

(9:15 a.m.)

MR. NOSEWORTHY, CHAIRMAN: Thank you and good morning. We have a little blast of winter out there this morning. I'd like to welcome everybody here to the final submission for the 2003 capital budget for Newfoundland Power. I'd like to thank everybody for making the effort to get here on a fairly timely basis on a fairly difficult morning, and it's a little bit of a late start but I don't think under the circumstances it's too, too bad. Before we begin I'll ask ... good morning, Ms. Newman, do you have any preliminary matters this morning before we start?

MS. NEWMAN: No, Mr. Chairman, I believe that there is one comment that Mr. Alteen wanted to speak to.

MR. ALTEEN: No.

MS. NEWMAN: No? Okay, fine, there isn't any, and I believe the parties are prepared to proceed with their closing arguments this morning beginning with Newfoundland Power, and then the Consumer Advocate, Newfoundland Hydro, and the comments that Board Counsel may be wishing to make, followed by a reply by Newfoundland Power.

MR. NOSEWORTHY, CHAIRMAN: Thank you very much. From a timing basis, perhaps with your agreement, I'll just leave it flexible and see where we are, possibly at the end of one of the submissions and that might be an appropriate time to break before we begin another submission, so we'll just leave it at that for now and see where we are if that's acceptable. Okay, good morning, Ms. Butler, would you begin please?

MS. BUTLER, Q.C.: This is, as you've already indicated, the conclusion of Newfoundland Power's capital budget application filed in August and amended in October. The application, as we indicated in our opening statement was presented principally under Section 41 of the Public Utilities Act, seeking the approval of the 2003 capital budget in the amount of \$55.8 million, but also under Section 78 of the same Act, requesting that the Board fix and determine the company's rate base for 2001 in the amount of \$545,162,000.

This was the longest capital budget hearing on record for Newfoundland Power, comprising about seven hearing days and 6,000 pages of record, and in light of the size of the record, and to assist the Board,

and no doubt to assist me as well, Mr. Chairman, the company has actually prepared a table of concordance which was passed out earlier this morning. That was the point that Mr. Alteen was asked to address, so you should all have before you now a table of concordance, which merely acts as a cross-reference between the principal justifications contained in Schedule B to the application with responses to information requests. This is meant only as a reference tool for everybody's convenience and I won't be referring to it myself, Mr. Chairman, for the purposes of the oral argument at all.

The oral argument will address three areas only. The first is how the Board regulates Newfoundland Power's capital expenditures. The second is the 2003 capital budget itself, and the third, of course, is the fixing and determining of the 2001 rate base.

In the first category, Mr. Chairman, I will address the legislation, the regulatory practice that has evolved, and how that practice affects three things; that is the form of the application, or the format of the application; the Board's supervision beyond the application itself; and the record in the proceeding.

In Section 2, I'll address the issues of judgement, reliability and equitable access to service, and the size of the budget overall. And Mr. Chairman, I would have to say, I'm certain this panel has heard every possible argument there is to present on a capital budget application, so I don't intend to review every section of the capital budget, but rather highlight some selected portions of it, and in terms of the length of the argument, I would expect I'll be approximately 45 minutes. I would welcome questions throughout rather than leaving them to the end, if you have a question that arises on a particular portion.

Okay, the legislative basis, I've asked Mr. Wells to actually put the legislation into the system, so I'll start with Section 37.1, which quite obviously states that a utility such as Newfoundland Power is required to provide service and facilities that are reasonably safe and adequate and just and reasonable. And also, Section 3(b) of the Electrical Power Control Act, which states basically, to summarize, that the sources and facility for the production, transmission and distribution of power must be managed and operated in a manner that would, and it's the first three sections which are particularly relevant, result in the most

1 efficient production, transmission and distribution,
2 result in consumers having equitable access to an
3 adequate supply of power, and result in power being
4 delivered in the lowest possible cost consistent with
5 reliable service.

6 Section 41 of the Public Utilities Act, under
7 which this application is brought, requires that
8 Newfoundland Power submit to the Board an annual
9 capital budget of proposed improvements or additions
10 to property for the Board's approval, not later than
11 December 15th annually.

12 However, I also want to highlight Section 41.3,
13 which is the prohibition in Section 41, which is also
14 relevant to this application, and specifically, of course,
15 that Newfoundland Power shall not proceed with
16 construction, purchase or lease of improvements where
17 the cost exceeds \$50,000 or the lease is in excess of
18 \$5,000 a year without prior Board approval, and that is
19 why, of course, as Mr. Ludlow said in his pre-filed
20 testimony, Newfoundland Power generally presents
21 their capital budget application as early as they can in
22 the third quarter, and in this year, August of 2003 (*sic*).

23 Now, in light of these statutory requirements,
24 Mr. Chairman, I think the focus of the hearing is
25 whether Newfoundland Power's proposal for \$55.8
26 million in capital expenditures in 2003 is reasonably
27 required for the utility to meet its statutory obligations
28 that we've just reviewed, and those are statutory
29 obligations to each of the 220,000 customers regardless
30 of whether they are residential, commercial, rural or
31 urban, and regardless of whether these customers
32 reside or fall in areas that are growth areas of the
33 province, or areas of out-migration. And
34 Newfoundland Power has considered each of these, or
35 considered them to be five statutory requirements in the
36 preparation of the 2003 capital budget, and we do
37 submit that the \$55.8 million represents the capital
38 expenditure necessary to maintain the electrical system,
39 and meet the statutory obligations we've just reviewed.

40 In light of the legislation, Newfoundland
41 Power submits that the Board's role is to ascertain
42 whether these proposed capital expenditures would be
43 reasonably and properly incurred in keeping with the
44 statutory provisions I've referred to, and if that is your
45 conclusion then the capital budget must be approved.

46 Reasonableness in the regulatory context
47 requires the Board to consider the five factors from the

48 legislation that I've referred to. A capital expense may
49 be reasonable and therefore justified on the basis of
50 safe facilities or adequate service, as stated in Section
51 37 of the Public Utilities Act. A capital expense may be
52 reasonable and therefore justified on the basis of
53 reliable service or equitable access to service as stated
54 in Section 3 of the Electrical Power Control Act. But
55 perhaps from the 30,000 foot view, Mr. Chairman, the
56 Board must be satisfied that the capital expenditure as
57 a whole, \$55 million, will result in least cost reliable
58 service.

59 And one final point in the consideration of
60 reasonableness as it relates in any event to the 2003
61 capital budget application. Beyond what
62 Newfoundland Power's witnesses said, either in the
63 application, or in their response to RFIs, or from their
64 testimony when they appeared before you, the Board
65 received no contrary evidence. In other words, there
66 was no evidence called by the Intervenor or Board
67 Counsel to suggest to the Board that any of
68 Newfoundland Power's proposed capital expenditures
69 were unreasonable, or that the overall size of the capital
70 budget was unreasonable.

71 The Board is left, therefore, to address the
72 question of reasonableness by considering the case
73 which Newfoundland Power put before you, guided, of
74 course, by your prior experience with capital budget
75 hearings.

76 Let me turn now to the regulatory practice that
77 has evolved, and the capital budget filing requirements
78 relevant to that. Newfoundland Power has been
79 regulated by this Board since Newfoundland Power
80 was constituted in 1966. The company's filing
81 requirements have evolved over time, and it is through
82 that ongoing regulatory relationship that we feel both
83 parties have achieved some degree of certainty and
84 predictability, but approval of the capital budget
85 application, Mr. Chairman, is only one step in the
86 Board's regulation of the utility's capital spending.

87 (9:30 a.m.)

88 Let me address format first, and when I
89 suggest format, I mean what we actually prepared and
90 filed with the Board originally in August, and amended
91 in October. The format of what you have before you
92 has been modified over the course of time to reflect
93 what we feel is a reasonable balance between the
94 management of the utility, that is the management of

1 the utility's assets, and the Board's supervision of that
2 management, and an example of this, I think, is in the
3 energy supply category if we could go ... thank you, to
4 Schedule B, page 1 of 82.

5 Here you will see the hydro plants facility
6 rehab project at a cost of, or a proposed cost of \$2.345
7 million, the details of which Mr. Ludlow explained are
8 on page 9, and I won't go to the detail page. However,
9 you'll remember Mr. Ludlow's testimony on November
10 21st, and for the purposes of the record, I'll just tell the
11 Board it's pages 6 and 11 of that transcript, this
12 category addresses the company's 23 hydro plants and
13 these 23 hydro plants present specific engineering
14 management challenges, primarily because of their age.
15 Their average age is 57 years.

16 The 23 hydro plants are managed within the
17 company as an asset. They are presented here in terms
18 of their rehabilitation as a project, but when you look to
19 the details on page 9, the ... page 9 of 82, indicates each
20 expenditure within that \$2.345 million which exceeds
21 \$50,000 or greater, and that is how Newfoundland
22 Power satisfies the Board's supervisory jurisdiction
23 under Section 41.3 for proposed expenditures in excess
24 of \$50,000.

25 And also, as the response to an RFI, CA-5,
26 indicates, major upgrades in the area of energy supply
27 and hydro plants, such as, for example, the Lockston
28 Penstock replacement this year, or surge tank
29 replacements are identified separately given their
30 relative size. So this is one example of how previous
31 experience with the Board has caused the format of our
32 application to take the form that you see today.

33 I want to address also on the issue of format,
34 the issue of least cost or NPV analysis. Newfoundland
35 Power presented the capital budget with full
36 justifications provided in Schedule B, as we can see
37 shown here on page 1 of 82. These justifications give
38 an indication of how each project is to be executed on
39 a least cost basis. In filing the 2003 capital budget
40 application as we had cause to tell you during the
41 course of the hearing, Newfoundland Power is guided,
42 as it always has been, by applicable Board orders, and
43 principally that would include PU-6, 1991.

44 That order, Mr. Chairman, effectively provides
45 that expenditures should be evaluated where
46 appropriate using net present value methodology, and
47 that this analysis, together with its supporting

48 justification should be available to the Board on
49 request. Both the Board and Newfoundland Power
50 know that a net present value analysis is indicated only
51 where applicable and appropriate, and in this case a
52 good example of that is still on your screen, the
53 Lockston Penstock. So when you look to Schedule B,
54 page 13, you will see a net present value analysis.

55 But NPV analysis is only applicable where
56 viable alternatives exist. An example where an NPV
57 analysis would not be appropriate would be, I would
58 suggest, the replacement of a section of a distribution
59 feeder that has failed. There would be no meaningful
60 NPV analysis for that.

61 In many cases, a least cost alternative is
62 obvious without a formal NPV analysis, and here I think
63 I need only refer to the answers which Mr. Ludlow gave
64 the Chair and Vice-Chair on the Blackwoods Dam.
65 Again, for the purposes of the record, you'll find that
66 on November 21st, page 34, starting at line 21, and page
67 41, starting at line 34.

68 Since the Blackwoods Dam displaces three
69 gigawatt hours of energy with an approximate value of
70 \$150,000 per year, the economic good sense of
71 spending \$200,000 on the dam's rehabilitation is
72 obvious without formal NPV analysis.

73 I submit, as well, Mr. Chairman, that the
74 objective of least cost analysis is often met by normal
75 commercial means. For example, in cases where no
76 viable alternatives exist, least cost objectives may be
77 met through competitive tendering, and examples of
78 that, I'll give you one at least, is shown at page 12 of
79 Schedule B.

80 As a final step in addressing the application
81 process, the form or the actual process that's followed,
82 let me turn now to the response to inquiries. Following
83 the filing of the capital budget application,
84 Newfoundland Power receives questions in the form of
85 RFIs from the Board. In this application there were 24
86 of these, and in some cases the questions sought to
87 have Newfoundland Power provide further documents
88 to assist the Board in determining if a particular capital
89 expense is reasonable. This is, again, consistent with
90 PU-6, 1991, and we feel that through that process the
91 Board receives everything which the Board considers
92 necessary to its mandate.

1 How does the regulatory practice that has
2 evolved affect ongoing supervision? In Section 16 of
3 the Public Utilities Act, we know that the Board has
4 general supervision of all public utilities and can make
5 necessary examinations and inquiries and keep itself
6 informed as to compliance. Many of Newfoundland
7 Power's filing requirements for capital budget
8 applications are found in the practice that has evolved
9 under this section since 1966.

10 In other words, after the Board approves a
11 budget under Section 41 of the Act, it then moves to
12 Section 16 of the Act and supervises the execution of
13 that budget. The capital budget application itself is
14 merely one step in a continuum of capital expenditure
15 supervision which will go on all year, and I want to cite
16 some other elements of the supervisory role if I might.

17 First, we have the capital expenditure progress
18 reports. The progress reports are required to be
19 submitted to the Board within 45 days of the end of
20 each quarter, and they indicate actual capital
21 expenditure by quarter. The capital expenditure status
22 report, which is different, for the current year, is filed
23 with each capital budget application and that details
24 forecast variances by project.

25 Then we have the capital expenditure summary
26 report, which is filed annually, within 60 days of year
27 end, and details actual variances by project. Fourthly,
28 Mr. Chairman, we have Return 4A of the company's
29 annual return which is filed before April 2nd of each
30 year, and this return is required by Newfoundland
31 Power's system of accounts which the Board approves
32 under Section 58 of the Act, to include actual capital
33 expenditures for the previous year as well as the
34 calculation of rate base. The accuracy of Return 4A is
35 attested under affidavit by an affidavit (*sic*), by an
36 officer of Newfoundland Power and is reviewed by the
37 Board's financial consultant.

38 We also know, Mr. Chairman, and we have an
39 example of it in this hearing through our response to an
40 RFI, that periodically the Board commissions an
41 independent engineer to review Newfoundland Power's
42 technical operations, and this too is relevant to the
43 capital expenditure of the utility. The most recent
44 review was completed in 1998, and that engineer was
45 Mr. Dan Browne. His conclusions are reproduced at
46 page 1 of the response to CA-85(b). His conclusions
47 were relevant to Newfoundland Power's capital
48 expenditures, and they remain relevant to

49 Newfoundland Power's capital expenditures, and I'll be
50 returning back to this point a little later in my argument.

51 Finally, Mr. Chairman, as the sixth additional
52 point in the process, beyond the actual capital budget
53 application, I just point out, as we all know, that
54 applications for approval of capital expenditures
55 supplemental to an approved capital budget, are also
56 considered under Section 41.3 of the Public Utilities Act
57 as required, and a recent example of this occurred earlier
58 this year with the transformer difficulties experienced at
59 Burin, and you'll see the response to PUB-10.2,
60 Attachment A, which contains the detailed engineering
61 studies and assessments related to those difficulties, so
62 the Board gets to see the supporting documentation
63 relevant to supplemental capital budget approval as
64 well. And that is why, of course, when you look to
65 Schedule E, I believe, to the capital budget application,
66 you'll see reference to two Board orders in support of
67 the 2002 capital budget, as opposed to what is normally
68 just one.

69 So, I guess, my point, Mr. Chairman, is that
70 what we have done here in the last two weeks is merely
71 a portion of what Newfoundland Power and the Board
72 do together relevant to the utility's regulation of capital
73 expenditures in 2003.

74 The capital budget presented with this
75 application is merely a snapshot of a moment in time,
76 and the Board will get to see many snapshots of the
77 capital budget and capital expenditures over the course
78 of the year.

79 I'll turn now to the issue of the record in this
80 proceeding, and that relates to the detail required
81 relevant to the Board's two separate duties. We still
82 have on the screen Section 16, which is the second of
83 the Board duties, as I've indicated, and that is the
84 supervision of the execution of capital expenditures,
85 and you will recall, the first duty is, of course, under
86 Section 41, in terms of the approval of the capital
87 budget itself.

88 We now have, either behind or beside us,
89 each, 16 binders comprising some 6,000 pages of record.
90 The bulk of this has been provided in response to
91 questions, primarily from the Intervenor, the Consumer
92 Advocate, and I want to take a moment to just look at
93 some examples of the questions and the paper which
94 Newfoundland Power was asked to provide in

1 response. You don't need to go to the questions
2 themselves, I'll just give you three examples.

3 In CA-45(a), the utility was asked to provide
4 the mileage of each and every vehicle to be replaced. In
5 CA-93(h), we were asked for a copy of the maintenance
6 records and reports for the computers which are to be
7 replaced. And in CA-20(b), we were asked to provide
8 a copy of engineering studies and reports and revisions
9 to equipment standards referred to on page 19 of
10 Schedule B, so that related to the rebuilding of
11 substations.

12 Whether the detail that comes from those
13 types of questions is helpful to the Board in fulfilling its
14 function of either approval under Section 41, or
15 supervision under Section 16, is a valid question for the
16 Board to address at this hearing, so I think specific to
17 these three examples we'd be asking are the actual
18 odometer readings of the vehicles proposed to be
19 replaced necessary to your approval of the capital
20 budget. Are the 347 pages of technical support calls
21 and hardware related calls to the help desk which we
22 provided in CA-93(h), Attachment A, of assistance to
23 the overall question of least cost reliable service. Or are
24 the 441 page of inspection and testing of substation
25 concrete pads and foundation reports for 137
26 substations meaningful to the Board's mandate.
27 Newfoundland Power does not believe that these
28 particular inquiries advance the Board's exercise of its
29 regulatory jurisdiction over Newfoundland Power's
30 capital expenditures.

31 So to summarize the first section of my
32 argument, Mr. Chairman, our submissions are that in
33 relation to the capital budget application itself, the 2003
34 capital budget application meets the requirements of
35 Section 41 of the PU Act, of Section 3 of the EPC Act,
36 it complies with PU-6, 1991, it is consistent with the
37 regulatory practice which has evolved over many years
38 relating to capital budget applications, and is in
39 conformance with regulatory reporting which exists as
40 part of the supervision of Newfoundland Power's
41 capital expenditures by the Board.

42 My second point is that we believe the Board's
43 supervisor mandate requires it to determine if the
44 budget is a reflection of sound management and
45 engineering judgement. We do not think that your
46 supervisory mandate requires a detailed review of the
47 accounting or the engineering data and tools that

48 underlie each of the judgements that was made in the
49 presentation of the budget.

50 And related to this, my third point would be
51 that Newfoundland Power must operate efficiently, that
52 is one of the requirements, or perhaps the overall
53 requirement of being a publically regulated utility, and
54 we submit that excessive detail is not required in a
55 capital budget application, nor is it desirable for the
56 Board to cost-effectively fulfil its own mandate.

57 (9:45 a.m.)

58 And I'll move now, Mr. Chairman, to the
59 second part of my argument which is relation to the
60 2003 budget itself. The budget in the amount of \$55.8
61 million has been summarized in Schedule A, and
62 outlined in detail on Schedule B. We know from the
63 pre-filed testimony and the evidence of Mr. Hughes
64 and Mr. Ludlow, that the electrical system which the
65 company manages, consists of 23 hydro generating
66 plants, five diesel plants, three gas turbine facilities, 137
67 substations, and 298 feeders.

