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Case: Urgent Issues in Freight Rail Service

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SURFACE TRANSPORTATION BOARD

EP 770

URGENT ISSUES IN FREIGHT RAIL SERVICE

PUBLIC HEARING

VOLUME II

Wednesday, April 27, 2022

9:04 a.m.

Surface Transportation Board

395 E Street, SW

Washington, DC

1   APPEARANCES:

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3   PANEL IX:

4

5   National Industrial Transportation League

6   Ross Corthell, chairman of National Industrial

7   Transportation League's Rail Committee, and Vice

8   President, Transportation at Packaging Corporation

9   of America

10

11   American Forest and Paper Association

12   Julie Landry, Director of Government Affairs

13

14   Packaging Corporation of America

15   Doug Grewe, Transportation Manager

16

17   National Association of Chemical Distributors

18   Jennifer Gibson, Vice President of Regulatory

19   Affairs

20   Jackie Wood, Hawkins, Inc.

21

22   -- continued --

1   PANEL IX (Continued):

2

3   Occidental Chemical Corporation

4   Karenanne Stegmann, Vice President of Supply

5   Chain

6

7   International Liquid Terminals Association

8   Kathryn Clay, President, or Michael Stroud

9

10   Pilot Travel Centers LLC

11   Shameek Konar, Chief Executive Officer

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13

14   PANEL X:

15

16   Arizona Electric Power Cooperative, Inc., Freight

17   Rail Customer Alliance, and National Coal

18   Transportation Association

19   Emily F. Regis, Arizona Electric Power

20   Cooperative, Inc., Freight Rail Customer Alliance,

21   and National Coal Transportation Association

22   -- continued --

1   PANEL X (Continued):

2   Ann Warner, Freight Rail Customer Alliance

3   John Ward, National Coal Transportation

4   Association

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6   Robert D. Rosenberg, Arizona Electric Power

7   Cooperative, Inc., Freight Rail Customer Alliance,

8   and National Coal Transportation Association

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1   P R O C E E D I N G S

2   CHAIRMAN OBERMAN: Good morning,

3   everybody. As long as I'm within six minutes,

4   that's what I was trained at Metra was our on-time

5   measurement. It's three minutes, 50 percent ahead

6   of the game. Apologize for being a couple minutes

7   late.

8   While we're waiting for the streaming, I

9   do have a couple of basic announcements. As always,

10 turn off your cellphones. Just a reminder for those

11 of you sitting here, and I am told they are going to

12 figure this out for our next public hearing, when

13 your microphone is on and green, we can't press ours

14 down. So if we're going to have an exchange, try to

15 remember to turn yours off if one of us wants to

16 have a back and forth.

17   Secondly, not to sound like a school

18 master, but yesterday, and this is our brand-new

19 hearing room, just like the smell of a new car,

20 right, a lot of people left their empty bottles and

21 candy wrappers and lunch bags on the floor.

22   Please, when you leave, clean up your act.

1   It's not a movie theater, not yet. But no, it would

2   really be helpful. The staff and our facilities

3   management people don't want our brand-new

4   upholstery to get soiled or the carpet to have Coke

5   kicked over on it, so they have asked me to ask you

6   to all be careful.

7   So we have another full schedule. We

8   learned so much yesterday that I'm hopeful our

9   education up here can proceed faster, but we

10   certainly want to hear from everybody. We do not want

11   to cut anybody off, so we're going to have a full

12   hearing.

13   So we will begin with our -- perfect

14   timing. We will begin with our first panel.

15   I think everybody is here, but let me just

16   call the roll to make sure everybody is up here.

17   Pilot Travel?

18   MR. KONAR: Yes.

19   CHAIRMAN OBERMAN: I better put my glasses

20   on.

21   Okay. Shameek Konar?

22   MR. KONAR: Yes, sir.

1   CHAIRMAN OBERMAN: NIT League, Ross

2   Corthell.

3   MR. CORTHELL: Yes, sir.

4   CHAIRMAN OBERMAN: American Forest and

5   Paper, Julie Landry.

6   MS. LANDRY: Yes.

7   CHAIRMAN OBERMAN: Packaging Corporation,

8   DCA.

9   MR. GREWE: Good morning, this is Doug.

10   CHAIRMAN OBERMAN: National Association of

11   Chemical Distributors, Jennifer and Jackie. And

12   Occidental, Karenanne Stegmann.

13   MS. STEGMANN: Yes, good morning.

14   CHAIRMAN OBERMAN: International Liquid

15   Terminals, Katherine Clay. No?

16   Well, you know what? It may be her plane

17   is late or Metro is on fire or something, she'll get

18   here later. And if so, we'll call her up here.

19   I know that Mr. Konar has got to get in

20   and out; right?

21   MR. KONAR: Yes, sir.

22   CHAIRMAN OBERMAN: So we're going to ask

1 him to testify, if we have some questions, we'll ask

2 him, and then we're going to send him on his way.

3 Fair enough? And then we'll have the full panel.

4   So with that, Mr. Konar, microphone is

5 yours.

6   MR. KONAR: Chairman Oberman, members of

7 the Surface Transportation Board, thank you for

8 inviting me to testify today. My name is Shameek

9 Konar, I am the Chief Executive Officer for Pilot

10 Flying J. We operate the largest network of travel

11 centers in the United States, serving the U.S.

12 trucking industry and four wheel customers. We

13 currently account for approximately 20 percent of

14 the country's highway, or as we call it,

15 over-the-road diesel supply, 20 percent, as well as

16 30 percent of the diesel exhaust fluid supply, also

17 known as DEF.

18   Similar to my colleagues here, Pilot is

19 facing a threat of severe reduction in rail service

20 allocations. For Pilot, the service reduction

21 allocations are being imposed by the Union Pacific

22 Railroad.

1   On April 13, we were informed by the Union

2   Pacific that we were required to reduce shipments by

3   26 percent. In subsequent conversations, we were

4   asked to reduce them even further by 50 percent or

5   face embargoes.

6   We're not aware of any other company being

7   instructed by the Union Pacific or any other

8   railroad to reduce their shipments to the extent

9   they are asking Pilot.

10   We understand through conversations with

11   the Union Pacific that its allocations are based on

12   the simplistic approach of looking at those shippers

13   who have increased their number of shipments between

14   January 2022 and March 2022.

15   This does not take into account the

16   overall number of shipments received at Pilot's

17   facilities, which, by the way, have remained static

18   over this period. We believe the Union Pacific's

19   approach does not fairly and proportionately

20   allocate the supply issues, because Pilot has not

21   increased the total number of cars it's received

22   every month since January.

1   What's actually happened is Pilot has

2   become a shipper for some cars that we were not

3   shippers before.

4   So our facilities are still receiving the

5   same number of cars. It's just the name who is

6   shipping has changed, because we've taken control

7   over some of the cars because of the issues we've

8   had with the railroads so that we have the

9   optionality to deliver these cars in markets that

10 they contain, right.

11   So the total number of cars has stayed the

12 same.

13   We understand and appreciate that the

14 current market conditions are imposing significant

15 constraints on the railroads, and we're committed to

16 help ease this congestion. However, 26 to 50

17 percent reduction in our allocations will have

18 substantial consequences for the markets.

19   I would like to take this opportunity to

20 take you through a few of the consequences that

21 Union Pacific's mandate will have on the supply

22 chain, the availability of fuel and fuel prices.

1   First, let me talk about the DEF supply

2 chain, and just as a reminder, we supply about 30

3 percent of the DEF in the United States.

4   The trucking sector is dependent on DEF.

5 All trucks manufactured after 2010 cannot operate

6 without DEF, and Pilot operates if not the largest,

7 one of the largest DEF supply networks in the

8 country.

9   We have 23 rail-served DEF facilities that

10 make the DEF, and we have 18 rail transloaders.

11   Of the 300-plus million gallons of DEF

12 that Pilot supplies to the industry every year, 74

13 percent is moved via rail.

14   Union Pacific's restrictions will prevent

15 Pilot from keeping many markets adequately supplied

16 with DEF, likely causing shortages that will

17 sideline trucks and reduce trucking capacity.

18   Let me give you some context. A single

19 railcar carries 21,500 gallons of DEF on average,

20 okay. A single truck generally takes in seven

21 gallons of DEF every time they fill. This is based

22 on our data.

1   So that implies that a single railcar is

2   basically providing 3,000 trucks' worth of DEF

3   fills.

4   For some more context, basically, every

5   railcar that gets missed in terms of DEF delivery

6   will reduce trucking potential by five million

7   miles. All right. That's a really big number, five

8   million miles.

9   Because you've got 3,000 fills, and DEF

10 blends with diesel at a ratio of 2.7 percent for 100

11 gallons, all right. So 2.7 gallons of DEF allow a

12 truck to use 100 gallons.

13   Furthermore, a reduction in freight

14 transported by the UP will only add additional

15 pressure on the trucking sector in general. The

16 railways are pulling back, we have got to move the

17 stuff on trucks. If we can't supply DEF, there's

18 more pressure on the sector and we let the sector

19 down.

20   Second, fuel availability and pricing.

21 Let me begin with diesel. U.S. diesel factories

22 today are running 10 to 15 percent below what they

1   have been in the last five years at their lowest

2   point.

3   So if you take the minimum diesel

4   inventory over the last five years, today we're at

5   10 to 15 percent below that number.

6   Certainly markets like the Northeast, the

7   West and the Southwest are even in worse shape than

8   the rest of the country. Renewable fuels like

9   biodiesel, renewable diesel move exclusively on

10   rail, on ships or on trucks. And there are no

11   pipeline options. Certain states like California

12   are heavily dependent on the imports of renewable

13   fuels that are generally transported on rail.

14   Fourth, over 50 percent of Pilot's

15   renewable diesel is transported on rail, and having

16   our capacity cut by 50 percent would actually

17   increase fuel prices in these states and potentially

18   run out at some of these locations.

19   Let me now address the challenge of

20   gasoline. In order for gasoline to meet the octane

21   requirements required by engines 87 to 93 octane,

22   you have to blend gasoline with ethanol to get to

1   that level of octane so that you can use it in a

2   car.

3   Ethanol, like bio and renewable diesel,

4   basically moves on trucks, ships or rail. In

5   certain markets like parts of Arizona and Nevada,

6   Pilot in partnership with Union Pacific has actually

7   developed ethanol unloading facilities, and we serve

8   a majority of these markets.

9   Cutting Pilot's ability to ship ethanol

10   from its plant in Nebraska to these markets by 50

11   percent will substantially reduce the amount of

12   gasoline available in these markets because we can't

13   blend the ethanol into the gasoline. And would

14   result in a further increase in prices during times

15   when gasoline prices are up 48 percent since April

16   2021.

17   To summarize, we believe UP's allocation

18   logic is flawed, it's disproportionate and

19   unprecedented. If implemented, it will have three

20   impacts. There will be a significant impact on DEF

21   supply potentially stranding a large number of

22   trucks, a negative impact on diesel and gasoline

1   supply and prices in an already-challenged market,

2   and it will hurt our supply chain during times that

3   we cannot afford it.

4   On behalf of Pilot, our 70,000 trucking

5   fleet customers and the million customers that we

6   serve in our stores every day, to keep America

7   moving, I want to thank you for this opportunity to

8   testify here today, to describe the situation and

9   highlight the potential consequences to the country

10 if this is left unresolved.

11   As mentioned at the beginning, we want to

12 be part of the solution, but the current situation

13 is untenable for us.

14   I'm happy to answer any questions you

15 might have.

16   CHAIRMAN OBERMAN: Thank you. Just -- I

17 want to get a couple of the basic facts down.

18   How many locations do you have that are

19 served by UP?

20   MR. KONAR: I don't have the precise

21 number of locations, but what happens is the UP

22 brings in -- I'll talk about DEF, into 40 locations

1   in the U.S. and then we distribute it on trucks. So

2   we have got 23 facilities and 17 to 18 transloaders.

3   So once we create the DEF, we put it on a truck and

4   take it out to our retail locations. But wholesale,

5   it would be about 40 or 41.

6   CHAIRMAN OBERMAN: 41 places that UP

7   delivers to you?

8   MR. KONAR: Doesn't deliver to all of them,

9   but about 70 percent of it gets delivered by UP. And one of

10   our challenges is DEF is made out of urea, so, you

11   know, vital to the fertilizer industry. And UP

12   actually single serves to a lot of urea

13   manufacturing facilities. So even if I wanted to

14   get somebody else to get the DEF, we couldn't.

15   CHAIRMAN OBERMAN: Well, that was my next

16   question. Are there any places where a switching

17   order or some alternative could get you

18   what you needed during this time?

19   MR. KONAR: Right now, UP is responsible

20   for over 40 or 45 percent of our DEF supply. If

21   they had trackage rights, we have obviously gone and

22   tried to talk to some other railroads saying hey can

1   you help us out. But most of them are unable to

2   because of the constraints on their system and they

3   don't have trackage rights.

4   CHAIRMAN OBERMAN: Could you tell us again

5   just what was the message that UP sent? Tell us how

6   they explained it to you.

7   MR. KONAR: The way they explained it to

8   us was they basically -- let me get the exact

9   numbers.

10   So they basically sent us a note saying

11   that in the last week, you shipped about 190 cars for

12   the week, and we want you to reduce it by 46 cars.

13   Basically about six cars a day. And otherwise we're

14   going to embargo you.

15   They gave us a week to do it. They have

16   not embargoed us yet, and we haven't reduced the

17   cars because we would be in deep trouble if we

18   reduced the cars.

19   We have reached out back to the UP a

20   number of times asking for a meeting with

21   their senior leadership so that we can explain the

22   consequences to them. We've had our outside counsel

1   reach out to UP's outside counsel.

2   But really have not had any engagement

3   back from UP at this point.

4   CHAIRMAN OBERMAN: So are you saying that

5   the -- I thought you related it to they were saying

6   the people who shipped a lot, those are the ones who

7   were cutting. Is that the way you understood it?

8   MR. KONAR: Yes. So they, according to

9   their metric, they feel like we have increased our

10   shipments from January to March. What's actually

11   happened is we've just taken over as shipper on a

12   number of the cars. The total number of cars has

13   not really changed.

14   But if you look at it with Pilot as the

15   shipper, we have increased by about 60 cars a month.

16   But in reality, those cars were coming to our

17   locations anyway.

18   CHAIRMAN OBERMAN: Well, I'm still trying

19   to figure out a business model where a company says

20   please don't buy our product. I'm sure somebody

21   will explain that one to me before the day is out.

22   I meant to say earlier, by the way, that

1   Robert Primus, of course, is still with us, so why

2   don't I ask Robert if he has any questions and then

3   we'll see if there are any up here and then we'll go

4   forward. But thank you very much.

5   BOARD MEMBER PRIMUS: Good morning, Marty.

6   Are we not doing the whole panel? Are we just doing

7   this individual?

8   CHAIRMAN OBERMAN: We're just going to do

9   this witness because he has to get out of here.

10   BOARD MEMBER PRIMUS: Okay. Sorry about

11 that.

12   CHAIRMAN OBERMAN: Go ahead.

13   BOARD MEMBER PRIMUS: Mr. Konar, thank you

14 very much for agreeing to actually come before the

15 panel and talk about this.

16   Can you talk about the downstream effect

17 if this embargo were to take place on the industry,

18 like how would it affect prices going forward?

19   MR. KONAR: So I break that up in two

20 pieces. One is if the embargo were to take place

21 and we were not able to move DEF on the UP, we would

22 probably at this point lose about 35 percent to 40

1   percent of our DEF supply where we do not have

2   alternatives.

3   And, you know, from an annual perspective,

4   that would mean we would miss about 100 million

5   gallons of DEF. And, you know, you multiply that by

6   like I said each railcar is worth about five million

7   miles of trucking. If you lose 100 million gallons

8   of DEF, it would be absolutely catastrophic because

9   we don't just supply ourselves. We supply a lot of

10   the market because we supply 30 percent of DEF in

11   the United States.

12   So I mean, the consequences there are I

13   mean not only would I get fired, but there would be

14   a lot more to it.

15   But on --

16   BOARD MEMBER PRIMUS: You shouldn't be

17   held holding the bag. Obviously it's not your fault

18   in terms of their cutting back.

19   My question I was trying to get to is so

20   if you've got to cut back 35 to 40 percent of DEF,

21   and you say that the trucks after 2010, all of them

22   require it. What does that go to the cost of

1   purchasing that? I mean, where is the price now?

2   If that doomsday were to happen --

3   MR. KONAR: Actually, you just couldn't

4   get it, you just could not get the DEF, because

5   there isn't -- the U.S. numbers, the U.S. consumes

6   about a billion gallons of DEF. We supply more than

7   300 million, somewhere between 300 and 350 million.

8   You could not replace 100 million gallons of DEF in

9   any kind of reasonable time frame. You could maybe

10   replace it by next year.

11   BOARD MEMBER PRIMUS: So what happens

12   economically?

13   MR. KONAR: It's an absolute disaster, I

14   mean, trucking is already so tight and we're having

15   so many issues with freight, right. So it would

16   be -- the simple way for me to say is it would be

17   equivalent to removing 10 percent of the trucks from

18   the road today.

19   BOARD MEMBER PRIMUS: Thank you.

20   CHAIRMAN OBERMAN: Karen I think has a

21   question.

22   BOARD MEMBER HEDLUND: For those of us

1   outside your industry, could you just explain what

2   DEF is and why it's important?

3   MR. KONAR: Yes, ma'am, I should have

4   started with that.

5   DEF is diesel emissions fluid. It's a

6   urea derivative, it reduces NOx emissions coming out

7   of the tail pipe of trucks.

8   You know, with all the clean air standards

9   over time, NOx emissions have been reduced pretty

10   substantially.

11   And since 2010 there's a rule basically

12   that you cannot make trucks that don't use DEF

13   because you have to have the NOx emissions reduced.

14   So all 2010 plus vintage trucks, and there aren't

15   that many that go too far back because a long

16   distance truck is going 250,000 miles a year or so.

17   You know, they don't survive longer than that.

18   Pretty much all the trucks right now have to have

19   DEF. And you actually can't turn the engine on if

20   your DEF isn't correct. It's not a choice.

21   CHAIRMAN OBERMAN: Thank you very much.

22   BOARD MEMBER PRIMUS: Marty?

1   CHAIRMAN OBERMAN: Robert, do you have

2 something else? Go ahead.

3   BOARD MEMBER PRIMUS: I'm sorry, just a

4 follow-up question if you don't mind. You were

5 talking about your production now. Have you changed

6 at all in terms of your production? Why are you --

7 threatened with this embargo, I mean, with the cars,

8 are you adding cars because of -- what reason are

9 you adding -- is it because -- you said that

10 production has been steady; is that correct?

11   MR. KONAR: Yes, sir. We're actually not

12 adding cars.

13   So what has happened is we've actually

14 become the shipper of record on a number of cars

15 that we were not before. So we have still got the

16 same number of cars going, but we've taken control

17 becoming the shipper, because we needed to have some

18 more flexibility with the rail issues we've been

19 having as to where to move the cars and how to move

20 the cars.

21   And we've -- this has happened both in DEF

22 and our ethanol business, where -- did we lose --

1   CHAIRMAN OBERMAN: Well, that's a good

2   question.

3   Robert, can you hear us?

4   BOARD MEMBER FUCHS: It might be on sleep,

5   but I think we'll still be able to record so why

6   don't you keep going.

7   MR. KONAR: So both on our ethanol and DEF

8   businesses, we have increased the number of cars

9   that we've become the shipper of record but not

10   really increased the number of actual cars, because

11   the volumes have not changed.

12   BOARD MEMBER FUCHS: Thank you.

13   CHAIRMAN OBERMAN: Thank you, Mr. Konar.

14   Much appreciated. So we're going to let you go

15   and go ahead with the rest of this panel.

16   MR. KONAR: Thank you, sir. Appreciate

17   the opportunity.

18   BOARD MEMBER FUCHS: Thank you.

19   CHAIRMAN OBERMAN: So before we start, I

20   realize there's also another person listed from

21   International Liquid Terminals, Michael Stroud. Is

22   he here? There he is.

1   MR. STROUD: I am here.

2   CHAIRMAN OBERMAN: Perfect timing. Okay.

3 So we will proceed, and we're going to let everybody

4 on the panel speak and then we'll hold questions

5 until the end as we did yesterday.

6   So NIT League, you're up.

7   MR. CORTHELL: Good morning, everybody.

8 Good morning to Chairman Oberman, Vice Chair Primus,

9 Board members Hedlund, Schultz, Fuchs and of course

10 STB staff. First of all, some congratulations on

11 your YouTube ratings yesterday, I understand it was

12 about 15X, so --

13   CHAIRMAN OBERMAN: What does that mean?

14   (Laughter.)

15   CHAIRMAN OBERMAN: 15X?

16   MR. CORTHELL: 15X your normal views.

17 Congratulations.

18   Thank you for taking the time that you are

19 devoting to learning more about one of the great

20 challenges North American freight rail shippers and

21 receivers are having as me manage supply chains that

22 are critical to their customers and business, the

1   nation's economy and national security itself.

2   My name is Ross Corthell, and I am Vice

3   President of Transportation for Packaging

4   Corporation of America, but today I am here to

5   testify as Chair of the Rail Transportation

6   Committee for the National Industrial Transportation

7   League, also known as NIT League.

8   Since 1907, NIT League has been a trade

9   association representing the voice of the shipper

10   across truck, carload, intermodal, ocean and barge.

11   NIT League members represent a broad swath of

12   commodities and businesses, most of which are

13   dependent on a healthy, viable and reliable freight

14   rail network.

15   From consumer goods, manufacturers and

16   transporters to agriculture, aggregates, chemicals,

17   steel, forest products, energy, fuels, food,

18   et cetera, NIT League members spend billions in

19   freight dollars annually and employ millions of

20   people.

21   The supply chain challenges our members

22   face have been as diverse as the markets they serve.

1   For those that depend on the nation's freight rail

2   network, however, the single largest challenge has

3   had one very common denominator, poor rail service

4   reliability.

5   As shippers and receivers battle every day

6   to manage their supply chains, given lengthy and

7   highly variable transit, as well as missed switches

8   at the local level, I will tell you that the number

9   one reason given by the railroads themselves for

10   these issues is crew availability, followed by

11   locomotive power.

12   Now, to be clear, this is not a problem

13   that started in the first quarter of this year.

14   It's not a problem that started in 2021 when it

15   became crystal-clear that working and/or retirement

16   age folks had more choices and therefore were not

17   necessarily coming back to the railroads for

18   employment.

19   This is not a problem that started in the

20   third or fourth quarter of 2020, when volumes

21   started to recover to more normal levels. This is

22   not a problem that started in March of 2020 when

1   COVID ran through the nation. This is a problem

2   that started long before any of those events.

3   The problem started before COVID, and it

4   has its roots in the advent of the financial model

5   known as precision scheduled railroading, or PSR.

6   And yes, I did say financial model.

7   I'm not going to go into the complete

8   history of PSR, except to say that in every

9   individual instance of its implementation, it has

10   created pain for rail customers and reward for rail

11   investors.

12   Because of the highly publicized financial

13   successes of the early adopters of PSR, all Class I

14   railroads, in essence, had some version of PSR

15   implemented by 2019.

16   However, despite data showing average

17   train speed and dwell times trending positively in

18   that year, first mile and last mile was already

19   suffering as the model started taking its toll on

20   local train reliability and ultimately freight rail

21   customers.

22   And I don't think you have to go any

1   farther than the data in the public record of EP 754

2   in May of 2019, and the railroad's testimony to have

3   the public record reflects just how bad first mile

4   and last mile service was back in 2019 as the

5   railroad sat here yesterday to tell you that their

6   implementations were going flawlessly in 2019 and

7   PSR was doing everything it was promised to do. And

8   yet there were a lot of people testifying about how

9   bad service was locally during EP 754.

10   I told the Board at that time precision

11 schedule railroading has proven to be anything but

12 precise at origin and destination.

13   Now, despite all of this feedback, early

14 on and with all of the evidence of local service

15 issues and with a laser focus on operating ratios,

16 Class Is doubled down and decided it was in their

17 best interests to precisely schedule highly variable

18 world of local switching.

19   The results from their volume analysis was

20 from local service cuts from five days a week to

21 three days a week or seven days a week to five days

22 or X to Y. And the correlated reduction in the

1 qualified train operations, both human and hard

2 assets.

3   In some extreme cases, Class Is dictated

4 to unit train shippers that despite that shipper's

5 investment in infrastructure previously demanded by

6 the railroads themselves, they were unilaterally

7 changing those customers back over to manifest

8 service, a move that was highly disruptive, costly

9 for those shippers, not to mention millions in

10 wasted infrastructure investment.

11   Now, as a rule, supply chains that run

12 just in time inventory without addressing variation

13 will stock their customers out. Successful GIT

14 systems chase out variability before they chase out

15 inventory, and Class Is however have been stocking

16 their customers out of good rail service for years

17 now.

18   In this context, the inventory is the

19 locomotive power and the people. They have cut

20 their inventory, there is no slack in the system to

21 deal with the inherent variability of the model

22 itself.

1   Class Is, in essence, have precisely

2   scheduled themselves into stockout situations that

3   are now costing their customers hundreds of millions

4   if not billions of dollars in suboptimal freight,

5   railcar fleet purchases and leases, production

6   delays, their own outages, their own stockouts, and

7   believe it or not, more demurrage.

8   The financial model is working, however,

9   as evidenced by the announcements of massive stock

10   buybacks at the same time that service is dismal.

11   Investor analysis after analysis continues to be

12   bullish on the large freight rail suppliers, and

13   they do not seem to assign much, if any, risk to

14   future earnings associated with poor service.

15   Just pause and think about that statement

16   for a minute.

17   And, you know, I wrote these notes on

18   Saturday because I was thinking about this hearing.

19   And then on Monday I came into my office and I had

20   an e-mail in my inbox, and it was from one of the

21   large U.S. banks that analyzes the freight rail

22   industry. And here is the headline.

1   "Proposed emerging service rules are

2   unlikely to cause meaningful risk to the railroads."

3   That's remarkable.

4   To be clear, NIT League absolutely wants

5   its freight rail suppliers to be operationally and

6   economically viable, to earn at a level that allows

7   them to reinvest in their networks and to offer a

8   reasonable return to their investors. We know long

9   term that this is in our best interest, but NIT

10   League is adamantly opposed to massive cost shifts

11   to our members caused by PSR, purely financial

12   model, that benefits railroad investors while

13   costing the nation's supply chains millions and

14   virtually no recourse in the shipping and receiving

15   community.

16   The balance of power and economics is

17   tilted too far.

18   I'm going to share with you just some

19   anecdotal evidence of our members that have

20   submitted to us, but I'm going to tell you straight

21   out as a large rail shipper and someone that talks

22   to a lot of shippers, this is a small sample of

1   issues, but our members are having issues every day.

2   Every day they walk into the office, they wonder

3   what the railroad is going to deal them today in

4   terms of a service challenge. It is not sporadic at

5   all.

6   Number one, our transit times in the first

7   quarter this year have increased by 15 percent over

8   pre-pandemic levels due to crew and power shortages.

9   Another, in the month of January, one of

10   our facilities ran short of cars for three weeks.

11   This facility is captive to one Class I railroad,

12   has no other rail option.

13   Our company shipped 150 trucks in the

14   first quarter to prevent customer shutdowns.

15   In March, over 50 of our customers'

16   shipments were stranded for 15 days waiting for

17   crews and power.

18   Our client has cars on a manifest train

19   that's been parked for three days now waiting on a

20   crew.

21   Another, we have 35 cars dwelling 10 days

22   in Chicago.

1   Our plant has missed seven switches in

2   seven weeks.

3   We have 10 cars dwelling over eight days.

4   One of our new members gave us specific

5   car numbers with specific dates across all Class I

6   railroads. The story was the same, excess delays

7   causing plant shutdowns.

8   We've gone from one crisis to another for

9   over two years now. I know I'm getting short on

10   time so I'm just going to wrap up.

11   A couple of positive things and then an

12   urging. Number one, positive. Short lines have

13   done their very best to help the customers work

14   through these issues, and I commend them for that.

15   But short lines are as constrained as the shippers

16   in that they are dependent on the Class Is for

17   service.

18   But where customers have short lines in

19   their first mile/last mile, that has made up an

20   awful lot of hassle, so I commend the short line and

21   their association and their commitment to customers.

22   Second positive, the Class I investments

1   in technology in the area of preventive maintenance

2   have created some reliability, and so I think that

3   there's some lessons to be learned there. How do we

4   deploy technology safely and reliably to create more

5   reliability across the network? So I give them a

6   lot of credit for this stuff that they have invested

7   in on the preventive maintenance side to create

8   reliability.

9   Then I'm going to close with one urgent

10 message. Please consider the fact that NIT League's

11 members ship commodities that even in these

12 challenges times remain exempt from much of the

13 STB's purview, yet these companies suffer the very

14 same service problems faced by regulated traffic,

15 and they need the same tracks, they need access to

16 the same tracks.

17   Thank you again for this opportunity and I

18 have some recommendations, and we can hopefully get

19 to in the Q&A session.

20   CHAIRMAN OBERMAN: Thank you. Turn

21 that -- thank you. And just before our next

22 speaker, just to correct the record, Ross, Robert

1   Primus served ably as Vice Chairman last year, but

2   Michelle Schultz is now our Vice Chairman because we

3   rotate. I am still trying to figure out a system

4   where we can replace the Chairman, but I haven't

5   quite got there yet.

6   (Laughter.)

7   CHAIRMAN OBERMAN: But I will take

8   suggestions.

9   MR. CORTHELL: I appreciate that

10   correction. Now I have to go back to calling him

11   sir.

12   Congratulations, Michelle. My apologies.

13   CHAIRMAN OBERMAN: Julie.

14   MS. LANDRY: Good morning. My name is

15   Julie Landry, I'm the Director of Government Affairs

16   for the American Forest and Paper Association. On

17   behalf of AF&PA, I want to thank the Board for

18   holding this public hearing and inviting freight

19   rail stakeholders to testify regarding current

20   service issues and potential avenues to address

21   disruptions. Many AF&PA members have been seriously

22   affected by poor rail service, as I will describe

1   today.

2   AF&PA serves to advance U.S. paper with

3   products manufacturers, in fact, based public policy

4   and marketplace advocacy. The forest products

5   industry is circular by nature, and AF&PA member

6   companies make essential products for renewable and

7   recyclable resources. We generate renewable

8   bioenergy and are committed to continuous

9   improvement through our industry's sustainability

10   initiative, Better Practices, Better Planet 2030.

11   The forest products industry accounts for

12   approximately four percent of the total U.S.

13   manufacturing GDP, manufactures nearly 300 billion

14   in products annually and employs approximately

15   950,000 people.

16   The industry meets the payroll of

17   approximately 60 billion annually and is among the

18   top 10 manufacturing sector employers in 45 states.

19   Efficient and reliable rail service is

20   critical for AF&PA member companies to receive raw

21   materials and/or ship finished paper and forest

22   products via rail. Although some of our member

1   shipments can be transported by truck, for most of

2   our members, some portion of inbound raw materials

3   or outbound finished products must ship by rail.

4   American forest products companies operate

5   in a fiercely competitive commercial environment and

6   their productivity and success require timely and

7   consistent rail transportation. When essential rail

8   transportation services are disruptive, our member

9   supply chains are thrown into disarray, resulting in

10   unanticipated costs and business harms.

11   Unfortunately, this is exactly what has been

12   happening to our members due to recent service

13   failures.

14   Due to these failures, our affected

15   members have spent many days engaging in damage

16   control. Instead of focusing on their core

17   manufacturing business, they have to shift resources

18   to track down delayed shipments, address lack of

19   sufficient car supply and/or reduce switching

20   services.

21   To keep their own and their customers'

22   facilities running, several members have been

1   required to use expensive alternative transportation

2   on an emergency basis.

3   In speaking with our members, I've heard

4   many stories about recent service failures and their

5   effects on the forest and paper products industry.

6   The types of service problems experienced most by

7   AF&PA members fall through three separate

8   categories, inadequate car supply, delayed transit

9   times and reduced switching services.

10   In the survey we sent out this month, we

11   asked our members a series of questions about their

12   rail service. I will relay their answers to you

13   today.

14   First, using a scale of 1 to 5, with 5

15   being very high and 1 being very poor, our members

16   rated their satisfaction with their rail service

17   providers as a 2.

18   On that same scale, when asked how

19   critical rail service is to our members' business

20   model, every single respondent said 5, very high.

21   Third, when asked to compare their current

22   car order fill to pre-pandemic experience, answers

1   ranged from a 35 to 50 percent lower fill rate.

2   When asked which rail service provider consistently

3   performed the worst, CSX was mentioned by all

4   service participants.

5   When asked on a scale of 1 to 5 how

6   material the effect of current service disruptions

7   are to their business, the average answer was 4.5.

8   I would like to mention a few examples of

9   the issues our members have been facing with current

10   inadequate rail service. I have a few examples for

11   you.

12   One of our member companies experienced

13   significant deterioration in rail service starting

14   in Q4 of 2020. Since that time, average transit

15   times have increased six days due to significant

16   handling delays during transit. The variability of

17   this transit is even worse, making it impossible for

18   shippers to plan their business.

19   At the same time, missed switches at

20   destination for this company have increased 45

21   percent, causing railcars to build up at

22   destination, yet the railroads continue to charge

1 demurrage and then eventually embargo a location

2 even when the railroad's own missed switches were

3 the cause of the backup.

4   Another member company saw significant

5 financial impact over $30 million from lost

6 production because of poor service. This location

7 is dependent on rail service and the consistent

8 supply of empty railcars to meet their customers'

9 needs.

10   There has been no incremental production

11 or increased rail demand, yet the railroad is no

12 longer meeting the historic car order. The car

13 order fill was 95 percent or better in January of

14 2020, and in early 2022, the car order fill is now

15 around 40 percent.

16   Another company reports one rail service

17 provider's car order fill decreased from 94 percent

18 in Q4 of 2020 to just 66 percent in Q1 of 2022. The

19 same rail provider also significantly increased

20 their missed switches from a total of 233 in 2019 to

21 339 in 2021, and already in 2022 has had 129 missed

22 switches.

1   Finally, for this company, this rail

2   provider increased their transit time from 12 days

3   in 2019 to 19 days in 2021.

4   For this member company, in just 2021,

5   they lost over 45,000 tons of production due to mill

6   downtime because of these issues.

7   Another company reports during the end of

8   Q3 through the beginning of Q1 of 2022, they

9   experienced weeks of multiple consecutive days

10 without service, resulting in mill downtime or

11 shutdown during a time, the holiday time, when

12 customer demand was high. The rail provider did not

13 have enough crew or railcars to resolve the

14 situation for over 60 days.

15   Finally, another member company facility,

16 which is supposed to receive service seven days a

17 week, was recently only served three days in a

18 14-day time period.

19   This poor rail service has resulted in the

20 following changes that member companies have had to

21 make at significant additional expense.

22   Some companies, if they're able, must

1   shift traffic to alternative transportation, usually

2   truck, even though they and their customers are

3   configured to ship and receive products by rail.

4   Additionally, they have had to incur additional

5   warehousing costs for the use of external warehouses

6   to store products until cars can be provided. They

7   have had to shift production schedules and even

8   sometimes shut down production.

9   And finally, some companies have tried to

10   move to other rail service providers, but that is

11   rarely possible due to the captive nature of our

12   members' facilities.

13   More than 30 years have passed since the

14   STB first classified forest products industry

15   shipments as exempt from its oversight. At the

16   outset, it was deemed to be plenty of competition

17   for the industry's business and the exemption was

18   created to ensure railroads did not face bankruptcy

19   at a time when the nation's rails were struggling to

20   stay in business.

21   The arrangement worked for both parties

22   because certain pricing and administrative burdens

1   were no longer applicable if our industry shipments

2   were not under the STB's purview. The intent was

3   for this exemption to foster competition.

4   Rail markets have significantly changed

5   since these exemptions were granted in the late '80s

6   and the concentration of Class I rail service

7   providers leaves more than two-thirds of our

8   industry facilities captive to just one railroad.

9   This captivity and lack of oversight for

10 our rail shipments from the STB de-incentivizes

11 railroads from providing adequate service and

12 negotiating reasonable rates with our members. As

13 an exempt and captive commodity when the industry

14 encounters poor service, exorbitant rates, our

15 companies have no recourse for negotiating with the

16 railroads.

17   We face the same unreasonable demurrage

18 practices, poor service, car supply issues and

19 rising rates as the commodities which are under the

20 STB's purview. In our exemption were revoked,

21 forest products shippers would have the STB's

22 regulatory remedies at our disposal when negotiating

1 with our rail providers.

2   Updating these policies, specifically the

3 forest products industry's commodity exemption,

4 would help level the playing field for our industry

5 and give us the same tools other shippers already

6 have at their disposal.

7   For our industry, this must occur as a

8 first step.

9   The need for oversight is clear, given the

10 current disruptions which are creating adverse

11 ripple effects throughout the entire U.S. economy.

12   Thank you again for the opportunity to

13 testify this morning. I would be happy to submit

14 our statement for the record and answer any

15 questions that you panel may have.

16   CHAIRMAN OBERMAN: Thank you very much.

17   Doug?

18   MR. GREWE: Thank you, sir. Good morning,

19 Chairman Oberman and all members of the Board. My

20 name is Doug Grewe, I'm the Transportation Manager

21 of the Corrugated Mills for Packaging Corporation of

22 America. We are the third largest manufacturer of

1 corrugated packaging in North America. Our mill

2 system includes eight paper mills, seven produced

3 container board rule stack to support our corrugated

4 packaging division and one manufacturer's uncoated

5 paper. The seven container board mills supply pulp

6 board to more than 90 of our own box plants and

7 converting facilities in addition to a number of

8 outside customers' plants.

9   Total origin and destination pairs come to

10 over 400. We ship over 40,000 manifest box car

11 loads per year across the 400-plus lanes to support

12 this business. We supply packaging to a very

13 diversified customer portfolio.

14   Some of our end-use customers include

15 pharmaceutical, industrial, automotive, food, just

16 to name a few.

17   Our plants and mills are located

18 throughout the country. We ship with all seven

19 Class I railroads and multiple short line railroads.

20 Our national footprint gives us a clear perspective

21 on the overall state of rail operations. The

22 perspective we are afforded is through experience

1 gained on a day-to-day basis managing or

2 transportation flow and confirmed through regular

3 interactions and conversations with rail management,

4 ops and sales.

