CHAIRMAN NOBER: Okay. Well, with that, Mr. DiMichael, welcome back to the Board. I know you're a frequent litigant here, but the first time in a rate case. Are you going to use all 40 minutes?

MR. DiMICHAEL: No, Chairman Nober. I would like to reserve six minutes for rebuttal.

CHAIRMAN NOBER: Okay.

MR. DiMICHAEL: I would also like to introduce to the Board Mr. George Koeck, who is the General Counsel of Otter Tail Power. And he is here because, obviously, Otter Tail is extremely interested in the matter.

Otter Tail is a utility headquartered in Fergus Falls, Minnesota. The complaint was filed in January of 2002, but due to the passage of time there has been substantial changes in the evidence. And, Chairman Nober, you noted the fact that the complainant in this case has chosen to use the RTC model upon invitation from the Board. And just so we're all clear here also, although the evidence contains both the string model as well as the RTC model, I will tell you here that Otter Tail in this case will rely on the RTC model for its operating statistics.

That also leads, really, to a second introductory thing here just so, again, everyone is clear. Otter Tail when it had used the string model introduced some certain non-coal reroutes. And when the Board invited Otter Tail to use the RTC model it did not permit Otter Tail to use those reroutes. And, frankly, that is fine. So, again, the state of the evidence will be here that Otter Tail was not relying on its evidence regarding non-coal reroutes. We have attempted, basically, to listen to what the Board's I think clear preferences are.

Otter Tail's presentation is in a base case and an alternate case. The base case involves revenue divisions for crossover traffic based upon a market-based division. And the alternate case represents revenue divisions for crossover traffic based upon the MSP formula.

The only difference between the two cases is that, as well as there is somewhat more tons in the alternate case than in the base case because we were not able because of the regressions used to use all of the tons. But aside from that, aside from certain quantities which are driven by the different tons, the two cases are the same.

I would want to really emphasize here and, Chairman Nober, basically to reemphasize I guess what you just said. And that is that these cases as we read the Board's decisions are highly factual and are based upon their record. What we've tried to do here is to take a look at the past cases and where the shippers have succeeded or failed in the presentation of evidence. And I will tell you here that I would invite the Board to take a very close look at the record here, because we believe in this case there is substantially better evidence than has been presented in a number of past cases in a variety of areas. And I'll be talking about some of them, but they range from things such as productivity to much more esoteric things as construction allowances and bridges, and things of this sort. But we think we have attempted to meet several of the Board's evidentiary issues that it has identified in past cases.

Anyway, what we have here is a map of the Otter Tail railroad, the Otter Tail stand alone railroad. And as you see, it excludes the -- there was a route there from Glendive north for the non-coal traffic. And this excludes that. So it basically runs from the Converse Yard in the Powder River Basin to the Big Stone Plant.

Now, Chairman Nober, you mentioned that both parties have used the RTC model. And that, in one sense, is true. But in another sense there are significant differences. And what I have here is a schematic of the Otter Tail railroad which shows the segments of the Otter Tail railroad that were modeled by BN using the RTC model and the segments of the Otter Tail railroad that were modeled by BN using the RTC model. So there is this very odd sort of two segment using the RTC model and two segment not. And what the BN did for the other two segments is they kind of said, well, Otter Tail's thing is fine. But what BN failed to do then is to properly link the segments and did not show the Board what would happen if you make changes on one segment and how they effect a second segment. So changes that you might make, for example, to the coal as BN did running from Converse Yard to Donkey Creek will have an effect upon the red segment that BN did not model.

So there is, we think, very significant flaws in BN's operating plan here that the Board needs to take cognizance of.

The BN used the RTC model here for these two segments, for example, but it did not even in a model several of the yards using the RTC model. So, again, we're talking about major aspects of this operation that was not modeled by BN.

BN tries to lay on top of the Otter Tail model, however it's own dwell times and its own yard capacities. But here those dwell times and yard capacities are entirely unrealistic. It says, for example, that things in a yard need to be done sequentially when they really can be done simultaneously. And there are very, very excessive times, for example, in those yards. There is an empty train inspection, for example, in one yard. It's supposed to be taking on average six hours when a much more extensive inspection has just taken place at the Guernsey Yard about 102 miles away.

So there's a whole series of things here in which BN's operating plan is severely flawed.

So we think here that this is a case in which clearly the complainant's operating model and operating plan should be adopted by the Board.

In fact, if you superimpose BN's yard times and dwell times on Otter Tail's full RTC model, that RTC model will not run again showing the severe flaws in BN's operating model.

Let me turn to a question that has been a substantial question in many of these cases.

And I would maybe tell the Board here that if the Board would like to ask questions during this time, that is fine. I have no problem with that.

But let me turn to a question which has been a major question in all of these cases, and that is the question of revenue divisions and the revenue divisions for crossover traffic.

The ICC and the STB up until the Duke case had, we believe, consistently held that a market-based approach to allocate crossover revenues is the proper approach. In, for example Nevada Power II, the ICC declared that "the proper approach to allocate cost over revenue was to estimate what market-based divisions would be, and this will be the standard for future cases." And while the methodology has evolved over time from a mileage-based pro rate to a modified mileage pro rate to the MSP, we believe that the principle involved has always been to try to estimate what market-based divisions would be. This is the very first case in which complainant has given market-based divisions to the Board. Since SARR is a replacement for the BNSF as the PRB origin carrier for crossover traffic, it steps into the BNSF's market position. And we think evidence about market-based divisions are crucial to allow the SARR to mirror BNSF's conduct when it negotiates with other carriers in the same way that the SARR mirrors BNSF's market-based revenues when it negotiates with its shippers.

The SARR assumes that it gets the exact same revenues that the BNSF gets from its shippers as a result of those marketplace negotiations. The same process takes place when BNSF negotiates with its revenue division carriers. And we believe, therefore, that market-based divisions should be used as the best surrogate of that.

Now BN has claimed in this case that to use market-based divisions gives the SARR origin carrier a much too large share of the division revenue. Now, we have distributed to the Board a confidential exhibit that I'm going to discuss only very circumspectly here. But if you take a look at the charts in front of you, and I'm looking basically at the yellow chart, this shows two actual unit train movements of coal. This is a movement that has a short haul carrier in it and it has a long haul carrier in it. And the long haul carrier and the short haul carrier divide the revenue. But as you'll see from the first move, which is the top line of this chart, the short haul carrier actually, even though it has a very small proportion of the miles, gets the majority of the revenue, the actual dollar revenue. And the chart, which is on the top which is a mils per ton mile, shows the huge difference in mils per ton miles that the origin carrier would get, in this case the destination carrier would get, for its short haul move.

