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1 (1:00 P.M.)  
 2 CHAIRMAN:  
 3 Q. Thank you. Good afternoon. Beautiful one out  
 4 there, although I haven't been out to see it.  
 5 Anyway, looks good. I'd like to welcome  
 6 everybody here for the final oral submission  
 7 in terms of Newfoundland Power's 2008 Rate  
 8 Application. I want to thank everybody, I  
 9 think, as well, for the rather prompt turn  
 10 around, both with a view to the written  
 11 submission and indeed today, as well. That  
 12 certainly helps us every day or so in terms of  
 13 getting the decisions and orders finalized in  
 14 due course. Anyway, before we get started,  
 15 anything, Ms. Newman?  
 16 MS. NEWMAN:  
 17 Q. No, there's no preliminary matters. You will  
 18 see a document on your desk headed up  
 19 "November 5th, 2007" that I believe counsel  
 20 for Newfoundland Power will speak to in due  
 21 course in his submissions.  
 22 CHAIRMAN:  
 23 Q. Okay, thank you. Good afternoon, Mr. Kelly.  
 24 Just before we begin, probably looking at--

Page 3

1 that affect the requested rate change in this  
 2 General Rate Application. I reviewed all of  
 3 the provisions of the Settlement Agreement in  
 4 my opening comments and many of them were  
 5 commented on by the company's witnesses during  
 6 testimony. We've also addressed all of the  
 7 issues in our written submissions, so I  
 8 therefore do not intend to review each of the  
 9 agreed provisions in detail with you.  
 10 The agreed issues are summarized in  
 11 paragraph 6 of the Settlement Agreement.  
 12 You'll note from paragraph 6 on the screen  
 13 that there is agreement on the Cost of Service  
 14 Study, the Methodology and the Rate Design  
 15 with the sole exception of the Domestic Basic  
 16 Customer Charge. The Return on Common Equity  
 17 for rate-making purposes has been agreed at  
 18 8.95 percent for 2008. The Automatic  
 19 Adjustment Formula will continue as  
 20 previously, but reflecting the final adoption  
 21 of the Asset Rate-Based Method. The Automatic  
 22 Adjustment Formula will apply for a period of  
 23 not more than three years beyond the 2008 test  
 24 year. The Equity Risk Premium will be 4.35  
 25 percent at a risk-free rate of 4.60 percent

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1 it's not Mr. Wells, for sure, over there.  
 2 KELLY, Q.C.:  
 3 Q. No, Mr. Chairman, that's Jennifer Walsh. And  
 4 Jennifer will assist with any of the computer  
 5 things we need today.  
 6 CHAIRMAN:  
 7 Q. Welcome, Jennifer. When you're ready, Mr.  
 8 Kelly, please?  
 9 KELLY, Q.C.:  
 10 Q. Thank you, Mr. Chairman. Chair and Vice-  
 11 Chair, we've now come to closing argument in  
 12 this General Rate Application. The efficiency  
 13 of the hearing process, only five days of  
 14 evidence was necessary, is a function of the  
 15 Negotiate Settlement Agreement which was  
 16 reached in this matter. As Mr. Ludlow  
 17 indicated in his evidence, Newfoundland Power  
 18 will continue to support and encourage the  
 19 negotiated settlement process in the future.  
 20 I would again like to thank all participants,  
 21 and in particular, Mr. Johnson and Mr. Kennedy  
 22 for their constructive participation in that  
 23 process.  
 24 Mr. Chairman, the Settlement Agreement  
 25 resolved virtually all of the monetary issues

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1 for the purposes of the operation of the  
 2 formula. The final adjustments to complete  
 3 the adoption of the Asset Rate-Based Method  
 4 will be implemented. The amortization of the  
 5 regulatory deferrals and reserves will take  
 6 place over three years, with the exception of  
 7 the balance attributable to the degree day  
 8 component of the weather normalization  
 9 reserve. The Company will maintain the Cash  
 10 Accounting Method for OPEBS until the next  
 11 GRA, but will begin to tax effect with respect  
 12 to pension costs in 2008. Depreciation rates,  
 13 depreciation expense and the amortization of  
 14 the depreciation variance have been agreed.  
 15 The Purchase Power Unit Cost Variance Reserve  
 16 will be replaced by the Demand Management  
 17 Incentive Account. The Energy Supply Cost  
 18 Variance Clause will be added to the Rate  
 19 Stabilization Clause and will apply to energy  
 20 supply costs incurred through to the end of  
 21 2010. The other rule amendments have been  
 22 agreed. And finally, there's also agreement  
 23 on a comprehensive review of Retail Rate  
 24 Designs to be undertaken in accordance with  
 25 Schedule A to the Settlement Agreement.

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1 KELLY, Q.C.:

2 The Amended Application, which gives

3 effect to the Settlement Agreement and other

4 forecast changes, results in an average rate

5 increase of approximately 2.8 percent.

6 Because of the new Cost of Service Study, that

7 average rate increase will have different rate

8 impacts on the various customer class. The

9 parties are agreed on those differential

10 impacts. For the Domestic Class, the average

11 rate increase is approximately 3.9 percent.

12 With the average increase of 2.8 percent the

13 Company is satisfied that it will be able to

14 maintain its credit worthiness and sustain its

15 existing credit ratings. This is confirmed by

16 the Moody's Press Release which is in evidence

17 as Consent No. 2.

18 The only significant issue with respect

19 to 2008 operating costs, and hence, the 2008

20 test year revenue requirement is whether a

21 productivity allowance should be imposed. So

22 I'll deal with that issue first.

23 On the screen is Exhibit 2, the first

24 revision. The Company's best forecast of

25 operating expenses for 2008 is 49.4 million,

Page 7

1 allowance of \$284,000, effectively requiring a

2 freeze of operating expenses at 2007 levels.

3 Mr. Todd acknowledged that he did not conduct

4 a line-by-line analysis of the Company's

5 operating expenses. Indeed, he had not even

6 read the Company's answers to most of the RFIs

7 which had been asked by the Consumer Advocate.

8 Instead, he purported to take a global

9 approach, simply looking at past productivity

10 gains, and projecting the same results into

11 the future. And with respect, that approach

12 totally ignores important evidence.

13 Cost reductions since 2002 and 2003 were

14 largely achieved by crystallizing efficiency

15 gains through the Early Retirement Program.

16 Customers are now receiving benefits of over

17 \$2 million annually from those crystallized

18 efficiency gains. That's shown in Exhibit 3,

19 the Net Present Value Analysis. However,

20 changing workforce demographics means that

21 such programs will not likely be cost

22 justified during the coming years. There is a

23 need to train workers for the future.

24 Consequently the Company has expanded its

25 apprenticeship and training programs. That is

Page 6

1 line 28 on Exhibit 2, the first revision. 58

2 percent of that amount, or 28.7 million

3 relates to labour expense, which is line 4.

4 Union wages will rise four percent in 2008 and

5 non-union are forecast to rise three percent.

6 Inflation generally impacts other costs, as

7 well. So it would not have been unreasonable

8 or unexpected if operating expenses rose by

9 two to three percent from 2007 levels. That

10 would have been in the order of one million to

11 one and a half million dollars. Instead, the

12 Company will control its non-labour operating

13 expenses and has included a reduction of

14 \$531,000 for efficiency gains in its labour

15 expenses. You'll see that in RFI CA-NP47.

16 However, as Mr. Delaney explained, achieving

17 those efficiency gains will be a challenge.

18 Management's best estimate for operating

19 expenses in 2008 is 49.4 million, an increase

20 of only \$284,000 from 2007 forecast costs. To

21 put that in perspective, that's an increase of

22 only .58 percent or approximately one half of

23 one percent. That's an extremely good record.

24 Now, Mr. Todd, for the Consumer Advocate,

25 has proposed an additional productivity

Page 8

1 absolutely critical for the future. In

2 addition, as we all know, the booming Alberta

3 economy is drawing skilled personnel from

4 Newfoundland and increasing wage pressures in

5 this province.

6 The sworn evidence of the Company's

7 witnesses is that the best estimate of 2008

8 operating expenses is 49.4 million. Mr. Todd

9 has not criticized any specific expense, nor

10 has he offered any concrete plan as to how the

11 Company could or should reduce operating

12 expenses. In fact, I say Mr. Todd's approach

13 has an element of recklessness about it. With

14 the 2.8 percent rate increase, the Company's

15 credit metrics will be at or just below the

16 bottom of Moody's range. The Company must earn

17 its ROE next year to maintain its credit

18 metrics. What then is the Company to cut to

19 meet an imposed productivity allowance?

20 Labour is 58 percent of its operating

21 expenses, but cutting labour means cutting

22 apprentices and trainees because of collective

23 agreement seniority provisions and cutting

24 apprentices and trainees imperils future

25 service.

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1 KELLY, Q.C.:

2 One of the most compelling reasons for

3 not imposing a productivity allowance is the

4 contradiction between the two expert witnesses

5 for the Consumer Advocate.

6 Mr. Todd was of the opinion that because

7 of management's past success in achieving

8 efficiency gains the 2008 operating expenses

9 should be frozen at 2007 levels, leaving

10 management with the challenge of offsetting

11 all of the four percent union pay increase and

12 the three percent non-union pay increase. But

13 contrast that with Mr. Bowman. Mr. Bowman, on

14 the other hand, accepted that the target of

15 531,000 for labour efficiency gains is

16 aggressive. That's the word he used,

17 "aggressive." Mr. Bowman was concerned that

18 management will need to cut costs and that

19 customer service may deteriorate. He felt

20 that service standards with reporting relative

21 to benchmarks should be imposed to guard

22 against deterioration of service. And you'll

23 find his evidence in that on October 26th,

24 pages 79 to 80 in the transcript.

25 Neither of those two extreme views is

Page 11

1 lumpy. Customers benefit by incenting the

2 Company to engage in that multi-year process

3 and customers reap the rewards at the next

4 GRA. In the time between GRAs, while gains

5 may be achieved in one area, costs may

6 escalate in other areas. Some costs, such as

7 depreciation expense arising from new capital

8 expenditures, are not recovered in rates until

9 the next GRA.

10 Establishing an unrealistic productivity

11 allowance has several potential negative

12 consequences. First, it may deny Newfoundland

13 Power the recovery of its just and reasonable

14 operating expenses contrary to the Public

15 Utilities Act. Second, it may create a

16 disincentive or a penalty for good

17 performance. And third, it may lead to more

18 frequent rate hearings to recover necessary

19 operating expenses.

20 (1:15 P.M.)

21 In summary on this issue, no basis has

22 been shown in the evidence for the

23 productivity allowance proposed by Mr. Todd on

24 behalf of the Consumer Advocate. The proposed

25 productivity allowance is not in accordance

Page 10

1 justified. It is not appropriate to expect

2 management to hold operating expenses at 2007

3 levels in the face of escalating labour costs

4 without compromising service. However,

5 management believes, based on its experience,

6 that it can achieve efficiency gains of

7 \$531,000 without impacting service. And

8 management itself has proposed that those

9 efficiency gains be incorporated in the 2008

10 test year.

11 Mr. Todd's proposed productivity

12 allowance is not in accordance with this

13 Board's policy of incenting Newfoundland Power

14 to seek efficiencies between rate hearings,

15 which can then be passed on to customers at

16 the next GRA.

17 The Consumer Advocate argues, at page 4

18 of his written submissions, that the Board

19 must insure that consumers share in any

20 productivity gains promoted by the incentives

21 in a multi-year regulatory regime. However,

22 as Mr. Delaney explained, realizing

23 productivity gains is a multi-year process,

24 not simply a one-year task. You will recall

25 that Mr. Delaney described the process as

Page 12

1 with generally accepted sound public utilities

2 practice.