68 The company must also operate and maintain
69 approximately 10,000 kilometers of transmission and
70 distribution lines over a large territory. A lot of these
71 electrical system assets are old and are subjected to
72 some of the harshest and windiest weather conditions
73 in North America. The vast majority of what I've
74 described, Mr. Chairman, is investment in engineered
75 assets, and ongoing investment to replace, refurbish
76 and repair these assets necessarily requires sound
77 engineering judgement.

78 I'd like to take you now to PGH-1. This casts
79 the \$55.8 million in proposed capital spending in a
80 different light. In other words, instead of giving it to
81 you by projects, it shows you what drives the capital
82 spending. Consistent with previous budgets, the
83 largest category of proposed capital spending for 2003
84 is required to replace existing plant and equipment. The
85 \$28.4 million on your screen is more than half of the
86 total capital budget, and it represents expenditures
87 necessary for the refurbishment or replacement of the
88 existing electrical system and includes many types of
89 projects.

90 I wonder if I can give you some examples.
91 Within plant replacement we have first, projects related
92 to the condition of plant, and here I need only refer you
93 back to the slide that Mr. Ludlow presented on the

1 Lockston Penstock which is detailed on page 13 of
2 Schedule B. The judgement which the company had to
3 exercise here, of course, is whether the Lockston
4 Penstock has outlived its useful life, and/or whether it
5 remains safe. In the same category, Mr. Chairman, we
6 have projects related to what I would call the suitability
7 of plant, and here the example I would cite, I think,
8 would be the portable diesel generator. The
9 engineering judgement that has gone into making the
10 determination to put this project in the capital budget
11 this year relates to the fact that the existing portable
12 diesels are old, one is no longer mobile, and their
13 capacity is insufficient to meet current emergency
14 requirements.

15 Also in the \$28.4 million we have projects
16 related to adequacy of operating performance and here
17 the upgrade to ten kilometers of feeder, Milton 02 on
18 Random Island would be an example of this. This is an
19 expense which addresses equality of service in a low
20 population area. In the same category, Mr. Chairman,
21 we have projects that reflect choices based upon
22 current operating needs, and you will recall that Mr.
23 Ludlow was asked about the decision to upgrade a 50
24 year old transmission line referred to as 24-L and the
25 decision to decommission another 50 year old
26 transmission line, 17-L. The judgement that he
27 exercised here was described by Mr. Ludlow in cross-
28 examination.

29 We also have in the same category of plant
30 replacement, issues of public and employee safety, and
31 an example of that, I think, would be the Water Street
32 underground project, and again, the Lockston
33 Penstock. And we also have preservation of assets
34 that have a high degree of value for customers. Here I
35 think it's important to highlight that Newfoundland
36 Power's continuing rehabilitation of 23 old but very low
37 cost hydro plants is an example of the exercise of
38 judgement in the preservation of assets, plant
39 replacement at \$28.4 million, or plant rehabilitation,
40 instead of having to decommission these plants and
41 replace them with what would be very high cost hydro
42 plants. In other words, Mr. Chairman, Newfoundland
43 Power's approach to capital investment in the electrical
44 system is a balance between the maximization of asset
45 life on the one hand, and the pro-active replacement of
46 deteriorated or inefficient plant on the other.

47 Optimizing the operating life of assets will tend
48 to lower overall costs, and Newfoundland Power has
49 been successful in managing its operations through a

50 combination of prudent capital investment and
51 operating cost reduction. This is a point that was made
52 in the pre-filed testimony of Mr. Perry and Mr. Hughes
53 at page 4, and I'll just, without going to it, refer you
54 back to that.

55 They indicated in their joint pre-filed testimony
56 that since 1992 gross operating expenses have been
57 reduced by approximately 22 percent, 34 percent on an
58 inflation adjusted basis, and the company's workforce
59 in the same period has decreased by 33 percent. These
60 significant reductions in operating costs are also borne
61 out by the reports of the Board's auditors, their
62 financial consultants, Grant Thornton, for the years
63 1998 through 2001, and I'll just refer, if I can, on the split
64 screen ... you will recall, we went through this exhibit in
65 the only question that I put on redirect to Ms. Duke.
66 This is CA-124, Appendix A, Schedule 1 at the top, and
67 Appendix D, Schedule 1 at the bottom.

68 The savings in labour alone between 1998 and
69 2001 are \$4 million. If you use the 1996 figure, the
70 reduction in terms of operating costs in labour alone is
71 \$6 million. I'll go back now, if I can, to PGH-1, the next
72 largest driver of 2003 capital expenditures, representing
73 approximately 20 percent, that's the 19.7 percent of the
74 budget, is in the area of customer and sales growth, and
75 the two prominent examples of 2003 proposed capital
76 spending justified by that cause are the Virginia Waters
77 and Chamberlains power transformers referred to at
78 pages 27 and 29 of Schedule B.

79 In addition, Mr. Chairman, I would say that
80 extensions, transformers, meters, and services which
81 total approximately \$11.8 million of the 2003 budget are
82 also principally but not exclusively related to growth in
83 the number of customers.

84 These expenditures in terms of, that are driven
85 by customer and sales growth are necessary for the
86 company to fulfil its statutory obligation, that is an
87 obligation to provide electricity. If there are customers
88 the company must supply that power on an equitable
89 basis, regardless of where the customers are.

90 Ten percent of the proposed capital spending
91 is in the area of information systems, and that is the
92 same number, that \$5.507 million that you will actually
93 see in the IS category when the budget is cast in a
94 different way on Schedule A to the application, and
95 everyone, I think, in this room would accept that
96 running a business, no matter how small, requires these

1 days substantial investment in information services,
2 but given that it is only ten percent of the total capital
3 expenditure, the overall submission, Mr. Chairman,
4 would be that this has been kept to the acceptable limit
5 within the capital budget for 2003.

6 Many of the expenditures in the \$5.507 million
7 are expenditures designed to simply maintain the
8 effectiveness of current methodology, I'm sorry,
9 technology. For example, pages 68 and 69 of Schedule
10 B of the budget deal with the application environment
11 expenditures of about \$755,000. I think most of us can
12 relate to the need to maintain the technology you have
13 on your computer systems. Two more prominent new
14 applications would be the facilities management
15 program on page 71 at \$562,000, and operations support
16 systems at \$383,000. That was at page 79 of Schedule
17 B, and both of these did show positive net present
18 values. To see the analysis on that, I can refer you to
19 RFI CA-69(e), Attachment A, and RFI CA-71(g),
20 Attachment A. These expenditures within the \$5.5
21 million will make Newfoundland Power's asset
22 maintenance and day to day operations more efficient.
23 And again, I think ratepayers understand the need to
24 upgrade information technology.

25 And finally in that category, Mr. Chairman, I
26 would say Newfoundland Power's personal computer
27 infrastructure expenditures, that is the purchase of
28 actual personal computers, are budgeted at \$634,000.
29 The company's current PC management practices are
30 consistent with other Canadian Utility practices as
31 outlined in Attachment A to the response to CA-103(b).

32 Back to PGH-1 now, the balance of this
33 particular exhibit attached to Mr. Hughes testimony has
34 a category for GEC allowance for unforeseen and
35 financial, at another 6.5 percent; systems additions and
36 third party requirements adding up to the balance, and
37 I don't need to review these in detail for you.

38 I'll turn now to the issue which I said I would
39 address and that is sound engineering judgement, and
40 look back to Section 37 of the Act. Safe and adequate
41 facilities and just and reasonable service require capital
42 expenditures, and this requires the exercise of
43 judgement. The judgement would be on issues such as
44 timing, necessity and appropriateness of the
45 investment.

46 The subject of engineering planning at
47 Newfoundland Power was specifically addressed by

48 Mr. Ludlow on November 19th at pages 13 and 27 of
49 the transcript. He spoke of the engineering planning,
50 you'll recall, for the Water Street underground switch
51 replacement over the period 1999 to 2004. Surge tanks,
52 insulator and penstock replacements were also subject
53 to multi-year engineering plans.

54 Another example of Newfoundland Power's
55 engineering planning is it's proposal to study the radial
56 transmission systems in the areas of Port aux Basques
57 and Old Perlican. Through this means Newfoundland
58 Power considers options to improve reliability
59 performance on specific radial transmission systems.

60 It was indicated during the hearing, Mr.
61 Chairman, that Newfoundland Power has in recent years
62 adopted a proactive capital maintenance approach, and
63 we agree with this. We also agree that, it was
64 suggested by Mr. Kennedy to Mr. Ludlow, this kind of
65 a capital maintenance approach involves a greater level
66 of judgement than a reactive, fix it as it breaks
67 approach. I think that's obvious. The Board's duty
68 though is to satisfy itself that Mr. Ludlow's department,
69 Engineering and Operations, is doing a reasonable job
70 in the exercise of this judgement.

71 So to assist the Board in this determination, we
72 would stress three points. Again, there was no
73 evidence provided to contradict the engineering
74 judgement that was the foundation for the application.
75 From the three days that he was on the stand, I think,
76 Mr. Ludlow's testimony in general should give the
77 Board the comfort it needs that the shop is in good
78 hands. I think Mr. Kennedy said himself on November
79 21st, that he recognized Mr. Ludlow was in sound
80 command of the engineering issues, and I think too that
81 the Board can draw support from the company's track
82 record.

83 Mr. Hughes indicated in his direct examination
84 that sound capital investment would serve to reduce
85 operating costs, and I think I've already suggested to
86 you today, we have the evidence that that has, in fact,
87 occurred.

88 I'm move now to the issue of reliable service
89 and equitable access to service, which is, of course,
90 Section 3(b) of the Electrical Power Control Act. I've
91 already indicated to you that Mr. Hughes said efficient
92 operations, which is what we see on the screen as
93 3(b)(i), will be the result of capital expenditures, and we
94 know that equitable access to an adequate supply of

power, which is 3(b)(ii), requires capital expenditures, sometimes in areas of very low population, for example, the Milton 02 feeder.

There was a significant RFI that I want to refer to here and that is the response to CA-85(b). Newfoundland Power addressed how it balances reliability and costs and their response provides the policy position of Newfoundland Power on this important issue. I think all four pages of the response to CA-85(b) are important reading for the Board on the issue of reliability, and Mr. Hughes' examination in chief also gave a synopsis of this with a useful historical perspective to reliable and equitable service. Again, for the record, I'll just point you to the November 13th transcript at page 9, lines 37 to 80.

(10:00 a.m.)

We'll go, if we can, Mr. Wells, to 85(b), to summarize the highlights of what this four page response to RFI says, and what Mr. Hughes actually testified to, in the late eighties and nineties, Newfoundland Power focused on building the system. From '93 to '97, Newfoundland Power drastically reduced the level of investment to reflect the economic conditions of the day, which were the cod moratorium, and with the benefit of hindsight, both Mr. Hughes and Mr. Ludlow have told the Board that the company may have gone too far.

Mr. Dan Browne, the Board's engineering expert, filed a report in 1998 stressing that Newfoundland Power seek to improve its reliability performance. We see the actual quote there with the perhaps more important portion of it bolded. The reliability of supply to company customers is considered to be acceptable, although lower than the average for Canadian utilities. It is important that the utility maintain and, in fact, seek to improve its performance in this regard.

In the last four years, Mr. Chairman, '98 to 2001, Newfoundland Power addressed that very recommendation and specific electrical system reliability concerns with the result that in certain rural areas reliability has increased, but overall, as Mr. Hughes told you, reliability still remains below the Canadian and Atlantic Province average.

In the operations category, therefore, Newfoundland Power does propose to spend the

\$500,000 on a reliability study for Port aux Basques and Old Perlican areas, and these studies will determine what, if any, cost effective means exist for addressing reliability for customers in those two areas.

Now, finally let me address in Section 2, the size of the 2003 capital budget, because issue has been taken in this proceeding with its overall size. The response to CA-1 sets out Newfoundland Power's capital budgets since 1993, but Mr. Wells is focusing here on the screen, which is appropriate, on the period '98 to 2003.

In the five year period from '98 to 2002, as you can see, the annual capital budget averaged about \$49.4 million. Now there is a response to a Public Utilities Board question, 24.1, which actually gives the history for 20 years, and without referring to that on the screen, I can tell you that Newfoundland Power's capital budget has ranged from a low of \$30.9 million in 1996 to a high of \$68.02 million in 1990. Mr. Hughes addressed this point in his testimony on November 13th, page 9, lines 7 to 17, and he said that the average capital budget over 20 years adjusted for inflation is \$48 million. If you compare this to the 2003 capital budget, without the Aliant poles, it's approximately \$50 million. In other words, what we've presented to you for approval without Aliant poles would be \$50 million, so it is essentially the same as the average over the last 20 years on an inflation adjusted basis.

The response to CA-72(d), page 2 of 2, is also useful information, I think, on this point, and it indicates that the average capital budget per customer was \$148 in 1996. You'll see that in the far right column, across from 1996. It was, however, \$354 in 1990, and you'll see that written at line 1 of the page, before the table. To put the number in context, the average capital budget per customer was \$240 in '92, and \$354 in 1990. The forecast for 2003, Mr. Chairman, is \$253, and we'll see that in the second last column, across from 2003, if you included Aliant ... and \$235 if you exclude Aliant.

So let me summarize the company's position on this section of my argument. First of all, we feel there was no serious challenge made to the numerous engineering judgements which form the basis for the expenditures proposed in Newfoundland Power's 2003 capital budget application.

The second point I would make is that reliability and equitable access to service are related

1 concepts and because Newfoundland Power was told
2 in 1998 that reliability needed to improve, it has, and
3 must continue to spend capital dollars for that reason.
4 Newfoundland Power doesn't have the luxury of
5 spending capital money only in growth areas. It is
6 obliged to spend capital dollars to ensure reliability in
7 areas where it has very few customers, and that is the
8 reality reflected in the capital budget.

9 The third point I would make, Mr. Chairman, is
10 that the 2003 capital budget is not disproportionately
11 large by historical context, and it has been fully justified
12 as necessary to provide the least cost reliable service
13 required by the two pieces of legislation I referred to
14 earlier this morning.

15 So with that I'll turn, if I might, to the third and
16 final section of my argument which is the fixing and
17 determining of the 2001 rate base, and this is, as we
18 know, detailed on Schedule F to the application.
19 Newfoundland Power is seeking to have the Board fix
20 and determine the company's rate base for 2001 at
21 \$545,162,000, and that is pursuant to Section 78 of the
22 Public Utilities Act.

23 Newfoundland Power included this request in
24 the capital budget application for the purposes of
25 regulatory continuity and for certainty as to its 2001
26 rate base, and Mr. Chairman, that is an entirely
27 reasonable exercise of the Board's regulatory
28 supervision. Remember, in 2002 the Board approved
29 Newfoundland Power's issue of \$75 million in long-term
30 debt, and that long-term debt finances capital
31 expenditure which leads to plant investment. The debt
32 is secured by the company's assets, and in these
33 circumstances approval of the 2001 rate base in a timely
34 fashion makes sound financial sense and provides a
35 reasonable level of regulatory certainty.

36 The capital expenditures that went into plant
37 investment for 2001 were made with the Board's
38 approval. The long-term debt which financed those
39 expenditures was issued with Board approval. It's only
40 reasonable that the holders of the debt know that 2001
41 capital expenditures have been fully and finally
42 approved by the Board and essentially that chapter is
43 finished.

44 So Schedule F to the application sets out the
45 calculation of the 2001 average rate base, referred to as
46 average, of course, because it has to be an average of
47 the opening and closing rate base, and the Board's

48 financial consultants, Grant Thornton, in their 2001
49 report addressed the appropriateness of the calculation.

50 In the response to CA-124, Attachment D, the
51 2001 Grant Thornton report at page 4, the Board's
52 financial consultants concluded for you that the
53 average rate base included in the company's 2001
54 annual report to the Board, which is the same page, Mr.
55 Chairman, as what we have in front of us, cast as
56 Schedule F, is accurate and in accordance with
57 established practice.

58 The company's 2000 rate base was approved
59 in your order PU-21, which was 2001/2002. Capital
60 expenditure for 2001 was approved in orders PU-24,
61 2000/2001, and PU-12, 2001/2002. In addition, this
62 Board approved specifically the capital expenditures
63 which are included in the 2001 rate base related to the
64 Aliant pole purchase in a separate order, PU-17,
65 2001/2002. All other elements of the rate base for 2001
66 which is shown on your screen, that's the accumulated
67 depreciation, contributions in aid of construction,
68 weather normalization, and you can just scroll down,
69 cash work and capital allowance, materials and
70 supplies, were all calculated in accordance with Board
71 orders and Board approved policies, and accordingly,
72 Mr. Chairman, the fixing and determining of the 2001
73 rate base is a regulatory approval which should be
74 granted in the normal course, as it was in the year 2000,
75 or for the year 2000, and for the year 1999.

76 So let me summarize the argument as a whole,
77 and I go to Schedule A of the application again. The
78 2003 capital budget application at \$55.8 million is in
79 compliance with the legislation, it's in compliance with
80 Board orders and regulatory practice and it will be
81 subject to supervision by you throughout the year in
82 the means I've described.

83 Newfoundland Power's capital budget process
84 is rigorous. The support for the decisions that
85 Newfoundland Power made, and which led to the
86 presentation of the \$55.8 million as the capital budget,
87 is found in the 6,000 pages of record, which when
88 asked, the company was able to produce in short order,
89 so that is a reflection of how rigorous their capital
90 budget process in terms of management back at the
91 company truly is. And also I would say that the
92 witnesses, all five of them, were able to address for you
93 the expenditures in the categories that they sponsored
94 in a comprehensive manner, and in a forthright manner,
95 so the submission I make on that point, Mr. Chairman,

1 is that the Board should be satisfied from their
2 testimony that sound judgement is being exercised in
3 management, finance, operations, engineering,
4 customer service and information services, at
5 Newfoundland Power.

6 So the proposal to spend \$55.8 million in 2003
7 is necessary to provide least cost reliable service to
8 each of Newfoundland Power's customers, and the
9 fixing and determining of the 2001 rate base is a matter
10 of regulatory continuity and financial certainty, and
11 therefore, Mr. Chairman, Newfoundland Power does ask
12 for approval of its application and that is for the 2003
13 capital budget and for the 2001 rate base as presented.
14 Thank you.