5   Through this lens, I will share some of

6 the challenges our organization has experienced

7 recently.

8   At PCA, we primarily rely on two modes of

9 transportation to move our paper rolls to customers

10 and box plants for conversion to corrugated

11 packaging, truck and rail.

12   In an ideal and reasonably predictable

13 transportation environment, we manage our supply

14 chain by designating our freight modes to match the

15 necessary lead times and cost practices to satisfy

16 our plants and end customers' demand for packaging.

17   One of the most important variables in our

18 decision matrix is rail transit time and

19 variability.

20   Over the course of the past many months,

21 we have experienced high volatility in transit time

22 caused by the railroad's decisionmaking and

1   implementation of precision scheduled railroading.

2   Additionally, the operational cuts linked

3   to COVID market demand were premature as the slow down

4   only lasted weeks before returning to pre-pandemic

5   levels. This only contributed to further

6   instability in our network. The decision to cut

7   back on the operational labor force is still causing

8   adverse impact to the state of railroad operations

9   that we are forced to manage. I will provide

10   examples of the operations and velocity changes that

11   have challenged our supply chain's predictability

12   and our ability to get to market effectively.

13   The issues that have been caused by the

14   decisions made by the railroads that have directly

15   resulted in increases to our transportation resource

16   allocation, including increased person hours

17   required to solve complex supply chain problems and

18   increase costs.

19   Furthermore, the consequence of rail

20   actions has caused cascading impacts to our

21   production capabilities as a whole, which equates to

22   further disruption to our overall supply chain

1 network. Every instance of rail unpredictability

2 multiplies the variables we must work through to

3 adjust our network.

4   Just this week, we are managing through a

5 missed switch in one of our largest mills and a

6 cutback on railroad supply box cars at another one of

7 our largest mills.

8   We have multiple locations that have not

9 received all their schedule switches this week, and

10 this is not abnormal.

11   Our rail shipments are calculated and

12 planned around consistent and stable transit times

13 while accounting for limited variation. We are

14 flexible such that we do not require prescribed

15 transit times from one origin to destination.

16 However, we do expect and need predictable transit

17 to be consistently close within the two- to four-day

18 window.

19   There have been instances on some lanes

20 that transit time has increased by 10 to 20 days

21 overall. Based on feedback from our rail partners,

22 we have been told that the cause of the rail transit

1   instability includes increased train lengths and

2   decreased train volumes running in certain corridors

3   due to efficiencies gained for the railroad related

4   to PSR.

5   As a result, railroad operations are left

6   waiting for trains that are left behind schedule to

7   classify into longer trains for their next move

8   between yards.

9   When PSR concepts were implemented on one

10   of our largest lanes, we had to modify routing that

11   increased transit time versus preferred route.

12   To make up for the lost transit time and

13   decreased train velocities, resulting in dwindling

14   inventory at one of our largest plants, we were

15   forced to insert rush truckloads into our preplanned

16   mill production in order to ship them before the

17   supply chain was able to catch up. The costs were

18   very significant in this one instance.

19   The spot market rates were up to 20

20   percent higher per ton versus the contracted rail

21   rates. Unfortunately, this has become a common

22   occurrence as we have managed multiple emergency

1 situations similar to this example related to rail

2 service instability.

3   The relative impact that a considerable

4 number of resources are required to react and work

5 through these disruptions so our customers and

6 plants were not put in a shutdown situation or they

7 could not deliver to end customers. Overall transit

8 time variability causes major disruptions to our

9 supply chain and planning capabilities.

10   In addition to the manifest and transit

11 issues, we have had many instances of first

12 mile/last mile failures. PCA plants served by Class

13 I carriers in various regions have been repeatedly

14 told on the day the service is expected that no

15 switch would be provided due to lack of crews. When

16 switches are missed, the number one reason cited is

17 lack of crew availability.

18   Sometimes this notice never comes and it

19 requires the plant to reach out to see if service

20 will be provided while plant employee schedules

21 become useful. These resources are costly to our

22 plants and are a direct result of the railroad's

1   reducing costs to pass on value to their investors.

2   When this occurs regularly at a specific

3   facility, it causes unforeseen production issues at

4   the local level as well as further upstream

5   throughout our mill infrastructure.

6   The subsequent solution and result in the

7   end almost always are the creation of numerous

8   truckloads. For every railcar we convert to truck,

9   we build at least three full truck shipments to

10   resolve the immediate inventory shortage to satisfy

11   our orders.

12   When switches are missed, the railroad

13   does not reimburse us for the lost costs. We have

14   to pay for extra switches to make up for the backlog

15   in some cases.

16   Slower railroad velocity has also

17   contributed to challenges in managing and right

18   sizing our rail fleets. The overall increase in

19   transit time has rendered railroad-owned fleets and

20   privately-owned fleets inadequate to cover the slack

21   in the supply chain. At one of our mills, the short

22   falls of the rail fleet due to increased cycle times

1 and lower overall velocity has forced us to cap the

2 amount of rail shipments per day. At this location,

3 we structured our strategic plan to ship 25 percent

4 more cars per day. The serving railroad told us to

5 find another option to cover the transport of

6 approximately 480 tons per day they could not

7 handle.

8   This results in up to 20 extra truckloads

9 per day dispatched from this location. Currently we

10 do not have a timeline when this is expected to

11 change.

12   At other mills we are forced to pay empty

13 moves to right size the fleet of the short line that

14 serves the mill. We are unable to count on Class I

15 supplied equipment to cover the shortfall so we've

16 partnered with their short line provider to source

17 additional cars. They were able to identify

18 available box cars on the sister line to move the

19 cars into close service for that specific mill. The

20 costs for empty repositioning move was substantial.

21 Increased transit time and issues self-inflicted by

22 the railroad actually created revenue moves for

1   empty cars in those cases.

2   These are examples of our mills being

3   forced into using suboptimal freight options to move

4   our product to market. Our overall mills suboptimal

5   mode of freight increased 21 percent from Q1 2021 --

6   I'm sorry, Q4 2021 to Q1 2022. Year over year Q1

7   suboptimal freight has increased by over 41 percent.

8   I would like to end with this last point,

9   which still continues to exacerbate all of the

10   issues I have outlined. The product we produce and

11   ship via rail, pulp board, is an exempt commodity.

12   I appreciate the opportunity to address

13   the committee today and look forward to any changes

14   that could be beneficial to shippers and therefore

15   consumers in the future.

16   CHAIRMAN OBERMAN: Thank you. Thank you

17   very much, Doug.

18   Jennifer and Jackie.

19   MS. GIBSON: Good morning, Chairman

20   Oberman and members of the Board. I am Jennifer

21   Gibson, Vice President of Regulatory Affairs at the

22   National Association of Chemical Distributors. With

1   me today is Jackie Wood, Senior Buyer and Planner at

2   Hopkins, Inc., one of NACD's active members, and we

3   both thank you very much for holding this important

4   and timely hearing this week.

5   NACD's members blend, repackage,

6   warehouse, transport and market chemical products

7   for approximately 750,000 end users in nearly every

8   industry sector. A substantial percentage of NACD

9   members receive products via railcar and depend on

10   timely shipments in order to meet their customers'

11   needs.

12   Chemical distributors have been adversely

13   impacted by a lack of adequate rail service and in

14   many areas, the situation is getting worse.

15   Inconsistent deliveries, reductions in

16   service days, extended transit times and other

17   delays have a substantial impact on the ability of

18   distributors to provide the essential materials to

19   the industries that need them to make their

20   products.

21   This is particularly detrimental when

22   dealing with public health industries such as water

1   treatment and food processing.

2   Because of the nature of some chemicals,

3   such as chlorine, there are no alternate shipping

4   methods, so distributors are 100 percent reliant on

5   the railroads to provide consistent service. For

6   other chemical products that do not absolutely need

7   to be shipped by rail, trucking is frequently not

8   always a viable option because largely because of

9   the hazardous materials driver shortage, shortages

10 that remain a problem, not to mention the fuel

11 challenges that a previous witness discussed.

12   So I am now pleased to turn the mike over

13 to Jackie Wood to discuss her company's recent

14 experiences with the freight rail service and to

15 provide you with several real world examples on how

16 these deteriorating conditions have impacted

17 Hawkins's operations.

18   MS. WOOD: Good morning, Chairman Oberman

19 and the Board members. I am pleased to be here

20 today on behalf of my company, Hawkins, Inc., based

21 in Minneapolis, Minnesota, and with locations

22 throughout the United States. Hawkins is a

1   formulator, manufacturer, blender, distributor and

2   sales agent of industrial chemicals and

3   reagent-grade laboratory chemicals sold to

4   municipalities and businesses throughout the entire

5   United States.

6   As the largest bleach manufacturer in the

7   Midwest, thousands of water treatment facilities,

8   other manufacturers, food and dairy producers,

9   research labs and many other organizations depend on

10   Hawkins for the chemical products that they need.

11   A large majority of the products we

12   distribute into these industries is shipped to their

13   manufacturing sites via rail, so we are highly

14   dependent upon the freight rail service.

15   These freight rail service problems are

16   having a critical impact on our company's

17   operations. I will now provide you with some of the

18   examples from just the past few weeks.

19   As stated before, we had heard from

20   several of our vendors earlier this month that the

21   Union Pacific requested that they reduce their

22   outbound shipments by 10 to 30 percent,

1 substantially impacted our upcoming delivery

2 schedule, as vendors have now pushed out their

3 scheduled ship dates. This has forced us to replace

4 over two million pounds of material through other

5 avenues. Then on an aggregated level, our transit

6 times have increased 54 percent when compared to the

7 same period last year with an added five days on

8 average. Some of the lanes have increased more than

9 14 days on average.

10   Some more specific recent examples, one

11 car shipped from Calvert City, Kentucky to

12 Centralia, Illinois on March 28 with a typical

13 transit time of five days. This car actually

14 arrived early on April 1. But instead of delivering

15 upon arrival, the BNSF decided the car should go

16 back to the staging yard in Galesburg, Illinois.

17 Once the BNSF realized that Galesburg was congested,

18 they shipped it down to Memphis, Tennessee to reduce

19 the congestion. This car was eventually placed on

20 its destination on April 19, an entire three weeks

21 after its departure.

22   Another example, one car shipped from

1   Formosa, Texas to Centralia on March 10 with a

2   typical transit time of 16 days, this car arrived 33

3   days later on April 12. As far as I can tell, there

4   were no missed routes or repairs causing this delay.

5   It was just slow to move through each of the yards,

6   the switching yards, on the Union Pacific and the

7   BNSF.

8   Another example, we have two chlorine cars

9   sitting in Winnipeg for four days when I had entered

10   a service log with the Canadian Pacific pointing out

11   that they were in violation of the Federal Railroad

12   Administration code regarding toxic inhalation

13   materials. CP saw the service log, pushed the

14   estimated arrival time out another two days and then

15   closed the log stating the revised movement date. I

16   had demanded that the CP reopen the log and not

17   close it until this issue was resolved.

18   They did just that, and the cars departed

19   after going for a total of six days. It took

20   another three days for the cars to be placed once

21   arriving in the town of their final destination.

22   Another example was our CSXT transit times

1   from Formosa, Texas to Mulberry have recently

2   increased from 13 days to 25 days, nearly double.

3   The Union Pacific has decreased our

4   service days at our St. Paul Terminal 1 from five

5   days a week to three days a week. They have also

6   reduced the maximum inventory threshold at one of

7   our facilities from eight cars in the serving yard

8   to five cars, even though we've had a year-over-year

9   increase of 30 percent.

10   To make matters worse, the UP is

11   constantly threatening an embargo situation whenever

12   we exceed the storage capacity by more than two

13   days, regardless of the fact that their missed

14   service days create.

15   Another car shipped on March 11 to our St.

16   Paul facility, our Red Rock facility via CSX to CP

17   railroad. It had arrived to our Terminal 1 facility

18   in St. Paul via the Union Pacific on March 31

19   because of an electronic data interchange waybill

20   mix-up. It then took the UP seven days to even

21   respond to our issue, another three days to pull the

22   car from Terminal 1 to provide it to the Canadian

1   Pacific. Red Rock did receive that car on April 13,

2   a total of 33 days after shipment.

3   And lastly, in previous years, our

4   Centralia, Illinois plant received deliveries from

5   the BNSF three to four times per week. BNSF

6   recently reduced this to twice a week. This past

7   week, they went a total of six days without

8   providing a service switch. This caused our

9   Centralia plant to shut down production for two days

10   while waiting for raw materials. When the train did

11   arrive, it had more cars than our facility could fit

12   on our tracks. Now, had the railroad provided some

13   cars earlier in the week, we could have continued

14   production, offloaded the cars and had them out of

15   our system prior to the next switch.

16   On top of the substantial production

17   impact, we will now be charged demurrage fees for

18   the five cars currently sitting in the serving yard.

19   These are just some of the many service

20   issues we have experienced over the last couple of

21   weeks. Thank you for giving me the opportunity to

22   share them.

1   MS. GIBSON: These issues that Jackie has

2   discussed are just representative of the problems

3   that many other chemical distributors across the

4   country are also experiencing. Deteriorating rail

5   service is a significant contributor to the severe

6   supply chain crisis that American businesses and

7   consumers have been facing in recent months and

8   years now.

9   To close, I would just like to reiterate

10   the Hawkins and other NACD members really do need

11   reliable, efficient and affordable rail service to

12   run their businesses successfully and to serve their

13   customers.

14   NACD and Hawkins commend the Board for

15   investigating recent rail service deterioration and

16   for holding this important hearing. We really look

17   forward to working with the Board to address the

18   immediate service issues and to create a more

19   favorable rail service environment for the thousands

20   of customers who depend on this critical

21   transportation mode to move products and our economy

22   forward. Thank you.

1   CHAIRMAN OBERMAN: Thank you.

2   The next, Occidental Chemical. Karenanne.

3   MS. STEGMANN: Good morning, Chairman

4   Oberman, Vice Chairman Schultz and Board members

5   Fuchs, Hedlund and Primus. I am Karenanne Stegmann,

6   Vice President of Supply Chain for Occidental

7   Chemical Corporation, commonly known as Oxy Chem or

8   Oxy.

9   I am here today to express our concerns

10 regarding the unacceptable status of rail freight

11 service. Oxy is a leading North American

12 manufacturer of basic chemicals and vinyl resins,

13 including chlorine, caustic soda, polyvinyl chloride

14 resins, which are commonly known as PVC, and

15 potassium hydroxide, KOH. These chemicals are the

16 building blocks for a range of products essential to

17 public health and modern life.

18   Our products are used to ensure clean

19 drinking water in municipalities across the United

20 States, and in medical supplies, pharmaceuticals,

21 construction materials and fertilizers, and are

22 vital to the economy of the United States.

1   I have some specific examples of the

2   impacts of our products that we transport by rail.

3   98 percent of U.S. drinking water relies on chlorine

4   for disinfection. 96 percent of crop protection

5   chemicals use chlorine in their manufacture. 85

6   percent of pharmaceuticals have chlorine as an

7   integral part of their manufacturing process.

8   70 percent of disposable medical

9   applications, including medical, IV bags, tubing and

10   gloves, are made from PVC.

11   Caustic soda has a wide range of

12   applications in many industries, including pulp,

13   paper, aluminum and textiles, chemical processing,

14   and KOH is used in a variety of industrial

15   applications, including batteries and fertilizers.

16   Oxy employs approximately 4,000 employees

17   and contractors at our corporate offices and our 22

18   manufacturing facilities in North America. We very

19   much appreciate the ability to make comments

20   today -- at today's hearing, and in addition, we

21   appreciate the assistance and support Oxy has

22   received over the last several years through the

1   rail customer and public assistance program.

2   We fully recognize the last two years have

3   been extremely challenging in commerce, as industry

4   and businesses such as Oxy navigate through the

5   pandemic and its impacts.

6   Unfortunately, though, rail transportation

7   continues to be a significant challenge with no

8   clear resolution or timeline for restoring reliable

9   rail service. Our primary reasons for testifying

10   today are, first, to reinforce how persistent rail

11   service disruptions directly and negatively impact

12   shippers such as Oxy.

13   Second, to advocate for potential

14   solutions to resolve and prevent the widespread

15   unacceptable service levels we are experiencing

16   today and prevent them from occurring in the future.

17   Oxy averages over 50,000 rail shipments

18   per year utilizing all seven Class I railroads and

19   many short lines. Over the last several years, we

20   have watched the railroads implement their own

21   versions of precision schedule railroading by

22   altering their operating plans, reducing their

1   workforces, repurposing lease tracks and

2   classification yards and reducing locomotive power.

3   As a result of these unilateral railroad

4   actions, we have experienced significant increases

5   in transit times, misrouted railcars, missed

6   switches, overall disruptions in rail service

7   resulting in delayed deliveries of our important

8   products to our customers, and reducing our own

9   operating rates at our 22 North American

10   manufacturing facilities.

11   We have seen a reduction in resiliency of

12   the rail network overall and the railroad's

13   collective ability to restore service to adequate

14   levels following events like weather impacts,

15   derailments and other disruptions.

16   The end result unfortunately is extended

17   periods of inadequate rail service and an inability

18   to restore normal fluidity of the rail network.

19   Today rail issues continue to have a real

20   impact on our ability to run our facilities. Since

21   January 1 of this year, four of our manufacturing

22   facilities have reduced operating rates collectively

1   by 58 days due to poor rail service.

2   Currently, we are significantly impacted

3   by the Union Pacific imposed rail shipments

4   restrictions, which appear applicable to a select

5   group of large shippers like Oxy as opposed to being

6   applied generally and equitably to shippers across

7   the UP network.

8   While we continue to communicate with the

9   UP, avoid being placed on permit embargoes, we have

10   been forced to balance shipments across our

11   manufacturing facilities in response to the UP

12   established maximum car counts.

13   The current UP shipping restrictions are

14   already having a detrimental impact on our business.

15   Another major area of concern for Oxy is

16   the overall poor rail service and congestion in the

17   Houston area, impacting our traffic on the UP and

18   BNSF.

19   For instance, we have experienced

20   mishandling of railcars by the UP resulting in

21   additional miles and dwell time on shipments. In

22   addition, we have seen congestion issues on the BNSF

1   in the Houston area resulting in first mile/last

2   mile service delays to and from our facility

3   resulting in significant strains on our private

4   railcar fleet and delayed customer shipments.

5   Systematic failures around the New Orleans

6   gateway have also resulted in disruptions to our

7   shipments. Over the last several years, even

8   pre-COVID, we have seen increased times on traffic

9   interchanging in New Orleans. Recent crew and

10   equipment shortages are further compounding

11   congestion, causing even longer transit times and

12   resulting in late deliveries to our customers.

13   For example, we've seen NS traffic

14   received in New Orleans en route to Jacksonville,

15   Florida increase from an average transit time of 6.3

16   days in the first half of 2021 to 11.5 days in the

17   first quarter of this year. That represents an

18   astonishing 82 percent increase in transit time.

19   That's just one simple example.

20   Some of this increase is attributed to

21   mishandled railcars that were interchanged to the

22   wrong short line railroad.

1   Some other examples of excessive dwell

2   time in New Orleans include three cars shipped from

3   Houston on the BNSF idle in New Orleans for nine

4   days before interchanging to the NS to continue on

5   to North Carolina. Seven railcars interchanged to

6   the NS in New Orleans idle for nine days due to

7   congestion on the NS en route to Birmingham. Five

8   railcars idled in Lafayette, Louisiana for seven

9   days before being moved by the BNSF after we opened

10 a case.

11   In contrast, we have not experienced the

12 same level of rail service deterioration on the KCS.

13 It appears they have proactively increased both

14 equipment and resources earlier in 2021 in

15 preparation of serving their customer business

16 requirements, including along the Gulf Coast where

17 we're experiencing many issues.

18   So on a positive note, we would like to

19 acknowledge the KCS for their customer focus and

20 their approach to commercial and operational

21 processes.

22   Our intent is not to complain to the Board

1   but rather to actively advocate for improvements and

2   be part of the solution. The railroads need to

3   provide the level of customer service that is

4   required and frankly, expected given the rates they

5   charge.

6   While they have admitted their service

7   metrics aren't satisfactory, are they committed to

8   the learning from this process and preventing a

9   repeatedly poor rail service network issues that we

10   are currently experiencing?

11   Along those lines, Oxy would highlight to

12   some of the proposals and concepts we believe would

13   lead to rail service improvements for our traffic.

14   First, we need the railroads to take

15   ownership for their aggressive reductions in

16   equipment and labor resources that are resulting in

17   their inability to serve their customers under their

18   new operational modes. In their planning processes,

19   the railroads should be required to consider

20   scalability and responsiveness to shippers'

21   increased business requirements. The reactionary

22   rail environment that exists today is not

1   acceptable, and it is negatively impacting shippers

2   who are ultimately paying the price of poor service

3   and shipment restrictions.

4   Second, the railroad should provide

5   overall rail service restoration plans to the Board

6   with defined milestones and timelines for

7   implementation, including weekly reports from the

8   railroads about the progress they're making towards

9   meeting their service objectives.

10   In addition, we need successful execution

11   of these action plans and true accountability for

12   missing any service milestones. In today's

13   environment, it's just too common for the railroads

14   to communicate that network fluidity is just around

15   the corner, only for them later to report that they

16   have been unable to recover as quickly as expected.

17   Third, we believe elements of EP 768, the

18   proposed rulemaking enabling private railcar

19   providers to assess charges to a railroad when our

20   freight cars do not move for a specified time, would

21   incentivize the railroads to perform by implementing

22   a compensation mechanism where railroads pay

1   shippers for rail service failures.

2   We honestly want the rail service and not

3   compensation. However, just as shippers are charged

4   demurrage when they may be the cause of congestion

5   on the networks, we believe the implementation of

6   such reciprocal charges would direct railroads'

7   focus from their operating ratios towards customer

8   service.

9   Finally, it's crucial that the railroads

10   dedicate appropriate resources to address the

11   congestion in New Orleans in the short-term and

12   implement infrastructure improvements to develop

13   long-term fluidity through the New Orleans gateway.

14   Likewise, the railroads must dedicate

15   appropriate resources to address the congestion in

16   the Houston area, to restore service and prepare for

17   the increased volumes that are projected due to a

18   combination of increased shipper demand and to a

19   greater magnitude, planned increases of rail traffic

20   by the rail industry, particularly in light of the

21   proposed CP/KCS merger.

22   In closing, Oxy would like to thank the

1   Board for recognizing these persistent rail issues

2   and holding this hearing, to facilitate the

3   opportunity to provide constructive input. We look

4   forward to the oversight from the Board to ensure

5   railroads implement a customer-focused approach

6   timely from these chronic rail service issues, with

7   the additional focus on the New Orleans gateway and

8   the Houston area.

9   While we look forward to an immediate

10   solution to our rail service limitations, we are

11   equally interested in ensuring that plans are in

12   place to restore consistent rail service and

13   transport our critical products on a consistent rail

14   service and network resiliency for the future.

15   Thank you, and I'd be happy to answer any

16   questions.

17   CHAIRMAN OBERMAN: Thank you.

18   Mr. Stroud.

19   MR. STROUD: Good morning. Thank you,

20   Chairman, Vice Chairman, members of the Board. My

21   name is Michael Stroud, I am the Vice President for

22   Government Affairs and General Counsel for the

1   International Liquid Terminals Association. Thank

2   you for holding this hearing today.

3   As we approach the 160th anniversary of

4   the Pacific Railway Act, the International Liquid

5   Terminals Association, or ILTA, appreciates the

6   opportunity to provide comments on this hearing

7   regarding urgent issues in freight rail service.

8   ILTA would like to insert its full

9   comments into the record, and I will provide an

10   abbreviated summary of those comments.

11   ILTA's member facilities form a critical

12   link in the transportation of a wide range of liquid

13   commodities, many of which you've heard from today

14   and yesterday, and they include crude oil, refined

15   fuel products, chemicals, renewable fuels,

16   fertilizers, vegetable oils and also other food

17   grade materials.

18   Terminal operators are literally the nexus

19   of the various transportation modes and they include

20   water, road and rail.

21   As the Board heard yesterday, the impacts

22   of poor rail services resulting from precision

1   scheduled railroading, or PSR, are far-reaching.

2   The impacts of PSR on ILTA members are significantly

3   impacting the national supply chain, which you've

4   heard today, especially for liquid commodities such

5   as gasoline, ethanol and other liquid products.

6   Delays in processing errors of railcars en

7   route to destinations can have cascading

8   consequences, with profound impacts on shippers and

9   receiving facilities. Under PSR, it is common for

10 ILTA members to have missed switches, partial

11 switches or incorrectly performed switches which

12 have both immediate impacts and again cascading

13 ripple effects.

14   ILTA offers these comments to further the

15 conversation with the Board and with the railroads

16 along with our other industry stakeholders and the

17 railroad partners about how we can move forward to

18 bring greater accountability and transparency with

19 increased functionality to the global -- to the

20 national supply chain and to our supply chain

21 operators overall.

22   The adoption of cost-saving measures

1   collectively classified as PSR have amplified the

2   effects and the impacts of longstanding first

3   mile/last mile service issues. Since ILTA's

4   comments in December of 2021, PSR continues to

5   negatively impact the terminal industry. This was

6   not the original goal of PSR.

7   According to one class -- according to one

8   Class I railroad's Web site, PSR is defined as

9   "looking a little different from railroad to

10   railroad but at its core, it's intended to benefit

11   customers by providing consistent, reliable,

12   predictable service."

13   Yet as customers to the railroads, ILTA

14   members continue to see decreased levels of service

15   and with increasing costs all while still awaiting

16   the promised consistent, reliable, predictable

17   service.

18   Under PSR, railroads have cut staff,

19   closed rail yards and limited locomotive

20   availability and slowed operations on main lines,

21   thereby increasing both travel times and the

22   corresponding delays, which you heard yesterday from

1   other witnesses.

2   ILTA members can attest that PSR is simply

3   leaving railroads with significantly reduced

4   capacity to allow them to respond and ameliorate

5   disruptions. ILTA members have also seen a decrease

6   in last mile services from railroads. Railroads are

7   increasingly withholding normal last mile services

8   such as blocking and spotting of railcars, and they

9   are also without explanations and they are also

10   increasing these costs -- increasing the services

11   and costs for these services.

12   Net effect is the railroads gain the

13   ability to report higher efficiencies and increased

14   operating ratios, when, in fact, they have merely

15   just shifted these costs onto other portions of the

16   supply chain, and particularly to the costs of the

17   terminal operators and shippers.

18   The supply chain overall has not gained

19   any efficiency from PSR. If anything, the lack of

20   accountability makes the whole supply chain less

21   efficient. This point was really highlighted

22   yesterday by the Federal Maritime Commission's

1   testimony.

2   Railroads are initiating or threatening to

3   initiate embargoes more frequently than in the

4   pre-PSR era in what appears to be a strategy to

5   leverage terminals to add private track capacity or

6   in some instances, as some of our members have

7   notified us, they have to acquire their own rail

8   yard space to fill in behind unmet need in rail

9   service, again without decreasing any kind of fees

10   charged by the railroads.

11   Many ILTA members have been embargoed by

12   Class I carriers due to alleged labor shortages

13   resulting in fewer than 50 percent of rail switches

14   occurring within their prescribed time window. The

15   cost this imposes on terminals include wasted human

16   capital time and hours and financial capital, lost

17   financial capital for products and cargo not being

18   delivered or picked up when agreed on within agreed

19   time frames.

20   Unreliable rail services have also

21   resulted in significant reductions in certain

22   product availability, simply meaning terminals are

1   not able to provide the product deliveries under the

2   contracts with their customers.

3   In some instances, there have been

4   reported of force majeure clauses to avoid

5   contractual obligations due to product not being

6   available for terminal customers.

7   The impacts have hit customers and

8   shippers across all commodity classes, forcing them

9   into an efficient -- inefficient and more expensive

10   solutions to try to make these ends meet. We've

11   heard a lot of that discussed today and yesterday.

12   In some instances, like the U.S.

13   Department of Agriculture testified yesterday,

14   terminal operators are in the same position as

15   having staff simply guessing if and when a train

16   will show up at a terminal, which results in

17   inefficient scheduling for manpower at terminals.

18   The actions of the railroads impose direct

19   costs to terminal operators, which come in three

20   forms. First, increased costs from PSR that

21   directly relate to unreliable and unpredictable

22   service. These include increased labor and other

1   costs, essentially outsourced to terminals without a

2   reduction in the railroad's charged fees.

3   The second leading source of costs is in

4   the form of indirect cost due to the increasingly

5   onerous task associated with disputing demurrage

6   claims, which my colleague just mentioned, and some

7   others on the panel as well.

8   Finally, there are significant opportunity

9   costs for missed sales or inability for terminal

10   operators to meet market demand due to delivery

11   disruptions that originate with the railroad.

12   In conclusion, ILTA asks the Board to

13   require the railroads to report quantifiable

14   performance metrics to help the Board and other

15   stakeholders identify and assign costs and financial

16   impact to the rail shipper customers.

17   We believe that the transparency and

18   accountability of the railroads could be vastly

19   improved by a straightforward set of objective

20   reportable metrics. While our submitted written

21   comments provide more detail, the metrics could

22   include, for example, dates of scheduled services

1   and services not delivered. The number of missed

2   switches, and instances of incomplete delivery of

3   railcars. Only through increased transparency and

4   accountability can rail service be delivered in a

5   meaningful manner as promised.

6   Thank you again for the opportunity to

7   bring this issue to your attention and the impacts

8   on the terminal industry and look forward to your

9   questions.

10   CHAIRMAN OBERMAN: Thank you, Mr. Stroud.

11   Very good presentations.

12   Patrick, do you want to start?

13   BOARD MEMBER FUCHS: Sure. Thank you.

14   I first want to thank Ms. Stegmann for

15   recognizing our staff team at the public assistance

16   program, they do a great job. I know they are

17   valued by others on the panel. And because you also

18   mentioned the public interest in the hearing, I feel

19   compelled to inform people that they are standing by

20   to provide a free informal dispute resolution

21   service and of course the Board always favors

22   informal dispute resolution on first instance.

1   I want to turn to questions on the subject

2   of transparency. We heard a lot today and yesterday

3   about the primary root cause being T&E crew. We

4   have also heard that the challenge where this cause

5   manifests most acutely is with local trains, missed

6   switches, of course there have been other things

7   highlighted with gateways and transit times. And

8   we've also heard that the root cause isn't going to

9   be solved overnight.

10   So I'm wondering, on the subject of

11   transparency, what specific additional transparency

12   measures would be most helpful in the near term?

13   We've heard CSX yesterday talk about informing

14   customers of crew numbers. Most people on the panel

15   have filed in first/last mile, and talking about

16   other reliability measures.

17   And I'm wondering, what are the specific

18   measures that would be most useful right now to help

19   with your business planning.

20   MR. CORTHELL: I'll start out. Patrick,

21   thank you for the question. There's been a lot of

22   discussion about first mile/last mile. And I think

1   what yesterday's hearing illustrated just so clearly

2   was a disconnect between the railroad's perception

3   of their operations as measured by

4   terminal-to-terminal velocity and the real world

5   that we live in, which is first mile/last mile. Our

6   touch points are at the railroads. We don't touch

7   them in the middle of their line hall. We touch

8   them at origin and destination. And they were very

9   clearly disconnected from the fact that even in

10   2019, we were having significant challenges at

11   origin and destination, and yet their testimony was

12   that they were operating flawlessly.

13   So I think first mile/last mile is very,

14   very critical. But I think what we need to do is

15   have the Board set the standard for what first

16   mile/last mile is. Don't let the railroads set

17   their own standard because you will get six

18   different standards and it won't be meaningful for

19   you, or us.

20   So you really need to -- you know, to your

21   point, kind of think through this and set the

22   standard. And I would say NIT League members stand

1   ready to help you work through that process.

2   I would add, and Julie mentioned, fill

3   rate. As part of your first mile/last mile metric,

4   I would urge you to consider a fill rate metric as

5   well.

6   CHAIRMAN OBERMAN: When you say set -- you

7   have to turn your mike off.

8   What do you mean, "set the standard"? Can

9   you give us an example of what that standard might

10   look like?

11   MR. CORTHELL: Yeah. So you even heard a

12   little bit yesterday that I believe the CSX said

13   that they were measuring train speed even a little

14   differently than the peer group, right.

15   So if you don't set the standard, then

16   they are all going to set their own standards.

17   CHAIRMAN OBERMAN: But what would a first

18   mile/last mile standard be in your view?

19   MR. CORTHELL: Okay.

20   CHAIRMAN OBERMAN: Give me an example.

21   MR. CORTHELL: I can give you an example.

22   So you might set a standard that a perfect switch

1   might be, you know, received the number of cars that

2   you ordered and you received that at the time that

3   they had scheduled that switch.

4   So if the switch was scheduled for 10:00

5   a.m. every day, they get there at midnight that

6   night, that is not a switch that is productive for

7   our membership. If they get there, you know,

8   between 9:00 and noon, we still work with that. So

9   there's some range of acceptability on the time.

10   And then there's the aspect of did they

11   fill the order that you expected them to fill. So

12   if they show up with one of the 10 cars that you

13   ordered, that's not necessarily a good switch.

14   Stuff like that.

15   CHAIRMAN OBERMAN: Sorry, Patrick. Go

16   ahead.

17   BOARD MEMBER FUCHS: And to be absolutely

18   clear, what you're talking about is a common

19   definition of first mile/last mile, not a set percentage

20   but a common definition.

21   MR. CORTHELL: Yes. I do believe you have

22   to set some upper lower limits for how you define

1 that but a common definition that everybody has to

2 follow.

3   BOARD MEMBER FUCHS: And within that

4 definition, I mean, carriers have basic elements,

5 and it will differ between a closed gate facility

6 and an open gate facility. And the general thrust

7 is on the closed gate looking at constructive

8 placement, time order for placement and actual

9 placement, and then for the open gate you have

10 estimated trip time and actual placement and then a

11 plus minus around there, commonly defined across

12 railroads so that everybody is speaking the same

13 language when it comes to reliability. That's the

14 basic concept.

15   MR. CORTHELL: Yes, sir.

16   CHAIRMAN OBERMAN: Is that it?

17   BOARD MEMBER FUCHS: Yes.

18   CHAIRMAN OBERMAN: Michelle?

19   BOARD MEMBER SCHULTZ: Thank you all for

20 your testimony this morning and for being here.

21   I have heard testimony that UP has already

22 started to meter service, and I wondered if you

1   could speak to whether or not you or your members

2   would be willing to voluntarily reduce service if UP

3   offered a financial incentive to do so.

4   MR. CORTHELL: I can't speak on behalf of

5   all of our members on how they might interpret that

6   against their own individual businesses, but I can

7   tell you from many, many conversations that our

8   members remain open to productive conversations

9   about how to help solve this overall issue that

10   we're all facing.

11   So I find that our members are pretty open

12   minded about how to work through solutions, but I

13   can't commit them today to accepting, you know, some

14   sort of financial offset against not having service

15   because in some cases, and has been mentioned, you

16   know, there is no other option but rail service.

17   So what you're talking about is are you

18   willing to -- to accept some sort of compensation

19   for taking your plant down? I kind of doubt that.

20   MS. GIBSON: On behalf of NACD, I don't

21   know for sure either, but I know their primary

22   objective is to get the products to the customers

1   that the customers need and maybe some financial

2   incentive would help somewhat, but that's not -- the

3   goal is to get these products moving efficiently. I

4   would say that's our main concern.

5   MR. STROUD: I would echo that as well,

6   that while I can't speak for our entire membership,

7   I think that the goal of a liquid terminal is to be

8   serviced by a larger vessel and then serviced down

9   to the retail. And in order for us to work with a

10   lot of our industry partners here in which we

11   actually store their liquids, we would need to be

12   able to move those in a very, very large capacity.

13   So financial incentive doesn't really help

14   us in that regard, I don't believe. But happy to

15   ask our membership if you would like.

16   BOARD MEMBER SCHULTZ: Thank you.

17   CHAIRMAN OBERMAN: Is that all, Michelle?

18   Michelle, were you done?

19   BOARD MEMBER SCHULTZ: Yes.

20   CHAIRMAN OBERMAN: Karen.

21   BOARD MEMBER HEDLUND: Two quick questions

22   for Ms. Stegmann. The first is you said the

1   railroad should consider scalability. What did you

2   mean by that?

3   MS. STEGMANN: So I have a group that does

4   demand chain planning for our production facilities,

5   and again, when we make decisions about production

6   or what production rates to run in our facility --

7   CHAIRMAN OBERMAN: I can barely hear you.

8   MS. STEGMANN: So during COVID, we did

9   have a plant that we had to shut down, but we also

10   look at optimizing our operating rates across our

11   facilities. And we consider how quickly we can

12   respond to increase in customer demand.

13   When the railroads are -- it's basically

14   contingency planning for increase in business

15   requirements. Again, they made such large labor

16   reductions, and even just recently this quarter,

17   they were announcing they were putting locomotives

18   back in service. I questioned where they were in

19   fourth quarter of 2021 when we were experiencing

20   some of our worst service.

21   So again, they need to be looking at

22   scalability and how quickly they can respond and

1   what that timeline looks like.

2   BOARD MEMBER HEDLUND: The second question

3   I have relates to New Orleans. You said that the

4   railroad should address the problems in New Orleans

5   perhaps by adding additional infrastructure.

6   Do you have any particular suggestions

7   about additional infrastructure that needs to be

8   built in New Orleans?

9   MS. STEGMANN: I don't think we've gotten

10   a clear enough understanding of what the delays are

11   or issues may be. But I think those with that

12   expertise in the railroads would be able to better

13   speak to that.

14   I did want to follow up on one suggestion

15   in talking about the metrics and what would help

16   shippers. And I compare it to my commute home each

17   day, looking at my iPhone. I have a map that shows

18   me the congestions on the highway. I know -- I

19   mean, I could visualize having an interactive map

20   showing the rail network, red for areas where

21   there's high congestion, green for areas where the

22   rail work is fluid.

1   You have that today all across the U.S. on

2   your highways, on your Apple phone. I can also

3   predict what my travel time is from point A to point

4   B. Today when I fly home to Dallas, Texas, I will

5   look at my flight radar on my Apple phone to track

6   the completion of where I am on my travel on the

7   airplane.

8   So I have it in air travel, I have it on

9   road travel on the highways, but yet we can't

10   predict transit times, travel or congestion on the

11   railroads. I think a live visual mapping and giving

12   us some indication on where this heavy congestion is

13   and where shippers do have a choice of shipping from

14   multiple locations may be able to be part of the

15   solution.