3 Next I will address the Domestic Basic

4 Customer Charge issue. Domestic Basic

5 Customer Charge is now \$15.60 a month. It is

6 close to the average of Domestic Basic

7 Customer Charges across Canada. And you'll

8 find that in NP-CA No.1. Newfoundland Powers

9 Basic Customer Charge has fallen by \$1.20

10 since 2003, while Basic Customer Charges

11 elsewhere in Canada have risen by \$2. The

12 Domestic Basic Customer Charge recovers only

13 75 percent of the costs as agreed in the

14 mediated settlement approved by the Board in

15 2003. Consequently, there is justification

16 for increasing both the Basic Customer Charge

17 and the Energy Charge. However, in order to

18 move closer to marginal costs in setting the

19 Energy Charge, the Company has proposed

20 holding the Basic Customer Charge at current

21 levels and applying all of the increase to the

22 Energy Charge. As a result, while Domestic

23 Customers will see an average rate increase of

24 3.9 percent, some customers will see increases

25 of up to 4.3 percent.

Page 13

1 KELLY, Q.C.:

2 Mr. Bowman's proposal to reduce the

3 Domestic Basic Customer Charge by a dollar

4 would mean that some Domestic Customers would

5 see increases of up to 4.9 percent. The

6 average all-electric home uses approximately

7 2500 kilowatt hours per month. All customers

8 above 1500 kilowatt hours per month would

9 receive higher bills on Mr. Bowman's proposal.

10 In fact, 20 percent of customers would see

11 rate increases above the Company's proposed

12 maximum of 4.3 percent. Put that in context,

13 that's 40,000 customers, 40,000 Newfoundland

14 families who will see rate increases of

15 between 4.3 and 4.9 percent on Mr. Bowman's

16 proposal.

17 In this case the Settlement Agreement was

18 heavily influenced by the desire to maintain

19 rate stability for customers at this time.

20 Customers have experienced significant

21 increases in recent years because of rising

22 oil prices. In addition, this amended

23 application will mean an average 3.9 percent

24 increase to Domestic Customers. The Company's

25 proposal balances increased rate efficiency,

Page 15

1 Newfoundland Power's 2007 Capital Budget

2 Order. There is no evidence justifying any

3 change in approach by the Board. Customer

4 satisfaction remains at high levels. No

5 problem of either underspending or

6 overspending on capital or maintenance

7 expenditures has been demonstrated. In order

8 to create the audit trail suggested by Mr.

9 Bowman, significant capital expenditures for

10 information technology systems and increased

11 operating costs would be required in order to

12 track, record and report capital and

13 maintenance expenditures on a feeder-by-feeder

14 basis.

15 The fundamental difference in approach

16 between Mr. Bowman and the Company witnesses

17 was demonstrated in cross-examination of Mr.

18 Bowman when he was asked to examine CA-NP463.

19 That RFI contains the SAIDI statistics for all

20 of Newfoundland Power's 300 plus feeders, and

21 18 of those feeders have SAIDIS above 300

22 minutes or five hours duration. And I

23 challenged Mr. Bowman to say which of those

24 feeders would require capital or maintenance

25 expenditures, and of course, he couldn't do

Page 14

1 on the one hand, by putting the entire 3.9

2 percent increase on the Energy Charge while

3 trying to maintain rate stability by holding

4 the Basic Customer Charge at current levels.

5 Mr. Bowman's proposal further increases the

6 rate impact, especially on all-electric

7 customers as we enter the current winter

8 season.

9 Further on this point, the Domestic Rate

10 Structure, including the appropriate level of

11 the Basic Customer Charge, will be examined

12 during the Rate Review Study next year. The

13 Company believes that that is the appropriate

14 mechanism to further consider the Basic

15 Customer Charge. The Company does not believe

16 a piecemeal approach to retail rate review

17 makes sense.

18 So in summary, Newfoundland Power does

19 not support a reduction in the Domestic Basic

20 Customer Charge as proposed by Mr. Bowman.

21 Next I want to talk about Mr. Bowman's

22 proposal on Reliability and Service Standards.

23 Newfoundland Power believes that the Board

24 should continue to follow the approach which

25 it set out in order P.U. 30 (2006), that's

Page 16

1 so, because the answer doesn't depend on what

2 the SAIDI or the SAIFI statistic is. Rather,

3 the answer has to be based upon an engineering

4 assessment of the physical assets and what, if

5 anything, needs to be done by way of capital

6 or maintenance expenditures. Capital and

7 maintenance expenditures are driven by the

8 condition of the electrical system, not simply

9 by SAIDI or SAIFI or any other statistical

10 measure of reliability. SAIDI and SAIFI

11 statistics are simply the result, the result

12 derived from capital investment, maintenance

13 and operational deployment as explained by Mr.

14 Delaney.

15 The evidence discloses other

16 contradictions in Mr. Bowman's approach. Let

17 me just explain what I mean. Reliability

18 Standards have generally been adopted in

19 jurisdictions that have gone through

20 deregulation or change to performance-based

21 regulation or where there's been significant

22 customer dissatisfaction with service.

23 Changing to PBR requires a legislative change

24 to the method of regulation. As Mr. Bowman

25 pointed out in answer to NP-CA13, PBR entails

Page 17

1 KELLY, Q.C.:

2 a risk of under investment in reliability

3 expenditures, and the reason is because

4 companies under PBR have an incentive to cut

5 back expenditures to maximize returns. But

6 Newfoundland and Labrador has traditional Cost

7 of Service Regulation.

8 As Mr. Bowman points out in answer to the

9 same RFI, in a traditional Cost of Service

10 jurisdiction, the potential risk is over

11 investment in the electrical system. In other

12 words, the risk is a utility might seek to add

13 to its rate base simply to increase profit.

14 Yet, all of Mr. Bowman's examples, including

15 his proposed Green Mountain Power Model, are

16 derived from PBR type jurisdictions and all of

17 his proposals contain minimum standards to

18 prevent under investment. More importantly,

19 Mr. Bowman could not demonstrate any actual

20 under investment or over investment in the

21 electrical system. In fact, reliability is

22 improved. But the testimony of Mr. Delaney

23 and the response to CA-NP463 also indicated

24 that there are still many feeders in this

25 province, namely in rural areas, that will

Page 19

1 engineering standards and operational

2 practices are reviewed in engineering

3 assessments performed for the Board.

4 So the Board should ask itself the

5 question, what purpose will be served by

6 adopting Reliability and Service Standards?

7 Will they assist the Board in determining the

8 appropriateness of capital or maintenance

9 expenditures? And as we've seen, clearly they

10 will not since capital and maintenance

11 expenditures are determined by the condition

12 of the electrical system through a process of

13 engineering assessment and judgment. They are

14 not simply determined by reliability

15 statistics. But if on the other hand the

16 purpose is simply to provide a better audit

17 trail, then the Board should ask itself these

18 two questions. First, what will it cost to

19 put in place the necessary information

20 technology systems and the work practices to

21 track, record and report capital and

22 maintenance expenditures that impact

23 reliability? And number two, how will such

24 costs benefits customers since they merely add

25 to the regulatory burden and are not required

Page 18

1 need improvement over the next several years.

2 And when Mr. Bowman was challenged in NP-CA3

3 to provide specific examples of where the

4 establishment of formal Distribution

5 Reliability and Services Standards have

6 somehow established that reliability and

7 service-related expenditures are prudently

8 incurred, Mr. Bowman could not provide any

9 specific examples.

10 Note also that in Delaware and Vermont,

11 two examples cited by Mr. Bowman, annual

12 capital budget submissions are not a

13 requirement. You'll find that in NP-CA No. 2.

14 There is no mechanism in those jurisdictions

15 for advance approval of capital expenditures.

16 Those jurisdictions do not have the detailed

17 capital budget approval process employed by

18 this Board.

19 Newfoundland, in fact, has three, three

20 open and transparent processes dealing with

21 reliability expenditures. First, a capital

22 budget approval process deals with capital

23 expenditures. Second, maintenance expenses

24 are reviewed in general rate applications.

25 And third, from time to time system condition,

Page 20

1 to provide service? It is simply not correct

2 to say, as the Consumer Advocate asserts at

3 paragraph 36 of his written submissions, that

4 the only costs associated with the standards

5 is their development.

6 Jennifer is putting on the screen Graph 6

7 from the Company's evidence. And what that

8 graph shows is that the Board already has

9 access to the information to audit the

10 effectiveness of expenditures under the

11 Distribution Reliability Initiative. And you

12 can see that in Graph 6.

13 Interestingly in this case the Consumer

14 Advocate now concedes at paragraph 35 of his

15 submission that there should only be system-

16 wide targets, not individual feeder targets.

17 One must therefore ask how will system-wide

18 targets assist the Board in determining the

19 appropriateness of expenditures to improve the

20 performance of individual feeders or the

21 reasonableness of the results of such

22 expenditures? They can't. And contrary to

23 the Consumer Advocate's submission at

24 paragraph 37 of his submissions, any standard

25 clearly reduces management's flexibility in

Page 21

1 KELLY, Q.C.:

2 running the business since management must now

3 respond to that regulatory requirement. For

4 what is the purpose of a regulatory

5 requirement if management is not intended to

6 respond to it?

7 (1:30 P.M.)

8 So in summary on this reliability issue,

9 the evidence does not establish the need for

10 Service and Reliability Standards. Service

11 and Reliability Standards in Newfoundland are

12 potentially an expensive solution to a non-

13 existent problem. The Board should continue

14 with its existing regulatory approach as set

15 out in Order P.U. 30 (2006).

16 The next issue I want to deal with is

17 intercorporate transactions.

18 Newfoundland Power filed the report on

19 intercorporate charges with the Board on March

20 31st, 2004 in accordance with P.U. 19 (2003).

21 Newfoundland Power has complied fully with the

22 report and with all orders and directions of

23 the Board. Grant Thornton has not reported

24 any occasion of non-compliance by Newfoundland

25 Power. It should be noted that no evidence

Page 23

1 charged by outside counsel is not appropriate.

2 It completely ignores the difference in roles

3 between inside counsel and outside counsel.

4 Inside counsel are the client's

5 representative, give direction and assist with

6 due diligence. Outside counsel have the

7 responsibility to complete the transaction and

8 give all necessary opinions with respect to

9 the title to the assets acquired. They are

10 the ones that give the opinions and take the

11 risks associated with doing so. The functions

12 of inside counsel are more executive in

13 nature. The roles of inside counsel and

14 outside counsel are simply different, and

15 there is no readily ascertainable market for

16 this type of in house or executive legal

17 service, so consequently the fully loaded

18 cost, plus the 20 percent mark-up, is used as

19 the market proxy. And again, that is in

20 accordance with generally accepted sound

21 public utility practice.

22 And similarly, one cannot compare

23 assistance provided by members of the

24 executive group to arms-length advisors and

25 consultants, as suggested by the Consumer

Page 22

1 has been filed by the Consumer Advocate

2 demonstrating any deficiency in the Company's

3 existing practices and procedures with respect

4 to intercorporate transactions. The current

5 reporting is fully open and transparent.

6 There is no issue of transparency.

7 The charge-out rate for senior executives

8 and managers is based on cost recovery. This

9 is consistent with the practice across the

10 country. In fact, Newfoundland Power applies

11 a 20 percent mark-up, the highest in Canada,

12 to the fully loaded costs. Charge out at

13 fully loaded costs, plus a mark-up, is in

14 accordance with generally accepted sound

15 public utility practice.

16 The level of intercorporate charges for

17 executives and senior managers has markedly

18 reduced over the past few years. In 2007 and

19 forecast 2008 the total charge out for

20 executives and senior managers, including the

21 20 percent mark up, is expected to be less

22 than \$100,000 per annum.

23 The Consumer Advocate's recommendation

24 that Mr. Alteen's charge out rate to Fortis

25 should be equal to or greater than rates

Page 24

1 Advocate at paragraph 73 of his submissions.

2 There is no ascertainable market for this type

3 of executive services. So again, the fully

4 loaded cost, plus the 20 percent mark-up is

5 used as the market proxy, and that's in

6 accordance with generally accepted sound

7 public utility practice across the country.

