.)*

52 MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr.
53 Kennedy, if you would please, in relation to our blood
54 sugar levels and our need for nourishment ... if you
55 could?

56 MR. KENNEDY: Thank you, Chair. I'm going to go
57 right back to the beginning actually, Mr. Hughes and
58 Mr. Perry, when we were looking at the provision in the
59 Electrical Power Control Act concerning lowest
60 possible cost, and I said well that was self-defining, and
61 then the other parts of that provision are consistent
62 with reliable service, and we dealt with reliability, so I
63 just wanted to ask you a couple of quick questions
64 about the word "service", and the company is clearly
65 aware of the Board's decision in the joint pole
66 application and that the decision of the Board was to
67 ultimately deny Newfoundland Power the ability to add
68 to its rate base, the non-joint use poles, and if I'm
69 reading the decision correctly, it's because the rate base
70 is to include only those assets and expenses that are
71 related to the provision of electrical service, and there's
72 three projects, and I'm not asking about the projects per
73 se, but just that the very general nature of those
74 projects, and one was the enhanced telephone system,
75 and the other project was the internet project that's in
76 your capital budget.

77 MR. HUGHES: Can you give us the reference?

78 MR. KENNEDY: Well, I have the CA's, and it was CA-
79 80 for the enhanced telephone system.

80 MR. HUGHES: One of them was the internet, one was
81 ... what did you say?

82 MR. KENNEDY: One was the enhanced telephone
83 system, but the other one wasn't actually a project, it
84 was just a response to a CA, it was CA-83, which is just

1 the ... it was a list of the number of ways that customers
2 could pay their bill.

3 MS. BUTLER, Q.C.: It's a reference to your testimony,
4 page 8 of your testimony.

5 MR. HUGHES: I'm sorry, what was the CA number?

6 MR. KENNEDY: There was CA-80, just dealing with
7 the telephone system. We can stick with that one,
8 actually, that's for ... for the purposes of the questions
9 I need to ask, that's fine.

10 MR. HUGHES: Uh hum.

11 MR. KENNEDY: If I could, conceptually
12 Newfoundland Power has assets that are clearly aimed
13 at delivering electrical service to customers, your
14 transformers, your substations, your conductors, your
15 insulators, and so on.

16 MR. HUGHES: That's correct.

17 MR. KENNEDY: And then it has aspects of its
18 operation which I'd like to characterize as indirect to the
19 electrical, the provision of electrical service, such as
20 your enhanced telephone service in the sense that it
21 doesn't directly bring electricity from Hydro to the
22 customers' door.

23 MR. HUGHES: If you define it, if you define one as
24 electricity delivery, and you don't use the word
25 "service", I can agree with you, but to my mind a
26 telephone system is answering customer calls, it must
27 be part of electrical service.

28 MR. KENNEDY: Okay.

29 MR. HUGHES: I mean, but if you want to do a split on
30 electrical wires to a call centre, I agree that they're
31 slightly different, but both are electrical service.

32 MR. PERRY: Yes, if you look at CA-81, for example, the
33 number of calls in 2001 to 460,000, you know, trouble
34 calls, 9,200, account balance and payment status,
35 154,000, you know, clearly it's, you know, this is part of
36 running our business, you know, it's ...

37 MR. KENNEDY: And I understand that, Mr. Perry, and
38 in the case of the account balance calls, 154,000 out of
39 your total 460,000 calls, they're, for instance, possibly
40 answered through the internet service that you
41 provided, providing to your customers.

42 MR. HUGHES: It could be, what this is ... on the
43 account balance, it's the one sort of automatic feature.
44 A lot of customers purely just want the balance, they
45 don't want to, they just want the information, they want
46 to know it's \$81.31, or whatever the number is, and
47 that's all they want, and so that's why it's set up that
48 way, but you're right, if they had internet access, they
49 could look at their bill.

50 MR. KENNEDY: And so in that respect the
51 introduction of internet services would help you in
52 your call answering service.

53 MR. HUGHES: Yes, I mean it's relatively small. I can't
54 recall the numbers, but if you compare the number of
55 people who contact us by internet compared to those
56 who call, it's tiny, but you're right, that most people will
57 tend to use a method, you know.

58 MR. KENNEDY: And just so that we're clear from the
59 company's perspective, you, as CEO speaking on
60 behalf of the company, when we refer to the term
61 "service", from Newfoundland Power's perspective, it
62 doesn't make any distinction between what I earlier
63 described as directly related to the provision of
64 electrical service, and services that are more indirect to
65 that but part, as you indicated, Mr. Perry, part of your
66 business.

