

MAINE STATE LEGISLATURE

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JUN 13 1985

AUGUSTA, MAINE

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PROCEEDINGS

CHAIRMAN BALDACCI: There is the reconvening of the Joint Select Committee to Investigate Public Utilities meeting of yesterday. Today we have the vice president of New England Telephone, Mr. Richard Jalkut.

Mr. Jalkut, do you have prepared testimony?

MR. JALKUT: Yes, I do, Senator, and I think Al Warren has copies for everybody on the committee as well as the staff.

CHAIRMAN BALDACCI: While Al is distributing those, would you please stand and raise your right hand and repeat after me.

Richard J. Kutt was sworn in.

MR. TALKUT: Senator, if I could please introduce some of the other New England Telephone personnel here. I think most of you know Al Warren, who is our lobbyist here in Augusta, Chris Bennett, who is our in-house attorney who represents us in the State of Maine, and John Racant, I think is over there on the right-hand side, our public relations manager.

It might be worth while to take a moment just to review what is in the documents so you can follow along with what I'm saying, there is a table of contents, a copy of my opening statement, there is a copy of our code of business conduct, called 'Personal Responsibility, which is dated March

1 of 1983, which is an update from the last version we had
2 which is here, dated March of 1982. There is also a document
3 entitled Guidelines for Tracking and Reporting Activities and
4 Expenses, under Chapter 83, which is the Public Utilities
5 Commission rule. There is a New England Telephone commercial
6 practice dated August of 1975, that states the rules and
7 regulations by which New England Telephone personnel are to
8 handle political campaign services for candidate seeking
9 office when they require telecommunications services, and
10 lastly there is a document signed by Al Warren dated June 17,
11 1984, to the department heads that work for me in the State
12 of Maine, discussing what our policies are for political
13 campaigns.

14 I have a brief opening statement. In my brief
15 opening statement I would like to describe New England
16 Telephone's public affairs process in Maine, discuss our
17 practices for reporting political and lobbying expenses, and
18 explain why they were changed, discuss our policy relating to
19 telecommunications provisioning for political candidates,
20 describe the history and status of PACs, discuss our code of
21 business conduct, and lastly, make several recommendations to
22 the Committee.

23 First of all, I would like to compliment this
24 Committee for its diligence, professionalism, and cooperation
25 in its dealings with New England Telephone and its personnel.

1 Since we're in the business of being regulated we
2 are used to answering data requests and interrogatories. The
3 41 questions that you posed to us last spring were very well
4 prepared and integrated. When it became obvious that we
5 would not be able to respond quickly with a quality job we
6 solicited the cooperation of your staff in giving us more
7 time. They were very cooperative then and have been all
8 along in dealing with our staff. We appreciated the openness
9 of communication.

10 To move to the purpose of my being here today, New
11 England Telephone certainly understands the Committee's
12 generic concern about the potential improper use of rate
13 payer funds being used to fund political activities. We also
14 understand that for a Committee undertaking of this magnitude
15 that great care in analyzing detail and sufficient time to do
16 the job right were necessary as opposed to a quick review.

17 New England Telephone in Maine has a public affairs
18 manager. When you meet him in the State House you call him a
19 lobbyist. His name is Al Warren, and he is the only person
20 assigned to this function in the state. His predecessor's
21 name, and many of you knew him, was Bob Catell, who retired
22 several years ago.

23 Mr. Warren's duties and responsibilities include
24 reviewing state and federal legislation to assess their
25 impact on our business, its customers, employees, rate payers,

1 recommending specific positions our company should take on
2 legislation, and then trying to work with the Legislature in
3 an educational lobbying capacity to sell our ideas. In
4 addition, Mr. Warren has the responsibility to recommend
5 specific legislation to New England Telephone that he
6 believes is in our best interest. If his ideas are accepted,
7 he works on a draft and then attempts to find a sponsor.

8 In the course of doing his job, Mr. Warren will
9 interact with many elected and appointed officials,
10 legislative assistants, and staff, to assist in their
11 undertaking of specific issues that effect the company and/or
12 the rate payer. On a federal basis he will have some contact
13 with the Maine delegation's staff from time to time.

14 As you well know, there is a requirement that each
15 lobbyist working in Maine file a specific report with the
16 Secretary of State's office essentially quantifying the
17 amount of lobbying time and the associated value of that time.
18 Both Bob Catell and Al Warren filed these reports annually.

19 In addition to the Secretary of State's
20 requirements, there is also a PUC rule covering this same
21 general area. It's known as Chapter 83.

22 Until our last rate case, which coincided with some
23 publicity about this Committee and, quote, the political
24 activities of utilities, New England Telephone had always
25 declared the Secretary of State's report of hours and dollar

1 value to the PUC for the ultimate disallowance of that
2 expense in a rate case. The dollar value was even carried
3 forward and printed in the Form M, which is the report to
4 which we were obliged to perform at the end of a given
5 calendar year accounting for all of our revenues and expenses
6 to the Public Utilities Commission.

7 Until our last rate case this reporting mechanism,
8 although it was in error, was not challenged by the
9 Commission or any of the intervenors in the numerous rate
10 cases. This statement is not intended as an excuse for not
11 following Commission procedures, but just as an illustration
12 of how our error compounded itself.

13 During a hearing in January the Public Advocate's
14 attorneys questioned several of our witnesses, including me,
15 about the difference in the reporting requirements of Chapter
16 83 of the PUC's rules and Secretary of State's rules.
17 Immediately we recognized the error we had made in assuming
18 one was a surrogate for the other. We knew that past
19 practice was not correct. We read a statement into the
20 record of the hearing the very next morning promising to
21 rebuild our data to coincide with the test year being
22 examined by the Public Utilities Commission.

23 After an in depth review of the lobby disclosure
24 rules and the Chapter 83 requirements, we corrected our
25 testimony in the rate case. In addition, on April 11th, 1984,

1 we published guidelines for tracking and reporting activities
2 and expenses under Chapter 83. Upon completion of our
3 refiling of political activities expense, in an extensively
4 detailed document with work papers, I was cross-examined at
5 length by the Commission, its staff, and the Public Advocate
6 about the process we used and the amount we reported.

7 To give you some idea of the size of the document
8 and the degree of detail these two binders represent the
9 documents that I'm talking about for one calendar year.

10 I hope you can see how one mistake, made a long
11 time ago, in assuming that one report satisfied the
12 requirements of another, caused this problem. Unless the
13 Public Advocate had brought this to our attention, largely
14 due to the work, I'm sure, of this Committee, we may have
15 made the same mistake for another year.

16 I would like to point out that there is significant
17 differences in the assumptions used in the two sets of rules.
18 One focuses on time spent by lobbyists, primarily for
19 lobbying within the State House. The other rule is far more
20 broad, even including public talks given by company officials
21 at business and consumer meetings.

22 I would make a strong recommendation that you review the
23 requirements of political activity rules and laws within
24 branches of state government to consolidate them where
25 possible, and define with some specificity what you want

1 reported as a Committee.

2 Another area of our business that brings us in
3 constant contact with the political process is providing
4 telephone facilities during election periods.

5 Given the nature of the political fund raising
6 process, money is usually on the short side and campaign
7 managers always have some better purpose for it than to give
8 it to New England Telephone, especially in the forms of
9 deposits. Appeals to me from Democrats and Republicans for
10 local, state, and federal elections are routine.

11 Our objectives in developing specialized written
12 procedures in 1975 to handle these requests were to provide
13 good service for these customers, insure that the bills would
14 be paid, and to insure that we would maintain a strict
15 neutrality with respect to the candidates.

16 Toward those ends, we have appointed highly trained
17 specialists who work in our business office to interface with
18 the candidates and their staffs. If either Al Warren or I
19 receive a direct request for service or relief from a
20 procedure, we refer the customer to our specialists, who for
21 the most part get very high marks from candidates for being
22 articulate and cooperative about explaining the particular
23 deposit and payment options.

24 It is also our practice to remind our various
25 department heads in the state, during the spring, that any

1 violation of our rules is a serious offense, and you have a
2 copy of that last memorandum.

3 In addition to providing telephone service to
4 candidates, we are also asked to allow them to tour our
5 buildings and meet our employees. We attempt to be
6 cooperative, but again, consistent with the rule. In general,
7 we will allow candidates to tour our locations, with an
8 escort, such as an Al Warren, but not in a manner that will
9 interrupt the work activity. Socializing can only take place
10 in the lounge and cafeteria areas where employees are on
11 breaks or lunch hours. If we are contacted by one candidate
12 we take the initiative to call the office of his or her
13 opponent to offer them the same courtesy.

14 As you know, we do not have a PAC at the state
15 level in Maine, although there has been a New England
16 Telephone Fed PAC at the corporate level since 1978.