16   CHAIRMAN OBERMAN: Karen, were you done?

17   BOARD MEMBER HEDLUND: That's it.

18   CHAIRMAN OBERMAN: Robert has some

19   questions.

20   While we're waiting for Robert, I have a

21   question.

22   Ms. Stegmann -- there he is.

1   Go, Robert. Go ahead.

2   BOARD MEMBER PRIMUS: I think this is

3   going to happen all day.

4   CHAIRMAN OBERMAN: Go ahead, Robert, if

5   you're -- are you connected? Go ahead with your

6   questions.

7   I don't think he can hear us.

8   BOARD MEMBER PRIMUS: If you can hear me.

9   I can't --

10   CHAIRMAN OBERMAN: Can you hear me,

11 Robert?

12   BOARD MEMBER PRIMUS: I can hear you. I

13 can't see you.

14   CHAIRMAN OBERMAN: That's okay. I'm

15 nothing to look at.

16   (Laughter.)

17   CHAIRMAN OBERMAN: Go ahead with your

18 questions.

19   BOARD MEMBER PRIMUS: You said it, not me.

20   Hey, I want to thank everyone for coming,

21 and I have to say that unfortunately, the testimony

22 is still damning on the part of what the railroads

1   and their responsibility or their irresponsibility

2   to the network these days.

3   And so yesterday during testimony with NS

4   and CSX, we heard about future planning and working

5   with customers to plan, you know, future operations.

6   And I just want to see, during all this crisis and

7   even during UP talking about embargo, what sort of

8   communication have you or your members had with the

9   railroads? And has that communication been

10   one-sided?

11   MR. CORTHELL: I would say on a tactical

12   level, our members are communicating constantly back

13   and forth with the railroads, primarily on the topic

14   of problem resolution.

15   So, you know, we've had rail reps doing

16   more problem resolution in the last couple of years

17   than they probably did in the 10 years prior of

18   their career, because they're just overwhelmed by

19   these types of requests.

20   So a majority of the conversations with

21   the railroads aren't strategic in nature at this

22   time. They're absolutely tactical, how do we solve

1   the problem that has been created today.

2   MS. STEGMANN: I would just add that the

3   Union Pacific, the vice president of industrial

4   products did reach out and communicate ahead of the

5   announcement. We have set up weekly meetings with

6   the UP and are discussing, because we were also

7   given an overall target, numbers and different

8   metrics to understand what the max car counts are by

9   geographic location.

10   And we've been communicating, and there's

11   been some flexibility in prioritizing and balancing

12   the shipments across our portfolio.

13   BOARD MEMBER PRIMUS: Anybody else?

14   My next question, make this my last

15   question, if service doesn't improve over the next

16   six months, where does that put your members or,

17   Ms. Wood, your organization? You specifically were

18   talking about giving specific examples of how they

19   were impacting your organization.

20   I know, Ms. Stegmann, you were doing that

21   too.

22   But how does that impact your business and

1   the downstream effect? Because I just don't think

2   that we're going to be turning this around any time

3   soon.

4   MS. WOOD: Well, our business is highly

5   impacted by any sort of rail disruption, as it was

6   mentioned before, a lot of times we can do a

7   tactical plan B of getting truckload shipments.

8   However, there are certain commodities that cannot

9   legally ship via truck, not to mention the national

10   shortage of truck drivers that we have been facing

11   over the last several years.

12   There are just -- there are no alternative

13   options, and if there are, they are extremely

14   costly. So the impacts could be shutting down water

15   treatment plants, shutting down food production

16   facilities. I mean, several things that would

17   impact public health quite drastically, in my

18   opinion.

19   MR. STROUD: This is Michael Stroud.

20   So I would say for our members too, that

21   again we continue to rely on -- many of our

22   facilities rely on rail to move product in and out.

1   So if service does not improve, based on the

2   information we have from members thus far, we

3   anticipate we'll have additional failures to either

4   meet contractual needs for failures to meet and be

5   able to ship product to customers.

6   So I don't -- operations will continue to

7   deteriorate, and if this does not improve overall

8   for our members, it's unlikely to be a beneficial

9   situation for them.

10   BOARD MEMBER PRIMUS: I can't see anybody

11   so I don't know if anyone else wants to talk or not.

12   I appreciate those comments, and I think

13   that --

14   CHAIRMAN OBERMAN: Robert, I think that

15   NIT League -- did you want to respond?

16   MR. CORTHELL: I didn't want to interrupt,

17   but I would just reiterate, you know, that the

18   nation's supply chains are in a dire situation today

19   because of this, and it's not getting better, it's

20   getting worse. And the longer it goes on, the worse

21   it's going to get.

22   So it has a huge impact on the nation's

1 supply chains, and I believe -- I don't want to be

2 doomsday -- but it's critical to our national

3 security at some point in time. We have to be able

4 to move commodities, and it's becoming more and more

5 challenging every day.

6   BOARD MEMBER PRIMUS: Thank you. Thanks,

7 Marty.

8   CHAIRMAN OBERMAN: All right. Thank you,

9 Robert.

10   Ms. Stegmann, you said something that

11 caught my attention, you said that the railroads

12 need to stop being reactive. And I don't know if

13 that's just the same thing that you meant when you

14 talked about scalability, but I wonder if you want

15 to elaborate on what you mean by that.

16   MS. STEGMANN: More just that today, we

17 don't have a sense of the shipments today, what

18 they're going to incur. So what happens is we're

19 working with them after a car has dwelled for seven,

20 eight, nine days versus being able to predict

21 transit time. I mean, they know where the

22 congestion is today. If we're shipping out of a

1   Houston facility moving towards New Orleans, we

2   should be able to have a sense today that that is

3   going to be a six-day transit time or 12-day transit

4   time.

5   We're waiting until the actual problem

6   occurs and then we're engaging on their customer

7   service. I think we need to move more towards

8   predictive transit rather than reactionary transit

9   data.

10   CHAIRMAN OBERMAN: So it sounds like

11   you're talking in that sense about more advance

12   communication. I thought maybe you were talking

13   about railroads need to plan a year in advance of

14   how many employees they need to have on their

15   payroll. But you were talking more about the

16   immediate --

17   MS. STEGMANN: Correct.

18   CHAIRMAN OBERMAN: I'm just going to make

19   a comment. This has been a very helpful panel. A

20   couple of things. A number of you have talked about

21   demurrage. Yesterday there were many shipping

22   panels that talked about the problems with the

1 service leading to increased demurrage charges.

2   I can't and won't comment on a specific

3 right or wrong of any charge any of you have

4 received, but I would encourage you and the

5 railroads to reread the policy statement we issued

6 three years ago. It's very specific about our views

7 about when demurrage should and should not be

8 charged and what the billing requirements are. And

9 if you're not -- if your demurrage situation is not

10 consistent with our policy statement, we want to

11 hear about it.

12   I'll leave it at that. I'm not supposed

13 to foment litigation. But I -- you know, we issued

14 that after a great deal of input from all

15 stakeholders, and we meant it. Two of us are still

16 here, and I'm pretty sure we still mean it, and I

17 think the other three do too.

18   So I was very concerned to hear that a lot

19 of the problems we're hearing in general, in

20 addition to shipping issues, have led to what sound

21 to me like people think they are getting demurrage

22 charges they shouldn't get. I'm not going to

1   comment on the merits.

2   But I wanted to underscore that and a

3   message to the railroads they should reread the

4   policy too and follow it.

5   The only other observation that just

6   strikes me, listening to the shippers after we

7   listened to two of the railroads late yesterday, I

8   had the same sensation after the demurrage hearing

9   three years ago. And from where I'm sitting, it's

10   like we're on two different planets, and I was

11   thinking about seeing if I could get my colleagues

12   to adopt a rule banning euphemisms in communications

13   with this Board, because the shippers come in here

14   and tell us about plants shutting down, food

15   supplies not functioning, fuel prices going through

16   the roof, and the railroads come in here and say,

17   we're not where we want to be.

18   Honest to God, for the railroads that are

19   coming in this afternoon, please do not tell me

20   you're not where you want to be. Tell me the

21   numbers. The not where we want to be makes this

22   sound like well, we're working on it.

1   I think, Ross, you're right, I think that

2   we're in one of the most serious national supply

3   chain situations this country has seen in a long

4   time in the context of these worldwide problems.

5   And it has to be treated with more than euphemisms.

6   So I'm just getting a little of my frustration out

7   maybe in advance of this hearing and also the

8   solutions to it.

9   That was all I had.

10   Patrick, you had some follow-up?

11   BOARD MEMBER FUCHS: Just one, very

12   quickly.

13   Ross, you had mentioned some positive

14   technological investment on the maintenance,

15   inspection side of things. And picking up on a

16   comment from Ms. Stegmann, I'm wondering about any

17   positive investments across the Class I in supply

18   chain visibility. I know some railroads are looking

19   at car-based technology with rail pulse, some are

20   looking at train-based using PTC, but that doesn't

21   necessarily capture some of the times in which a car

22   is not on a train.

1   But it seems to me that our current system

2   of AID readers and kind of dead zones in between

3   those readers doesn't advance the goal of predictive

4   analytics and real-time tracking.

5   So I'm wondering, are there technologies,

6   visibility tools carriers -- some carriers are

7   advancing that work particularly well for shippers

8   and that other carriers could look to as viable

9   solutions?

10   MR. CORTHELL: Yeah. So there's TMS,

11   transportation management systems, out there.

12   They're typically third-party engagements. They do

13   interact with the CLMs, the car location management

14   systems, car location -- car management location,

15   excuse me.

16   At any rate, they interact with those

17   systems, so it is a bit of an old technology. But

18   if you're using that technology, you know, in the

19   context of managing your supply chain, you can get

20   great benefit out of that.

21   And I'm going to give UP a plug here,

22   because we, Packaging Corporation of America at

1   least, has recently integrated our TMS with the UP

2   system, we're in infancy of that right now, but the

3   goal is that we can enter a switch order inside of

4   our system, and that will translate into a work

5   order for them. And now we're starting to work off

6   the same set of data, and we're no longer arguing

7   about whose data is more accurate.

8   So these are baby steps that we're taking.

9   We've been asking for it for a long time. It's

10   starting to happen. We're very pleased that UP

11   stepped up and helped us get there. A lot of work

12   left to lay out on that road, but there are tools

13   that can be implemented.

14   BOARD MEMBER FUCHS: Great. Anybody else

15   on the panel?

16   CHAIRMAN OBERMAN: I would just like to

17   sort of wrap up one aspect of what we've been

18   talking about.

19   You know, we obviously have already begun

20   a process to move forward with the possibility of

21   requiring reporting of first mile/last mile data.

22   Ross, you added an additional point to say

1   and have first mile/last mile standards, which

2   strikes me as a little bit -- it's complicated as

3   the FMLM data is itself, that's why we issued the

4   RFI we did, setting the standard strikes me as more

5   complex to figure out how to do it, because there's

6   so many variabilities of --

7   BOARD MEMBER FUCHS: I thought he was

8   talking about a definition.

9   CHAIRMAN OBERMAN: Well, yes, but that --

10   I think he was saying something like if you're --

11   you know, the first mile/last mile standard is that

12   your stuff has to arrive within 20 percent or

13   something of when it's supposed to arrive, some

14   metric.

15   Isn't that the kind of thing you were

16   talking about?

17   MR. CORTHELL: Chairman, what I was

18   describing was really setting the tolerance level,

19   the upper and lower limit of what is a successful

20   switch, for example.

21   BOARD MEMBER FUCHS: Just for what counts,

22   just for what counts as -- what your percentage is

1   and the metric, not for liability for penalty.

2   MR. CORTHELL: Absolutely.

3   CHAIRMAN OBERMAN: No, no, I understood.

4   MR. CORTHELL: You have to measure against

5   some standard.

6   BOARD MEMBER FUCHS: Right. That's all.

7   MR. CORTHELL: If you're going to be 80

8   percent on time, you have to measure against that

9   standard.

10   What I'm suggesting is that standard

11   should be set by the Board, not allowed to be set by

12   individual railroads, because then it's going to

13   become very meaningless.

14   CHAIRMAN OBERMAN: And Patrick, I

15   appreciate the clarification. Maybe we'll get to

16   the point someday where there will be some

17   liability, but I think right now we're just talking

18   about measuring so we can understand it.

19   And the reason I'm asking this question is

20   that I have been impressed, as urgent as these

21   problems are, that it takes us time to get things

22   right, because the industry is so complicated.

1   And what I wanted to focus on -- because

2   almost every member from the shipping community,

3   since yesterday, and so far today, has said if you

4   can do anything for us, we need the FMLM data.

5   And so my question is, if we could get

6   moving on getting just the data reported quickly,

7   even before we set some kind of standard as to when

8   the switch counts, which is what I think Patrick was

9   focusing on -- would just getting the data give some

10   immediate benefit to moving ahead of the crisis

11   we're in? Just the data itself? And if so, can one

12   of you enlighten me on how that would help you? I

13   would appreciate it. You're all nodding.

14   Mr. Stroud.

15   MR. STROUD: Yes. So in our full written

16   testimony, we provided a full set of objective,

17   measurable metrics. How that would help us is

18   essentially we would be able to calculate or know

19   exactly what our anticipated delays will be or when

20   our products will arrive or when service will

21   happen.

22   I mean, as my colleague on the panel just

1 said and alluded to, you know, if we went onto

2 Google flight and we looked at a particular flight,

3 it would tell us, you know, percentage of time it's

4 on time, delayed, and what time it's going to arrive

5 generally speaking.

6   So I think for all of us up here, the

7 ability to have predictability, and to give the

8 Board, and everybody -- start to collect data very

9 quickly about whether or not there's been a

10 mis-switch, a partial switch, or a correct switch,

11 would all help all of us in all of our industries,

12 and I think would help the Board too.

13   CHAIRMAN OBERMAN: So I just want to

14 translate to make sure I understand it.

15   You're saying if tomorrow you had first

16 mile-last mile data on your shipments, on your

17 members' shipments, they could look at the last two

18 weeks, how often that flight was on time, and then

19 for the next two weeks they could say well, if

20 that's the way the service is going to be, I'm going

21 to plan accordingly, so it would help them

22 immediately, even if the service is terrible, it

1   would help you immediately to plan around the

2   terrible service in a way that you don't have

3   visibility now. Is that what you're saying?

4   MR. STROUD: Yes. And it would also

5   provide the Board and the industry the ability to

6   start looking at data themselves too.

7   CHAIRMAN OBERMAN: Well, that I

8   understand. And the only reason I'm asking for it

9   is that I asked yesterday every group and the

10   railroads what can we do within the next 30 days,

11   next 60 days, because everybody points to hiring and

12   so far hiring is if it's going to solve the problem,

13   it's six months or a year away.

14   That needs to happen as fast as possible,

15   but I think -- I want to know and I think the Board

16   wants to know are there other things we can do right

17   now that will at least alleviate if not solve the

18   whole situation, and I think you've answered that

19   question.

20   It does seem to me, Ross, that it's

21   another mental effort to then figure out, okay, so

22   what should the standard be before it actually

1 counts as compliant or something. That would also

2 help, because then if there's a standard, presumably

3 the railroads would try to aim at it. But even

4 without the standard, getting the data sounds like a

5 step in the right direction. That's what I'm

6 hearing.

7   MR. CORTHELL: Mr. Chairman, do you mind

8 if I add just a little context, a little finer

9 point?

10   CHAIRMAN OBERMAN: Sure.

11   MR. CORTHELL: So think about what

12 conditions have to exist in an industry where, at

13 the present moment, you could be failing almost all

14 of your customers, and the analyst assigned zero

15 risk to your earnings associated with those massive

16 failures. What are the conditions that have to

17 exist in that, in that world? It's pretty severe

18 lack of accountability is the bottom line.

19   And so just having the data is not going

20 to solve anything. It's really going to be, you

21 know, the Board holding the railroads accountable to

22 the performance that that data is going to reflect.

1   And as individual shippers, as individual

2   members, it's very difficult -- our members know

3   what's happening at their plant on a daily basis,

4   they know what's happening, and they know which

5   problem they're out there having to solve today.

6   So just having visibility that reaffirms

7   what they already know is not going to do it. But

8   having that public forum, and having accountability,

9   you know, in a public forum, for that first

10   mile-last mile, now that starts to change things,

11   but it's not an overnight fix. I mean, you still

12   have some very fundamental structural issues that

13   need to get solved. And it's primarily around

14   velocity.

15   When I use the term velocity, I don't mean

16   terminal to terminal, I mean origin to destination

17   velocity. That's your number one killer.

18   And, you know, if you think about it from

19   just head count perspective, I would tell you, I'd

20   rather have 8,000 T&E employees that are constantly

21   in motion than 10,000 T&E employees that are idle

22   for 30 percent of their time. So I would caution

1   against just getting hung up on a head count number

2   as much as, you know, getting dialed in on what are

3   the velocities that need to happen, origin to

4   destination, not just terminal to terminal, because

5   we have already recognized there's a disconnect when

6   you get focused on that metric. But origin to

7   destination velocity is what really needs to occur

8   here.

9   CHAIRMAN OBERMAN: So I think when I use

10   the word "standard," I want to make sure we're

11   talking about the same thing. Patrick -- I always

12   turn to Patrick with metrics.

13   Would you enlighten me and the rest of us

14   on the concept we were just talking about here,

15   about reporting and setting some -- setting some

16   criteria for when it's reported as a successful

17   compliance? I think -- let's be clear on what --

18   we're all talking about the same thing.

19   BOARD MEMBER FUCHS: The way I understand

20   what Ross was talking about was let's say you have

21   an open gate facility and the comparison about

22   hitting it has to do with some sort of original ETA

1   or some sort of ETA, 24, 48, hours out compared to

2   wherein there was actual placement. It's my

3   understanding from what Mr. Boychuk was describing

4   yesterday but also was described today, in terms of

5   things like car to train compliance -- there is a

6   plus or minus on those numbers, because you're not

7   going to get it down to the minute.

8   Is it plus four hours, plus eight, plus 24

9   hours, plus or minus. You still count as hitting

10   your original ETA, same concept what exists for that

11   actual placement.

12   And so I think what Ross is just

13   describing is not -- maybe not what we would

14   typically think of as a standard, like you have to

15   hit a certain percentage of switches or certain

16   percentage of car to train compliance. It's more

17   saying when you see that somebody has a 78 percent

18   car trip plan compliance, it's within plus or minus

19   eight hours versus plus or minus 24 hours, because

20   if one railroad does plus or minus 24 hours, and one

21   does plus or minus eight hours, the comparability of

22   those metrics is not going to be there,

1   understanding it's very difficult to compare by

2   railroads, and in the 7-24 context railroads -- it's

3   not apples to apples.

4   And understanding those caveats, you're

5   not even speaking the same language, because the

6   plus-minuses are different, which will so skew the

7   statistics that we won't have a comprehensive and

8   consistent understanding of what's going on across

9   the network. I think that's what you were

10   describing.

11   MR. CORTHELL: Precisely.

12   CHAIRMAN OBERMAN: And speaking for

13   myself, I am still struggling to learn railroad

14   lingo around here, and I knew that I didn't have as

15   fulsome a statement of it, so I think it was good

16   for all of us to be talking about the same thing. I

17   thought that's what we were talking about, but I

18   apparently didn't use the right words. So I

19   appreciate it, Ross and all of you, it's been very,

20   very helpful.

21   Are there any other -- Karen?

22   BOARD MEMBER HEDLUND: Ross, you used a

1   term, but at the time you used it I was thinking

2   exactly the same thing. You said this is a national

3   security issue.

4   This isn't about getting -- supply chain

5   issue isn't about getting toasters to people's

6   kitchen counters. This is about clean water, and

7   I'd like to hear maybe at a later time more about

8   your thoughts about that. We're not having

9   technical issues with railroads. This is what we're

10   hearing over the last two days, the implications of

11   this are much more far-reaching. So thank you.

12   MR. CORTHELL: Yeah. And happy to make

13   myself available. And I would also emphasize that

14   this is not something that's developed over the last

15   couple of months. This has developed over years of

16   steadfast investment in a financial model that's

17   creating the wrong outcomes for our country.

18   MR. STROUD: And, Mr. Chairman, I just

19   wanted to make one final point.

20   CHAIRMAN OBERMAN: Go ahead, Mr. Stroud.

21   MR. STROUD: The data would be helpful,

22   but again, it does need to have some sort of an

1   objective metric, and that's our point, is that --

2   and we provided several examples which would not be

3   helpful, but anything to start moving towards that

4   point would be very helpful for us.

5   And on the national security side of this

6   as well, I would point out that we're about to start

7   entering hurricane season, and almost all of us will

8   have to move product throughout the Gulf Coast and

9   other places, and having a reliable solution for

10   transport is critical.

11   CHAIRMAN OBERMAN: Thank you, Mr. Stroud.

12   Leave the Gulf Coast alone, will you, until we

13   finish the Amtrak case.

14   (Laughter.)

15   Hard for us to do this more than one at a

16   time on that line.

17   Thank you, all. We're going to -- this

18   was a very, very informative panel, and much

19   appreciate the effort you've put into this.

20   It's 11:00. We're going to take a

21   10-minute break because I think we could use one,

22   and we're also going to reboot our Zoom and YouTube

1   connections because I am told they are on the blink

2   for some reason. We will hopefully take care of

3   that during the break. Thank you all.

4   (Recess.)

5   CHAIRMAN OBERMAN: All right, folks.

6   Let's reconvene. We are now at panel 10. It looks

7   like you are well assembled, but I'm going to call

8   the roll just to make sure everybody is here.

9   Emily, I see you.

10   Ann is here, John Ward, Robert Rosenberg.

11   MR. ROSENBERG: Present.

12   CHAIRMAN OBERMAN: Katie Mills, Steve

13   Ambrose, Ben Abrams, Eamon Monahan and David Dillon.

14   Everybody is here. So we will go in that order.

15   Emily, proceed. Oh, wait. Don't proceed

16   yet.

17   Robert, are you online? Can you hear us?

18   BOARD MEMBER PRIMUS: I can see and hear

19   you. Can you hear me?

20   CHAIRMAN OBERMAN: Yes, loud and clear.

21   Stay with us.

22   BOARD MEMBER PRIMUS: Wonders of

1   technology. Thank you.

2   CHAIRMAN OBERMAN: And I think wonder is

3   the right word.

4   Emily, you're on.

5   MS. REGIS: Thank you. Good morning.

6   Chairman Oberman and members of the Board, my name

7   is Emily Regis, and I am here in several capacities.

8   First, I am the fuel services manager for Arizona

9   Electric Power Cooperative, or AEPCO, a rural

10   electric generation and transmission cooperative in

11   southeastern Arizona.

12   I also serve as president of the National

13   Coal Transportation Association or the NCTA, an

14   association of coal shippers, producers and service

15   companies, and its executive director John Ward is

16   with me here today. I am also vice president of the

17   Freight Rail Customer Alliance or FRCA, a national

18   association of shippers and shipper associations led

19   by my colleague, Ann Warner, who is also with me

20   today. And I serve as the cooperative utility

21   representative on the STB's Rail Energy

22   Transportation Advisory Committee. Our group's

1   counsel, Robert Rosenberg, is here as well.

2   Coal shippers like AEPCO have been

3   struggling for many months with receiving inadequate

4   coal deliveries to our power plants. As the country

5   began to recover from the pandemic in early 2021,

6   demand for many products and commodities increased

7   and rail service deteriorated.

8   As early as February 2021, AEPCO

9   experienced increased train cycle times and delays

10   in our deliveries of New Mexico and Wyoming coal.

11   At that time, AEPCO had a large stockpile of coal to

12   guard against inconsistencies in coal deliveries.

13   Beginning in summer 2021 the stockpile began to

14   shrink, and we have not seen a recovery in service

15   as we experienced with past railroad service

16   troubles.

17   As fuel service manager, I manage detailed

18   records on every train delivery for our own planning

19   and contract compliance purposes. AEPCO has shipped

20   coal from the same UP-served sources in Wyoming PRB

21   region and BNSF-served northern New Mexico since

22   before I joined AEPCO more than 20 years ago.

1   Our standard round-trip cycle times of

2   three to five days for New Mexico coal and eight to

3   nine days for PRB coal have grown to as long as 10

4   days for New Mexico and between 10 and as much as 14

5   days for PRB coal.

6   The longer cycle times impede our ability

7   to obtain adequate supply. By late summer we were

8   looking for an extra train to offset the

9   accumulation of missed trainloads, and many other

10   utilities were in the same situation as equipment

11   became hard to find, and the railroad's limited

12   equipment and trains and service to alleviate

13   congestion.

14   We finally secured additional cars for one

15   makeup trip late in the year, but by then we were

16   almost out of coal. We would have run out if we had

17   not curtailed coal-fired generation at our

18   facilities.

19   The key problem we saw was lack of train

20   crews. On multiple occasions, our train was parked

21   waiting on railroad crews to move a loaded or

22   unloaded train. A month ago, in March, one PRB

1   train arrived, unloaded about 78 cars and then sat

2   after the crew left after it had exhausted its hours

3   of service. The replacement crew did not arrive for

4   four days. The local railroad operations personnel

5   could not even tell me when a replacement crew was

6   scheduled to return.

7   A few weeks earlier, the railroad claimed

8   we did not release the empty train at the plant on

9   time or through the proper procedure, and no crew

10   arrived until we resolved the issue with a phone

11   call. The railroad then billed us for over $53,000

12   as a penalty for the several hours of locomotive

13   hold charges.

14   The upshot is that the railroad is free to

15   take up to four days to bring its crew without any

16   penalty, but if AEPCO slips up it owes $53,000.

17   This shows a complete lack of fairness and

18   reciprocity, and I hate to say it, but after I wrote

19   these comments, this last week it happened again

20   when our train arrived on Thursday, it unloaded but

21   then it sat four days before the replacement crew

22   came to take it and depart with the empty train.

1   We also have experienced numerous delays

2   in locomotive problems. For example, the

3   interchanging short line that we use to ship our New

4   Mexico coal refused to move the train because it

5   arrived without the required number of locomotives.

6   Another time the locomotives were not properly

7   configured within the train. Other times the two

8   Class I railroads and the interchanging short line

9   failed to communicate about the train's ETA and

10 availability for pickup at interchange.

11   Locomotives also ran out of allowable

12 service hours or experienced mechanical problems

13 that required units to be set out and replaced en

14 route and from our coal mines, causing the empty or

15 loaded coal train to sit parked for hours or

16 sometimes days waiting for replacement power.

17   Other locomotives sat at our plant for

18 hours or days awaiting repairs before the train

19 could depart. Please understand that the route of

20 movement to these coal mines and our power plant has

21 not changed in over 40 years.

22   In the fall of 2021 AEPCO, like many other

1   utilities in the membership of FRCA and NCTA, with

2   depleted coal stockpiles and slow deliveries, had no

3   choice but to curtail coal generation to conserve

4   coal supply before the winter peak. Since that

5   time, we and others have tried to rebuild our

6   stockpiles to prepare for the summer 2022 with

7   soaring gas prices, but rebuilding has become more

8   difficult as rail service continues to deteriorate,

9   and now the railroads are parking or restricting

10   train sets again. Curtailment planning has resumed

11   even as gas prices continue to increase and concerns

12   about summer reliability grow.

13   Poor railroad service became a recurring

14   topic of discussion among FCRA's trade association

15   and utility members and NCTA's diversified

16   memberships since the onset of precision scheduled

17   railroading.

18   FRCA, MCTA and the National Rural Electric

19   Cooperative Association undertook efforts to devise

20   a coal utility on-time rail performance survey to

21   try to collect railroad performance data from the

22   shipper perspective to be used as a benchmarking

1   tool for logistics and planning for shippers, and to

2   be used in discussions with the STB, including its

3   RETAC meetings. We are now in our second year of

4   collecting data from the shippers and in the fourth

5   iteration of the semiannual survey effort. The

6   latest July 2021 to December 2021 results are very

7   disturbing.

8   92 percent of the respondents report that

9   rail service issues have impacted their company's

10 coal transportation, 60 percent report that rail

11 service was worse in 2021 than it was in 2019 and

12 2020, and 64 percent report their companies had to

13 modify operations in the second half of 2021 due to

14 poor service.

15   50 percent of the respondents quantify the

16 adverse effect at one million to about 10 million

17 per utility, and 20 percent quantified the impact at

18 10 million to 20 million per utility. 89 percent

19 reported that railroad service had negatively

20 affected their utility's ability to maintain

21 adequate coal inventories.

22   The members attribute the service problems

1   primarily to a lack of train crews and to the

2   adoption of so-called PSR.

3   John will provide his perspective of the

4   overall impacts to coal, while Ann will offer some

5   suggestions regarding additional data and

6   interventions that are needed to address these

7   problems for coal and other shippers. I thank you

8   for your time, and I'd be pleased to answer any

9   questions.

10   CHAIRMAN OBERMAN: Thank you, Emily.

11   Ann, who is going to speak next?

12   MS. WARNER: John.

13   MR. WARD: Thank you, Chairman Oberman,

14   members of the Board. My name is John Ward and I

15   serve as executive director of the National Coal

16   Transportation Association. On behalf of our

17   members who produce coal, consume coal, manufacture

18   and maintain railcar systems, I sincerely thank you

19   for addressing the current rail service issues

20   affecting all commodity types, including coal.

21   Contrary to some popular perceptions, coal

22   remains a vital component of the U.S. energy

1   infrastructure. In 2021, coal was the second

2   largest source of electricity generation, accounting

3   for almost a quarter of America's electricity

4   supply.

5   Coal-fueled generation rebounded in 2021

6   in response to surging natural gas prices and bad

7   weather. This caused a drawdown of utility coal

8   stockpiles of historic proportions. Coal stockpiles

9   at the end of 2021 are at the lowest level since

10   1978.

11   In the first quarter of this year, the

12   stockpile situation has continued to deteriorate.

13   Approximately three-quarters of coal-fueled power

14   plants today have stockpiles that would supply less

15   than 40 days of operation at full capacity, and

16   nearly 20 percent of power plants currently have

17   less than 10 days of fuel on hand.

18   The situation that Emily described related

19   to her power plant in Arizona is consistent with

20   power plants in every region of the country, dozens

21   of generating units have been idled, or are

22   operating at very low capacity today, as utilities

1   attempt to conserve fuel for summer demand that is

2   right around the corner.

3   In yesterday's hearing, a number of

4   witnesses referred to railroads pivoting to growth.

5   Coal producers, consumers and exporters stand ready

6   to assist in that goal. We would love to utilize

7   our power plants more when market conditions like

8   today's exist. We would love to rebuild our

9   stockpiles if we could get someone to deliver the

10 coal.

11   And once again, contrary to some popular

12 opinion, coal is not going away. U.S. Energy

13 Information Administration forecasts that coal will

14 still be providing 10 percent of America's

15 electricity in 2050. And because of coal's unique

16 ability to be stockpiled for use when other energy

17 resources are not available, that contribution to

18 America's energy security and resiliency will

19 continue to be vital.

20   Finally, I would like to respond to

21 allegations in the press that shippers participating

22 in this hearing are rent seekers out to transfer

1 railroad profits to their own financial statements.

2   May I point out that NCTA's members have

3 invested billions of dollars of their own capital to

4 support rail as the only viable option to transport

5 coal. These investments extended far beyond the

6 purchase and leasing of fleets of modern rail sets.

7 These investments include fast loading and unloading

8 systems, multiple loop tracks, batch weigh loadout

9 systems. Furthermore, mines and utilities are

10 organized to meet railroad schedules on a 24-7

11 basis, and maintain large and expensive stockpiles

12 of product at both origin and destination.

13   This stockpile factor represents the

14 largest surge or smoothing capacity in the rail

15 system between origin and destination, and it exists

16 at no cost to the rail carriers.

17   We are not rent seekers. We want

18 railroads to succeed, and we are hopeful that with

19 this Board's leadership the railroads can emerge

20 from this crisis with incentives in place that

21 prevent similar service meltdowns in the future.

22   And with that, I would like to hand the

1 microphone to Ann to discuss some of the actions

2 that may be helpful in creating incentives that

3 result in sustainable improvements to service the

4 shippers of all sorts of commodities.

5   MS. WARNER: Mr. Chairman, Vice Chairman

6 Schultz, Members Hedlund, Primus and Fuchs, thank

7 you so much for the opportunity for us to be here

8 today.

9   Just to add on to what Emily and John just

10 shared, the shipper -- the freight rail shipper

11 problems are not -- they're common among all

12 commodities, among all parts of the country. As

13 such, what I want to turn to today is more to the

14 causes, and offer some solutions and remedies.

15 Understanding the causes is critical for crafting

16 responses and avoiding the next service meltdown, as

17 what John alluded to.

18   If you look historically, a meltdown has

19 happened about every eight to 10 years. We don't

20 want to find ourselves here again in another eight

21 to 10 years with the same service problems. This

22 service problem just seems to be made worse because

1   of PSR, made complicated by COVID, and then with the

2   supply chain problems, and as it has been noted,

3   affecting our national security, to move goods as

4   effectively as possible.

5   In our collective view, the root causes

6   are market imbalances and a lack of effective

7   regulatory incentives. Investors pressure railroad

8   management to lower costs and reduce operating

9   ratios, rather than grow volumes by providing

10   quality service. Leadership that fails to deliver

11   on PSR principles stand to be replaced.

12   And as what John and Emily noted is

13   particularly frustrating, because we want a strong

14   freight railroad industry, and we want to help make

15   that happen in any way possible.

16   However, shippers, we also lack bargaining

17   leverage in trying to help reach solutions. Many

18   shippers are captive to a single railroad. Even

19   those fortunate enough to be served by two railroads

20   have no assurance that the second carrier will be

21   able to provide better service, or handle a

22   diversion of traffic.

1   Few shippers can obtain meaningful and

2   enforceable service standards. The railroads claim

3   they need to deliver in order to get paid, but they

4   still are overextending their track infrastructure,

5   pulling locomotives -- putting locomotives in

6   storage and furloughing employees when challenges

7   arise. When things later do not go exactly to plan,

8   assuming there is a plan, the railroads lack the

9   capacity to respond.

10   In a competitive market, providers pass

11   savings and efficiency gains through to customers to

12   avoid losing business. The continued decreases in

13   operating ratios, market share and service quality,

14   combined with the increase in carrier profits,

15   provide strong evidence that the railroad market is

16   not competitive in the aggregate.

17   We seek both short-term and long-term

18   measures to address the problems. I think we have

19   -- many panelists have discussed before, that there

20   should be transparency in how the railroad allocate

21   the limited service they provide. Transparency is

22   important because rail management is incentive --

1   incented to favor the traffic that helps the

2   operating ratio over other traffic, more recently

3   referred to as demarketing.

4   We appreciate the reluctance to

5   micromanage, but the service allocation determines

6   which businesses and sectors succeed. The inability

7   to meet demand should not increase the railroad's

8   discretionary power over the economy. Again,

9   transparency and accountability are vital.

10   As others have noted, the railroads should

11   be required to prepare and submit detailed action

12   plans to address their service inequities, followed

13   by weekly progress reports showing the levels of

14   compliance and progress or lack thereof.

15   But additional measures are needed to

16   address the market imbalance. One such mechanism is

17   to impose penalties for poor and inadequate service.

18   By statute, the Board can impose a penalty of $8,736

19   for each day a violation continues, but this amount

20   is really just pocket change in isolation.

21   It becomes meaningful when applied to each

22   railcar that a railroad cannot deliver or will not

1   allow in service.

2   The Board should also consider limiting

3   the ability of the railroads to increase dividends

4   and engage in stock buybacks when service is

5   suffering. If the Board feels that it cannot do so

6   directly, then it could do so in conjunction with

7   penalties.

8   The Board should also give consideration

9   to revoking exemptions, as what has been discussed

10   earlier, when service levels are inadequate,

11   exemptions impair the ability of the Board to carry

12   out the national transportation for all affected

13   traffic.

14   There's been quite a bit of discussion

15   about first mile-last mile data that should be

16   delivered. Not to reiterate what's been said

17   previously, but this is certainly a path in the

18   right direction to actually get a better

19   understanding of how the railroads are actually

20   performing in those two vital segments of the

21   journey.

22   I would also add that this would help in

1   terms of clarifying what is the common carrier

2   definition moving forward.

3   So thank you. Emily, John and I and our

4   counsel Robert would be more than happy to answer

5   questions following this panel.

6   CHAIRMAN OBERMAN: Thank you.

7   So, Mr. Rosenberg, are you --

8   MR. ROSENBERG: I have no prepared

9   remarks, I'm just here for the Q&A, thank you.

10   CHAIRMAN OBERMAN: You're here for moral

11   and legal support.

12   MR. ROSENBERG: Certainly.

13   CHAIRMAN OBERMAN: Katie.

14   MS. MILLS: Good morning. Can you hear

15   me?

16   CHAIRMAN OBERMAN: Yes.

17   MS. MILLS: Great. Good morning. My name

18   is Katie Mills. I am the associate general counsel

19   of the National Mining Association. The NMA is a

20   national trade association that includes the

21   producers of most of the nation's coal, metals,

22   industrial and agricultural minerals, the

1   manufacturers of mining and mineral processing

2   machinery, equipment and supplies, and the

3   engineering and consulting firms, financial

4   institutions and other firms serving the mining

5   industry.

6   The NMA's members conduct mining

7   operations throughout the United States and rely on

8   rail carriers to transport mined products, including

9   coal.

10   The demand for coal is only going to rise,

11   especially for coal exports. Russia's invasion of

12   Ukraine triggered a spike in U.S. thermal coal

13   exports due to Europe's tight energy supply and low

14   natural gas reserves. Here at home, the elevated

15   natural gas prices will also increase coal

16   competitiveness in the energy sector.

17   Rails, roadways, appliances, buildings,

18   stadiums and airports, and other structures, are

19   supported by steel, a material dependent on

20   metallurgical coal. 70 percent of the world's steel

21   requires this coal for its production. The U.S. is

22   one of the largest metallurgical coal exporters in

1   the world, and demand is only expected to increase.

2   While coal is an inexpensive resource

3   right here at home, mining companies are facing

4   enormous difficulties getting coal to the consumer.

5   Rail continues to be the primary mode of

6   transportation for coal across --

7   CHAIRMAN OBERMAN: Katie, it sounds like

8   your microphone is not on.

9   MS. MILLS: Is that better?

10   CHAIRMAN OBERMAN: That's better.

11   BOARD MEMBER FUCHS: The good news is I

12   think we picked up --

13   CHAIRMAN OBERMAN: We heard you. We just

14   wanted to make sure everyone else hears you.

