Mr. DiMichael, I think you've reserved six minutes.

MR. DiMICHAEL: Yes. Thank you, Chairman
Nober. Let me just address several things here, perhaps some of them in reverse order that Mr. Sipe talked about them.

Concerning productivity. Mr. Sipe said that a reasonable man would ask that there would be a correlation between specific areas of productivity and specific operating costs. And I would submit to you that if that is the test, it will be impossible for anyone to tell whether five, one, two, three, five, ten years from now there is going to be specific areas of productivity that you can link to specific operating costs and then tell how much that is going to be.

I would tell you that I don't believe that that is the test. As Commissioner Mulvey said, to some extent the RCAF-A and the RCAF-U have been sort of two extremes and the Board is attempting to find out instead of going to one extreme or the other, just where the balance ought to be.

Now, Mr. Weicher said that all we did is give you a list of factors, all conjuncture. I totally disagree with that. Obviously, the list we
have here is simply a list. But that is backed up in

the record with literature from the industry

indicating that these are likely areas of productivity

and indicating likely when they are going to be.

Now, I don't think that there is really

anything that -- that the Board is going to demand a

specific linking in time and place and amount, it is

not going to happen. The Board does not and cannot do

that in its own productivity adjustment. But it seems

to me what we have given the Board here is evidence it

has not had in previous cases to make a reasoned

judgment, a judgment based on substantial evidence in

the record when the Board said there is this one and

there is this other, and we don't know where. We have

told you at least some factors where you can find

where this productivity is going to be and when it's

going to be. And we think that you should either now

say there is enough in the record to say the RCAF-A is

proper or at least to say that the RCAF-U is okay for

the first few years, but by that time there is enough

time gone past and enough productivity gains that we

can assume that it is likely that the arrow will now
point more toward the RCAF-A.

Commissioner Mulvey, you mentioned very quickly about Otter Tail's regressions. I will tell you that -- I'll refer to the OTP rebuttal evidence Volume 3A14 for a very detailed discussion of the central limit theorem that will explain how when you apply the statistics over and over again to various movements, the confidence factor for the total becomes actually a very small one. We totally disagree with Mr. Sipe on that question, and we think the central limit theorem will answer all of those questions.

COMMISSIONER MULVEY: Was this a mixing of a cross section and time series data? Was it different observations over time?

MR. DiMICHAEL: I would not even begin to try to answer that question.

COMMISSIONER MULVEY: Because there's a few tests for that as to whether or not it's a valid thing to do, and I was wondering because --

MR. DiMICHAEL: I was hoping you would just simply write down the reference and --

MR. SIPE: The central limit theorem.
MR. DiMICHAELE: Concerning the modeling, there was a number of questions here asked about the modeling. And, frankly, the matter -- this is a very similar situation to the question that the Board already decided in the PPL case. In that case the shipper the Board said had an incentive, had a very great incentive to put its best case in, and it didn't. And it now can't say well, gee, I thought maybe I didn't have to do it because of some other circumstances.

The Board here is faced with the exact same question as far BN was concerned. BN may have had reasons, perhaps, and I don't agree with that for sure, of why they didn't model the whole thing. And, frankly, they had an incentive to do the very best case they can. And the very best case they can should have been the entire model start to finish. So they cannot opine now that there was something that they did that they shouldn't have did. Or something that they didn't do that they should have done.

Now concerning the dwell times. BN's evidence on the dwell times is based basically on its
own operations in its own yards, which unlike the
Otter Tail railroad yard are located several hundred
miles from the Powder River Basin.

Otter Tail's evidence on dwell times and
yard capacity has been based on a feasible plan which
is actually the plan that WRPI used and that now UP
uses where the UP has a yard basically in the Powder
River Basin. UP operates its yard very differently
from the way the BN operates its yard. So what we are
telling you is that we think you can certainly credit
the Otter Tail times.

Just one more quick thing. Mr. Sipe
talked about the 25 mile revenue division, and I would
refer the Board to our supplemental rebuttal, Exhibit
3A13 where we make a very detailed response to that.
That was some of the stuff, that was some of the
material that I was explaining to you today.

And I thank you very much.

COMMISSIONER MULVEY: Thank you.

CHAIRMAN NOBER: With that, I want to
thank the parties on both sides for their excellent
preparation and tremendous argument. And I think that
a lot of the real core issues in the case were addressed today. And I'm sorry it was a long discussion, but that meant that we were having a full one.

And on behalf of the Board, I want to thank you all for your time and your energy and your attention.

And the Board stands adjourned.

Thank you very much.

(Whereupon, the above-entitled matter was concluded at 3:32 p.m.)