8 So customers benefit by offsetting the fully

9 loaded costs, plus recovering an additional 20

10 percent mark-up.

11 But also keep in mind the intangible

12 benefits that Mr. Ludlow referred to, exposing

13 executives and managers to different utility

14 operations and practices develops valuable

15 experience. They see what works well and they

16 see what doesn't work so well. Customers

17 benefit by having experienced and

18 knowledgeable executives and managers at

19 Newfoundland Power.

20 The Consumer Advocate has also questioned

21 the charges for staff time in the

22 administration of the insurance program. The

23 same staff person was involved in the Terasen

24 Gas acquisition. For this person's time the

25 employees fully loaded wage costs represent

Page 25

1 KELLY, Q.C.:

2 the market price for the service. No

3 additional mark-up is required or appropriate

4 in this circumstance. This approach also

5 gives Newfoundland Power the added benefit of

6 retaining this particular service in house.

7 If a mark-up were to be imposed, there would

8 be a strong incentive for Fortis to transfer

9 this service either to Fortis itself or to one

10 of its other affiliates. The net result,

11 consumers would pay exactly the same amount or

12 potentially more if a mark-up was added,

13 however, Newfoundland Power would have lost

14 the benefit of having that service available

15 to it in house. And keep in mind that

16 Newfoundland Power's customers benefit each

17 and every year by being part of the Fortis

18 Group Insurance Program. Currently those

19 benefits are approximately \$600,000 a year to

20 be part of that group program.

21 Over the past decade customers of

22 Newfoundland Power have enjoyed material

23 benefits from creative solutions to control

24 costs and achieve operating efficiencies.

25 Those benefits have resulted from the

Page 27

1 the report filed with the Board in March,

2 2004. Newfoundland Power has no objection to

3 those existing requirements being formatted in

4 any manner that the Board deems appropriate

5 and made generally available howsoever the

6 Board determines. With respect to any new or

7 additional requirements, the Consumer Advocate

8 has the burden of demonstrating that they are

9 necessary and appropriate and in accordance

10 with generally accepted sound public utility

11 practice. There is no evidence specifically

12 setting forth the precise requirements which

13 the Consumer Advocate proposes, nor any

14 evidence demonstrating that such proposals

15 would comply with sound public utility

16 practice. In the absence of such evidence, it

17 is difficult for the Company to meaningfully

18 reply or for the Board to order changes.

19 Newfoundland Power notes that provisions

20 with respect to governance, confidentiality

21 and compliance adopted in some other

22 jurisdictions such as Alberta came about

23 because of deregulation and open competition.

24 As a result, there was a recognized need to

25 insure a separation and fair dealing between

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1 excellence, dedication and hard work of

2 Newfoundland Power's executive and management

3 team. Excellence should be encouraged, and

4 excellence comes from knowledge and

5 experience, and that comes from exposure to

6 other ways of doing things. The Board should

7 be very reluctant to adopt rules or practices

8 that unduly limit or restrict the acquisition

9 of knowledge and experience, because as we've

10 seen over the past decade, customers benefit

11 by having knowledgeable and experienced

12 executives and managers at Newfoundland Power.

13 Another issue raised in this

14 intercorporate transactions relates to the

15 standby fee. The Consumer Advocate has lead

16 no evidence to support a standby fee for a

17 retainer. A standby fee for Fortis and its

18 affiliates implies an obligation to provide

19 service on request. Why else would Fortis pay

20 a standby fee? An obligation to serve Fortis

21 on request is contrary to existing practice,

22 not of benefit to customers and contrary to

23 the stand-alone status of Newfoundland Power.

24 Existing requirements with respect to

25 intercorporate transactions are contained in

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1 regulated operations and activities, on the

2 one hand, and competitive operations on the

3 other hand.

4 The same situation does not exist in

5 Newfoundland. The need for such additional

6 provisions has not been demonstrated. As I

7 said, the burden is on the Consumer Advocate

8 to set forth clearly the requirements to be

9 imposed and to demonstrate that such

10 requirements are necessary to protect and

11 benefit customers, and that burden has not

12 been discharged in this proceeding.

13 Personal bonuses paid to senior

14 executives and managers are a non-regulated

15 expense. They're not paid for by customers.

16 That is and continues to be the appropriate

17 regulatory response.

18 Intercorporate transactions must be

19 examined in their totality. Newfoundland

20 Power's customers receive demonstrable

21 benefits from Newfoundland Power's

22 relationship with Fortis and its affiliates.

23 As I said in my opening comments, it is

24 difficult to quantify these benefits with

25 precision, but they are clearly substantial.

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1 KELLY, Q.C.:

2 There is simply no question that the balance

3 is heavily and unequivocally in favour of

4 customers.

5 Let me turn next to five other issues

6 that the Consumer Advocate has raised. Those

7 are electronic billing, labour management,

8 safety communications, pole management and

9 energy conservation messaging. All of these

10 matters fall within the scope of management's

11 decision making. No evidence has been lead to

12 establish that any expenditure is imprudent.

13 With respect to electronic billing,

14 Newfoundland Power has the highest electronic

15 billing usage of surveyed utilities in Canada.

16 Usage continues to grow. The current approach

17 provides benefits to all customers.

18 Incentives have cost and operational

19 implications. Customer incentives are not

20 considered to be necessary or desirable at

21 this time.

22 With respect to vacancy tracking,

23 Newfoundland Power forecasts labour

24 requirements on a full-time equivalent, an FTE

25 basis. This approach has been sanctioned and

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1 of expenditures in 2002 and 2003.

2 Newfoundland Power currently leverages its

3 strength in direct contact with customers to

4 promote energy conservation. Most

5 importantly, the future direction of

6 conservation messaging expenditures will be

7 influenced by, first, a Conservation Potential

8 Study later this year and the Energy

9 Conservation and Efficiency Partnership

10 announced in the Provincial Energy Plan.

11 The Consumer Advocate, in his written

12 submissions, has proposed that the Board add

13 an additional \$182,000 to operating expenses

14 for the 2008 test year for radio and

15 television advertising to promote energy

16 efficiency. Now let's put that proposal in

17 context. Keep in mind that the Provincial

18 Government is establishing the Energy

19 Conservation and Efficiency Partnership with

20 an initial investment of \$5 million to

21 coordinate and assist with energy conservation

22 and efficiency initiatives. Any energy

23 conservation messaging for radio and

24 television should be designed and implemented

25 as one component of an integrated conservation

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1 in fact encouraged by the Board. The movement

2 to a flexible work system has resulted in

3 substantial productivity gains over the past

4 decade. Those labour productivity gains have

5 been one of the key drives in controlling

6 operating expenses. So Newfoundland Power

7 does not support vacancy tracking.

8 Safety communications. They are already

9 being coordinated with Newfoundland Hydro.

10 However, the objective is better safety

11 messaging, not achieving cost savings. No

12 additional reporting is necessary.

13 Used pole repurchasing is a small

14 component of an integrated approach to pole

15 management. That integrated management system

16 has been instrumental in controlling pole

17 supply and installation costs for more than a

18 decade.

19 (1:45 P.M.)

20 And finally, energy conservation

21 messaging. The expenditures contained in the

22 2008 test year are appropriate. Newfoundland

23 Power's Energy Efficiency Program costs are

24 forecast to be \$595,000 in each of 2007 and

25 2008. This is approximately twice the level

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1 program involving all stakeholders as proposed

2 under the Provincial Energy Plan. Mr. Ludlow

3 has stated that Newfoundland Power will

4 participate fully in this provincial

5 partnership initiative. The Company will

6 determine the most appropriate allocation of

7 resources in cooperation with the Provincial

8 Government and with other participants. The

9 Board should not attempt to set the specific

10 roles or functions that the Company will

11 perform, nor direct any specific type, radio

12 or television, or any amount of expenditure.

13 These are matters best left to the judgment of

14 management as this important provincial

15 initiative develops.

16 So in concluding on these points, Mr.

17 Chairman, no cause has been shown with respect

18 to any of these issues to warrant the Board in

19 intervening with the management of the Company

20 in these matters.

21 Mr. Chairman, there's two matters I want

22 to touch on in concluding. The first is

23 International Financial Reporting, or IFRS.

24 And with respect to IFRS, there is clearly

25 considerable uncertainty as to how this



<p style="text-align: right;">Page 33</p> <p>1 KELLY, Q.C.:</p> <p>2 transition will develop over the next several</p> <p>3 years. The Company has experience in dealing</p> <p>4 with changing accounting and financial</p> <p>5 reporting requirements. It has already</p> <p>6 developed a plan, which is in evidence as</p> <p>7 Consent 4, to meet the 2008 transitional</p> <p>8 obligations or objectives. It is closely</p> <p>9 monitoring all developments with respect to</p> <p>10 IFRS. It is reasonable and appropriate for</p> <p>11 this Board to continue to monitor developments</p> <p>12 with respect to IFRS and with respect to</p> <p>13 Newfoundland Power's ongoing plans with</p> <p>14 respect to those developments. The Company</p> <p>15 will report to the Board with respect to</p> <p>16 further developments and with respect to the</p> <p>17 Company's plans with respect to IFRS</p> <p>18 transition.</p> <p>19 The second point I wanted to touch on</p> <p>20 briefly is the Federal Government's recent</p> <p>21 announcement of a potential one percent</p> <p>22 reduction in corporate income tax rates. And</p> <p>23 we have put forward in Consent 5 the Company's</p> <p>24 proposed mechanism to deal with that change,</p> <p>25 should it occur. And the Consumer Advocate</p>	<p style="text-align: right;">Page 34</p> <p>1 has had an opportunity to see and review, and</p> <p>2 I understand is in substantial agreement. At</p> <p>3 this time the legislation has not been</p> <p>4 written, let alone passed. As we know, there</p> <p>5 is currently a minority government in Ottawa</p> <p>6 and there is significant possibility of an</p> <p>7 election next year. So we don't yet have</p> <p>8 enacted legislation. There is significant</p> <p>9 uncertainty therefore as to whether the change</p> <p>10 will become law, whether it will have its</p> <p>11 existing proposed format or be modified. In</p> <p>12 the meantime, the Board should determine the</p> <p>13 revenue requirement based upon the current</p> <p>14 state of the law and the record in this</p> <p>15 proceeding.</p> <p>16 However, the Company does recognize that</p> <p>17 if tax rate change, customers should be</p> <p>18 entitled to the benefit of the reduction in</p> <p>19 corporate taxes. It is therefore appropriate</p> <p>20 for the Board to order that Newfoundland Power</p> <p>21 create a deferral account, the precise terms</p> <p>22 of which will be defined once legislation has</p> <p>23 been enacted. And you'll see this in the</p> <p>24 second-last bullet in the proposal. Any</p> <p>25 reduction would be trued-up in relation to the</p>
<p style="text-align: right;">Page 35</p> <p>1 2008 test year tax requirement. The Board can</p> <p>2 then make an order in due course with respect</p> <p>3 to the disposition of any amount to be</p> <p>4 credited to the reserve. It is the Company's</p> <p>5 intention to deal with the matter promptly</p> <p>6 upon enactment of the legislation. In this</p> <p>7 way Newfoundland Power's customers will</p> <p>8 benefit if an income tax reduction is enacted.</p> <p>9 Meanwhile, the Company's tax obligation would</p> <p>10 be met if the reduction is not enacted or if</p> <p>11 it is modified from the existing proposal or</p> <p>12 delayed in time. That approach also insures</p> <p>13 that the Company maintains its credit</p> <p>14 worthiness. Mr. Chairman, Newfoundland Power</p> <p>15 believes that this is the most appropriate</p> <p>16 mechanism to deal with the Government of</p> <p>17 Canada's proposal at this point in time.</p> <p>18 Mr. Chairman, those are the submissions</p> <p>19 which I wish to make. I would, on behalf of</p> <p>20 both myself and Newfoundland Power, like to</p> <p>21 thank the Board and the Board staff as well as</p> <p>22 both Mr. Johnson and Mr. Willar for their</p> <p>23 cooperation and patience throughout this</p> <p>24 entire GRA process. Mr. Chairman, those are</p> <p>25 my closing submissions, unless you have any</p>	<p style="text-align: right;">Page 36</p> <p>1 specific questions.</p> <p>2 CHAIRMAN:</p> <p>3 Q. Thank you, very much, Mr. Kelly. So I guess</p> <p>4 for ease by way of procedure, if we do have</p> <p>5 any questions, we might as well ask them after</p> <p>6 each presentation. I don't have any -</p> <p>7 VICE-CHAIR WHALEN:</p> <p>8 Q. No, thank you.</p> <p>9 CHAIRMAN:</p> <p>10 Q. - thank you, very much.</p> <p>11 KELLY, Q.C.:</p> <p>12 Q. Thank you, Mr. Chairman.</p> <p>13 CHAIRMAN:</p> <p>14 Q. Just before we begin, Consent No. 5, is that</p> <p>15 the correct number for that?</p> <p>16 MS. NEWMAN:</p> <p>17 Q. It is, yes. The document that's headed up</p> <p>18 November 5th, 2007, Proposed 2008 Federal</p> <p>19 Corporate Tax Rate Reduction would be Consent</p> <p>20 No. 5.</p> <p>21 CHAIRMAN:</p> <p>22 Q. Thank you, very much. Good afternoon, Mr.</p> <p>23 Johnson.</p> <p>24 MR. JOHNSON:</p> <p>25 Q. Good afternoon.</p>