15   MS. MILLS: Wonderful, wonderful. These

16   mining operations run 24 hours a day, seven days a

17   week, and 365 days a year, to meet the needs of

18   consumers. However, just because the mines are

19   running full speed ahead, it does not necessarily

20   mean that coal is moving across the country.

21   For example, at one mine in 2021, the

22   operation lost the equivalent of 167 train shipments

1   due to poor performance. So far in 2022, that same

2   mine lost 72 train shipments, and if this rate

3   continues, nearly 290 trains will not be shipped by

4   the end of the year.

5   To put this into perspective, at a rate of

6   13,500 short tons per train, approximately 3.9

7   million short tons of coal from just one mine will

8   never see the domestic or global market. Once the

9   shipments are lost, they can never be made up. The

10   backlog projections are so dire that coal producers

11   need more than 100 percent of shipments to not only

12   cover for existing contracts but to make up for what

13   is not being picked up.

14   The issue is not the number of cars. It's

15   that the trains do not often show up at all.

16   Another coal producer only had 30 percent

17   of its trains show up earlier this year. They have

18   empty vessels waiting to be filled at their cost

19   and, are two months behind on filling consumer

20   orders, solely because of the lack of rail service.

21   Sometimes stockpiles are at record levels

22   at mine sites with auxiliary stockpiles undergoing

1   permitting for the ability to safely increase the

2   amount of product trucked to the auxiliary sites.

3   These types of service issues are

4   threatening the U.S. energy supply and grid

5   reliability. Many customers want more coal than the

6   railroad can deliver, resulting in the curtailment

7   of utilities like we just heard, burning coal, to

8   keep adequate stockpiles of inventory available,

9   especially during the grueling summer months.

10   It is especially difficult for utilities

11   that must turn to natural gas and are forced to pay

12   at the current high prices that are only being

13   exacerbated by the current geopolitical turmoil.

14   In turn, higher fuel rates mean higher

15   rates for electricity users.

16   With many countries banning Russian energy

17   imports, we need to make sure our domestic coal

18   exports can fill the void, and get the product to

19   the markets where it's desperately needed. We need

20   to be able to move coal to utilities to keep the

21   lights, heat and air conditioning on, we need to be

22   able to transport metallurgical coal to the

1   industries that repair roads, bridges and buildings

2   to keep our infrastructure safe. We need to move

3   coal, and right now it's just not happening. Thank

4   you.

5   CHAIRMAN OBERMAN: Thank you.

6   Mr. Ambrose.

7   MR. AMBROSE: Chairman Oberman, Vice Chair

8   Schultz and members of the Surface Transportation

9   Board, thank you for holding today's hearing on

10   urgent issues in freight rail service.

11   My name is Steve Ambrose, and I am the

12   vice president of sales and logistics for GCC of

13   America, headquartered in Denver, Colorado. We're a

14   cement manufacturing company primarily.

15   I am here on behalf of the Portland Cement

16   Association, which represents the majority of the

17   nation's cement manufacturers, to talk about a

18   recent experience of shipping cement to market.

19   Over the past year, many cement

20   manufacturers have experienced significant declines

21   in rail service that have hindered our ability to

22   get our product to market in a timely manner.

1   Portland cement is a manufactured powder that is the

2   primary ingredient in concrete. More specifically,

3   Portland cement is the bonding agent inside of

4   concrete. It's a similar role to flour in a cake

5   mix.

6   As an essential construction material and

7   a basic component of our nation's infrastructure,

8   Portland cement is used virtually in all

9   construction applications, including highways,

10   bridges, mass transit, airports, schools, offices,

11   homes, commercial and residential buildings, dams

12   and water resource systems.

13   The low cost and universal availability of

14   Portland cement ensures concrete remains the

15   nation's most essential and widely used construction

16   material. Literally nothing in the modern world can

17   be constructed without it.

18   Approximately 87 million metric tons of

19   Portland cement were produced domestically in 2021

20   at 100 cement manufacturing plants in 34 states

21   across the country. GCC of America has five cement

22   plants in the United States and 26 terminals serving

1   12 states. Generally, GCC's product is used in

2   construction in all the mountain west states and

3   some west central states.

4   We expect the demand for cement to

5   increase as the economic recovery continues, and as

6   states and communities implement infrastructure

7   projects funded in large part by the investments

8   made to recent Infrastructure Investment and Jobs

9   Act.

10   Based on Portland Cement Association's

11   market analysis, the investments made by the

12   Infrastructure Investment in Jobs Act will result in

13   46 million more metric tons of additional

14   consumption over that five-year period.

15   This is a significant increase in

16   consumption. The cement industry is regional by

17   nature, and most manufacturing plants are located

18   near large limestone deposits, the principal

19   ingredient of Portland cement. In recognition of

20   the regional nature of the cement industry, it is

21   critical to have a reliable and cost-effective

22   transportation option. The majority of the cement

1   shipped in the United States is shipped by rail, and

2   very few manufacturing plants or terminals are

3   serviced by more than one Class I railroad company.

4   The average distance of shipments by rail

5   range from 250 to 300 miles. Truck transportation

6   is traditionally not economically viable more than

7   100 to 125 miles.

8   As such, cement relies substantially on

9   railroads to deliver our product to market beyond

10   the economical range of trucks.

11   In addition, some cement plants have

12   access to water transportation for domestic

13   shipments. These plants look to rail, barge,

14   trucks, to transport their product. Most bulk

15   cement shipments from manufacturing plants to

16   regional distribution terminals where the cement is

17   delivered then by truck to local contractors and

18   ready-mix concrete producers. The nation's cement

19   manufacturers have historically relied heavily on

20   rail transportation to move the majority of the

21   shipments between cement plants and distribution

22   terminals, and that reliance has only grown in

1   recent years.

2   It is therefore absolutely critical for

3   the cement manufacturers that the railroads provide

4   reliable, efficient, sustainable, cost-effective

5   service to meet the widespread and growing demand

6   for our product.

7   With this background, the cement industry

8   is working to meet carbon neutrality in 2050 across

9   the cement and concrete value chain. Cement

10   manufacturers look to rail as a highly sustainable

11   mode of transportation to move our product to market

12   as we work to achieve carbon neutrality.

13   The overwhelming majority of cement

14   manufacturing plants are captive to a single

15   railroad. For example, west of the Mississippi

16   River is dominated by two Class I railroads, the

17   BNSF and Union Pacific, and their tracks typically

18   do not parallel each other at cement manufacturing

19   plant sites. East of the Mississippi River, the CSX

20   and Norfolk Southern are the two dominant Class I

21   railroads.

22   It is rare that cement manufacturing plant

1   is not captive to one railroad, as it is rare that

2   rail lines parallel each other at or near locations

3   where plant sites exist.

4   For example, GCC of America's plant in

5   Odessa, Texas, is captive to the Union Pacific, and

6   its closest BN tracks are 120 miles north -- 129

7   miles east, or 196 miles west of that plant.

8   When Class I rail carriers moved to

9   precision schedule railroading in recent years,

10   cement manufacturers experienced a significant

11   decline in service. Prior to this shift, cement

12   manufacturers were already facing challenges with

13   efficient service. A shift to precision railroading

14   has resulted in significant increase in missed

15   switches, increase in demurrage, billings, as cars

16   had to be added to runs to accomplish the same

17   volumes that were accomplished prior.

18   For example, a manifest run prior to

19   precision railroading that took seven days now takes

20   10. Collectively, this is likely to increase the

21   cost of cement manufacturers not only through

22   increased demurrage, added railcars, but also in

1   lost sales.

2   Not only is the above example playing out

3   in manifest shipments, it is also playing out in

4   unit train service. Up until two years ago and for

5   the past eight prior, GCC of America has been

6   running 100-car unit trains from Pueblo, Colorado,

7   to Denver, Colorado, on seven-day average intervals.

8   Two years ago the intervals changed to 10

9   days. Our records show the reasons given were lack

10   of crews, locomotive availability and in some cases

11   both. As a result, GCC of America ran out of cement

12   in the Denver market seven times in 2021.

13   However, this is not just only impacting

14   us. It is important to consider the impact to our

15   customers in the construction of airports, highways,

16   city streets and finally the average citizen, who

17   experiences delays and increased costs, further

18   impacting the housing shortage.

19   Cement manufacturers have seen further

20   degradation in rail service over the past year.

21   Many railroads point to staffing cuts and challenges

22   associated with the COVID-19 pandemic. While large

1   parts of the economy were impacted by various

2   restrictions, construction in many cases remained in

3   place as an essential activity, and in some cases

4   volumes and demand for construction materials,

5   including cement, increased as projects were

6   accelerated due to reduced traffic levels on

7   roadways.

8   This all coincides with the Class I

9   railroads announcing further service cuts. Coupling

10   the reduction in service through staffing cuts,

11   precision schedule railroading and continued or

12   increased demand for construction materials has left

13   cement shippers in some very difficult situations of

14   not being able to fulfill orders in a timely manner.

15   At the beginning of the pandemic, there

16   were many uncertainties. For example, the cement

17   industry was concerned about a slowdown in

18   construction, when, in fact, that did not happen.

19   After initially scaling back service significantly,

20   the Class I railroads have had ample time to require

21   enough workers to meet the continued and increasing

22   demands for rail shipping.

1   The time for railroads to continue to

2   point to reduced staff in service because of the

3   COVID-19 pandemic has long passed. For cement

4   manufacturers, we anticipate increases in cement

5   demand over the next five years. We need to know if

6   we can rely on railroads to help us meet these

7   critical shipping needs and ask each of the Class I

8   railroads what their plan is to address backlogs and

9   service in a timely manner.

10   While cement is a small percentage of the

11 Class I railroad's annual business, it is important

12 to note that declines in rail service are facing all

13 shippers, and for the cement industry in many

14 instances there is not a cost-competitive

15 alternative to rail.

16   Finally, and perhaps most concerning, is

17 this current situation. The exemption of Board

18 oversight on hydraulic cement prevents this

19 essential industry from having a formal means to

20 raise specific concerns with the Board.

21   This is an issue that in our opinion needs

22 to be addressed by the Board, and the Portland

1 Cement Association continues to work diligently

2 towards resolution on this matter.

3   In closing, thank you for allowing me to

4 testify on the perspective of cement manufacturers.

5 The cement industry appreciates the Surface

6 Transportation Board giving thought to actions that

7 can be taken to help shippers get their product to

8 market in a timely fashion. The Portland Cement

9 Association continues to stand by ready, to provide

10 information, support, and act as a resource for the

11 Surface Transportation Board on these ongoing

12 considerations. And again, I thank you.

13   CHAIRMAN OBERMAN: Thank you, Mr. Ambrose.

14   Ben.

15   MR. ABRAMS: Good morning. Can everybody

16 hear me?

17   BOARD MEMBER FUCHS: Yes.

18   MR. ABRAMS: Chairman Oberman, members of

19 the Board, my name is Ben Abrams, and I am the

20 president and CEO of Consolidated Scrap Resources

21 Incorporated. CSR is a member of the Institute of

22 Scrap Recycling Industries, or ISRI. I also serve

1   as a member of the board's Railroad-Shipper

2   Transportation Advisory Council.

3   On behalf of ISRI we appreciate that the

4   Board is holding this hearing to allow us the

5   opportunity to explain our concerns with rail

6   service, as well as the impacts that unreliable

7   service has on shippers of ferrous scrap. Ferrous

8   scrap is an essential raw material used for more

9   than 70 percent of U.S. steel production. U.S.

10   steel mills consume more than 60 million tons of

11   ferrous scrap per year, and according to the AAR

12   more than 40 million tons of that amount travel by

13   rail. We expect that volume to increase

14   significantly over the next five to 10 years, with

15   the expansion of steel mill capacity in the United

16   States.

17   Steel that's made from recycled ferrous

18   scrap also saves approximately 68 percent of the

19   energy needed to produce virgin steel, thereby

20   reducing greenhouse gases. And rail transportation

21   is absolutely critical for ferrous scrap

22   transportation, steel mill consumers, especially at

1 distances greater than 150 miles between scrap yards

2 and steel mills.

3 Because of the unique characteristics of

4 bulk ferrous scrap, including its heavy weight and

5 volume, there are many situations where rail is the

6 only feasible shipping mode for this material.

7 I must also mention as others have on this

8 panel, and others, that ferrous scrap is an exempt

9 commodity, which, of course, makes challenging

10 service or any other rail-related issues more

11 time-consuming, expensive and uncertain.

12 Our company, CSR, is a regular user of

13 rail service to ship ferrous scrap to our widespread

14 customer base across the eastern United States. Our

15 Harrisburg, Pennsylvania, location is located on the

16 Norfolk Southern line, and our York, Pennsylvania,

17 location is located on a short line operated by the

18 York Railway Company, a division of Genesee and

19 Wyoming. We can access both NS and CSX from there.

20 Railroad service performance is essential

21 to our success as an industry. We have continued

22 unfortunately to see a deterioration of reliable

1   rail service across the board for scrap companies

2   during the last several years.

3   As background, prior to 2012, our industry

4   primarily relied on gondolas furnished by the

5   railroads to ship ferrous scrap. After 2014,

6   however, obtaining the sufficient supply --

7   sufficient or timely supply of railcar gondolas from

8   the railroads became increasingly difficult. The

9   lack of an adequate car supply materially impacted

10   our ability to satisfy shipping volumes and the

11   delivery needs of steel mills.

12   Scrap shippers were then forced to invest

13   in private railcars at significant expense, one they

14   had generally not had to bear in the past, to obtain

15   more reliable and consistent railcar capacity.

16   Despite the significant investments made

17   by our industry over the last decade, poor rail

18   service continues to negatively affect railcar cycle

19   times and create serious challenges in managing our

20   railcar fleets.

21   Around 2017, U.S. Class I railroads began

22   implementing precision schedule railroading as their

1   operating model. Although PSR was marketed as a

2   mechanism to improve rail service, the expansive

3   cost cutting and labor and equipment assets that

4   came as part of PSR did not improve efficiency and

5   reliability.

6   On top of these issues, recent

7   pandemic-related supply chain disruptions have

8   exacerbated existing railroad service challenges

9   without a clear end date to resolve them.

10   To provide the Board with up-to-date

11 information on rail service, ISRI surveyed its

12 ferrous shippers with the focus on service provided

13 during the last 90 days. The responses showed that

14 scrap metal shippers generally rate their recent

15 rail service as poor. On a scale of 1 to 5, with 1

16 being the worst and 5 being exceptional, the average

17 rail service rating was 2, and no member rated their

18 rail service higher than 3.

19   The survey respondents expressed concern

20 that poor rail service is preventing them from

21 meeting delivery requirements to their steel mill

22 customers, and leads to substantially higher costs

1   for replacing missed railcars with trucking, and/or

2   the need to lease or buy additional railcars, as

3   well as lost sales that cannot be recouped. There

4   is an extremely high level of frustration because

5   scrap companies are not able to timely or

6   effectively address these concerns with their rail

7   carriers in a way that would create a better

8   platform for reliable communication and

9   follow-through.

10   ISRI members reported that during the last

11   90 days they have experienced missed switches,

12   reduced service days, inconsistent car order

13   deliveries and extended dwell times in local

14   facilities, all limiting their ability to fill

15   orders for customers in highly volatile scrap

16   markets.

17   In addition, empty car deliveries for

18   loading during the last 90 days were on average only

19   65 to 75 percent of what was actually needed, and

20   some members even reported receiving only 10 to 30

21   percent of their demand.

22   Many of the empties that were delivered

1   were not received on time. Similarly, the

2   percentage of loaded or released cars that were not

3   picked up on time ranged from 25 to 50 percent.

4   When railroads perform inconsistently like

5   this, not on schedule, and/or change established

6   practices like service days, scrap shippers are

7   forced to change their plans and schedules, and then

8   chase down their railroad customer service

9   representatives to try and address these problems.

10   Sometimes those service representatives

11   can help, which is certainly appreciated, but

12   sometimes there's not much they are able to do,

13   because too much staff is involved, and not

14   necessarily attentive to customers' challenges.

15   Trying to weave through many Class I

16   organizations, to find the right people who will

17   promptly and effectively address service issues, in

18   a timely manner, can be extremely challenging, and

19   often to no avail.

20   Many survey respondents reported that most

21   of their shipments were made from facilities served

22   by a single railroad. Consequently, they don't have

1   an alternate carrier to rely on when the incumbent

2   carrier experiences significant service problems.

3   Trucking is not a feasible long-term

4   option for most ferrous scrap shippers for the

5   reasons noted previously. And as one ISRI member

6   reported that during the month of April, they had to

7   pay four times more than their rail rates for

8   trucking to ship scrap to a steel mill because of

9   the unavailability of adequate empty railcars.

10   When scrap companies are forced to convert

11 to trucking, despite being set up for, and planning

12 to ship by, rail, the massive rate increases are in

13 addition to the logistical nightmare of handling and

14 coordinating the large number of trucks needed to

15 ship the same amount of scrap that should be shipped

16 by rail.

17   All survey respondents reported that

18 service problems impacted their operations, labor

19 and costs. That caused significant loss of revenues

20 and harmed relationships with their steel mill

21 customers due to the failure to honor contractual

22 supply commitments. In down scrap markets, scrap

1 shippers bear the burden of lost orders because they

2 cannot ship scrap before those orders are canceled.

3 While that is a risk that scrap shippers assume,

4 they should also be able to assume that poor

5 railroad service won't prevent them from timely

6 completing those orders.

7   It does not happen all the time, but on

8 numerous occasions in the last six months we have

9 gone days without a car spot as these cars pile up

10 in switch yards waiting to be delivered to us. When

11 we have asked for updated delivery schedules, we

12 have received limited to no information to rely on.

13 Our staff does not know when cars will be available

14 to load and consequently when they will need to

15 work. As a company we lose precious time and

16 opportunity to fill orders.

17   What is most frustrating is that we cannot

18 seem to get accurate information about how many cars

19 will be placed for us, when that will happen, so

20 that we can plan our operations accordingly.

21   I run a business too, and I understand

22 things happen outside of our control, but it is not

1 too much to ask for reliable information to be

2 communicated to us, and initiated by the railroad,

3 upon their delivery -- about their delivery and

4 pickup times.

5   The bottom line is that railroads are

6 critical partners of the scrap industry, and we want

7 to have that relationship. We depend on their safe,

8 reliable and cost-effective delivery of our

9 materials, which is essential to U.S. steel

10 production, which, in turn, plays an essential role

11 in U.S. manufacturing and renewing the nation's

12 infrastructure.

13   To be clear, I'm not here to dictate -- or

14 tell the railroads how their companies should be

15 run. And I also recognize that pandemic-related

16 issues have created labor shortages across the board

17 for most industries, including the scrap industry.

18   But we need to get to a better place than

19 where we are today. I greatly appreciate when

20 railroad customers service representatives visit us

21 to learn more about CSR and are attentive to the

22 problems we have. As mentioned, there's only so

1   much they can do. We need better and more reliable

2   service on the ground every day if our business is

3   to operate in the way that the railroads want their

4   businesses to operate, which is to say with a high

5   degree of efficiency and productivity.

6   We need better, more consistent and easier

7   communication with and from the railroads that

8   results in effective and prompt measures to address

9   problems that arise. And we as shippers cannot

10   simply bear the burden of all the costs to do this.

11   We have incurred numerous and significant rate

12   increases over the last two years without much

13   change in service standards.

14   Railroads need to prioritize allocations

15   of capital and human resources to elevate the status

16   of shippers in the hierarchy of constituencies that

17   the railroads serve.

18   While it is great to have financially

19   healthy railroads, the revenue and shareholder value

20   increases should not be made at the expense of the

21   shippers or other stakeholders of the rail industry,

22   or to the economy as a whole.

1   We strongly believe that railroads need to

2   increase their investments in labor and equipment to

3   help alleviate current service problems. Railroads

4   need to live up to their own schedules and service

5   promises and be accountable when they fail to do so.

6   Communication of customer service needs --

7   also needs to improve, as rail customers should not

8   be forced to chase rail representatives to address

9   their problems.

10   Thank you for holding this hearing, and

11 I'm happy to answer any questions you may have.

12   CHAIRMAN OBERMAN: Thank you, Ben.

13   Eamon Monahan.

14   MR. MONAHAN: On behalf of the Corn

15 Refiners Association, thank you, Chairman Oberman,

16 and members of the Board, for the opportunity to

17 describe the issues our industry is having with

18 deteriorating rail service. CRA is the national

19 trade association representing the corn wet milling

20 industry of the United States. Corn refiners

21 produce hundreds of products with thousands of uses.

22 These are essential inputs for the American economy,

1 including not just food and animal feed but

2 pharmaceuticals, medical devices, personal care

3 products and a wide assortment of industrial products

4 ranging from construction adhesives to compostable

5 plastics. CRA members process approximately 13

6 percent of the United States's corn supply,

7 resulting in 9.3 billion in value-added revenue.

8 This accounts for 7,200 jobs and impacts an

9 additional 160,000 jobs, with an annual economic

10 impact of 47.5 billion. Corn refining is today's

11 leading example of value-added agriculture.

12   To serve this role in our food system and

13 consumer products economy, CRA members depend

14 heavily on an efficient, reliable and affordable

15 rail transportation network to transport their

16 product.

17   In 2020, agricultural products contributed

18 nearly 7.4 percent or 6.3 billion of total rail

19 revenue. Railroads originate 24 percent of U.S.

20 grain shipments, and of that, corn accounted for

21 691,000 carloads in 2020, approximately half of all

22 grain carloads.

1   Rail also dominates transport of corn

2   gluten meal and corn gluten feed, essential animal

3   feed products produced by corn refiners and relied

4   upon by poultry, pork and beef producers.

5   Recently, rail service has deteriorated to

6   such a degree that our industry is struggling to

7   play its essential role in the food and agriculture

8   system. One corn wet mill operator lost at least $5

9   million in revenue to delays in the first quarter of

10 this year alone. One CRA member has endured losses

11 of over $11 million in lost bushels and grind over

12 the last year because they were simply unable to

13 ship. In those cases our members' downstream

14 customers, needed to shut down or slow down their

15 own production, to accommodate these missing inputs.

16 In other cases, to maintain their business

17 relationships with their customers, our members are

18 forced to buy product from one of their own

19 competitors, to make up the difference if they can.

20   Because cycle times are up on average five

21 days, members have increased their leased car

22 position by an additional 500 cars, at a cost of at

1   least $6 million over the last year. On multiple

2   occasions, corn wet mills have been forced to

3   temporarily cease operation because there are simply

4   no cars available to deliver inputs or ship finished

5   product. These mills are complex industrial

6   facilities intended to run 24 hours a day, seven

7   days a week. It's not like flipping a switch. Corn

8   needs to steep at specific temperatures for 30 to 40

9   hours, so it takes a long time to shut this

10 operation down, even longer to ramp it up. When you

11 do that in the cool, like what happened multiple

12 times in the first quarter this year, this places

13 particular strain on the expensive equipment in

14 these facilities.

15   Further, with Pacific cargo transit times

16 averaging 111 days even before the lockdown of the

17 Shanghai port, many customers that previously relied

18 on imports are attempting to now source corn refined

19 products domestically.

20   As a result, for some products, U.S. corn

21 wet mills are operating at their full finishing

22 capacity to meet this increased demand. That makes

1   these temporary shutdowns caused by rail service all

2   the more detrimental to the economy.

3   A recent report from the American Farm

4   Bureau Federation uses USDA data to clearly

5   summarize the steep increase in delays and unfilled

6   train car orders shippers are experiencing, all

7   while rail rates and fees are rising. Over all,

8   compared to the first quarter of 2021, train speeds

9   in the first quarter of 2022 were down 5 percent and

10   rail origin dwell times up 9 percent. Comparing the

11   same time period, the number of unfilled orders for

12   grain cars increased by 47 percent, and at the same

13   time, bids for grain railcars on the secondary

14   market have increased 500 percent, demonstrating how

15   desperate agricultural shippers are to get their

16   product moving.

17   In addition to the concerns expressed by

18   other agricultural stakeholders yesterday, CRA

19   wishes to highlight the following. Issues with

20   switching in the first mile-last mile have forced

21   our members to reduce production in key product

22   lines and occasionally shut down, as I mentioned,

1 with ripple effects down the supply chain requiring

2 their customers to shut down production.

3   To compensate, members have used trucks

4 where possible but that comes with substantial

5 additional costs and strain on fractured trucking

6 market. Precision schedule railroading, far from

7 its intended result of increasing efficiency, has

8 created total communication breakdowns. Facilities

9 are not told when the daily switch will not happen

10 as planned until a customer calls, often a day

11 later, to report that a car did not arrive, to find

12 that it never even left.

13   There are no responses from railroads to

14 these delays. Lastly, actual and threatened

15 embargoes at customer destinations routinely affect

16 shipping performance. And to be clear, all of the

17 above has occurred while railroads charge

18 historically high fees. Alongside our coalition

19 associations, the American Chemistry Council and the

20 Fertilizer Institute, CRA has participated in

21 hearings and ex parte meetings before the Board on

22 issues that address some of the above. Regulatory

1   relief on issues such as reciprocal switching are a

2   key part of the long-term solution to increase

3   competition and efficiency in the rail market.

4   However, much more urgent action is needed.

5   CRA appreciates Secretary of Agriculture

6   Vilsack's letter summarizing the damage rail service

7   is doing to agricultural supply lines, and we echo

8   his suggestion, that STB obtain service improvement

9   plans from each railroad, and require weekly updates

10   from them to ensure progress is being made.

11   Requiring railroads to be publicly

12   accountable for their failure to provide reliable

13   service may be a first step towards improvement.

14   Currently, railroads accept very little

15   accountability for the consequences of their

16   business decisions, such as PSR.

17   Absent such accountability, there's

18   greater incentive for railroads to be responsive to

19   Wall Street than to their customers, and the overall

20   public interest that is part of their common carrier

21   obligation.

22   Further, the Board should consider what

1   other medium- and long-term tools it has at its

2   disposal to increase competition, combat unfair

3   business practices in the rail industry and increase

4   accountability for service failures.

5   On behalf of the corn refining industry, I

6   appreciate this opportunity to comment on these

7   urgent issues. Thank you.

8   CHAIRMAN OBERMAN: Thank you very much,

9   Eamon.

10   Mr. Dillon.

11   MR. DILLON: May I respond to the question

12   that you asked yesterday about how do we get people

13   and how do we keep the right ones? Can I have two

14   minutes before I represent my client or should I not

15   do it?

16   CHAIRMAN OBERMAN: No, you can tell us

17   anything -- I think you may be representing your

18   client if you have an answer to our questions, but

19   make sure you are in the microphone, and it's on

20   there. You're in a -- we put you on the corner.

21   I'm not sure why.

22   MR. DILLON: Okay.

1   CHAIRMAN OBERMAN: Go ahead, please.

2   MR. DILLON: I grew up in a blue-collar

3   neighborhood in Chicago. I think you being an

4   alderman for so many years, you are kind of familiar

5   with the people and the clannishness and certain

6   kinds of things that they adhere to.

7   And when I was a kid, there were a

8   tremendous amount of railroad men in that

9   neighborhood. My father was one and so were three

10   of my uncles. It was nothing for them and many,

11   many others to wear striped caps that they wore to

12   go to the school, to go to church, to go to the

13   grocery store, whatever. They took great pride in

14   that, and they wore their union buttons on the cap.

15   As I got older, I got to ride with my

16   father on the locomotive. I was fascinated with

17   this whole thing. When I got to be 18, he got me on

18   as a fireman, which was like an assistant engineer.

19   And that's what I did while I was going to college.

20   I worked nights.

21   And I asked my father one time, why is

22   everybody here somebody's brother or cousin, or

1   whatever? Everybody knows everybody, people

2   intermarry, and they really love what they do.

3   And he said well, you said the right

4   thing. I wouldn't want to do anything else. I

5   would do this for free if I could figure another way

6   to put food on the table for you and your mother and

7   your brother.

8   So what I think is part and parcel of the

9   problem is pride. These people took tremendous

10 pride in what they did. Folks talked yesterday

11 about what a hard job it is, and it is.

12   When I went on, as my father did, the

13 conditions were pretty much the same. Today the

14 workday maxes out at 12 hours. Up to 1964, it was

15 16 hours. They could work you seven days a week,

16 they could work you 30 days a month.

17   I had a summer job, I had three or four

18 paychecks on my dresser, I couldn't get to the bank

19 because I was working 16 hours a day in seven. So I

20 got six hours of sleep, and then the other was clean

21 up, get something to eat and go back. And I loved

22 it.

1   You don't have that anymore because it

2   used to be the local supervision grew up the same

3   way. They started in the mud and the dirt and all

4   the rest of it, and they took pride in their men and

5   they trained them, they respected them, they asked

6   them for favors of hey, could you stay over, could

7   you do this for me, could you -- and it was a

8   reciprocal thing.

9   That's all gone. Nobody expects anybody

10   to work 14 hours, 16 hours, today. But I do think

11   you could give them some pride.

12   The other thing is you get what you pay

13   for. I was involved in a situation where one of the

14   Class Is needed a whole bunch of engineers in a

15   godforsaken place, the job paid about 125,000 a year

16   at the time, and they couldn't get people. But what

17   they did is they gave them a $10,000-a-month-bonus.

18   And you know what? They had all the people they

19   needed. And that money -- that extra 20,000, that

20   was peanuts to the railroad in terms of what they

21   made.

22   So that's my take on this. You don't give

1 them any respect, you don't give them what they're

2 adequately entitled to by way of compensation, and

3 those are the things you're going to have to fix.

4   Now it's down to 11:43. Can I have a

5 little bit more time to finish representing my

6 client?

7   CHAIRMAN OBERMAN: Do the best you can

8 because we're on a tight schedule.

9   MR. DILLON: Okay. All right. I'm here

10 on behalf of Sweetener Supply company and its

11 accompanying railroad, which is the Brookfield

12 terminal railroad.

13   The company is a manufacturer or processor

14 of sugar. They are 150 people employed there,

15 working seven days a week, 24 hours a day. They

16 have good benefits and good jobs.

17   The company would be even bigger and more

18 prosperous if they were given adequate rail service

19 by Burlington Northern Santa Fe. They are seven

20 days, Burlington Northern Santa Fe won't switch them

21 any more than five. That means that they are out

22 about 800 more cars of sugar a year that they could

1   process if they were given the adequate transfer of

2   cars.

3   More importantly perhaps is the fact that

4   because they won't switch them on Saturday and

5   Sunday, they generate demurrage. Now, the agreement

6   that they have, the interchange agreement, says the

7   Burlington's railroad will put cars on that

8   interchange track, and then the Brookfield railroad

9   will bring them to the site on the factory site and

10   switch all these cars.

11   So Burlington does nothing but hook and

12   pull. They don't do any switching. Their company

13   does their own with their own private railroad,

14   which is a Class 3 terminal switching railroad

15   recognized as such by the Federal Railroad

16   Administration.

17   The point is, however, that that failure

18   to switch, charging them demurrage of $150 per car

19   per day for Saturday and Sunday, has cost them in

20   the past 20 months $341,000.

21   Now, the agreement itself says that

22   railcars are considered to be interchanged at the

1   time the railcars are placed on the interchange

2   track. The delivering party's crew uncouples the

3   railcars, and any unnecessary information -- or

4   necessary information will be forwarded.

5   So they're doing exactly what the

6   agreement provides for. They're putting the cars on

7   the interchange track. There should be no

8   demurrage. The company should -- the switching

9   company of BNSF should come and take those cars out.

10 If that were to be done, they could handle more cars

11 of sugar, and they would be eliminating a charge

12 which says I won't switch you Saturday and Sunday

13 but I'm going to charge you $150 a car per day. So

14 that's $300 a car every weekend, which comes up to

15 about $9,000 a weekend when they're really busy.

16   If you multiply that by 52, that's

17 $450,000. That's the situation that they find

18 themselves in.

19   They have met with BNSF, their local

20 management, their corporate management, and they get

21 told we don't have crews and we don't have

22 locomotives, which, quite frankly, is ridiculous. I

1 have pictures of them at home in Trains magazine

2 where they have aerial pictures, and there's long,

3 long lines of stored locomotives, new modern ones.

4 It's the same way with people.

5   Like I just said, it's very, very hard to

6 get and keep these people because they don't get the

7 respect that they are due. And when you take a job

8 like this where you don't work from 9:00 to 5:00 and

9 then you go home and forget about it, that's one

10 thing. When you live that, and you live with these

11 people more than you live with your own family, you

12 better make it attractive in some way, and generate

13 the loyalty that they used to have years ago.

14   I could say a whole lot of things like was

15 said yesterday about poor switches, no crews, no

16 this, no that. We all know all about that.

17   But I think the question becomes are these

18 railroads going to play by their own rules. Here are

19 the rules. You put the thing on the track,

20 demurrage goes away. I put the thing on the track,

21 you get to pay demurrage.

22   So it's a heads I win, tails you lose,

1   type of a situation.

2   So I really don't have that much more to

3   say about it. It's a simple situation. They are

4   being held up for phony demurrage, they are being

5   denied the ability to grow their business by being

6   switched adequately to take care of all the business

7   that they have. So they are losing two workdays a

8   week for a seven-day, 24-hour-a-day operation. And

9   that's the whole story right there. And there's no

10 reason for it.

11   CHAIRMAN OBERMAN: All right. Thank you

12 very much, Mr. Dillon. You have to turn off the

13 microphone there. Thank you very much.

14   First, I recognize that Chicago voice

15 anywhere. You make me feel right at home.

16   (Laughter.)

17   So does Karen. Secondly, I do want to

18 acknowledge -- as Emily mentioned, Emily Regis is a

19 very esteemed member of the RETAC advisory

20 committee, and always makes a great contribution.

21 And of course Ben Abrams is our member of our RSTAC

22 committee, and both of you do a lot of work that

1   helps this Board, and I appreciate the fact that you

2   do that and that you're here today.

3   I'm sure we have some questions.

4   Karen, do you want to start?

5   BOARD MEMBER HEDLUND: Thank you.

6   Mr. Ambrose, I am -- I have been living in

7   Colorado full-time for the last couple of years,

8   I've had a place in Colorado forever, and I've been

9   to Pueblo many times. And you mentioned the

10   shipping cement from Denver to Pueblo.

11   And there is a plant in Pueblo that makes

12   concrete ties. And there's also a big steel company

13   in Pueblo. Pueblo used to be called the Chicago of

14   the west. It's now called Evraz, but it was Rocky

15   Mountain Steel. And what do they make? They make

16   track, they make most of the track used in the west.

17   So if we're having trouble making concrete

18   and track because they can't get the cement to

19   Pueblo and the scrap to Pueblo, this is going to

20   come back and bite the railroads in ways they

21   haven't thought about.

22   MR. AMBROSE: I don't disagree. The

1 cement manufacturing plant is in Pueblo. The rail

2 tie manufacturer is called Rockland, they're across

3 the street, so they do get cement because they are

4 trucking it. The issue is that if the unit train

5 doesn't get to Denver, we don't have infinite

6 storage at Pueblo, so then we have to shut the plant

7 down, and this delay of 30 percent has created a lot

8 of chaos in that regard.

9   But as long as they're willing to pick it

10 up at Pueblo -- and even the customers in Denver, we

11 say well, you can go pick it up at the plant, and

12 there's simply not enough trucks to do that.

13   BOARD MEMBER HEDLUND: If I could take

14 just another minute, I want to congratulate the

15 Portland cement manufacturers. Cement manufacturing

16 and concrete manufacturing is one of the biggest

17 polluters on the planet, but they are spending a lot

18 of time and money now investigating sequestration of

19 carbon into concrete. So we may be producing green

20 ties. But it's a great development, and I really

21 want to congratulate your industry in looking into

22 that.

1   MR. AMBROSE: Thank you.

2   CHAIRMAN OBERMAN: Robert Primus.

3   Robert, do you have some questions?

4   Did we lose Robert again?

5   BOARD MEMBER PRIMUS: Actually, I just

6   heard you.

7   CHAIRMAN OBERMAN: I'm on delay. Go

8   ahead, Robert.

9   BOARD MEMBER PRIMUS: With your mask on, I

10   can't read lips.

11   CHAIRMAN OBERMAN: Go ahead.

12   BOARD MEMBER PRIMUS: I just have -- I

13   just want to again say thank you to you all for

14   being here. And I know again it's a tough

15   circumstance to be in. You guys all have businesses

16   to run. You know, your association, your

17   memberships, are really trying to get our economy

18   moving forward, you know, post-COVID, and there's a

19   lot on the table. And it just seems that with

20   respect to the railroads and their impact on your

21   supply chain, that it's making it a lot harder, and

22   I think, you know, our economy is teetering on the

1 verge of something really terrible if we don't get

2 this fixed.

3   So I want to just ask you guys, you know,

4 in the immediate term, what do you think we can do,

5 what should we be doing, to be focusing on -- to

6 help turn these guys around?

7   CHAIRMAN OBERMAN: Who wants to speak up?

8   Ben?

9   MR. ABRAMS: I'll just start and say a

10 couple really quick things.

11   One thing is the communication level

12 between railroads and the shippers, it's got to

13 improve in a way that -- the communication needs to

14 be initiated by the railroads. The communication

15 for missed switches, for the number -- you know,

16 cars that are supposed to be delivered to be loaded.

17 If that number is off of what's requested, or what

18 the railroad says is going to -- you know, is going

19 to be delivered, and then it doesn't turn out to be

20 right, the timing of things.

21   I mean, there's -- we have to plan our

22 businesses. People are scheduled to work certain

1 hours and they make other plans, you know, outside

2 of that. And then the railroad doesn't do their

3 part, you know, and they have to rearrange

4 everything.

5   That's not to mention, you know, the other

6 risks that we take with orders being canceled and

7 whatnot.

8   But it's got to start with better

9 communication, and that probably comes from

10 additional staff at the railroad whose main job it

11 is to communicate, to pick up where things have

12 fallen down. And things do fall down, I get that.

13 I mean, people don't show up, crews are not on time,

14 it happens.

15   That's -- okay, so what happens after the

16 crew runs out of time? Well, are you going to get

17 the spot the next day? If so, what time? What can

18 we rely on? How is the railroad going to fix those

19 individual problems that happen on a day-to-day

20 basis? Rather than having our people say oh, well,

21 I guess we're not getting our switch today, no one

22 bothered to tell us that. And now we have to chase

1   down the right people at the railroad.

