

19 CHAIRMAN NOBER: Mr. Sipe and Mr. Weicher,
20 you're both veterans of this process.

21 MR. SIPE: I think Mr. Weicher will lead
22 off.

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1 CHAIRMAN NOBER: You know the drill here.

2 MR. WEICHER: Yes, sir. Good morning.

3 CHAIRMAN NOBER: Welcome back.

4 MR. WEICHER: Thank you very much. I'm
5 Richard Weicher from the Burlington Northern Santa Fe
6 Railway Company. Mr. Sipe and I are dividing the
7 time. I might take a couple extra minutes at the
8 front to address some of these contract issues and I
9 think Mr. Sipe will let me do that, although we'll try
10 to stay within the overall time frame.

11 I have lived through this case from the
12 beginning when it was ICC and the Atchison, Topeka and
13 Santa Fe Railway Company, although I'm not sure I
14 completely remember the record from back there. But
15 it does have some salient core issues that have been
16 there all the way through. And a key one of that was
17 the revenue and forecast projection issues of the
18 tonnage on the relatively, by some of these other
19 cases, confinable stand alone railroad. It started
20 out with these 6 million ton projections for two
21 utilities.

22 The Atchison, Topeka and Santa Fe at that

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1 point did vigorously challenge the future assertions
2 for tonnage, put in witnesses and evidence on that
3 issue. In its 1997 decision, among other issues, but
4 this I honestly think was a big issue. I don't know if
5 Mr. Loftus would disagree with that. it wasn't the
6 only issue, but it was a big one. The Board said, "No,
7 we're going with the other forecast that the tonnage
8 would stay there from that source." Did the same
9 thing in the 1998 reopening when -- excuse me,
10 reconsideration-when then Santa Fe came back and
11 reargued that tonnages were already looking like they
12 weren't going to be there. But the Board said, "Well,
13 we're not worried about this year-to-year stuff.
14 We'll stay with the original theory as proposed by
15 Complainants of the tonnages." The Board ordered
16 dramatic reductions, 40 percent rate roll backs, which
17 to my knowledge may be the biggest it ever did,
18 millions in reparations. And it was based on a faulty
19 premise, we believe, that affected the rate for years.

20 The Board said very clearly in its
21 decision, in the 1998 decision, that if it turned out
22 these projections were inaccurate or wrong, that the

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1 railroad could come back. We're back.

2 I want to address for a moment this
3 contract issue and I don't really propose to debate
4 through terms of the contract. I think there's a
5 couple overriding principles here.

6 I think that everything Burlington
7 Northern Santa Fe is seeking is fully within the
8 contract. We waited until 2003, like it says. It
9 dealt with certain things in terms of how it accounted
10 for the rate and the reparations and during a fixed
11 period of time. There are things that are Caesar's
12 and there are things that are not Caesar's. And for
13 this purpose, you're Caesar. For purposes of rate
14 prescription, stand alone costs, rate regulation and
15 there are things that are not part of your
16 jurisdiction, with all respect, and that's contracts.
17 The rate contract's got an arbitration provision. I'm
18 in-house counsel. I'm not looking for more rate
19 litigation or arbitration litigation, or contract
20 litigation. But, you know, that's life. I got budget
21 responsibility for that stuff. I'm not promoting
22 litigation. But those, in my humble opinion, are not

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1 your issues.

2 And your issue, this Board's issue, is
3 what is the right way to administer it's 20-year DCF
4 stand alone cost constrained market pricing coal rate
5 guideline regime. We're not asking for a check.
6 We're not asking for reparations. We are asking the
7 Board to preserve the integrity of a prescriptive
8 process over the life of these prescriptions. And if
9 that gives rise to some other issue some place else,
10 which I don't think it does, that is not your problem.

11 What is your problem is to figure out what
12 happens when you invite either a shipper or a
13 railroad, or not invite, you state what the law would
14 require, that if you're making a long term
15 prescription based on some fundamental core facts and
16 they are proven to be wrong, in short of mid-life, and
17 wrong substantially by years the changes the long-term
18 revenue flow, you know, I think this may even be sort
19 of an issue of first impression. I'm not sure, but
20 can you -- it probably is under the coal rate
21 prescription. Can you properly administer this
22 process to fix the faulty premise that it was based on

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1 so that over the life of the stand alone railroad it
2 produces sufficient revenue to meet the cost of the
3 stand alone railroad?

4 Mr. Sipe will be addressing the
5 calculatory issues and the formulaic issues. That's
6 the world that the STB is supposed to deal with here
7 as opposed to the world of contracts which we think
8 everything we're doing is perfectly right. APS's
9 argument seems to be separate from this contract
10 stuff. Ignore what happened the last several years.
11 Ignore what happened to the so-called stand alone
12 railroad or its surrogate. What happened in the real
13 world is the revenues and the tons that moved on this
14 thing that actually occurred when you look at what you
15 should do to your prescription. If the prescriptive
16 process has any real meaning, then you do have the
17 burden of getting it right over the life of the stand
18 alone railroad. That's what we think is a core policy
19 issue here that the Board should address.

20 I will pause, if I may, and let Mr. Sipe
21 address some of the, many of the additional formulaic
22 and calculatory issues.

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