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1 CHAIRMAN:  
 2 Q. When you're ready and if you could, I'm sure  
 3 you will be commenting on the corporate tax  
 4 rate reduction, as well.  
 5 (1:53 P.M.)  
 6 MR. JOHNSON:  
 7 Q. Well, I brought it to their attention and I'm  
 8 happy, indeed, that we're going to deal with  
 9 it that way. Obviously as a friend of mine  
 10 has a way of saying, you're not born until you  
 11 get your birth certificate, so we'll see if  
 12 the government lasts and if it does last,  
 13 it'll flow through.  
 14 Good afternoon, Mr. Chairman, Vice-  
 15 Chairman, again. On behalf of myself and my  
 16 friend, Mr. Willar, it's been an honour to  
 17 appear before you this last while and to act  
 18 for consumers since May. It's a long time ago  
 19 now, another season back, but we are at the  
 20 end. And I share my friend, Mr. Kelly's,  
 21 observations that this has been certainly an  
 22 efficient process.  
 23 I would like to start off just by  
 24 addressing the productivity issue. I think  
 25 it's fair, actually, for a Consumer Advocate

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1 you can observe that the productivity benefit-  
 2 to-cost ratio has declined in 2008 relative to  
 3 the rest of the period since Newfoundland  
 4 Power's last GRA.  
 5 Now, operating costs, we concur, have  
 6 been pretty much running flat from '04 to '07,  
 7 which also implies, as Mr. Todd states, that  
 8 Newfoundland Power's productivity gains during  
 9 this period were sufficient to fully offset  
 10 the upward cost pressures during these years,  
 11 but in 2008 we do see an increase of \$284,000.  
 12 Now, in looking at this we have to  
 13 observe that the evidence is that Newfoundland  
 14 Power has insisted that in no way has it eased  
 15 off in its efforts to achieve productivity  
 16 gains relative to previous years and we also  
 17 know that the wage pressure in '08, vis-a-vis  
 18 the unionized contractual wage increases and  
 19 management increases, are not different from  
 20 what they've had to deal with in previous  
 21 years, and that has come out in the evidence.  
 22 And we also note that looking at a broader  
 23 measure such as the annual rate of inflation  
 24 as measured by the Consumer Price Index that  
 25 over the period from '04 to '07 there has been

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1 to bring forward assertions with respect to  
 2 productivity allowance. And the basis that we  
 3 look upon the productivity allowance is that  
 4 we certainly don't regard it as being a  
 5 punitive measure to implement a productivity  
 6 adjustment which reflects any expectation of  
 7 consistency between the test year when there  
 8 is a reduced incentive to find productivity  
 9 savings, and I think that's just a financial  
 10 fact.  
 11 In non-test years in which any utility,  
 12 Newfoundland Power included, has a much  
 13 greater incentive to achieve solid  
 14 productivity improvements. And I guess that's  
 15 the fundamental basis upon which we view the  
 16 matter. We have, as Mr. Todd testified before  
 17 the Board, and I hope it was useful, we have a  
 18 multi-year regulatory regime which creates a  
 19 strong incentive to crystallize productivity  
 20 gains early in the period after a rate case,  
 21 but not so much in the years removed from the  
 22 test year or in the test year itself. That's  
 23 just a fact.  
 24 Now, Mr. Todd noted that by examining  
 25 Newfoundland Power's overall operating costs

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1 equal or higher inflation as forecast in '08,  
 2 so we take that into the mix.  
 3 Now, there, as Newfoundland Power has  
 4 indicated, apprentice linesmen are at a higher  
 5 level than there has been in quite a number of  
 6 years because of this demographic bubble that  
 7 all utilities are facing. But we also note,  
 8 as I've indicated in our brief and as Mr.  
 9 Delaney has testified, that they are being  
 10 deployed to meet the needs that used to be  
 11 filled, to some degree, by contractual labour  
 12 that they paid for. So there is an offsetting  
 13 element that's happening by use of these  
 14 apprentice linesmen as they're being deployed  
 15 for these activities.  
 16 And we would also observe that, for  
 17 instance, the technicians who joined the  
 18 Company in 2005, they are not as seasoned as a  
 19 seasoned employee, but neither were they in  
 20 '05 and '06 and '07. And the same thing goes  
 21 for many new hires that would have replaced  
 22 people who left under the ERP a few years ago.  
 23 Now, we, as indicated in our brief, don't  
 24 suggest that you can have a continuing roll  
 25 out of ERPs, that doesn't make any sense. But

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1 MR. JOHNSON:  
 2 we do certainly think that consumers might  
 3 expect Newfoundland Power or any other utility  
 4 to build productivity into the test year  
 5 forecast because that's realistic, especially  
 6 when you consider, as Mr. Todd noted, that  
 7 it's the consumers themselves who actually pay  
 8 for the expenses, whether they be technical or  
 9 on the operating side or any other expenses  
 10 that are used to find that productivity.  
 11 So I would just back up for a moment, as  
 12 well, on the productivity piece, and that is  
 13 to say that it is for you, the Board, to  
 14 consider at the end of the day whether  
 15 Newfoundland Power's credit matrix will  
 16 impacted on this. Mr. Todd suggests that, no,  
 17 the utility, if a productivity allowance is  
 18 awarded, just lives within its budget.  
 19 (2:00 P.M.)  
 20 Now, the fact is that if the Board  
 21 concludes that this holding Newfoundland Power  
 22 to a forecast operating expense in 2008 in  
 23 line with 2007 is going to, on all the  
 24 evidence, impair Newfoundland Power's credit  
 25 rating, well, then you can't do it. But, I

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1 proceeding with it. And I'd just like to  
 2 start a bit at some first principles which I  
 3 think are rather important to this debate.  
 4 The Court of Appeal in the Stated Case,  
 5 it's almost like the Magna Carta, it gets  
 6 talked about so much here, but they said in  
 7 that case that it was important to remember  
 8 that in addition to your periodic adjudicative  
 9 role, which itself involves a large measure of  
 10 policy implementation in arriving at your  
 11 decisions, that the Board has also, because of  
 12 its duty of general supervision of all public  
 13 utilities, an ongoing supervisory role of the  
 14 activities of the utility between hearings.  
 15 And, of course, it goes without saying  
 16 that the key duty for the Board is to balance  
 17 the rights of investors in the utility with  
 18 those of customers. That's the touchstone of  
 19 why we're here. And a recent example of this  
 20 was this Board's initiative in relation to the  
 21 development of the Board's guidelines and  
 22 policy in relation to capital budget  
 23 applications, for instance. There was a  
 24 process put in place for the input of the  
 25 utilities, the Consumer Advocate and the

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1 think in the past this Board has exercised  
 2 some independent judgment as to whether or not  
 3 the utility's financial standing in the world  
 4 will actually meet with the negative, the  
 5 negativity as the utility would have you  
 6 believe in each and every case.  
 7 And I'd also observe that Newfoundland  
 8 Power, in agreeing to the rate of return in  
 9 the Settlement Agreement, was quite aware that  
 10 productivity was on the table before the  
 11 Board.  
 12 So, I guess in sum, we would suggest that  
 13 having regard to this incentive effect, having  
 14 regard to the track history, it is a fair  
 15 proposition for consumers to put before the  
 16 Board to see a measure of consistency between  
 17 '07 and '08. And I've expanded on it in the  
 18 brief and I'll move on to the next topic.  
 19 In this case, as the Board is aware, it  
 20 was not possible to resolve the issue of the  
 21 Distribution Reliability and Service Standard  
 22 issue, so it is before this Board for a  
 23 resolution. And it is obviously for you to  
 24 decide whether the arguments in favour of the  
 25 initiative outweigh the reasons for not

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1 Industrial Customers so that all views could  
 2 be considered, even though the tradition in  
 3 this jurisdiction has not been for the  
 4 Consumer Advocate to be necessarily appointed  
 5 for each annual capital budget of each  
 6 utility. But despite that, this Board  
 7 obviously believed that consumers, whether  
 8 general or domestic or industrial, should be  
 9 invited to participate. This was a matter of  
 10 importance, so I sought approval to be  
 11 appointed and I was appointed. And a few days  
 12 ago I note we all received correspondence from  
 13 the Board's counsel in connection with this  
 14 initiative advising that we will all be  
 15 contacted again for feedback when the Board  
 16 begins its formal review of these guidelines  
 17 in late 2009. And in my judgment that's  
 18 totally appropriate.  
 19 Now, as you know, I don't have a full-  
 20 time, ongoing staff or an ongoing general  
 21 appointment, but when significant issues that  
 22 affect the interests of consumers arise, I am  
 23 able to seek appointment and avail of the  
 24 services of technical or expert assistance on  
 25 terms acceptable to the Minister of Justice.