2   And it's like calling -- sometimes if

3   you're lucky and you have a first mile-last mile

4   contact and you can call their cell phone and talk

5   to them and maybe get some information. But I don't

6   think that that's necessarily true across the board.

7   You've got to -- you know, it's like

8   calling somewhere and getting an automated answering

9   situation and you got to dial through and maybe you

10   get connected and maybe you don't, or you get an

11   automated response from the railroad if you send an

12   e-mail.

13   So I mean, to me that's where it starts,

14   with that communication. And I think that would

15   alleviate a lot of frustration at a minimum, on our

16   end.

17   BOARD MEMBER PRIMUS: Appreciate that,

18   Ben. Thank you.

19   Anyone else?

20   MS. REGIS: I would agree that the

21   communication issue is huge, and also that the

22   locomotive power issue seems to be very prevalent.

1   If there could just be good working locomotives

2   placed in strategic locations that were readily

3   available for the operations people.

4   I talk to railroad operations people a

5   lot, and they are utterly frustrated because they're

6   not given the resources that they need to move

7   goods, move trains.

8   And I talk endlessly about locomotives,

9   yet that shouldn't even enter into my purview. We

10   own railcars and we run an electric power plant, yet

11   I'm always talking about locomotives.

12   So I would say that if they could find a

13   way to handle the mechanical side of things, that

14   would alleviate a lot of issues.

15   BOARD MEMBER PRIMUS: Thank you.

16   MR. ROSENBERG: If I can add,

17   transparency, accountability -- I probably need to

18   get closer to the microphone.

19   Transparency, accountability, the data

20   needed for those, and also some sense of shared

21   consequences. All of these shippers, receivers,

22   manufacturers, consumers, are all suffering. The

1   railroads are thriving financially right now.

2   There's a mismatch there, and it should be

3   addressed in some way. We've mentioned penalties,

4   others have mentioned the equivalent of demurrage

5   for private cars. There should be some way to align

6   the interests, because it doesn't appear to be that

7   way. And as long as that continues, the situation

8   has the potential to compound and exacerbate rather

9   than be resolved, particularly on a long-term basis.

10   CHAIRMAN OBERMAN: Patrick?

11   BOARD MEMBER PRIMUS: Thank you.

12   BOARD MEMBER FUCHS: I think my question

13   is a follow-on to Robert's, and you know, we've

14   talked a lot about metrics to be collected

15   retrospectively. I really want to hone in on the

16   prospective communication.

17   Ben, you had talked about additional staff

18   and knowing when a crew times out.

19   Just for the panel, what does the ideal

20   prospective communication look like in terms of what

21   specifically do you need to know and specifically

22   when do you need to know it, to help your planning

1   on a prospective basis?

2   MS. REGIS: Well, I think one thing that

3   would be helpful to know is what kind of cycle time

4   standard should we be using as a planning tool?

5   That's one of the things we came up with in this

6   on-time performance period, is trying to look at

7   what -- like-kind utilities in regions of the

8   country that are shipping the same mileages to the

9   same sources, et cetera, what does the cycle time

10   look like, and what should it be. And folks are

11   constantly trying to figure out, you know, is it 10

12   days? Is it eight days? And how much equipment do

13   I need to put in place to manage it that way, and so

14   forth.

15   We just don't know. And often, the ETAs

16   also that are presented for your trainloads are

17   changing all the time. It's sometimes tomorrow,

18   then it's Saturday, and then it's later, and -- you

19   know, you're just watching and waiting until it

20   shows up.

21   BOARD MEMBER FUCHS: And to be specific,

22   you're thinking looking back a certain period of

1   time, and update it for each shipment, about what

2   that lookback was on the cycle time, and that

3   continual updating process?

4   MS. REGIS: Well, that is helpful for

5   sure. But could there be some kind of standard of

6   measure that if you're moving PRB coal to -- you

7   know, 500 miles away, that it's going to take this

8   many hours, or days plus hours? Just something to

9   use as a planning tool.

10   MR. ABRAMS: I'll just add, I think where

11 things fall down the most is that first mile-last

12 mile, or that first -- or that maybe not just first

13 mile-last mile, but in our instance we have a hump

14 yard that's not far from our facility, so that's

15 where a lot of the cars accumulate, for Harrisburg.

16 It's about five miles as the crow flies. And that's

17 where a lot of cars accumulate.

18   And I get it, they want to wait until they

19 have a bunch of cars, they bring them over. Fine.

20 But tell us, you know, with reasonable accuracy when

21 that is going to happen, and don't let us walk into

22 work at 6:00 the next morning and find out that they

1   were supposed to move 15 or 20 cars over, and it

2   didn't happen, and now we're starting from scratch

3   again the next morning, and saying okay, well, is it

4   going to happen today. Well, maybe, and maybe they

5   have an ETA that's updated on their portal that says

6   yes, it's going to happen today.

7   But if it's not really going to happen,

8   then tell us that, so that we know that.

9   And that's where I think the human capital

10 comes in. It's really -- it's not just someone in

11 Atlanta or somewhere else punching in what a new ETA

12 is or the system setting that. It's somebody who is

13 in the yard, and someone who is interacting with the

14 crews, who knows what the daily schedule is going to

15 be, approximately how long things are going to take,

16 and putting in an accurate assessment to the best

17 that they can of when deliveries are going to

18 happen. That's just one example, but it gets back

19 to the -- you know.

20   BOARD MEMBER FUCHS: So Ben, to make sure

21 I'm understanding, you're saying that sometimes

22 there is a lack of visibility of how your cars are

1   progressing through the hump, and that's a delay

2   point. And then once they get through, there might

3   be another delay point on the really last mile part

4   of it.

5   And when it comes to the delay as your

6   cars are going through the hump, it's your view that

7   you really need somebody on the ground actively

8   communicating because an automated system -- the

9   automated system as it's set up today is not going

10 to know how something is progressing through the

11 hump. So there's got to be a direct communication

12 to the yard.

13   But if there was a way to get the yard

14 communication to the railroad and back out to you,

15 that would also work, but you just need it from the

16 yard as opposed to some automated system after it's

17 already progressed to the hump, you need to know

18 what's happening through there. Is that basically

19 it?

20   MR. ABRAMS: Right. Don't rely on

21 something that's too automated. Get somebody that

22 sends us an e-mail that says we realize we missed

1   that connection, that train coming over, but I am

2   writing this now at whatever time, and I am telling

3   you that this is going to happen today.

4   And that's a human person who you are

5   interacting with, and that's someone who, if

6   something else happens, like they're on it, they're

7   managing that case, and they can deal with it.

8   Whether they're local or in Atlanta or wherever

9   else, at least it's somebody who is truly monitoring

10   that and has accurate information, they understand

11   what's happening on the ground.

12   BOARD MEMBER FUCHS: And for what that

13   means in terms of real consequences for you, which

14   is it's the same delay, but you can manage your

15   workforce better so the delay doesn't have the same

16   impact.

17   MR. ABRAMS: Right.

18   CHAIRMAN OBERMAN: Michelle?

19   BOARD MEMBER SCHULTZ: I would like to

20   thank all of you for taking the time to be here

21   today and for your detailed testimony about what's

22   currently going on on the network. But I would

1   especially like to thank Mr. Monahan. I believe

2   that you raised two specific recommendations for the

3   Board as to what action the Board should take in the

4   immediate future to address the current situation.

5   If I heard you correctly, I think you

6   recommended service improvement plans and weekly

7   updates. And I wondered if you could speak a bit

8   more specifically about what those service plans

9   should include.

10   MR. MONAHAN: Well, I have to admit to

11   being not quite expert enough in rail issues to

12   necessarily dictate what would be included there.

13   But I'm sure testimony yesterday from USDA

14   and my colleagues at the National Grain and Feed

15   Association highlighted some essential things, and

16   members of this panel as well.

17   And so I think -- input from this hearing

18   I think will help to identify some of the things

19   that should be included in that better than I can

20   off the cuff, if you don't mind.

21   BOARD MEMBER SCHULTZ: Anyone else on the

22   panel?

1   MR. ROSENBERG: In our written statement,

2   or testimony, we described -- in our written

3   testimony we describe, or we attempt to describe, in

4   some detail, that there should be very specific

5   plans as to what measures that the railroads are

6   going to take, it should be granular, there should

7   be milestones, there should be progress reports

8   following up, indicating to what extent that they

9   have or have not met those steps in terms of, say,

10   locomotives being restored, or employees being hired

11   or where they are in the training process.

12   And then an indication of what

13   consequences for service have or have not been

14   achieved, based on those steps.

15   So there should be, you know, transparency

16   and data and accountability.

17   MR. MONAHAN: And maybe if I'm unable to

18   outline what should be included in those improvement

19   plans, I would say or reiterate rather that the goal

20   of that is creating some accountability, and plain

21   English accountability.

22   I think if you explain to somebody out on

1   the street, who isn't in this room and knows this

2   lingo some of what happens in the rail industry,

3   they wouldn't believe it. And so the second part of

4   the recommendation that started with Secretary

5   Vilsack is sort of like a weekly progress report on

6   how railroads are meeting or failing to meet that

7   improvement plan.

8   BOARD MEMBER SCHULTZ: Thank you.

9   BOARD MEMBER FUCHS: So to kind of bring

10   in the concepts that people have been discussing

11   with the metrics and then these plans, something

12   like, you know, we do collect weekly service data,

13   and then there have been suggestions for additional

14   what I presume to be weekly first-last mile car trip

15   planning compliance metrics.

16   And so what this might look like in your

17   view is what does that look like on a forward going

18   basis, and we have already seen from some of the

19   railroads in their testimony their plans to get back

20   to a pre-pandemic level, so there is a trajectory,

21   with basically set target times for the metrics,

22   getting back to where they were at a pre-pandemic

1   level, that people can monitor to see how the

2   railroads are doing.

3   And Rob, to your point, to the extent that

4   there are input -- really relevant inputs which I

5   think we're hearing, our T&E crew, some visibility

6   on that front, that's the type of -- bringing it all

7   together with prospective targets while we already

8   have sort of the retrospective aspect of it.

9   MR. AMBROSE: Since you have oversight on

10 them, those are the metrics, how fast are you

11 employing crew, how many locomotives are you

12 bringing into service. And trust me, they have

13 sophisticated modeling in their lines to know what

14 that will mean for dwell times, for velocities, from

15 location to location.

16   They report to you, so to speak, just set

17 targets for what those are to bring service back in.

18 I mean, I think we all agree that's probably the

19 biggest issue, are those two things. Thank you.

20   BOARD MEMBER FUCHS: Thank you.

21   CHAIRMAN OBERMAN: Just a couple things.

22   Mr. Rosenberg, when you said that there

1   were details in your prepared statements, are we

2   talking about the FCR -- the whole crew?

3   MR. ROSENBERG: Yes.

4   CHAIRMAN OBERMAN: First of all, I can't

5   see Ann Warner in a public hearing without always

6   reminding people she started the ball rolling on our

7   doing something on collecting FMLM data. And it

8   seems like a long time, and it is, but it's high up,

9   and we are working on it, and I think this hearing

10 is going to generate some reasonably quick action on

11 our part, I hope. It's more complicated than we

12 thought.

13   But two things.

14   Ann, you had mentioned a statute that

15 allows us to levy fines. Could we just have the

16 citation? Which statute?

17   Maybe Mr. Rosenberg knows.

18   MR. ROSENBERG: I want to go back and

19 check. I think it may be 49 USC 11901, but give me

20 a moment to check.

21   CHAIRMAN OBERMAN: Okay. I just wanted to

22 make sure we knew what we were talking about.

1   And Katie, you had mentioned two mines

2   that had lost a great deal of shipments, and I just

3   wondered, which carriers were involved in those two

4   mines?

5   MS. MILLS: To be completely honest with

6   you, I don't know off the top of my head, but I'm

7   happy to get back to you with that information.

8   CHAIRMAN OBERMAN: Okay. Because those

9   were some dramatic missed carloads.

10   MS. MILLS: Sure.

11   MR. ROSENBERG: Mr. Chairman, if I could

12   interrupt, the provision is 49 USC 11901(a), and the

13   current penalty level by Board regulation is $8,736

14   per violation per day.

15   CHAIRMAN OBERMAN: Okay. Thank you very

16   much.

17   Let me just check my -- I think those were

18   all the questions I had.

19   Anything else from the Board?

20   Again, thank you all, really. A lot of

21   work went into this, we need all this information.

22   Oh, I do have one -- I guess more an

1   observation.

2   Ben, in talking about the communication,

3   you related the communication to the advent of PSR.

4   And I'm still trying to figure out what PSR is. And

5   is there something about PSR that says don't talk to

6   your customers? I mean, where does that come in

7   really?

8   I mean, why do you relate it to PSR?

9   MR. ABRAMS: You know, I don't know -- I

10   just think that it was -- PSR was supposed to be

11   this massive improvement, you know, in terms of

12   service. And I don't know that the change in

13   communication relates to PSR, but, you know, I know

14   that staffing was reduced and costs were cut. You

15   know, that was part of the point of PSR, and the

16   idea was that they were going to make that up in

17   service with other areas.

18   So I don't know if -- I don't know that

19   communication got worse after PSR. I'm trying to

20   remember back that far. But the issues that we had

21   were certainly -- the delay issues, missed spots,

22   those were certainly prevalent before PSR, but I

1   sort of felt like there was more interaction and

2   maybe more access to local staff prior to that.

3   That's the best answer I can sort of give you.

4   CHAIRMAN OBERMAN: Well, I will -- I think

5   you're still on there. There we go.

6   I'll just make this observation, because

7   I've been having this discussion, sometimes a

8   debate, more recently the last few weeks because of

9   the problems, with people in the industry, people in

10 the media, about PSR.

11   And it begins to become a distraction

12 because it means so many different things to

13 different people. I don't mean we shouldn't be

14 talking about it, but there are four more railroads

15 we're going to hear from this afternoon, and I'm

16 going to tell them now they can think about it at

17 lunch, tell me what their PSR model has to do with

18 not picking up the phone and telling the customer

19 when your efficient railroading is going to get them

20 their cars. Or if they don't, why not. Organizing

21 the trains, getting them out on schedule, has

22 nothing to do with employing somebody at the office

1   with a telephone.

2   We hear this so often, Ben, you pinpointed

3   it. I find it very frustrating.

4   But I think that completes our work here.

5   Again, thank you for all of your work. We are going

6   to break for lunch. It is 12:40. We will reconvene

7   here at 10 minutes after 1:00. Thank you all.

8   (Whereupon, at 12:40 p.m., the hearing was

9   recessed, to be reconvened at 1:10 p.m. this same

10   day.)

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1   AFTERNOON SESSION   (1:16 p.m.)

2   CHAIRMAN OBERMAN: Good afternoon, and we

3   are resuming. And our next panel is panel 11, labor

4   panel. We have Rich Edelman, you are representing

5   three --

6   MR. EDELMAN: Five.

7   CHAIRMAN OBERMAN: Five. More even. And

8   Matt Hollis. And I don't have the other names here.

9   MR. GRISSOM: This is Don Grissom, he is

10   the assistant general president of the Brotherhood

11   of Railway Carmen, and Josh Hartford, general

12   chairman for the machinists.

13   CHAIRMAN OBERMAN: And okay. And I

14   understand there were some other -- are there some

15   other folks here, from these unions? Okay. No.

16   All right, Rich, you're on.

17   MR. EDELMAN: Thank you, Chairman Oberman,

18   Vice Chair Schultz, Member Primus, I don't see

19   you, but I hope you're doing well, Members Fuchs and

20   Hedlund.

21   So I am Richard Edelman, I've been

22   practicing before the ICC and STB since 1987. When

1   I prepared for today, I tried to aim for the 20

2   minutes I asked for. I thought I was there, but

3   I've had to add some remarks in response to what I

4   heard from NSR and CSXT yesterday, and I ask your

5   indulgence on that. Today I'm speaking for the

6   Brotherhood of Maintenance of Way Employes Division,

7   of teamsters, Brotherhood of Railroad Signalmen,

8   SMART mechanical division, National Conference of

9   Firemen and Oilers and the Transport Workers Union

10   of America. All of those unions are nonoperating

11   unions.

12   Now, there has justifiably been a lot of

13   focus on the operating crafts and crew shortages,

14   but trains move on tracks, they are controlled by

15   signal systems, and freight is moved by locomotives

16   and in railcars, and they are inspected, maintained,

17   repaired by maintenance of way employees, signalman

18   and shop workers. And if there are too few of them,

19   or if they are pressured to cut corners, then trains

20   don't move, or don't move well.

21   Last week, CSX's CEO Foote said CSX

22   doesn't need any more track workers. And that's

1   just the same old short-term thinking. CSX is

2   focusing on T&E crews now because that's their

3   immediate problem. But if they don't bolster their

4   nonoperating crafts, they are going to run into

5   other problems later.

6   The unions appreciate the Board holding

7   this hearing on freight rail service problems

8   because the situation is reaching dire levels, as

9   everybody has said to you.

10   As a result of this new business model

11   called precision schedule railroading.

12   And Marty, you left with a question and

13   I'm going to answer that. What is precision

14   schedule railroading. It's branding. It is simply

15   a euphemism for ruthless cost cutting driven by

16   financing interests who discovered that there are

17   these duopolies that benefit from government

18   authorizations, and immunity when there has

19   historically not been very much regulatory or

20   enforcement standards, so there have been few

21   impediments to cost cutting.

22   The focus on schedule is a distraction.

1   The real issue is the institutionalized cost cutting

2   under the name of a scheduling device. If it was

3   about scheduling, why did the railroads cut

4   maintenance of way signal employees? They're not

5   involved in when the trains move.

6   This is also a blue-sky business model,

7   that operations and infrastructure will always be in

8   optimal conditions, and that's just delusional.

9   Yesterday, Norfolk Southern said the

10   period of 2018 and '19 and the current periods are

11   completely unrelated, but here's the thing.

12   In 2019 NS's self-praise of that was based

13   on a plan with no cushion and that everything would

14   run optimally. And now the pandemic, yes, that's a

15   very big problem, but they weren't set up for any

16   problem.

17   And NSR and CSX, they talk like they were

18   providing great service in 2019, and it was the

19   pandemic that messed everything up.

20   Now, some of us were around back then.

21   Well, actually most of us were around back then.

22   And we all know that that's not true. And we were

1 all talking about service problems, employment had

2 already been dramatically cut, and they were having

3 these problems. And it was actually in January

4 of '20 and February of '20 when I started reaching

5 out to shipper lawyers who I knew from the big

6 merger transactions to say, this is what we're

7 seeing is happening, what's happening to your

8 clients, and these two things are related. And we

9 all knew it.

10   So when the carriers say there's nothing

11 wrong with scheduled railroading as an operating

12 plan and that the critics are off target for

13 attacking scheduled operations, they're just

14 deflecting, because the problem is not inherently

15 with the scheduled railroad, but with a ruthless

16 cost cutting business model, of which inflexible

17 scheduled railroading, that's just a part. And it

18 puts operating ratio and returns to investors as a

19 first, second and third priority, and safety and

20 service second.

21   And if you've been told this by rail

22 customers, by the rail employees, we all know it.

1   And it's actually Billy DeCarlo from TCU, said to

2   me, you know, they would have you believe that

3   everybody else in this room is crazy, but we all

4   know, we've all experienced it.

5   Now, before I move on to summarizing some

6   of my written comments, I want to make an

7   observation. I have represented rail unions for 35

8   years, and this is the worst labor relations, and

9   more importantly worst employee relations

10 environment, over those years. And that's saying

11 something, because I started in the period of

12 abandonments, line sales, losses of tens of

13 thousands of jobs, a Presidential emergency board

14 report that dramatically changed collective

15 bargaining agreements and, frankly, use of ICC

16 transactions to circumvent agreements.

17   So why are things worse now? Because back

18 then rail labor may have been upset at what was

19 happening, much of which was improper, some of it

20 unlawful, but the industry was in economic

21 extremism. In recent years, we've seen tens of

22 thousands of jobs cut, degradation of the jobs that

1   remain, circumvention of collective bargaining

2   agreements, wage stagnation, at a time of record

3   profits. As shown by our economist, Thomas Roth,

4   since 2004, since the implementation and full

5   integration of the big mergers, the Class Is for

6   real profits have increased 479 percent. The

7   composite stock prices of the big 3 publicly traded

8   Class Is increased 1,359 percent. I actually put an

9   exclamation point, which I don't normally do as a

10   lawyer, but oh, my God, that's a four-digit percent

11   increase.

12   Profits per employee increased 979

13   percent. By comparison, during this period, real

14   wages are only up 14 percent.

15   Now, yesterday Ms. Sanborn from Norfolk

16   Southern, I'm pointing because she was over there,

17   said -- Norfolk Southern talked about a balance of

18   how resources are allocated. Well, that's just

19   words. What I just read to you, that's how they do

20   the balance.

21   Now, all of this escalated as the Class Is

22   moved to the new business model, and stunningly, it

1 continued into the pandemic, since the start of the

2 pandemic, traffic has returned to 97 percent of 2019

3 levels, but employment is down 19 percent from

4 December 2019 to the present.

5   97 percent of the car loadings, 19 percent

6 lower employment. The Class Is have attempted to

7 blame the pandemic for their staffing problems,

8 saying we're encountering the same problems as all

9 of these other businesses.

10   Mr. Foote compared their problems to the

11 difficulties that Starbucks is having with baristas.

12 Now, my daughter applied for a job at Starbucks,

13 they gave her a couple of hours of training, that's

14 a ludicrous comparison.

15   Whatever the difficulties other industries

16 are having filling positions, most didn't go on a

17 job cutting spree prior to the pandemic. The

18 staffing problem is not something that happened to

19 the Class Is; it's a problem they deliberately

20 created.

21   I wasn't going to dwell on this given the

22 Chairman's request that we not be repetitive, but I

1   heard the railroads repeat this lame deflection

2   yesterday. I can't let that go by unanswered. What

3   they said yesterday is let's just say disingenuous.

4   All of that stuff from Norfolk Southern and CSX

5   about algorithms, forecasting, use of social media

6   to recruit people, and geographic-specific focus,

7   and reference to general BLS statistics on the

8   economy, this all ignores the brutal job cuts done

9   in this industry that happened prior to the

10   pandemic.

11   And all this talk about hiring incentives

12   and bonuses and gift cards wouldn't have been

13   necessary if the carriers hadn't gutted the existing

14   workforce.

15   Let's put it this way. You don't repair

16   damage done with a sledgehammer with a screwdriver.

17   Now, I'll just say this. The statements I

18   heard yesterday were insulting to the workforce, and

19   frankly insulting to this Board.

20   I also want to address the rote

21   expressions of gratitude to the workers for their

22   dedication during the pandemic. You should know,

1 that at the bargaining table, they say those same

2 workers are overpaid abusers of health insurance.

3   As Peter Kennedy from the BMWE had said,

4 we've seen a 1,000 percent increase in thank-yous

5 for your service and a zero percent increase in pay.

6   As explained in our papers, rail jobs are

7 skilled jobs that require at least multiple months

8 of training, followed by years of learning, and in

9 some cases can take up to 10 years to reach full

10 competency. The suggestion that railroads can fix

11 the problems caused by deliberate program job cuts

12 pursuant to the mindless cost cutting is simply --

13 and hiring off the street, it's a fantasy.

14   In the meantime, 81 percent of the

15 pre-pandemic workforce is moving 97 percent of the

16 pre-pandemic freight and profits are up 9 percent.

17   What does that tell you? 2021 operating

18 revenue was about the same as 2019. So the Class Is

19 have increased their profitability, not through

20 growth, but continuing cuts in expenses,

21 significantly and substantially in the workforce.

22 And the rail workers haven't had a pay increase in

1 nearly three years.

2   Now, why does this matter to you? You're

3 not a labor relations agency, and we don't want you

4 to be one, but you are an agency charged with

5 promoting safe and efficient rail system, fair

6 wages, safe and adequate -- suitable working

7 conditions, sound economic conditions. And these

8 obligations are implicated by what's been happening

9 with rail employment.

10   And we and the other unions have

11 documented this. The railroads can't hire, people

12 are leaving mid-career. In my 35 years, I never

13 heard of anybody with eight to 12 years of time on

14 the railroad leaving.

15   Patrick, you asked me yesterday, what

16 could be done about staffing in the near term. Now,

17 some of this is not what the Board can do. The

18 railroads can enter new agreements that finally

19 share the wealth with the workers that generate the

20 wealth. And that would halt the hemorrhaging of

21 experienced employees leaving.

22   People are leaving these jobs. We've

1   given you statements in the record, and I'm going to

2   read a couple of them.

3   I also have to say, listening to Ms. Adams

4   yesterday, NSR is either fooling itself or

5   attempting to fool you. But I can say one thing for

6   sure, it's not fooling the employees and the unions.

7   All this marketing and media stuff, it

8   isn't going to change the reality of the rates of

9   pay, and rules and working conditions.

10   As for Ms. Adams's talk about the

11   compensation and benefits that their people receive,

12   let's point out that the current rates of pay

13   haven't increased in three years. And the health

14   plan that she touted, they're trying to diminish

15   that healthcare. Other things she didn't mention

16   was any significant pay raise, nor did Ms. Sorfleet

17   from CSX.

18   Now, the railroads are fond of

19   market-based solutions when they deal with the

20   shippers, and they tout the market when they are

21   dealing with investors, so the market solution for

22   their employment problems would be to give people

1 better pay and benefits, but when it comes to their

2 employees, they're blind to that.

3   CSX patted itself on the back in front of

4 you about the $600 month -- this is an advance that

5 they are giving, which you have to pay back when

6 there's retro-pay.

7   CSX talked about its collaboration with

8 the unions, and then -- you know, I don't know what

9 they're talking about, you know. Certainly not with

10 my clients. And last night, after CSX's speakers

11 talked about a collaboration, Mr. Foote said oh, the

12 crew problems could be solved by putting one person

13 on a train. I guess they are going to have one

14 person driving a three-mile-long train.

15   I don't represent the operating crafts, so

16 I won't address the merits. I just want to note

17 there was one comment, Mr. Foote undercut the entire

18 program speeches they made to you about relations

19 with labor.

20   Now, none of this is for the Board to

21 resolve. It's for the carriers to figure this out,

22 for the National Mediation Board, Presidential

1   emergency board, and maybe Congress. But you should

2   know where it stands and know the truth of it when

3   you deal with the question of retention of the

4   workforce and recruitment of new employees.

5   I didn't want to spend so much time

6   talking about bargaining at all, but after I heard

7   yesterday I had to answer that.

8   And you should know it's not just the wage

9   stagnation. It's the degradation of the job since

10   implementation of the cost cutting business model,

11   pressure to cut corners, to rush through

12   inspections, defer maintenance. Every craft reports

13   this pressure.

14   I was at a meeting at the FRA about three

15   years ago, went around the room, every craft said --

16   I said when we left, you know, the people of the

17   FRA, they probably think we all rehearsed this. We

18   didn't. It was completely spontaneous and

19   contemporaneous. We all said the same thing.

20   Anybody who denies that this pressure

21   exists, that proper inspection and maintenance or

22   repair standards aren't being discouraged and

1   sometimes actually suppressed, is ignorant, being

2   misled or dissembling.

3   I struggled about how to say that, I try

4   to avoid hyperbolic language, but as my father told

5   me, sometimes you have to call a thing what it is,

6   except he used a little more colorful language than

7   that.

8   And you can see from the statements that

9   we have provided you, the workers we represent are

10 anguished by this. You can see the pride these

11 people have in the quality of their work and their

12 commitment to doing the jobs right.

13   Patrick, yesterday you said well, what can

14 be done to improve retention and recruitment besides

15 pay. Well, one thing is start treating these

16 workers with the dignity they deserve. Respect

17 their skills and dedication, and stop the abuse of

18 the workforce, because people are leaving because of

19 that.

20   And I want to say thanks to Mr. Dillon who

21 got it, he got it. The people running the railroad

22 today, they don't. And too many high-skilled and

1   dedicated workers are leaving.

2   So, you know, we've given you, I'm going

3   to try and move quickly, surveys of -- for example,

4   the BRS survey, it says 93 percent of their local

5   offices reported that the new business model has

6   affected their workloads, 57 percent say their

7   territories have been expanded, they can't keep up.

8   The maintenance of way, 87 percent say

9   working conditions are worse today than five, 10,

10   15, 20, years ago, 91 percent attributed that to PSR

11   changes. 65 percent explicitly cited reduced

12   manpower, pressure to cut corners, 71 percent said

13   safety has been compromised.

14   BRS's Mike Baldwin who is here today

15   reports signalmen say they are pressured to cut

16   corners, ignore or defer repairs, and to not work to

17   the standards to which they were trained.

18   BMEW's director of research Peter Kennedy

19   reports members are in reduced-size work crews that

20   can't cover -- they can't work in the larger

21   territories, they are under pressure to defer

22   repairs, they're working too many days of overtime.

1   Smart Mechanical's Larry Holbrook reports annual

2   locomotive inspections used to involve 2- to 300

3   tasks, now they are down to 50.

4   You heard talk about these locomotives,

5   all of these shopcraft people have said their

6   railroads are cannibalizing for parts. So that

7   locomotives are in storage, so if they wanted to

8   pull them out, they wouldn't even be serviceable.

9   Car men can only inspect from one side of

10   the train because they are not given time to go to

11   both, that they are being asked to look at the

12   brakes on rolling trains, that supervisors are

13   pulling defect tags off of cars, that car men are

14   threatened with discipline if they actually shop the

15   car, send it for repairs.

16   I'm going to read you just a couple of

17   quick things as fast as I can from these statements.

18   Signalman Jeremy Farr, I have witnessed

19   multiple coal workers resign from the industry out

20   of concern for the current indifference for

21   employees being overworked, understaffed,

22   management's neglect of safety and concerns.

1   I have had perform duties outside of my

2   scope of work because of a strained understaffed

3   maintenance of way department. I've been involved

4   in more emergency work caused by derailments over

5   the past four years than any other time in the last

6   15.

7   Dan Jacopino. The new larger territories

8   are not sustainable for the long term, it's only

9   short-term gain for the company. It forces us to

10   complete only required tasks and move to the next

11   location. This leaves no time for routine

12   maintenance and to perform other duties.

13   Garrett Childress, a car man, about people

14   are being pushed to just be -- to not do their job

15   correctly. Those who do it correctly are criticized

16   as being inefficient, they're watched, scrutinized,

17   disciplined. People are being -- we're short

18   workers, we're forced to work overtime constantly.

19   There are quite a few who work 16-hour days, five

20   days a week.

21   Eric Nelson, a maintenance of way worker,

22   management doesn't care. We couldn't get time to

1   make repairs or there are no parts or no money to

2   pay the crews. We almost -- can always, every

3   single time, pick the next derailment and location.

4   When we make plans or suggest we work the location,

5   nothing is done. So we remove the track from

6   service or slow-order on the location to keep it

7   from having a derailment.

8   They complain to us about the overtime. I

9   work dark to dark, and I send in daily reports of my

10   activities, I even added noncoherent statements to

11   see if they were actually being read. They weren't.

12   Dennis Stermal, maintenance of way

13   employee. BNSF has turned maintenance of way

14   department into repair of way department. We have

15   completely eliminated any type of preventive

16   maintenance to maintain the track structure. If it

17   isn't broken, slow-ordered, out of service, it

18   becomes impossible to get manpower and materials to

19   maintain the track.

20   There's one section of track, we have

21   several broken rails due to a base break every

22   winter. The MRP, I'm not sure of that title, at the

1   time that I counted the welds, just 4/10 of a mile

2   section there were 40 thermite welds between both

3   rails, he had his boss come out, get it approved, to

4   be relaid this season. When the season plans came

5   out, it wasn't on it. He resigned in March of 2022.

6   I have to tell you I have met this

7   gentleman, I've talked to him a number of times, he

8   was a skilled and dedicated employee at BNSF, and

9   you guys ran off a valuable employee and you'll

10   regret it.

11   I want to talk about the Amtrak train that

12   got stuck in the snow. All of us here in D.C., we

13   all remember that. And Amtrak took a lot of heat

14   over that.

15   But do you know what the problem was?

16   That CSX hadn't put a brush cutter through that

17   territory in like three to four years, and they have

18   the maintenance of way crew there. The train

19   couldn't get through because there were tree limbs

20   downed on the track, and they couldn't clear it.

21   Last thing -- a member statement, actually

22   this is BRS vice president. He went to a meeting

1   with the top executives at CSXT, and he talked about

2   the difficulties being faced by signalmen under the

3   new business model, he talked about instability of

4   positions, irregular work-hours, disruption of

5   personal life, increased size of the territories,

6   inability to do all of the work in the territories,

7   just do the FRA required tests. Trouble tickets,

8   which are defects, being deferred, pressure to cut

9   corners.

10   At the end of the meeting, executive vice

11 president, CSX, Ed Harris responded and said it was

12 true that CSX was asking its workforce to do more,

13 and if they did not like it, maybe CSXT is not the

14 place for them to work.

15   That's the attitude of the current

16 management under this pressure.

17   So what's the Board to do? We urge you to

18 do all you can to enforce service standards and the

19 common carrier obligation. If the Board feels it

20 currently lacks sufficient authority to remedy these

21 service problems and enforce the obligation, so

22 advise Congress and ask for more authority.

1   This is not only an appropriate role for

2   the Board, it's necessary since it was the decision

3   of the ICC and the Board that allowed the

4   transactions that created the current megacarrier

5   duopolies. I was there for those merger

6   transactions. Those authorizations were predicated

7   on the findings that the transactions would be

8   consistent with the public interest. And applicant

9   projections that they would provide better and

10   faster service, savings would be passed along to the

11   shippers and the public in general, economies of

12   scale would be available.

13   And these approvals came with exemption

14   from antitrust law and all other laws, including the

15   Railway Labor Act, as necessary to carry out these

16   transactions. And the Class Is use that immunity,

17   and they did it to modify their collective

18   bargaining agreements without compliance with the

19   Railway Labor Act.

20   This too was justified as in the public

21   interest. And for a while, there were public

22   interest gains, but the finance interests realized

1   that the rail carriers are government-sanctioned

2   duopolies, with a recent history of very light

3   regulation, that substantial profits could be made

4   not by growing the business but by cutting costs and

5   trying to serve only the highest-profit-margin

6   customers. And there was not much customers could

7   do about it, and this agency had previously not

8   shown a willingness to do something.

9   But as shipper complaints escalated, as

10   rail labor substantiated what was going on, the

11   Board stirred to action and now we have this

12   hearing.

13   For our part, we certainly don't support

14   efforts to break up or break off parts of the Class

15   Is or to repeal their antitrust immunity. Those

16   transactions already occurred, and unwinding them

17   would be difficult and harmful to the rail workers.

18   If creation of those megacarriers was in

19   the public interest, the rationale for that hasn't

20   changed.

21   What's changed is the willingness of those

22   who control and manage the Class Is to act

1   consistent with the representations they made in

2   getting the authority they had.

3   We don't think tinkering with small

4   competition fixes is going to help, given the size

5   of these entities and the physical infrastructure.

6   Tinkering with competition will not be effective,

7   although we do support first mile-last mile data.

8   What will really help is the Board

9   enforcing service standards in the common carrier

10   obligation.

11   I know the shippers say we want to see

12   commercial solutions and competition-based

13   solutions, but given the size and the market

14   dominance of the railroads, a regulatory regime has

15   to be appropriate before commercial solutions can

16   work effectively.

17   Now, the Class Is are going to react that

18   the unions, the shippers, the Board, they want to

19   send the industry back to the bad old days of

20   pre-Staggers, it would be like sitting around a camp

21   fire telling stories about the pre-Staggers monster,

22   woo, scary. We heard that from Mr. Foote yesterday.

1   They will argue that the service problems should be

2   resolved by markets.

3   No one is proposing to recreate the

4   regulatory regime that existed prior to Staggers.

5   Mr. Foote can get all testy about it, but no one is

6   advocating that.

7   Rather we suggest that railroads be held

8   accountable for their statutory obligation, and for

9   the representations they made when they sought

10   merger and control authorizations that created

11   today's mega-Class Is.

12   The industry that currently exists is

13   different from the one that existed when the

14   Staggers Act and the ICCTA were passed. And the ICC

15   and STB case law under those statutes was developed.

16   It's time for the rules and regulations of the STB

17   to respond to the industry that exists today and the

18   environment in which railroads and customers and

19   their employees work.

20   Karen, yesterday you asked whether Wall

21   Street would in the current circumstances view a

22   little more favorably some more assertive regulation

1   by the Board, and the analyst said no.

2   Well, our response is too bad, ignore

3   them. And that's censored from what I originally

4   wrote.

5   Because in this industry, there are

6   statutory and other legal obligations. The common

7   carrier obligation. And the megamergers created

8   market dominance that they want to authorize based

9   on the public interest.

10   The finance interests currently dictating

11   business models may not like the STB actually

12   holding them to account for adequate and reasonable

13   service, but to paraphrase CSXT's VP's response,

14   Vice President Tim Carron, maybe the railroad

15   industry isn't the industry for them.

16   Thank you. I appreciate your indulgence

17   for my going a little bit over time.

18   CHAIRMAN OBERMAN: Thank you, Rich.

19   All right.

20   Proceed, Mr. Hollis.

21   MR. HOLLIS: Good afternoon, Chairman

22   Oberman and members of the Board. Thank you for --

1   so good afternoon. Thank you for holding this

2   hearing today on urgent issues and freight rail

3   service, and for the opportunity to provide these

4   comments today that are in addition to our more

5   comprehensive written testimony that was already

6   provided.

7   My name is Matt Hollis, and I am a

8   second-generation 18-year railroader currently

9   serving as national vice president and special

10   assistant to the president of the Transportation

11   Communications Union, TCU.

12   In my assignment, I am responsible for the

13   overall representation of our members on each of the

14   major freight carriers.

15   For reference, TCU represents many

16   different employees across the rail industry,

17   including the clerical, which itself is somewhat of

18   an umbrella term for many different job

19   classifications, including the intermodal equipment

20   operators and intermodal service workers that we

21   will talk about today, the Brotherhood of Railroad

22   Carmen, the employees that inspect and maintain the

1   railcars, as well as many others.