17 In my three years in Maine I have been encouraged
18 by various business associations and candidates to establish
19 a state PAC. I have refused to do so because I believed it
20 would be a bad practice for a regulated utility operating in
21 Maine to get directly involved in the state's political
22 process, even if it meant just supporting a pro-business
23 candidate regardless of political party.

24 At the federal level we do have a small PAC,
25 restricted to middle and upper management employees, with no

1 pressure even remotely applied to participate. In fact, to
2 my knowledge there has only been one solicitation ever for
3 this PAC and that was back in 1978. The fund is administered
4 by an officer and several department heads, and I make the
5 recommendations about contributions and levels in the State
6 of Maine.

7 The conduct of the employees of New England
8 Telephone is governed by a booklet, signed by all employees,
9 entitled Our Code of Business Conduct, a Personal
10 Responsibility. And you have a copy of that. Of note, the
11 most recent issue of the code is dated March 1983, and it is
12 revised probably one or two times every five years, depending
13 on what is going on in the business. It was updated in 1983
14 to make it more compatible with the environment in our
15 business days. I signed a copy of this issue, as I did with
16 all the previous editions since my employment.

17 Section 10 of the code entitled Political
18 Contributions, and other sections, such as the one entitled
19 Company Property and Services, address areas of review by
20 your Committee and state company policy very clearly.

21 Three major points are made within Section 10:
22 Number one, the use of company funds for the support of
23 parties or candidates is forbidden; number two, any direct or
24 indirect pressure infringing on the right of an employee to
25 make his or her own political contribution is forbidden; and

1 number three, the company seeks the resolution of political
2 and regulatory issues affecting its interests based on the
3 merits involved.

4 In order to insure that these and other company
5 practices are being followed, I personally monitor the work
6 activities of our public relations and public affairs
7 organizations to insure adherence. In addition, I audit the
8 expense reports of the employees and personally review their
9 Public Utilities Commission Chapter 83 guideline reports.

10 As you consider the conclusions to your
11 investigation I would leave you with five concerns or ideas
12 that I have that you can file under food for thought: First,
13 I believe that there is some difficulty in determining what
14 constitutes a political activity. For example, definitions
15 vary greatly from one authority to another, as I have
16 described. The Committee should consider whether another set
17 of definitions or requirements is really needed and, if so,
18 should attempt to consolidate the rules to minimize confusion
19 and achieve your objectives.

20 Currently the Public Utilities Commission defines,
21 quote, any act conducted directly or indirectly for the
22 purpose of influencing public opinion with respect to an
23 issue of public concern, end quote, as a political activity.

24 That could be interpreted by some to mean that all
25 of the work, for example, that we are doing with the State

1 Planning Office and the Governor's Telecommunications Task
2 Force, including the sole funding of a special poll that we
3 have been asked to take of residence customer computer use
4 could be construed as a political activity. As the chief
5 provider of Maine's telephone service for over 100 years, we
6 have acquired invaluable knowledge and expertise in this
7 field that should be shared with the state, and our opinion
8 should be added to those of others so Maine policymakers can
9 arrive at informed decisions. Yet this may be considered a
10 political activity for a utility but not judged, by that same
11 standard, for others who participate in the process.

12 Another example of a political activity, according
13 to a definition, could be the efforts we undertook to explain
14 what divestiture was all about to our customers and share
15 owners, including special meetings for business groups and
16 legislators. We consider these educational responsibilities,
17 in a rapidly changing world of telecommunications, to be part
18 of our public responsibility for our customers. Yet other
19 parties have argued to the PUC that these are political
20 activities and should be disallowed as expenses.

21 Ironically, these same parties would probably argue
22 that we weren't doing our job if we didn't attempt to
23 communicate what divestiture meant to our customers.

24 Secondly, like any other business of our size in
25 Maine, we have a need to keep track of all our statutory and

1 administrative responsibilities. Lobbying for New England
2 Telephone in Maine is not just advocacy, but it is an
3 information gathering process that is necessary for us to
4 meet and respond to changing legal requirements. Sorting
5 through hundreds of bills introduced into each session to
6 determine how they will affect New England Telephone is a
7 formidable task. Yet, it is a necessary part of doing
8 business, and I hope you conclude that it should be regarded
9 as a legitimate expense.

10 Thirdly, New England Telephone is proud of the fact
11 that our employees have a sense of civic responsibility.
12 Many of our employees devote some of their on and off the job
13 time to a variety of charitable and governmental activities.
14 At times, I am asked, in my role as New England Telephone's
15 vice president for Maine, for the company's participation in
16 various civic committees. We have provided this Committee
17 with a long list of these activities undertaken by myself and
18 other New England Telephone employees. Included are the
19 Maine Telecommunications Task Force, the Governor's
20 Management Task Force, the Maine Highway Safety Committee,
21 the Governor's Task Force on the Use of Computers in
22 Government, the Maine State Lottery Commission, and the Maine
23 State Transportation Committee. The amount of business hour
24 time devoted to these activities is miniscule compared with
25 off the job time. Some suggest that these activities are

1 political, and therefore undesirable, even though we were the
2 ones who were asked for our help. I believe this does disservice
3 to New England Telephone and to the spirit of corporate
4 volunteerism.

5 Fourthly, the Committee's attention must be drawn
6 to the reference in our code of business conduct stating that
7 our employees have personal activities and opinions that New
8 England Telephone doesn't question provided that they do not
9 interfere with their jobs. Undoubtedly, many members of the
10 Committee have seen New England Telephone employees at
11 political meetings, receptions, dinners, fundraisers, et
12 cetera. The fact that they are employees of a public utility
13 does not mean that they should stay away from the public
14 process. Any conclusions of the Committee should respect the
15 personal rights of our employees to express their opinions
16 and engage in personal political activities.

17 Finally, as you consider the definition of lobbyist
18 and political activities, and examine potential new reporting
19 requirements, I would encourage you to expand the definitions
20 to include everyone, utilities personnel, as well as the
21 various state departments that spend a considerable amount of
22 time on the third floor.

23 Thank you for allowing me some time here today to
24 discuss our involvement in the political process and some of
25 my views as the head of New England Tel's Maine operation.

1 I'm sure that the caution you have exercised so far in going
2 slow and considering all of the data that you have gathered,
3 including these hearings, will enable you to produce a fair
4 and comprehensive report. Once again, thanks to you and to
5 the staff for staying in touch with us and keeping the
6 communications open. Both Al Warren and I have appreciated
7 that very, very, much.

8 Thank you.

9 CHAIRMAN BALDACCI: Thank you, Mr. Jalkut.

10 Do you have anything else you would like to add to
11 that prepared statement?

12 MR. JALKUT: No, just that all the paper here is
13 resource information only and I promise not to read any of it
14 unless you ask me to.

15 CHAIRMAN BALDACCI: I wouldn't inflict that
16 punishment on you at this time.

17 Are there any questions from any members of the
18 Committee from Mr. Jalkut?

19 Representative Soule.

20 CHAIRMAN SOULE: First of all, let me also express
21 the Committee's appreciation for New England Telephone's
22 cooperation, and the staff is impressed, and both Chairman
23 Baldacci and myself, the courtesy you have extended to them.
24 And it has made our job a lot easier, and we do appreciate
25 your assistance.

1 In your suggestions for areas in which we might be
2 looking, one of our charges is to make suggestions to the
3 Legislature to perhaps clarify the rules by which we all play.
4 Is -- I seem -- the common thread I seem to gather from all
5 of your suggestions is basically a definition kind of dilemma
6 that you appear to be in.

7 MR. JALKUT: That's correct.

8 CHAIRMAN SOULE: Can you give us any thoughts as to
9 areas you feel may fall within the definitional guidelines as
10 political now which you don't feel are political, and those
11 areas which you might feel should be something that should be
12 reported?

13 MR. JALKUT: Let me see if I can give you an
14 example. If I were to go out and give a talk to a group of
15 share owners or customers to discuss what is going on in our
16 business, which is going through a fair amount of turmoil
17 right now, and stated New England Telephone's position about
18 an issue, that would be construed by some under Chapter 33 of
19 the Public Utilities Commission's guidelines as a political
20 activity. When we look at what the definition that the state
21 has, through the Secretary of State's office, for political
22 activity is we find that it pretty much confines the
23 reporting requirement to the lobbyist who spends his time on
24 the third floor of the State House trying to influence
25 legislators about positions that the company wished they

1 would take. So you have a clear extreme range of definition
2 here between what the regulated utility is expected to report
3 to the Commission for the ultimate disallowance in a rate
4 case, and what the Secretary of State expects under the
5 definition that the state has of a lobbyist.

6 So my suggestion is not to bring you a definition
7 but to encourage you to look beyond even just the PUC. Maybe
8 we have a problem with the Department of Environmental
9 Protection, maybe there are other state agencies who
10 similarly have reporting requirements that border on the
11 definition of what is allowable and disallowable. I
12 encourage you to pull them all together and produce some
13 synthesis, if you can, to enable the utilities not to have to
14 serve two or three masters, because the problem that we fell
15 into was in assuming that one was the same as the other, when
16 in fact they are really not.