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1 MR. JOHNSON:  
 2 That's how it works. Now, there have been  
 3 recent examples of these appointments.  
 4 Newfoundland Power's Accounting Policy  
 5 Application; Newfoundland and Labrador Hydro's  
 6 Application to recover the costs of burning  
 7 one percent sulphur fuel; Newfoundland Power's  
 8 Rattling Brook Capital Budget; and indeed, the  
 9 Rate Stabilization Plan and Wholesale Rate  
 10 Review emanating out of Hydro's 2006 GRA, for  
 11 which I was given an enlarged appointment  
 12 because the work that had to be done could not  
 13 get done within the confines of that GRA.  
 14 Now, and of course, we also have in this  
 15 parties, in these parties before you, a  
 16 Settlement Agreement, in this case, an  
 17 agreement to a process for the review of  
 18 Newfoundland Power's Domestic and General  
 19 Service Rates, a process that I spoke of in my  
 20 opening statement to the Board on October  
 21 22nd.  
 22 Now, as a goal of that process is to  
 23 resolve the issue of appropriate rate designs  
 24 for inclusion at Newfoundland Power's next  
 25 GRA, which is some three years away, this

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1 at least since 1998, according to Mr. Delaney,  
 2 saying that the most important attributes of  
 3 service is reliability it provides to its  
 4 customers. But ironically, they see no role  
 5 for the Consumer Advocate when it comes to  
 6 input as to the standards in relation to the  
 7 service that customers receive and pay for.  
 8 And they see it as inappropriate for it to  
 9 report to a Board approved standard. We have  
 10 put forward a proposal and I have called  
 11 expert evidence as regards to distribution,  
 12 reliability, service standard. Now,  
 13 Newfoundland Power's customers have been, at  
 14 least since 1998 according to Mr. Delaney,  
 15 saying that the most important attributes of  
 16 service is, reliability is number one and  
 17 price is number two. But there are no Board  
 18 approved targets in place in relation to  
 19 reliability or customer service and certainly  
 20 none that involves consumer input or Consumer  
 21 Advocate input. Now, I pointed out that  
 22 Newfoundland Power reports to its own  
 23 internally developed plan targets. And I've  
 24 pointed out that they compensate themselves in  
 25 accordance with how they measure up to their

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1 process obviously calls for steps to be taken  
 2 after this GRA in order to meet that goal.  
 3 And a scope of work has not yet been  
 4 developed, but it will be developed, and  
 5 again, I'll have to seek approval. That's the  
 6 way the process works. But life goes on  
 7 beyond the GRA.  
 8 Now, I just offer this observation to you  
 9 in connection with the distribution and  
 10 reliability piece. As I see it, Newfoundland  
 11 Power sees a place for the Consumer Advocate  
 12 at the table when it comes to discussing rates  
 13 and how its various customers will at the end  
 14 of the day be paying for the service that  
 15 Newfoundland Power provides to its customers.  
 16 But ironically, they see no role for the  
 17 Consumer Advocate when it comes to input as to  
 18 the standards in relation to the service that  
 19 customers receive and pay for. And they see  
 20 it as inappropriate for it to report to a  
 21 board-approved standard.  
 22 We have put forward a proposal and I have  
 23 called expert evidence as regards a  
 24 Distribution Reliability Service Standard.  
 25 Now, Newfoundland Power's customers have been,

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1 own corporate targets, in the case of  
 2 management and executive. And these corporate  
 3 targets, just for the record, are shown in CA-  
 4 NP-340. And for instance, in 2007,  
 5 reliability for SAIFI, they're going to report  
 6 to a target of 2.63 and customer satisfaction,  
 7 89 percent, first call resolution, 87 percent  
 8 and an all injury frequency rate, et cetera.  
 9 Also, other corporate targets are earnings and  
 10 controllable operating costs which any company  
 11 would be concerned about.  
 12 Now, I just ask for you to consider that  
 13 corporate targets for 2008 will not be  
 14 improved until January 2008. And I believe  
 15 the RFIs indicate that's when Newfoundland  
 16 Power's Board of Directors, which contains no  
 17 customer representation, will meet again,  
 18 presumably after Christmas. Now, Mr. Delaney,  
 19 suggested in his evidence that if management  
 20 in Newfoundland Power were to set a SAIFI  
 21 target of 2 with warts and all, I suppose,  
 22 that that would not affect spending at  
 23 Newfoundland Power, so we'll have to wait and  
 24 see. But in any event, the point here is that  
 25 we don't have a clue as to what standards

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1 MR. JOHNSON:  
 2 Newfoundland Power will report to until their  
 3 Board of Directors gives the green light in  
 4 January. And then we won't know why they  
 5 chose those standards. Now, it sounds strange  
 6 when it's put that way, but that's the way it  
 7 is.  
 8 So, in my judgment, at the heart of this  
 9 issue is the fact that this Board is generally  
 10 charged with balancing the competing interests  
 11 of consumers and investors in utility. In my  
 12 respectful submission to you, customer service  
 13 performance targets and reliability targets  
 14 must go beyond reporting relative to company  
 15 targets. They should be Board approved  
 16 targets with consumer input, in order for it  
 17 to be a proper balance. Now, in Mr. Bowman's  
 18 original pre-filed evidence of August 6, he  
 19 recommended initially that the development of  
 20 the standard be tri-party effort led by  
 21 Newfoundland Power, which of course, is the  
 22 primary distributor in the province, with  
 23 input and review by Hydro, Consumer Advocate  
 24 and Board approval. And he recommended that  
 25 the parties co-operatively develop the scope

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1 Green Mountain Power Corporation Service  
 2 Quality and Reliability Plan. Now, as Mr.  
 3 Bowman noted in his proposed scope of work, to  
 4 reduce time and cost, he chose the Green  
 5 Mountain Standard as what he termed the Straw  
 6 Man to be modified by Newfoundland Power,  
 7 Consumer Advocate, and by--to reflect  
 8 Newfoundland Power's tracking and monitoring  
 9 capabilities and expectations of customers as  
 10 determined through direct contact, so  
 11 complaints or inquiries that Newfoundland  
 12 Power has and customer surveys that they carry  
 13 out on a regular basis, obviously at a cost to  
 14 consumers. Now, it was quite clear, I think,  
 15 to the Board, during the cross-examination of  
 16 Mr. Delaney, that Newfoundland Power already  
 17 tracks and reports on most of the data that's  
 18 even captured in that template. Now, there  
 19 might be a different standard used to, at the  
 20 call centre for instance, 80/40, 80/20, but  
 21 the nature of the information is already been  
 22 collected. This is an important point. So,  
 23 the argument of Newfoundland Power, that you  
 24 should reject the standard because of the cost  
 25 of reporting additional data and additional

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1 of work and schedule and submit it to the  
 2 Board for your review and your approval.  
 3 Now, as Mr. Bowman details in his  
 4 supplemental evidence, in response to a RFI  
 5 from Newfoundland Power, I think it was NP-CA-  
 6 12, he said, look--that he said he would  
 7 develop a scope of work and schedule and  
 8 present it to Newfoundland Power in September,  
 9 prior to the hearing, as part of the  
 10 negotiation process. And he stated that he  
 11 recommended that the Board direct that a  
 12 distribution reliability and service standard  
 13 be developed with reporting initiated under  
 14 the Standard during 2008. Now, the  
 15 recommendation was that the Consumer Advocate  
 16 would lead the development of a Standard with  
 17 input and review by Newfoundland Power. And  
 18 the Board, of course, would have approval.  
 19 Because frankly, Newfoundland Power is  
 20 not interested. So, as negotiations didn't  
 21 resolve the issue, the proposed scope of work  
 22 and a template for distribution, reliability  
 23 and service standard was created. And the  
 24 template currently has the data and  
 25 information included in the Vermont based

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1 capital for new information systems, there's a  
 2 bit of a red herring. Whether or not a  
 3 standard requires additional cost of  
 4 reporting, depends obviously on its design.  
 5 And it's only if this Board decides that cost  
 6 increases, whether they be related to  
 7 additional reporting or improved technology  
 8 that enables improved performance is justified  
 9 on the basis of customer service, will there  
 10 be a cost increase. Now, this is the same  
 11 process fundamentally as exists now, except  
 12 this time you would incorporate consumer and  
 13 Board input. So, if Newfoundland Power came  
 14 before you and said, we want to go about a  
 15 different tracking scheme, this is what we'll  
 16 do, I think the Board will say, well justify  
 17 why we should go for that.  
 18 The other issue that was raised is the  
 19 urban and rural reliability differences and  
 20 how to deal with them. Well, one way to deal  
 21 with it is to set targets for overall system  
 22 SAIDI and SAIFI, like Vermont and Delaware  
 23 does. And indeed Newfoundland Power uses  
 24 overall system SAIDI and SAIFI in their  
 25 corporate targets right now.

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1 MR. JOHNSON:  
 2 (2:15 P.M.)  
 3 Now, the business about tracking at the,  
 4 whether there be a standard at the feeder  
 5 level, I mean, that is something that is an  
 6 idea to discuss. It need not be what the  
 7 Board would approve at the end of the day, but  
 8 it is interesting that if you do look,  
 9 obviously, at the Power Policy of the  
 10 Province, that it talks about an equitable  
 11 treatment of the consumers, so it is at least  
 12 of relevance to ask, you know, what really  
 13 would that mean in the context of the  
 14 regulated environment. That's really what it  
 15 amounts to Mr. Chairman and Vice-Chair, a  
 16 suggestion, maybe this is worth a discussion.  
 17 I can't see the harm that comes from having a  
 18 discussion like that. It seems to me to be  
 19 very worthwhile. Now, at the end of the day,  
 20 it would have to be decided, does this makes  
 21 sense? What would the cost implications be?  
 22 But to cut something off at the knees because  
 23 of these type of criticisms, it seems hardly  
 24 fair. You'd wonder how you'd ever bring  
 25 forward a proposal where you run into a

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1 engineering judgment and there's certainly no  
 2 displacement of the need to carry out field  
 3 investigation, inspection and to abide by  
 4 sound engineering and asset management  
 5 practices. And as we pointed out, Fortis  
 6 Alberta operates under and reports under a  
 7 Service Quality and Reliability Plan and they  
 8 just report reliability, but they report to  
 9 standards in these customer service areas.  
 10 And as before the Board, in evidence, the  
 11 Regulator in Alberta stated that it has a  
 12 mandate to see to it that its customers  
 13 receive safe, adequate and proper service,  
 14 adjustable and reasonable rates and that this  
 15 is a way of helping it to fill its mandate.  
 16 Now, your mandate is practically  
 17 identical to the Alberta mandate in that  
 18 fundamental regard. And your mandate is also  
 19 to achieve a balance between the interests of  
 20 consumers and service providers in our  
 21 Province. And so, that's why I think I find  
 22 it a bit troubling to run into the argument  
 23 that, well now, Alberta, is only an example of  
 24 what to do where there has been demonstrated  
 25 poor performance and deteriorated customer

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1 situation where a Straw Man becomes the  
 2 whipping boy. And I've also addressed in the  
 3 argument, the cost of putting forward a draft  
 4 of the proposal. We've indicated that Mr.  
 5 Bowman has agreed to develop the draft of the  
 6 standard at no additional costs within a  
 7 couple of weeks of Newfoundland Power  
 8 responding to questions included in Attachment  
 9 A to the Brief.  
 10 So, there is also the argument that the  
 11 standard reduces management flexibility to run  
 12 the business. Well as, again, we've addressed  
 13 in our Brief, Newfoundland Power, for one  
 14 thing can keep its internal metrics by which  
 15 it pays its executives and managers and  
 16 incents them and they can certainly, I would  
 17 hope, continue to apply engineering judgment.  
 18 I can't believe that jurisdictions elsewhere  
 19 who have standards are signing on to releasing  
 20 the responsibility of the Utility to apply  
 21 engineering judgment. The standard simply  
 22 helps to align Newfoundland Power's management  
 23 priorities with regulatory priorities approved  
 24 by this Board, not by their Board, by your  
 25 Board. So, a standard is not a substitute for

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1 service. I would just point out that it is  
 2 certainly interesting, nonetheless, that when  
 3 service deteriorated, what did that Board look  
 4 to? It looked to service, quality and  
 5 reliability performance monitoring and  
 6 reporting plan. But that's another issue. The  
 7 issue here for the Board to address is whether  
 8 it accepts Newfoundland Power's argument that  
 9 reliability and service standards approved by  
 10 this Board are solely remedial and reactive in  
 11 nature. It's a key inquiry, I think, for this  
 12 Board.  
 13 My submission to you, this Board should  
 14 be wary about signing onto the notion that a  
 15 Board Approved Reliability and Service  
 16 Standard should only be considered in light of  
 17 current performance only. And to sign onto  
 18 the notion that in the absence of demonstrated  
 19 poor performance, such a policy has no useful  
 20 regulatory role. I think it's ironic  
 21 actually, that if deterioration of service  
 22 were to occur and this Board were to set about  
 23 to improve the situation by approving  
 24 standards to get the matter fixed, that you  
 25 would, in all likelihood, need both utility