2   I am also testifying today on behalf of

3   our machinist brothers and sisters represented by

4   the International Association of Machinists, the

5   IAM's District Lodge 19. Together, TCU and IAM

6   District Lodge 19 make up the IAM Railroad Division.

7   I would like to preface my testimony today

8   by saying up front that some of my remarks will be

9   related to traditional labor matters like wages and

10   working conditions, including safety. And while I

11   understand that the STB is the economic regulator,

12   there is a fact that service provided by the

13   railroads is inextricably linked to the conditions

14   of the railroads. And that includes the conditions

15   of the rolling stock, infrastructure, and more

16   important, the condition of their workforce.

17   From my position at TCU, I've had a front

18   row seat to the complete and utter degradation of

19   the nation's Class I railroads over the past few

20   years, I've watched as private equity firms have

21   acquired controlling stakes in railroads only to use

22   their power to deploy business models that extract

1 as much wealth as possible. As evidenced by the

2 Norfolk Southern's $10 billion stock buyback that we

3 heard about yesterday. And all of this to the

4 detriment of the railroad workers, their customers

5 and ultimately the public's interest.

6   The Class I railroads have each deployed

7 their own variations of their precision scheduled

8 railroading, or PSR business model, which as we've

9 heard is a misnomer as anyone can tell you that PSR

10 is neither precise, well-scheduled, and it hardly

11 resembles real railroading. A more accurate

12 description would be doing less with less, or moving

13 fewer carloads with drastically fewer employees.

14 And of particular importance to this Board, they

15 have made a career on the railroad that was once a

16 pathway to the middle class and the upper middle

17 class into a career that is hostile, unappealing,

18 and taking what was once considered highly desired

19 and competitive positions to what you're seeing

20 today, a labor shortage where people refuse recall,

21 or outright resign their positions mid-career.

22   And all of this is due to the railroad's

1   persistent pursuit of the all mighty operating

2   ratio, or as I call it, their false prophet. Their

3   singular goal has been to reduce costs to the

4   railroads in salaries for workers, head counts and

5   service for customers, to reduce the operating

6   ratio, and massively boost their profits.

7   For our testimony today, we want to

8   highlight three specific crafts that we believe best

9   demonstrate the current issues of the workforce and

10   the freight rail service. I'll start with the

11   intermodal equipment operators, or the intermodal

12   service employees.

13   TCU's intermodal workers have been at the

14   forefront of our nation's supply chain crisis during

15   the past few years. As background, these employees

16   load and unload intermodal shipping containers using

17   cranes, side-loading vehicles and drayage equipment.

18   They rely on their equipment to be in top working

19   order. Unfortunately that is often not the case in

20   today's intermodal environment. Our members often

21   report their equipment is broken, or in sad states

22   of disrepair, and that was before the COVID-related

1   equipment shortages, and all that does is further

2   compound the work onto the fewer pieces of equipment

3   that are actually working.

4   To make matters worse, our intermodal

5   facilities have become dangerously understaffed, and

6   considering the minimum time to be trained to

7   operate this equipment is at least six months, even

8   if the railroads were successful to bring in new

9   hires, which they have not demonstrated an ability

10   to do, they would not be fully qualified for months.

11   At CSX, their intermodal head counts have

12   been reduced from 623 employees in 2018 to 437

13   today. That's a 30 percent decrease. Even in the

14   past two years during the height of the intermodal

15   boom, CSX intermodal employee head count dropped by

16   50. And many of these losses are a direct result of

17   resignations as intermodal employee operators -- I'm

18   sorry, intermodal equipment operators, have been

19   exhausted by the increasing workloads and the

20   rigorous demands of management.

21   CSX intermodal employees have the lowest

22   rate of pay among their peers. New hires starting

1   and capping out at $20.06 an hour, as has been the

2   case since 2019. With no new efforts from

3   management to incentivize new hires have been made

4   despite the pleas from the local managers,

5   supervisors and union officials like myself.

6   CSX has experienced record profits, and

7   record workloads, on a per capita basis, and

8   requests to increase pay, or provide incentive

9   bonuses or payouts, are being refused and blamed on

10   the stalled round of current bargaining.

11   I would ask the Board to consider -- to

12   put yourself in our members' shoes, being asked to

13   work throughout COVID and perform forced overtime,

14   mandated 12-hour shifts, six days a week, while your

15   company reaps record gains. Is it too much to ask

16   for or expect a raise? Perhaps a bonus?

17   You know, there's a lot of rhetoric that

18   goes around in the COVID era thanking front-line

19   workers for their efforts, including during this

20   hearing, but never is that gratitude backed up in

21   any material way, at least not in the railroad

22   industry.

1   CSX has done very little to address the

2   intermodal manpower shortages. In fact, just last

3   week, CSX CEO Jim Foote said, in their quarterly

4   earnings call, that other than conductors and

5   engineers, they don't need any more workers.

6   Intermodal workers included. Or any other of the

7   crafts that we represent. Only operating crews.

8   And this is simply not true. In fact, I would

9   challenge Mr. Foote to go to any of our intermodal

10   yards, or any of our mechanical shops, and try to

11   sell that message to our members.

12   While CSX leads in this race to the

13   bottom, they're certainly not alone in neglecting

14   the intermodal workforce. It's the same sad story

15   at practically every carrier. Nobody wants to work

16   the job the way it's being offered. Mandatory

17   12-hour shifts, six days a week, on your feet all

18   day, hustling as fast as possible, or perhaps just

19   as Mr. Foote described it yesterday, being expected

20   to work like a dog.

21   There's no question, the low wages, and

22   the unreasonable workload, demands that are brought

1   on by PSR, have resulted in a workforce simply

2   incapable of keeping up with the volumes at the

3   nation's intermodal facilities.

4   I heard Commissioner Bensill yesterday

5   morning describe the numbers in detail. A 21

6   percent growth in intermodal traffic in the last

7   year, but somehow the railroad's intermodal volumes

8   dropped 16.8 percent. If that is not a telling

9   statistic of intentionally limiting your own

10   service, I don't know what is.

11   Even so, in many locations due in part to

12   the shuttering of the yards and de-staffing over the

13   years, the traffic is now so congested that our

14   intermodal employees have been forced to stack

15   containers anywhere and everywhere there is a vacant

16   piece of real estate.

17   This often results in the containers being

18   stacked in congested rows of multiple levels,

19   creating multiple movements to retrieve every

20   container for shipment. And when the real estate at

21   the terminal simply runs out, which does happen in a

22   lot of areas, the carriers are then forced to rent

1   or to develop parking areas nearby that act as

2   holding lots for shipping containers, none of which

3   are well-operated, regulated, or regulated through

4   the traditional in-and-out gate processes.

5   With the reduction of crew availability

6   and the multi-mile link train lengths, the promises

7   that were made as PSR was rolled out simply aren't

8   coming true.

9   Trains often arrive at a terminal already

10   filled to capacity and incapable of picking up the

11   scheduled shipments. Moreover, most of the carriers

12   intermodal facilities simply aren't designed to

13   support the multimile train lengths, and this

14   provides an even greater complexity.

15   Suffice it to say this, intermodal traffic

16   is hitting snags at every corner of the PSR model,

17   and every one of those snags results in more loads,

18   unloading, grounding, drayage, parking, inspecting,

19   et cetera, by our members on the ground. And yet

20   despite the growing volumes, as Commissioner Bensill

21   mentioned, the workforce is still shrinking at an

22   alarming rate. This causes a vicious cycle of

1   pushing the remaining workloads onto fewer and

2   fewer, making the job harder and harder, and making

3   it more difficult to retain, or to hire.

4   It's simply not a sustainable model. I'll

5   turn to Brotherhood of Railway Carmen now. And the

6   car man craft includes the employees that as I

7   mentioned, they inspect, repair and maintain the

8   freight railcars. They assemble trains in yards and

9   perform air brake tests prior to departure, and more

10 specifically, they inspect practically every

11 safety-related point on a railcar. In total, there

12 are approximately 90 inspection points per car per

13 side, or 180 per car, depending on the type of car.

14   Our car men also perform repairs, both on

15 the repair in place track or the RIP track, as well

16 as the more comprehensive repairs in the shops.

17 Their skill set is an apprentice track position,

18 meaning that you're hired into the car man craft as

19 an apprentice, and you spend 732 working days to

20 become a journeyman. Unfortunately, the car man

21 career, like other crafts, has undergone a

22 transformation in the PSR era.

1   What was once a tough but good living has

2   been transformed into a hostile environment where

3   our members are constantly harassed and pressured by

4   local management to work faster, to skip

5   inspections, and to allow bad order cars to leave

6   the yard.

7   Outgoing trains are supposed to undergo a

8   pre-departure inspection, where as I mentioned the

9   car men would inspect up to 90 individual points per

10   side.

11   Car men used to be provided up to three

12   minutes per car. Now they are expected to perform

13   these same inspections in less than one minute, and

14   it's absolutely impossible without cutting corners.

15   Car men used to be able to get underneath

16   cars to physically inspect various components. Now

17   they're simply offered or allowed a brief visual

18   inspection.

19   As some of our car men say "this is the

20   only job where they train you to do a job, and then

21   they fire you for actually doing it."

22   During the onset of PSR, car men were

1   repeatedly threatened by local management that if

2   they didn't improve their speeds, that management

3   would close their yard. Well, because of the

4   manpower shortages which were caused by the

5   railroads themselves, the remaining car men are

6   forced to work massive amounts of overtime, many

7   times 16-hour shifts, several days in a row. Some

8   report sleeping in their cars rather than wasting

9   the time commuting home, just so that they could get

10   an extra hour or two of rest.

11   Our members often reference the joke

12   pirate flag that "the beatings will continue until

13   morale improves." Nothing unfortunately more

14   accurately describes the current state of a car men

15   career.

16   As a result of the worsening environment

17   and constant forced overtime, the car man craft is

18   experiencing record resignations. And we have

19   provided several examples in our written comments

20   and we hope that you will give your attention to

21   them.

22   Since January 1, 2019, we've seen 157

1   resignations from car men at the CSX, and 271 from

2   Union Pacific. More recently, since January 1 of

3   2021, there have been 144 resignations from Norfolk

4   Southern, and 143 from Burlington Northern. That's

5   715 resignations in total, roughly 15 percent of the

6   car man craft have walked out the door. That's not

7   furloughs. That's resignations.

8   And as the son of a railroad shopcraft

9   employee, I can't stress this enough, this is not

10   normal in this industry.

11   As I've mentioned, these jobs were once

12   prized positions. You had to know someone to get a

13   job on the railroad. Today the railroad cannot

14   hire, but as evidenced, the railroads are struggling

15   to retain their current workforce.

16   Switching now to the machinists. The IAM

17   District Lodge 19 represents the machinist craft on

18   the railroads, and a machinist is a shopcraft

19   employee whose primary function is to repair,

20   overhaul and maintain and inspect the locomotives

21   and the track maintenance equipment.

22   These are highly skilled craft employees

1 trained by the railroad, and often learning skills

2 that are very unique to the railroad. These skills

3 include working with complex pneumatic system,

4 machine parts with extremely small tolerances,

5 rebuilding air brakes and truck assemblies, among

6 many others.

7   And as you can guess, my testimony will be

8 that the machinist craft has been hit hard by PSR

9 cuts as well.

10   In 2015, Norfolk Southern employed

11 approximately 1,100 machinists. In 2021, they had

12 476. At one shop, eight machinists resigned in one

13 month alone due to the forced overtime every shift,

14 every day. At Norfolk Southern in Chattanooga, they

15 recently attempted to recall 28 furloughed

16 machinists. A majority of which did not return,

17 eliminating over 100 years of combined experience.

18   At Union Pacific, 78 machinists are

19 currently furloughed across the system. And at

20 Union Pacific's large North Platte shop, where there

21 used to be 351 machinists, including 21 apprentices,

22 today there are approximately 100 less machinists

1   and no apprentices, 17 machinists recently resigned

2   to seek out better employment opportunities citing

3   UP's toxic work environment, dehumanizing treatment

4   from management or their unrealistic expectations as

5   a result of operational changes brought on by PSR.

6   At BNSF and at CSX, the trends are

7   unfortunately the same. And just like in the car

8   man and the other shopcrafts, the remaining

9   machinists have faced the same pressures, not to

10   inspect or repair locomotives, limited time frames,

11   reduced manpower, forcing the remaining work onto

12   the hands of too few.

13   And as one NS machinist wrote in his

14   resignation letter, and I quote, "the culture

15   changed from caring about safety to just getting

16   engines out the door whether they were fixed or

17   not."

18   The quality of a machinist's career has

19   deteriorated as well. Due to PSR job cuts,

20   employees are forced to transfer all over the

21   country to keep their jobs. At CSX, a machinist

22   with over 10 years of service was forced to transfer

1   from Atlanta, Georgia, to Nashville, Tennessee, then

2   to Evansville, Indiana, bringing his family in tow

3   each time, before he finally resigned, once he had

4   found more secure employment, and in the face of

5   another furlough.

6   I wish these were rare occurrences, but

7   unfortunately they have become commonplace. This

8   forced job-hopping happens constantly all across the

9   Class I railroads, among all the crafts, and it

10   didn't used to be this way.

11   And as you've already heard from others,

12   the sad results of this new business model has been

13   fairly obvious, a lack of serviceable locomotives,

14   and a lack of employees to service them.

15   Today while Union Pacific complains about

16   lack of locomotive power that's available, they

17   currently have over 2,000 locomotives sitting in

18   storage. Unfortunately, nobody knows what kind of

19   state those locomotives are in, because, as Rich

20   testified, all the railroads have made a habit of

21   cannibalizing stored locomotives for parts.

22   Today many railroads are scrambling to put

1   locomotives on the tracks. The only problem is they

2   don't have machinists to prepare them, or service

3   them, they don't have crews to run them. They cut

4   them.

5   So in closing, I would just say I've heard

6   the line of questions from the Board to different

7   witnesses that talk about suggestions for what can

8   be done in the next 30, 60 or 90 days. And the

9   answer inevitably turns to the need to hire new

10   employees, and to ramp up training, as people come

11   into the workforce.

12   But that's for new hires, and that does

13   absolutely nothing to stem the tide of the mass

14   exodus of experienced railroaders leaving their

15   careers. But I can tell you something that the

16   railroads can do today.

17   They can get off their high horse, give

18   our members a contract that they deserve and they

19   can treat their employees with the dignity that

20   these people deserve doing their jobs every single

21   day.

22   Thank you for your time, and I look

1   forward to answering any questions.

2   CHAIRMAN OBERMAN: Thank you very much,

3   Mr. Hollis.

4   I'm going to just ask a couple of

5   questions of either Rich or anybody who wants to

6   answer.

7   So what is the wage of these machinists,

8   for example, who have left?

9   MR. HARTFORD: So the average journeyman

10   wage is $34.07, around that, anywhere between 34 and

11   34.50 an hour.

12   CHAIRMAN OBERMAN: So without overtime,

13   that's -- you've got to -- that's around 70, but

14   typically, what does a machinist make actually with

15   overtime? What's the typical?

16   MR. HARTFORD: It's not uncommon to hear

17   journeyman machinists making in excess of 100,000,

18   just because of the amount of overtime that is being

19   required for us because of the lack of machinists.

20   CHAIRMAN OBERMAN: So -- you're telling us

21   that people are walking away from $100,000-a-year

22   jobs?

1   MR. HARTFORD: Yes. And I believe in the

2   written testimony we have resignation letters where

3   they are just extremely burned out to the point

4   where they cannot work any longer, so they are

5   leaving, to find different jobs, just for that

6   reason.

7   CHAIRMAN OBERMAN: So tell me this. I

8   don't know -- Rich, or if anybody else wants to

9   comment on it. These people are all in pension

10 programs. Are they walking away from pension

11 benefits that they aren't there long enough to vest

12 in? Can you sort of give us an insight as to how

13 that works?

14   MR. EDELMAN: They are all covered by

15 Railroad Retirement, which is a good retirement

16 system. But people are retiring early from that,

17 and they are going to other careers.

18   And when you finally invoke Railroad

19 Retirement, if you don't have a present connection

20 with the industry at the time, it diminishes what

21 you get paid.

22   And the people who we're like talking 10,

1   12 years, in, they're not going to qualify.

2   Am I right about that?

3   MR. HOLLIS: Yes.

4   MR. EDELMAN: So it's a very -- that was

5   one of the things that for a long time kept people

6   in. And you will see from some of the statements

7   that I gave you from some of the people who stayed,

8   they said the only reason I'm staying is because of

9   my status in Railroad Retirement.

10   CHAIRMAN OBERMAN: Well, you've told us

11   that there were 700-some machinists who left, who

12   retired?

13   MR. HOLLIS: The number that I gave was

14   the Brotherhood of Railway Carmen.

15   CHAIRMAN OBERMAN: The car men.

16   MR. HOLLIS: Yes, sir.

17   CHAIRMAN OBERMAN: I think it would be

18   useful if you have the numbers. If you don't have

19   them today, that's fine. But, you know, I've asked

20   the railroads about these overall employees, I've

21   been focusing on T&E going through time, because the

22   trends are the same.

1   I think it would be interesting, and

2 useful, particularly if we're going to start keeping

3 in some way monitoring what's going on, and there's

4 been a lot of talk that people want us to do that,

5 to have the overall numbers, and in a way that we

6 could make sense of them in terms of how they

7 compare. So I assume there's always some number of

8 people who are ready to retire, some number who even

9 leave early when times were better.

10   I think what would be important for us is

11 what's the difference now in terms of the total

12 numbers railroad by railroad, or at least for the

13 four big U.S. railroads.

14   MR. EDELMAN: So one thing we did give

15 you, we have some numbers from the Railroad

16 Retirement Board, and that's in our exhibits. And

17 -- now, that's the entire industry. Okay? So it's

18 not -- you know, that includes Amtrak and commuters,

19 but none of the -- the commuters pretty much held

20 their employment numbers, Amtrak is not off that

21 much.

22   But what the Retirement Board said was,

1 prior to the pandemic, there were 205,000 covered

2 Railroad Retirement Act employees. It went down to

3 about 186,000, it's been hovering at about 188 since

4 then. They then calculated the number of people who

5 actually retired, which was about 9,300, which meant

6 9,700, they infer, not us, the Retirement Board,

7 people who quit mid-career. And that is unheard of.

8   CHAIRMAN OBERMAN: It would be interesting

9 to take a comparable period, maybe pre-PSR, and see

10 what those numbers look like so we could compare it.

11 But -- and maybe -- I don't know if you have access

12 to this, but when I asked a railroad or one of the

13 others does about, well, your T&E employees are down

14 X number, it would be helpful to relate the

15 retirement numbers or the other numbers of the

16 people who wash out from the training and so forth

17 to that railroad, so we could kind of measure what

18 you're talking about in terms of employee

19 conditions, which are forcing people out, to measure

20 it up against the specific railroad when they come

21 in here and tell us what they're doing. That would

22 be helpful. If you can do it.

1   I don't know if the data -- if you could

2   break it down.

3   MR. EDELMAN: I don't know if we have

4   that. I've been asking for it. The railroads

5   surely have it. You can see all the data we've

6   provided you, from Tom Roth's data, to BLETs,

7   graphs, those are off of your data, reported by

8   department.

9   But let me say one other thing. Because

10 the railroads come in here like this is all

11 anecdotal stuff, they are reading statements from

12 this guy and a couple of guys came up here.

13   Think about what the unions do, all right?

14 We have local lodges, local committees, we have

15 local chairmen. They talk to their co-workers.

16 They report that information to their general

17 chairmen and their system officers, they talk to

18 their vice presidents.

19   The general chairperson, the vice

20 presidents, they go to union meetings.

21   What we are telling you is a distillation

22 of what is being filtered up from the rank and file

1   to their organizations as their representative.

2   The railroads can deny this is happening,

3   but this is what is happening. And again -- never

4   mind, I'll curtail the pejoratives.

5   CHAIRMAN OBERMAN: I think one of the

6   other people wanted to speak.

7   MR. GRISSOM: Yes, Mr. Chairman. When I

8   was hired on the railroad 42 years ago, our members

9   would stay at this job, 90 percent -- 97 percent of

10   the members would stay until retirement. There

11   wasn't a big turnover. This was not a job, this was

12   your career, this was the last job you obtain.

13   Our members stayed there until retirement,

14   and as you said, the railroad retirement pension is

15   one of the best pensions. And yes, we're having

16   people with 20 years, whatever, invested in their

17   retirement walking away from the job, because of the

18   forced overtime, because working 16 hours a day.

19   The railroad's job is not compatible to

20   the other outside industries that are making more.

21   This is shift work. You know, the railroad is 24-7.

22   So when you do get hired, you're more than likely

1   going to be working a second shift with Tuesday to

2   Wednesday off. Or third shift. And how can you

3   compete with the entry rate?

4   So when somebody is hired, if the job pays

5    $70,000 a year, you've got to remember, most

6   collective bargaining agreements have entry rates,

7   so they are coming in at 80, 85, percent, so they

8   are making 60,000 or less, and working third shift,

9   and away from their family.

10   Yeah, they can make over 100,000, because

11   they are there 16 hours a day, but it has changed, I

12   have seen a lot of changes in my 42 years on the

13   railroad.

14   CHAIRMAN OBERMAN: Thank you.

15   MR. EDELMAN: Let me add one other thing.

16   In 2015, the big thing -- Karen, you may remember

17   this, AFTA and other organizations.

18   What is the future of staffing for these

19   industries? You know, where is the future workforce

20   going to come from. And all these conferences,

21   everybody was talking about this. And then through

22   PSR, the railroads wiped out all the junior people.

1   All those people are gone because they were low

2   seniority, and they're gone.

3   This was a crisis in 2015. What is it

4   now? Yesterday you asked about what about the

5   situation with diversity in hiring? The IBW, they

6   told me they had 10 women hired at the Altoona shop.

7   Only three of them are left now.

8   So what is happening, beyond the current

9   crisis, is what is the future of these crucial

10   positions of running these railroads?

11   And the other thing, which they don't get,

12   is skills and expertise are transmitted by senior

13   people, they set the standard for the junior people.

14   It's not just companies giving them computer

15   training programs to learn how to do stuff. You

16   learn to do the job the right way, and that is going

17   to also be seriously hurt, because this -- you know,

18   they all want to talk about training.

19   They have a viable system with senior

20   respected employees teaching the people who do this

21   job how to do it right, and that's being eviscerated

22   too.

1   CHAIRMAN OBERMAN: Patrick and then

2   Robert.

3   Robert, do you want to go? Do you have

4   some questions?

5   BOARD MEMBER PRIMUS: I do. Getting this

6   technology up and running. Can you hear me okay?

7   CHAIRMAN OBERMAN: You're on.

8   BOARD MEMBER PRIMUS: Again, all-star

9   panel, and I want to thank you guys for being here.

10   You know, there's going to be -- we got

11   the next panel coming up, I know there's going to be

12   talk about their employment attendance, their new

13   attendance policy called Hi-Viz within BNSF.

14   Can you comment on what effect that has

15   had on labor, and what you think it's going to

16   have -- what effect it's going to have on hiring and

17   retention going forward?

18   MR. EDELMAN: Hi, Robert, and I hope

19   you're feeling okay.

20   So right now, that policy is being applied

21   most heavily to the operating crafts, which none of

22   us here represent. So I don't know if there's still

1   anybody here from SMART or BLE who could talk to it.

2   CHAIRMAN OBERMAN: They're all here.

3   MR. EDELMAN: So you could get that answer

4   there. But look, basically, that's a policy of

5   saying we can't retain people, we can't hire people,

6   so whoever is here is going to work all the time.

7   BOARD MEMBER PRIMUS: I mean, do you see

8   that policy actually bleeding over to you guys at

9   all?

10   MR. EDELMAN: Sure, absolutely. I'm sure

11   they will, yeah.

12   BOARD MEMBER PRIMUS: Okay. And my last

13   question, for Matt. You know, you said that, again,

14   you're -- I believe you said second-generation

15   railroad; is that correct?

16   MR. HOLLIS: Yes, sir, that's correct.

17   Yes, sir.

18   BOARD MEMBER PRIMUS: And the gentleman

19   next to you, I'm sorry -- no, not Rich. My camera

20   is going crazy right now, I can't -- I'm focused on

21   Karen. There we go.

22   MR. HOLLIS: Next to me is Don Grissom.

1   BOARD MEMBER PRIMUS: Let me ask both of

2   you. You guys have both had great careers and you

3   guys were brought into the railroad obviously due to

4   at the time, you know, the career, as you said, what

5   it offered.

6   Sitting there today, if you guys were

7   coming in and looking at the railroads today, would

8   either of you consider joining the railroads now,

9   knowing what you know now?

10   MR. HOLLIS: No, I don't think so. It has

11   drastically changed. The morale is -- you know,

12   it's beyond low.

13   But I think what's probably the most

14   telling with that is all of the incentive programs

15   that the railroads are coming up with to try to

16   encourage their current workforce to refer people

17   for employment.

18   And if you follow much on social media, I

19   think the railroads have a hard time finding current

20   members of their labor force that want to recommend

21   their peers, to come into this work environment.

22   MR. GRISSOM: And I have to agree with

1 Matt. I believe this is the only industry which

2 trains you how to inspect a car, find a defective

3 car, and when you perform your work, they want to

4 fire you for it.

5   And the intimidation and the scare tactics

6 is we're not in the business of repairing freight

7 cars, we're in the business of moving freight. But

8 under the federal regulations, they have to be

9 repaired. If there's a defect -- it's going to

10 cause a derailment. This is our craft. This is

11 what the railroad trains us to do, and then when we

12 do our job, they want to charge us.

13   And there's cases where people have been

14 taken out of service, and, you know, we eventually

15 get them back through arbitration after two years.

16 But in the meanwhile, two years they're out of work

17 and they're not paying their bills. They might get

18 back pay, but what do they do for them two years?

19   And then this intimidates everybody else

20 from doing their job. This is the day-to-day

21 activities what we go through.

22   BOARD MEMBER PRIMUS: Let me ask you,

1   especially the fact that you guys have done what

2   you've done for so long, and obviously you love what

3   you do, would it be fair to say that it's painful

4   for you to even say that you wouldn't join today,

5   considering that, you know, you've been in it for 40

6   years, for as long as you have been? Is it fair to

7   say that it's painful to see this transition?

8   MR. HOLLIS: Well, it's painful to see the

9   transition, and that pain is -- you know, it's most

10   noticeable when you are on the shop floor or in

11   local lodge meetings and you're hearing the

12   real-life stories of the continued degradation of

13   the workforce, just continued abuse of excessive

14   overtime, forced amounts of overtime, inability for

15   people to have a work-life balance. And people --

16   you watch them walk away from what were prized

17   careers. That's absolutely painful.

18   MR. GRISSOM: And not only hearing from

19   our members, but the members' spouses are now

20   calling us and complaining about everything. We

21   never heard from the spouses before, but this is

22   what we're hearing now, all the complaints, and the

1   long hours, and unsafe, and the fatigue they're

2   going through.

3   BOARD MEMBER PRIMUS: I appreciate that,

4   thank you.

5   CHAIRMAN OBERMAN: Patrick, just let me

6   make one observation and then go ahead.

7   I think you folks probably can't answer

8   it. If there is time, we may not have time, and I

9   know the smart guys are still there, I'd love to

10   hear some response to the suggestions that were made

11   about velocity, adding power, shortening trains, for

12   an immediate relieving of some of the congestion.

13   I assume none of you are really -- that's

14   really not your turf. So I see them here.

15   Stay there.

16   I don't know how much time we're going to

17   have at the end of the day, but if there's time, I

18   would like to call them back up. So I just wanted

19   to give them a heads-up.

20   Patrick, you had some questions.

21   BOARD MEMBER FUCHS: Thank you. Focusing

22   on the use of our authorities, which Rich you

1   clearly and appropriately differentiated, I think I

2   heard you say that use of competition authorities

3   would be tinkering, which I take to mean is not very

4   effective.

5   In your view, are the reasons to think

6   that use of competition authorities could be

7   counterproductive in this moment, or harmful to the

8   long-term future of labor in the rail network, or is

9   it just that it would be not that effective?

10   MR. EDELMAN: A couple of things. First

11 of all, some of the competition remedies people are

12 talking about would actually adversely implicate

13 existing collective bargaining agreements, that

14 would be complicated.

15   But beyond that, I think it will give

16 people a false sense of security that something is

17 being done.

18   And personally, and in talking to a lot of

19 rail workers and officers, they don't think some of

20 these remedies are really going to work.

21   And it's really not addressing the

22 problem. You know, the problem is -- again, I went

1   through all these merger cases. I read all that

2   stuff, I sat through the depositions, all of those

3   operating plan witnesses, and all the grand plans,

4   and how it was going to be great.

5   And, you know, there were reasons to

6   create these giant entities, and some of them were

7   valid, however painful it was to labor.

8   But, you know, it's being exploited by

9   people who aren't -- don't want to do rail service.

10   And, you know, I'm going to -- I had a

11   little time this weekend, I read this book, "Iron

12   Empires: Robber Barons, and Railroads". It really

13   resonated a couple of ways.

14   One is if you switch out robber barons and

15   switch in hedge funds and private equity, it all

16   clicks into place. And you see them talking about

17   the rail workers, I was going to read it but I ran

18   out of time, pride in their work in doing this, and

19   the problems of workers being forced to do too much

20   work, and feeling unsafe.

21   And so to get back to answering your

22   question, I think that those things are going to

1   work around the edges. And as I said, I understand

2   their preference to be able to deal with commercial

3   relationships to resolve those disputes. But if you

4   don't have a proper regulatory environment, if they

5   are not provided the base level of service, that

6   they don't adhere to the basic notion of common

7   carrier, they sit there and basically say, hey,

8   shipper up that branch line, serving you doesn't

9   meet our OR profit margin, and not recognize that

10   that's too damn bad because they have a common

11   carrier obligation, you're supposed to serve them,

12   that that branch line is part of a network that

13   generates the traffic that moves over the trunk line

14   where they do make more money.

15   If that basic principle isn't applied,

16   being able to, in an occasional bunch of places,

17   being able to move from one railroad to the next,

18   isn't going to remedy the problem.

19   BOARD MEMBER FUCHS: When you say adverse

20   effects, does that extend to operating and

21   nonoperating crafts?

22   MR. EDELMAN: Well, if we're talking for

1   example about reciprocal switching, that's going to

2   be the operating crafts.

3   BOARD MEMBER FUCHS: Okay. And then one

4   other question from me, which is you indicated

5   support for first-last mile metrics as a way of

6   providing transparency on reliability. Of course

7   the Board already collects a number of weekly

8   service metrics on aspects of the network such as

9   velocity and terminal dwell. And I read your

10   comments in that docket.

11   I'm wondering if I should hear your

12   comments today and read your comments in that docket

13   as also indicating support for car trip planning

14   compliance metric, or is it your view that

15   first-last mile is the primary missing piece, and if

16   we're making an assessment of value to burden,

17   that's really where we should be focused?

18   MR. EDELMAN: I'm not going to opine about

19   the car trip -- whatever you just mentioned, because

20   I don't know enough about it.

21   But I do want to say on first mile-last

22   mile, and really to echo the comments of some of the

1   people who came before me, they don't care when

2   traffic moves from one terminal to another. And I

3   said in my comments, what do the railroads sell,

4   what do people buy. They don't buy movements of

5   trains across the system. They buy pickup and

6   delivery of cars, and that's what the railroads are

7   supposed to be selling.

8   If you want to know whether they're

9   actually doing their job and they're meeting their

10 obligations and providing real service, I think

11 that's a valuable thing.

12   The other thing I'll say, I listened to

13 this, and maybe I'm -- I'm a union guy, I hear

14 corporate-speak, but transparency, accountability.

15 You know what, what we need, I actually agree with

16 the gentleman from the NIT League, you need some

17 basic definition of what it is, standards, and they

18 need to be held responsible to them. And being able

19 to see that they're not doing a good job, that's

20 something but that's not what the end result is

21 going to be, it's that they do the good job, that

22 they do the mission that they are supposed to do and

1   that they say they do.

2   One other thing, I talk about finance

3   interests, Wall Street, people go well, you're the

4   union lawyer, you talk about Wall Street like that.

5   You notice there's all these people up

6   here the last few days from Fortune 500 companies

7   who are saying the same thing that we are. It's not

8   just an ideological position, it's every stakeholder

9   in this industry, understands the damage being done,

10   as did Matt Rose, and I can't -- I was no friend of

11   Matt Rose, but Matt Rose said the way to grow the

12   industry is to grow the industry. Sorry for going

13   on.

14   BOARD MEMBER FUCHS: Thank you.

15   CHAIRMAN OBERMAN: Karen, you had a

16   question?

17   BOARD MEMBER HEDLUND: Rich, I realize we

18   don't have any representatives of the passenger rail

19   community here because we're focusing on freight

20   service. But I would be interested, you may not

21   have them at your fingertips, how the experience

22   with respect to resignations, and hiring, how they

1   differ at Amtrak and the commuter railroads.

2   MR. EDELMAN: I don't have numbers like

3   that at my fingertips. I did talk to clients who --

4   they're not seeing that. People -- look, commuter

5   rails went through a weird period quite obviously.

6   BOARD MEMBER HEDLUND: As did Amtrak.

7   MR. EDELMAN: And fortunately with federal

8   support they kept a lot of good people on.

9   But in terms of the issue of am I allowed

10   to do my job, am I leaving because I can't stand

11   this anymore, I don't hear any of that from

12   anybody -- any other parties.

13   BOARD MEMBER HEDLUND: I also was

14   recalling an experience that I had back in 2014 when

15   I was deputy administrator of FRA, and I went to

16   Chicago, to an event. It's a famous community

17   college on the South Side that used to be a big

18   technical high school, and they had a career day.

19   And there were representatives of the NSF and UP and

20   Amtrak talking about jobs in the railroads. And it

21   was standing room only. There were hundreds of

22   people there.

1   And I was quite surprised. And I thought

2   well, it's Chicago and there's a lot of people whose

3   families worked in the railroads.

4   But there was huge interest, and I wonder

5   what it would look like today.

6   MR. EDELMAN: Crickets.

7   CHAIRMAN OBERMAN: Any other questions?

8   Well, I for one will say -- first of all,

9   as I've said to every panel, thank you for being

10   here and for doing the homework. I think we need

11   more homework. But I just want to note the passion

12   expressed here by the people who work on the

13   railroads.

14   It is a job, and everybody wants to have a

15   decent job, but there's more to it that comes out.

16   And whatever amount of money labor is taking home,

17   it's not millions of dollars in stock buybacks, so

18   there's more to it, and I think we all ought to

19   acknowledge it and respect the commitment that labor

20   has in doing the job right.

21   You know, what I hear is if you're going

22   to get paid $34 an hour whether you inspect the car

1   in one minute or three minutes, but you're not going

2   home with job satisfaction, and that means

3   something, so it's not just about the dollars. And

4   I think that's important for us to note.

5   Because, you know, as somebody said, you

6   get a thousand thank-yous but no wage increase. But

7   truth is the country does have to thank you, because

8   if you weren't out there it wouldn't happen.

9   I'll just tell you on a personal basis,

10   when I was chairman of Metra and I went on a tour of

11   our yards -- I imagine this is the car men, and

12   after every rush hour, a Metra train pulled into a

13   yard and a car man went out and crawled under the

14   car and looked at every brake. And I was there in

15   July, and they pointed out to me that they were

16   there, January, when it was 20 below and there was a

17   foot of snow on the ground, they crawled under the

18   car. And Metra had a near perfect accident rating

19   because that happens.

20   So, you know, you have to put this in

21   context, and I just want to acknowledge it, just

22   speaking for myself. So thank you.

1   Next up, UP and BNSF.

2   Welcome. I can't remember who is first, I

3 have to look at the program. BN is listed first, so

4 we have -- Jill, are you going to be the ringmaster?

5   MS. MULLIGAN: I am not. We're going to

6 jump right in with Mr. Garland.

7   CHAIRMAN OBERMAN: Okay. So we have

8 Mr. Garland, Mr. Bobb, Judy Carter, and just to

9 identify people on the panel, we have Eric

10 Gehringer, who we all know probably more than you'd

11 like us to know you, Elizabeth Whited and Michael

12 Rosenthal.

13   Matthew, you're going to start?

14   MR. GARLAND: Yes, sir, thank you.

15 Chairman Oberman and the Board, so we have already

16 done our introductions, and I just want to introduce

17 myself real quick. My name is Matt Garland, I am

18 the vice President who leads BNSF's transportation

19 team. So I've been with BNSF for over 20 years in

20 the industry. My grandfather was actually a

21 brakeman on the Santa Fe. I started out as an

22 assistant trainmaster more than 20 years ago, which

1   on the former Santa Fe would be essentially a

2   position like a yardmaster on the northern tier of

3   our region.

4   Since I've been experienced in the

5   industry, my team is made up of more than 18,000 men

6   and women working as train crew members all over

7   the western half of the United States and parts of

8   Canada, as well as dispatchers, yardmasters, and

9   others that support them. I'm immensely proud of

10   the dedication and hard work they bring to the job,

11   every single day. Often in incredible, difficult

12   conditions to help our customers' businesses, and

13   the American economy going.

14   Today I'm going to update you on where our

15   service performance currently stands, and our

16   aggressive plan to improve it. I plan to spend just

17   a minute talking about the issues that led to our

18   current service performance. That's really only as

19   a means to help you better understand the actions

20   we're taking to make things better.

21   As BNSF has made clear in our

22   communication to the Board and to our customers,

1   we're not here to make excuses. Our service is our

2   responsibility, and we simply have not met our

3   customers' expectations in recent months.

4   We hope that at the end of this

5   presentation the Board understands the sense of

6   urgency we have around recovery, and our commitment

7   to taking the necessary steps to improve.

8   As our recovery measures have come online,

9   we have started to see some clear signs of progress,

10   and we're going to share those as well. If we could

11   advance the slide one, please.

12   So I'm going to start with safety. I

13   really have two core responsibilities at BNSF. The

14   first is the safety of our employees, and the second

15   is service we provide to our customers.

16   Every operating conversation we have at

17   BNSF starts with safety, and I want to touch briefly

18   on that here as well.

19   BNSF believes that every accident and

20   injury is preventible. And we have an unwavering

21   commitment to achieving that vision.

22   That commitment has resulted in consistent

1   reductions in employee injury, and rail equipment

2   incidents, over a long period of time. Beyond being

3   one of our core values, our safety focus benefits

4   our customers as well.

5   Injuries and rail equipment incidents

6   often result in service interruptions, with negative

7   impacts on network fluidity and velocity.

8   Improvements we derive in our safety results will

9   only help our service recovery.

10   None of these efforts that we'll talk

11   about today will matter if we can't execute them

12   safely, and our commitment to achieving that with

13   our employees is unwavering.

