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

MR. SIPE: I think Mr. Weicher will lead off.
CHAIRMAN NOBER: You know the drill here.

MR. WEICHER: Yes, sir. Good morning.

CHAIRMAN NOBER: Welcome back.

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

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

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

The Board said very clearly in its decision, in the 1998 decision, that if it turned out these projections were inaccurate or wrong, that the
railroad could come back. We're back.

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

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

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

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

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

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