15 MR. NOSEWORTHY, CHAIRMAN: Thank you very
16 much, are there any Board questions, Commissioner
17 Finn?

18 COMMISSIONER FINN: I have none, Mr. Chairman,
19 for Ms. Butler, thank you.

20 MR. NOSEWORTHY, CHAIRMAN: Commissioner
21 Whalen?

22 COMMISSIONER WHALEN: No, I have no questions,
23 thank you, Mr. Chair.

24 MR. NOSEWORTHY, CHAIRMAN: I have none, thank
25 you very much, Ms. Butler. Good morning, Mr.
26 Browne, do you need some time?

27 MR. BROWNE, Q.C.: If you want to break for a few
28 moments.

29 MR. NOSEWORTHY, CHAIRMAN: Okay, we'll break
30 for ten minutes.

31 *(break)*

32 *(10:30 a.m.)*

33 MR. NOSEWORTHY, CHAIRMAN: Thank you. Once
34 again, good morning, Mr. Browne, I wonder could I ask
35 you to begin your oral submission, please?

36 MR. FITZGERALD: Thank you, Mr. Chairman, actually
37 I'm going to start.

38 MR. NOSEWORTHY, CHAIRMAN: Well, good
39 morning, Mr. Fitzgerald.

40 MR. FITZGERALD: Good morning, Mr. Chairman and
41 Members of the Board. Before I get into the main text
42 of what I was going to speak about this morning, I just
43 want to make one comment regarding Ms. Butler's
44 comment this morning, that you have no contrary
45 evidence to Newfoundland Power's evidence regarding
46 the reasonableness of their budget. We take some
47 issue with that. It is our position, and it has been our
48 position in the past hearings, that evidence that is
49 presented to this Board, or that is gleaned or elicited
50 through cross-examination is, in and of itself, evidence,
51 and it forms a part of the body of the evidence, and the
52 Board can rely on that evidence to determine whether
53 there's been any reasonableness or not, so I just want
54 to clear that up, that it's not necessarily incumbent on
55 an intervenor to bring direct evidence in contrary
56 distinction to, or contrary to what's been presented by
57 direct examination. The Board decides whether the
58 responses to the cross-examination have, in fact,
59 revealed the reasonableness or not of Hydro's *(sic)*
60 budget, so I just want to put that on the record.

61 As we know, the capital budget of
62 Newfoundland Power as presented was firstly
63 presented to Newfoundland Power's board of directors,
64 and page 3 of the pre-filed evidence, we have Mr.
65 Ludlow stating the budget is presented to the
66 company's board of directors for corporate approval
67 before being submitted to the Board for regulatory
68 approval, and I think it is worth examining just exactly
69 what the duty of a director in a Newfoundland
70 corporation is, and I have for quick reference a handout
71 here, if I could just ask Ms. Blundon to circulate this.
72 It's a very brief document. This is extract from the
73 Newfoundland Corporations Act regarding the duty of
74 directors, and we submit that while Newfoundland
75 Power is, in fact, a monopoly as we all know, it is a
76 corporation nevertheless, and it is governed by the
77 Corporations Act.

78 I would like the Board to look briefly at Section
79 203 of the Corporations Act, as a reminder, or
80 something to keep in mind when considering the
81 motivation or rationale behind any director's actions,
82 including what's at issue here, i.e., the presentation of
83 Newfoundland Power's capital budget.

84 Section 203 of the Corporations Act states as
85 follows. A director of, a director and officer of a
86 corporation in exercising his or her powers and
87 discharging his or her duties shall, (a), act honestly and
88 in good faith with a view to the best interests of the

1 corporation. It is trite to say that it's obviously,
2 directors are not charged with the duty to act in the
3 best interests of ratepayers, and that's an obvious
4 point. However, I think it should be kept in mind here
5 when determining the reasonableness or not of the
6 budget. It's obviously a budget presented in the best
7 interests of the corporation.

8 Now, I would, it has been acknowledged in the
9 pre-filed evidence of Mr. Philip Hughes, the CEO of
10 Newfoundland Power, at page 12, that this simple
11 concept is true, that the capital expenditures increase
12 Newfoundland Power's rate base. That's axiomatic, we
13 know that to be true. It has also been admitted by Mr.
14 Hughes that an increase in rate base can potentially
15 create greater earnings for Newfoundland Power, and I
16 would refer to the transcript if I could, Mr. Wells, of the
17 proceedings, November 13th, page 28, line 45. The top
18 of the page here, on cross-examination by the
19 Consumer Advocate the following exchange occurred,
20 and the question was posed to Mr. Hughes, "But is it
21 true that the greater the rate base, the more return you
22 will get?", and Mr. Hughes' response was, "No, that's
23 not true, what it is is the greater the rate base, the
24 greater the potential earnings would be in this
25 theoretical world where everything stays the same
26 because it's one of those things that mathematically
27 correct, and if the rate base is higher then one
28 component of revenue requirement is higher".

29 Now, in light of this, and in light of the duty of
30 the board of directors, what we know to be their duty,
31 we would submit that the Board should consider that if
32 an increase in rate base can potentially create greater
33 earnings, and if a director is duty-bound to act in the
34 best interest of the corporation, then we submit that
35 that raises the probability that the Directors of
36 Newfoundland Power will always attempt to create a
37 situation where potentially greater earnings are
38 possible, in the best interests of the corporation, and
39 thus be inclined to increase the rate base for that
40 purpose. I think that that probably follows.

41 In the information filed by Newfoundland
42 Power in relation to the general rate application, you
43 will see that Newfoundland Power's revenue
44 requirement in any one year relates, of course, generally
45 to the revenue required to cover, if you will, the
46 following components of their costs. We have rate
47 base, we have purchased power, we have depreciation,
48 we have operational expenses, and we have income
49 taxes.

50 For the 2003 year, the revenue required to
51 cover the rate base is \$65 million, which if you look
52 carefully at the numbers since 1998, indicates a 26
53 percent in the revenue requirement for rate base since
54 1998. And again, if you examine the numbers of each of
55 these areas of revenue requirement, you will find that
56 no other of the above components, i.e., purchased
57 power, depreciation, operational expenses, income
58 taxes, none of these other items have increased so
59 dramatically.

60 The amount which Newfoundland Power
61 spends on information technology, or the amount that
62 they're proposing to spend in 2003 comprises some ten
63 percent of Newfoundland Power's proposed capital
64 budget. We would ask the Board to consider whether
65 this is an area of the capital budget that Newfoundland
66 Power may be overcapitalizing and thereby adding to
67 rate base unnecessarily.

68 Newfoundland Power's increasing investment
69 in information systems or technology became visible or
70 raised the Board's concern, we would submit, firstly in
71 1998, and to address this issue of increased spending
72 in this area, the Board made an order, PU-36, 1998, and
73 it's been filed in these proceedings as Information 11,
74 and in the order of PU-36, the Board said as follows.
75 The Board also notes the increasing level of
76 expenditures in the area of information systems and
77 requires that Newfoundland Power provide the Board
78 with a report on the company's information technology
79 strategy for the period 1999 to 2002, and this report
80 should also identify the planned expenditures in this
81 area of the expected productivity gains and the cost
82 savings and any other benefits the company resulting
83 from these expenditures.

84 The uncontroverted evidence before this
85 Board in this hearing is that the total actual amount that
86 Newfoundland Power has spent on its information
87 systems since 1998 is \$21 million, and a reference for
88 that can be found at the transcript of November 22nd at
89 page 5. Now all of this \$21 million of capital asset has
90 gone into rate base.

91 In the pre-filed evidence of Ms. Duke and Mr.
92 Collins at page 6, the following evidence was given to
93 the Board, and I'm quoting from their evidence here. It
94 says, "Investment in information technology has
95 facilitated a reduction in the company's workforce
96 lowering the overall cost of serving customers". Ms.
97 Butler mentioned this morning by redirect evidence that

Ms. Duke identified the reduction in labour costs over the same period, i.e., from 1998 to 2001, by reference to the Grant Thornton reports at CA-124, and in summary indicated that the overall savings in labour costs since 1998 has amounted to a mere \$4 million. So when Newfoundland Power says in its pre-filed evidence that investment in information technology has facilitated a reduction in the company's workforce, lowering the overall cost of serving customers, we submit that the Board should keep in mind the level of the IT investment, i.e., \$21 million, compared to the actual labour cost saving of \$4 million.

We also submit that the Board should be cognizant of what has happened to rate base since 1998 on a per customer basis, and a graphic description of how rate base has increased per customer since 1998 can be found in the record at CA-72(a). I don't know if we need to call that up right now, Mr. Wells, but if you can do it quickly ... and there's a graph if you keep scrolling down, Mr. Wells, just bear with me for a ... CA-72(a), there's a bar graph. This, we would submit, Mr. Chairman and Members of the Board, here you have a visualization of, in fact, what's happened to rate base since 1998. It had been flat, I would submit, from 1993 to 1998, and something happened in 1998 and all of a sudden we're on an upward trend.

We would submit that there is evidence before this Board that indicates that Newfoundland Power has often overbudgeted in the area of information technology, and again, to illustrate this, I would ask that we have a look at CA-11, there's an attachment there. CA-11 will show you what has been spent, or sorry, what Newfoundland Power has actually budgeted for its information systems since 1998. In 1998 you have \$3.4 million, and 1999 you have \$4.1 million, and 2000 \$4.1 million, and 2001 \$3.6 million, and 2002 \$6.2 million.

The actuals that were spent in these years can be found in the Grant Thornton reports at CA-124, and I can tell the Board, and the Board can ascertain this themselves, that in fact over the same period of time on average Newfoundland Power has overbudgeted in this area by about \$260,000.

We would submit that the Board should keep this figure in mind when determining this item of Newfoundland Power's capital budget. Specifically, if we look at where some of these overages come from, there is a clear example that's illustrated at CA-49(b) in

the applications enhancement section of the capital budget, and Table 1. This is a clear example of overbudgeting in our opinion. This table shows the actuals and the budgeted amounts for 1999 to 2002 for application enhancements, and if you look at Table 1, it is obvious that every year this items has been overstated. In fact, in 1999, if you do the math, it's been overstated by about 26 percent. In the following years, granted, it hasn't been as drastic as that, but it has always been more than actual, than has been budgeted for.

And again, I won't take you completely through the math, but we would submit that the overage here is about six percent, and six percent of \$766,000 is a considerable amount. It may not be a considerable amount to Newfoundland Power, but it is \$50,000 to \$60,000, and again, perhaps this is another area where Newfoundland Power is overbudgeting.

The internet enhancement which is at Schedule B, page 67 of 82 ...

COMMISSIONER FINN: Can I just go back to that last point you made?

MR. FITZGERALD: I'm sorry?

COMMISSIONER FINN: You say the actual is always in excess of forecast?

MR. FITZGERALD: Yes.

COMMISSIONER FINN: And you're saying that's an example of overbudgeting?

MR. FITZGERALD: Yes.

COMMISSIONER FINN: I'm not quite following that point.

MR. FITZGERALD: In ... perhaps, Commissioner Finn, which area ...

COMMISSIONER FINN: Well, just the statement you made that if the actual is in excess of what's forecast, that that's an example of overbudgeting. I mean what they budgeted is what they forecast, isn't it? Or am I getting ...

MR. FITZGERALD: Oh, I may have said that incorrectly, that's quite possible. If you just look at

Table 1 there. In 1999, Newfoundland Power presented in their budget a figure of \$964,000 representing the amount they expected to require for application enhancements. It turned out that, in fact, the only amount of money that they actually needed was \$710,000.

COMMISSIONER FINN: And that was one year, over 2000/2001, and the others ... are you using the whole table to ...

MR. FITZGERALD: Yes, and then if you look at 2000, the budget items was presented at \$974,000, the actual was \$906,000. In 2001, it was presented as a need, a requirement of \$657,000, in fact it was only \$619,000.

COMMISSIONER FINN: Alright, thank you.

MR. FITZGERALD: If we could move then to the internet enhancement aspect of the capital budget, it's Schedule B, page 67 of 82, and in particular, sorry, in reference to that is CA-50(c). We would submit that Table 1 at CA-50(c) again shows an indication, it's an indication that Newfoundland Power has been, again, perhaps overbudgeting here. In every year the budget has been presented at a higher figure than was actually consumed, with the exception of 2001, but the differences in each of the other years is more than 50 percent. So again, we would submit that this is another area that the budget expenditure should be brought in line with the actuals and submit that a reduction in the range of \$50,000 would be appropriate here.

But also, this internet enhancement, we know by NLH-29 that \$60,000 of this \$160,000 amount represents the forecast amount required to enhance the internet website of Newfoundland Power, and we know generally that approximately only 32, or somewhere, 30 to 40 percent of Newfoundland Power's residential domestic customers avail of the internet, and we query then whether this is really a necessary expense for the delivery of power to the other ratepayers. Obviously, it's not of any benefit to 60 or 70 percent of other residential domestic customers, and they can't avail of it.

The other area of the information systems budget which we find problematic is the personal computer infrastructure, and this is a budgetary item presented for the 2003 year of \$634,000, and a lot of this represents the replacing of Newfoundland Power's personal computers. In 2003, Newfoundland Power has

indicated that it needs to replace 123 desktops and 17 laptops, that's 140 new computers. By response to CA-28, Newfoundland Power has estimated its cost of these 17 laptops to be about \$4,500 each. However, they do admit at CA-28 that they don't know exactly what they're going to cost because they don't have the specifications yet. However, they're saying take it from us, we've paid this much in the past, \$4,500, we expect to pay that in the future, and we question the soundness of that rationale.

(10:45 a.m.)

If it turns out that these 17 laptops only cost \$2,500 each, then simple math would indicate that the cost to replace the laptops might be overstated by \$36,000 to \$40,000. Newfoundland Power is also claiming that it intends to retain 194 computers this year, but we know that in last year's budget, Newfoundland Power claimed that they would retire 80 computers, but in fact they only retired 12, and we have to ask where are all the computers going.

When we went through the help desk calls, which were CA-93(h), Attachment A, we found that over the years, Newfoundland Power has had excess computers. They have the computers that they've been able to transfer to Fortis, they have had computers they've been able to ship down to Belize, they've had computers able to be utilized for the Fortis Abitibi project. Now we aren't comforted by the explanation that we shouldn't worry, all these transfers are being accounted for in some miscellaneous hopper of inter-company transactions. We don't think that's the point. The point is, why does Newfoundland Power have these extra computers in the first place that allows them to distribute them, whether they get fair market value for them or not?

Does not the fact that they have this inventory of extra computers to lend (*phonetic*) to related companies, indicate that they were not needed in the first place? Not to go through, we've gone through some of the help desk calls, the document that's before the Board, but I would like to refer to one if I could, Mr. Wells, at page 42. I think it's illustrative of what we perceive to be a problem with overcapacity.

At page 42 of this, of CA-93(h) ... that's page 42, Mr. Wells? The third entry, it says the existing PC was stored for the past year and is now required for a new employee. Now, we have been told by

Newfoundland Power that these computers have a limited shelf life, and they are recycling their computers every four years, but here is one that has sat on the shelf for a year. This machine, we would submit, has not been cascaded, as is the terminology that's been used by Newfoundland Power. It has in fact stagnated, it sat on the shelf for a year. We don't know how many other machines are like this. And we have to remember that all the stored computers, or the loaned out computers that Newfoundland Power has, all get added one way or the other to rate base.

In its response to PUB-19, whereby Newfoundland Power explains the reason why they kept 68 computers in 2002, despite telling the Board that they would be retired, does not give us any confidence that Newfoundland Power actually needs the 140 PCs that they claim they need this year. What if they don't retire all of the 140 that they claim they will retire, and say, keep only 50 or 60 of them, or only retire 50 or 60 of them? We have to remember that they kept 68 last year that they said they were going to retire. If they keep 50 or 60 computers, then we would submit that they would have overbudgeted in this area again by approximately ... well the cost of these computers, which going by their figures of \$2,000 for a desktop and \$4,500 for a laptop, this could very well amount to in excess of \$100,000. The math is, if they keep 60 computers, the percentage of laptop to desktop is about 22 percent to 88 percent, we calculate 39 desktops retained at \$2,000 each to be \$78,000, and 11 laptops at \$4,500 each would be \$49,500, which amounts to \$127,000. We think that there's a reasonable probability here that, in fact, Newfoundland Power has overbudgeted in this area, and a savings could be made by disallowing a portion of the personal computer infrastructure.

In summary, we would submit that the Board should be cognizant of the fact that Newfoundland Power's rate base since 1998 has increased significantly. When examining the information systems component of Newfoundland Power's 2003 capital budget of approximately \$5.5 million, it should have regard to CA-11 which will show that Newfoundland Power has consistently overbudgeted in this area on average by \$260,000. By specifically examining some of the following areas, i.e., the applications enhancements, the internet enhancement, and the personal computer infrastructure, we would submit that these areas will reveal overages and unnecessary expenditures.

And finally we would urge the Board to consider whether Newfoundland Power has really answered PU-36 from 1998 and has identified the cost savings that the ever-increasing IT budget has purported to achieve, or is the swelling of the IT budget another area where Newfoundland Power is unnecessarily increasing its rate base. We do know that appended to NLH-28, which is the information technology strategy report that Newfoundland Power provided to this Board, projected in 1999 that the capital budget for IT in 2002 would be \$4.7 million. We're now in 2002 and it's \$5.5 million, and we say that this is precisely the problem that the Board identified in 1998. There is an upward trend in this area, and it may be one of the areas where Newfoundland Power is unnecessarily overcapitalizing an adding to its rate base. That's my submission, Mr. Chairman.

MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr. Fitzgerald.

MR. BROWNE, Q.C.: Thank you, Mr. Chairman and Members of the Board. Mr. Fitzgerald talked about the board of directors and their function, and we requested to see the minutes of the meetings of the board of directors on July 24, 2002, and the excerpt from the minutes, and it's interesting to note that when your financial advisors went to look at these, that the board of directors never approved this particular budget. The board of directors, in fact, approved the budget of \$57,955,000, so does that mean that they're coming back for more at some particular time because if that's the case, it requires some explanation on Newfoundland Power's part.

Interestingly enough, they also approved, besides the \$57,955,000, they also approved the right of the company to increase the budget by ten percent without coming back for more approval, so if you take the \$57,955,000, for practical purposes, it's all of \$58 million, and another ten percent on top of that, we'll probably be seeing a repeat visit somewhere down the road during the life of this budget. In any case, they certainly have not approved the budget as it's presented here, despite what Mr. Ludlow has told us.

Mr. Chairman and Members of the Board, the direction for this Board in terms of the budget process comes from the legislation and it comes from the Newfoundland Court of Appeal in the stated case, and the Newfoundland Court of Appeal in the stated case rendered its opinion on June 15, 1998, and stated the

1 Board is the statutory body which has the authority
2 and duty for the general supervision of all public
3 utilities in Newfoundland and Labrador, and in the
4 course of exercising that supervisory role has general
5 authority to make all necessary examinations and
6 inquiries and keep itself informed as to the compliance
7 by public utilities with the law. And as well, it has the
8 right to obtain from the public utility all information
9 necessary to enable the Board to fulfil its duties.

