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

I'd like to start where you were ending up there in the questioning about, you know, this idea the carrier's right to vacate a prescription. How do you get a rate prescription? Before that can happen you have to find that the railroad violated the law, that it charged a rate that exceeded a maximum reasonable level that is permitted under the law.
Without that predicate finding, you have no jurisdiction to prescribe a rate.

CHAIRMAN NOBER: Correct.

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

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

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

But for the railroad, who only had this imposed upon it because it violated the law in the
first place, to be able to say, "Well, you know, we'd like to keep the prescription," you know, no, it should not have that right. It doesn't make any sense in the statutory scheme of what's going on.

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

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