So the same thing is true of this second move, which is the bottom two charts. It shows again two carriers, one with a long haul move and one with a short haul move, where the short haul destination carrier is getting the huge proportion of the ton miles, and actually gets a majority of the revenue.

So far from not fairly or not accurately portraying what actual divisions are or what the marketplace will show, we think that the Board should follow its precedent that it said in the Nevada Power case and the FMC case and look seriously, rely on market-based divisions.

Now, if the Board chooses not to do that and there is, obviously lots of questions in there, but if the Board chooses not to do that --

CHAIRMAN NOBER: I'm sorry. Page 2 shows

what it would be if we applied MSP?

MR. DiMICHAEL: Yes. In fact, I will get to page 2 actually right now. But page 2 actually gets to the question that I'm going to be talking about now, and that is if the Board decides not to use market-based divisions, we believe that the MSP methodology is the best methodology for the Board to use.

The BN, however, has said that the Board should attempt to reduce the terminal blocks. And just to set the stage here. The MSP methodology would give both the origin and the terminal carrier a 100 mile revenue block. What the BN said in this case is that the Board should get away from that precedent and should reduce the 100 mile terminal block to simply a 25 mile terminal block.

Now, there are a number of reasons that this is simply wrong. The 100 mile terminal block has been used by the Board in its Waybill Sample for many, many years. It is actually the basis in the Waybill Sample for dividing revenues between carriers.

The Waybill Sample doesn't, as BN would

like the Board to do here, is kind of break that 100 terminal block into different classes of traffic and have some class of traffic have a 25 miles block, another class of traffic have some other mile terminal block. Well, the Waybill Sample doesn't do that. It treats the traffic as a whole.

Now BN's methodology and BN's reasoning for this is absolutely flawed, we think. The BN's analysis only looks at the terminal costs. It therefore, assumes that the line haul costs for this for all these movements and all these kinds of movements are exactly the same. So, for example, a line haul cost for a unit train movement is the same as the line haul cost for a commodity movement, is the same as a line haul cost for an intermodal movement. But that just simply isn't true that the line haul costs that you have for a coal movement is very different, because of the efficiencies in that is very different than the line haul cost you get, for example, from a merchandise movement of chemical or steel, or whatever. And is very different from the line haul cost that you get out of a very light loading intermodal movement.

So one of the key assumptions in the BN's calculation of the 25 mile mileage block is simply wrong.

A second key assumption in that calculation of the 24 mile milage block is also wrong, and that is BN's assumption that if you move traffic one mile, it is the same cost per mile as if you would move it a 100 miles. But to move that traffic a single mile is not a 100 times the cost -- the cost of moving it 100 miles is not 100 times the cost of the one miles; rather the cost of the first mile is much more proportionally than the cost of the second, third, fourth, 100th mile. It's a second assumption in the BN's calculation, and that assumption is wrong.

Before the Board gets into trying to divide out its Waybill Sample the way the BNSF would have it here, there is some serious issues that the Board needs to take a look at and some serious ramifications. Because the BNSF would basically undo the methodology in the Waybill Sample, it would undermine the Waybill Sample and any derivatives from the Waybill Sample.

For example, different carriers have different mixes of traffic, and so therefore things that are based upon the Waybill Sample such as the RSAM and the RVC>180 would have to change. The calculations that the BN used for this are very, very complex and we think that they are wrong.

Perhaps, however, the best reason for the Board rejecting the BNSF's attempts to go to a 25 mile milage block was stated by the Board itself through its counsel in a recent case to the D.C. Circuit when the Board was talking about this particular issue about revenue allocation. It said in this brief in the XCEL case: "The burden was on BNSF to make a convincing showing that its alternative approach was superior to the general approach the agency has used since 1994 as there is a norm of regularity in government conduct that presumes an agency's duties are best carried out if the settled rule is adhered to."

If the Board is not going to use what we think is a rule that it's stated in Nevada Power and

FMC that it should it consider market-based divisions, it should then at least adhere given the fact that the BN has not at all proven its 25 mile mileage block here, it should at least adhere to the 100 mile millage block that it has used for many, many years.

Let me turn to an issue which has been a key issue in stand alone cases for a long, long time and that is the issue of the RCAF-A and the RCAF-U productivity.

The Board has used the RCAF-A and the RCAF-U -- the Board has attempted to decide between using the RCAF-A and the RCAF-U in these cases for several cases now. And it has decided to use the RCAF-U because it says that although we believe that there will be some productivity gains for a stand alone railroad, they will not be we think as much as a normal carrier as an existing carrier because the stand alone railroad is starting out with the most efficient railroad.

Now, in this case we have identified specifically -- let me just stop. In past cases basically what the shipper has said in that case is that, of course, there's going to be productivity. This railroad industry has had productivity for years and there's no reason to believe that the SARR will not have productivity. And the Board has said well that's simply not good enough.

But what we have done in this case is to identify in the record specific things that have been stated in the literature. And if you look in the record, there's literally an inch or two of articles that have identified specific aspects of productivity, and some of them you see right over here. They not only identify specific places where the industry, the literature in the industry specifically believes that productivity will take place, but these articles also identify when that productivity gain is likely to occur.

Now BNSF in this case has said that, look, most of the productivity in the railroad industry comes from long lived assets that will never be replaced in the SARR until after the 20 year period. But if you take a look at this list, that is simply not true. In fact, virtually all of these will take place as the literature states between the year 2002 when we began collecting these and 2007. Things like microprocessors. Things like top-of-rail lubrication. You can just simply read right down there, and I know the staff will be delving deeply into this. But these are many, many things that can be either done right now or that will be expected to be done very near future.

Moreover, even for longer lived assets there is going to be productivity. For example, locomotives. Locomotives, obviously, last a fair amount of time. But SARR, an Otter Tail SARR like the BN, leases its locomotives. And those locomotives contain lease provisions which permit BN and permit the SARR to turn those locomotives back or to sell them after five years in certain circumstances. So the SARR will have exactly the same options that the BN itself does to make the productivity gains even on longer lived assets.

Now let's talk about real long lived assets such as track. The SARR has been built to carry traffic that is going to take place, not in the year 2002 when the SARR began, but in the year 2022. In other words, the SARR has been sized, the capital investments of the SARR have been sized to carry traffic all the way 20 years in the future. The traffic carried now by the SARR is much lower.