14   Now, I'm going to turn to our service

15   performance and start with where we're at right now.

16   This slide captures some of the key performance

17   indicators we use internally with our customers to

18   gauge how we are doing. Each of these measures

19   looks at the first quarter of '22 compared to the

20   prior year. Train velocity is important because it

21   tells you how quickly cars are moving on our

22   network. For the first quarter of '22, our dwell

1   remains elevated compared to the average dwell from

2   the first quarter of '21. Our local service metric

3   is an important gauge of how we are performing

4   between our serving yards and our customers'

5   facilities. And finally our train holding metric is

6   an average of a daily snapshot of trains holding on

7   or around our network, short of destination. We

8   have seen this metric rise in February as you can

9   see, but I'm going to share some of the improvements

10   we're making recently, especially the category of

11   trains holding for crew availability, which we know

12   the Board is interested in.

13   I would also be remiss if I didn't

14   acknowledge the impact our service issues have had

15   on Amtrak and some other passenger partners.

16   However I can tell you our commuter performance is

17   very, very good, at this point.

18   I wanted to spend a brief moment on how we

19   got here, as context on how we plan to recover, and

20   sustain that service level, our customers need.

21   At the highest level, our recent service

22   performance is the result of severe congestion on

1 our network that was caused by a combination of

2 factors. First, we experienced significant volume

3 increases over the past year following the volume

4 deficit we experienced during the pandemic. While

5 we built into our plan the ability to surge up in

6 response to volumes to exceed forecasts, those

7 swings from 150- to 200,000 units, in a very short

8 period, left us resource-challenged, in -- really

9 around our surge planning. The impact of which --

10 that increased demand across the supply chain.

11 Those efforts are well-documented. As are BNSF's

12 efforts with our customers to support fluidity,

13 despite challenges across ports, trucking and

14 warehouses.

15   While we move quickly to bring additional

16 locomotives and crew resources to support all the

17 business areas, those are resources that take time

18 to deploy. At the same time, a series of difficult

19 events occurred on top of existing supply chain

20 issues, and a series of extreme weather events that

21 started in late '21, and has continued through the

22 first four months of 2022.

1   As a result, we experienced an increased

2   amount of car inventory on our network, and as our

3   velocity slowed with increased demand, there was an

4   understandable reaction from our customers, to add

5   more cars, on the network, in hopes that they would

6   quickly increase their chances of getting their

7   shipment.

8   Unfortunately, adding cars to the network

9   has the opposite result. Compared to the same time

10 last year, we have 5 percent more cars online, but

11 we're moving 3 percent less volume. And while those

12 don't sound like big percentages, that's on a base

13 of about a quarter million cars.

14   Stepping back through the numbers, I want

15 to say that we understand the impacts that this

16 trajectory has had on our customers, and we are

17 committed to turning that around, and we're all

18 focused on the path forward.

19   So let's turn to what we're doing to make

20 our service better. We have implemented an

21 aggressive service recovery plan to focus on really

22 three areas, car inventory, locomotive availability

1   and crew. One impactful tool we have deployed to

2   improve our service performance is really the

3   management of car inventory. We're working with our

4   customers towards a goal to temporarily reduce the

5   number of cars on our network by 2 percent.

6   We understand that reducing car

7   inventories can have an immediate impact on our

8   customers, and because of that, we're really taking

9   a tactical approach.

10   Let me emphasize, we are undertaking this

11 effort with input, and feedback, from our customers,

12 and we are working hard to find solutions to

13 minimize negative impacts on their business.

14   On locomotive availability, we're

15 deploying more power against our volumes and taking

16 steps to make sure that more power is readily

17 available for service. Since the start of winter,

18 we have pulled 250 locomotives out of storage, and

19 we plan to add an additional 100 locomotives to the

20 fleet in the coming weeks. That constitutes an

21 approximate 10 percent increase of our overall

22 fleet.

1   On crew availability, making sure that we

2   have enough people to meet our customers' service

3   needs is absolutely critical. As volumes recovered,

4   we moved quickly to recall most of the 3,000

5   employees that we had furloughed. Now, it's easy to

6   look back and say today that we should have carried

7   more employees on furlough, but in reality, this is

8   one of the toughest decisions that BNSF has to make,

9   and that directly impacts lives and livelihoods.

10   There is a real cost to families. We have

11   to hire or train them, just to turn around and tell

12   them we don't have a job.

13   Over my career, I've had to walk into

14   classrooms full of people, who have left jobs to

15   come to BNSF, and tell them that they are

16   furloughed. Those days are hard on everyone, but

17   certainly hardest for the individuals who have been

18   furloughed. That is why we work so hard to align

19   our labor force levels to the customer's expected

20   demand, and that is also why we are moving quickly

21   to respond to the challenges in customer demand as

22   we see it.

1   So while I highlight these three areas, I

2   don't mean to exclude the other measures our teams

3   have taken to respond to the changes and challenges.

4   As an example, in 2021, we paid over 27 million, in

5   guarantees, to employees, to hold them in reserve,

6   and that was really to make sure that we had an

7   immediate availability to deploy them, to help

8   handle customer volume upswings.

9   Now, Steve is going to highlight how those

10 guarantees supported record 2021 harvest volumes.

11 We flew train crews around our network to ensure we

12 had the ability to service coal plants, experiencing

13 stockpile shortages, as demand peaked in response to

14 winter.

15   Just last week, in response to blizzard

16 conditions that shut down North Dakota highways, the

17 NSF hired contractors to clear snow to get roads

18 reopened for our crews for a period of time. And

19 for that period of time, we were the only mode of

20 transportation continuously operating, in large

21 parts of that state.

22   We will continue to evolve our plans in

1   response, and confront new challenges with new

2   solutions.

3   Let me talk about hiring and attendance.

4   As Judy is going to describe, we have an

5   aggressive plan to hire, train, and put into

6   service, additional personnel, that includes more

7   than 1,700 train yard and engine employees in 2022.

8   As we currently stand, our TY&e head count is up

9   more than 30 percent compared to this time last

10   year, even though our volumes are down by 2 percent.

11   We have also made changes to the

12   attendance policy for our train crews. In

13   February -- and that was really designed to drive

14   more predictable and reliable service for our

15   customers, while simultaneously addressing our

16   employees' needs for more predictable work and rest

17   schedules.

18   Thus far our new program has led to

19   positive increases in crew availability across our

20   network. And that benefits our customers.

21   Now, we certainly understand change can be

22   difficult. This is the first time that we have made

1   a policy shift on attendance in 20 years. While the

2   point system is not unique in the industry, we made

3   changes to provide greater flexibility in our

4   program for our employees, including some

5   adjustments based on employee feedback we received

6   when we did a trial implementation.

7   We will continue to engage with our

8   employees as they transition through this.

9   So unfortunately, some of the public

10   rhetoric about our new program has really just

11   simply been untrue. I feel compelled to just take a

12   few moments to correct a few factual misstatements.

13   One, our employees are still able to use

14   their vacation and paid leave days. On average, our

15   TY&E employees have three to four weeks of paid

16   vacation, and over 10 paid leave days per year. In

17   fact, we increased our employees' ability to use

18   vacation and PLD days this year by 25 percent.

19   Since the policy's launch, we have seen

20   more planned vacation days taken than before the

21   change. And those increased days have come at a

22   time when we had a remarkable high level of

1   employees, more than 90 percent, which are currently

2   in the green category, which essentially just means

3   things are working well for everyone, the employee

4   is consistently available to work, and they are not

5   in danger of reducing their points under the system.

6   In fact, we're seeing less discipline with

7   this new policy.

8   Additionally, prior union concerns that

9   few employees will be able to earn points for good

10   attendance under Hi-Viz prove to be unfounded. In

11   only two months, more than 90 percent of BNSF

12   trained service workforce have earned good credits

13   for good attendance.

14   Our employees are adapting to the program,

15   making good use of the transparency and pathways to

16   time off it provides. Claims of mass resignations,

17   as many as 700, I think we heard a thousand

18   yesterday, are dramatically overstated. We are

19   seeing slightly higher than normal attrition, but

20   when we did a sample of approximately 300 TY&E

21   employees, who have resigned this year, we found

22   that a majority hadn't worked a shift in over six

1   months.

2   There are incentives built into this

3   program so employees can receive good attendance

4   credits for being available to work. Some media

5   reports have said that employees must work 14

6   straight days to really achieve a good attendance

7   credit. That's untrue.

8   They simply must be available for their

9   shift during that two-week period, just like all of

10   us here in the room are expected to be available for

11   our normal working hours.

12   Federal law permits train service

13   employees to work up to 72 hours per week, but in

14   fact, within our TY&E workforce, less than 50

15   percent work more than 40 hours per week.

16   And on average, our employees that are

17   entering -- excuse me, earning good attendance

18   credits under our new program are home for at least

19   24 hours between trips.

20   So look --

21   CHAIRMAN OBERMAN: How many?

22   MR. GARLAND: On average our employees

1   that are earning good attendance credits are home 24

2   hours between trips.

3   CHAIRMAN OBERMAN: What percentage of

4   employees?

5   MR. GARLAND: That would be all the

6   employees that I just mentioned, 90 percent.

7   So let me conclude with this section. We

8   know that some railroad jobs can be very

9   challenging, with nontraditional schedules, time

10   away from home, particularly for our train crews.

11   Where we have options to mitigate that, we

12   are committed to making those changes. BNSF has

13   been able to negotiate, and implement, work-rest

14   agreements with several of our unions over the past

15   few years, and we're actively working towards

16   additional agreements, and other measures, that can

17   drive additional home rest and other

18   fatigue-mitigation efforts.

19   We believe that this program is going to

20   result in better visibility and predictability, for

21   our employees, through a reduction in unscheduled

22   and disruptive layoffs, especially combined with

1   ongoing efforts to create consistent train lengths.

2   So let me talk about our signs of

3   improvement real quick. We're confident that our

4   plan will work and bring our service performance

5   back to where it needs to be, but I want the Board

6   to know that this will not happen overnight.

7   It will take time to implement our plan,

8   and for its benefits to be realized. We are

9   encouraged to already have seen some initial

10   improvements.

11   For instance, the number of trains held

12   for power is down 30 percent from our peak in

13   February. That reflects the gains we have made in

14   bringing locomotives back online, and as

15   approximately 300 new hires that we currently have

16   in training continue to finish and come into active

17   service, we expect to see even further improvements

18   in the number of trains held.

19   So as I was preparing for this hearing,

20   yet another major blizzard struck North Dakota, over

21   the weekend, brought with it record snowfall, wind

22   gusts up to 50 miles an hour. Our ability to get

1 crews where they needed to be was severely impacted

2 by the state of North Dakota closing roads, and it

3 took us time to get those cleared.

4   I mention this only to show how the

5 measures we began putting in place have allowed us

6 to begin recovery from the latest external factor,

7 on an expedited basis.

8   On the week prior to the blizzard, we

9 reported an average car velocity of 180 miles per

10 day, across our northern region, along with average

11 terminal dwell of 28.4 hours.

12   With that blizzard on the way, we

13 activated our winter action plans, we pre-positioned

14 additional power, snow removal crews, we actually

15 held a lot of contractors over for an entire week

16 and paid them to make sure we had them, and then we

17 had to dig out again after another record blizzard.

18   You can see the effect the blizzard had on

19 our velocity metrics, but thanks really to the grit

20 and determination of our employees, and I would like

21 to publicly thank all of our employees for working

22 through these events, we already have seen an

1   improvement coming out of the weekend.

2   So in addition to all the high-level steps

3   I've talked about, we have specific targets and

4   action plans for where we want to be in -- 30, 60

5   and 90 days from now.

6   For example, we do expect the next 30 days

7   to continue to be somewhat choppy, as we work out of

8   the winter weather that continued to impact us, and

9   reallocate resources across our network.

10   Within 60 days we expect to start feeling

11   the first positive effects of the larger hiring

12   classes, as they start to graduate. We've created a

13   dedicated leadership and project management team.

14   We've opened up a 24-7 command center staffed by

15   senior leaders, really that's to drive system-level

16   decisionmaking authority 24 hours a day, seven days

17   a week, in a type of war room approach.

18   This is a similar approach we've taken in

19   times of natural disasters, such as when Hurricane

20   Harvey struck the Gulf Coast in 2017, or the

21   widespread flooding along the Mississippi and

22   Missouri rivers in 2019.

1   So thank you for the opportunity to

2   address you all today. I sincerely appreciate it.

3   Before Steve speaks about our customer engagement,

4   Judy is going to provide some additional comments on

5   our hiring plans.

6   MS. CARTER: Thanks, Matt.

7   And thank you to the Board for the

8   opportunity to be here. Again, I am Judy Carter, VP

9   of HR for BNSF.

10   Again, Judy Carter, head of HR for BNSF.

11 I'm going to provide a little bit more detail about

12 our robust hiring plan, but I also wanted to echo

13 Matt's thoughts for the tremendous job that our

14 employees do for us and showing up for our customers

15 every day, including our employees here with us in

16 the room today. You are critical to our success and

17 we couldn't deliver the nation's goods without all

18 of you showing up for us. We appreciate that.

19   We're very aware of the concern that rail

20 service issues -- or the concern that you all have

21 that our issues are a result of deliberate decisions

22 to reduce our workforce, below levels needed to

1   support our volumes. One of the most important

2   things we plan for as a company is having the right

3   resources in the right place at the right time. Our

4   ability to flex our employee resources up and down

5   with volume is critical to this planning effort.

6   For BNSF, we never want to be in a

7   position where we don't have enough employees to

8   support the volume and growth that our customers

9   bring to us. However, we are also very mindful, to

10   add to Matt's point, that we can't bring on new

11   employees with the flip of a switch, and especially

12   given the training times associated with many

13   operations roles. So we work very hard to meet the

14   right number of people resources in place, for

15   current and future demands.

16   In order to do that, we have to do a

17   number of things. Across our network we look at our

18   current employee levels, and consider historic

19   employment trends, including attrition rates and

20   expected retirements. We consider our operations

21   trends like crew starts and geographical areas.

22   We also look at the customer and commodity

1   forecast across our network. Using all this data,

2   we use that to forecast the number of employees we

3   would need to have in each of our locations.

4   When volume forecasts play out as

5   expected, our network remains fluid and we meet our

6   customer expectations. When we see unexpected

7   changes in those forecasts, we see impacts to our

8   people resource planning.

9   For example, in the last two years, we

10   have seen quickly shifting employment markets as

11   well as significant shifts in customer demand. The

12   pandemic has radically restructured labor markets

13   for all industries. As Matt described, there are

14   many things we need to balance with forward hiring,

15   including the human element for our current and

16   future employees.

17   However, when we see more volume

18   materialize than we plan for, we quickly resource up

19   to ensure we have the employees in place to support

20   it. Our historical records reflect that, as do the

21   recovery plans for 2022.

22   We made the decision in the last quarter

1   of 2021 to pull forward some of our 2022 hiring.

2   Sitting here in April, we have an aggressive plan to

3   hire, train and put into service an additional 3,000

4   employees, across transportation, engineering and

5   mechanical, and we are on pace to meet that goal.

6   On the crew side, we plan to hire more

7   than 1,700 additional crew members. That number

8   reflects an increase to our plan that we made in

9   just the last few weeks. We currently have 300 TY&E

10   employees in training, which takes about 13 to 15

11   weeks to complete.

12   We continue to review our crew numbers

13   weekly, and adjust with increasing volume and/or

14   attrition. Even before these additions, our TY&E

15   head count is up more than 3 percent compared to

16   this time last year, even though our volumes are

17   down. We have also recalled all train crews in the

18   Pacific Northwest, California, Montana, Twin Cities,

19   and have called back the vast majority of the 3,000

20   employees we had furloughed last year.

21   I would like to take a moment to describe

22   the current challenges we are seeing on the hiring

1   front and how we are responding. The reality is

2   that we're facing the same headwinds as many other

3   U.S. businesses. In this very competitive labor

4   market, we are seeing a smaller pool of applicants,

5   lower levels of job acceptance and more candidates

6   falling out during the preemployment screening and

7   training process.

8   We are responding to this challenging

9   environment with new programs to support our

10   recruiting efforts. For example, in our hiring

11   process, we are making job offers to a larger number

12   of candidates to respond to the lower acceptance

13   rate and higher fallout rate we are seeing during

14   training and onboarding. We have also used our

15   regional applicant and acceptance data to put in

16   place incentives tailored to attract future

17   employees to high-need areas, including Montana and

18   Washington state.

19   These incentives include sign-on bonuses,

20   adjustments to the total compensation and enhanced

21   relocation benefits.

22   We have also taken steps to streamline and

1   rework the application process to ensure that we

2   have a broader applicant pool for the openings we

3   have. On the onboarding front, we started training

4   as soon as we can, rather than making some employees

5   wait before we can assemble a larger training class

6   size.

7   I would like to note that while we have

8   streamlined our onboarding process, we have not in

9   any way reduced the amount of training that our new

10   employees receive through our FRA-certified training

11   programs, to ensure that they can enter their roles

12   safely and empowered to work.

13   We have also increased our recruiting and

14   job sourcing activity across our system, seeking new

15   levels of engagement with local schools, colleges

16   and military communities. We continue to evolve our

17   culture, and our employee experience, to make BNSF a

18   place where employees want to come, and want to

19   stay. And where all of our employees have equal

20   opportunities to achieve their full potential.

21   We know that this has been and will

22   continue to be a challenging year for our railroad

1   and our employees. We are committed to turning this

2   around for our customers, which means working on

3   every front to get new employees on the ground, and

4   keep our existing employees in their jobs, and

5   safely serve our customers' needs.

6   I will now pass it to Steve to talk about

7   our customer engagement.

8   MR. BOBB: My name is Steve Bobb, and I am

9   BNSF's chief marketing officer. I appreciate the

10   opportunity to be with you today and describe our

11   ongoing customer engagement, in relation to our

12   current service.

13   As I mentioned in my testimony at the

14   reciprocal switching hearing last month, BNSF fully

15   acknowledges that our service has not met our

16   customer expectations over the past several months.

17   Matt outlined the aggressive operational steps we

18   are taking to address that, and I will talk about

19   what we are doing to support our customers during

20   this time, including our efforts to ensure that they

21   stay fully updated on our service recovery and

22   process.

1   We are committed through all levels of the

2   organization to be direct, transparent and frequent

3   in our customer communications.

4   This allows us to work collaboratively

5   with the customers to improve service during times

6   when service is challenged, like today, and also to

7   facilitate our customers' growth, to say yes when

8   our customers approach us with growth opportunities.

9   Before I talk about our communication

10 efforts, I want to briefly highlight a few aspects

11 of current rail demand that have impacted BNSF a bit

12 differently than the rest of the industry, and I

13 think provide some helpful context to our

14 discussions today and some of the concerns we have

15 been hearing from our customers.

16   Last month I talked to you about how BNSF

17 is a growth railroad, and how our growth

18 disproportionately comes from our ability to succeed

19 in highly competitive markets.

20   Competing with innovative service

21 offerings, and market competitive rates, has made, I

22 believe, BNSF the largest carrier in the world, and

1   largest carrier of agricultural products in North

2   America.

3   Over the past 25 years, BNSF's volumes

4   have grown significantly as a result of this growth

5   strategy, even while volumes for the rest of the

6   industry have shrunk. The growth in our

7   agricultural products business has been particularly

8   pronounced. To date, BNSF is carrying 20 percent

9   more agricultural products freight annually, than we

10   were just a decade ago. And while we have added

11   160,000 units to our ag network over that time, the

12   rest of the industry has added less than 5,000 units

13   combined.

14   I know there have been particular concerns

15   expressed by some of our agricultural customers, and

16   the USDA, about the impact that rail service issues

17   are having, particularly with respect to feedlots,

18   and availability of fertilizer for the planting

19   season.

20   BNSF feels a great responsibility to the

21   American farm community, and we have a long track

22   record of focusing our efforts as needed to meet the

1   challenges presented to our network. This year will

2   be no different.

3   In 2021, volume demand exceeded all

4   forecasts, and resulted in record volumes being

5   moved by BNSF. Despite the supply chain issues we

6   are facing, BNSF rose to the challenge, and moved a

7   record amount of agricultural shipments last year,

8   and we did so across a broader geographic area, with

9   longer lengths of haul, to serve further

10   grain-producing origins than we have historically.

11   We accomplished that by proactively doing

12   things like prepositioning locomotives, and crew, at

13   key locations to allow quick deployment, and making

14   sure all mainline track maintenance projects were

15   done before harvest.

16   We have built on those successes and

17   continued our proactive approach this year. We are

18   currently running the largest system grain fleet,

19   and the largest system fertilizer fleet, ever, this

20   spring peak period. We have allocated over 800

21   locomotives to our agricultural network, including

22   recent increases to support fertilizer deliveries in

1   the critical planting window.

2   With those assets deployed, we were able

3   to move 11 percent more volume in the first quarter

4   of 2022 than the same time last year, and continue

5   seeing more significant volume to support the

6   planting season.

7   We are also planning for another surge

8   fleet of locomotives for the fall harvest. We have

9   also asked the Federal Railroad Administration for

10   approval to inspect our track and equipment in a

11   more efficient manner, leveraging technologies which

12   have been shown to deliver superior safety outcomes,

13   while also reducing track occupancy time, required

14   for such inspections, thereby increasing capacity,

15   to handle more freight.

16   Given what we were able to accomplish

17   during harvest last year, we are confident that our

18   service will be ready to meet demand again, in 2022.

19   One of the ways we support growth is

20   through our capital investments. This year we will

21   spend 3.55 billion on capital, which is the largest

22   in the industry. You can see the breakdown here,

1   which includes significant amounts to equipment

2   acquisition, capacity expansion and efficiency.

3   Our communications goal is to ensure that

4   all our customers have the timely and accurate

5   information they need, about their rail service, to

6   make informed decisions for their businesses. We

7   have always held the belief that we should be as

8   transparent as possible with our customers, and that

9   is never more important than when our service is not

10   meeting their expectations.

11   Every week we distribute network updates

12   that contain an overview of a service performance

13   for the prior week, including the same key

14   performance indicators that Matt mentioned earlier,

15   and our service expectations for the week ahead. We

16   had previously only provided those updates every

17   other week, but have increased the cadence to every

18   week during our service recovery effort.

19   We publish five different versions of the

20   update, each week, one with information specific to

21   the agricultural, auto, coal, industrial products

22   and intermodal networks.

1   In addition to these weekly updates, which

2   are cataloged on our Web site, we communicate in

3   real time with customers concerning other issues on

4   our network, providing specific information on that

5   issue, the areas it affects, and our plans and

6   expectations for resolution.

7   In addition to this information about our

8   network, our customers can access specific

9   information any time of day or night, about their

10   shipments, and service, through the myriad tools on

11   our online customer portal.

12   For example, our track my train tool lets

13   customers track the trains on which their shipments

14   are moving across our network. We provide geofence

15   notifications to inform our customers on a

16   car-specific basis when their shipments pass into

17   geographic boundaries that have been set by the

18   customer.

19   Local service notifications are generated

20   every day once a daily plan for local service in an

21   area has been established. And those are sent to

22   subscribing customers within an hour of the local

1   crew going on duty.

2   Our railcar management tool allows our

3   customers to view and manage all cars that are

4   either at, or inbound, to that customer's facility,

5   with real-time status updates, as cars are released.

6   Last, our Message Us Tool gives our

7   carload customers a real-time interface to escalate

8   issues within BNSF, and see a record of any requests

9   they have previously made.

10   Of course, all of the information sharing

11   I just described is supplemented by the direct

12   personal interactions people across BNSF have with

13   our customers, every single day.

14   Our customers develop relationships not

15   with just their marketing representatives, but with

16   our local operations team, and our customer service

17   group, which is available 24 hours a day.

18   Our senior leadership is also directly

19   engaged with our customers about our service

20   recovery efforts. Two weeks ago, we held our

21   agricultural products annual summit. Matt Igo, our

22   executive vice president of operations, and I,

1   provided an overview of our service recovery effort,

2   and members of BNSF's leadership teams have already

3   had direct interaction with most of the shippers or

4   shipper groups that are scheduled to appear at this

5   hearing.

6   BNSF is committed, at all levels of the

7   organization, to transparency and engagement with

8   our customers, through our service recovery effort.

9   At BNSF, we take tremendous pride in

10 delivering safe, efficient, consistent and reliable

11 service to our customers. We know we are not

12 currently meeting our customers's expectations. I

13 want to reinforce our commitment to restoring

14 network velocity so that we can deliver the quality

15 of service our customers have come to expect, and

16 position ourselves to grow with our customers,

17 long-term.

18   My colleagues are happy to answer any

19 questions that you may have. Thank you.

20   CHAIRMAN OBERMAN: Thank you, Mr. Bobb.

21   We will now move to UP, and then we will

22 have questions.

1   Who is going to speak first?

2   Eric?

3   Elizabeth? You're on. There you go.

4   That was me.

5   MS. WHITED: That's like a test; right?

6   Good afternoon, Chairman, Vice Chairman

7   and members of the Board. My name is Beth Whited,

8   and I am an executive vice president at Union

9   Pacific, and my responsibilities include

10   sustainability, strategy and human resources,

11   including labor relations.

12   I know that you are concerned about

13   employment levels at Union Pacific, and I thank you

14   for the opportunity to appear at this hearing, to

15   discuss them.

16   In my testimony, I will describe our

17   approach to setting employment levels, our response

18   to recent dramatic changes in traffic volumes and

19   our plans for growing a workforce that is prepared

20   to meet future challenges.

21   First, our basic principle in setting

22   employment levels is to staff to the work, so that

1   our employees have fulfilling and productive roles.

2   We do not want employees with so little work that

3   they become disengaged, or so much work that they

4   become overloaded. Of course, we recognize the

5   nature of our business means we experience

6   disruptions and surges, that are difficult, if not

7   impossible, to predict.

8   We do our best to staff so Union Pacific

9   can meet customer needs, despite those challenges.

10   I understand that the Board is

11   particularly interested in employment levels for

12   train crews. There, when we staff to the work,

13   traffic volumes are a central focus. When traffic

14   volumes fall, and work opportunities drop, our

15   collective bargaining agreements encourage us to

16   manage employment levels through furloughs, placing

17   employees on inactive status, until the work returns

18   and they are recalled to active service.

19   As you're aware, 2020 was a period when we

20   reduced employment levels in response to a

21   significant reduction in traffic volumes.

22   As COVID-related shutdowns significantly

1 reduced the demand for rail transportation, we

2 increased the number of furloughed employees, and

3 later, as volumes started to return, we started

4 recalling those employees.

5   While our initial return rate was

6 promising, at around 70 percent, that rate

7 decreased, as we recalled employees in greater

8 numbers. Like other businesses that recalled

9 employees after COVID-related shutdowns, we found a

10 significant number of employees, in our case around

11 50 percent, were choosing not to return. Currently,

12 Union Pacific has no furloughed train service

13 employees.

14   Even before recalling all of our

15 furloughed employees, we began to hire new employees

16 in locations where our furlough numbers were small

17 or nonexistent. But while our volumes grew close to

18 pre-pandemic levels, we, like all employers, faced

19 significant headwinds in meeting our hiring goals.

20   Those hiring headwinds you've heard a lot

21 about, and they are a particular problem in certain

22 parts of our network. The latest labor market

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1   reporting shows that the U.S. unemployment rate is

2   at 3.8 percent, with a near record level of job

3   openings. Union Pacific operates in some of the

4   nation's tightest labor markets, with unemployment

5   numbers below the very low national average. Our

6   employment numbers are falling short in locations

7   that generally have the most work, and the lowest

8   unemployment rates.

9   With 20/20 hindsight, I would say we

10   should have started hiring in the more difficult

11   markets sooner, but we did not foresee the change in

12   expectations for the labor market as we came out of

13   the pandemic shutdown. Job seekers now want more

14   flexibility, better hours, set schedules. We're

15   working to create jobs that are more appealing, and

16   meet the needs of the future workforce, as well as

17   the workforce of today, and we will need to work

18   closely with our union partners to address those

19   needs.

20   We are planning for the future,

21   positioning ourselves to continue hiring as we grow

22   and retain the employees we hire and train. Our

1   plan is to hire 1,400 trained service employees this

2   year, to offset our expected attrition of a

3   thousand, and grow our workforce.

4   Increasing the breadth and diversity of

5   our recruiting pipeline is a critical way that we

6   will meet our present and future hiring needs.

7   Our demographic data indicated that there

8   are segments of the population that aren't part of

9   our candidate pools. We have responded by adopting

10   aggressive diversity goals, so that by 2030 our

11   workforce will better reflect the communities we

12   serve.

13   We are progressing towards these important

14   goals by broadening our outreach, improving our

15   recruitment technology and making our recruitment

16   and hiring process more welcoming to all candidates.

17   Also we have strategically partnered with jobs for

18   America, to include students near high school

19   graduation, and Second Chance, to include candidates

20   that may have taken a different life path, and are

21   now looking for stable, well-paying opportunities to

22   join the workforce.

1   We have partnered with the National

2   Association of Manufacturers to connect with high

3   school students interested in industrial arts, and

4   we're working to ensure young women have the

5   confidence and desire to work in fields where women

6   are underrepresented.

7   Great people know great people, which is

8   our paid employee referral program, has led to more

9   than 5,000 referrals, and 550 job offers.

10   Additionally, we have increased the speed of our

11   employment and training pipeline. In January, we

12   began offering candidates the option to submit a

13   prerecorded interview, which saves time by avoiding

14   scheduling, and it creates more access with no

15   appointment. More than 1,000 prerecorded interviews

16   were completed in the first quarter, of this year,

17   which is a 50 percent increase in the completed

18   interviews, over the fourth quarter of 2021.

19   We've also streamlined the candidate

20   evaluation process, removing administrative steps

21   between the interview and an offer. The result has

22   been a 31 percent decrease in the time from

1 application to an offer, and a 44 percent decrease

2 in application to a release to start time, in the

3 first quarter of 2022.

4   Our greatest challenge is moving

5 candidates from offer acceptance to fully trained

6 employees.

7   For a train crew employee to become

8 qualified for the position, and learn how to do the

9 job safely, they must complete 14 weeks of classroom

10 and on-the-job training. To meet our current hiring

11 demand, we have added 25 instructors, increased the

12 new hire class frequency and increased class size

13 while maintaining student-teacher ratios. We have

14 also encouraged new hires to start in hard to fill

15 locations by offering financial incentives and

16 covering expenses to bridge the gap between the

17 first day at UP and the first paycheck.

18   Once we hire and train employees, we do

19 not want to lose them. We are working to minimize

20 attrition by supporting an engaged workforce. That

21 support ranges from departmental diversity, equity

22 and inclusion action plans to our 10 active and

1   engaged employee resource groups, including groups

2   that work with veterans, women and those interested

3   in a sustainable and innovative railroad.

4   In addition, Union Pacific has long

5   recognized that members of the United States

6   military are dedicated individuals who bring a

7   unique set of skills to the railroad. We engage

8   with transition offices on military installations,

9   and veterans offices at universities, community

10   colleges and technical schools.

11   Once on board, we support our military

12   employees and their families when the employees are

13   called to duty.

14   To support our employees in personal

15   career development, we've launched a partnership

16   with the University of Nebraska at Omaha, UNO, which

17   creates an opportunity for the professional

18   development of all employees with free tuition, at a

19   nationally ranked university offering online and in

20   person hearing. Nearly 500 employees have become

21   UNO students.

22   Union Pacific is confronting the hiring

1 challenge by focusing on candidate needs both

2 present and future, to make Union Pacific the future

3 workplace of choice.

4   Thank you. I'll turn it over to Eric

5 Gehringer, our EVP of operations, for information

6 about our service.

7   MR. GEHRINGER: Thank you. I want to

8 thank you for the opportunity to speak, regarding

9 Union Pacific's current service issues. Union

10 Pacific understands the severity of the situation

11 and is working hard to restore service, to the

12 levels our customers expect. By the close of my

13 testimony, I will have addressed the following key

14 points. Network congestion is causing progressively

15 poor service on the Union Pacific network. Union

16 Pacific's actions, to reduce inventory, will improve

17 the overall health of the rail network, and our

18 increased network resources and adjusted

19 transportation plan will assist in easing mainline

20 congestion.

21   I need to start though by describing some

22 terms and metrics we use internally when evaluating

1   network congestion. Gross inventory is the total

2   number of cars on the network, including stored

3   cars, and cars at customers' facilities.

4   You may be less familiar with the term

5   active inventory, which is gross inventory minus the

6   number of stored cars. And this finally gets me to

7   the key term, operating inventory.

8   Operating inventory is active inventory

9   minus cars placed in customer facilities. The key

10 metric for understanding what is happening on the

11 railroad right now is our cars per carload. Cars

12 per carload is the operating inventory divided by

13 the average daily numbers of revenue carloads. Put

14 more simply, cars per carload is the number of cars

15 it takes to support moving one daily carload across

16 the network. When cars per carload goes up, that

17 means Union Pacific is taking more time to move each

18 car across its network.

19   Right now, Union Pacific is seeing a

20 significant surplus in operating inventory, which

21 causes a much higher than typical cars per carload

22 count. This operating inventory surplus is one of

1   the contributors of network congestion.

2   To put this in perspective, our operating

3   inventory from January to April of this year has

4   increased by 30,000 cars, or 18 percent.

5   This rate of increase is extremely high

6   compared to previous years, where the rate of

7   increase would have been about 2,000 cars in the

8   same period.

9   That congestion is impacting our crew and

10   power availability, which feeds into a cycle

11   degrading network fluidity.

12   We've also seen congestion like this in

13   November of 2014, where there was over 218,000 cars

14   of inventory in the network with 8.2 cars per

15   carload. Also in November of 2017, where there were

16   over 210,000 cars in inventory in the network with

17   8.3 cars per carload.

18   In March and leading into April of 2019,

19   cars per carload on the Union Pacific were at 9.1

20   with operating inventory hovering around 200,000.

21   The network was congested.

22   We were able to work through that 2019

1   congestion by reducing the number of cars on the

2   network, thereby increasing velocity and train

3   speed. We know from experience that reducing

4   operating inventory alleviates congestion, and

5   though we know getting cars off the network is one

6   of several immediate actions we can take to reduce

7   inventory, we cannot do this overnight.

8   With the amount of congestion currently on

9   the network, it will likely take us the better half

10   of the year to decongest the network assuming

11   minimal variability on the network in addition to

12   our customers' crucial help in taking private cars

13   off the network.

14   This brings me to the current Union

15   Pacific network. Mr. Chairman, I am not going to

16   use euphemisms, I'm going to give you the numbers as

17   we see them this morning.

18   CHAIRMAN OBERMAN: Good.

19   MR. GEHRINGER: Operating inventory this

20   morning is 195,000 cars, our car velocity is 179

21   miles per day, and our TPC, which is our primary

22   service metric, is 58 percent, followed by the last

1   one, first mile-last mile that we've talked about

2   today is at 90 percent.

3   Network congestion is the result of a

4   combination of factors. First, a series of

5   unanticipated service interruptions caused delays

6   across our network, which created unanticipated

7   demand for our crew and locomotive resources.

8   In addition to the unanticipated resource

9   demand, like many other companies, our ability to on

10   board new train service employees in some locations

11   has been a challenge post COVID.

12   As a result, we have modified some of our

13   talent acquisition and new hiring on boarding

14   strategies and systems to timely acquire new talent.

15   The cumulative effect of crew shortages in

16   difficult to hire locations and increased inventory

17   led to greater resources imbalances and further

18   slowdowns to our initial performance.

19   So what are we doing today to solve the

20   problem? We are pulling on several levers at the

21   same time.

22   First we are taking an aggressive approach

1   to reducing operating inventory, more aggressive

2   than in the past. We are in the process of reducing

3   the number of Union Pacific controlled cars on the

4   system by 2 to 4 percent within the next 30 days.

5   Second, we are exploring whether to meter

6   our traffic in the near term. Third, as Beth

7   mentioned, we are working hard toward our goal of

8   hiring 1400 train service employees in 2022.

9   Since April of 2021, we hired over 700

10 train service employees and charged the pipeline

11 with an additional 500 service employees in

12 training. This aggressive action has resulted in us

13 graduating approximately 400 train service employees

14 since implementing this plain.

15   In addition to the aggressive hiring, we

16 continue to focus on judiciously using our groups

17 and injecting an appropriate number of locomotives

18 in business.

19   We are also working closely and

20 collaboratively with our customers to reduce private

21 car inventory. This multifront approach will help

22 expedite recovery for us and our customers from this

1   period of congestion and ultimately grow our

2   network.

3   Let me address quickly the concept of

4   metering traffic, which has been a concern expressed

5   by a number of our stakeholders.

6   Metering traffic will allow Union Pacific

7   to control the number of cars on the network, while

8   simultaneously serving all customers by resolving

9   the congestion. As you know from conversations we

10   had with you a few weeks ago, we have reached out to

11   7000 customers but only engaged directly with those

12   customers who have the highest impact on the

13   network.

14   During those conversations with our

15   customers, we described what we were trying to

16   accomplish and that we were considering metering

17   their traffic to help improve network fluidity.

18   When implemented, metering will get

19   inventoried to an appropriate level on the network

20   and allow customers to reduce their cars in the

21   network. Some of our customers have agreed to

22   reduce excess cars from the network, which will help

1   reduce operating inventory on the network in the

2   near term. So our work with the customers is

3   showing positive momentum.

4   Our plan includes strategically deploying

5   additional resources where the current operational

6   congestion has created crew and power shortages and

7   the addition of crews and power can help alleviate

8   congestion. We've added 150 locomotives since

9   January of 2022, including 100 locomotives in the

10   last 30 days. We've also relocated approximately 80

11   borrowed out train service employees to enhance crew

12   supply within specific member areas where we are

13   seeing increased demand.

14   With these key measures in place, we

15   anticipate the train speed will increase while

16   terminal dwell will decrease.

17   With 2020 hindsight in plain view, a

18   global pandemic and supply chain problems, we

19   acknowledge that these abnormal external and random

20   events have interfered on our operations beyond what

21   we anticipated. We set out to hire at the

22   appropriate rate based on our projections, but the

1   labor market in certain locations proved

2   challenging.

3   Reflecting on that, we acknowledged that

4   we were more fragile than we initially realized and

5   we recognize that this is an opportunity for us to

6   improve. Once we became aware of these events, that

7   they were not isolated and were enduring, we started

8   taking the necessary measured steps to quickly

9   improve the overall health of the rail network and

10   our workforce.