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1 MR. JOHNSON:  
 2 and consumer input to do that. But because  
 3 service is good today, all Newfoundland Power  
 4 says you need to do your job is their input on  
 5 the standards that they report to. We have  
 6 addressed this matter in our Brief. As I've  
 7 indicated, if the Board sees fit to approve  
 8 the scope of work, I'm prepared to seek  
 9 authority from the appropriate authorities to  
 10 carry it out. But I would be equally happy,  
 11 frankly, with the Board doing it, if that were  
 12 the Board's intent.  
 13 I'd like to turn to the energy efficiency  
 14 issues, as I've termed them, and the first  
 15 issue on that that I would like to observe is  
 16 that--and this is particular to the  
 17 conservation advertising piece, that it's very  
 18 clear to me that Newfoundland Power and the  
 19 Consumer Advocate, that we don't even view  
 20 certain of the issues that are in dispute  
 21 through the same lens at all. At page 84 of  
 22 their written submissions, they say "In this  
 23 proceeding, the Consumer Advocate has raised a  
 24 number of issues that essentially involve  
 25 Newfoundland Power's managerial judgment in

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1 and Board of Directors. That cannot be  
 2 permitted in my respectful judgment and I  
 3 think that the public would be justifiably  
 4 mystified if that were the result. As this  
 5 Board is aware, this is what the recently  
 6 released energy plan had to say about  
 7 Holyrood, in an average year, the Holyrood  
 8 thermal generating station provides about one  
 9 quarter of the electric power capacity on the  
 10 Island of Newfoundland. It burns heavy fuel  
 11 oil, also referred to as No. 6 fuel oil or  
 12 bunker C and on average emits 1.3 million  
 13 tonnes of greenhouse gases and significant  
 14 amounts of other pollutants. It goes on to  
 15 say, "Holyrood presents the biggest challenges  
 16 for the island system in the near term. The  
 17 cost of operating Holyrood has increased along  
 18 with world oil prices, resulting in a large  
 19 portion of the rate increases for Island  
 20 customers in recent years." Now, as this  
 21 Board is aware, we are into a period of record  
 22 high oil prices and as I stated in my opening  
 23 statement to you, at Newfoundland Power's last  
 24 general rate application, power purchase  
 25 expense was then forecast to be 230 million

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1 respect of routine business issues." And they  
 2 say in respect of these routine business  
 3 issues that the Board is not the manager of  
 4 the Utility and should not, as a general rule,  
 5 substitute its judgment on managerial and  
 6 business issues for that of the officers of  
 7 the enterprise. And they say that the  
 8 evidence in respect of these routine business  
 9 issues does not support Board intervention,  
 10 and in fact, they go on to say after they've  
 11 discussed these matters involving managerial  
 12 judgment on routine business issues, they say  
 13 there is no evidence before the Board on these  
 14 matters that justifies any action by the  
 15 Board. And in particular, I thought it  
 16 striking that they put the issue of energy  
 17 efficiency communications under this routine  
 18 business decision category. You want to be  
 19 careful on that, I think, in the sense that  
 20 this Board should not see this as being in the  
 21 area of a routine business decision by  
 22 Newfoundland Power. That would be turning  
 23 over a matter of unquestioned public  
 24 importance and consumer importance to the  
 25 discretion of Newfoundland Power's management

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1 dollars. In this application, it's forecast  
 2 to be 337 million dollars. Surely the need  
 3 for messaging and consumer education on energy  
 4 efficiency and energy conservation has never  
 5 been as acute. The problem is the massive  
 6 disconnect between what's happening on the  
 7 ground with oil prices and public  
 8 consciousness over conservation and  
 9 efficiency, and Newfoundland Power's proposed  
 10 spending on advertising the message,  
 11 conservation and efficiency to its customers.  
 12 It's a disconnect between the boardroom of  
 13 Newfoundland Power and the hearing room where  
 14 customers are to be protected. It's a stark  
 15 reminder that it has to be me to tell them  
 16 that they've got to increase its spending on  
 17 paid media for TV and radio outreach, to add  
 18 to its spending to make it commensurate with  
 19 safety advertising because safety advertising,  
 20 at least that's something that we know that  
 21 they have identified and they're calling a  
 22 priority, as it is. At the hearing, it was  
 23 noted that the advertising budget for energy  
 24 conservation projected by Newfoundland Power  
 25 was in the range of \$90,000 all in print media

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1 MR. JOHNSON:  
 2 and it was noted that Newfoundland Power's  
 3 budget for the production and distribution of  
 4 promotional items, such as branded merchandise  
 5 bearing the company logo was significantly in  
 6 excess of this, I think it was around  
 7 \$115,000. Now Newfoundland Power has stated  
 8 that yes, oh yes, we hear you, but a  
 9 proportion of those promotional items, that  
 10 was allocated to non-regulated expenses. But  
 11 I submit that's merely besides the point. It  
 12 is the size of the budgetary commitment that  
 13 matters and given the admitted concerns over  
 14 Holyrood and the next incremental capacity  
 15 addition, it's inexplicable that the total  
 16 advertising budget for conservation would be  
 17 surpassed by the cost of promotional items,  
 18 regardless of their regulatory allocation.  
 19 Now, what troubles me is that we've heard  
 20 in this case sworn evidence that Newfoundland  
 21 Power, neither sought nor received an iota of  
 22 marketing advice before taking the decision  
 23 not to pursue television and radio advertising  
 24 on this message. Now they did not need  
 25 marketing advice, the evidence indicates, to

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1 testified to. I think that is good, but it's  
 2 not a substitute for missing or for  
 3 overlooking the tried and true media of radio  
 4 and TV to get this message out there. The  
 5 question that seems to me for you is whether  
 6 or not, given how Newfoundland Power has  
 7 characterized this as a routine business  
 8 decision, whether or not the Board should, at  
 9 Newfoundland Power's invitation, effectively  
 10 endorse the priorities of Newfoundland Power  
 11 in terms of its advertising and spending on  
 12 conservation and energy efficiency.  
 13 Consumers have told Newfoundland Power  
 14 and I've referred to that in my Brief, that  
 15 they want Newfoundland Power to be more  
 16 visible and in my Brief I mentioned how  
 17 Newfoundland Power's internal report on their  
 18 messaging has said, as recently as 2005,  
 19 consumers are saying that they're not really  
 20 aware of us. Now, consumers have spoken. Now  
 21 it's time that they be ordered to take the  
 22 obvious step and treat this with the  
 23 importance it deserves, like safety. And I  
 24 totally reject the idea that this now has to  
 25 wait for further study or further groups

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1 tell them to put safety ads on TV and radio  
 2 and they've admitted TV and radio audiences,  
 3 that's good for safety because you have a wide  
 4 slot of the public and that's why we're doing  
 5 that on safety. Now, they've also suggested  
 6 that yes, TV and radio is also very effective  
 7 too on energy and efficiency and conservation  
 8 when it's free. And that's why they go out of  
 9 their way to try to get on programs like "Out  
 10 of the Fog" or an NTV feature or something  
 11 like that.  
 12 Now, it's all very ad hoc and I salute  
 13 them, by the way, for doing that, you should  
 14 look for free opportunities to spread the  
 15 message, but for goodness sakes, you can't  
 16 overlook the customer's clear number two  
 17 choice as to how to receive the conservation  
 18 and energy efficiency message, as Mr. Delaney  
 19 attested to, which is through television and  
 20 I'd extend that and say radio equally applies.  
 21 You can reach countless thousands of people  
 22 all the one time.  
 23 (2:15 P.M.)  
 24 Now there's nothing wrong with their "in-  
 25 the-trenches" approach that Mr. Delaney

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1 because, Mr. Chairman, Vice-Chairman, I say to  
 2 you respectfully this ought to have been done  
 3 yesterday. The public is already there.  
 4 On the basic customer charge which is  
 5 another issue that I put under the category of  
 6 efficiency, as the Board is aware, we're  
 7 proposing that the basic customer charge for  
 8 Domestic customers be reduced by a dollar a  
 9 month. And we are somewhat surprised that  
 10 Newfoundland Power is opposed to the reduction  
 11 in the basic customer charge because it is  
 12 certainly consistent with energy efficiency  
 13 initiatives and it's also consistent with  
 14 reducing rates in the long term by reducing  
 15 production from Holyrood, both of which have  
 16 been identified as being concerns of  
 17 Newfoundland Power. I mean, I heard Mr.  
 18 Ludlow state in his evidence on October 23rd,  
 19 page 132, that the major rate pressure point  
 20 has been and will continue to be the oil burn  
 21 at Holyrood. And I heard Mr. Delaney on the  
 22 24th of October to say that it is very, very  
 23 important--or very important, I think his word  
 24 were, right now for us to be engaged in energy  
 25 conservation in this province, given where we



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1 MR. JOHNSON:  
 2 are right now. And we already know that the  
 3 energy plan dealt with the challenges, both  
 4 economic and environmental that burning heavy  
 5 oil at Holyrood poses.  
 6 Now we would submit to you that the basic  
 7 customer charge can be reduced and it's a  
 8 balancing act between the efficiency on the  
 9 one hand and the acceptable rate impacts to  
 10 customers on the other, and I'm attune to  
 11 that, but I'm also attuned to where we find  
 12 ourselves. There's evidence before you as  
 13 introduced by Mr. Bowman, which is CDB 3,  
 14 which shows that if the basic customer charge  
 15 is reduced by a dollar a month, consumers  
 16 consuming less than 1500 kilowatt hours per  
 17 month, which represents over 67 percent of the  
 18 customers in the class, will see reduced bills  
 19 or remain mostly indifferent compared to the  
 20 Newfoundland Power proposal to freeze the  
 21 basic customer charge at current levels.  
 22 Customers consuming more than 2000 kilowatt  
 23 hours a month representing less than 16  
 24 percent of customers in the class would, in  
 25 fact, see higher bills relative to the

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1 I'd like now to turn to intercorporate  
 2 relationships. The intercorporate  
 3 relationships is really interesting in a  
 4 couple of difference senses because it really  
 5 is an insight into what incentives are there,  
 6 in terms of whether a regulated utility that  
 7 can have transactions with intercorporate  
 8 affiliates are truly motivated like an arm's  
 9 length party would be and I know the Board is  
 10 struggling to try to achieve a fairness for  
 11 the consumer because you're quite attuned as  
 12 you were in P.U. 19 to how you meet the  
 13 uniqueness of these transactions and what can  
 14 we do to mimic the market in a sense is really  
 15 what it amounts to. And just let me share a  
 16 couple of observations with you on this. You  
 17 take the concept of charging an affiliate,  
 18 whether it be Fortis or some other affiliate,  
 19 based on fully distributed cost, for instance.  
 20 Now, I sort of try to make an analogy in my  
 21 own mind as to how this would work in a real  
 22 life situation. I got a buddy of mine who  
 23 sells ski-doo's at a dealership and he's after  
 24 saying more than once, "if you ever get into a  
 25 market for a ski-doo, I'll give you one at

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1 Newfoundland Power proposal ranging from .29  
 2 percent to .63 percent higher than under the  
 3 Newfoundland Power proposal to freeze the  
 4 basic customer charge. And, of course, the  
 5 largest rate increases for those consumers  
 6 consuming more than 3000 kilowatt hours a  
 7 month. But it is worth noting that the  
 8 largest bill impact is still more than two  
 9 percent than the seven percent increase  
 10 originally proposed by Newfoundland Power for  
 11 these customers.  
 12 My submission to you is that the decision  
 13 to reduce the customer charge by a dollar does  
 14 not require a change to the rate design. And  
 15 I'm concerned about delaying the decision to  
 16 reduce the basic customer charge until after  
 17 the Rate Design Study because that will forego  
 18 an opportunity to reduce production from  
 19 Holyrood for at least three years through this  
 20 initiative, and we believe that this would be  
 21 inconsistent with, you know, the tenace of the  
 22 energy plan and indeed Mr. Ludlow's testimony  
 23 that the major consideration with regard to  
 24 rates is the price of oil and Holyrood  
 25 production.