So, in other words, there is going to be productivity gains as the Otter Tail railroad grows in to its traffic base, the same way that there has been productivity gains in the railroad industry over the past 20 years as the railroad industry has grown in to its traffic base. In fact, we think it is logical to believe that the SARR will have greater productivity gains in industry, which is now according to all accounts, become capacity constrained. The SARR is not capacity constrained. It is sized for the year 2022, not for the year 2002.

So no matter what categories of assets you take a look at there is the likelihood that the SARR will have substantial productivity gains. And we think the RCAF-A should be used. At the very least we think what the Board should do here is to use if it does not wish to whole hog, so to speak, it should at least use the RCAF-U only for the first several years of this SARR. And in the year 2008, which is in the record as all of these things will have taken place by then in the year 2008, then to begin to use the RCAF-A at that point.

Let me turn to one other issue that has been a very controversial one before the Board, and that is the PPL test. I will start out by saying that Otter Tail disagrees with the logic and the law behind the PPL test. And we do not think it is formulated the proper way.

Having said that, Otter Tail for at least the purposes of the calculation has accepted what the Board has done. And we will tell you that despite the logical and legal problems we see in the PPL test, in a sense those can be overleaped because the Otter Tail railroad passes the PPL test, as the Board itself has formulated it. So we here think the PPL test has been satisfied.

Now the BN, however, has suggested in this case that Board should apply the PPL test not just once, but twice. It should apply the PPL test, first of all, in taking a look at the real world rate levels that take place when the cases were first filed. And then should apply the PPL test a second time at the rate prescription stage.

The BN incorrectly assumes at this second time that the SARR will not receive full market rates from non-issue traffic. Now let me explain.

The PPL test was designed, as we understand the Board, to ensure that real world rate levels do not result in a cross-subsidy; real world rate levels for all the traffic, for Otter Tail's traffic and for all of the other traffic. And the PPL test is applied to these real world rate levels. And, in fact, the underlying question on the PPL test is whether the SARR would extend in this case the north/south line to the east/west line on the basis of the real world rate levels.

Now, when it gets to the rate prescription stage, however, what you've got it that although the percent reduction that results in the rate prescription is calculated on the basis of the entire SARR group. That percent reduction is applied to a single shipper. In this case it would be Otter Tail Power. It is not applied to any other shipper on the SARR. Let's say Otter Tail gets a 25 percent rate reduction in this case, there is no other shipper out there who can come to the Board and say well, you know, Otter Tail got a 25 percent rate reduction and I know that I'm a part of an Otter Tail group, so I'd like the 25 percent rate reduction, too. You order the BN to do that for me right now. That's not how it works; that shipper has to come in and prove its own case.

So as a matter of fact for all of the non-issue traffic, the non-issue traffic is not reduced. The only rate that is in fact reduced is the Otter Tail rate.

So if the Board wants to accept the logic of the PPL test and if the Board wants to accept the logic of the PPL test at the rate prescription stage, the PPL test should be applied by reducing only Otter Tail's rate and then the second time PPL test could be run. But there is no reason to assume that the rate reduction would apply not just to Otter Tail, but to everyone else in the group. That simply is not the case. The SARR is expected to have the same options that the BNSF has. Even if Otter Tail gets a rate reduction, the BNSF after this case will continue to get the same market rate levels from all of the other traffic that it gets now. So it would be incorrect to reduce the other rate levels and the run the PPL test there. At the most you should do is to reduce only the Otter Tail rate and run the PPL test at that time.

CHAIRMAN NOBER: You can keep going.

MR. DiMICHAEL: Okay.

Let me turn to a couple of quick issues here that are important in the overall scheme of things, however.

Southern Powder River Basin traffic. BNSF has said that there is Southern Powder River Basin traffic that moves southward from some of the mines and that traffic does not share facilities, BNSF says, directly with the issue traffic and therefore it should be excised. But there is no requirement. BNSF has completely misread PPL. There is no requirement that all the crossover traffic must share facilities.

What PPL says is that a complainant may not arbitrarily shift attributable costs to traffic that does not share facilities with the issue traffic. Basically if you pass the PPL test, you show that the complainant does not shift attributable cost to traffic that does not share facilities with the issue traffic.

This issue about the Southern Powder River Basin traffic has been basically decided. It has been decided by, first of all, the PPL test. If you pass the PPL test, you pass whatever standard the Board has in this. And it has also been decided in the Duke CSX case where you had exactly the same, in fact if anything even a more extreme case where the complainant's traffic did not even reach to the point where the non-issue traffic was. And the Board accepted that traffic there.

So although BN makes a major point of this, we think that this is settled both with the PPL test as well as in the Duke CSX case.

Let me talk about one other issue here, and that is regarding debt costs. Consistent with STB precedent, Otter Tail has updated its cost of debt to reflect the fact that the SARR would have refinanced its debt in 2003. As I mentioned before, this case began in January of 2002. The case continued long enough to see substantial declines in the cost of debt over that period.

And as far as precedent goes, the STB and the ICC before it have routinely updated cost of capital in other areas and in other decisions. The Board has routinely updated things like projections, for example EIA projections to take into account the most recent projections. And in WTU the Board has said that it would expect a SARR to refinance itself if interest rates dropped.

In this case interest rates have dropped, not after the decision but they've actually dropped during the case. And we think it makes perfect sense and is perfectly consistent with STB precedent to have the SARR refinance its debt, just like probably -- well, lots and lots of homeowners in the country have done, and in fact BN itself has done.

CHAIRMAN NOBER: Do you want to reserve

the balance of your time or --

MR. DiMICHAEL: Let me hit one last issue here.

CHAIRMAN NOBER: Okay.

MR. DiMICHAEL: And that is maintenance of way. The major difference between BNSF and the SARR and the Otter Tail SARR in the maintenance of way area has been in the SARR's use of contract employees to make maintenance of way to do maintenance of way program maintenance.

The STB in the TMPA case rejected the notion that there could or there even could be a maintenance of way that is out sourced like that. In this case, however, Otter Tail again has submitted evidence showing that a very large class III RailAmerica out sources 95 percent of his program maintenance. So that what we have here then is a evidentiary record that, unlike the facts that were present in the TMPA case, shows that it is possible. So at the very least the Board should take into account the possibility of that and then take a look at the individual aspects of the maintenance of way costs to see if that element makes sense.

