

3 CHAIRMAN NOBER: Well, good morning,
4 everyone. And thank you all for coming.

5 As you know, today we will hear argument
6 in another rate-reasonableness case, the Otter Tail
7 Power Company versus the BNSF Railway Company.

8 For those of you that aren't familiar, the
9 case involves a challenge to the reasonableness of
10 rates for transporting coal from the Powder River
11 Basin. The shipper has chosen to litigate under the
12 stand alone cost constraint, which is typical of some
13 large rate cases here.

14 Like the rate cases before it, this will
15 rise and fall on its own merits.

16 In prior cases shippers have used a
17 program for modeling the operations at their
18 hypothetical railroad that the Board found lacking.
19 But in this case the shipper has used a modeling
20 program the Board has found acceptable in prior cases,
21 and BNSF has also employed it. This raises the
22 question whether the evidence in this case changes the

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1 landscape in some way that entitles the shipper to
2 more deference on at least some aspects of the case,
3 and that's at least a point we'll be exploring this
4 afternoon.

5 Because the shipper and the railroad have
6 used the same model, we see a new emphasis in the
7 arguments. Instead of arguing about whose model works
8 better, the parties now emphasize the inputs to the
9 model.

10 I'll get to the point where we ask you to
11 turn off your cellphones now rather than later.

12 Frankly, I think this is where the
13 battleground should be, and I hope this will result in
14 better, more accurate regulatory decisions.

15 The parties have also raised a number of
16 issues here which we've seen in similar cases, which
17 is the appropriateness of crossover traffic, methods
18 for allocating revenue and the different ways of
19 looking at productivity increases in the rail industry
20 going forward, as well as some new matters as well.

21 Despite having seen some of these issues
22 in the past, I certainly have an open mind in the

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1 issues before the case and look forward to exploring
2 some of them today.

3 Now, a few administrative matters. We
4 will hear from counsel from Otter Tail first, who has
5 40 minutes and it'll be up to Mr. DiMichael to have
6 saved some time for rebuttal.

7 We'll then hear from counsel from BNSF,
8 who has 40 minutes. And after each party's
9 presentation, the Board members will ask questions and
10 we'll do it on a rotating five minute basis.

11 And, as I said before, here is where I
12 normally remind everyone to turn off their cellphones
13 or pagers or put them on vibrate, at the least. And
14 I'm sure that you've all done that by now.

15 So with that, I recognize Vice Chairman
16 Buttrey for any comments he may have.