MR. SIPE: Good morning, Chairman Nober, Vice-Chairman Mulvey, and Commissioner Buttrey. I'm going to address my -- the initial portion of my remarks to a second fundamental defect in AEPCO's case, which is its vastly exaggerated revenue, which it claims as a result of very heavy reliance on cross-over traffic movements that dominate this stand-alone railroad.

This is not only a critical issue in the case, it's an issue that raises in a slightly different form from the trackage rights issue, the questions about burden of proof, which Chairman Nober asked AEPCO's counsel about, and I'm prepared to address those issues regarding burden of proof as I go through my remarks, here, and again in response to your questions.

AEPCO has designed a stand-alone railroad that carries virtually no traffic that's local to the stand-alone railroad, except the issue traffic and -- If you'll show the first slide. What we see here on this slide is traffic mix by revenue on AEPCO's hypothetical stand-alone railroad. Some 2 percent of it is issue traffic that's local to the stand-alone, 98 percent of this traffic on the hypothetical stand-alone is cross-over traffic. It neither originates or terminates on the stand-alone railroad. It is overhead traffic, and it's the revenue from this cross-over traffic, not the issue traffic revenue, that produces AEPCO's claimed overage of revenues and excessive costs.

In fact, the issue traffic revenues have virtually no impact on the outcome of the SAC analysis in this case. The outcome would be almost exactly the same if the issue traffic rates were twice as high as they actually are, if they are half what they actually are or, even if the issue tracts were negative, and the Defendant railroads were paying AEPCO for the privilege of transporting its coal. The outcome of the SAC test under their evidence would be exactly the same. I think the Board needs to look with skepticism on a stand-alone railroad configuration that is so dominated by cross-over traffic that the complainant's evidence would produce an essentially identical result, regardless of the level of the challenged rates, and that's what we have here.

Defendant's evidence shows why the Board should give no credence to AEPCO's revenue division claims. The reason why AEPCO relies so heavily on cross-over traffic is that it believes it can simply assume enormous revenue contribution from that traffic without proving that it would be available. Note that most of the revenue that AEPCO claims is on movements of intermodal and automotive traffic. Next slide. Next one.

And we see from this slightly revised version of the first slide that under AEPCO's evidence, the revenues from intermodal and automotive traffic alone exceed the costs to construct and operate the hypothetical stand-alone railroad that AEPCO posited. Common sense tells you that this outcome is not credible. Intermodal and automotive traffic has been exempted from regulation by the ICC because it's highly competitive, and the rates on that traffic are constrained to reasonable levels by the working of market forces. It's a contradiction of the first order for AEPCO to contend that rates on competitive traffic are unreasonably high. Yet that's the proposition that AEPCO's evidence is asking the

Board to endorse.

We know that rates on intermodal and automotive traffic are not unreasonably high, and the issue here, by the way, is not as Mr. Rosenberg framed it. We're not claiming that intermodal is marginal traffic, we're claiming that intermodal traffic doesn't produce rates that are unreasonably high. It's competitive traffic. It's not super competitive. It doesn't earn revenues that are super competitive. We know that these rates aren't too high because, if they were, shippers would be in here asking the Board to revoke the TOFC-COFC exemption on this traffic. We also know the intermodal rates. Traffic on intermodal and automotive traffic are not too high when we look at the full route of movement on this traffic and all the facilities that are required to produce these two movements. Next slide.

These next two slides are going to be a pair of maps, which I can't have up at the same time, but I'm showing you the BNSF one first, and what you see here is that in the -- the red shows the BNSF lines from which AEPCO draws traffic to flow over the

BNSF portion of its stand-alone railroad. The stand-alone railroad is that little snippet in the sort of custard color between Defiance and Vaughn New Mexico. Traffic is drawn from a vast network. You see origination facilities, terminals, yards, spread all over the western two-thirds of the country. AEPCO has only built the little snippet. It's a similar situation for UP. If you would look at the next slide.

There is the UP system that flows traffic and this, by the way, is not just intermodal and automotive, it's intermodal, automotive and manifest traffic, also some grain and coal. Primarily intermodal, automotive and manifest. That traffic flows over vast portions of Defendant's system to the small segments used by the stand-alone railroad.

We know that the rates on this intermodal and automotive traffic are not unreasonably high, when we consider the costs that must be incurred used to maintain the far-flung network needed to handle those movements. Both the BNSF and UP networks include substantial facilities that AEPCO hasn't paid any attention to in its case. The traffic that AEPCO flows over the SARR would not be available to move over those lines in the dessert, unless the rest of this network existed.