Now we say it does make sense. And if you look at this particular slide here this shows from the record various standards for maintenance of way. The average route miles per field person. Now BNSF's figures show only 2.6 route miles per field person for the Otter Tail SARR, whereas the real world BNSF itself has more people; 3.8.

Otter Tail has evidence in the maintenance of way area that WRPI had 5.8 route miles for a person. And the Otter Tail railroad is certainly not very much above that.

In other operating costs here, the operating maintenance cost per track mile and the spot maintenance percentage. The real world BNSF in operating maintenance cost per track mile is $14,000. Otter Tail's railroad is $14,500. So the combination of the RailAmerica in evidence as well as these clear standards that Otter Tail meets and that BNSF does not, or the BNSF evidence does not, clearly suggests that the Otter Tail maintenance of way evidence should be credited here and should not be simply dismissed, but rather gone into in a very deep detailed way.

And with that, I thank the Board.

CHAIRMAN NOBER: Thank you.

How much time did he use?

UNIDENTIFIED SPEAKER: He's still got six minute.

CHAIRMAN NOBER: Six minutes. Okay.

Vice Chairman Buttrey, do you want to start?

VICE CHAIRMAN BUTTREY: I think I'm going to reserve my questions to the end.

CHAIRMAN NOBER: Okay.

COMMISSIONER MULVEY:

The differences between Otter Tail and BNSF Otter Tail and your SARR and BNSF's SARR, are pretty substantial. But does that reflect any differences in geography that would apply to this route as compared to the overall BNSF system? The overall BNSF data, I believe, refer to the entire network, right?

MR. DiMICHAEL: Yes. The overall BNSF would refer to the entire network. But if you go back to the slide. Certainly the WRPI would be actually more comparable to the Otter Tail railroad than almost anything. WRPI was basically a coal only railroad, as the Otter Tail has been configured now that we've dropped out the non-coal traffic. It is basically a coal only railroad also.

So on this we think the average route miles per field person, the WRPI is a lot like this.

In terms of the other things, we think that a coal only railroad would be actually easier in terms of organizing the maintenance than you would if you would have all sorts of traffic that would have different effects.

COMMISSIONER MULVEY: I notice, operating maintenance cost per track mile versus average route miles per field person, would the route miles be less because the SARR in this case, the coal rail, would be double tracked?

MR. DiMICHAEL: Yes.

COMMISSIONER MULVEY: And so therefore, again, looking at the average for the system as a whole, you would expect there to be more route miles because it's single track in many cases, whereas as double track route miles are necessarily going to be different, no?

MR. DiMICHAEL: That's right.

COMMISSIONER MULVEY: Okay. You had chart there on expected productivity gains.

MR. DiMICHAEL: Yes.

COMMISSIONER MULVEY: And you're referring to the literature. I was wondering if that literature is the study done by Steve Ditmeyer recently and presented by the National Defense University?

MR. DiMICHAEL: I don't know if that is in there, but I can tell you that it's not a single study. There is literally, oh I don't know, probably 18 or 20 different pieces of literature from various publications.

COMMISSIONER MULVEY: That particular study outlined about 25, I believe, technologies that are on the horizon which could greatly improve railroad productivity over the next decade or 20 years or so. However, the article also makes clear that it's unlikely that many of these are ever going to be instituted or only going to be instituted with great difficulty after overcoming railroad resistance. And some of the ones that you have listed there, like positive train control, are ones that the railroads are not at this point eager to invest in, rightly or wrongly.

So when you say that these would be in effect by 2008, I'm not sure that the evidence is there to support that most of these technologies would in fact be implemented anywhere near the 2008 time frame.

MR. DiMICHAEL: Well, the literature that we have would suggest that these are feasible to be done by then, and I think it would be fair to say at least some of them, in fact many of them, would be expected to be done by then. So I don't know specifically a study that you're talking about. But I think here that there's certainly evidence in the record that would suggest that there is substantial productivity gains fairly early on in the system and that don't depend upon long lived assets.

COMMISSIONER MULVEY: No. It depends upon rational behavior, but that may be difficult to achieve.

MR. DiMICHAEL: And perhaps just on that point not on rational behavior, but the SARR is at least some of the reasons why a real world railroad cannot access, perhaps, some of these is because it has a history that includes union contracts and, for example, other things but I'm especially thinking of that that limit its ability to do that. Now the SARR is a least cost most efficient railroad not burdened by that. So to the extent that some of these things can't be done because of those sort of existing constraints, the SARR is not limited.

COMMISSIONER MULVEY: Okay.

CHAIRMAN NOBER: Let's start with the first point, which is the one I raised in my opening statement which is, you know, the Board has never accepted a shipper's operating plan before. And I don't know what we'll do with this case. But for the sake, just hypothetically, let's assume for the moment we were to assume a shipper's plan. What level of deference would go along with that? What of the component parts of that should we accept, which of the parts that BN challenges should we look at? How should the Board view an operating plan in that circumstance, which is a matter of first impression for us, were we in the hypothetical to find that?

MR. DiMICHAEL: I think there are two aspects of this, I think, with an operating plan. An operating plan will develop for you the operating statistics. Basically the unit numbers and then you have to multiple those unit numbers by the costs of the various units.

I would think that if you would adopt the operating plan, it certainly means I believe that you would have to give a considerable amount of deference to the operating statistics because those really flow directly from the model. And the acceptance of the model of the plan really goes along with that.

I think you also would have to defer strongly then to things that sort of directly relate to the operating statistics, like for example the dwell time and the yard capacity. Because you can't split the model like that up if the model runs with certain configuration and a certain yard capacity, as long as you believe that that yard capacity and the dwell time seem to be fairly reasonable, the model runs. And so I think it would mean that you would have a certain amount of deference given to those things, too.

CHAIRMAN NOBER: So what does that mean for questions, my last question, for issues like dwell time and yard size, for example, if we were to assume your operating plan worked and BNSF said well, yes, but we think these two parts don't, should yours deference?

MR. DiMICHAEL: Yes, I do. Because it seems to me that that flows directly from the operating plan.

And I think the way that you put it, Chairman Nober, is correct. I think there's a certain amount of deference. I'm not going to tell you that you couldn't decide on something else. But I think we have here not only a workable operating plan, but also substantial evidence that would show that the dwell times and the yard capacities that we have calculated are in fact feasible, are in fact real in the real world. And it seems to me if you put those together, the deference then I think rises to a very large extent.

CHAIRMAN NOBER: Then sort of the flip side of that is what level of evidence would the defendant railroad have to put in to contradict that? Do they have to have an entire operating plan that works? Can they have pieces of it and show that these pieces work or don't work?