10 And in paragraph four of the decision, the
11 court went on, it is important to remember, however,
12 that in addition to its periodic adjudicative role, which
13 itself involves a large measure of policy implementation
14 in arriving at its decisions, the Board has, because of its
15 duty of general supervision of all public utilities, an
16 ongoing supervisory role of the activities of the utility
17 between hearings as well, which is facilitated by
18 statutory requirements for periodic reporting of
19 financial information to the Board.

20 And the court went on in paragraph 118, in
21 defining the parameters of said supervisory power,
22 however, the Board must account for a competing
23 principle, namely, that the Board is not the manager of
24 the utility and should not as a general rule substitute its
25 judgement on managerial and business issues for that
26 of the officers of the enterprise. That's what the court
27 said, that's all true. Ms. Butler is correct.

28 However, the court went on to say this,
29 nevertheless, it is recognized that regulatory boards
30 have a wide discretion to disallow or adjust the
31 components of both rate base and expense, and the
32 court quoted from an American case, the contention is
33 that the amount to be expended for these purposes is
34 purely a question of management judgement, but this
35 overlooks the consideration that the charge is for a
36 public service, and regulation cannot be frustrated by
37 a requirement that the rate be made to compensate
38 extravagant or unnecessary costs for these or any other
39 purposes.

40 And at paragraph 122, it is still within the
41 jurisdiction of the Board to supervise and review both
42 the type and level of expenses incurred by the utility in
43 respect of its operations. If it did not have that
44 jurisdiction, the actual rate of return to earn on rate base
45 in a given year, would be subject to manipulation by
46 the utility, as for example, in a year where near the close
47 of the fiscal period it appears that the rate of return will
48 be more than anticipated, the utility if totally

49 unsupervised could make large expenditures unrelated
50 to the delivery of service, simply to bring the rate of
51 return in line with what has been projected. These are
52 the words of Mr. Justice Green.

53 Bearing that in mind, the court said the
54 jurisdiction of the Board to take account of deviations
55 from estimates of expenses when setting future rates,
56 does not differ from that pertaining to its jurisdiction
57 with respect to taking account of excess revenue. The
58 disallowance of an expense may lead, in effect, to a
59 greater rate of return and potentially to excess revenue
60 if the resulting actual adjusted rate of return is in excess
61 of a previously determined acceptable range of return.

62 The court went on to quote Phillips
63 (*phonetic*), an authority, an American authority. Public
64 utilities cannot spend freely and expect all expenditures
65 to be included as allowable operating expenses. In
66 effect this means the commissions are permitted to
67 question both the judgement and integrity of
68 management, and if rates must be high enough to yield
69 sufficient revenue to cover all operating expenses, the
70 consumer has the right to expect that such expenditure
71 will be necessary and reasonable.

72 At the same time, managerial good faith is
73 presumed. Public utilities must be given the
74 opportunity to prove the necessity and reasonableness
75 of any expenditure, challenged by a commission or an
76 intervenor. To justify an expenditure, a company must
77 show that the expenses were actually incurred, or will
78 be incurred in the near future ... that the expense was
79 necessary in the proper conduct of its business, or was
80 of direct benefit to the utility's ratepayers. And I
81 emphasize that, direct benefit to the utility's ratepayers,
82 and that the amount of expenditure was reasonable.

83 Moreover, it must be emphasized again that a
84 public utility may still spend its money in any way it
85 chooses. Management's function is to set the level of
86 expenses. The commission's duty is to determine what
87 expense burden the ratepayer must bear.

88 And of course, these comments are consistent
89 with the Electrical Power Control Act, where it's declared
90 to be the policy of the province, that all sources and
91 facilities for the production, transmission and
92 distribution of power in the province should be
93 managed and operated in a manner that will result in
94 power being delivered to consumers in the province at

1 the lowest possible cost consistent with reliable
2 service.

3 (11:00 a.m.)

4 Judge Green made reference to the competing
5 interests here. The regulatory body in question in
6 Newfoundland, the Board of Commissioners of Public
7 Utilities, is generally charged with balancing the
8 competing interests of consumers and the investors in
9 the utility, and he quotes from Mr. Justice Dupre
10 (*phonetic*) of the Supreme Court, this involves the
11 Board attempting to make sure that in the consumers'
12 interests, the service provided is adequate and provides
13 just and reasonable rates, and for the utility and its
14 investors, that those rates provide a sufficient income.

15 Judge Green states, the balancing of interests
16 is found in Section 3 of the Electrical Power Control
17 Act, emphasizing the interests of the utility in the
18 reference I just made. And Judge Green at paragraph 22,
19 and it's the last paragraph I'll read from Judge Green,
20 this statutory entitlement of the utility to a just and
21 reasonable return is the linguistic touchstone for the
22 balancing exercise. This phrase emphasizes the fairness
23 aspect, both to the utility in earning sufficient revenues
24 to make its continued investment worthwhile, and to
25 maintain its credit rating in financial markets, and to the
26 consumer in obtaining adequate service at reasonable
27 rates. It also emphasizes the need for a tempering of
28 each interest group's economic imperative by
29 consideration of the interests of the other.

30 All these are quotes from the judgement of the
31 majority, written by Mr. Justice Green in the stated case,
32 and it's always good reading, and it's always worth
33 taking a look before writing a decision, I think, to read
34 that case. I know in the presentations before this Board
35 since the decision came out, I always take a close look
36 at that case because he said something for everyone,
37 but his theme of the balancing interests, I think it's very
38 appropriate here.

39 And who are the consumers in this province,
40 whose duty the Board is charged with balancing, who
41 are they? They're the ratepayers, 220,000 of them
42 approximately, and I was reminded yesterday to go to
43 Stats Canada, look at the latest income guide for
44 Canada, and it can be found in Catalogue 75-202, and in
45 this province the average total income for unattached
46 individuals for the years 1997, \$18,400, a single parent.
47 1998, \$18,035. In 1999, \$18,174. 2000, \$19,300. But the

48 most interesting point of all is that in 1991, that same
49 single parent making \$19,300 on average, in 1991 was
50 actually making \$20,400 in 1991, and in 1992, making
51 \$22,300. This is the average for the single parent, one
52 income in the family, the average in Newfoundland.

53 And what about where both partners are
54 working, what about when two people are out there
55 working. Let's look at who the consumers are. The
56 economic families where two or more are working, 1997,
57 \$46,700. Two people working out there, probably got a
58 caregiver. 1998, \$48,000. 1999, \$50,000. 2000, \$50,500.
59 They don't compare with Canada. Newfoundland
60 Power is always comparing with Canada. If you want to
61 compare that with Canada, in 1998, two people, \$65,000,
62 and two people in 2000, \$68,000, and in 1998 a single
63 parent in Canada on average made \$26,000, and in 2000,
64 \$28,000. So it's always good to see who is out there
65 because we in this room, we're all professionals, we
66 have a certain income level which none of us, I'm sure,
67 is going to apologize for, but it's good to see what's the
68 average out there. The person at Wal-Mart making
69 \$7.00 an hour, the minimum wage being \$6.00 ... give her
70 \$7.00, a 40 hour week, and if she works 52 weeks of the
71 year, she'll only make \$14,500, and you got her
72 deductions out of that. These are the people out there
73 paying these costs and paying their electricity bills the
74 same way as you or I. The frightening part is that these
75 are the average. So when we're balancing the interests
76 of a corporation seeking \$57 million for capital
77 expenditures, we're balancing the interests against
78 these people and their ability to pay. And their ability
79 to pay is something you might want to keep in mind,
80 because Newfoundland Power at the other end of this,
81 is looking for a rate increase. They're looking for more
82 from that crowd, from these people, these fellow
83 citizens, and is there a relationship between the rate
84 increase and what they're looking for here, I tried to get
85 a straight answer from Mr. Hughes. Read the transcript.

86 In 1998 when we last appeared before this
87 Board dealing with the capital budget, and dealing with
88 the general rate of return, the Board put Newfoundland
89 Power on the automatic adjustment formula and set the
90 rate of return at 9.25 percent. I'm not going to dwell too
91 much on the rate of return. And over their strenuous
92 objections ... if we could just go for a moment to CA-1,
93 Mr. Wells, and CA-1 gives the average annual capital
94 expenditure by budget, and these are not actuals ... or
95 maybe they are, I'm not sure now ... in any case, it
96 shows the trend before 1998 and after 1998, and we can
97 see that in these most recent years, that we're getting

1 into high levels of capital expenditure. Newfoundland
2 Power says that's inflation. It might be inflation, it
3 might be the fact that we stopped spending due to the
4 cod moratorium. Well excuse me, the cod moratorium is
5 still on as far as I know. Anyone with a first year
6 economics course from Memorial University knows that
7 inflation is not sector, is exactly sector driven. Right
8 now the inflation rate for oil, I was reading in the paper
9 the other day, is 3.2 percent, the inflation for Canada for
10 this month, 3.2 percent, because it's all oil related. In
11 order to accept their theory, you would have to say that
12 all the inflation for Canada, and really what it has not
13 been an inflationary period, is dumped all into these
14 years. Well where was the inflation in the previous
15 years when budgets were consistent ... no inflation
16 then?

17 And nothing has improved in rural
18 Newfoundland since the time of the cod moratorium.
19 They said they weren't spending because of the cod
20 moratorium out there. If anything rural Newfoundland
21 has deteriorated.

22 It's easy to look for reasons to show why you
23 have this need to spend. If we can go to CA-2 for a
24 moment, please? I asked to state the variances from
25 1993 to 2002, can you just go to the attachment to that,
26 please, Mr. Wells? You can see in 1993, the budget was
27 under ... just go to 1994, it was under by \$1,318,000. In
28 1994 it was under by \$4,951,000. If you go to the next
29 year ... CA-2. In 1995, it was under by \$7,241,000. Go to
30 the next year, in 1996 it was under by \$2,188,000. Go to
31 the next year, and in 1997, \$2,239,000. So in all these
32 years we managed to make do and there was money
33 returned to the kitty, so to speak.

34 After, after 1997 ... 1998, if you can go to that
35 for a moment, is that there? We see here, December 31,
36 1998, that the overspending starts, \$1,785,000. Go to
37 the next year please? 1999, \$1,251,000. The next year
38 please? 2000, \$1,065,000. The next year please? 2001,
39 \$3,277,000. The next year please? And so far we've got
40 money in the bank there for 2002, to the time this was
41 prepared. We'll have to wait and see how that pans
42 out.

43 And so we saw a trend for a period of years,
44 and we see another trend for this period, despite the
45 generous budgets given by this Board, it never seems
46 to be enough, they keep coming back for more. Is this
47 prudent and reasonable budgetary planning where
48 they're coming back for millions of dollars more for one

49 period of time, and then in another period of time
50 they're giving it all back, it's not enough.

51 Can we go to CA-62 for a moment? And here
52 we see two columns showing the rate base and capital
53 budget is a component, one of the components of rate
54 base, there's good evidence on that, and here we see
55 the rate base rather as steady and progressing at a
56 reasonable rate from 1992 to 1997, because from 1992 to
57 1997, we start with \$450,400,000 in 1992. Go to 1997, it's
58 \$477,000,000, so we see in the intervening years it grew
59 by \$27 million. But look what's happened in the
60 intervening years between 1998 and 2003 forecast, it will
61 have grown from \$488 million to \$594 million. It has, will
62 have grown by in excess of \$100 million in that
63 particular period. In the period of the automatic
64 adjustment formula it has grown astronomically, and it
65 has grown at a time that the capital budgets have
66 grown.

67 (11:15 a.m.)

68 Where is the reasonableness and balance here
69 where a company in a very short period of time can
70 grow their rate base by what is 25 percent? Where is
71 the balance for the consumer here? We're all paying on
72 that. The figures are startling, and it's not that their
73 customer base has grown, their customer base has been
74 very modest.

75 If we can go to CA-72 for a moment, and
76 maybe if we went to the table, Mr. Wells, thank you ...
77 the customer accounts has relatively modest growth.
78 In 1993, the customer accounts are stated there, and
79 they're stated in 2003 forecast, there's 19,000 in a ten
80 year period. Nothing as dramatic as the rate base, so
81 this money is not being used on new accounts, and
82 where does it all end?

83 We hear Mr. Ludlow on the stand saying, and
84 Mr. Hughes, yeah, we'll probably need \$60 million in the
85 next couple of years, and it may be down to \$50 million,
86 it may be down to \$40 million. They don't know what
87 they need because they have no plan. There's no plan
88 here.

89 Try as I may to ask them what the budgetary
90 process and what the budgetary plan was, I could not
91 get an answer. We all meet, we discuss, yeah, it comes
92 from the linesmen up, we meet again, we caucus, where
93 is the paper, where are the minutes ... no minutes, I was
94 told by Mr. Hughes I was a creature of the fifties and

sixties to suggest there should be something in writing. I put it to you, if they went to a bank with that budgetary plan and process, and sat down with the bank manager looking for \$56 million, and he asked them what their budgetary plan was, they would be shown the door, because there is no plan. The plan appears to be to spend. The plan appears to be on its face, to increase that rate base year over year over year, dramatically so.

They couldn't get it on the rate of return of 9.25 percent, they couldn't get good value on that, they could increase their chances of getting good value by increasing the rate base by \$100 million in the period of the automatic adjustment formula, and when we get to the general rate hearing, I think we'll be able to show real dollars to show that that is indeed a fact.

As Mr. Fitzgerald says, it's all about the corporation, it's all about the directors, the corporation, the rate of return. The piety we hear about customer service and serving our customers and our poor old customers, amounts to trite. This is all about money. It's 11:20, I saw the Chairman giving me a few looks a few times, I don't know, did you want to break or did you ...

MR. NOSEWORTHY, CHAIRMAN: Well, I was going to suggest, Mr. Browne, that if there was an appropriate place to break around 11:30. We can do it now if it's appropriate.

MR. BROWNE, Q.C.: Yeah, I'm going into a new section now, so if you want to ...

MR. NOSEWORTHY, CHAIRMAN: Probably we'll break now then for ... I'd like to try and restrict it if I could to 15 minutes.

(break)

(11:45 a.m.)

MR. NOSEWORTHY, CHAIRMAN: Thank you, Mr. Browne, could I ask you to continue? Do you have any idea, sir, on how long you'll be?

MR. BROWNE, Q.C.: It's really hard to say because I didn't rehearse. I'm ad libbing here a bit.

MR. NOSEWORTHY, CHAIRMAN: Okay, if you could ...

MR. BROWNE, Q.C.: I had to touch all the main points out of duty. I'll do my best.

MR. NOSEWORTHY, CHAIRMAN: Okay, if you could proceed please, thank you.

MR. BROWNE, Q.C.: Myself and Steve went over for a coffee and it's pretty nasty out there.

MR. NOSEWORTHY, CHAIRMAN: Yes, indeed.

MR. BROWNE, Q.C.: Mr. Ludlow told me we won't lose the electricity though, so ... In the period that the rate base rose \$100 million, what has been the result ... well, just look at CA-104(a) for a moment, CA-104(a), and I asked to put the company average for SAIFI and SAIDI from 1993 to the present, and when you look at it for 1993, the SAIFI and the SAIDI, and as I recall the evidence, the SAIDI is how long it takes to get to a site and do the work, until the electricity comes on, so that could be driven by location or whatever ... but in 1993, the SAIFI, 4.77, and go down to 1977 (*sic*), 4.01, the SAIDI, 4.62. Then just go into the period of the expenditures, the \$100 million if we include this year, which is not there, but the SAIFI, 3.99 to 3.73. Not an appreciable difference, and it's not all Aliant. Aliant has set amounts each year, albeit it's all rate base. So it makes you wonder, this proactive policy that they have, does the, is the increase in capital expenditure wrapped around that, proactive ... getting rid of something in anticipation that it might break soon. How many years of life are we losing off equipment by this practice? They announce the practice is new.

That's a managerial decision, that's judgement. How do we measure if consumers are getting creamed here on that? I guess it would be akin to we're all going home and throwing out our toasters. We had them for five years and it mightn't work another three, so let's get rid of them, bring them down to the basement or to the flea market and we'll go out and get a new one, or a television set, or something or other, but it seems to me that there should be a testing done of that equipment. There has to be some proof brought to the Board before they engage upon that practice.

Where's the proof that that is broken? It's a pretty ambitious policy and plan, and something about it just strikes me wrong. In terms of the ongoing expenditure, Newfoundland Power seems to be quite proud of its statistics for reliability, even though we don't see a heck of a difference between 1993 and 2001.

1 In the capital, in his evidence of November 14th, 2002,
2 in the capital budget, at line 66, Mr. Hughes stated,
3 "Most utilities in the country are trying to aim for an
4 availability of 99.99, which means they are probably
5 less than an hour", and I think we've had evidence that
6 it takes two hours to get to a site.

7 But yet, if you go to CA-61, Schedule D in the
8 media release of October 9, 2001. I think you can only
9 do these by date, Mr. Wells. October 9, 2001. Okay,
10 just go back a page, and about the fourth paragraph
11 down, a question Mr. Kennedy asked concerning
12 reliability, Newfoundland Power issued a press release,
13 improvements in system reliability continue to
14 contribute to customer satisfaction with Newfoundland
15 Power's service. On a year to year basis, overall system
16 reliability stands at 99.99 percent. Year to date the
17 number and duration of outages have been reduced by
18 11 percent and 16 percent. The company's year to date,
19 satisfaction is currently at an all-time high, 90 percent,
20 up 27 percent from 1996 levels. Well, 1996 probably
21 wasn't the best of years for the company, but 19 ... but
22 we see here, the customer satisfaction rating at 90
23 percent, we see reliability, they're telling us, is 99.99
24 percent system reliability. Why are we continuing to
25 get into this spending phase then, if things are good, if
26 things are that good?

27 At what point does this expansion in the
28 capital budget stop? I think the Board needs to give
29 the company a signal here. When we're approaching
30 \$60 million and surpassed \$60 million on one occasion,
31 I think that's the line in the sand. The company should
32 be put down to historic levels. The population is
33 dwindling. Statistics Canada tells us, I think we've got
34 340,000 people on the island, people are leaving. Most
35 people are not having any more than two kids. The
36 population is dwindling. It seems to me down the road,
37 if this kind of expansion in rate base continues by way
38 of the capital budgets, the, someone is going to be
39 saddled with this debt at some point. If our population
40 was increasing, you can probably see some justification
41 for it, if the customer base was increasing.