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1 cost." And I haven't taken him up on it, but  
 2 it strikes me, though, that he's essentially  
 3 saying "Tom, I know you, you know me, I'll  
 4 sell it to you at cost. I'm not trying to  
 5 maximize my benefit in my transaction with you  
 6 because there's other good and valuable  
 7 consideration flowing, friendship", whatever.  
 8 In essence, this is where I run into the  
 9 problem on the insurance piece, for instance,  
 10 the staff time on insurance. Now, this is, I  
 11 understand it, being treated as an exception  
 12 to the fair market value rule because it's a  
 13 shared service and we're going to charge off  
 14 that time at fully distributed cost.  
 15 Now the evidence would show that over the  
 16 years, it's obvious Mr. Knight and his people  
 17 are good at what they are doing because  
 18 there's more and more joining the family at  
 19 FortisAlberta, FortisBC, but the revenue line  
 20 in terms of providing administration of that  
 21 service is flat, as we've seen in the  
 22 evidence. I think it's around 150,000 bucks.  
 23 Now, I can't think for the life of me of  
 24 another business that operates at arm's length  
 25 to others where that would be the case. A

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1 MR. JOHNSON:  
 2 regular business would not be looking at it  
 3 like that, they'd be looking, as this Board  
 4 has indicated in your decision in P.U. 19,  
 5 that look, you've got to make sure that you  
 6 maximize the benefit. Now I've not questioned  
 7 in this proceeding the pooling that  
 8 Newfoundland Power and its affiliates does in  
 9 relation to insurance. We've gone through the  
 10 insurance review and, you know, large  
 11 sophisticated entities can often avail of that  
 12 and produce a savings, that's good, it's  
 13 working. What I'm talking about is the  
 14 administration of it. They've got this in-  
 15 house expertise, I mean, this is not a clerk  
 16 that we're talking about here. This is a  
 17 person who, as I've brought to your attention  
 18 Mr. Hughes in the last hearing and there's an  
 19 information item on that, talked about go to  
 20 Belize, go to the Maritimes, and helped them  
 21 through the insurance issues. This is high  
 22 level of expertise here and the notion that we  
 23 are what, maximizing a benefit by charging it  
 24 out at cost? That just escapes me completely,  
 25 I can't believe that that would meet any

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1 hearing that for the first time and it's not  
 2 evident from the record, so I'll take them at  
 3 their word. My point is that it just  
 4 highlights that staffing, if it's going to be  
 5 done, has got to be done at fair market value  
 6 or a reasonable proxy, end of issue. That's  
 7 what maximizing the benefit to Newfoundland  
 8 Power's customers means in my judgment.  
 9 The notion that oh, no, no, you've got to  
 10 be careful now because you got to realize that  
 11 when we send off a staff person, they're  
 12 picking up all sorts of, you know, good stuff.  
 13 Well, that's fine and dandy, but they're  
 14 assisting Fortis or the other affiliate while  
 15 they're out there too now, so let's not get  
 16 carried away and in arm's length transactions,  
 17 if I was running the firm and I was providing  
 18 one of my people at arm's length, I wouldn't  
 19 reduce my fees or my charges because the  
 20 person I'm sending out is picking up a bit of  
 21 valuable learning experience. What self-  
 22 interested company acts in that manner? I  
 23 can't think of one, so you've got to be very  
 24 cautious to start ascribing this intangible  
 25 with this demonstrable benefit because I just

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1 definition of maximizing the benefit for the  
 2 benefit of consumers, that that should not be  
 3 an exception to the fair market value rule.  
 4 On the staffing piece in particular and  
 5 I'm not talking about executive or management  
 6 staffing now for the time being, but just  
 7 staffing in particular. We think that in the  
 8 context of the Board's decision in P.U. 19  
 9 that talked about a duty to provide  
 10 demonstrable benefit, a maximized benefit to  
 11 consumers of any staffing transaction or any  
 12 supply of any item, that that's not consistent  
 13 with charging it out at cost, even if it's a  
 14 fully distributed cost. Now I hear what Mr.  
 15 Kelly says when Newfoundland Power says we're  
 16 very transparent about it. I'm not  
 17 questioning the transparency about it, I'm  
 18 questioning the charge, that it's not  
 19 consistent with maximizing the consumer  
 20 benefit. Now this, this notion and by the  
 21 way, it appears that Mr. Knight was the  
 22 individual, according to Mr. Kelly, who  
 23 assisted Mr. Alteen on that transaction. Now  
 24 it appears that they had him charged out at  
 25 fair market value on that transaction. I'm

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1 point out to you, as I did in the Brief, that  
 2 this Board surely will recognize in P.U. 19  
 3 when you said we are not happy with executives  
 4 and managers being just charged out at cost.  
 5 We think there should be a look at that, like  
 6 you did. Now, you wouldn't have had to do  
 7 that at all if the intangible of Newfoundland  
 8 Power's executives and managers going out to  
 9 Alberta or Saskatchewan or wherever they're  
 10 going, provided demonstrable benefit.  
 11 (2:45 P.M.)  
 12 Finally we turn to the executive and the  
 13 management issue. Well, I'm sure Mr. Alteen  
 14 must delight in my having to make the argument  
 15 of the value that he represents in doing these  
 16 transactions and I don't mind doing it, he's a  
 17 very fine fellow and a very fine lawyer. My  
 18 issue is that it's troubling to me that we  
 19 have a gentleman with such experience who is  
 20 engaged in these transactions and this is not  
 21 like buying the fish and chip shop down in  
 22 Portugal Cove, these are billion dollar  
 23 transactions and it's troubling to me that  
 24 when I see, as I've put before you in the  
 25 MR. JOHNSON:

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1 information item, these other firms from  
 2 across the country and firms including McInnes  
 3 Cooper, I'm telling you they would not lace up  
 4 the skates for that type of rate. Now if  
 5 anything a lawyer is good at, is having a  
 6 market rate. Now it seems to me that we've  
 7 got to be sensible about this. When you are  
 8 written up in an expert magazine and you're  
 9 listed as being the solicitor to Fortis on a  
 10 transaction, well I'm sorry, I have an  
 11 expectation and consumers do too that Fortis  
 12 should pay what they would be paying to an  
 13 outside counsel. If anything, if anything,  
 14 the involvement of someone embedded, like Mr.  
 15 Alteen, brings even more value than what an  
 16 outside counsel can provide because they know  
 17 the shop inside and out. That is why my  
 18 suggestion to you is that prior to, they  
 19 should have the onus here, they should have  
 20 the onus. Prior to legal work being engaged  
 21 and in the future, they have got to satisfy  
 22 you that they are charging out a rate  
 23 competitive in the market, commensurate with  
 24 the experience of the lawyer involved and  
 25 commensurate with the type of work. It is

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1 what these people charge. We know that, and  
 2 they're bringing this valuable counsel and in  
 3 Mr. Alteen's case, \$170.00 an hour, I mean,  
 4 it's just one of those things where it seems  
 5 to me I cannot, in good conscience, say to you  
 6 that yes, I can live with that 20 percent mark  
 7 up. And as I suggested in my Brief, I can't  
 8 suggest to you that I could live with the 25  
 9 percent mark up that the CRTC used to apply  
 10 years ago. And that's why I suggested, look,  
 11 if you're going for a mark up, the Board will  
 12 be its own decision maker on the mark up, but  
 13 there should be some element of a stand-by fee  
 14 too, in this sense, we know from the track  
 15 history how much Newfoundland Power's  
 16 executives have been called up, there's just  
 17 no question about it. And I don't know  
 18 anybody, including this Board, would have  
 19 dreamed that in 2003 they would have ended up  
 20 clocking 3000 executive hours for those  
 21 transactions, and see now what we're being  
 22 told is now, look, what's done is done, that's  
 23 in the past, this is the new us now, there's  
 24 2008, 2009, that's not what we're going to be.  
 25 But now, I'm from Missouri, okay, that's like

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1 disappointing that Newfoundland Power didn't  
 2 see fit to bring this information before the  
 3 Board in terms of what the other lawyers have  
 4 gotten, but I can assure you, it would have  
 5 opened the eyes had they done so. And this  
 6 really goes--and that's a case where in my  
 7 judgment we have an observable market, okay.  
 8 Now, in the case of the other executives, what  
 9 strikes me is that they're saying there's no  
 10 readily ascertainable market for these  
 11 executive services, but the implication of  
 12 what they're saying is that we've gone across  
 13 the country, there's no ascertainable market  
 14 and here now, what we've done, is we've looked  
 15 at the highest and now we're charging the  
 16 highest, so is that good? I mean, that's  
 17 basically what it is. But it seems to me that  
 18 the consumer is nearly getting penalized  
 19 because of the lack of the observable market  
 20 here in this case when if all we're talking  
 21 about is a 20 percent mark up on the rate.  
 22 Because I look at what Mr. Alteen's rate is at  
 23 20 percent and I'm saying, guys, come on,  
 24 there's not a consultant whoever appears in  
 25 this room who doesn't charge well in excess of

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1 buying a "pig in a poke", we don't have a  
 2 clue, they're not making any undertaking to us  
 3 or me or you that they're not going to be  
 4 heavily involved if it's not '08, '09, '010.  
 5 That's why I'm inviting the Board to say  
 6 listen, we can see there can be affiliate  
 7 transaction work done, but we have got to put  
 8 a limit on what amount is acceptable. We have  
 9 security laws which prevent these ladies and  
 10 gentlemen when they take the stand from  
 11 telling us what's on Fortis' horizon. It is  
 12 illegal for them to tell us. I can't even  
 13 cross-examine them on what might be coming  
 14 down the pipes. So I'm very uncomfortable  
 15 about saying, oh no, because it's a hundred  
 16 thousand projected now, that that's all we've  
 17 got to be concerned about. I think that  
 18 misses the boat entirely.  
 19 The other issue that I have is that I'm  
 20 quite concerned as to how the evidence from  
 21 Newfoundland Power indicates that in their  
 22 assessing the appropriate or their survey of  
 23 mark ups from across the country, that they  
 24 didn't take into account if the utility in  
 25 MR. JOHNSON:

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1 question was a net seller or a net buyer.  
 2 Now, see to me, that is indeed a very relative  
 3 circumstance because at the end of the day, we  
 4 want the rate to reflect the value of the  
 5 service that is being provided to the Fortis  
 6 affiliate. Now for the life of me, it  
 7 ignores--when you ignore the track history of  
 8 how much a utility has been called upon in the  
 9 past to come up with the rate, that it seems  
 10 quite difficult to say that you're actually  
 11 maximizing the value to the customer. I mean,  
 12 how in the world, I mean, if I'm Newfoundland  
 13 Power and I was self interested, as they  
 14 should be, how in the world would I overlook  
 15 in my transactions with an arm's length party,  
 16 my tradition of having provided you a lot of  
 17 top notch quality service in the setting of my  
 18 rate. That doesn't make sense, so that's why  
 19 I view it as material, the admission by  
 20 Newfoundland Power that they didn't bother to  
 21 look at whether those other utilities have  
 22 that type of relationship with their parent or  
 23 not.  
 24 I think I would be derelict in not  
 25 observing one further thing about the time

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1 I would finally say that it's a bit  
 2 artificial, in my judgment, to say that we  
 3 should be concerned about a standby charge  
 4 when, because vis-a-vis the stand alone issue,  
 5 when we know defacto that Newfoundland Power  
 6 has been quite quite available to Fortis, and  
 7 I mean, that's the defacto situation. And if  
 8 that hasn't affected stand alone, why would a  
 9 retainer policy and a tailored rule regarding  
 10 how much work you can do for the utility cause  
 11 a problem?  
 12 The Intercorporate Code of Conduct for  
 13 Newfoundland Power is also addressed in my  
 14 Brief. I think that it is, this Board in P.U.  
 15 19 in recognizing the thorny issue that  
 16 intercorporate transactions can be, heavily  
 17 looked at the pricing issue and said, you  
 18 know, this is something that's got to be  
 19 looked at and a concerned policy effort. And  
 20 I think that the relationships amongst Fortis  
 21 companies now, that it is time for the Board  
 22 to take on board and consider a broader code  
 23 of conduct, like your sister board in Alberta  
 24 has done for the utilities out there, and  
 25 certainly as the evidence shows in this case,

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1 that was done in 2003 by the executive. And  
 2 the Board has concluded that they followed  
 3 that order, that's fine and Grant Thornton has  
 4 said it, so that's fine. But it's telling and  
 5 from another point of view, okay, and it goes  
 6 back to this theme of maximizing the value for  
 7 the customer. They followed the order to the  
 8 letter, okay, but if a utility was truly  
 9 interested in maximizing the benefit to  
 10 consumers, they should have been motivated to  
 11 apply the mark up earlier, knowing all the  
 12 work that they were doing for Fortis. You  
 13 perhaps wouldn't have known everything they've  
 14 known on that, but they knew. And just ask  
 15 yourself would a company dealing at arm's  
 16 length delay making a profit until the last  
 17 possible minute and after which the  
 18 opportunity to make the profit had already  
 19 passed. For whose demonstrable benefit was  
 20 this? I would suggest to you that a company  
 21 who was interested in maximizing the benefit  
 22 would have been all over this, post haste.  
 23 The ink would not have been dry on your order  
 24 and in fact, you would not have even had to  
 25 tell them.