MR. DiMICHAEL: We think that the way BN has done this in this case where they basically segmented the railroad and given you a model for two unconnected segments to the railroad, frankly cannot be adopted here. It simply does not work. It does not provide you with a rational basis for developing an operating plan.

So I think, obviously, the flip side to that is if you believe that the Otter Tail operating plan based on the RTC model a full railroad operating plan with reasonable yard times and dwell times work, it seems to me that is the end to that question.

CHAIRMAN NOBER: Commissioner Buttrey.

VICE CHAIRMAN BUTTREY: Back on the operating costs side of the ledger, so to speak. I'd just like to get some things in the record if we could about costs.

Would you agree to stipulate for the record that wages and salaries at the railroads and at the power company are higher or as high as they've ever been?

MR. DiMICHAEL: I don't think I could stipulate to that because I don't know and I --

VICE CHAIRMAN BUTTREY: Okay.

MR. DiMICHAEL: -- wouldn't hazard a guess.

VICE CHAIRMAN BUTTREY: I would guess that they might be.

It seems that health care costs are going up for everybody. Coal and gas costs are going up for everybody. Construction costs are going up for everybody. Maintenance costs are going up. Taxes are going up. Cost of capital, other things. But it's in the record that the railroad actually came in with an offer to the power company that reduced what you'd been paying in the past, a reduction in your rates. We're not allowed to talk about the amount, nobody is, but it's my understanding and based on the record that the railroad actually came in given those facts and circumstances and offered you a rate that was less than what you had been paying. And I don't know at the moment how long you had been paying the rate that you had been paying. And I think we can say for the record, I believe we can, that the railroad in this case is not revenue adequate at the moment. I believe that's the case.

I just want to make sure that you and the power company and everybody understands that the Board could come in a with a rate prescription that's higher than the last offer from the railroad. Is that clearly understood by everybody?

MR. DiMICHAEL: Absolutely.

VICE CHAIRMAN BUTTREY: Okay.

MR. DiMICHAEL: But I would like to respond to that question if I may, Vice Chairman Buttrey. Because I think this all depends I think on where you start.

Otter Tail has been paying a rate like this for a long time. And it is believed that the rate it has been paying for a long time is unreasonably high.

Over ten years ago, over ten years ago Otter Tail attempted to build out to escape its captivity from the BN because it thought it was paying a rate that was too high. BN sued Otter Tail to prevent the build out. It successfully sued Otter Tail to prevent the build out and to basically maintain its monopoly position. Since that time, that occurred in 1998, Otter Tail has attempted to negotiate with the BN, win/win negotiations and all other kinds of negotiations. And it has failed. It has not been able to succeed getting a rate that it believes it should have.

Otter Tail is now before this Board because this Board is the last place it can come to get the rate relief that it believes it should have. And I guess the question that you may ask well why is it doing this? Why is it spending so much time and effort to get rates that it believes are reasonable?

I would suggest to you the answer to that question can be answered by simply a flight into Fargo, North Dakota within Otter Tail's territory. It's in some ways a very pretty territory, but there isn't much there. It's a rural territory. It is a desperate --

CHAIRMAN NOBER: I've done it.

MR. DiMICHAEL: I know you've done it.

CHAIRMAN NOBER: I've done that.

MR. DiMICHAEL: And you can see that it desperately needs economic development. Otter Tail's corporate strategy for the last 10 or 15 years has been to try to develop the area economically. And a key aspect of that is reasonable utility rates which depend upon reasonable rail rate. So this statute, I believe, is not just a question of the economic health of the railroad. It is also a question of economic health of the customer. And what Otter Tail is doing here is attempting to reasonable rail rates so it can support a corporate strategy that is trying to get economic development in that area.

CHAIRMAN NOBER: Commissioner Mulvey?

COMMISSIONER MULVEY: Let me follow-up on that for a moment. You said that you tried to do a build out to escape captivity. And build outs are legal, and other shippers have proposed them and some have even done them. What are the bases from that suit to stop you from doing the build out? Was it that you would be violating the contract, your contract with them?

MR. DiMICHAEL: No. What happened here, it was not violating our contract. One of the key aspects of the build out was to build to a short line rail carrier about five or six miles away. Otter Tail believed that the short line railroad could serve it over certain rights that that short line had over the BN. BN sued Otter Tail for tortious interference because it said that the short line railroad could not in fact serve the Otter Tail plant. And the court eventually agreed with the BN on that.

So the only build out possibility there is now is about a 25 mile build out to a long line.

COMMISSIONER MULVEY: So this was a paper barrier that was in your contract?

MR. DiMICHAEL: Yes.

COMMISSIONER MULVEY: Yes. Another good example of the usefulness of those.

You mentioned about the maintenance of way and there is substantial evidence now from the railroad that is serving the Powder River Basin that the cost of maintaining the infrastructure there is much higher than elsewhere because of fugitive dust. And have you taken that into your account in your calculations of maintenance of way costs?

MR. DiMICHAEL: I will tell you that I'm not quite that into the record of being able to tell you whether it takes into account fugitive dust. And the record would have to speak for itself on that.

COMMISSIONER MULVEY: You also mentioned about using the RailAmerica model with regard to maintenance of way and contracting out. But, of course, there's always the issue of whether or not contract services perform as well as that performed by the traditional brotherhoods. And so there's always a question as to whether or not you're getting the same quality work for the buck. So that's always an issue when you're talking about reducing costs through contracting out to maintain the same quality.

MR. DiMICHAEL: Well, at least the article that we submit, the evidence that we submit about the RailAmerica's President is quoted in that as saying that they are very happy. They have been able to save a substantial amount of money.

COMMISSIONER MULVEY: Okay. One more thing, and that was early on in your presentation you mentioned some regression analyses and you couldn't do some calculations because of differences in the regression analyses. What regression analyses are those?

MR. DiMICHAEL: What we did here is when we were taking a look at using market-based divisions, because of the limitations of the data we were given we had a cut-off on the data that we did not use any movements below a certain percentage of miles. And then it was basically a regression for the movements that we had above that. Because when we put the alternate case in on the basis of the MSP, we didn't have to rely on that basically artificial cut-off because we were not being limited by the data that BN gave us. So that was the difference between the two.

COMMISSIONER MULVEY: Okay. Thank you.

CHAIRMAN NOBER: All right. Let's turn to the productivity, which is something that has come up in many cases and we've asked a lot of questions about up here and we still seem to be having a hard time getting, you know figuring out what the right thing to do on this is.

