

14 MR. LOFTUS: Yes, I would. I will be
15 brief. A couple of points.

16 I'd like to start where you were ending up
17 there in the questioning about, you know, this idea
18 the carrier's right to vacate a prescription. How do
19 you get a rate prescription? Before that can happen
20 you have to find that the railroad violated the law,
21 that it charged a rate that exceeded a maximum
22 reasonable level that is permitted under the law.

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1 Without that predicate finding, you have no
2 jurisdiction to prescribe a rate.

3 CHAIRMAN NOBER: Correct.

4 MR. LOFTUS: Correct. So, before you
5 ever get to this point, you have to find that the
6 railroad violated the law.

7 Now, to get to that point, in this current
8 situation it was true in 1994, it is a huge
9 undertaking for a shipper to take on that burden to
10 come before this agency, to prove it, to go through
11 all the time, expense, etcetera associated with that
12 process.

13 So, the prescription is for the benefit of
14 the shipper. It's not for the benefit of the
15 railroad. So, if the shipper for whose benefit the
16 Board has acted and at whose request, says "We don't
17 want it anymore," then it seems to me it's perfectly
18 reasonable for the Board to say, "Okay. Well, you
19 were the one who wanted it. You can blah, blah, blah.
20 Fine, it's gone."

21 But for the railroad, who only had this
22 imposed upon it because it violated the law in the

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1 first place, to be able to say, "Well, you know, we'd
2 like to keep the prescription," you know, no, it
3 should not have that right. It doesn't make any sense
4 in the statutory scheme of what's going on.

5 Now, it's different from the point, and I
6 think this was made, whether you can vacate the
7 prescription because under the changed circumstances
8 that have been demonstrated you run the new numbers
9 and you find the challenged rates no longer exceed a
10 reasonable level. Well yes, then you can vacate the
11 prescription because of the changed circumstances, not
12 because the carrier asks you to, but because the facts
13 are such that the rates challenged are no longer shown
14 to exceed a maximum reasonable level. But that's not
15 the case we have here.

16 They are shown to exceed a maximum
17 reasonable. There is a challenged rate. It's clear
18 what the challenged rates are from the DCF analysis.
19 We went back and we changed certain assumptions.
20 Tonnage, etcetera, etcetera. We didn't change what
21 the challenged rates were, neither one of us. And so,
22 it is clear.

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