17 And, to the credit of the Public Utilities
18 Commission, when I mentioned that they had not called us on
19 our error, the thousands and thousands of pages of documents
20 that we produced to them, and the thousands of numbers that
21 we produced to them, really doesn't allow them to examine
22 every single dollar in great detail. We're talking about an
23 expense of about five or \$6,000 with the report that we filed.
24 So I'm not criticizing them in any way.

25 When we went through and expanded the definition to

1 cover every possible scenario that you could imagine in order
2 not to be in error again, we captured about \$66,000 worth of
3 expense. Frankly, I think that is too much. I think we over
4 reported, but we did not want to be chastised one more time,
5 so we decided to err on the side of over reporting. I think
6 the answer is somewhere in the middle.

7 There is no doubt in my mind that we hire Al Warren
8 to be a public affairs manager or lobbyist here in Augusta.
9 His job is to track legislation, his job is to work with the
10 Legislature, his job is to try to represent the company's
11 position. Maybe a starting point is to quantify his whole
12 salary and say that should be reported. I'm not sure. But I
13 think that it is necessary to come up with a better
14 definition than the one we have.

15 CHAIRMAN SOULE: Thank you.

16 CHAIRMAN BALDACCI: Mr. Jalkut, how long have you
17 been the vice president for New England Tel?

18 MR. JALKUT: A little over three years.

19 CHAIRMAN BALDACCI: Had you been involved with the
20 company here in Maine before that period?

21 MR. JALKUT: I came to work in the State of Maine
22 for the first time in 1977, and I worked here for two years
23 under the then general manager, Perry Hudson. And I had that
24 responsibility for making sure when your phone was broken it
25 got fixed; that was my job.

1 CHAIRMAN BALDACCI: Mr. Jalkut, as far as you can
2 remember since you have been with the company, or vice
3 president of New England Telephone, the political reports --
4 political reporting to the Secretary of State and to the
5 Public Utilities Commission, have you ever been called on to
6 up until this point, before this all started with the Scott
7 affair, or with this investigation, had you ever been called
8 on to explain what you were writing down, or the extent of it,
9 or the value of it?

10 MR. JALKUT: No, I haven't. In fact, when I first
11 came on the job I had the responsibility then, as I do now,
12 to sign the report that we file with the Secretary of State.
13 And, when I received the first report that was then prepared
14 by Bob Catell, it was a very small amount of money, in the
15 range of three or \$4,000. And it seemed unusual to me, being
16 a new guy on the job, that if he was the lobbyist he wasn't
17 reporting. His whole salary, and I made him go and get the
18 reference, you know, with the definition for what he was
19 supposed to be reporting, and made him prove to me that the
20 hours in fact that he was charging on that report were the
21 hours consistent with the definition. And, I only signed
22 the report after I was satisfied. And, it seemed to me from
23 that time, coming forward until this drama, if you will,
24 erupted that that was kind of silly, that he should only be
25 expected to report, you know, hours in the act of lobbying

1 when in fact he was essentially a public affairs manager,
2 that was his job.

3 CHAIRMAN BALDACCI: Were you ever called on to
4 explain the report at any time --

5 MR. JALKUT: No.

6 CHAIRMAN BALDACCI: -- were you ever questioned?

7 MR. JALKUT: Never. The first time that the item
8 became an issue was about 7:30 one night at a public hearing
9 that we were having at the Public Utilities Commission, when
10 the Public Advocate brought out Chapter 33 and brought out
11 the report that we filed and said explain the differences
12 between the two results. That was the first time we had ever
13 been asked to explain anything.

14 CHAIRMAN BALDACCI: Since that time you have
15 changed your report to reflect instead of four or \$5,000, how
16 much?

17 MR. JALKUT: About \$66,000 that we quantified based
18 on -- we incorporated the Secretary of State's report into
19 the Public Utilities Commission report, used their definition,
20 and came up with about \$66,000 worth of quantifiable expense,
21 which I said still I think is on the high side, because we
22 threw in a lot of things that today I don't really think are
23 political activities, but we didn't want to argue the point.

24 CHAIRMAN BALDACCI: So bringing that to an end then
25 what you can look at prior to putting that all on the

1 shareholders, prior to that \$66,000 being paid for by the
2 shareholders, that it had in fact been paid by the rate
3 payers, and that it was through your belief to be not
4 chastised that you would put it all below the line?

5 MR. JALKUT: That is correct. Had we reported more
6 dollars in the past consistent with the Commission's rule, we
7 would have had more expense disallowed. I think that is the
8 point you're trying to make.

9 CHAIRMAN BALDACCI: Yes.

10 MR. JALKUT: And so we under reported in those
11 years where we were were not following the Commission's rule.
12 But before you send me a bill, all right, for that amount of
13 money, I want to tell you that we never came close to earning
14 the authorized rate of return. I got to get that plug in.

15 CHAIRMAN BALDACCI: We got into that discussion
16 downstairs, but I think your points are well taken, and your
17 food for thought are very well taken. And I think drawing
18 the line on political activities certainly is a very
19 difficult task, and I can only echo the sentiments of
20 Representative Soule in commending you and your company for
21 the way it has conducted itself, and the way it has dealt
22 with the staff and our committee. It is taken in a very
23 constructive fashion, both from you and from this committee,
24 so that we can do something that will lay the foundation for
25 uniform reporting, or stricter reporting requirements with

1 these things in mind, I want to thank you very much.

2 MR. JALKUT: Thank you.

3 CHAIRMAN BALDACCIO: Are there any other questions?
4 Senator Sewall.

5 SENATOR SEWALL: In the two forms of reporting that
6 you filed, one under Chapter 83 and one with the Secretary of
7 State, which one is the tougher, more difficult one?

8 MR. JALKUT: The Public Utilities Commission rule
9 by far.

10 SENATOR SEWALL: Wouldn't it make sense before we
11 go on making more paperwork, and more headaches, and more
12 trouble for everyone if you filed that one and then filed a
13 copy with the Secretary of State?

14 MR. JALKUT: We could do that, but I think if you
15 looked at the definition that the Public Utilities Commission
16 has, you would find that open to -- find that open to some
17 broad interpretation. And, if it was your pleasure that we
18 used the more expensive definition, I would encourage you to
19 even sharpen that up a little bit.

20 SENATOR SEWALL: It seems to me what you're saying
21 is that where you are a regulated activity, that if you filed
22 one extensive form somewhere, and put the other one where
23 other people could easily have access to it, that you would
24 be doing enough, rather than filing the same information, in
25 many cases, under two separate chapters, so they should

1 somehow be meshed so that certain sections could be sent --

2 MR. JALKUT: I agree with you 100 percent. I don't
3 think there is any need for duplication in this area.

4 CHAIRMAN BALDACCI: Mr. Jalkut, isn't it true that
5 the Public Utilities Commission in its reports asks different
6 kinds of questions than the Secretary of State as far as the
7 funds go?

8 MR. JALKUT: Yes. Yes. The Public Utilities
9 Commission definition is several pages long.

10 CHAIRMAN BALDACCI: So they would be interested in
11 coming at it from a particular position, whereas the report
12 from the Secretary of State's office comes out of from a
13 different area?

14 MR. JALKUT: Yes. I am really not privy to what was
15 the motivation behind the statute that ended up requiring a
16 lobbyist to report his time. I can suspect what it probably
17 was. But the Commission is looking at the proper use of
18 utility funds from a rate payer point of view, which is their
19 charge. I think the Secretary of State is trying to account
20 for what goes on in the Legislature. And I think they are
21 coming at it from two different motivations.

22 CHAIRMAN BALDACCI: Are there any questions of any
23 others members of the committee?

24 Are there any questions from any members of the
25 staff?

1 Mr. Asch.

2 MR. ASCH: I just had two questions: One, in the
3 process of meeting the requirements of Chapter 83, has the
4 Public Utilities Commission met with your company to discuss
5 how they expect that to be met?

6 MR. JALKUT: Not as yet. The -- there is an open
7 docket pending between New England Telephone and the
8 Commission right now. We settled the dollar requirement for
9 our rate case back in June, but the final order has not been
10 completed, and probably will come out sometime this month. I
11 would expect that if the Commission is going to make a
12 statement about Chapter 83, it will be made in that report.
13 Subsequent to that, I would expect that after the exparte
14 rules that we must observe are gone, because the case is
15 closed, and the document is closed, as well, that they would
16 want to sit down with us and discuss that in more detail.

17 MR. ASCH: If I understand you correctly, your
18 company, and we would assume the other Maine utilities, in
19 attempting to meet these requirements have been flying solely
20 on the basis of what has been written by the PUC, they have
21 not met with you to work them through with you, to explain
22 exactly what they want, and you seem to be referring to
23 ambiguity or to some question as to exactly what they meant
24 within Chapter 83?