Now, first of all, I want to appreciate your putting up the evidence that you have on this. And I guess the question I have is what goes into the RCAF-A? I mean, what is it made up of? Is it extrapolating past productivity increases into the future? Is it looking at what are productivity increases that are likely to come into the future? I mean, what is it made up of?

MR. DiMICHAEL: It is a total factor productivity measure taking into account all productivity factors basically looking at input versus output.

The RCAF-A is calculated, I believe, on the productivity per year over the last, I believe it's 4 years, it might be five. I'm not sure. And so the figure that the STB uses right now for, let's say, 2000 --

CHAIRMAN NOBER: But we don't calculate it. It comes from someone else.

MR. DiMICHAEL: Well --

CHAIRMAN NOBER: I mean, doesn't an outside group do the actual inputs? Not us. I don't think this is one of our measures. We don't forecast it, but we get it.

MR. DiMICHAEL: No, you don't. But --

CHAIRMAN NOBER: So the actual inputs are not ours.

MR. DiMICHAEL: Yes.

CHAIRMAN NOBER: I mean, we crunch the number but we don't --

MR. DiMICHAEL: You crunch, right. But in other words, it is not really a forecast of productivity, and it is an average of the past several years of productivity which then are basically assumed to be truly for the coming year. And it is, therefore, a moving average. So you don't in a sense say well we're going to stand here in the year 2005 and we're going to guess what productivity is going to be in the year 2005 and 2006. You rather look backwards to the last three, four, five years; whatever it is. I said I think it's four. And you basically average the productivity and that's the productivity adjustment that you put in this year's RCAF.

CHAIRMAN NOBER: But at some point we have to project out 20 years, right?

MR. DiMICHAEL: Well, yes. Now here --

CHAIRMAN NOBER: So then we have to make an extrapolation then what's the productivity going to be in the future and base it on the past.

MR. DiMICHAEL: Yes.

CHAIRMAN NOBER: Is that correct?

MR. DiMICHAEL: That's right.

CHAIRMAN NOBER: So we're looking at what is the past productivity gains and then extrapolating those into the future?

MR. DiMICHAEL: That's correct.

CHAIRMAN NOBER: Now do we think the railroads will continue to get productivity increases in the future at the rate they have in the past?

MR. DiMICHAEL: I think that is --

CHAIRMAN NOBER: And that's what we have to find, right?

MR. DiMICHAEL: Right.

CHAIRMAN NOBER: I mean, forget whether or not you get them, would any railroad get the same amount of productivity increase in the future that they've gotten in the past?

MR. DiMICHAEL: Well, but in a sense --

CHAIRMAN NOBER: I'm going to ask them that.

MR. DiMICHAEL: You're answering that question yes right now; that when you look in the year 2005 you're not looking in productivity. You're not calculating productivity in the year 2005. What you're doing is you're saying --

CHAIRMAN NOBER: What's the rolling average for the last four years?

MR. DiMICHAEL: -- what is the rolling average of the last four years, and that's what we're going to assume. Because that's been the rolling average for the past four years, that's what we are assuming is going to be taking place this year.

CHAIRMAN NOBER: Are productivity increases going up or down in the rail industry if you compared the last five years to, say, ten years ago?

MR. DiMICHAEL: If you compared the last-- my cost consultant is probably going to kill me for trying even to guess this. But I believe that the productivity gains if you would compare with the last five years with maybe ten years ago, they are not as great as the were ten years ago.

CHAIRMAN NOBER: So, again, that's getting to the question I'm asking. Putting aside whether Otter Tail railroad ought to get productivity increases, are all productivity increases in the rail industry diminishing. I mean, maybe they've in the past extracted the most productivity increases they can and the gap between A and U is going to narrow in the future, but our projections if we're projecting it based on the last four years wouldn't show that. They'd show them in straight lines, whereas the reality might be that they're coming together making this -- sort of obviating the problem.

MR. DiMICHAEL: I mean, there has been substantial --

CHAIRMAN NOBER: I mean, it's going to be such an issue at least I'll understand how we do these calculations.

MR. DiMICHAEL: Well, I don't think it is correct to assume that productivity gains in the future are going to be less than productivity gains in the past. The railroad industry --

CHAIRMAN NOBER: But they might. I mean, why would we assume that?

MR. DiMICHAEL: Well, because for example out there there is the very real possibility that over the next 20 years, certainly over the next 10 or maybe 10 to 20 years, the railroad industry will move from two crew trains to one crew trains. If you do that, it cuts your crewing by 50 percent. It's a huge productivity gain.

CHAIRMAN NOBER: Correct. Which you would get because that's a federal rule, not a union contract?

MR. DiMICHAEL: That's right.

CHAIRMAN NOBER: You can keep talking.

MR. DiMICHAEL: Well, what I'm saying is that there is I don't think anything out there to assume that especially the productivity gains that we're seeing now will just not possibly be able to take place in the future. That risk tends to suggest that there is substantial productivity gains and even things that are just sort of out there would suggest that there is certainly the possibility of productivity gains. No one knows whether there's going to be productivity gains great or less or the same now as there is ten years from now. That's just simply unknowable. All we can do is take a look, as the Board does with it RCAF-A. Look at recent past and project that out.

And the same way with the RCAF-U.

CHAIRMAN NOBER: Okay. I'm sorry. If I could indulge one more question.

When you say that you get more use out of the same amount track, that's measured as a productivity increase if you're getting more revenue ton miles per mile of track on an annual basis; that's treated as a productivity increase?

MR. DiMICHAEL: There is more output for the same amount of input, yes.

CHAIRMAN NOBER: I mean, that doesn't mean--

MR. DiMICHAEL: In other words, through higher volume --

CHAIRMAN NOBER: So you utilizing excess capacity by increased volume is a productivity -- you measure that as a productivity increase?

MR. DiMICHAEL: Absolutely. Because what you're doing is you are putting more tons, for example, on the same amount of cost. Your unit costs are going --

CHAIRMAN NOBER: But carriers are now are probably capped out at that. So does that make up a large portion of what the productivity increases have been in the past?

MR. DiMICHAEL: In other words what we're saying is the Otter Tail railroad is --

CHAIRMAN NOBER: Could get that?

MR. DiMICHAEL: Could get more because it is not, perhaps, capped out the same way that a present day railroad is. So if a present day railroad is, for example, capped out then the Otter Tail railroad we think there is a very good possibility that the Otter Tail because it's not capped out will actually have more productivity gains than the railroading industry now.