42 But there's been really no study done of the
43 proactive approach. I believe that Newfoundland
44 Power is assisting with the growth of their own capital
45 expenditures through advertising, in direct violation of
46 what this Board has said and said consistently. In PU-
47 6, 1991, at page 56, the Board stated, the Board does not
48 allow advertising expenditures that are solely for
49 corporate image building and do not have any direct

50 link to the supply of service. The Board believes that
51 DSM advertising at Newfoundland Power is in the best
52 interests of its customers. You'll never see a DSM ad
53 on television suggesting people cut back. The Board
54 accepts that Newfoundland Power's advertising
55 expense forecast for that year was reasonable, and at
56 page 60, the Board said ... past policy stated that it
57 should not include promotion advertising that will
58 require an increase in capital expenditures. Don't go
59 out and tell people to further use electricity. Electricity
60 is a commodity, it's not, it's in short supply here. We're
61 not like we're in Labrador City or Wabush. This
62 electricity has to be produced for the most part during
63 the harsh winter season at Holyrood.

64 Electricity is a commodity which no one can
65 do without and in the province there is a monopoly,
66 and Newfoundland Power for the most part is the
67 distributor, Newfoundland Hydro the generator. We
68 find according to evidence filed before this Board at the
69 Newfoundland Hydro hearing, between 30 and 40
70 percent of our electricity can on occasion come from
71 Bunker C at the Holyrood thermal generating station.
72 Bonbright (*phonetic*), in his text, "Principles of Public
73 Utility Rates", states in his forward, "In short, there is
74 an economic problem involving the allocation of scarce
75 resources to the relatively unlimited demands upon
76 them, and the function of utility rates is to reconcile the
77 ends with the limited means." Scarce resources, it's not
78 a resource in great supply.

79 Page 9, Bonbright states, "Most regulated
80 industries sell services rather than goods which
81 ordinarily, save natural gas, cannot be stored. This
82 also means that services are both non-storable and
83 non-transferable, which gives them a special price from
84 the point of view of price policy".

85 And he also stated this in reference to
86 advertising, "It should be emphasized that fully
87 competitive services do not need regulation, since the
88 prices of such services are disciplined by the forces of
89 the competitive market price. Neither fair return
90 regulation or restrictions on prices are required."

91 Because there is not an overabundance of
92 supply of electricity, it makes common sense that in the
93 past the Board has prevented Newfoundland Power
94 from advertising electricity which, as of itself out of
95 necessity (*phonetic*), may require additional capital
96 expenditure. In 1996 the Board said limit your

1 advertising to matters relating to conservation, safety,
2 consumer information.

3 In this budget, Newfoundland Power is
4 seeking \$11 million for new expenditures. We do not
5 know, we will never know how much they went out on
6 that and got themselves, by meeting with contractors,
7 by suggesting electric heat, but it's all in violation of
8 recognized principles.

9 What we do know is that they have sent
10 inserts to their customers, CA-56, Attachment A, "what
11 to look for in a heating system". And in March 2000, in
12 CA-60, can you go to that for a minute, please, CA-60?
13 And just go back to that for a moment, please? Now
14 that's where they're telling us about the meter readings,
15 that's another topic. Just go to CA-56 for a moment
16 again. There was an ad there, I think we've seen it in
17 the evidence previously in any case, where it says,
18 "let's shed some light on oil prices". Oil has increased
19 60 percent since 1997 while electricity has risen by only
20 two percent. Electric hot air or hot water furnaces can
21 easily replace your oil fired unit while eliminating the
22 need for a chimney and an oil tank. Now this is coming
23 from a company that's regulated. They are guaranteed
24 their rate of return. Those oil companies out there are
25 not guaranteed their rate of return. They're in
26 competition with each other. Newfoundland Power is
27 guaranteed money from this Board. They shouldn't be
28 able to use that money in whole or in part, directly or
29 indirectly, to advertise in the competitive market. They
30 are a monopoly. They're guaranteed their money.
31 Forward's Oil or Tibb's Oil, or any of those small oil
32 companies, the fellows going around driving oil trucks
33 operating from their house, that's who they're in
34 competition with, as well as the Irvings and these
35 people, by advertising like that.

36 When I asked Mr. Hughes about it, he states
37 on page 32, I think it's fair game. I think it's totally
38 wrong. How can it be fair game when there are existing
39 orders of this Board dealing with those particular
40 issues? So we don't know to what extent that \$11
41 million they're looking for in capital expenditure is
42 driven by themselves, but it is troublesome.

43 Furthermore, if you could theorize that there
44 would be less load on the system if people conserve,
45 because during hard times people turn to conservation.
46 Ontario is going through, you can read in the papers,
47 conservation is where it's at now in Ontario. Are the
48 demands on the system too much because there is no

49 conservation or healthy conservation advertising being
50 done? I asked Mr. Perry about that, and he states at
51 page 30, line 48, "I would add to the Board too, that
52 when you think about growth in sales and growth in
53 number of customers, ultimately a growth in sales, there
54 is a lot more going on than people choosing to go to
55 electric versus going to oil. You know as disposable
56 income has been going up in the province over the last
57 few years, people's use of electricity has increased".
58 Well, he's wrong there. Stats Canada says, in fact, for
59 single households, and for two people working, their
60 income has gone down. You'd help people by teaching
61 them how to conserve, and you probably would help
62 the system.

63 (12:00 noon)

64 I raise these issues now because I see a direct
65 connection between advertising, expanding the system,
66 and looking for money in the capital budget to do that.

67 I mentioned earlier about the lack of a plan and
68 again, that is troubling. I won't read out all the quotes
69 I have here, but Mr. Hughes on page 6 of the November
70 14th, 2000 (*sic*) transcript, I asked if there was any value
71 in having a five year plan or a six year plan or a seven
72 year plan. "Mr. Browne, the world you're living in", this
73 is Mr. Hughes now, "The world you're describing is
74 something that went out in the fifties and sixties. I
75 mean the centrally planned, you know, how the world
76 is going to unfold. It doesn't exist anymore. We
77 respond to our customers, we respond to reliability
78 concerns for, if someone builds a store in Pearlgate or
79 Corner Brook or Stavanger, we have the obligation to
80 serve them". That's true. "I cannot, nor can any
81 Newfoundland ... employee, either encourage or
82 discourage them. They will do it based on their own
83 business decisions".

84 And when I asked him for written minutes, "To
85 be honest, Mr. Browne, I can't think of an internal
86 meeting, unless it's an action list. Action lists we keep
87 but I'm not sure if we keep minutes. Maybe I'm wrong,
88 but I don't know why you would keep minutes".
89 However, if you look at Brushett's reports, and if we
90 just go to them for a minute in CA-124, you probably
91 can see why they need more organization. In
92 presenting a budget to this Board, go to CA-124, the
93 1999 annual financial review, and on page 8, okay, the
94 previous page, Mr. Wells, thank you. Yeah, I think
95 that's it. Yes, page 8, your financial consultant reports
96 on the variances in capital expenditures, and the

variances I find to be astronomical. In some they're as much as 18 percent, 20 percent, 24 percent, but no matter what the variance, the money seems to move from category to category for some reason or another, because even though the variance may be in a plus situation from a consumers' perspective, they still need more money.

To have such a dramatic percentage of variances, does that show a healthy financial plan or a healthy budgetary procedure, and it's consistent. If you go to page 8 in the Newfoundland Power 2000 annual financial report, some of these variances ... a variance of four or five percent mightn't be so bad, or six percent, but after you leave the ten percent range, you get 41 percent or 12 percent, and you're coming back looking for more money as they did in this particular instance, it makes you wonder about this process that we're undertaking right here.

The same would hold true for the 2000 and, the 2001 capital budget, just go to that for a moment, page 9 there, and we have the sector variances there are 23 percent, 14 percent, 45, 22, 13, 21 percent one way or the other, but it certainly doesn't indicate that the money that you are approving is going to the particular allotment for which you are giving your approval. Their forecasting seems to be way off.

It's time that the Board required a five year plan from Newfoundland Power for its budgetary procedures. We are requesting the Board give them a five year plan. We need to see where they are headed. You need to see where they are headed. This 24 month plan that they're giving is just not good enough.

And furthermore, it is time that we moved away from the requirements that the Board set in 1991, in PU-6, the methodology that the Board suggested for Newfoundland Power in presenting its budgets. It's way outdated, it's contrary to what you set for Newfoundland Hydro, and we would want you, we would request that you repeat your order for Newfoundland Hydro on the way that a budget is to be presented.

And furthermore, Newfoundland Power always has this advantage. They have the historic advantage. They are always there. Unfortunately, Board chairs and vice-chairs and commissioners change. We've seen several changes since 1996 in Board members, and the Board Chair, and Consumer Advocate counsel changes

all the time. The only constancy here is Newfoundland Power. So therefore, I think as a help to boards now and in the future, that when they present their budgets, in addition to what you put down for the guidelines for Newfoundland Power in PU-7, 2002/2003, they should also in looking for a project be required to put in the SAIDI and SAIFI figures for the five years immediately prior to the project. That should be a requirement.

They should be required to put in the list of repairs and expenses dealing with the budgetary items for the past ten years. You should be able to see their history. Let's see the history of what went on in that project. You should be able to do that in a moment's notice, just look through it. There should be a statement as to approximately how much this budget if approved will add to Newfoundland Power's rate base. How much it will add to the rate base. A statement as to approximately how much, if this budget is approved, will add to the utility's cash return.

A statement as to what efforts have been made to coordinate this expenditure with Newfoundland Hydro, and budgets should be prioritized, a list of projects should be presented on a priority basis. It all can't be priority. You can't present a budget and say these are priorities, there must be priorities within them. There are always projects that are deferred, they always defer projects. What projects are deferrable, to allow you to use your judgement in balancing the interests, because that is ultimately what you are required to do.

And furthermore, there should be a report back to the Board. After money is spent, after two years, and that money has been expended, they should be required to report to the Board on the expenditure and to give the SAIFI and SAIDI figures to show that real improvement has occurred. Show us, give us the proof that what you did, that the money was well spent. Where is that done now?

That would be beneficial to this Board and future boards. We need some history in these applications, and it's not for me or for you to have to go out and ask hundreds of questions in order to try to find out what the history is. They have it, they have it in their computers. They could give it to us when we asked, so it should be presented in the first instance. This is not burdensome. From your perspective it should be part of your duty, I would think, to ensure that the money that they are looking for hasn't, that the project that they were looking to support, there haven't

1 been hefty expenditures in that in the past, they're not
2 looking to replace something that they've been
3 repairing constantly and spent a couple of million
4 dollars repairing it, and now they're looking to replace
5 it.

6 Furthermore, from the questions presented by
7 Ms. Greene of Newfoundland Hydro, there seem to be
8 some disparities between what Newfoundland Hydro is
9 placing in their capital budget and what Newfoundland
10 Power is placing in their capital budget, what they're
11 capitalizing here. Ms. Greene in her comments said,
12 well we put that in our operating, while they put that in
13 capital. Well shouldn't there be a standard? Should it
14 be their election or should it be a standard set by the
15 Board and accounts as what is capital and what goes to
16 operating?

17 We note in this particular budget that
18 Newfoundland Power is looking for a half a million
19 dollars in studies, but they're also looking for \$400,000
20 approximately in their operating budget for studies.
21 How can that be? If you need experts from the outside
22 to determine these issues, I think it would be money
23 well spent.

24 These are some of my comments, I want to get
25 to some of the budgetary items itself. And when we
26 look to the budget, there are lots of good things in this
27 budget, and we're happy to say it, and we're happy to
28 see it there, and there are lots of things in the budget
29 which are reasonable and which have been proven. In
30 fact, the vast majority of the items, we had difficulty
31 challenging, even though we did our due diligence in
32 asking questions about these.

33 Because as you all know, it's impossible for us
34 or for you to go out and hire an engineer to take what
35 they are submitting and say study that. It's beyond our
36 capacity budget-wise and it's beyond yours, so when
37 they say we didn't bring contrary evidence, how could
38 you? What are we going to do, spend millions of
39 dollars to examine every aspect of their budget? You
40 can only do it by the cross-examination process. And
41 it's up to them to prove their case. The burden is
42 always on them to prove their case.

43 And so when we look at some specific items,
44 we have no difficulty with them. I'll give you some of
45 them, and I'll also state some of the items that we do
46 have difficulty with. In reference to Lumsden and the
47 amounts to be spent there, we have no difficulty with

48 that. The reports which we've reviewed go back to
49 1993, and cite problems there with the Lumsden
50 penstock. No problem, we agree.

51 MR. NOSEWORTHY, CHAIRMAN: For clarification,
52 I think it's the Lockston penstock.

53 MR. BROWNE, Q.C.: Lockston, I'm sorry, Lockston,
54 yeah. I was just looking for my page, and I had lost it.
55 Page 11 of 82, the thermal plants, the facility
56 rehabilitation in Port aux Basques, at a cost of
57 \$1,561,000, we have no problem with that. That appears
58 reasonable to us. They are dealing with the portable
59 gas turbine there in Port aux Basques. That portable
60 gas turbine is one of the portables that has been used
61 in Port aux Basques. We'll come back to the two that
62 haven't.

63 CA-37(a), the trunk feeders, rebuild
64 distribution lines, we have no problem with that, the
65 \$3,504,000 that's being spent on those. And we have
66 no difficulty with the Port aux Basques, once again we
67 see Port aux Basques there. Since 1977 (*sic*) the Port
68 aux Basques area has been subject to 750 unscheduled
69 outages, most of these are minor in nature, but overall
70 have a substantial impact on operating costs and
71 therefore they're going in and repairing the feeders in
72 Port aux Basques. That's fine, we have no difficulty
73 with that.

74 The list of unforeseens, we now have
75 insurance in place, and the unforeseen budget is
76 \$750,000. Hydro got a million. It would not be
77 unreasonable to set that at \$500,000. They seem to
78 always spend it anyway, which I find intriguing. It
79 wasn't always at \$750,000. Back in 1993, I think it was
80 \$350,000, and then it moved to \$600,000 and then it
81 moved to \$750,000.

82 The extensions on page 34 of 62, the
83 \$4,322,000, it seems reasonable. These are for new
84 customers and for some old customers who are using
85 more electricity. I sort of wonder about that. Wouldn't
86 they be better off ... here's where you come into a
87 conservation argument. They have, they're noting in
88 Table 1 of CA-30(a), in Table 1, if you can just go to
89 that for a moment. They mention in the table, the
90 Bonavista area, the gross number of new residential
91 customers, 166 in Bonavista. I'm glad to see that
92 growth in Bonavista. I didn't have time to query it, but
93 I just wonder about that, that Bonavista has 166 new
94 residential customers. I guess that's a good thing.

1 (12:15 p.m.)

2 Street lighting, that's obvious, page 39 of 82,
3 in Schedule B. We have no difficulty with that. The
4 meters on Schedule B, page 36 of 82, if you just to go
5 CA-31(e). Okay, we see the meter project cost over
6 time. In the last number of years, the variances seem to
7 be adding up there. They seem to be overstating their
8 requirement, and it probably leads to the indication that
9 some money could be sawed off there. They're
10 probably into about \$200,000 there if you start looking
11 at it from the last couple of years. There's nothing
12 wrong with the project. It seems that if you look to the
13 evidence though, there's overstatement there.

14 CA-34(i), if you can go to that for a moment,
15 the transformers with a project cost of \$5,975,000
16 (*phonetic*). This seems to be one of these projects
17 that, whereby they're out there proactively and if we
18 look at CA-34(f), if you can just look at the amounts
19 that are being spent on that over the last number of
20 years, on transformers, it seems to have gone up
21 astronomically since 1998. In 1995, a million, and we're
22 right up to over \$5 million in forecast. They seem to be
23 replacing these. I would hope that proper testing is
24 being done and good equipment is not being thrown
25 away. We don't know, neither do you.

26 If you go to Schedule B, page 46 of 82, down
27 below the page, once again you see these trunk feeders
28 to rebuild distribution lines, and I point out again, in
29 Port aux Basques, they're spending \$200,000 on that,
30 and I'm coming back to Port aux Basques big time.

31 So a lot of these items, we have no difficulty
32 with. We think that that's part of the balancing of the
33 interests here. A lot of this work needs to be done. It
34 seems to be warranted on its face, although where
35 they're into the proactive repairs, there are some causes
36 for concern.

37 Now, in the area of vehicles we do have a
38 major problem. If we go to CA-46(g), Attachment A,
39 CA-45(g), I'm sorry, Mr. Wells, I'm misleading you
40 there. We have problems with this personal use of
41 company vehicles, and quite frankly we would like a
42 stop put to it. What does it have to do with the
43 servicing of electricity and with the provision of
44 electricity to have ratepayers provide a vehicle to an
45 employee for personal use that is not part of that
46 employee's compensation package?

47 Vehicles should be tied in directly to the
48 provision of electric services. Why should someone
49 making \$19,000 a year see the person next door using a
50 vehicle to which he is contributing for other than the
51 provision of electric services? The provision of these
52 vehicles should be tied to the job and specifically to the
53 job.

54 We don't see policemen out there with private
55 vehicles just in case there's an emergency, or firemen,
56 or doctors, or nurses. Why are the people at
57 Newfoundland Power so exceptional that they need 44
58 unmarked vehicles, and according to Mr. Ludlow, he
59 doesn't take exception to the fact that someone could
60 take one of these and go to Toronto in one. Enough is
61 enough here.

62 You won't find, you will find generally in
63 Government, Newfoundland and Labrador Housing,
64 people are told to park these vehicles overnight, not to
65 use the vehicles. That's why they all are decalced.
66 Because if someone is using these for personal use, and
67 say over the four year period for which they're using
68 their vehicles, someone ... and they have 44 ... and I
69 think six are used by the executive, and that's part of
70 their compensation, that's fair enough. Let's look at the
71 other 38. If, by way of personal use, over the life of that
72 vehicle, someone puts on 50,000 clicks on that vehicle
73 for personal use, and the wear and tear of that, and you
74 multiply that by 38 vehicles, that's costing a lot of
75 money. Just, if you just think about this for a moment.
76 That costs an awful lot of money for the consumers of
77 this province. Consumers have no obligation to
78 provide a personal vehicle to employees of
79 Newfoundland Power. If the shareholder wants to give
80 them the vehicle, because they're pleased with what
81 they're doing or something, let them go ahead, but that
82 should not be coming out of regulated funds. That is
83 wrong. I don't know but the Board has jurisdiction to
84 allow them to use that out of regulated funds. We here
85 dealing with a monopoly, regulation, rate base, the
86 production of electricity, the cost of electricity. We
87 object strenuously to this policy, which is really no
88 policy at all when you read it. You can use it but be
89 careful, don't be careful, you can go to Toronto.