25 MR. JALKUT: I can't speak for the other utilities,

1 but from New England Telephone's point of view we have not
2 sat down, except as I referenced in my opening statement,
3 that I was cross-examined by the Commission as some length
4 about these documents that were filed with them, in which we
5 went into some significant amount of detail, quantify 15-
6 minute incremental reflected on Wednesday of -- you know, the
7 third Wednesday of the month. But, we have not talked to
8 them about that other than in the formal hearing room process.

9 MR. ASCH: So then to the extent that you have been
10 forced to create reporting systems for your employees, that
11 you have been placed in the position of creating them
12 yourself without external guidance?

13 MR. JALKUT: That is correct.

14 MR. ASCH: And you are -- which would then lead me
15 to a question that you probably can't answer, but it would
16 seem some me if we attempted to compare your response to the
17 response from any other phone company in the state, or
18 Central Maine Power, that we would have no assurances that
19 you were both actually measuring precisely the same thing?

20 MR. JALKUT: I think that is correct. I think that
21 you would have to go back to the Commission and ask them if
22 they are satisfied that the quality of the reporting is
23 uniform. But I only see my own, and so I really couldn't
24 comment on anybody elses.

25 MR. ASCH: I would like to add the staff was

1 extremely impressed with the fact that New England Telephone,
2 seeing what they perceived to be a potential deficiency in
3 their reporting system, took upon itself to correct this, as
4 near as we can determine from the record, without any input
5 probably from the Public Utilities Commission or any other
6 sources, any others sources we are aware of. We were
7 extremely pleased with that, and wanted to make sure we
8 express that to the Committee.

9 CHAIRMAN BALDACCIO: Thank you.

10 Thank you very much, Mr. Jalkut. I appreciate it
11 very much.

12 MR. JALKUT: Thank you.

13 CHAIRMAN BALDACCIO: We will take a two-minute break.

14 (A short break was taken.)

15 CHAIRMAN BALDACCIO: We're back in session now. The
16 committee is back in session after a short recess.

17 CHAIRMAN SOULE: Mr. Chairman, I would move that
18 the Committee go into executive session to discuss with
19 counsel, legal counsel the question concerning the
20 outstanding subpoena for Dr. Christian Potholm.

21 CHAIRMAN BALDACCIO: Is there a second to that?

22 REPRESENTATIVE CROWLEY: Second.

23 CHAIRMAN BALDACCIO: All in favor of going in to
24 executive session for that purpose?

25 It is unanimous.

1 (There followed an executive session which is
2 contained in another volume.)

3 * * * * *

4 CHAIRMAN SOULE: Mr. Chairman, I would like to make
5 a motion that the -- I do move that the Committee pursue its
6 efforts in the appropriate court to -- in accordance with
7 applicable law to effectuate obedience by Dr. Christian
8 Potholm and Command Research to the subpoena duces tecum
9 issued by this Committee, and that the chairman, Senator
10 Baldacci, be authorized to make that application and to
11 further authorize Mr. Flaherty to proceed herewith in court
12 to command obedience of that subpoena.

13 CHAIRMAN BALDACCIO: It has been moved; is it
14 seconded?

15 REPRESENTATIVE CROWLEY: I'll second.

16 CHAIRMAN BALDACCIO: Is there any discussion?
17 Prepared to vote?

18 REPRESENTATIVE HIGGINS: I would like to pose a
19 question if I might. During our earlier discussions we heard
20 pros and cons of the motion before us. And, I guess one of
21 the biggest concerns that I had was that we had -- it asked
22 us -- technically not asked the question that we wanted to
23 receive the answer for. And, some people seem to think that
24 Dr. Potholm is not dealing with us in good faith or in good
25 conscience. I'm not sure whether I share that view or not.

1 But at any rate, it still appears to me that we asked a
2 question of which he answered, and now we're saying that he
3 didn't fulfil his obligation by answering a question we did
4 not ask.

5 And it brought up in the discussion, and I'm not
6 sure I heard the answer, or that it wasn't in fact answered,
7 what happens if we authorize, or ask the court to enforce the
8 subpoena, and they say to us you asked the wrong question,
9 and Dr. Potholm responded correctly, or adequately to your
10 question, what is the perception of the Committee and its
11 counsel in doing that, and furthermore what happens later on
12 should we ask that question that we really wanted the answer
13 to?

14 CHAIRMAN BALDACCI: I think it has been very clear,
15 Mr. Higgins, and I'm only answering from what I heard, is
16 that we just would be able to ask that question again, and
17 there would be no problem in asking the question.

18 MR. FLAHERTY: If I may respond since I'm counsel
19 for the Committee, we are not dealing here with a question.
20 We're not dealing with an interrogatory. We're dealing here
21 with a request for production of certain kinds of
22 documentation generically described. There has not been an
23 answer to an interrogatory, yes or no, because there has been
24 no interrogatory. The only question here is whether the
25 documentation sought can be said to be within the scope of

1 the investigation. It is not -- he has not answered any
2 questions, he has simply said I will not produce any such
3 documentation in response to the request.

4 REPRESENTATIVE LIVESAY: I need a clarification.
5 My understanding is there were four, or five, or six or so
6 questions that he didn't respond to, and he is citing a
7 number of reasons for not responding, one was privilege, and
8 another one was that it was beyond the scope of the committee.
9 And, the impression that I have gotten, at least it seems
10 that the opinion of minority counsel is that the way at least
11 four of those questions were phrased the right questions
12 weren't being asked, so that he wasn't being forced to
13 respond in a way that maybe the Committee would have liked to
14 have had him respond. And it is my understanding if those
15 questions had been phrased in the proper way that we would be
16 in a better position to enforce our request for production of
17 certain documents. I don't know whether -- am I right in
18 that assessment or am I wrong in that assessment.

19 MR. FLAHERTY: Whom are you asking?

20 REPRESENTATIVE LIVESAY: I guess I'll ask Mr.
21 Linnell. He had been my guiding light.

22 MR. LINNELL: I think you have generally described
23 the position that I articulated to you. I believe that on
24 the face of the documents that are asked for, on the face of
25 them, they are without the scope of the Committee's interest.

1 I believe -- I know John Flaherty alone could probably come
2 up with a better question, and I'm sure he and I together
3 could have come up with some which would have produced the
4 kind of document you're looking for. You're going to have to
5 go to court with that question. It is my judgment, as I
6 explained, I think that objection of his, which is one of
7 about five, has merit. That is my position.

8 CHAIRMAN BALDACCIO: Would you like to ask Mr.
9 Flaherty --

10 REPRESENTATIVE LIVESAY: I know Mr. Flaherty's
11 position.

12 MR. FLAHERTY: I think I ought to say for the
13 record, since I am --

14 CHAIRMAN BALDACCIO: I would like to hear it.

15 MR. FLAHERTY: I think I ought to say for the
16 record that Mr. Rotholm was never asked a question did you
17 share utility, nonutility client polling results with utility
18 clients. He chose to enter that as an answer in his
19 affidavit. The question was never asked of him. And the
20 only -- there are no questions out there which we're talking
21 about today. We're talking about a set of requests for
22 production, and they take the form of produce this category
23 of documentation, produce that category of documentation. He
24 then comes forward and said I won't because that category is
25 beyond the scope of this investigation. And I have said to

1 this Committee that whether it is beyond the scope, or within
2 the scope, depends quite critically on what the documentation
3 is, and since the investigating committee is totally in the
4 dark as to, A, whether there is such documentation, and B, if
5 so, what it does contain, it devolves upon someone, i.e., a
6 Superior Court justice to receive that if he is so disposed
7 himself, and review it, and then tell us one way or the other.
8 That is what I have said.