CHAIRMAN NOBER: If it just fills up its capacity?

MR. DiMICHAEL: If it simply just fills its--

CHAIRMAN NOBER: And volumes continues to go up?

MR. DiMICHAEL: Capacity. If it simply just gains productivity just purely because of that.

VICE CHAIRMAN BUTTREY: You mentioned a customer base just a few minutes ago. I'm just curious. Are your customers captive to you in your market? Do they have other alternatives for getting power someplace else?

MR. DiMICHAEL: Yes, they are captive to us in our market, although because of federal rules, which I understand very perfectly, other utilities can wheel over.

VICE CHAIRMAN BUTTREY: And you're regulated by the Public Utilities Commission in your state?

MR. DiMICHAEL: Yes. In our states.

VICE CHAIRMAN BUTTREY: In your states.

And presumably you have differential pricing arrangements with your customers? You charge residential users different from what you charge small commercial and large commercial and mega commercial interests?

MR. DiMICHAEL: May I, since the internal counsel of Otter Tail is here, perhaps I might ask him to answer that.

VICE CHAIRMAN BUTTREY: Yes. I'm just curious.

MR. KOECK: Primarily we are primarily a

residential and small business provider of power. As a result, we are tariffed or in one state we have a performance-based rate making. So our customers are pretty much in a captive state-based rate environment. There are a couple of exceptions with a couple of our large industrial customers in which we are allowed to contract. But those contracts themselves are also approved by our public utility commissions in our operating states.

VICE CHAIRMAN BUTTREY: Thank you.

COMMISSIONER MULVEY: The economist here. Just a little clarification, and that is that productivity is just simply output per unit of input. And railroads are famous for having many, many, many productivity measures; output per train mile, output per track mile, output per car mile,per employee, etc.

The railroad industry has achieved tremendous improvements in productivity and I believe, unless I'm mistaken, has lead all industries in productivity improvements over the last 20 years. It would be unlikely to be expected to continue, I would think, that an industry would stay on top that long. A lot of the low hanging fruit, if you like, have been taken especially with regard to employee productivity. The railroad workforce is a small fraction of what it was 20 years ago, and so the output per employee has gone up simply because the employee workforce has been reduced so much.

And, yes, you're right that the crews could possibly be reduced from a two-man crew to a one-man crew. But, again, that's probably going to be difficult to achieve and will only be achieved through negotiations.

And I'd also point out that in fact a lot of these benefits, these productivity increases that the railroads got, a lot of research suggests that the railroads paid dearly for them. They weren't gotten freely. They were expensive and they were negotiated.

It's also true, as Roger points out, that -- volume, is at an all time high and capacity is very much being strained. And therefore, it's unlikely that some of these projected forecasts in traffic system wide for the railroads will be achievable, simply because the capacity is not there.

So, again, there's limits for productivity growth in that area, and that also concerns me.

And then finally, as I pointed out, I am concerned about the achieveability of these things. Many of them are great ideas but whether they're actually going to be achieved in the near term, and the near term being your timeframe of 2008, I'm somewhat skeptical of that.

MR. DiMICHAEL: Let me respond to at least a couple of those things. It is true, certainly, that the railroad industry if you look over the past, let's say, 25 years since Staggers the number workers in the railroad industry has declined significantly. But if you look, for example, over the past four years which is the relevant time frame from the RCAF-A, the drop in railroad employment has not taken place. In fact, there has been a slight uptick in railroad employment over that time.

So, you know, yes if we were looking at productivity trend going from 1980 to 2000, we can certainly say surely there was a huge drop in the number of people. But if we're looking over the past three, four, five years on the people side, we certainly can't say that.

And I think that -- well, maybe it's just something I don't --

COMMISSIONER MULVEY: I was going to ask about the reduction in the size of the car fleet? The railroads more and more now are having shippers supply the cars, therefore their car fleet is reduced. Does that get measured in the RCAF-A that they have greater productivity per car that they own but they're now leasing more cars, so is that captured? I could ask some of our economists about whether that's separated out or not.

MR. DiMICHAEL: I guess I don't know specifically about how it's calculated in the RCAF-A. But if you look in this particular record here because now the Otter Tail railroad is a coal railroad, it is getting most of the cars that it has are, like BNSF now has, are shipper supplied cars.

COMMISSIONER MULVEY: Right.

MR. DiMICHAEL: So as, for example, a

shipper which has brought a car, let's say, 15 years ago on the BN and is now thinking of buying a new car, heavy loading car, aluminum car, etcetera, the Otter Tail railroad would get that exact same productivity gain that the BNSF would get.

COMMISSIONER MULVEY: Thank you.

CHAIRMAN NOBER: Okay. Well, I just have one more set of questions, and that's about the PPL test which I know there's been a lot of discussion about.

And let me just make sure I understand. You all just disagree with the test as a fundamental concept, is that correct?

MR. DiMICHAEL: Yes, we do.

CHAIRMAN NOBER: And --

MR. DiMICHAEL: But as I said, we --

CHAIRMAN NOBER: Why is that?

MR. DiMICHAEL: Well, there's probably two or three reasons. And I said, this is in a sense kind of a mute point because we think we passed the PPL test as the Board has done it. But there's perhaps two or three reasons here.

One, we think that it is proper, actually, to do a cross subsidy analysis. But we think it is not proper to do a cross subsidy analysis on a segment-by-segment basis. We don't think it is actually possible because there are fixed costs as well as variable costs. We think you can do it on a traffic basis but not on a segment basis.

CHAIRMAN NOBER: I'm not sure I understand what you mean.

MR. DiMICHAEL: Well for example, you can calculate whether a particular movement is covering its variable costs or not, because there are variable costs that are attributed to that particular move. Okay. But there are fixed costs.

And when the Board calculates whether a real railroad is cost subsidizing or not, it does not look at it on a segment basis. It looks at it on a traffic basis. In other words, is the railroad serving this shipper in this movement, is it covering its directly variable costs? It does not look at a segment-by-segment basis. It looks at it on a traffic basis, on a variable cost basis on the traffic itself.

Now, what the Board has done in this case, what the Board has done in the PPL case is to mix -- is to try to identify to a particular segment of line both fixed and variable costs and use those in calculating the PPL test. But we think that that's not really possible to do.