90 Furthermore, we are concerned when
91 Newfoundland Hydro, according to CA-45(f), and you
92 go down to their replacement criteria, and we all know
93 where Hydro operates, they're in the rural areas, and
94 there's no glamour in a lot of the areas in which Hydro
95 operates. They're getting, they seem to be getting a lot

1 more use out of their vehicles, five to seven years.
2 Why is it Newfoundland Power is getting only four or
3 five years?

4 We saw as well that manufacturers are now
5 giving seven year warranties on these vehicles. They're
6 upping the ante to 100,000 kilometers. There's more
7 option out there. They should be getting more use out
8 of these vehicles now. How is it that it can be good for
9 Newfoundland Hydro but not good for Newfoundland
10 Power, who are for the most part in the urban areas?

11 Why is it that their personal use on
12 snowmobiles, they're so strict, oh no, don't take a
13 snowmobile, you might lose your job over that, but the
14 same doesn't apply to a car. Sure a car is more
15 expensive than a snowmobile. There seems to be an
16 ambiguity here.

17 If it's not tied to servicing electricity, they have
18 no business using these vehicles. They seem to have
19 too many vehicles, that being the case, and we would
20 suggest a good start would be where they're giving
21 vehicles, by the way, to Belize at a moment's notice,
22 they can take a vehicle and shift it from their inventory
23 to Belize, and another one and sell it to Belize, it seems
24 to me they must have lots of vehicles. They're coming
25 here looking for money from the consumers of this
26 province, suggesting dire straits, we need to replace
27 these, but yet they can give two line trucks to Belize,
28 just overnight. Something doesn't follow there.

29 We see that there's back orders on some
30 vehicles. There's evidence of back orders on some
31 vehicles which leads me to believe that, well, you know,
32 some vehicles haven't been delivered from the previous
33 budget yet ... I think one of the CAs I asked. So that
34 being the case, they seem to make do with the vehicles
35 they have. There seems to be an abundance here. The
36 Board could perhaps put them on the straight and
37 narrow by decreasing the vehicle budget that they have
38 submitted by \$300,000. When you look at the personal
39 use, when you look at Belize, when you look at the back
40 orders, there seems to be an overabundance here.

41 Plus, they always have the option, you're not
42 denying them anything, because they always have the
43 option to go out and lease vehicles. We still don't
44 know when we come to operating, because I asked the
45 question, how many vehicles they are leasing. They
46 always have that other option, so if they get in dire
47 straits, they're not without means because they do

48 lease. But they seem to have spares, there seems to be
49 overlaps in ordering. I think you'll find that in CA-45(c)
50 and CA-45(d), there's evidence in reference to vehicles
51 there.

52 CA-46(c), we have the VHF mobile radio
53 system. Newfoundland Power has told us that they
54 have no communications plan. Hydro now has a
55 communications plan because they filed one with this
56 Board, and according to Ms. Greene, they're coming to
57 look for a VHF replacement in the next budget.

58 The consumers of this province cannot be
59 saddled with two VHF systems, and I think it's
60 incumbent upon this Board to direct the utilities to work
61 it out. We saw in previous hearings, the minutes of
62 meetings where at the local level they seem to say this
63 is one area where we can cooperate, the minutes of
64 meetings of the coordinating committee, the VHF radio
65 system.

66 So before Hydro gets there, and before we
67 start putting new money into Newfoundland Power's,
68 there has to be a plan here. There's nothing in the
69 world to stop those two utilities from operating that
70 system. Hydro's is used by the Government. They've
71 opted into it. Their own people told us it was possible.
72 Let's be reasonable here. That's one way that the Board
73 can balance the interests.

74 (12:30 p.m.)

75 In terms of lines, we see out there in the area of
76 the Goulds that Newfoundland Power is replacing one
77 line, the 17-L, and putting its emphasis on the 24-L, and
78 on November 20, 2002, on page 2, I asked concerning,
79 I asked Mr. Ludlow concerning insulators, were
80 insulators being replaced on those lines, and he said
81 when we did the insulator replacement program, it was
82 focused on transmission, in the transmission area in
83 particular. I could go on, and that's the reference. We
84 focused on radial lines, we focused on lines that were
85 underbuilt, etcetera, but the answer led me to believe
86 that there wasn't too much by way of insulators put on
87 those lines.

88 If you go to PU-30, page 1 of 3, in the capital
89 budget of 2000, and the question asked by Mr.
90 Kennedy, we see in 1998 in that particular line, 17-L,
91 there was 738 insulators there, and 30, and then another
92 71. It just goes to show the lack of a plan. I assume
93 that if there's anything salvageable there, when they

1 replace these lines ... they're taking down two lines and
2 putting one in, one strong one, that we will see the
3 benefit of salvage there. I would hope that the Board
4 would address that issue.

5 CA-86, I asked them about faxes, 40 faxes, they
6 wrote a response in CA-86(a), and they listed the
7 number of fax machines that they have, and they need
8 one in various areas. That's reasonable. They have 19
9 in three offices in St. John's, Kenmount, Duffy, and the
10 control centre. 19 seems a lot for me to be, for fax
11 machines, where there are emails now. I'm very
12 concerned with the lease that they enter into in
13 reference to these fax machines. I asked them about the
14 business practice of purchasing out fax machines at the
15 end of their life, and they seem not to have opted into
16 that. I think that's an area, if the Board is considering
17 their budget, it's a small item, but it's an area that they
18 can look at.

19 I just want to go to the engineering study on
20 page 33 of 82, and if you go to the engineering study,
21 if you go to the second page, the justification for the
22 study, and they say, if you go to the top of the page,
23 thanks, Mr. Wells ... I'm sorry, the second page, let's go
24 to the second page for a moment, please. Where it says
25 justification for the project ... it might be down the page.
26 Project justification, it says customers served by radial
27 transmission lines in general experience more frequent
28 and longer power interruptions than other customers.
29 Well, I think that's perfectly understandable. Even
30 though it's not a looped line that they are doing now in
31 the Goulds, it may have had the same effect. They had
32 two lines going to the Goulds, now they're going to
33 have one line, but now they want to do a study in these
34 particular areas pertaining to transmission lines.

35 We don't think that there's much of a
36 justification there for that particular study. It seems like
37 a lot of money, \$500,000, evenly split between Old
38 Perlican, the Old Perlican study, and the Port aux
39 Basques study. When you look to these studies we are
40 mindful of the fact that they have told us previously in
41 Port aux Basques, when they built Rose Blanche, they
42 told us in Port aux Basques, that the lines there were
43 reliable, and I brought evidence out on all of this, and
44 I'd ask you to review that evidence, because in the
45 forward, the executive summary of the Rose Blanche
46 Development Study, they say upgrading of the lines
47 has resulted in improved reliability in recent years. We
48 saw reliability studies, we brought them all out in
49 evidence, I won't go over them all for you again now,

50 they're all there. No matter which way you want to slice
51 it, they use slices, Port aux Basques was doing pretty
52 good. The area of Doyles was doing pretty good.

53 We also saw in the Port aux Basques area, that
54 Newfoundland Hydro has a major work on the go
55 involving over \$3 million, and they've done an
56 engineering study just now, September 9, 2002, on TL-
57 214, and the conditions for upgrading in that very
58 particular area. They're going to spend \$2 million and
59 they're looking to spend, if it's approved, \$2,946,900.

60 We saw in the budget that various budgetary
61 items pertain to Port aux Basques. I don't believe that
62 they have proven their case in this particular instance.
63 They have not passed the burden of proof to show that
64 that study is needed.

65 They know the length of the line, Mr. Ludlow
66 told me that. They basically know the terrain, what's
67 wrong with sending a few linesmen in to take a look,
68 would that cost us \$500,000. They haven't shown their
69 case, they haven't produced figures to show that that
70 study is required, and we object to money being spent
71 on that study. We think it's, from a ratepayers'
72 perspective, allow the work that's going on in Port aux
73 Basques now in the budget, they have had several
74 budget items pertaining to Port aux Basques, allow the
75 budgetary item which Hydro appears to have justified,
76 if you're going to allow that, and let's see where we are
77 at the end of that. There's nothing urgent, they
78 couldn't show us one urgency there. We didn't hear
79 from the town council in Port aux Basques saying, you
80 know, we're in dire straits here, and neither did we hear
81 from the town council of Old Perlican. The Board isn't
82 inundated with calls from Port aux Basques or Old
83 Perlican.

84 Because when you look to Old Perlican and
85 the figures that were presented for SAIDI and SAIFI,
86 they are very, very good. The two witnesses said,
87 yeah, but this is a different slice, but when you look at
88 it all in its entirety, there's little by way of justification
89 for these projects. It seems to me to be good old
90 fashion budget padding here. \$500,000 is a heck of a lot
91 of money for a study. I don't think that they've proven
92 their case there.

93 And the other place where they haven't
94 proven their case is for this portable generating unit,
95 which they want to introduce to the island, the \$1.5
96 million that they want to introduce there. The portable

1 generating unit, they have two now out in Port aux
2 Basques. They have two units out there. They haven't
3 been moved since 1996, and I thought I read somewhere
4 one of them hadn't been moved in 15 years, but I
5 couldn't find that last night. So there's no portability
6 out there now, the money that we're spending is on the
7 gas turbine portable of \$1.5 million. That's a budgetary
8 item there. That is the portable unit that they have
9 used around the province, so really this is new
10 equipment here, that's what they're looking to introduce
11 into the island, these portable generating units, and at
12 a time when they're telling us reliability is at an all-time
13 high. It seems superfluous to our needs.

14 This one they're planning to park out in Port
15 aux Basques where they've got the other one parked
16 and allowed it to rust. And if you look at the
17 justification for it, if we just go to it for a minute,
18 because if you go to Schedule B, page 15 of 82 in the
19 application ... okay, here's where they're looking for the
20 \$1,500,000, this particular item, and go to the next page,
21 please, Mr. Wells, thanks, page 16 of 92, portable ... I'm
22 sorry, it's under project justification, yeah, just if you
23 can ...

24 Project justification, okay, where they say they
25 have three portable generating units consisting of one
26 portable gas turbine, that's one that they're spending
27 money on now in this particular budget to bring that up
28 to speed as far as I can tell by the budgetary item, that's
29 one that has been used, that portable gas turbine,
30 there's evidence that they have used that in the various
31 locations.

32 But then they go on to say that the company
33 also has a 2.5 MW diesel plant in St. John's. This is
34 part of the justification now. This plant was initially
35 built to provide black start capability for the St. John's
36 thermal plant. It was also available to provide back up,
37 etcetera, etcetera, and they tell us that this is the
38 justification for purchasing this \$1.5 million portable
39 generator. Well that rings hollow because I asked in
40 CA-18 the uses of the St. John's diesel plant. The fact
41 of the matter is it hasn't been used in the last seven
42 years, and in 1996 it appears to have been used just for
43 start ups and testing, CA-18, it hasn't been used in
44 seven years, so it rings a bit hollow that they would use
45 that as the justification for purchasing the portable
46 generating unit which they're going to park in Port aux
47 Basques. We all know geography and we all know
48 storms, and we all know the difficulty of moving

49 something in a storm from Port aux Basques to St.
50 John's.

51 And they have been negligent, because they
52 allowed, despite repeated inspection reports on those
53 two generating units, that they are now looking to
54 replace those two portable generators, they were told
55 time and again that they could be repaired. The chassis
56 could be repaired, we were told. It's all there in the
57 evidence, in one of the reports there from their
58 inspectors we were told all that could be done and as
59 recently as 2000, in 2000 their inspector, Nicholson,
60 says both generating units are in good condition, the
61 mufflers are rusty and the trailer chassis in Unit No. 2 is
62 very deteriorated, no longer roadworthy. This is the
63 same inspector or counterpart who told us that spares
64 were available for that chassis a number of years ago.

65 How could they take an asset for which the
66 ratepayers paid good money and allow it to rust? The
67 evidence is they've never given these an overhaul, and
68 the evidence is also, even in the May 2000 diesel report,
69 that if they spent \$38,500 on maintenance in one, and
70 \$29,000 in maintenance on the other, and some
71 projected capital cost, that they could, they would get
72 an extra ten years out of these. Now there is an
73 alternative. They can repair the darned things. Let
74 them go and repair it. Their experts, the external experts
75 are telling us they can repair it. The others are saying
76 go and spend.

77 I asked the question have these depreciated,
78 no one seemed to really know, but I didn't hear any ... I
79 suggested they've depreciated. I bet they have, and
80 they're not getting any return on them now, so they
81 want \$1.5 million that they can get a return on by new
82 generation. If they get, I think that they've acted
83 irresponsibly in putting this before the Board. The
84 justification is all wrong. They have a mobile diesel
85 unit which they also rent out there. Pennecon has a
86 diesel unit. They've never used them, so why do they
87 need the portability now? Are we in dire straits here?
88 Not according to what they tell us. I ask you to review
89 the evidence very carefully there. I think this is one of
90 the places the interests can be balanced.

91 The Virginia Waters transformers, I asked
92 questions on that. I asked the possibility of using an
93 upgraded transformer as opposed to putting a third one
94 in there, and there in Chamberlains. Mr. Ludlow seems
95 to say that that's not possible and we'll have to, and we
96 accept that evidence.

1 So these are some of the projects that we have
2 some difficulty with. We would ask that something be
3 done in terms of the inventory. We don't know, there's
4 a lot of budgetary items for spare equipment and spare
5 parts, and the inventory, and it might be, another thing
6 that you could put in your items for requirements for a
7 budget, that they checked against inventory, to say
8 that this item is not in inventory, and they're looking for
9 a transformer, they've checked. This item is not in
10 inventory. It seems like the inventory, we just have
11 some concerns with that.

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

13 So basically these are our submissions. I don't
14 think I'm leaving too much out there. Mr. Fitzgerald has
15 addressed information systems, once again the genie is
16 out of the bottle again there. The Board in 1998
17 attempted to put it in. I would request that the Board
18 perhaps give a set amount of money annually for this
19 item of a couple of million dollars and see if they can
20 work within it. I know their sister company over in,
21 over in Prince Edward Island where they're not in a rate
22 base system, they seem to get five years out of their
23 computers, according to the evidence.

24 Basically these are our comments. Thanks for
25 your patience, and thank you, and thank the staff
26 throughout for their cooperation, Cheryl Blundon and
27 Barbara and their legal counsel for their professionalism
28 as always. Thank you all very, very much.

29 MR. NOSEWORTHY, CHAIRMAN: Thank you very
30 much, Mr. Browne. It's quarter to 1:00. I'm wondering,
31 Mr. Young, do you have any idea of how long you
32 would be? I'm just trying to get a ...

33 MR. YOUNG: I would think it would be very brief, 10 or
34 15 minutes at the most.

35 MR. NOSEWORTHY, CHAIRMAN: Mr. Kennedy, do
36 you have any ...

37 MR. KENNEDY: I think I'll be about 20 minutes, not
38 much more, Chair, so I think you'll finish close on the
39 1:30. I don't know if you want to take a break just to let
40 people's heads clear just for a couple of minutes before
41 we start in again, or you can break between myself and
42 Mr. Young.

43 MR. NOSEWORTHY, CHAIRMAN: Ms. Butler, will
44 you require a fairly lengthy break to prepare for your
45 rebuttal, and by lengthy, I mean lunch.

46 MS. BUTLER, Q.C.: Well, I guess lengthy is a relative
47 term, Mr. Chairman, but we certainly will need a break at
48 the end of the last set of questions so that we can
49 determine between Mr. Alteen and I whether we have
50 any substantial redirect, so if you want to avoid two
51 breaks, I'm okay to keep going.

52 MR. NOSEWORTHY, CHAIRMAN: Okay, I think we'll
53 do that and see where we are. Yes, Mr. Young.

54 MR. YOUNG: Mr. Chairman and Members of the Board,
55 Hydro's role and purpose in intervening in this hearing
56 was stated, I think, very clearly at the outset of the
57 hearing, and that is with respect to the policies to me
58 applied by this Board in its approval, in its examination
59 and approval of the capital budgets for the two
60 electrical utilities that come before it.

61 When two utilities come before it, of course,
62 they expect to be treated generally the same. It's just
63 not a matter of bare fairness, however. I think it's also
64 appropriate to state that being treated on the same
65 basis, in accordance with the same rules and policies
66 allows the utilities to know what's expected of them. It
67 also allows the customers to know what to expect of
68 their utilities when they present evidence.

69 There appears that there may have been, and
70 to some degree I think this is a matter of time between
71 the orders that Newfoundland Hydro is now addressing
72 this capital budget under and that which Newfoundland
73 Power is at to, you know, just sort of the vintage of
74 those orders, but it appears to be some difference and
75 I think they deserve, perhaps, a little bit of scrutiny.

76 I would add that to the limit, to the extent that
77 we have asked questions to this hearing, and I'm going
78 to be making points, I suppose, in my argument, my
79 brief argument on this. We're going to try to limit it, not
80 to the particular products, or sorry, projects, but more
81 to the point of the approach taken. I think Ms. Butler
82 referred to it, I don't meant to misquote her, but I think
83 she referred to it (unintelligible) format, and that's an
84 appropriate way to refer to it, in some cases perhaps
85 methodology might be a slightly better term to use.

86 Some of the areas that Hydro has inquired
87 about ... I think perhaps, Mr. Chair, it's best if I just

essentially list them, I'm not going to (unintelligible) to go through the evidence on all these points, but these are the points that we inquired about and we think these deserve some consideration (unintelligible). One was the level of internal labour capitalized. Another is the breakdown of project labour costs between internal labour costs and external labour costs. Another issue we inquired about is the threshold dollar value before an item gets capitalized, (unintelligible) the materiality. Is it just the matter of the nature of the expenditure and the purpose of it, or is it also, does it have to cross some limit, from the point of view of the amount of dollars affected before it gets into the capital budget.

Mr. Browne mentioned this one, and I'll mention it also because it does differ from our approach in the most recent capital budget application. The number of future years in the capital plan that the utility should be required to provide.

Another item which we thought was worthy of some scrutiny is the question of how a capital project is defined, and what I mean by that is whether lumping a number of small projects together under one general category because they share some common traits, does that make that a capital project or is each project, each activity, each addition or improvement in each geographic area a different capital project. And in relation to this I'd ask, if I could, Mr. Wells, to bring up on the screen page 9 of 82 of Schedule B, just to illustrate my point. Perhaps if you could scroll down to the table down below. Thank you.

