

2 MR. MACDOUGALL: I have very little to  
3 add to my statement. The reason for it is that as  
4 the AAR did not have a copy of Mr. O'Connor's  
5 statement, I did not have a copy of Mr. Smith, Mr.  
6 O'Connor or the NITMIC statements.

7 It's not well timed. You asked to get  
8 these copies; they were listed on the website, but  
9 it was unavailable to us, my staff. This is not the  
10 only time this occurs, but this was five days on the  
11 17<sup>th</sup>, was the first filing, and we've not been able  
12 to get a copy.

13 I've tried as late as ten minutes before  
14 this meeting to get copies of these statements, and  
15 just like AAR, we didn't have it. That, of course,  
16 you've read the statements of everybody. We have  
17 not.

18 I think one of the commissioners asked  
19 that question. The reason for the answer is we have  
20 not been given the other participants' statements  
21 before this hearing.

22 All I can add from what I said last year

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1 is, and I mentioned it in this year's paper, I did  
2 here, concern about the type of hearings that may  
3 eventually result.

4 We don't like an official hearing just  
5 conducted by staff. I think because of the way that  
6 the SAC case is going to maybe getting into that,  
7 and I noticed last week it's the first time ever  
8 that I'm aware of, you're having an abandonment  
9 hearing conducted by agency staff.

10 There isn't one of you commissioners or  
11 an administrative law judge. That's a development  
12 which gives me concern, and I raise it orally  
13 because it was only -- you only made that decision  
14 last Thursday, and I was not aware of it when I  
15 prepared my statement.

16 I'd hate to see that development in  
17 abandonment swing over to rates as well.

18 The only other thing I could say came up  
19 today, why no complaints. One of the problems might  
20 be, and I think mainly because from the Department  
21 of Transportation, there hasn't been research on the  
22 current rate structure.

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1                   In the old days we had a person like  
2           Professor Ripley, who went into regular rates and  
3           showed how they were made and so forth. We had Mr.  
4           Daggett from Transcontinental Freight Rates. So we  
5           all know how, what those rates were. Mr. Druberra  
6           (ph) did Southern Freight rates in transition.

7                   I see a Sidley and Austin man in the  
8           back row. Kenneth Burgess in 1924 wrote a book on  
9           railroad freight rates. We don't have the current  
10          situation of what is rate, what are the rates today?  
11          How are freight rates made? What is the joint rate  
12          process?

13                   There may be a GAO study of interviewing  
14          certain shippers, but nobody has put forward what is  
15          the current rate structure today, and how are  
16          freight rates made. So I would offer that  
17          suggestion, and I think it's probably more  
18          appropriate for the DOT to spend some money to hire  
19          some professors, to out and bring Mr. Ripley's and  
20          Mr. Daggett's books up to date, as to what we're  
21          really talking about.

22                   I suspect that if you talk to shippers

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1 who are currently shipping by rail, it's not the  
2 absolute level of the rate that concerns them, but  
3 it's the relationship of the rates to a competitor,  
4 rate comparisons.

5 We made that suggestion a year ago, the  
6 same technique you used in the undercharged cases.  
7 You have to first use cost, to catch -- have the  
8 staff people get into cost, to find out whether  
9 there's market dominance.

10 But once you get market dominance, then  
11 you go to rate comparisons, and of course the  
12 overriding question there is eligibility. Assuming  
13 you're going to have a certain eligibility  
14 requirement, you could rate comparisons.

15 That's what was always done, in the rail  
16 field as well as in your overcharge field. In fact,  
17 you used to have a Bureau of Informal Rate Cases in  
18 the old ICC. Nobody's mentioned that here.

19 But it's not difficult how to decide  
20 these small processes for these rate cases. You  
21 just have to find out what the rates are first.

22 CHAIRMAN NOBER: Okay, thank you very

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1 much. Mr. O'Connor, are you ready?

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