9 CHAIRMAN BALDACCI: Thank you, Mr. Flaherty.

10 MR. LINNELL: I don't disagree with it.

11 MR. FLAHERTY: And I don't think Mr. Linnell
12 disagrees with that.

13 MR. LINNELL: I don't disagree with that.

14 SPEAKER MARTIN: Good, let's vote.

15 CHAIRMAN BALDACCI: Mr Speaker, the motion has been
16 made and seconded; how do you vote?

17 Speaker Martin.

18 SPEAKER MARTIN: Yea.

19 CHAIRMAN BALDACCI: Representative Soule.

20 CHAIRMAN SOULE: Yea.

21 CHAIRMAN BALDACCI: Representative Crowley.

22 REPRESENTATIVE CROWLEY: Yea.

23 CHAIRMAN BALDACCI: Representative Stevens.

24 REPRESENTATIVE STEVENS: Yes.

25 CHAIRMAN BALDACCI: Representative Allen

1 REPRESENTATIVE ALLEN: Yes.

2 CHAIRMAN BALDACCI: Senator Sewall

3 SENATOR SEWALL: No.

4 CHAIRMAN BALDACCI: Representative Higgins.

5 REPRESENTATIVE HIGGINS: No.

6 CHAIRMAN BALDACCI: Representative Willey.

7 REPRESENTATIVE WILLEY: No.

8 CHAIRMAN BALDACCI: Representative Sproul.

9 REPRESENTATIVE SPROUL: No.

10 CHAIRMAN BALDACCI: Representative Livesay.

11 REPRESENTATIVE LIVESAY: No.

12 CHAIRMAN BALDACCI: Senator Baldacci, yes.

13 Six voting in the affirmative and five voting in
14 the negative.

15 SPEAKER MARTIN: Mr. Chairman, I move that we
16 reconsider action and ask every one to vote against my motion.

17 CHAIRMAN BALDACCI: Motion for reconsideration, all
18 those in favor of reconsideration say, yes.

19 All those opposed say no.

20 The nos have it.

21 We have Mr. Rowe here -- the vote is recorded six
22 to five.

23 Mr. Rowe is here. I have to ask you, Mr. Rowe --
24 not ask you. I just would like to say first of all that I
25 appreciate your waiting until the Committee had finished the

1 business in which I thought wouldn't take as long as I
2 thought it would take. Sometimes what is clear to one is
3 fuzzy to somebody else.

4 I would also ask you to stand, if you would, and
5 raise your right hand.

6 Do you swear to tell the whole truth to this
7 Committee and nothing but the truth so help you God?

8 MR. ROWE: I do, sir.

9 CHAIRMAN BALDACCIO: Do you have a prepared
10 statement that you would like to submit to the Committee?

11 MR. ROWE: I do not. I have an outline that I had
12 planned to summarize briefly if that is acceptable. And if
13 would you like something else I can submit it.

14 First let me thank the Committee for listening to
15 my thoughts on this subject. I must confess that I have had
16 some trepidation about both the investigation and what useful
17 role, if any, I might play by appearing here. But I have
18 been encouraged by the sense that the Committee staff has
19 shown that what is about here is an attempt to devise
20 workable procedures for the future, and am even more
21 encouraged by what I heard in Mr. Jalkut's testimony and the
22 Committee's questions of him earlier this afternoon, because
23 it seems to me that this is the kind of area where a clear
24 set of understandings and procedures for the future are of
25 benefit to everyone.

1 In any event, it is certainly in that context --
2 only in that context that I can help very much since, as some
3 of you are well aware, I only began employment with CMP in
4 January of this year. But even with that limited background
5 I'm hopeful I can at least say something useful to the
6 Committee about CMP's views as to its appropriate role in the
7 political process, or with respect to the political process,
8 and as to the proper reporting and disclosure of that role.

9 Perhaps at the outset I might say that I have had
10 some particularly useful kinds of involvement, I think, prior
11 to my employment by CMP. I served for about three years as
12 lead counsel to the trustees of a bankrupt railroad in which
13 I had the obligation of reporting to a federal judge every
14 Monday morning on what was going on. And that teaches one
15 something of the difficulty of such reporting, and also
16 something of the humility which should accompany it. I also
17 spent three years as chief lawyer for a railroad in
18 Philadelphia which is owned by the federal government, and
19 had the pleasure of watching the General Accounting Office
20 come around to make certain that the accounts were
21 appropriate at that institution. And I hope that familiarity
22 gives me some perspective on all of this that may be useful
23 to the Committee.

24 I think it is clear that my company had difficulty
25 coping in the way that one would have wished with the

1 increasing intensity of regulation that took place in the '70s
2 and early '80s, the changes in the general operating
3 environment, perhaps some of the changes in the political
4 beliefs of people in the State of Maine, certainly the
5 referenda which affected the Maine Yankee atomic power plant,
6 and that all of this was compounded in the minds of many
7 people of the company by a bombing -- two bombings which took
8 place at the company's offices. The result of that was what
9 I think people sometime call a siege mentality, a sense that
10 the world is somehow against us.

11 In one of the tasks I was given by the board of
12 directors when I was hired was to pull up the shade, open the
13 windows, and let the sunshine in, and I have been doing my
14 best to bring that about.

15 Let me start with the response which I believe my
16 company has taken to this investigation, certainly the
17 response which I instructed be taken. We have uniformly
18 taken the position that which is asked for will be supplied.
19 We have tried to work out procedures with the staff of the
20 Committee to make certain that there is no particular or
21 peculiar burdens on some individuals as a result of this, and
22 it is my understanding we have been entirely successful in
23 reaching such arrangements.

24 I became concerned during, what I would call the
25 early stages of the staff's investigation of CMP, that we

1 might by accident miss something. You know, I don't know
2 anyone who really enjoys going through their files, and
3 utility executives don't enjoy that much more than other
4 people, particularly when they are festering over Seabrook,
5 and cogeneration, and the array of problems that are
6 confronting my company at the present time. So we took
7 several steps to deal with that, one of which was to direct
8 prompt responses to discovery requests, another was that in
9 order to make very certain that there wasn't something
10 lurking in my office that I didn't know about, or lurking in
11 the offices of one of the senior officers that they might
12 have forgotten or overlooked, we asked our counsel to
13 instruct the lawyer and several paralegals to go back through
14 all our files. So we had that second layer of quality
15 assurance, which gives me a great deal of confidence in
16 saying that if it is there it has been turned over. Finally,
17 we have made it clear that if there were further questions,
18 the staff of this Committee was welcome to come by the office
19 at any time, day or night, and look anywhere they pleased.
20 That, I think, summarizes our response to the investigation.

21 Let me go to the more general question of the
22 position which we have taken concerning political activities.
23 In a great many states, in a great many places in this
24 country, at various times, different organizations,
25 businesses, labor unions, other organizations, have been

1 closely associated with one or another political party. And
2 I have been informed, although I have no direct knowledge,
3 that the Central Maine Power Company was considered at some
4 periods of time to have such associations. I don't mean to
5 dispute it, simply to say that I work from second and third
6 hand information in that respect.

7 But it seems to me that the kinds of choices that
8 may be open to a normal business, or to a trade union, or to
9 many other kinds of organizations, are not productively open
10 to an electric utility in this day and age. It seems to me
11 that an electric utility must be, in terms of partisan
12 politics, as neutral as any collection of people can be. Now,
13 of all the positions in the world neutrality is probably the
14 hardest one to obtain, but we really try. And, we have done
15 a number of things in pursuit of that objective.

16 One of those things was that I spent some time
17 conferring with the management of utilities in New Brunswick
18 and Quebec, which are owned by the Provincial Governments in
19 which they work, we asked them how they handled political
20 problems. And the answer was that they have a little trouble
21 defining neutrality, too, but they try very hard because they
22 don't like the consequences if they don't. That seemed
23 reasonable to me.

24 Another thing that we did, and it came about a
25 little faster than I expected because I was asked the

1 question by Gordon Manual on his tv show, I didn't like my
2 answer, we abolished the PAC. CMP had a political action
3 committee, and it seems to me for a great many organizations
4 and a great many places that is a perfectly legitimate thing.
5 It also seems to me that it is a bit peculiar for an electric
6 utility that is regulated, probably not unusual, but it seems
7 to me to be courting danger no matter how carefully it is
8 operated. And it also seemed to me that it was the kind of
9 thing that created an awful lot of tension for a small amount
10 of money it had, so both due to my view of neutrality in the
11 political life of a utility ought to mean, and because it
12 certainly wasn't doing anybody any good anyway, we abolished
13 the PAC very early in my tenure here

14 We have also taken another step which illustrates,
15 I think, some of the -- the difficulty of what -- of seeking
16 the kind of neutrality which I think we must seek, and that
17 is we employed a new vice president, law and government
18 affairs. There are a couple of pieces of that that I think
19 merit a moment's commentary.

20 First we combined the legal and government affairs
21 functions because of my belief that the people responsible
22 for insuring that the company complies with the laws, ought
23 also to have particular supervision over the company's
24 activities in the peculiarly sensitive area of government
25 relations.

1 Second, we employed someone in that position who
2 had been closely associated with the government of this state,
3 with one of the parties in that state, and I raise that point
4 directly, because you all know it, and it seems to me that it
5 is useful to you to address exactly why we did that.

6 The situation has been that CMP, over the course of
7 the last decade, perhaps a little longer or a little shorter,
8 had become isolated in its understanding of the views and
9 workings of the administration of this state government. One
10 cannot communicate well with the Public Utilities Commission,
11 with the Public Advocate, with the Legislature, with any of
12 the different kinds of agencies with which we must
13 communicate if one doesn't have some understanding of what is
14 going on. And that is the reason why we hired Mr. Flannigan
15 for that position. And I can truthfully say that he has been
16 of immense help to us in terms of understanding why agencies
17 may be doing what they are, and helping us present the
18 information we deem relevant in the most useful and
19 professional way.