67 MR. HUGHES: Well, if you go back to your ... it was an
68 interesting point on the Aliant one because what you
69 had was some assets that it was easier to manage as a
70 whole. There was excess revenue, and the issue was,
71 well should they be lumped in or not, and it's one of
72 those interesting issues, and the Board decided that,
73 no, they wanted to keep it separate, which is fair, I mean
74 it's a fair thing to decide, and you know, we proposed
75 erring on the side of what actually, you know, had more
76 money for the revenue requirement, but both opinions
77 are very legitimate. When you get into things like this
78 it's all part of service. It's not really in that, what I called
79 it, interesting issue. You know, the call centre is about
80 as in the middle of the business as you can ever get.

81 MR. KENNEDY: Sure, but the internet, for instance, as
82 a service offered by Newfoundland Power is a little
83 more removed from that?

1 MR. HUGHES: No, I mean I view that internet,
2 telephone, mail, customers coming in to us, we would
3 try and respond to what customers would like. You
4 know, we've done some pilots in the (inaudible) on, I
5 think, at (inaudible), didn't we do a pilot, Mr. Perry, I
6 believe?

7 MR. PERRY: That's correct.

8 MR. HUGHES: We did a pilot on that, and if there was
9 an up surge in customers on internet, then we would
10 adjust and so on, so we would have less people
11 answering the phone and more people dealing with
12 internet queries. They'd probably be the same people
13 actually because they're very capable.

14 MR. PERRY: One of the things we're seeing, Mr.
15 Kennedy, is that you can't seem to do away with any
16 method of, for example, payment, like you would think
17 that customers these days would not walk into your
18 office to pay a bill, they would use their bank or the mail
19 or whatever, but for some reason a certain percentage
20 of our customers want to walk into an office and pay a
21 bill, you know, they get their cheques, they go around
22 the city or go around the community and they pay their
23 bills, and they want to walk in and pay their bill, so we
24 cannot, for example, eliminate that service. As well
25 though, we have to respond to other customer needs in
26 terms of being able to pay their bill through their bank,
27 so you know, that's why you see a range of those
28 abilities in the way we serve our customers.

29 MR. KENNEDY: So service from Newfoundland
30 Power's perspective is more than just the strict
31 provision of the electricity to its customers.

32 MR. HUGHES: Yes.

33 MR. KENNEDY: Okay, that's all the questions I have,
34 Chair, thank you.

35 MR. NOSEWORTHY, CHAIRMAN: Thank you ...

36 MR. KENNEDY: Thank you, Mr. Hughes, Mr. Perry.

37 MR. NOSEWORTHY, CHAIRMAN: ... Mr. Kennedy.
38 Which brings us to Board questions, Commissioner
39 Finn?

40 COMMISSIONER FINN: None, Mr. Chairman.

41 MR. NOSEWORTHY, CHAIRMAN: Commissioner
42 Whalen?

43 COMMISSIONER WHALEN: No questions.

44 MR. NOSEWORTHY, CHAIRMAN: I have no
45 questions for the witnesses. Ms. Butler, do you have
46 any redirect?

47 MS. BUTLER, Q.C.: No, Mr. Chairman, thank you, we
48 have no redirect.

49 MR. NOSEWORTHY, CHAIRMAN: I guess that
50 concludes the questions from the Board, there are no
51 matters arising from that, so I guess we've concluded
52 our questions for the witnesses, and thank you very
53 much, Mr. Hughes, thank you, Mr. Perry.

54 MR. PERRY: Thank you, Mr. Chairman.

55 MR. HUGHES: Thank you.

56 MR. NOSEWORTHY, CHAIRMAN: We will conclude
57 for today and we'll adjourn until Tuesday at 9:00 in
58 which case, I understand that Mr. Ludlow is beginning
59 with a presentation to us, is that correct, counsel?

60 MS. BUTLER, Q.C.: Yes, Mr. Chairman, and we think it
61 will probably consume about an hour.

62 MR. NOSEWORTHY, CHAIRMAN: Okay, well thank
63 you very much. There's nothing else, and we'll adjourn
64 for today and reconvene at 9:00 on Tuesday morning,
65 have a good weekend, thank you.

66 *(hearing adjourned)*