

1 **Q. In reference to the evidence of Barry Perry, page 13, lines 14 to 20, provide a**  
2 **schedule which shows the dollar amount of variances of the actual return on equity**  
3 **achieved in each year from the maximum return on equity which would result if the**  
4 **upper range on equity had been limited to twenty-five basis points above the**  
5 **awarded Board level.**

6  
7 A. Section 80 (1) of the *Public Utilities Act* entitles Newfoundland Power to earn a just and  
8 reasonable return (as determined by the Board) on the rate base fixed and determined by  
9 the Board.

10  
11 On July 25, 1996 the Consumer Advocate requested the Board “make an immediate  
12 Application to the Supreme Court of Nfld, Court of Appeal, pursuant to its jurisdiction  
13 under section 101 of the Act to deal with (the) matter of rate base.”

14  
15 The Board agreed and stated a case for the opinion of the Court of Appeal which included  
16 the following question:

17  
18 Q. 1. (ii) “Does the Board have jurisdiction....to set and fix the return  
19 which a public utility may earn annually upon the investment which the  
20 Board has determined has been made in the public utility by the holders of  
21 common shares.”

22  
23 The answer to the question 1. (ii) proposed to the court was “No”.

24  
25 Mr. Justice Green (as he then was) in his majority opinion, rendered on June 15, 1998,  
26 said in paragraph 58:

27  
28 58. The Consumer Advocate submitted that inasmuch as s-s. 80(1), by its  
29 express language, contemplates that the only measure of what NLP may  
30 earn annually is to be determined by a just and reasonable return on rate  
31 base, to allow the utility to measure what it may earn annually based upon  
32 a different factor, such as a rate of return on common equity which could  
33 very well be higher than the overall rate of return on rate base and might  
34 lead to a higher overall return that could be said to be justified, would be  
35 to allow the utility to earn more than that to which it is statutorily entitled.

36  
37 The Board has no jurisdiction to set or fix the return which Newfoundland Power may  
38 earn annually on its equity.

39  
40 The Board has jurisdiction to set and fix Newfoundland Power’s return on rate base, to  
41 set the rates of return on rate base as a range of permissible rates of return and to require  
42 the utility to dispose of any revenue excess to the return which Newfoundland Power may  
43 earn annually on its rate base in a manner determined by the Board.

- 1        The calculation requested by CA-512 is neither relevant nor necessary for a satisfactory  
2        understanding of the issues in this case.