20 We have also adopted a code of conduct for our
21 participation in political affairs. That is the two-page
22 yellow sheet that was distributed that doesn't say who paid
23 for it, but it has our name sufficiently prominently
24 emblazoned, so I doubt anyone will think it was volunteered.
25 And, I won't bore you by going through it in any detail.

1 because you can all read it as well as I can, and it really
2 is the essence of what we're trying to do. And I hope it
3 makes clear that we're trying to stay out of campaigns for
4 public office, out means out, we're trying to leave our
5 employees free to participate as they will. That means that
6 Mr. Flannigan is free to maintain his Democratic friends, and
7 some of our other people are free to maintain their
8 Republican friends, and as chief cook, bottle washer and head
9 eunuch I'm not allowed any friends at all. But that is by
10 choice rather than actual action of the board. Perhaps it is
11 by personality, and that is another problem.

12 The policy statement also makes clear that we
13 intend to continue to participate in the legislative process,
14 through testifying, through activities that fall within the
15 Legislature's definition of lobbying. We believe that we can
16 do this, we have a right to do it, and indeed a duty to do
17 that, in terms of the interests of our customers and our
18 investors. And, the policy statement addresses specifically
19 the fact that when and if referenda go directly to the kinds
20 of interests that are important to the economic well being of
21 our company, and its customers, and its investors, we will
22 also participate.

23 Now, following up on that, I would like to give
24 some attention to the kinds of things which Mr. Jalkut talked
25 about, the kinds of things which relate to the difficulties

1 in implementing general principles like these. And, some of
2 them are difficulties which I think this Committee can
3 productively address as it considers proper accounting
4 practices, others are matters which I hope the Committee
5 would be sensitive to as people who are particularly
6 interested in the openness and integrity of the political
7 process.

8 We have made it clear, and the policy makes clear
9 that employees of CMP can be candidates for office if they
10 chose. That is that easy, and it is also easy to say they
11 can do that in either party, and it is basically their
12 business. That is not very difficult. Where it gets more
13 difficult is when you get into what I will call for the
14 moment the inner circle of the company's management, the
15 people who are so closely associated with the company that
16 for them to be a candidate for public office would appear to
17 be a company initiative. Fortunately, we haven't had a
18 situation like that arise, and I'm reasonably hopeful that my
19 people are sufficiently over worked so it won't. But other
20 than working them to death, I don't know of a way of handling
21 that for a vice president of the company that is consistent
22 with the long run best interests of the company, the
23 political neutrality of the company, and the constitutional
24 rights of the people. I raise that, not as a problem that I
25 think this Committee will want to concern itself with greatly,

1 but as an example of a particular sort of problem.

2 Another example involves the question of what time
3 is lobbying, what time is political in the sense the Public
4 Utilities Commission asks. I think our company does not have
5 greater trouble than any other company interpreting
6 regulations as to what is lobbying. But political activity
7 as defined by the Public Utilities Commission is a lot
8 broader than that, and we have difficulty knowing. For
9 example, is my appearance here today political activity. I
10 don't think so, but yet generally when I try to make the
11 division between political activity and normal dealing with
12 the government, I say if I'm dealing with the executive
13 branch it is normal, and if I'm dealing with the legislative
14 branch it is political. Well, I'm not at all sure there is
15 any peculiar virtue in that distinction, but I'm more
16 comfortable with it than any other one I have come up with to
17 date. On the other hand, I would look at being here today,
18 it is hard for me to call this political. That is an example.

19 Another kind of example involves the question of
20 what happens when a bill is proposed to the Legislature, and
21 we send it around to five different people to ask how it
22 effects the company. Is that political? It is not lobbying,
23 although it may be a step before a lobbying event. We don't
24 know. What we are doing in all of this, we're not sitting
25 here just helplessly muttering, our company has substantially

1 revised its accounting practices over the last six months,
2 and we're doing more and more in that respect each day as we
3 go along -- not each day, but each month, to try to get the
4 questions clearer, and the bases for the decisions that we
5 make in an accounting sense more clear. And to the extent
6 that this Committee has definitive views about how these
7 things should be accounted, I think it will be a service if
8 those are resolved.

9 I would like to go one step further and simply
10 leave a general thought: We at CMP, at least during this
11 administration, have no objection whatsoever to reporting
12 whatever we are asked to report by the Legislature, or indeed
13 by the Public Utilities Commission. We do get a little whiny
14 at the burden and volume of some of the things that we get
15 requested to produce, particularly when we know that the
16 people who ask for things have even less time to read them
17 than we had to produce them in the first place. And, we have
18 had some constructive conversations in that respect, in fact
19 I had one with Mr. Donaghue out in the hall while we were
20 otherwise unemployed a while back, going in to possible
21 virtues for future kinds of PUC proceedings and more
22 streamlined procedures, because I have a sense a lot of paper
23 is being asked for by people who really can't use it, and
24 certainly can't help inform the Commission.

25 The next step beyond that, though, in this

1 generality I would like to leave is this: One ought to be
2 careful in making requirements and decisions which discourage
3 utilities from open active participation in the law making
4 process. And, I say that not to discourage any particular
5 reporting practice. I have no objection whatsoever to any
6 procedure for identifying what it is we do, so that the whole
7 world will know, and I will stand there and be judged upon it.
8 But I do think there is a great tendency to continually scale
9 off activities as either political, or promotional, or
10 selfcongratulatory, or somehow offensive on some other basis,
11 and to continue to erode the financial integrity of utility
12 operations.

13 And, I would urge this committee that, while it
14 will be and should be zealous in establishing clear reporting
15 procedures, that it does want, I think, or I would hope, its
16 utility industry to be effective in contributing to these
17 processes, for I think utilities that became crippled by
18 accident are likely to be of no use to anyone.

19 And, I gather that turned out to be a little longer
20 than I planned, and I apologize for that, but I do thank you
21 all for your attention, and will be happy to answer any
22 questions that are within the scope of whatever expertise I
23 have here.

24 CHAIRMAN BALDACCI: Thank you very much, Mr. Rowe.
25 That was very enjoyable.

1 The questions I have for you, Mr. Rowe, is that now
2 you have only been on the job since January, but why should a
3 public utility -- why should a public utility lobby?

4 MR. ROWE: Because --

5 CHAIRMAN BALDACCI: I want to finish that, because
6 isn't the Public Utilities Commission set up so that it
7 balances the rate payers' interests versus the shareholders'
8 interest, not the Legislature?

9 MR. ROWE: Two responses to that: First, I
10 certainly hope that is the way the Public Utilities
11 Commission is set up, but second, I think this goes into the
12 scope and content. Since I have been at CMP I have strongly
13 discouraged the company's presenting as many bills and
14 proposals to the legislature as I am told that it used to
15 present. I do that because, like you, I believe that the
16 Public Utilities Commission is there to strike these balances,
17 and that the Legislature cannot reasonably be expected to
18 adjust, and tinker, and tamper with those balances all the
19 time.

20 But on the other hand, the Legislature is, of
21 course, the ultimate voice of the people and the law. And,
22 there are occasions where interests different than ours seek
23 your assistance in taking steps which affect us, there are
24 occasions where people who don't know they have any
25 disagreement with us at all propose things which are

1 submitted in bills in the Legislature that could add
2 substantially to the cost of utility services, there are
3 other occasions where there is something in the utility needs
4 that is so fundamental that it can only be considered by the
5 Legislature.

6 So, whether it is a proposal so fundamental that
7 the Legislature has the right and power to consider it rather
8 than the Commission, whether it is defending ourselves from a
9 challenge from other people, or whether it is simply trying
10 to help prevent an unintended effect, I think an industry,
11 which in this state involves at the present time some six or
12 700 million dollars a year in revenues between the various
13 companies, you know, should not be deaf, dumb, and mute. I
14 don't mind being a mule, but I don't want to be a dodo. And
15 I don't think either our customers or our investors would
16 benefit from that. And I would hope that the Legislature
17 would feel the same.

18 CHAIRMAN BALDACCI: My concern is that, very simply,
19 that you as a utility having the Public Utilities Commission
20 to strike that balance and act as the person or agency to
21 come over to state government to represent you, I don't see a
22 need for -- you said the company used to file bills or --

23 MR. ROWE: Submit bills to different people and try
24 to find a sponsor, the same kind of process Mr. Jalkut
25 described.

1 CHAIRMAN BALDACCI: And lobbying all the time, you
2 cut down open lobbying all the time?

3 MR. ROWE: I will cut down on proposals. I haven't
4 cut down on the extent with which we watch what is going on.
5 There are a lot of bills that people put in over here that
6 affect us one way or another.

