

MR. HEMMER: Chairman Nober, Commissioner Morgan, thank you for this opportunity to appear before you. I will growl a little bit today, and I apologize for that. I have got a bit of a cold. But I will make up for that by being very brief.

I have heard that a cynical columnist somewhere said that the positions of all of the major nations' positions on the Iraqi conflict are marinated in oil. I would suggest, again a little bit too cynically, that the Board's SAC proceedings have become a bit marinated in legal fees and consulting fees.

There is nothing less sympathetic than a lawyer like me going from outside, where I collected those fees, to in-house. But there is also no better way to get religion about the cost of this process.

In preparing for this hearing, I asked our people to go back and look at all the types of litigation and other types of proceedings that we handled. Over the last five years, the cost of rate cases dwarf the costs of any other type of legal proceeding that we encountered at Union Pacific or perhaps I should say they encountered.

As a result of that, my colleagues and I got together and endeavored to take seriously, Chairman Nober, your invitation to come up with new ideas. And we put together maybe eight or nine ideas in our testimony, a few of which I haven't heard even commented upon. So I am going to touch on just two or three.

One thing we suggested was that there isn't any reason that we know of why parties should submit six filings on variable costs. In a typical Board proceeding, a party files a petition, somebody files a response. That's it, one round each. And maybe there's another round that gets submitted under various motions of trying to file replies and replies to replies.

At worst, it's four filings. We do six in variable cost proceedings. Each side does an opening. Each side does a reply. Each side does a rebuttal.

The third round in my view is simply an unnecessary

expense. I haven't heard anybody today object to that idea. I hope you will give it serious consideration.

Another topic that I would like to discuss with you is that we suggested a somewhat different perspective on the question of movement-specific costing. I think it is consistent with the AAR's perspective.

What we invited the parties and the Board to think about is this. We are all in favor of movement-specific costing when the costs are really specific to a movement. So, for example, if a movement is handled in unit train service, it ought to be costed as unit train service. And there are adjustments that are readily available for that. That is not at issue.

If the shipment is switched out significantly at the destination, that is movement-specific. It pertains to the movement of that traffic. If we need to get the crew wages for that specific movement, we have no trouble providing those. We will do it.

What we object to is having to attempt and support the attempt to develop so-called movement-specific costs that are not specific to a particular movement at all. Instead, they are an attempt to slice and dice unadjusted URCS costs in a different way. It is designed to say that a particular route bears a disproportionately low or high if we are on the other side portion of the company's total costs.

The example that has been tossed around today about road property really is quite a good one. As Mr. Dowd acknowledged, the railroads ceased to be required to keep records on road property investment. We don't do it anymore. Yet, we have been required in case after case to produce voluminous records and then to litigate at hundreds of thousands of dollars of costs per case how one might recompute those road property investment numbers from inadequate data.

The Board in two of our cases in a row has said, "Let's not do this. Let's just use URCS." But that precedent isn't

enough to stop the discovery requests and to stop the litigation. That is the kind of unnecessary and horribly expensive discovery in litigation that we really would like to dispense with.

Finally, I would like to mention briefly our proposal which I will candidly admit gets perilously close to substance, and that is our recommendation to you that you dispense with the long process of discovery into predictions of future rates, revenues, and traffic levels and, instead, just look at what is happening out there in the real world.

I don't object. I think someone suggested that if you have got a very specific piece of evidence that indicates that something has got to change regarding this particular kind of rate, that seems to me to be an appropriate exception.

This effort that we have been involved in which involved multiple consultants, attempts to read clues into contracts and make predictions 20 years into the future on what a railroad's revenues are going to be seems to me to be deficient on several scores. One is the predictions have been wrong. They're just wrong.

Second, the predictions assume a type of expertise that the Board and the Commission said in looking at product and geographic competition it didn't have. And it is an expertise that hardly anyone has. It really is reading tea leaves. So we urge you to look for some more reliable and much less burdensome way of reaching a reasonable prediction for the future.

I would be glad to answer questions with the other panelists.