Now, we're not suggesting that there's anything in particular untoward about the way this is grouped, and perhaps on several levels this makes a lot of sense to do so, but unless you ask an awful lot of questions about what's going on in each of these categories, it can be difficult to determine exactly what money is being spent at what place and to what end. I would add on that, obviously if you're going to subdivide very, very small projects in a, you know, an infinitesimally small individual approach, it's going to be not terribly efficient, so it's a matter of balancing, but we would ask the Board to consider whether the approach taken here is appropriate or whether it's appropriate to look at each individual item, or at least put some parameters on the way that these can be grouped.

Now, there were some issues that came up during the hearing about elements of uncertainty, and

I think this is a matter which everyone has touched upon to some degree, as to when a cost benefit analysis is required and what, in fact, constitutes a cost benefit analysis. I think if you speak to various engineers and experts in the area they'll, they won't always give you exactly the same answer, some guidance may be useful in that area.

And I think perhaps the last issue that we touched upon was the processes and considerations that are appropriate for a utility before an item or an event can be described as an unforeseen item or event, such that it may take immediate action and deal with it, and perhaps the process involved in taking those steps. It's a matter of record that in Newfoundland and Labrador Hydro's case, under PU-7, 2002/2003, there is some very specific directions on this issue.

While I'm comparing to some degree the approach that the Board may be taking to the two utilities that appear before it, I'd want to make reference to some of the testimony, I believe it was Mr. Hughes, who suggested that it can be misleading to, in sort of a knee jerk reaction way, compare Newfoundland and Labrador Hydro's circumstances with those of Newfoundland Power, and I can't (unintelligible) of the context of that ... but I believe it related to the fact that one company is primarily a distributor and the other company is primarily a generator and transmitter of electrical energy and power. There is obviously merit to that point, I think it can be overstated, however. It should be realized that both companies share the same activities, we all distribute, or we both distribute and transmit, and generate power. And many elements of the capital budget, and the operating budgets of both companies share a good number of attributes which are very similar. We operate in the same climates, in the same climate, although in my experience in having hearings around the province, every place you touch down seems to have the worst weather. You listen to people on the stand ... and that's understandable because when the weather is bad it seems bad no matter where you are.

So I'm not suggesting that there are no differences between the companies' operations or the areas that they operate in, or the size of the capital budgets on particular times, but I think generally speaking there is a great deal of similarity in the companies vis-a-vis this level of approach. And I think that when a consistent approach is being considered versus a different approach, the Board should perhaps

err on the side of being consistent in approach and draw distinctions, as a matter of exception, where they obviously require a different approach be taken.

There's another issue that I, Ms. Butler touched upon and I think perhaps we should also speak to briefly, and that is the sense that the utilities have as to the level of scrutiny that the Board should take on, on whatever matter it has before it. I think utilities, and generally speaking, would prefer if a Board was always alert, and perhaps diligent, in making any decision in relation to regulation, that it doesn't micro manage. It's almost a cliché to say that, but it is important, it's essential, in fact, for proper economic regulation. It's essential for the Board to ensure that it doesn't drill down through a project's merits, and all the considerations of all the issues that go on, to the same level ... just for example, you'd expect of a closely supervised junior engineer, the company has to make judgments and decisions, and of course, those can be questioned at appropriate times and appropriate ways, but that's a matter which I think this Board always has to bear in mind. And at the other end of the spectrum the Board has to be able to satisfy itself that the purposes, the costs, the benefits and the alternatives, and I suppose also the timing, of every capital project is appropriate or reasonable.

Now I would say that obviously the old truism that we've heard already a fair number of times this morning applies here. The goal is to strike the right balance, and in our intervention in this hearing we were primarily interested in seeking some further guidance in, in the approach the Board takes, dealing with both utilities as to these issues, not just the one of striking the right balance between levels of scrutiny, but also as to the various other issues that we've enquired about.

Those are all our submissions. Thank you.

MR. NOSEWORTHY, CHAIRMAN: Thank you very much, Mr. Young. First of all, let me apologize to Mr. Browne and Mr. Fitzgerald and my colleagues for not inviting them to ask questions, I think, of you ... the Consumer Advocate the last time around. I have determined since that there were none, but in any event there was an oversight on my part, which I apologize for. Do you have any questions, Mr. Finn, Commissioner Finn, Commissioner Whalen. Thank you, Mr. Young, very much.

MR. YOUNG: Thank you, Mr. Chair.

MR. NOSEWORTHY, CHAIRMAN: Good morning, Mr. Kennedy.

MR. KENNEDY: Good morning, Chair.

MR. NOSEWORTHY, CHAIRMAN: It is one o'clock, you've indicated you'll be 15 or 20 minutes. I think if we're going to take a break we'll do it after ... and maybe Ms., after your presentation maybe Ms. Butler will have a few words of wisdom for us after that as to how long she might be. Thank you. I'll ask you to proceed, if you would, please.

(1:00 p.m.)

MR. KENNEDY: Thank you, Chair. Chair, Commissioners, I have five topic areas, I guess, that I intend to cover. Some of these have been touched upon by other counsel, but in keeping with my role and trying to identify if there's a different flavour or view that, that could be taken of the issue that would be germane and relevant to the panel, to the Board itself in carrying out its mandates. Most of the counsels have already touched upon provisions of the acts themselves and I will as well, but I'll only do so in the context of the discussion itself.

The first topic area that I wanted to cover was the issue of reliability. As canvassed by counsel for Newfoundland Power in her closing argument, Section 3 of the EPCA places two obligations on Newfoundland Power. One is to provide an equitable access to an adequate supply of power to all its customers, and secondly to produce the lowest possible cost power consistent with reliable service.

Many of the proposed projects put forward by Newfoundland Power in its capital budget application have been justified on the basis of a desire to improve reliability. The Board may wish to consider providing direction to both utilities on this issue. Such directions could include whether, one, should a target be determined for what is considered to be reliable service, if so what should that target or standard be. Should it be a reasonable range, as suggested by Newfoundland Power's Chief Executive Officer, or should it be a specific SAIFI/SAIDI target, and if so how will this be measured. Will it be a measurement of up-time or customer opinion. These are all possibilities. Relatedly the Board may wish to consider whether a financial benchmark could be used to determine an acceptable level of capital spending, and if so what would it be.

1 Should it be based on a depreciation rate to match the
2 replacement rate, a percentage of the operating budget,
3 or stated on a range based on historical spending?
4 Again, these are options available.

5 The Board too needs to consider whether
6 there is a different standard for an acceptable level of
7 reliability between urban customers and rural
8 customers, and whether there is again another standard
9 for general service customers. It's noted that synonymous
10 with the word equitable, as is used in Section 3 of the
11 EPCA, are words such as evenhandedness, fairness,
12 acting unbiased, just and impartial. If, in fact, there are
13 different standards to be applied in the sense of
14 reliability between these different customer classes or
15 groupings, the Board may wish to determine how it's to
16 be broken down, at the feeder level, by the number of
17 customers affected, or along geographically based
18 regional lines.

19 I'd also like to note that Newfoundland Power
20 has in numerous instances drawn attention to the report
21 of D. G. Browne, and that's attached to CA-85(b), and
22 indicated that it took comments made by Mr. Browne in
23 his report as a directive of sorts from the Board on the
24 issue of reliability. The question is was this actually a
25 Board directive, a Board set policy, or merely the
26 statement of the Board retained independent expert.
27 And the Board may wish to clarify how it views the
28 reports of its own experts and how they should be
29 viewed in turn by the utilities.

30 The Board may also want to consider what
31 constitutes service and whether it should apply a
32 different standard when reviewing for approval
33 expenditures that are directly related to the provision of
34 electric service as opposed to those that are not directly
35 related to the furnishing of access to an adequate
36 supply of power, or whether it is necessary to make a
37 distinction in the first place. Assuming it does feel a
38 distinction is warranted, the Board will need to provide
39 directions to Newfoundland Power and Hydro on how
40 the Board will in the future determine the difference
41 between what aspects of the operations it considers
42 directly related to the provision of electrical service and
43 those that are not.

44 The next topic area I wanted to discuss was
45 the budget approval process and the subsequent
46 reporting on variances. There appears to be some
47 confusion over the requirements of Section 41 and the
48 actual treatment by Newfoundland Power of the

49 budgetary approval process. Similarly the Board's own
50 procedures and policies employed when examining a
51 capital budget application may not have been expressly
52 stated, nor how the Board views this approval based on
53 a Section 64 application.

54 In fact, there would appear to be a disconnect
55 between what Newfoundland Power thinks is being
56 approved and what the Board believes it may be
57 approving. Even if this is not the case the process
58 would benefit from making this aspect of the utility rate
59 regulation process more transparent and
60 understandable to all parties.

61 Firstly, this area would benefit from the
62 establishment of standardized terms when used to
63 describe budget items. It's noted that Section 41 speaks
64 of expenditures and not projects, nonetheless, and
65 perhaps in keeping with the Board's past practice,
66 Newfoundland Power generally breaks down its capital
67 budget as follows, although this can change depending
68 on the category and the nature of the expenditure.
69 Schedule A provides the categories themselves,
70 energy, substations and so on. Schedule B provides
71 the project descriptions. These may describe individual
72 projects, for example, the Lockston Penstock
73 replacement, under the energy supply category, or may
74 include sub-projects, such as the hydro plants facility
75 rehabilitation.

76 In turn, the sub-projects may include several
77 sub-sub-projects. (inaudible) the budget could be
78 described as follows, category, energy, \$7.076 million,
79 and I want to give the amounts involved in each. A
80 sub-category such as hydro plants rehabilitation, which
81 is under the energy category, which is \$2.345 million,
82 group projects underneath that sub-category, which at
83 page 9 that everyone has been referring to, which as an
84 example of a group project would be the dam
85 rehabilitation projects, which include three dams, Seal
86 Cove, Blackwoods, and (unintelligible), that's \$319,000.
87 Individual projects that are specific, such as the canal
88 rehabilitation for Lockston at \$80,000, and individual
89 projects that are more general, such as the ventilation
90 louvres, various plants, \$90,000.

91 As I understand Newfoundland Power's
92 position, they feel that a Section 41 approval is
93 approval at the level of the sub-category, meaning in
94 this instance the sub-category of hydro plants
95 rehabilitation of \$2.345 million. The Board may wish to
96 confirm that this is or is not the case, or if it's not the

case what is, in fact, being approved under that Section 41 application.

The level at which the Board approves the budget, if there is a level, will affect, among other things, Newfoundland Power's flexibility to adapt to actual conditions when carrying out its capital improvement program; the reporting of variances; and the requirement of Newfoundland Power to come back before the Board under Section 41.3 to seek supplemental approval of capital items any time they wish to expend more than \$50,000 and which have not been previously described in their capital budget, and I'll provide a little more comment on that.

In any event, agreement on the nomenclature to be used during the budget approval process would assist all parties and this agreed nomenclature could, properly fashioned, apply to both Newfoundland Power and Hydro.

The issue, in my view, is when is a Section 41.3 application required. Section 41.1 of the Public Utilities Act states that the utility must submit and annual capital budget of proposed improvements or additions to its property for Board approval, and the budget must disclose multi year expenditures that are expected, that's under Section 41.2. However, under Section 41.3 the utility can't go ahead and spend more than \$50,000 on the construction and purchase of improvements or additions without prior Board approval, so how do these two provisions fit.

Counsel for Newfoundland Power in her closing submission, as I understand her position, suggested that their presentation of the budget addresses this requirement by breaking down the projects for expenditures greater than \$50,000, however, as I've indicated the process would benefit from a better perceptualization of what constitutes a project, and what constitutes a category, and what constitutes an expenditure. The compartmentalization of the budget items as being provided by the utility, in this case Newfoundland Power. At issue though is what effect an approval under Section 41.1 has and whether the approval under Section 41.1 means that all such expenditures as described in the budget are thereby approved, negating any additional filing requirements under Section 41.3 unless it's a project that wasn't previously described in the budget itself. This, I believe, has never been expressly stated if, in fact, this

is the view shared by the panel, and I believe the process would benefit from it being so, so stated.

The requirement under Section 41.4 for the utility to provide a variance report by April 1 of each year on the actual budget expenditures, including an explanation as to expenditures in excess of those approved under Sub-Section 1, and I note that the provision speaks specifically to Sub-Section 1, would seem to support this view. Now, this still leaves the issue of whether Newfoundland Power has the freedom within the Section 41.1 approved budget to adjust its actual expenditures during the budget year, and if so whether this is okay so long as either the overall actual expenditure, expenditures are within budget or the actual expenditures are as described by a category, or a sub-category, or a project level are within budget.

Again, agreement on the nomenclature that's used to describe these different aspects of the capital budget would greatly assist in the understanding of all the parties in this process. Just an example, Newfoundland Power's budget variance report is filed by the Board as part of its application and previous one, previous ones, indicates that the scope of projects can change significantly during the year. These changes may be made due to (unintelligible) encountering field conditions different than what was expected, or Newfoundland Power completing detailed engineering reports that affect the design as originally proposed and so on.

At issue is whether the Board's approval under that Section 41.1 would be deemed to be approval of the total expenditure as proposed in the budget, regardless of how the individual projects are described, of categories versus group projects, and Section 41.3 would be triggered only in the event Newfoundland Power intended to make an additional improvement that was not described in the original capital budget.

The next topic area I just wanted to briefly touch upon was information technology. The Board may wish to consider giving directions to Newfoundland Power, and subsequently Hydro on the implementation of standard information platforms. Both utilities are on the cusp of adopting new information technology platforms, a process that will in essence be a perpetual one. If coordinated the utilities will be in a position in the future to share information electronically easily and seamlessly. The electronic sharing of information with each other, and ultimately with the

1 Board, could reap significant productivity gains in the
2 not too distant future. If not coordinated the utilities
3 may find themselves unable to share and exchange
4 information readily. Analogously unless coordinated
5 we may end up in a situation where Newfoundland
6 Power has all left-hand cars, and hydro right-hand cars,
7 and they're all driving on the same road. The adoption
8 of common infrastructure platform will allow the utility
9 to share that information, and the adoption by the
10 Board of a similar platform to share information with
11 each other.

12
13 (1:15 p.m.)

14 I have one recommendation I'd like to make to
15 the panel. I believe there's been identified several areas,
16 touch spots, where Newfoundland Power and Hydro
17 interact with each other on an operational level. This
18 seemed to be recognized just a moment ago by counsel
19 for Hydro in his closing argument in the sense that
20 there is a great deal of overlap and shared operational
21 areas between the two utilities, there is a great deal of
22 similarity were his, was his quotes, in both distribution,
23 transmission, and generation. Information technology
24 is one example where there is a shared experience
25 between the two utilities. Others are in the setting of a
26 standard measurement of reliability, or in the
27 optimization of the generation assets to be used in the
28 province, both hydro and thermal.

29 This is not to suggest that the companies
30 should be integrated. Newfoundland Power's position
31 that they are a separate company is recognized,
32 however, now that Hydro is being regulated fully this
33 is more of an issue than it was in the past, I would
34 suggest.

35 Accordingly the Board may wish to consider
36 whether better coordination between the utilities on
37 these issues, to foster efficiencies where available, may
38 increase productivity and thereby increase the
39 likelihood that the assets of the province are being
40 managed in accordance with the policy of the Electrical
41 Power Control Act.

42 The Board may wish to consider whether this
43 role could be fulfilled by a technical advisor, a sister
44 position to the Board's current financial advisor,
45 appointed under Section 3 of the EPCA and in
46 accordance with the Board's general supervisory role as

47 described in the stated case, the technical advisor
48 would be provided with an appropriate mandate and
49 direction from the Board. The technical advisor would
50 examine the stated issues, facilitate discussion between
51 the utilities, identify where a coordinated approach
52 should be adopted and report to the Board accordingly.
53 I would suggest that Section 3 of the EPCA provides
54 the jurisdiction and rationale to proactively encourage
55 Newfoundland Power and Hydro to work together on
56 these and other areas. Now, as this is a new
57 suggestion and one not previously raised, by me at
58 least, it would perhaps be appropriate for the Board to
59 embark on a consultative process with the utilities on
60 best this measure could be implemented in the event
61 that the Board feels that it would be warranted. That
62 concludes my comments. Thank you, Chair. Thank
63 you Commissioners.

64 MR. NOSEWORTHY, CHAIRMAN: Thank you very
65 much Mr. Kennedy. Do you have any questions
66 Commissioner Finn?

67 COMMISSIONER FINN: No, Mr. Chairman.

68 MR. NOSEWORTHY, CHAIRMAN: Commissioner
69 Whalen?

70 COMMISSIONER WHALEN: No, Chair, thank you.
71 Thank you Mr. Kennedy.

72 MR. NOSEWORTHY, CHAIRMAN: Now I thank you
73 once again, Mr. Kennedy. I don't have any questions.

74 MS. BUTLER, Q.C.: Mr. Chairman, if I might, Mr.
75 Alteen and I passed a note and I think if we took a
76 significant break the questions that we've got, perhaps
77 notes from each other, could be shared and then it
78 would mean a more efficient reply. I suspect that the
79 most we would be on reply argument is going to be like
80 maybe 15 minutes, but could we have at least a half an
81 hour break, would that be okay?

82 MR. NOSEWORTHY, CHAIRMAN: Yeah, a half hour
83 break would be ... why don't we go until 2:00, is that
84 okay? And you expect to be 15 minutes. I have a
85 personal reason for asking. I have some day surgery at
86 3:05 that I didn't cancel. I don't know whether to thank
87 you or not thank you for not going beyond that time,
88 but in any event it appears it might be possible based
89 on what you have said, so we'll, we'll adjourn now until
90 two o'clock and then reconvene then. Thank you.

(break)

(2:07 p.m.)

MR. NOSEWORTHY, CHAIRMAN: Thank you very much. Ms. Butler, could I ask you to begin, please? Sorry. Excuse me, are there any preliminary matters?

MS. NEWMAN: Not that I am aware of, Mr. Chairman.

MR. NOSEWORTHY, CHAIRMAN: Thank you. Ms. Butler?

MS. BUTLER, Q.C.: Mr. Chairman, I have a few points to make, and Mr. Alteen too will have a few points to make, just so that we can do this in the best, as I say, efficient way.

MR. NOSEWORTHY, CHAIRMAN: Sure.

MS. BUTLER, Q.C.: I'll start with, if I might, the reference which the Consumer Advocate had to declining population. Newfoundland Power, Mr. Chairman, accepts that population dwindling, population declining, and changes in population patterns are a reality, but I think the argument on this bigger issue has missed the point that I was attempting to make in my argument the first thing this morning, and that is that population decline does not affect Newfoundland Power's obligation to serve. Until we have an event, rare I would suggest to the Board, like last year during the Hydro GRP, some discussion of the relocation of the community of Great Harbour Deep. When the government decides to do that then Newfoundland Power can, in fact, share with Hydro in turning off the system, however, until that happens whether there are a 1000 residents in the Town of Victoria or 500 residents in the Town of Victoria, does not mean that Newfoundland Power's capital budget expenses are going to be reduced, the system still has to be maintained and the customers that are there still have to be served, and that, Mr. Chairman, is also a reality.