7 CHAIRMAN BALDACCI: Affect you as a rate payer or
8 as a shareholder?

9 MR. ROWE: Both.

10 CHAIRMAN BALDACCI: How do you draw that line?

11 MR. ROWE: In a very real sense, Mr. Chairman, I
12 try not to draw that line. And I don't mean that to be
13 disingenuous. We are a funny sort of business. Under the
14 law we have dual responsibilities, responsibilities to do the
15 best job we can for our customers, responsibilities to try to
16 obtain a fair return for our investors, and we have to try to
17 do -- to meet both of those responsibilities all of the time.
18 So, yes, sometimes it may be the effect upon an investor that
19 is the first cause for our being concerned about a bill,
20 other times it will be the effect upon a customer. In my
21 view both concerns are equally legitimate and equally
22 entitled to the consideration of either the Commission or the
23 Legislature. As you know, Mr. Chairman, as a businessman
24 yourself, a business doesn't last if it is not good for both
25 the investor and the customer, and that is as true in a

1 utility business as it is in any other.

2 CHAIRMAN BALDACCI: The only difference, Mr. Rowe,
3 is my business isn't guaranteed a rate of return as the
4 utility is, and that my business would have to suffer the
5 valleys as well as reap the peaks. But the point that I was
6 making, or getting to in a very difficult way, was how do you
7 report to the Public Utilities Commission your political
8 activities now, I mean how do you draw the line now?

9 MR. ROWE: Well, I tried to give you --

10 CHAIRMAN BALDACCI: Mr. Jalkut said he had \$4,000,
11 then he just decided he would take 66,000 and put it all
12 below the line; what do you do?

13 MR. ROWE: Let me give you some examples, because I
14 can only give you a general picture. First, we have adopted
15 an accounting process whereby employees with cross functional
16 involvements are required to keep their time on a daily and
17 hourly basis. That is obviously a judgmental thing, but it
18 is a substantial improvement in precision over what we had a
19 year ago.

20 CHAIRMAN BALDACCI: What did you have a year ago?

21 MR. ROWE: A year ago it was done on the basis of
22 monthly estimates of general use of time.

23 CHAIRMAN BALDACCI: Monthly estimates of general
24 use of time?

25 MR. ROWE: That's correct.

1 CHAIRMAN BALDACCI: How were those developed?

2 MR. ROWE: Not having been here I don't know except
3 what I saw in the first month, but there were sheets filled
4 out saying what did particular officers or managers think
5 they spent the bulk of their time on, and Maine Yankee might
6 have received a certain portion, or Seabrook a certain
7 portion, political activities a certain portion, and so forth.

8 It seemed to me that that was inadequate. More
9 importantly it seemed to the Commission that that was
10 inadequate. We were instructed to develop more sophisticated
11 procedures, and we have done so. We now have a system that
12 is evolving toward time reporting more like lawyers use for
13 our senior managers. In that context there are some
14 particular decisions we have made. For example, Annette
15 Anderson, who is director of legislative affairs for us, the
16 person in-house who spends the largest portion of her time on
17 matters that would clearly fall within the political activity
18 gamut, puts all of her time below the line, or in the
19 political activity column, unless she has done something
20 which she thinks specifically should be accounted the other
21 way. In other words, we reversed the presumption for Annette.

22 What I do with my own time, as I have generally
23 said, if I'm going to see a legislator about something, I
24 called it political activity, usually, even though it may be
25 just a status report, whereas if I'm going to see the Public

1 Advocate I would call it routine operations because he is
2 engaged in administering the law rather than politics.
3 Further breaking that down time I spend working on rate cases
4 is ascribed to rate case preparation.

5 I find that in the areas where I described some
6 difficulty to you, for example, reviewing a bill to see what,
7 if any, position the company might wish to offer on it, I
8 tend to describe that as political activity simply because in
9 the absence of certainty I would rather not use up a lot of
10 my time, or whatever credibility I can get, arguing about how
11 I onion slice something like that. But, as we learn and work
12 with this new system, I'm finding that we're going to have to
13 establish a more detailed set of internal accounting policies,
14 and our law department will have to issue a set of
15 instructions that probably use some examples and say, you
16 know, here is the rule, here are four examples, three of them
17 go one way and one goes the other, and to help clarify for
18 people because we're only four or five months into this
19 process. But, it is not only a question of political
20 activity, it is also a question with what areas where the
21 Commission would treat one sort of activity as institutional
22 advertising, and therefore, an investor only activity, and
23 other activities where the effort is exerted for a process
24 the Commission considers more legitimate, and therefore a
25 proper rate case expense. So as time goes on we'll end up

1 with a more and more complex set of rules as the accounting
2 system makes such a set of rules necessary.

3 CHAIRMAN BALDACCI: Does anybody -- Representative
4 Willey.

5 REPRESENTATIVE WILLEY: To start off with I'm
6 having a little bit of trouble trying to relate customers and
7 rate payers; in your case a rate payer is a customer?

8 MR. ROWE: Yes, sir.

9 REPRESENTATIVE LIVESAY: Where if it is a customer
10 of Campbell Soup Corporation we talked about before, it is a
11 customer not a rate payer. And by that same token, I wonder
12 why the customers of Campbell Soup aren't insulated from
13 political activities of the company, or for that matter, I
14 keep wondering through the thing, friends and things I read
15 in the newspaper if perhaps the political activities of
16 Senator Baldacci might be related in spaghetti and meatballs,
17 why is one different than the other.

18 CHAIRMAN BALDACCI: Why is business -- Are you
19 asking Mr. Rowe?

20 REPRESENTATIVE WILLEY: I ask Mr. Rowe.

21 CHAIRMAN BALDACCI: He doesn't cook spaghetti, that
22 was one of the requirements.

23 MR. ROWE: If there is anything, I obviously share
24 the perception that all businesses have to cover all of their
25 costs or else go out of business. I think there has been a

1 perception that regulated utilities should be treated
2 differently with respect to expenses for political, or
3 promotional, or some other groups of expenditures because
4 they are considered to have monopolistic positions which
5 protect them from the normal kinds of market pressures. I am
6 not overwhelmed by that analysis, but it is the analysis that
7 is reflected in the decisions of the Commission, and I do
8 like to obey the law even when I'm not overwhelmed by it.

9 REPRESENTATIVE WILLEY: Just one more.

10 CHAIRMAN BALDACCI: One more question. Don't give
11 away any recipes now, either.

12 REPRESENTATIVE WILLEY: Since your industry, and it
13 is a great industry, I think, is largely regulated through
14 the political process, do you think you should have equal
15 access to the political process on the same means that
16 everybody else does?

17 MR. ROWE: Oh, yes, I think that is vital. I would
18 even go a step further. I think we ought to have as much
19 access to the process, to the legislative process as would an
20 agency of government. And, I think we're dealing with two
21 kinds of issues here: The first one is let the truth be
22 reported, and there I hope no one here hears any tail wagging
23 from me. I'm all in favor of that, and I want to see it done,
24 and will participate to see it done as well as I know how.

25 On the more general question, I think the changes

1 which have occurred in the telephone company in the last two
2 years, the changes which are about to occur in the electric
3 company over the next two years, are going to see some very
4 different perceptions of what regulated utilities are. And I
5 think this Legislature may find itself wishing to consider
6 where the electric business is monopolistic and where it is
7 not.

8 Just to give you my own thumbnail, to show you what
9 I think, whatever that is worth, we have three basic
10 functions, generation, distribution, transmission.

11 Generation not only is now competitive due to the small power
12 production act, SPPA, and the like, for most purposes most of
13 the time I think my company has been both legislated and
14 competed out of the generation business. Not only are we not
15 a monopoly, I think we are at a very substantial disadvantage.
16 Transmission is already competitive between electric
17 companies and between regions. So to the extent there is a
18 form of influence that is more monopolistic than competitive,
19 and I believe those tend to be shadings rather than light
20 switches, it can only be in distribution, and even there the
21 changes in the state of the technology are making more and
22 more kinds of customers able to choose alternatives for
23 themselves.

24 I don't know how to cook spaghetti, but I'm not
25 always sure it wouldn't be a more promising business. And

1 I'm prepared to take lessons, Mr. Chairman.

2 CHAIRMAN BALDACCI: You're following suit I can see
3 that. I understand -- Representative Crowley.

4 REPRESENTATIVE CROWLEY: I don't belong to his
5 public utilities committee, so I'm not privy to all the
6 things he probably learned in the last few years, but in
7 order to survive I believe, from my concept, that you have to
8 lobby, you have to help us understand the bills that are
9 coming in, and you have to continue helping writing them, and
10 this is my -- the way I'm looking at it. I can't see going
11 otherwise for us to get some good legislation to have your
12 people analyzing it, the experts.

13 But I would like to get back to when you arrived on
14 the scene and there was the -- well, first, does Mr. Potholm --
15 I don't know Mr. Potholm from third base -- does he still
16 work for you?