As the shipper, claiming a particular revenue division on cross-over traffic movements, AEPCO has the burden to take account of these off-line costs, and I think this goes to Chairman Nober's point. They have a burden to come forward with a prima facie case, supported by substantial evidence on all the key elements. Clearly, one of those key elements is the revenue contribution from cross-over traffic.

By the time AEPCO filed its last round of evidence in this case, the Board had issued it's three initial decisions in the eastern cases, it had rejected the MMP approach, which AEPCO initially espoused, it had said in Duke versus Norfolk Southern, "We're going to fall back on the MSP prorate approach, which assumes a 100-mile block of credit for originating and terminating traffic."

The Board didn't say that is the accepted approach at all time, the Board said we're going to use, going forward, a stand-alone revenue allocation procedure, which takes account of on SARR and off SARR costs. AEPCO didn't make any effort whatsoever to look at relative on SARR and off SARR costs. It simply assumed the Board would impose MSP in this case, and assumed that that met its burden of proof. We don't think it does.

After the Board has spoken and said MSP is a fall back in the eastern case, but we will accept the better evidence of what constitutes coverage of on SARR and off SARR costs, the shipper has a burden to come in with something better, and AEPCO didn't do it here. What they did was, they used a revenue allocation procedure that was basically in the can that vastly over-assigns revenue to the on SARR segments, here. And the reason it does that, is it doesn't take any account of the costs of originating and terminating traffic, particularly the costs of originating and terminating these very large volumes of intermodal automotive traffic that dominate AEPCO's SARR.

Defendant's sought to address the deficiencies in AEPCO's evidence within the frame work of the MSP procedure. In other words, we didn't simply say, "Their evidence is no good. Throw it out." We came forward and we said, "The generic MSP, which AEPCO is relying on without any supporting evidence, is not sufficient to do a fair allocation of on-line and off-line revenues, because the costs on intermodal traffic and the cost on manifest traffic, don't adhere carefully, or closely, to the system average revenue allocation adopted by MSP.

What the Board's MSP procedure assumes, is that it will cost a railroad approximately 100 miles -- 100 miles worth of line haul costs, on average, to terminate or originate a load of traffic. We showed in our supplemental reply evidence, that the cost to originate or terminate a unit of intermodal traffic far exceed the generic 100-mile credit assumed by MSP. And the whole thrust of our evidence was to develop a more accurate and more reliable relationship between the line haul cost and the cost to originate and terminate.

We develop this evidence, relying upon the testimony of a recently retired senior railroad officer, Mr. Barry, who worked as vice-president of intermodal, for the Canadian National. He had vast experience working for railroads, handling intermodal traffic. Personal knowledge of the cost of originating and terminating intermodal and automotive movements.

Mr. Barry submitted unrefuted testimony in the record of this case that a railroad will incur more costs per unit of traffic to originate and terminate intermodal volumes than any other traffic on the rail system. And it's only logical if you stop and think about it, when you're terminating a train loaded with containers in an intermodal yard, you have to have the facilities there that not only allow you to place the train in the yard, but that allow you to remove the traffic, the container or the trailer, from the train it's been traveling on box, by box, by box.

Contrast that with the operations of a coal unit train where you have maybe 120, 130-car train, simply rolling through a dumper at a continuous speed of maybe five miles an hour at a mine. The cost to terminate a coal train are far, far lower on a per unit basis than the cost to terminate an intermodal load, and what we were after was to try to get a more precise cost than the system average AEPCO had relied on.

Mr. Barry relied both on his knowledge of the intermodal industry; he conducted expensive telephone interviews with people who are knowledgeable in the industry to corroborate his personal observations and experience. And, importantly, one particular set of telephone interviews that Mr. Barry had were with the authors of a study that we submitted in our record to support the defendant's testimony. That study was referred to in our papers as the FIRE study, is a report put out in 2003 by the Foundation for Intermodal Research and Education.

The study was supported by the Department of Transportation and the Federal Railroad Administration. Among other things, that study established a relationship between the cost to originate and terminate intermodal traffic on eastern movements. It was not the same set of traffic we're dealing with here, but it's the only study we found in the public record sponsored by a government agency, that addressed the precise issue in this case.