For example, there are variabilities in all of the railroad costing. For example, station clerical costs are about 70 percent variable and about 30 percent fixed. Fuel costs are 90 percent variable and about 10 percent fixed. Lots and lots of costs in the railroad. If you get rid of the traffic, you would still keep a certain portion of those costs. But what the methodology that the Board has used in the PPL test is to try identify to a segment of the line not only fixed -- to the not only variable, but also fixed costs because it's trying to geographically center those costs. And we think that that's just not possible to do because the fact of the matter is if the traffic would go, it would -- the fixed costs -- the variable costs would go but the fixed costs would remain. Because for example if the traffic would go, for example, 70 percent of the station clerical costs would disappear but 30 percent of the station clerical costs the Board has calculated are not variable. They would remain fixed. They are not segmented geographically, they would rather just remain with the railroad.

Finally, we think that PPL test is inconsistent with the Board's own calculations of what the proper test of cost subsidy is. The Board has said the proper test of cost subsidy is a directly variable cost. We think that a SARR should be measured by the -- a SARR steps into the shoes of a railroad. It is a replacement for that railroad. It should be measured by the exact same tests that a real railroad is measured by.

CHAIRMAN NOBER: But isn't that the whole basis of the SAC test, which is the traffic going at least to that shipper is self-supporting and if it's not enough to justify building out to the shipper itself, then how can it be cross subsidizing any other traffic? I mean, I don't understand it on the test, but that's how I understand it.

MR. DiMICHAEL: Okay. But you cannot identify to a particular segment of line the fixed costs on that particular segment of line. Because if the traffic does not go --

CHAIRMAN NOBER: You're saying there would always be some residual fixed cost even if you dropped that?

MR. DiMICHAEL: There will also be some. But the Board is attempting to geographically identify to a segment of line some of those fixed costs.

Let me maybe put it into a practical context here. When the BNSF and the UP, for example. When the UP built in to the Powder River Basin, what it was attempting to do in that case is to price when it started to build in not its variable and fixed costs, it was attempting to price on a variable cost basis. And it could get or pay more than the variable cost for that particular move, that was terrific. Because now it was covering a little bit more than other fixed costs.

CHAIRMAN NOBER: But it was also trying to build a market?

MR. DiMICHAEL: Excuse me.

CHAIRMAN NOBER: There were other things going on there.

MR. DiMICHAEL: But in other words it decided to build if it could cover its variable costs, thinking that over time it will gradual fill and up. But I can tell you that for a long, long time, and the Board well knows this, the pricing for competitive rail movements out of the Powder River Basin was very, very competitive which meant it was covering just variable costs.

UP decided to build in not -- and UP was pricing to its customers on a variable plus fixed cost basis, it was pricing to its customers basically on a long run variable cost --

CHAIRMAN NOBER: But all of that -- I mean, that may be in the real practical world of negotiating a contract. But when we look at it as a rate reasonable, this is how we apply it and we say is it improperly cross subsidizing other traffic.

MR. DiMICHAEL: But what --

CHAIRMAN NOBER: So applying the PPL test itself, I mean you may have quibbles with how we measure what's the actual fixed costs of it, but it seems to be reasonable approach particularly in a case like this where such a large percent of the traffic basically goes in a totally different direction than Otter Tail's.

MR. DiMICHAEL: My only point was that when a real railroad was attempting to decide -- let me back up.

What the PPL test is attempting to do is to determine whether a SARR would build the east/west line. Okay. Would I build the east/west line or not.

When a real railroad was faced with that question in, for example, the Powder River Basin it was answering that question on the basis of basically long run incremental costs without regard to fixed costs.

The Board should be looking at the same question, the question is before the Board in the exact same way and the Board should be answering the question in the same way that a real railroad would.

CHAIRMAN NOBER: But to go to the original question I was going to ask, which is the BN's point on the sort of second PPL test, if you will, is simply saying you shouldn't reduce the rate below the level at which they are cross subsidizing other traffic. So if you find that they are cross subsidizing other traffic, let's just assume for the moment you say they are, don't then by just a little bit but then the rate reduction results in a reduction that would take you below the cross subsidy points. That is no longer cross subsidizing traffic. Don't reduce the rate below there. That's their, as I think as I understand their argument?

MR. DiMICHAEL: No.

CHAIRMAN NOBER: That's not their argument?

MR. DiMICHAEL: Well, it is their argument, but --

CHAIRMAN NOBER: And I was going to ask you why is that not their point?

MR. DiMICHAEL: Okay. But what BN is saying is that you should reduce the revenue not just to the issue traffic, you should reduce the rate to every single --

CHAIRMAN NOBER: But that's how our percentage rate reduction assumes it.

MR. DiMICHAEL: But --

CHAIRMAN NOBER: It doesn't legally impose it upon them, but --

MR. DiMICHAEL: Exactly.

CHAIRMAN NOBER: -- when we give you relief, we do it by assuming everybody gets a proportionate rate relief, right?

MR. DiMICHAEL: But that is a contrary to fact presumption. You don't, as a matter of fact --

CHAIRMAN NOBER: Well, a lot of this case is.

MR. DiMICHAEL: You don't as a matter of fact do that. The only rate reduction that is in fact taken is one.

CHAIRMAN NOBER: That's the only rate reduction which we legally impose rate reduction. But our model assumes every -- you know, when we figure out your rate reduction, right, we assume across the board percentage rate reduction which I know people have their beef with.

MR. DiMICHAEL: You calculate -- I will not even go that.

CHAIRMAN NOBER: Okay.

MR. DiMICHAEL: You calculate the percentage reduction on the basis of the total SARR revenue. But you apply the rate reduction not to everyone, you apply the rate reduction to a single shipper.

CHAIRMAN NOBER: Okay. Any further questions?

Thank you.

COMMISSIONER MULVEY: And not to everybody, just to a single shipper? That's the only one we apply it to?

MR. DiMICHAEL: That's right.

COMMISSIONER MULVEY: For further clarification, you were talking about fixed costs and you said that if there was no traffic, there would be still be fixed costs? If there's no traffic, there's no fixed costs. That's the avoidable cost rather than the fixed costs.

MR. DiMICHAEL: Right.

COMMISSIONER MULVEY: That's the overhead costs that you would have for other parts of the operation.

MR. DiMICHAEL: Yes. I misspoke. I didn't mean if there was no traffic at all, but if that particular would disappear.

COMMISSIONER MULVEY: Okay. Thank you.

CHAIRMAN NOBER: All right. Well, again, we've kept you for a while but, Mr. DiMichael, thank you for your arguments.

MR. DiMICHAEL: Thank you.