17 MR. ROWE: He does not. He is taller than third
18 base. I met him one. I suppose I may have talked to him on
19 the phone another time. He is doing no work for the company
20 at the present time.

21 REPRESENTATIVE CROWLEY: Now, when you arrived on
22 the scene you had the Atlantic Research, Command Research,
23 and some other thing, Cambridge Research, I don't even know
24 what that is all about, and you decided to do away with that
25 process; would you explain why you decided to do away with

1 that?

2 MR. ROWE: Let's take it a little bit piece by
3 piece. Cambridge Research is a commercial survey firm in
4 Boston, I believe. And to the best of my knowledge they are
5 fat and happy selling surveys to whoever will buy them. And
6 we haven't made any kind of decision that we would never use
7 them for a survey, we just haven't seen any need to do any
8 surveys since I have been here. It is not a basic activity
9 of our business. If we had to do one again for some reason
10 we might consider Cambridge.

11 Atlantic Research was a CMP subsidiary. That was
12 abolished. I think it was abolished not so much because we
13 thought CMP should never ever arrange for in-house conduct of
14 a survey, but simply because Atlantic Research had been
15 sufficiently tangled up in a problem which we regretted very
16 greatly, that we simply thought it ought to be consigned to
17 the dust bin of history, and to simply stay away from it. My
18 attitude toward surveys in general, like my attitude toward
19 advertising, I'm not very enthused about engaging in the
20 process. And it would take a fairly strong showing to
21 convince me we needed to do one for some reason.

22 But finally, Command Research is, I believe,
23 Professor Potholm's organization, and I'm not even sure of
24 that. And again, I would say that there are two things that
25 strike me about that that are important: One, the basic one

1 is we simply weren't planning to do any surveys, so we didn't
2 need a surveyor, secondly; I think if CMP ever has reason to
3 engage in this sort of information obtaining in the future
4 and a great many companies find it necessary and appropriate
5 to do so, CMP would want to start fresh with a set of
6 procedures to guarantee that none of the kinds of questions
7 about double use of information, and so forth, that have come
8 up in this proceeding, would come up in any future activity
9 by us. So, you know, my attitude is when you don't need to
10 do something stop it, stay out of trouble until you know what
11 you're doing. I still have more than a little to learn after
12 my eight months here.

13 CHAIRMAN BALDACCI: Other questions? I understand
14 Mr. Flaherty --

15 MR. FLAHERTY: Just one or two, Mr. Rowe.

16 Do I understand that under your able guidance
17 Central Maine Power Company would not commit monies to causes
18 which are of national significance? For instance, Professor
19 Gautschi here yesterday indicated that according to his
20 studies a particular facility in Albuquerque, for example,
21 confronted with a certain kind of referendum problem was
22 being provided monies from utilities throughout the land. Do
23 you have any view on that?

24 MR. ROWE: Yes, a great many utilities throughout
25 the land, I have no idea how many, made contributions to the

1 Committee to Save Maine Yankee in order that that institution
2 could do its work. I leave to others their views on nuclear
3 power, but Maine Yankee makes electricity at 2-1/2 cents a
4 kilowatts hour, and it was awfully important to both our
5 customers and our investors that that asset be preserved. As
6 a result we needed and appreciated the assistance that that
7 committee obtained from others, and Maine Yankee has from
8 time to time returned such assistance by making contributions
9 to similar activities in other jurisdictions. I would tend
10 to take a rather narrow view of that sort of thing, in that I
11 am not very adventuresome about it, but where it is the same
12 sort of nuclear referendum you have to do something to stand
13 with the people who protected you. The only instance I'm
14 aware of is a Maine Yankee contribution which was reported
15 below the line as a political activity, and that is the only
16 one I can think of in my tenure.

17 MR. FLAHERTY: But if there were a grand assault
18 mounded on nuclear power, as indeed there has been from time
19 to time, as you well know, do I understand that you would
20 feel that contributions would be in order along the lines of
21 a leak in the dike syndrome?

22 MR. ROWE: I have given you an example of where I
23 felt a contribution was in order, and that is the best
24 example I can give. On the grand assault theory, I guess it
25 seems to me there has been a grand assault on nuclear power,

1 it has been successful. And I have a general sense that this
2 concept of somehow swimming up stream against grand assaults
3 is too high a form of geopolitics for utilities to profitably
4 engage in, but nevertheless I have given you the example of
5 the way we decided a particular case.

6 MR. FLAHERTY: Mr. Rowe, I think I understood you
7 to be saying that from your point of view involvement by your
8 company in the political process, i.e., lobbying, if you will,
9 or persuading legislators regarding a point of view which
10 your company might take in a given case, would be more in the
11 nature of reaction to proposals from other sources than
12 proposals from your own company?

13 MR. ROWE: More often than not because of my view
14 of the process. I share the chairman's view that most of
15 these issues should be hammered out at the PUC, because the
16 Legislature has put them there to do it.

17 Let me give you an example of something where I
18 might react affirmatively: During our recent proceedings
19 where in I was asked -- where we asked permission to borrow
20 60 million dollars at 18 percent, a number which choked us
21 all, I was asked by Examiner Donaghue what my reaction would
22 be if the Commission were to authorize the loan but order
23 that the entire interest cost come out of the investors.
24 Well, the interest costs on that loan are about the total
25 cash earnings of the investors -- of the shareholders. And

1 my answer to that question was that if the Commission were to
2 enter such an order I would call upon the Governor, the
3 Speaker, and the President of the Senate and ask whether they
4 preferred to consider legislation or to see me file for
5 bankruptcy the next day. And that is an example on the
6 record which you can look at of a place where if a situation
7 were that extreme I would avail myself of the right of the
8 destitute and fall at the feet of the Legislature.

9 MR. FLAHERTY: Then I take it you would hope that
10 perhaps a committee such as this would be able to present
11 some kind of definitional structure to the Legislature which
12 would delineate between activity which is from an activist
13 point of view as distinguished from a reactionary point of
14 view?

15 MR. ROWE: No. It is a thought. I don't think
16 that ought to be the way in which the union of recoverable
17 expenses is sliced. I guess, you know I'm happy that the
18 Legislature make a decision in its wisdom about how that is
19 to be sliced, but I wouldn't think that would be the basis
20 upon which to do it.

21 MR. FLAHERTY: Then I have one other, and it is a
22 matter of understanding your statement: You referred in your
23 discussion of the dust bin demise of Atlantic Research to the
24 termination of the process of the double use of information.
25 Would you be kind enough to explain to me what you mean by

1 double use of information?

2 MR. ROWE: It is something I get out of newspapers
3 and reports on this Committee's investigations, but it is my
4 understanding, you would know more about it than I do --

5 MR. FLAHERTY: I'm not sure, don't assume that.

6 MR. ROWE: I think it is fairly safe. It is my
7 understanding that there have been, or are believed to have
8 been, instances in the past where information gained in a
9 poll for CMP may have been distributed to political
10 candidates of one or both parties. And, I think if that
11 happened, and I don't mean to deny it, I simply have no
12 first-hand knowledge, that is unfortunate, and that any
13 surveying which the company in the kind of position CMP is in,
14 might be engaged in the future, ought to have protective
15 procedures to make certain that that kind of thing can't
16 happen.

17 MR. FLAHERTY: Do you know whether, based again on
18 the sources of information on which you rely on your last
19 statement, CMP also received that kind of information from
20 others sources for combining, if you will, or otherwise
21 collating?

22 MR. ROWE: I really don't know the answer to that.

23 MR. FLAHERTY: Thank you.

24 CHAIRMAN BALDACCI: Mr. Linnell.

25 MR. LINNELL: Representative Crowley asked all of

1 my questions.

2 CHAIRMAN BALDACCI: More coordination going around.

3 Mr. Rowe, seeing no other questions --

4 MR. ASCH: Mr. Chairman.

5 CHAIRMAN BALDACCI: Yes, Mr. Asch.

6 MR. ASCH: The staff wanted to go on the public
7 record expressing its appreciation for the cooperation
8 extended by Central Maine Power and by their attorneys in the
9 these proceedings. It has been a great help to us. The
10 Committee should recognize the spirit in which they have
11 approached this extremely difficult proceeding, particularly
12 given the set of circumstances surrounding the prior
13 investigation by the Public Utilities Commission. We are
14 extremely appreciative of the way they have conducted
15 themselves, highly professional, and extremely cooperative,
16 and very open.

17 CHAIRMAN BALDACCI: Thank you very much. Mr. Rowe
18 and his leadership have a very high approval rating with the
19 Committee on Public Utilities.

20 MR. ROWE: Thank you very much, we appreciate it.

21 CHAIRMAN BALDACCI: Thank you very much, Mr. Rowe.

22 We are now recessed until 2:00 o'clock tomorrow.

23 (The hearing was recessed at 4:00 P.M.)

24

25