If you'll put up the next slide, I'll show you what Mr. Barry's evidence regarding costs to originate and terminate intermodal traffic came up with compared to the evidence contained in the DOT FRA FIRE study. And, by the way, as I was saying, Mr. Barry conferred with the authors of the FIRE study, so he knew exactly what those authors had relied on and what they hadn't relied on.

Mr. Barry built up his costs to originate and terminate intermodal movements from the ground up, and we have there seven different categories of costs that he included, and they are all identified on the chart, so I won't read them out. He came up with a figure that we sponsored in our clarification filed in May of this year, with a number of about $63.21 per intermodal termination or origination. That compares to the number adopted in the FIRE study of $62.50. Very close, particularly when you stop to consider that the FIRE study did not include several elements of costs that Mr. Barry said should properly be included.

Those included ownership of lift equipment the FIRE study didn't take account, gate inspection costs, switching costs, and terminal trailer and container costs. If, in fact, the FIRE study authors had included those costs, they probably would have come up with an estimate that was higher than Mr. Barry's. Now, in order to make use of this number to derive an MSP value that could be used in calculating the revenue division, we had to compare the cost of originating and terminating intermodal traffic to line haul costs, and we did that by selecting a figure that is also in the public domain, not a figure that the defendant's ginned up for purposes of this litigation.

The figure we used is the TTX Company's current basic mileage rate payment of over-the-road users of TTX equipment, for movements of its empty intermodal cars.

We adjusted the TTX charge upwards to include car usage charges and costs associated with railroad owned trailers and containers. We converted the TTX car payment into an average cost per unit of intermodal traffic per line haul mile, and what we come up with in the clarification which we sponsored in May of this year, is an origination and termination credit of 400 miles, 400 -- the equivalent of 400 line haul miles. And our position before you today, is that this is the best evidence of record on which the Board should allocate divisions of revenue on cross-over traffic if, in fact, you ever get to that point. And I think if you select Mr. Meyer's and BNSF's arguments regarding the trackage rights issue, you won't get to that point.

Now, I don't want to belabor this, I just want to make one or two other points. In addition to the costs of originating and terminating intermodal traffic, we sponsored evidence regarding the costs incurred when traffic is interchanged at an intermodal terminal with another carrier, because the MSP procedure simply overlooks those costs, and that's not appropriate. Lots of times there is substantial activity involved, particularly where there is a socalled rubber tire interchange with another carrier. But, even when there are steel wheel interchanges in a terminal such as Chicago, the railroad terminating the movement, even though the movement doesn't terminate, the railroad handing off the movement to another carrier, incurs substantial costs, and those should be reflected. We also had procedures for doing more refined revenue allocations on merchandise traffic, which I won't summarize here, in the interest of time. They are reflected in the record.

At the end of the day on this intermodal revenue sharing issue, in fact, the entire revenue sharing issue, we do come back to burden of proof. You heard Mr. Rosenberg, he said it in his papers, and he said it again here this morning. He says the burden of proof shifted to us to put in impeccable evidence on the cost to originate and terminate this traffic. I mean, he didn't use the word "impeccable," but that's the implication of what he's saying. If we got anything wrong, if it didn't come out just right, then the Board should throw it out and simply revert to the generic MSP.

That can't be right. They had the burden to come forward in the first instance with some evidence on this key issue. Probably the single largest driver of any revenue or cost component in this case. They didn't come forward with any evidence. They said, "We assume you'll use your assumption on MSP." We came forward and said, "That's not right. We can come much closer than that."

We never said we're going to get it perfect. I mean, that would be ridiculous. You can't get something like that perfect in the context of performing an elaborate study in a compressed time period. I think we did very well. We used an industry expert. His results are corroborated by the FIRE study, and I would point out, as we note in our evidence, not only the origination and termination costs of that study sponsored by DOT and FRA are close to ours, but their cost to line home mile are much closer than our cost per line home mile than those that AEPCO subsequently came up with.

The FIRE study uses cost per line haul mile of 17.5 to about 22 cents per container mile.

We used 15.8 cents. AEPCO is somewhere over 40 cents. If you used all the data in the FIRE study, you would come out with an origination and termination credit of about 300 line haul miles for intermodal traffic, as compared to the 400 miles we sponsored. All the evidence in the record suggests that this credit is substantially in excess of the generic 100 miles that MSP and -- for system average traffic.

And I will hand it back to Mr. Meyer, before I get too excited about this topic.