The Consumer Advocate referred to CA-124, page 8, and this was in relation to what he highlighted as a discrepancy as great as 41 percent in a particular category. I believe it was Schedule ... are these done by year, Chris?

MR. ALTEEN: Go to B, page 8.

MS. BUTLER, Q.C.: You'll have to try the next one, Chris, so it would be C, Appendix C, page 8. There you go, thank you. This was the figure that Mr. Browne highlighted and, you know, at first glance, sure, a discrepancy of 41 percent on any particular budget category would sound to be quite enormous, but this is the general property category to begin with. There was only \$1.5 million budgeted in it, and I want to draw the Commissioners' attention back to a point that we made, or that was made, I'm sorry, to the evidence of Mr. Ludlow.

The general property category includes the unforeseen account. And to see that, of course, all you have to do is go to Schedule A, I'm sorry, Schedule B, page 5, no, yeah, page 5 of 82. So the unforeseen account is, or represents \$750,000 of the total of \$1.6 million in the year that Mr. Browne was referring to, it was likely \$750,000 of the figure that was shown on the screen is slightly less than \$1.6 million. So it doesn't take much for there to be a discrepancy of 41 percent in this category. And the operation of the unforeseen account is, as Mr. Ludlow explained in his testimony, no more than an enabler to allow work which falls in the unforeseen category to get started, usually associated with a catastrophic event. And you'll find that, or course, in his transcript on November 21st.

The next point I want to address is the reference to the VHF radio, and here, of course, the Consumer Advocate is suggesting that the two utilities are not doing enough to reduced costs from the sharing of the systems. I want to point out some areas where we do know from the transcript and the record of the (unintelligible), that there has been cooperation between the two utilities.

First of all, I want to tell you, or remind you, that Mr. Hughes said in his direct examination that he acknowledged that there was the potential for duplication of expenditure, but far less for capital expenditure duplication as opposed to operating expenditure duplication.

In relation to the portable diesel generator, Mr. Ludlow advised the Board that the portable diesel generator would be available to Hydro under the terms of the utility's, as its sharing agreement. In his direct examination Mr. Ludlow had a Powerpoint presentation that included a slide, which is slide 35, a picture of a distribution line at Springdale superimposed on the map of Newfoundland Power's service territory, and he

1 spoke there about the cooperation between the two
2 utilities in the proposed reconstruction of distribution
3 lines in this area where the service territories joined.

4 The meter testing is another example.
5 Newfoundland Power no longer has a meter testing
6 facility, they abandoned theirs and their meters are
7 tested at Hydro's facility.

8 Information services is another area that Mr.
9 Collins testified about on November 22nd. He and his
10 counterpart do speak about the system.

11 And returning to the issue of the VHF radio,
12 Mr. Hughes, in fact, was cross-examined on this point
13 on November 14th, page 7. I'd like to go to that
14 transcript, if I could, Chris. Page 7. The discussion
15 starts at line 35. Okay, actually, line 30. Mr. Browne
16 asked Mr. Hughes if he was aware about Newfoundland
17 Hydro having an application before this Board for a
18 purchase of a new VHF communication system,
19 etcetera. Now this discussion goes on for a couple of
20 pages.

21 I just want to point out that at page 8 Ms.
22 Greene, in fact, says on the record that ... there it is
23 there at line 10. "There is no current application before
24 the Board seeking approval of the VHF radio, it in fact,
25 has been put over to 2004". At the end of this
26 discussion on the point of the VHF radio system, Mr.
27 Chairman, Mr. Ludlow, I'm sorry, Mr. Hughes
28 concluded, and I'll draw your attention to lines 57 to 59.
29 "We've looked at (unintelligible), but our opinion is that
30 it's too expensive for Newfoundland Power and that's
31 where we are". So I trust the Consumer Advocate is
32 not suggesting that Newfoundland Power should be
33 spending more money than what they feel is
34 appropriate for a VHF radio system.

35 I'll turn now, if I can, to Mr. Browne's
36 suggestion that there should be a five year capital
37 budget plan. Here, Mr. Perry, actually explained on
38 November 14th that while the company produces a five
39 year financial forecast, it does not believe a five year
40 capital plan is appropriate, and he said, this is at page
41 4, lines 4 to 13 of the transcript. That's okay, Chris, I
42 don't think we need to actually go to it. That when you
43 get beyond one or two years in forecasting it gets very
44 difficult to predict what you're going to do with the
45 system. And if we were to provide numbers they'd be
46 probably fairly useless.

47 Mr. Ludlow was asked a similar question, Mr.
48 Chairman, on November 19th, page 27, lines 13 to page
49 28, line 40, and he told the Board that there is a
50 difference between not having a five year capital
51 budget, on the one hand, and having no planning on
52 the other. He cited the example of the switches on
53 Water Street failing and the knowledge gained during
54 the course of the work, enabling the company to keep
55 costs down by staging the capital expenditure over
56 time, and the second example he cited was the surge
57 tanks at the company's hydroelectric plants.

58 So the planning is evident, that's my point.
59 And as Mr. Ludlow confirmed, plans are driven by
60 projects and a longer term capital plan, he said, would
61 merely become an exercise in accounting, fitting
62 numbers rather than addressing practicality, no more
63 than putting projects on the radar screen.

64 (2:15 p.m.)

65 So in summary, is there a formal five year plan
66 or a five year capital budget, no, but is there an
67 engineering process that monitors the capital
68 requirements of the various components of
69 Newfoundland Power's electrical system with a view of
70 identifying work to be done, yes there is. And that's
71 the company's position in relation to the merits of a five
72 year capital plan.

73 Just a couple of budget items that arose during
74 the address of Mr. Browne. The first is in relation to
75 information technology, and he suggested ... I hope our
76 record keeping is correct, that there was in the area of
77 information technology a significant forecast error. I
78 wonder if we could look at CA-2, which contains the
79 approved versus actuals in the capital budget, budgets
80 over time. Can you just scroll down a bit. You have to
81 look first to 1998. That's '93. Thank you. And these are
82 the numbers that Mr. Browne suggested caused an
83 average variance of \$260,000. In IT, which at that time
84 was called computing equipment, the overage in '98 was
85 \$641,000; in '99 it was under by \$221,000; in 2000 it was
86 under by \$393,000; in the next year it was over by
87 \$505,000; and according to EAL-2, which is the most
88 recent variance for the 2002 year, the IT expenditure is
89 anticipated at the moment, Mr. Chairman, to be under
90 by \$790,000. In other words, the total variance over that
91 five year period is \$260,000, not \$260,000 every year.
92 The variance works out to approximately 1.2 percent.

1 Three other points in relation to budget items.
2 First is in relation to the policy on use of vehicles. And
3 here, Mr. Chairman, Newfoundland Power would say
4 that its policy on the use of vehicles has everything to
5 do with the provision of service to Newfoundland
6 Power's customers, and two separate witnesses
7 explained that policy. On the same issue the Consumer
8 Advocate suggests that you should reduce the vehicle
9 budget by \$300,000. Our point on this is that that
10 figure, and the suggestion is without foundation, Mr.
11 Browne is free to have the opinion that the vehicle
12 budget should be reduced by \$300,000 but there is
13 absolutely no record which supports a reduction in the
14 vehicle budget by \$300,000.

15 In relation to portable generation, Mr. Browne
16 actually used the term negligent in relation to the
17 company's decision, and naturally we can't let that
18 pass. Through the entire cross-examination of all our
19 witnesses, Mr. Chairman, on the issue of the portable
20 generation Mr. Browne never went once to the two
21 reports that have been filed in response to a Board
22 question on this which supported the decision on the
23 portable generator, and they are found at PUB 4.1. He
24 chose instead to refer to reports as far back as ten years
25 ago.

26 In relation to proactivity, Mr. Browne
27 suggested that being proactive in capital spending
28 would cause the life of assets to reduce. Mr. Hughes
29 said just the opposite. So the testimony that you have
30 before you and the facts on which it's based are to the
31 contrary. You'll see the first, Mr. Chairman, at page 6,
32 lines 1 to 5 of Mr. Hughes' pre-filed, but more
33 importantly ... I'll ask Chris if he can put up the
34 transcript of November 13th at page 11, lines 13 to 20.
35 "If you invest in capital in the right places the following
36 things will happen", he says, and then he actually
37 states at line 18, "The expected life of distribution plant
38 has increased from 28 years to 30 years, so we're getting
39 another two years out of those assets".

40 The final point I would make, Mr. Chairman, in
41 relation to, again, the Consumer Advocate's comments
42 during his argument, and this concerns the issue of the
43 average consumer at the low income end, and the
44 analogy he was drawing was the capital spending of
45 the utility relative to how this could be explained to the
46 average consumer. And I would, sorry, I would hope
47 from this process, Mr. Chair, that the average
48 consumers learn that Newfoundland Power's proposal
49 to spend \$55.8 million in 2003, when you adjust for

50 inflation and Aliant is, as Mr. Hughes says, consistent
51 with the company's spending over the last 20 years. I
52 think most ratepayers could relate to that. And I also
53 hope, Mr. Chairman, that the average consumers are
54 advised that in spending \$400 million in capital
55 expenditure over the last ten years, the consumers in
56 this province faced a base, an electrical rate increase,
57 when you take any flow-throughs from Hydro, of only,
58 just marginally over 1 percent, and in fact, Mr. Hughes
59 said when he testified on November 13th, that in the
60 last five years when the company had spent \$250
61 million on capital expenditures, base electrical rates,
62 excluding the same effect of Hydro flow-throughs, had
63 reduced by 1 percent. Thank you very much.

64 MR. NOSEWORTHY, CHAIRMAN: Thank you, Ms.
65 Butler.

66 MR. ALTEEN: Mr. Chairman, I expect I'll be quite brief,
67 but that last remark sounded like least cost to me. With
68 respect to the three things that I'm going to address,
69 they're more related, Mr. Chairman, to justifications and
70 formats of future filings, they are not to the substance
71 of the capital budget per se, so I will be brief. You
72 received various suggestions and possible directions
73 of the counsels that have argued here this morning with
74 respect to what you should ask us to put in future
75 capital expenditure filings.

76 I would submit to the Board that you should
77 treat that with caution and you should consider it in the
78 following sort of way. As Ms. Butler has indicated the
79 capital budget filings, formats, and justifications that
80 Newfoundland Power places before the Board are a
81 matter of an evolved process that has matured over
82 decades, not over years, not over a single hearing, over
83 a long period of time.

84 Every so often suggestions come forward,
85 we've had an awful lot in this hearing because I suspect
86 there's an awful lot of lawyers involved, and that's fair
87 game, but in terms of your approach to it we would ask
88 the Board to step back from it, understand what
89 Newfoundland Power is attempting to do here. They're
90 attempting to bring forward in this budget
91 approximately 300 projects, place those projects before
92 this Board in an orderly way to allow the Board to
93 consider them and exercise its supervisory jurisdiction
94 in relation to approving them or not approving them as
95 it sees fit. And practically we have to get that job done,
96 in the means that we currently have, that have evolved,
97 allow us a reasonable means to affect that job.

1 It has been indicated that you should not
2 micro manage, I believe Mr. Young made the remark,
3 and it's been indicated by Mr. Browne that you should
4 ask for a list of priorities so you may exercise
5 judgement. Mr. Chairman, you should not micro
6 manage. Mr. Chairman, you should not manage at all.
7 That's not your job, that's our job. And in terms of
8 prioritization of projects, that's just an invitation for you
9 to manage.

10 We don't come here, Mr. Chairman, in this
11 application feeling uncertain about the filing
12 requirements or requesting particular guidance,
13 however, we will respond to reasonable direction from
14 the Board, as we should, that's part of the evolution of
15 any process. Every additional requirement has
16 potential cost consequences, so if the Board is thinking
17 to make directions, make them meaningful for your
18 discharge of your job. Make sure it's information that
19 you need, not information that the lawyers need,
20 because you're the people that have to decide here.
21 And observe, Mr. Chairman, that in capital budget
22 proceedings, certainly for the last number of years for
23 Newfoundland Power, engineers are making most of the
24 decisions about the projects and engineers are making
25 most of the determinations for the Board. The panels
26 have been composed largely of engineers, no
27 disrespect intended, Commissioner Finn. That is a
28 practical means of dealing with complex technical
29 issues. In short, it works.

30 There's been a suggestion, the second point,
31 Mr. Chairman, there's been a suggestion that uniformity
32 of filing standards and requirements as between
33 Newfoundland Power and Newfoundland Hydro is
34 appropriate at this time. The suggestion has been made
35 that you should err on the side of consistency and
36 there's been some, fair admission that there are
37 significant differences in what we do in terms of our
38 positioning on the electrical grid, with the predominant
39 positioning (unintelligible) on the electrical grid.

40 I would caution the Board from not taking
41 notice that in terms of regulatory experience there's a
42 significant difference between Newfoundland Power
43 and Hydro. Newfoundland Power is at a mature state of
44 regulation. Newfoundland Hydro is at a less mature
45 state, and that's not a criticism, Mr. Chairman. It's a
46 statement of fact, they've been regulated for five years
47 or so, we've been regulated for a long, long time.

48 One indication of that is, Mr. Browne has made
49 he suggestion that we're making elections with respect
50 to what we capitalize, and Mr. Perry addressed this in
51 his testimony and said that that is governed by the
52 company's system of accounts, which is approved
53 under Section 58 of the Public Utilities Act by this
54 Board. That system of accounts, Mr. Chairman, is 50 or
55 60 pages long, it might even be as many as 70 pages
56 long. It is a comprehensive code which governs how
57 we account for both plant, capital expense, and
58 operating expense. I don't believe Hydro is at the state
59 in its sort of regulatory development where it has those
60 types of, what I would call sophisticated regulatory
61 controls, imposed upon by this Board so that the Board
62 has the same degree of confidence that things are done
63 consistently year over year and project by project, or
64 like to like expense. So the comparison has not only to
65 do with on who's on the grid and where they are, it has
66 to do with some real sort of control issues that are in
67 place, vis-a-vis Newfoundland Power versus, vis-a-vis
68 Hydro, and those comparisons, you could end up
69 doing things that radically change our system of
70 accounts and place us in a situation that may be very,
71 very difficult for us, so exercise some caution in
72 adopting as a matter of first principle that every issue as
73 between Newfoundland Power and Hydro are
74 necessarily the same, it just isn't so from the regulatory
75 sense.

76 Finally, Mr. Chairman, the question of Section
77 41 and its interpretation has arisen in the hearing, and
78 I briefly would indicate what our position is on that,
79 because we don't have any uncertainty about what
80 you're ordering, and I've never conceived that the
81 Board has a great deal of uncertainty, or that any
82 disconnect, as suggested by Mr. Kennedy, in fact,
83 exists between the Board or the regulator and the
84 regulated, vis-a-vis Section 41.

85 Section 41 is fairly simple. 41.1 says the utility
86 brings forward a budget, the Board considers the
87 budget, before the, for the Board's approval, and the
88 Board approves the budget. That's what that section of
89 the Act, or sub-section of the Act does.

90 Section 41.3 is prohibition that says thou shalt
91 not construct anything over \$50,000 without having the
92 Board's approval. Over time the boards, prior boards,
93 I believe, have requested that we disclose to the board
94 in our Section 41.1, budget application projects over
95 \$50,000, so the board may have some comfort about
96 what the composition of the budget is. That's a

1 practical judgement of a board to which we've
2 continued to respond for, I think it's five or six years
3 now, Mr. Chairman. So that's what's going on. If
4 additional capital expenditure is required during the
5 course of the year, obviously Section 41.3 comes into
6 play and then we apply for additional capital
7 expenditures as required, or as the circumstances
8 dictate.

9 Mr. Ludlow, and I believe perhaps Mr. Perry,
10 indicated we don't sort of switch things around in terms
11 of budget justification categories, however, we present
12 in terms of our administration of the budget during the
13 course of the year. However, over the course of the
14 year you're dealing with a forecast, variations occur and
15 reports and explanations are provided on a routine
16 basis to this Board. And where it required, or an
17 expenditure is required to be justified, which is a matter
18 of judgement, Mr. Chairman, because the system is
19 interconnected after all and spread over a great deal of
20 area. Newfoundland Power has exercised historically
21 sound judgement in bringing forward applications.
22 That too is part of regulatory maturity, I would submit.

23 So, Mr. Chairman, in Section 41's interpretation
24 we are not particularly uncertain and we do not feel a
25 disconnect exists. Those are our submissions. Thank
26 you for your ears.

27 MR. NOSEWORTHY, CHAIRMAN: Thank you very
28 much, Mr. Alteen.

29 MR. BROWNE: Mr. Chairman, there's just one point I
30 make just for clarification. Ms. Butler said that I used a
31 1990, a ten year old report to reference those portables.
32 That is not correct, the transcript will show the facts.
33 Thank you.

34 MR. NOSEWORTHY, CHAIRMAN: This brings to a
35 conclusion today's proceedings. I want to thank the
36 parties for their cooperation with regard to the schedule
37 and the procedures. (unintelligible) think that the
38 process has benefitted from the cooperation that exists
39 in this area and that the Board primarily is focused on
40 the evidence as presented to us, as opposed to getting
41 into long extended deliberations in terms of procedures,
42 and indeed (unintelligible) schedule, and I thank you
43 for that. I want to as well thank Mr. Wells for his
44 important contribution to these proceedings, quite
45 frankly, and as well our transcriber, Mr. Morgan, and
46 indeed the staff of the PUB. I want to thank the
47 counsel and certainly the witnesses for your testimony,

48 very much. It's certainly been enlightening as far as the
49 panel, and in particular myself, is concerned. This
50 indeed does bring a conclusion to the hearing
51 surrounding the capital budget and we will adjourn and
52 the Board, or the panel will make every effort to be
53 expeditious in our order. We recognize the importance
54 of this. I think that's been made clear to us and
55 certainly we will be as expeditious as possible in our
56 deliberations on that. We do have, I understand, a
57 motions day relating to the GRA on December the 4th,
58 that's correct, and we have one motion before, so at the
59 present time, Ms. Newman ... is there anything else you
60 wish to say in respect to that?

61 MS. NEWMAN: No, that's our schedule for 9:00 a.m.
62 on the 4th.

63 (2:30 p.m.)

64 MR. NOSEWORTHY, CHAIRMAN: Okay, thank you
65 once again. This is concluded and we'll see you on
66 December the 4th in the morning.

67 (hearing adjourned)