VICE CHAIRMAN MULVEY: They had five minutes.

CHAIRMAN NOBER: You have five minutes in rebuttal?

MR. ROSENBERG: Yes, Mr. Chairman. Obviously, time is short, and I'll try to address a bunch of points quickly.

In terms of a burden of proof, the Board, to a significant extent, sits in two capacities. It's, in part, I guess an umpire calling balls and strikes. It also has an independent duty to get things right. So there is a -- an inherent duality there. I do think Defendants could have presented more, and had adequate duty to do so. This taking what the trackage rights fee corresponds into, and into the construction of how many miles of railroad, ignoring all other means of traffic, is just not a very meaningful figure in any sense.

Otherwise, you know, our design of the stand-alone railroad I think is very logical and very sound. Because of how the Board interprets cross-subsidy, we are not permitted to build out to segments that don't serve the issue traffic. If we couldn't expand our railroad to include the Powder River Basin, we are also can't expand it to include the terminals, either on the West Coast or Chicago, or the other points that the traffic moves to.

The lines we utilize are heavily traveled, and the traffic that's there happens to be competitive intermodal traffic. It's the traffic that's available to us, and it's the traffic we ought to be able to utilize. Again, you know, what we heard here a few weeks ago is that this traffic earns its cost of capital, notwithstanding the fact it is competitive, not withstanding the fact that it is below the jurisdictional, and not withstanding the fact that some of it probably moves below 100 percent of variable costs. The fact that -- you know, the reasonableness of having this traffic cover it's cost of capital can be confirmed by consideration of the former recyclables cap, and if anyone has a question about that, I would be glad to explain it.

The routing of the traffic between Vaughn and El Paso was specifically addressed in the Board's August 2002 decision. At that point the Board said that it was okay, so that's the basis that we went ahead on that. The use of trackage rights was addressed in the -- the -- No. In the 2002 decision, so that's why we went ahead and did that. We've gone through all these motions that Defendants have filed, and we responded to the orders as they have -- as they have come out.

The Kauders calculation was not based upon on system average, you know, it was based upon revenues and traffic over similar lines. It's a more probative calculation than was indicated. We also think that the fact that we covered the UP attributable and unattributable costs on a below the wheel basis, is also a very meaningful fact that demonstrates the reasonableness of the 3.2 mils trackage rights fee, much less 8.35 or 9.2.

With maintenance away, defendants posit very heavy staffing arrangements and, with that, as with their transit times, they say it's got to be done that way because we do it that way, and we've got incentives to minimize our costs. That may all be fine and good, but economic history is replete with instances where newer firms come in with a different business plan and different staffing arrangements and are able to compete and take over market share and profits repeatedly.

It's particularly interesting that, you know, that one of the main criticisms that Defendant has was -- I'll try to be very quick -- is that it covered too much area and the Buckingham was not at all analagous to that. The Buckingham is a 200-mile railroad, you know, it covers -- it has spot maintenance for that entire line with a staff of 12.

In terms of fuel, there wasn't -- I can't believe there was always a pipeline at Belen. You know, the ACE represents a substantial locomotive demand, that would encourage someone to build out from there. And, if you have further questions, I'd be glad to answer them.