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1 FortisAlberta is under that type of regime and  
 2 they certainly have not had near the lop sided  
 3 relationship with its parent as Newfoundland  
 4 Power has traditionally had in this  
 5 jurisdiction. So there is fundamental issues  
 6 of confidentiality of information, board  
 7 governance and separation of functions, et  
 8 cetera, for the Board to consider in this  
 9 regard and I would suggest that the Board  
 10 undertake a process aimed at codifying a more  
 11 comprehensive code for Newfoundland Power.  
 12 With respect to the safety communications  
 13 co-ordination, again, I've addressed that in  
 14 my Brief, but I certainly did not think that  
 15 the evidence in this case disclosed that there  
 16 was enough co-ordination going on between  
 17 Hydro and Newfoundland Power. I don't know  
 18 how you can really suggest that there is when  
 19 you admit that you really don't know what  
 20 they're planning to do and what they're going  
 21 to execute upon in terms of communication  
 22 strategy et cetera, until after they've done  
 23 it, notwithstanding that there's some  
 24 conversations going on between the two. That,  
 25 MR. JOHNSON:

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1 to me, is not the type of co-ordination that  
 2 we should have in mind for our two utilities  
 3 on a safety issue, particularly public safety  
 4 and customer safety piece. I mean, there  
 5 should be no property rights in the safety  
 6 message. I mean, that should be something of  
 7 joint utility concern and frankly, that's why  
 8 in my recommendation I've suggested that they  
 9 report, that Newfoundland Power report back to  
 10 you as to what steps it's taking in that  
 11 regard to improve the co-ordination as  
 12 outlined in my Brief at paragraph 93. I think  
 13 it's vitally important that the public know  
 14 that the utilities are on the same page on  
 15 these types of issues.

16 Finally on the vacancy issue, this--if I  
 17 were here suggesting that you should order  
 18 Newfoundland Power to go back to using the  
 19 position vacancy approach or the SAP model in  
 20 Alberta, yeah, I could expect some push back  
 21 on that, that's fair enough and by judging by  
 22 what they're saying, their system has been  
 23 working pretty good internally, it's produced  
 24 a fair bit of productivity. But my question,  
 25 frankly, was more to do, coming out of the

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1 explanation as to how those assumptions were  
 2 arrived at, is a fairly modest proposition, it  
 3 seems to me. That certainly doesn't trench  
 4 upon the management function.

5 (3:00 P.M.)

6 Mr. Chairman, Vice Chairman, I guess in  
 7 terms of a wrap up conclusion on this, I think  
 8 the themes that I would invite you to bring to  
 9 your determination really and truly have to do  
 10 with your balancing role between the customer  
 11 and the investor in the utility. That theme  
 12 permeates a number of my issues and I think  
 13 that it will be justice well served if you  
 14 reflect on those comments and see how the  
 15 balance can be better achieved by the  
 16 decisions that you deliver following your  
 17 deliberations.

18 In closing, I would like to say to you  
 19 and Vice Chair and Ms. Newman and everybody  
 20 else associated with the Board and on behalf  
 21 of my friend, Mr. Willar, that it has been  
 22 enjoyable once again to appear before you.  
 23 It's been nice to work with Mr. Kelly and Mr.  
 24 Hayes and I thank you very much for your  
 25 attention.

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1 cross-examination of Mr. Delaney where it was  
 2 exceedingly difficult to get a handle on the  
 3 type of assumption they bring to bear on their  
 4 vacancy. We know every organization has  
 5 vacancies and Mr. Delaney said it's really  
 6 tangly and complicated if you try to do it on  
 7 a position basis. Okay, fair enough, but what  
 8 he described to me in terms of how to do it on  
 9 a person-to-person basis was no less tangly or  
 10 complicated in my submission and that's why in  
 11 the Brief I mentioned the instance of the  
 12 occupational nurse. Is he or she going to be  
 13 around, these are type of assumptions that are  
 14 important, not just for their running of the  
 15 business, but for the rate setting process  
 16 because it allows the intervenor and the Board  
 17 to get a sense of the type of vacancy  
 18 assumption that they're bringing to bear when  
 19 they project their labour costs forward for  
 20 the test year. And therefore, it seems to me  
 21 that my request in my Brief that the Board  
 22 order Newfoundland Power to file, as part of  
 23 its next GRA, a detailed description of the  
 24 method used to forecast its test year FTE's  
 25 and labour expense forecast with a detailed

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1 CHAIRMAN:  
 2 Q. Thank you very much, Mr. Johnson. Do you have  
 3 any questions? I passed by yourself last  
 4 time, I'm sorry about that.

5 MS. NEWMAN:  
 6 Q. No, no questions or comments.

7 CHAIRMAN:  
 8 Q. No questions. Any questions?

9 VICE CHAIR:  
 10 Q. No questions.

11 CHAIRMAN:  
 12 Q. I have no questions, thank you very much. I  
 13 think Mr. Young advised that he wouldn't be  
 14 here, in deed we received no written  
 15 submission from Hydro either. Mr. Kelly, any  
 16 rebuttal?

17 KELLY, Q.C.:  
 18 Q. No, Mr. Chairman, the matter has been fully  
 19 canvassed.

20 CHAIRMAN:  
 21 Q. Thank you very much. I want to thank both  
 22 counsel actually for a comprehensive, focused  
 23 and indeed concise oral argument this  
 24 afternoon. It's only been a couple of hours

25 CHAIRMAN:

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1 and certainly the written documentation that  
 2 was provided as well were quite comprehensive  
 3 so I thank yourself, Mr. Kelly, and Mr.  
 4 Johnson, Mr. Willar and Mr. Hayes for that.  
 5 This brings to a conclusion this particular  
 6 public hearing into Newfoundland Power's, I  
 7 guess General Rate Application and while the  
 8 panel indeed, has we normally do, reserve the  
 9 right to reconvene on any matters at the call  
 10 of the Chair, I'm hoping and sincerely trust  
 11 that that won't be necessary. It is the task  
 12 now in which Ms. Whalen and myself to sift  
 13 through the evidence presented during the  
 14 hearing, including the Settlement Agreement  
 15 and render as fair equitable and expeditious  
 16 decision as possible. I want to thank all the  
 17 parties indeed for your significant work and  
 18 co-operation throughout the hearing and in  
 19 reaching the Settlement Agreement that we've  
 20 done on this case. I also want to acknowledge  
 21 the work of Mark Kennedy in effect that he  
 22 facilitated in this particular agreement and I  
 23 would note that the Provincial Government,  
 24 through the auspices of the Minister of  
 25 Business in a press release dated actually

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1 And with that in mind, I want to thank Doreen  
 2 Dray who is back in the corner there, our  
 3 Financial and Economical Analyst and Barbara  
 4 Thistle, the Assistant Board Secretary who  
 5 today is filling for Ms. Blundon and has done  
 6 so in the past. On everybody's behalf, I'm  
 7 sure I want to extend my sincere appreciation  
 8 to Chris Wells and Jennifer, thank you very  
 9 much for today, and indeed Mike McNiven of the  
 10 Board for assisting with the technical portion  
 11 of the hearing and that's always important, it  
 12 seems to aid in our getting through the  
 13 evidence. Also I want to acknowledge the work  
 14 of Discoveries Unlimited, Judy Moss. Judy,  
 15 thanks in providing the transcription services  
 16 and indeed, pass along our appreciation to  
 17 your employees who work behind the scenes to  
 18 produce these transcripts accurately and on  
 19 time for us. Also Grant Thornton our  
 20 financial consultants as well who provide  
 21 input to us during these hearings. I want to  
 22 also recognize the continuing support and co-  
 23 operation of my own colleague to my left here,  
 24 Darlene Whalen, the Board's Vice Chair.  
 25 Currently we remain the only two commissioners

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1 October 26, 2007 speaking to red tape,  
 2 reduction initiatives recognized this  
 3 particular alternative dispute resolution  
 4 process as an efficient tool in serving the  
 5 interest of utility regulation and electricity  
 6 consumers throughout the province. And it was  
 7 good to see this achievement being recognized  
 8 in this way and I believe that all the parties  
 9 in the room can take credit for its considered  
 10 success. I don't know if you had seen it, but  
 11 we do have a cop of it and we'll provide that  
 12 to you. It's the only example that was used  
 13 in the press release. I'm not sure if that's  
 14 good or they were struggling. In any event, I  
 15 also want to express my appreciation to the  
 16 witnesses for their testimony and the clarity  
 17 in which it was delivered. I also want to  
 18 acknowledge the work of Ms. Newman and Ms.  
 19 Blundon who is in Scotland as we speak, for  
 20 their efforts in ensuring that the hearing  
 21 proceeded in a seamless fashion and while  
 22 things go fairly smooth during the course of  
 23 the hearing, there's undoubtedly a lot of  
 24 planning and organization by Board staff that  
 25 goes on behind the scenes to make this happen.

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1 with the Board and her continued co-operation  
 2 in these circumstances plays an absolute  
 3 essential role in the successful operation of  
 4 the Board. In closing, we will be conducting  
 5 our deliberations into the matters before us  
 6 in as a continuous manner as possible,  
 7 recognizing that there is only the two of us  
 8 at this point in time. It would be premature  
 9 at this stage to try to speculate on precisely  
 10 when a final order may be issued, but  
 11 certainly in a timely fashion with a view to  
 12 the proposed implementation dates for rates in  
 13 January of 2008. The panel will be, however,  
 14 taking the necessary time to ensure the order  
 15 is fair, thorough and complete and have it  
 16 available within the earliest practical time  
 17 frame. This hearing is now adjourned and  
 18 unless recalled by the Chair, which I don't  
 19 deem will be necessary, I'm sure. I want to  
 20 thank you all for your co-operation and we'll  
 21 see you next time, whenever that might be.  
 22 Thank you kindly.  
 23 Upon conclusion at 3:10 p.m.

1 CERTIFICATE

2 I, Judy Moss, hereby certify that the foregoing is a true  
3 and correct transcript in the matter of Newfoundland  
4 Power's 2008 General Rate Application heard on the 5th  
5 day of November, A.D., 2007 before the Board of  
6 Commissioners of Public Utilities, Prince Charles  
7 Building, St. John's, Newfoundland and Labrador and was  
8 transcribed by me to the best of my ability by means of  
9 a sound apparatus.  
10 Dated at St. John's, Newfoundland and Labrador  
11 this 7th day of November, A.D., 2007  
12 Judy Moss