11   Let me close where I began, by making

12   clear that we understand our current service is not

13   meeting our customers' expectations or our own.

14   Union Pacific agrees with our stakeholders that an

15   efficient rail system free from excessive congestion

16   and delay is vital to a robust supply chain and the

17   national economy.

18   We know that to restore our service levels

19   we must recover the system by charging the employee

20   pipeline, and being judicious with our crews. We

21   are now putting the right number of locomotives on

22   the network to handle the current future projected

1   volumes. Finally, our transportation plan

2   specifically targets eliminating excess inventory

3   off the system and we are asking our customers to

4   partner with us in this effort.

5   We are confident that doing this will get

6   the network to a place where it is moving smoothly

7   once again. Thank you for your time.

8   CHAIRMAN OBERMAN: Thank you, Eric. I've

9   got a lot of questions. I'm going to ask a few and

10   then we'll circulate around with my board members

11   and come back.

12   So let me start here. And I've gone

13   through this with the other Class 1s.

14   BN, you went -- in December of 2018, you

15   had 19,636 T&E employees, you dropped 3853 of them

16   by the beginning of the pandemic. That's a 20

17   percent decrease before we knew there were any

18   pandemic problems.

19   When the pandemic hit, you dropped another

20   3100, or another 20 percent. So by May of 2020, you

21   were down to 12,600 people. And you're not quite

22   back to where you were.

1   UP, in November of 2018, you had --

2   BOARD MEMBER FUCHS: Marty, I think you

3   have to press your button.

4   CHAIRMAN OBERMAN: I'm sorry.

5   Thank you, Patrick.

6   You had 18,698. By March of 2020, you've

7   dropped 3164, you were down 17 percent before the

8   pandemic. And then by June, you dropped another

9   3300, 22 percent.

10   Now, at the time the railroads dropped

11   these thousands of people between March and June of

12   2020, I assume like the rest of us, you had no idea

13   when the pandemic was going to end. But what you

14   did have an idea was to get people back and to hire

15   new people was going to take 14 weeks minimum.

16   Now, I heard Ms. Whited say that the

17   collective bargaining agreement -- did I understand

18   you to say it required you to furlough people when

19   traffic dropped?

20   MS. WHITED: I did not --

21   CHAIRMAN OBERMAN: Did I mishear that?

22   MS. WHITED: I said encourages, not

1   requires.

2   CHAIRMAN OBERMAN: Press the button there.

3   I had my button on.

4   MS. WHITED: I said encourages, not

5   requires.

6   CHAIRMAN OBERMAN: Well, you didn't have

7   to take a -- we've got to go back and forth,

8   Ms. Whited. You have to turn your mike off.

9   MS. WHITED: I'm sorry. Your new room is

10   nice, but the --

11   CHAIRMAN OBERMAN: Electronics leave

12   something to be desired.

13   BOARD MEMBER FUCHS: I thought no

14   euphemisms.

15   (Laughter.)

16   CHAIRMAN OBERMAN: Well, sometimes I try

17   to be nice. I'll use BN's word. They're choppy.

18   So encouraged but not required. I mean,

19   I'm really having a hard time understanding that

20   sort of corporate planning, it's throughout both the

21   same.

22   Now, my predecessor, Ann Begeman, had the

1   foresight sometime in mid-2020 to write letters to

2   all CEOs saying what are your plans to staff up to

3   be able to handle the return of traffic. And

4   traffic was already returning.

5   So we saw it. You know, we don't run

6   railroads here, but we saw it, and we got

7   assurances, and I became chairman a year and a half

8   ago, and I followed up in the spring.

9   And I'm having trouble, to be honest,

10   accepting what I'm hearing here today.

11   So I wrote a letter to Ms. Farmer, and I

12   got an answer on June 9 of 2021. The pandemic was

13   already underway for a year, and the traffic had

14   already returned to a large extent. And I know it's

15   still growing.

16   And Ms. Farmer wrote me on June 9, "with

17   regard to our employees," I'm quoting, "we have

18   sufficient train crews and yard employees for

19   current volumes." She went down, "our 2022 hiring

20   plan is highly dependent on volume levels in

21   determining the timing of bringing on transportation

22   maintenance and other personnel to support growth."

1   And she concluded, "BNSF has and will

2   continue to take the steps to ensure that we have

3   the right resources to meet new demand levels while

4   providing consistent and reliable service. BNSF has

5   demonstrated our ability to increase our resources

6   with great speed, in response to changing

7   circumstances, and I am confident in our ability to

8   do so now."

9   I sent a letter to Mr. Fritz, same letter,

10   I got his answer June 11, 2021. "Union Pacific is

11   well positioned to deal with the nation's economic

12   recovery in 2021. As demand has increased across

13   our network, we have quickly identified those growth

14   areas and strategically placed crews to serve

15   customers. Our pipeline of train, crew, yard and

16   maintenance employees is robust, and these employees

17   are qualified to fill future positions throughout

18   our network."

19   Now, you know I'd only been chairman for a

20   few months, been around for a long time, so maybe

21   bad on me to be so naive. We felt, I thought,

22   reassured. We didn't implement weekly reporting,

1   which we've been urged to do now.

2   But I just have to tell you that I hear

3   what you're saying and I've seen your charts, but

4   I'm taking it with a heavy dose of skepticism. The

5   CEOs aren't here to defend their letters, but they

6   sent you, and I'm trying to figure out what is it

7   that's changed?

8   The CEOs are still there, PSR is still

9   there, which is what I don't blame but many people

10   blame, the OR is still there, Wall Street is still

11   there.

12   So what is it -- you know, we sit here,

13   we're not just some entity that rides herd on you

14   because we like to hear ourselves talk. We're the

15   public.

16   That's why we exist. And I think all five

17   of us do our best to represent the public interest

18   up here.

19   So this is not, you know, what your

20   balance sheet looks like. As I said yesterday, this

21   is the price of bread going up, this is ethanol not

22   being mixed with gasoline and the prices are high at

1   the pump.

2   So I'm having a lot of trouble with this,

3   if you drop thousands of employees when the pandemic

4   began, apparently without any notion that you might

5   have to gear up.

6   Eric, you said that the current congestion

7   was due to unanticipated demand just this last

8   spring. What was unanticipated about it? I mean,

9   weren't you watching the trends in the summer of

10   2020 as the economy recovered? Maybe you couldn't

11   hit it with precision.

12   So you just said, somebody just said, I

13   think it was you, Eric, we have enough locomotives.

14   The April 8, '22 numbers have among the highest

15   level of trains held for power in the last five

16   years. And they have been going up for the last few

17   weeks.

18   They also have among the highest levels of

19   trains held per crew, for crews. And BN is the

20   same.

21   So how do you say you have enough power?

22   You've got thousands of locomotives in storage

1   someplace and you don't have enough power to power

2   the trains sitting on the tracks and are not

3   delivering grain trains to chicken farms? 20

4   percent cut in the fertilizer shipment but I guess

5   you rescinded?

6   I mean, what are we supposed to expect

7   here, just to take your word for it, don't

8   reregulate?

9   So I'm having trouble with it, but I'd

10   like to ask you, take your turns to respond to these

11   points. Thank you.

12   MR. GEHRINGER: So let me start on the

13   Union Pacific side. So let's go back to your

14   comment about trains held for crews and locomotives.

15   If you take that back and you look further towards

16   the end of last year, we came into November and

17   December and really through the beginning of January

18   and really actually continually progressing and

19   improving position.

20   Then we fit February, where we got hit by

21   about three dozen different incidents from

22   snowstorms to other events. That's when you saw to

1   your point, Mr. Chairman, a large increase in trains

2   held for crews and locomotives. Those are

3   absolutely linked to congestion.

4   If you look on the Union Pacific right

5   now, that congestion is not in our terminals. Our

6   terminals remain fluid, dwell of around 24 hours.

7   Where we have congestion is on line of road.

8   CHAIRMAN OBERMAN: Where?

9   MR. GEHRINGER: Line of road, trains out

10   between terminals. And that number fluctuates, day

11   to day is about 70 to 90 too many trains for the

12   volume that we're carrying. That's what translates

13   into that additional 20,000 cars that are excess on

14   the network right now.

15   So it feeds --

16   CHAIRMAN OBERMAN: Let me -- here, let me

17   have the mike back for a second.

18   I don't see it. February 11 numbers, the

19   trains held for power and for crew are considerably

20   lower than they are in April.

21   So I don't know how they went up in

22   February. The numbers don't bear up what you're

1   saying. And velocity has gone down steadily from

2   January to today.

3   So I don't see the blizzards of February

4   reflected in the numbers here in our data.

5   MR. GEHRINGER: So because the events were

6   in the end of January and February, you don't see

7   the immediate impact until we start to get that

8   inventory on the railroad. Typically a normal car

9   cycle is 30 days on average, some customers are

10   faster, some longer. So you have to get through

11   that car cycle where you start to see that

12   inventory, and that's effectively what we did

13   through the month of February, which is your exact

14   point, drove the holds up and the velocity down.

15   CHAIRMAN OBERMAN: But, Eric, we have

16   winter every year. Snowstorms are not unanticipated

17   in February. And what I'm trying to understand, the

18   reason that I gave this two-year overview not only

19   on trains held for power and crews but the hiring

20   numbers and the letters that we have sent saying

21   what's going on in your businesses. You're the ones

22   who are supposed to be --

1   BOARD MEMBER PRIMUS: We can't hear you on

2   line.

3   CHAIRMAN OBERMAN: I'm sorry. You're the

4   ones who are supposed to be expert business

5   managers, and I think you are.

6   I think you are. I don't think the people

7   at BN and UP are too stupid to run a railroad, just

8   to be clear and to not mince words.

9   I've been impressed with the rail industry

10 since I've been in it for some years. There's

11 something else at play, and I think we've heard a

12 lot about it in the last two days.

13   And so I expect the executives at this

14 table to be able to plan for the future. That's one

15 of the things you're hired for. And I don't see it

16 in the results.

17   Now, I've been talking for months now

18 about the lack of a cushion. So the pandemic was

19 unusual, but we've had two years, to begin to grow

20 back from it.

21   The blizzards are not unusual. The forest

22 fires are not unusual. And I don't see the planning

1   there.

2   If the planning is there, I don't see that

3   you're being allowed to implement it. That's where

4   my real concern is.

5   And I think the public through this Board

6   needs something more, quite frankly, than the

7   testimony we've heard here today. I appreciate your

8   having to come here and talk to us, but I think we

9   need something more.

10   I actually would be interested to know how

11   you -- how you railroads would feel about having

12   weekly reporting.

13   BOARD MEMBER FUCHS: I have a follow-up on

14   that.

15   CHAIRMAN OBERMAN: That's what we've been

16   urged to do by just about every speaker here. What

17   would be your reaction? Every week, how many have

18   you hired, how many started, how many finished

19   training, how many -- you know, the machinists say

20   they don't have enough people to fix the

21   locomotives. Maybe that's why you can't get them

22   out there.

1   Do you want to respond to that,

2   Mr. Garland?

3   MR. GARLAND: Yes, sir. So from BNSF's

4   side, and I won't week for speak for UP, but we

5   would definitely welcome the transparency and

6   additional reporting. I think that's something we

7   can provide on a weekly basis and we'd be happy to

8   do so.

9   If I could just make some other comments

10   in relation to your questions.

11   CHAIRMAN OBERMAN: Please do.

12   MR. GARLAND: So outside of safety, I

13   really think crew and hiring are some of the

14   toughest things we do on the railroad. We have to

15   match the forecasted demand that's going to come

16   onto the railroad, and then we also have to look at

17   where we need people.

18   When we entered this year, we had 3000

19   furloughed employees. And as we saw winter

20   conditions start to degrade, we started to recall

21   our employees into certain locations.

22   The challenges that were unsupported is

1   what we were seeing in the tight labor market, and

2   Judy addressed that in terms of there's other

3   opportunities, and that has been unusual from what

4   we've seen in the past.

5   Our locomotive plan, we have a solid plan

6   to return locomotives. We are seeing higher than

7   normal trains held for crew. But again, I think

8   this is just like Eric said, it's related to service

9   interruptions, driven higher car inventories onto

10   our network, which has further slowed us down.

11   And then, you know, I do understand and

12   appreciate the comment that winter happens every

13   year or fires happen every year. But when roads are

14   closed, which I can't get employees from their

15   houses to the depot to get on trains, I could have a

16   million employees, and that won't matter.

17   So I mean, as I mentioned just last week

18   in North Dakota, we were the ones plowing the

19   streets.

20   CHAIRMAN OBERMAN: I'm just going to make

21   one more observation on this point and then I'm

22   going to hand it off to Patrick.

1   Let's assume that hiring is more difficult

2   because hiring is difficult in this country. You've

3   got to pivot.

4   You know, Walmart just raised their truck

5   drivers' salaries. It was all over the media.

6   So it's easy -- to 110,000 from 87. They

7   pivoted.

8   So whatever it takes. You know, when a

9   grain user can't get their grain because your trains

10 don't come through, they pay more to trucks.

11 Whatever it takes.

12   So that's what I think the public interest

13 requires. And it's not like you can't afford it.

14   So let me hand it off to Patrick.

15   MR. GARLAND: I was just going to respond

16 in terms of that comment.

17   CHAIRMAN OBERMAN: Go ahead.

18   MR. GARLAND: So we have pivoted, and we

19 have offered additional incentives to get employees

20 to the right locations. We are looking at

21 increasing that amount because the amounts that we

22 have paid have not been as successful as we want

1   them to. So I see us continuing to do that and

2   increasing the amount to get the right employees in

3   the right location.

4   However, also this industry is governed by

5   broader collective bargaining agreements that take

6   time to work through, and they're currently in the

7   national negotiation. And that is what we can't

8   pivot on as quickly.

9   So as the teams work through that, that is

10   something, we absolutely want to give our employees

11   a raise, we think it's fully appropriate, and we

12   have made offers, but obviously that's a

13   confidential process. So thank you.

14   MS. MULLIGAN: Mr. Chairman, may I add

15   just one thing?

16   CHAIRMAN OBERMAN: Sure.

17   MS. MULLIGAN: In terms of what Matt said

18   about the pivot, I hope you did hear us talking

19   about our 30-day plan, 60-day plan, 90-day plan.

20   Those are plans that we've had working in the

21   background prior to this hearing and will keep

22   working them.

1   And Matt mentioned looking at the

2   opportunity to engage. One of the things we've done

3   historically when we've had our service in 2014 and

4   2015 is the RCPA process was extremely useful for

5   all parties. And what we did there is we had weekly

6   calls.

7   Now we do those monthly still, but

8   stepping up the cadence of those to weekly, and we

9   can expand the folks who participate in those from

10   the railroad side, and we would also welcome having

11   members and other participants from staff. It's an

12   opportunity for you guys to ask us very direct

13   questions about where we are in this process and

14   hear from the people who are implementing it every

15   day at the company.

16   CHAIRMAN OBERMAN: Well, I appreciate

17   that, Jill. All I'm reacting to is that a year ago

18   I got a letter from Katie Farmer saying everything

19   is under control, and today I hear the next 30 days

20   are going to be choppy. That's the problem I'm

21   having.

22   MS. MULLIGAN: Understood.

1   BOARD MEMBER FUCHS: I'm glad you

2   mentioned '14 and '15. As you all know, in 2014 the

3   board directed BNSF to submit a detailed description

4   of its contingency plans that you all would use to

5   mitigate the acute coal inventory shortage and then

6   also in '14 the Board directed BN and CP to also

7   publicly file plans to resolve backlog of grain

8   cars.

9   And I've had the opportunity to review

10   your submissions in that docket and presentations

11   that both, Joe and Steve, you have made in 2014

12   and '15.

13   You have heard calls from customers and

14   labor about reliability metrics, insurance plans.

15   You've agreed to proactively offer them.

16   I want you to, if you could, elaborate on

17   your experiences with those plans in 2014 and '15,

18   share with us any lessons learned and how plans

19   might be adapted to the current situation to provide

20   the transparency and insights that customers, labor

21   and the public are calling out for.

22   MS. MULLIGAN: I can start and certainly

1   others can add to it, including Steve, who is in

2   that process.

3   Number one, I think the starting point is we

4   understand the Board's concern here and we

5   understand the need and desire to be educated,

6   involved, understand and create accountability.

7   And so I think some of those mechanisms

8   are very effective for that.

9   In terms of the contingency plans that

10   were created, I think a couple things about that.

11   One, the Board created a sense of urgency, but they

12   allowed us as a railroad to come in and say what our

13   plan was. So that allowed us to take in the entire

14   context of our service challenges, the needs of

15   individual customers and the need of the collective

16   customer, and design something that we thought that

17   was going to be effective in response to those

18   current circumstances.

19   And look, circumstances changed quickly on

20   us in the railroad. We know that. So being able to

21   evolve those as we go along and explain why we think

22   what we're doing is effective and have an engagement

1   when we need to adjust those plans to be more

2   aggressive, to be more responsive to individual

3   circumstances, I think that a lot of the things that

4   we were doing in 2014 and reporting on, especially

5   on the coal side, are things that we're doing now,

6   in terms of monitoring the levels of stockpiles,

7   offer individual facilities.

8   And we're managing to the -- I use the

9   term "collective customer," but we also know when

10   there's urgent situations, we need to be able to

11   respond.

12   And we know we have a significant amount

13   of scrutiny on that front, and expectations and

14   obligations. And we take those seriously.

15   And so I think as the Board thinks about

16   those types of focused actions, we would ask to be

17   given the opportunity to be the party that designs

18   that.

19   And then also, we would caution in terms

20   of creating priorities among different customers.

21   It's one of the things that we're constantly

22   thinking about is how we meet the expectations of

1   all of our customers and balance that.

2   That doesn't mean that we don't respond to

3   truly significant experiences our customers are

4   having. But when we respond to a single occurrence,

5   that means we're taking a resource away from someone

6   else, and we don't do that lightly. And we're very

7   happy to have conversations with the Board about how

8   we're doing that on a weekly basis and individual

9   circumstances, because we know we need to get that

10   right.

11   And so the engagement from the Board is

12   something that we welcome may not be -- may be a

13   little too strong, but understood. And we'll

14   absolutely fully engage in that process with you

15   all.

16   BOARD MEMBER FUCHS: UP, could you comment

17   on the idea of service assurance plans and

18   reliability metrics?

19   MR. BOBB: One thing I would add to what

20   Jill talked about is you see it in play every month,

21   where we have conversations with the Surface

22   Transportation Board about what's going on in our

1 network. We talk to our customer assistance group

2 in terms of the issues that we're dealing with and

3 give our perspective on what's going on, and

4 likewise if that staff brings issues into that

5 conversation, then we deal with them. So you see

6 that going on yet today, and that's one of the

7 things we learned coming out of 2014, was to be

8 informative up front.

9   And again, we talked about that cadence is

10 always subject to change if necessary as well.

11   MR. GEHRINGER: So ours may not mimic the

12 BNSF's exactly, but as we put our plan together,

13 we're still focused on the same critical elements.

14   To your point, those change depending on

15 the situation. Where we are right now, operating

16 inventory is one of those critical elements, and

17 you're seeing us take multiple actions both

18 internally to Union Pacific and with our customers,

19 to drive that number down.

20   That's the one that has to continue to

21 move down to the appropriate level. And us sharing

22 that plan with you and updates on how we're

1   progressing with that, as well as the lagging

2   indicators of less dwell, less trains, improved

3   velocity, no concern with sharing that.

4   CHAIRMAN OBERMAN: Just on the question of

5   weekly reporting, what about weekly progress reports

6   on employment, hiring, so forth? Are you

7   comfortable with that too?

8   MS. WHITED: I'm not sure how informative

9   weekly would be, but I think we can certainly talk

10 to you about a structure. We're typically starting

11 training classes every other week, so maybe biweekly

12 would make more sense. But I don't think we have

13 any of concerns with sharing what's happening with

14 our pipeline, how we're seeing people graduate from

15 training, where they're going to work, where we're

16 having trouble.

17   BOARD MEMBER FUCHS: And one more

18 follow-on from me on this. You know, one of the

19 things that I saw in the 2014 coal order was the

20 term "enforce." And I sort of thinking about what

21 that means in terms of our specific statutory

22 authorities and the like.

1   But I'm also reflecting on what a number

2   of people have said about there's transparency and

3   then there's accountability. And hopefully sharing

4   it to the public provides some public

5   accountability, but I'm wondering, besides just

6   sharing the information, do you all view -- in light

7   of that "enforce" language in the 2014 order, is

8   there a role for the Board to further increase

9   accountability, you know, if plans were to be

10   submitted to us?

11   MS. MULLIGAN: You're asking a particular

12   legal question. I mean, I think from -- just from a

13   business perspective, when we say we're going to do

14   something, we're going to do it. So to the extent

15   there is continuing accountability to the Board in

16   that kind of posture, that's what we did in 2014,

17   and that's what you'll see us do as well.

18   I confess, I'm not 100 percent sure what

19   language you're referring to.

20   BOARD MEMBER FUCHS: I'm referring to

21   language in the 2014 order, submission of coal

22   specific service recovery plan and for the Board to

1   review, approve or revise and enforce the recovery

2   plan.

3   So I'm sort of wondering, and I know that

4   you all have found that that process had utility for

5   the public. But that language stuck out to me. So

6   I'm wondering what it meant to you, what it meant to

7   you at the time and, you know, whether or not

8   anything came to bear on that language as you all

9   were putting together your plan.

10   And it could otherwise be that just the

11 public transparency creates the accountability that

12 people are seeking, but I saw that particular

13 language and I just wanted your view on it.

14   MS. MULLIGAN: Honestly, for us it was the

15 public accountability that motivated us, and also

16 just following through on our commitments.

17   And part of that was reporting to you all

18 on our commitments. So when we were not tracking

19 those, we would have accountability around that.

20   And that's not to say we're perfect. You

21 know, what was it, the bumpiness -- choppiness, it's

22 something we're going to see, which is why we would

1   encourage you all to think about, when Matt talked

2   about expectations, 30 days, 60 days, 90 days, and

3   then when you have a snowstorm in the middle of the

4   weekend, that does set you back, we've talked about

5   losing a full week of process in less than two days.

6   What I don't want to do is have folks be

7   anxious about communicating to you guys about plans

8   because there's some kind of draconian fall off the

9   cliff consequence. I understand there are

10   consequences to this. We are going to keep engaging

11   with you all in the way that we do in terms of

12   defining our intentions and following through on

13   them.

14   And we don't intend to ever get to the

15   enforcement stage.

16   BOARD MEMBER FUCHS: Right. Well, I

17   appreciate that. And -- because I know your views

18   on how those processes were helpful for the public

19   and because of your experience with them, we would

20   very much value your insight with your engagement

21   with us personally as well as our RCPA team on what

22   that type of service assurance plan would look like

1   to provide that transparency and drive public

2   accountability. So thank you.

3   CHAIRMAN OBERMAN: Robert, do you have

4   some questions?

5   BOARD MEMBER PRIMUS: I do. Like you I

6   have many, I don't think we can get them all in

7   today.

8   But I'll just ask you now and hopefully we

9   can have another wrap-up. Once again I'll start the

10 same way we started off yesterday with NS and CSX,

11 in that while I appreciate everybody who is at this

12 table now and who has presented testimony, and it's

13 been tough testimony and you guys are definitely

14 before the firing squad, both of you are missing the

15 key player.

16   BNSF, you guys are missing Katie, and UP,

17 you are missing Lance. And I think it's

18 disappointing, a little disheartening, and I hope it

19 doesn't show that they're not taking this seriously.

20   Because I think, again by the appearances

21 of your labor force and your shippers and customers

22 and others, that we do take it seriously, and this

1   is I think the most serious issue before the Board

2   in quite some time.

3   And I am disappointed that neither of them

4   are here. I think it's worth taking time out of

5   their schedule to come here and be seen, and I would

6   love to have asked the questions to them and not

7   necessarily to you, because I believe again the buck

8   stops with each of them, and I think we deserve to

9   hear from them personally their views on the way

10   forward and how they are going to lead their

11   railroads moving forward.

12   So having said that, I want to focus on BN

13   on this round and I'm going to come back to UP if I

14   have a chance, Marty, on the second one.

15   And just a couple things. Actually,

16   during your testimony, you had said that in sort of

17   countering the Hi-Viz, when you said you polled 300

18   employees as to why they left, you said they hadn't

19   worked in six months. Why hadn't they been called

20   back to work in those six months?

21   MR. GARLAND: Can you hear me?

22   BOARD MEMBER PRIMUS: I can hear you.

1   MR. GARLAND: So what I was referencing

2   was the overall attrition number at 300. That's the

3   right attrition number --

4   CHAIRMAN OBERMAN: Can you move closer to

5   the mike.

6   MR. GARLAND: Is that better?

7   BOARD MEMBER PRIMUS: I can hear you.

8   MR. GARLAND: What I was referencing was

9   the 300 number was the total attrition that we've

10 seen since the start of this year in TY&E. And what

11 I was trying to counter was some of the false

12 narrative that thousands of employees are leaving

13 BNSF because of an onerous Hi-Viz policy, that just

14 is not the case.

15   What we are seeing, though, right now is

16 the employees we're recalling from furlough are

17 failing recall at a pretty high rate, right about 40

18 percent.

19   Now, part of that --

20   BOARD MEMBER PRIMUS: I guess I want to

21 just be clear. You said that you polled 300 who had

22 left and said that they hadn't worked in six months.

1   MR. GARLAND: Right. So that was part of

2   the -- out of the 300 that have left, that portion

3   of attrition, we sampled a size of let's call it 70

4   or 80 employees and we found that a large majority

5   of those had not had a productive start in close to

6   six months.

7   Now, part of that is --

8   BOARD MEMBER PRIMUS: That's different --

9   I'm sorry, that's a different from what you said.

10   Because you said 300, now you're down to 78.

11   So I just want to be clear, because that

12   300 was significant. If you're saying that they

13   hadn't worked in six months, especially when you

14   need to hire employees.

15   So even the 78, the 78 haven't been

16   working in six months. How come they weren't called

17   back?

18   MR. GARLAND: Okay. So let me go back

19   through that one more time.

20   Our attrition level has been right at

21   about 300. We sampled the size of that 300 that

22   have left or resigned.

1   And we couldn't do everyone, but the ones

2   we sampled, the vast majority were not highly

3   productive. I think that's the best way to put it.

4   BOARD MEMBER PRIMUS: Okay. That's a

5   little different from how you spelled it out in your

6   testimony.

7   You know, the reason why I asked that,

8   because I also don't -- I sort of take issue with

9   the idea that it's rhetoric when we're hearing from

10   your employees, these are current employees, so

11   these aren't people who are furloughed or people who

12   have left your organization. They're still there.

13   So it's hard for me to see that as

14   rhetoric when they're talking about what they're

15   enduring and going through right now.

16   So I hope going forward that you don't

17   look at it as rhetoric, as maybe signals that you

18   need to sit down and talk to these folks and figure

19   out, you know, is there something we can do better

20   to alleviate the problems that they have.

21   I think it's real, I think people have

22   talked about communication in the past, that there's

1 a lack of, and I think that's -- you know, we have

2 to get beyond that, when we're saying well, it's

3 just a few. I don't think that it is just a few.

4 And we've gotten letters and we've gotten -- you're

5 seeing these articles from family members explaining

6 that.

7   I don't see that as rhetoric. I see that

8 as an issue that needs to be focused on.

9   So I hope going forward, we can look at

10 that.

11   You know, and staying on those employees,

12 I know everyone is talking a lot about new employees

13 and what we're doing to incentivize, and everybody

14 on this panel too, they are thanking their employees

15 for just gutting it out during COVID.

16   Has -- and I know you're in the midst of a

17 negotiation right now. But has there -- substantial

18 pay raises, has anybody talked about substantial pay

19 raises last year during the COVID recovery and

20 acknowledging all that's going on? Has anyone got

21 that substantial pay raise that they so deserve?

22   I know on the hiring end, I see the

1   bonuses are high. But where is that in terms of

2   substantial pay raise for the existing workers?

3   What's the discussion there?

4   MR. GARLAND: Yes, we certainly do agree

5   that our employees, they are very valued and they

6   deserve a pay raise through this process.

7   The collective bargaining process --

8   CHAIRMAN OBERMAN: Mr. Garland, it's very

9   hard to hear you, I'm sorry.

10   MR. GARLAND: The collective bargaining

11   process was delayed a bit for COVID, so that has

12   caused some delay in the process. But our labor

13   relations team and everyone continues to work on

14   that negotiation, we hope to complete that as soon

15   as possible.

16   If I could just go back for a second also

17   in terms of our employees, because I think it's

18   important to really understand Hi-Viz in the context

19   of just ensuring that we have the right availability

20   for our customers and we provide the right

21   visibility for our employees.

22   So we do talk to our customers. We are

1   deeply engaged in conversation with a lot of

2   customers on a daily basis.

3   I myself spend anywhere from two to four

4   days out on the railroad per month talking to

5   employees. I fully understand that this is an

6   emotional change that our employees are going

7   through.

8   As I mentioned, we have not had a

9   substantial change to this policy in over two

10   decades, so this is going to take time to adjust.

11   It is a bit of an adjustment, so I fully understand

12   and appreciate what our employees are going through.

13   I will say in terms of impact, and I'll

14   just use an anecdote, but I think it's impactful.

15   In terms of what we saw happening specific

16   to weekend availability, we would see our

17   availability for employees drop into the 40s on some

18   weekends, call it an NFL playoff weekend in January,

19   where we are into the 48 percent range for employee

20   availability and we are not staffing our crews, and

21   it is delaying and impacting service in a

22   significant way.

1   So this all ties together with service,

2   but I think it's important to understand that we do

3   communicate with our employees often and frequently.

4   BOARD MEMBER PRIMUS: And again, I

5   appreciate that. I'm not saying that it's not.

6   Whenever someone says rhetoric, I don't

7   want them to think that the folks who are coming

8   forward and they are doing on their own, they are

9   exposing themselves and again they are not

10   furloughed, they haven't left the company, and

11   they're raising legitimate issues. I don't want to

12   be seen as that's rhetoric and dismissive.

13   I think that's something that's going to

14   help -- that conversation has to happen to help move

15   forward. They are your employees and you want them

16   to stay your employees.

17   The quickest way to get rid of employees

18   or see that retention rate decrease is to claim that

19   all they're saying is rhetoric, and it's not true.

20   And I think that we have to go look past that.

21   Let me ask one last question, and -- I'm

22   sorry, did you want to respond?

1   MS. CARTER: Just on that point, when we

2   had our employees who were going through the changed

3   management of Hi-Viz, we did have many of our

4   employees reach out to us and express concerns. So

5   we had a process that we worked with leaders in LR

6   and even Mr. Garland's general managers across the

7   system would engage with those employees to

8   understand exactly their points, their concern, and

9   have a face-to-face conversation with them about

10 that.

11   And we did hear things across -- coming

12 out of the pandemic. This was a very hard two years

13 for all of us, especially front-line workers. And

14 we understand and appreciate the commentary around

15 thank you is fine but it's not enough.

16   So we have wellness and employee

17 assistance programs and all those sorts of things

18 that are both in the field with our leaders to

19 assist when our employees say, you know, this has

20 been a difficult situation, I've got a family member

21 going through something, there is sickness or

22 whatever the case may be.

1   So we do our very best to listen to our

2   employees, take their concerns seriously, and then

3   use all of our programs to address those as they

4   come up.

5   BOARD MEMBER PRIMUS: And I hope that will

6   include pay raises in the future.

7   Marty, just one more and I'll move on from

8   this.

9   CHAIRMAN OBERMAN: Go ahead.

10   BOARD MEMBER PRIMUS: We talked about how

11   to alleviate some of the capacity and congestion,

12   and my question is sort of adding -- for BNSF,

13   adding utility jobs or extra switching crews, do you

14   think that that will alleviate bottle next at the

15   first mile-last mile?

16   MR. GARLAND: That was directed to BNSF?

17   BOARD MEMBER PRIMUS: Yes.

18   MR. GARLAND: As we look at our last mile

19   serviced, that's something we measure, we look at on

20   a daily basis in terms of how we're performing.

21   In the locations where we're not

22   performing to our expectations, that's certainly

1 something that we do. We add resources, we

2 overresource and we try and get that service plan

3 back on par.

4   So I would say yes, to answer your

5 question directly, that we do do that and will

6 continue to look at that.

7   BOARD MEMBER PRIMUS: Okay. Because for

8 me, it's that crew management issue again and how

9 well what we're doing and how well -- if it's

10 impacting that first mile-last mile. And we can --

11 happy to talk about that later at a later time.

12   So thanks, Marty, and hopefully I can get

13 that round 2 with UP.

14   CHAIRMAN OBERMAN: Michelle?

15   BOARD MEMBER SCHULTZ: We've heard a lot

16 of testimony during the last two days about the

17 current service situation on the network. It seems

18 as if farmers, food manufacturers, the agricultural

19 industry and the fertilizer industry have been

20 significantly affected, and I wondered if you've

21 given any specific consideration as to action what

22 your organizations might be able to take during the

1   next 30 days that could assist those industries.

2   MR. GEHRINGER: So as we think about the

3   actions that we've lined up, they would benefit

4   those, but we're focusing on trying to resolve for

5   all customers. So the additional locomotives that

6   we added in, for example, those are down in the

7   southeast portion of our railroad between basically

8   Little Rock to Houston to Avondale, which would be

9   on the destination end in most cases.

10   Those are absolutely designed for those

11   customers to improve our train speed down there, and

12   that's a great way to get inventory out of the

13   system. And with that is the inventory that we

14   would move benefits the rest.

15   If we look at where we've done the

16   borrow-outs, the borrow-outs, which I am just

17   reminding the board, borrow-out is something when we

18   look at the system, a very vocal level and surplus

19   number of crews, and as we've discussed today, I'm

20   not leaving you with the impression that we have a

21   lot of those areas, but there are some.

22   So we will actually take an employee

1   through a voluntary process and ask them to

2   relocate.

3   So right now we're relocating borrow-outs

4   up the PNW. In total across the system we have 80.

5   It's those type of activities that drive up the crew

6   base that allow us to support those customers better

7   than we were before.

8   So all seven benefit, but those are two

9   that benefit those specific subcategories of

10   customers.

11   MR. BOBB: From a BNSF perspective,

12   relative to fertilizer, which is the critical window

13   right now for us, it's executing the plan that we

14   put in place, and like we did last spring, this time

15   we have even more resources against it, and its

16   execution. That's what we have to do in the next

17   30, 60, days relative to fertilizer.

18   And then just to emphasize something that

19   Matt talked about, over the next 30 days, we are

20   addressing the incentives we have to take employees

21   that are in one geography and get them to move to

22   where we need extra employees and we don't want to

1   wait for the hiring process to produce those. So

2   that's in progress as well.

3   BOARD MEMBER SCHULTZ: Thank you.

4   CHAIRMAN OBERMAN: Patrick had a

5   follow-up.

6   BOARD MEMBER FUCHS: Actually it's a

7   follow-up comment because I want to circle back on

8   the enforcement point because I think Joe was right

9   on the money.

10   The enforcement point was argued by

11   Western Coal, and for the Board approval, they cited

12   our emergency authority under 11.123, which is what

13   we just issue the proposed rule under, and then they

14   cited, as Mr. Rosenberg did today, our penalty

15   authority.

16   And the Board did not include that in the

17   grain order and rejected it in the coal order, in

18   part because there is so much contract movement, and

19   there would be no differentiation between contract

20   movement and tariff movement and recovery plans that

21   it would create -- in part they noted a statutory

22   issue in that domain.

1   So I just offer that up as a way of

2   complimenting Jill for her recollection but also to

3   clean up the record so that people know what the

4   Board ordered and the issues the Board found as

5   we're considering the service assurance adjustments.

6   So the Board in that case suggested it was a public

7   accountability that governed.

8   CHAIRMAN OBERMAN: I just want to say it's

9   not fair for either Jill or Patrick to do so much

10   more homework than the rest of us, but I thank you

11   for bringing these things up. It's very

12   educational.

13   Karen?

14   BOARD MEMBER HEDLUND: Thank you. I have

15   to do some homework too, and I realize I still have

16   a lot to learn about the railroads, even though I

17   spent four years at FRA. Just basic vocabulary

18   sometimes escapes me.

19   When I was called last week to be given a

20   heads-up that you were going to be reducing service

21   to some of your customers, talking to UP, the term

22   used was "metering." And I said what does metering

1   mean. And it was explained it means you're not

2   picking up cars from your customers.

3   Why don't you just use English rather than

4   a euphemism? It's sort of like Putin's term,

5   special military operation. Maybe this is a special

6   railroad operation.

7   But when you did that, did you take into

8   account the impact on the ability of certain of your

9   customers to deliver really critical products, like

10   chlorine, like fertilizer and allocate whatever you

11   were doing among customers based on really the

12   criticality of what they are doing?

13   MR. GEHRINGER: The answer is absolutely

14   yes, but let me back up and walk you through

15   everything that's transpired in that process.

16   So that process which started as a

17   discussion about 4-1/2 weeks ago was a recognition

18   of with 30,000 excess cars on this system relative

19   to January, we knew just doing the old inventory

20   reduction playbook, we'd be months and months and

21   months.

22   And very much in line with some of the

1   questions you guys asked yesterday was are you doing

2   something different. And this is one of our

3   differents. Right now.

4   When we started that process, it started

5   with looking at inventory and customers back in

6   January, and then it looked at inventory the second

7   half of March. And what we were working to identify

8   was customers who may have more cars in the system

9   when their loads that are outbound loads have

10   remained relatively flat.

11   You heard it yesterday, and I have to be

12   just crystal-clear about this. There is nothing

13   that I'm saying that is meant to villainize the

14   customers. What the customers are doing is logical.

15   As we slowed down as a railroad, like any

16   railroad, they see their car cycle get longer, and

17   their response if they are -- they're going to put

18   more cars in the system. So this is not a blame the

19   customer.

20   This is more like we're all in it

21   together. We can all either make it better together

22   or we can all make it worse.

1   And you even heard that in a couple

2   people, they said well, I've seen my cycle times go

3   up 15 percent and they would say and I have added 15

4   percent cars. So it's almost a one-for-one ratio.

5   Now, what we did then as a result is we

6   looked at the customers that had most impacted, at

7   least on the surface, and we started the

8   conversation with every single one of them. Our

9   marketing and sales, commercial team, reached out to

10 every one of them with first our assessment, which

11 we left wide open as it may not be correct, there

12 are clearly details, a perfect example of what

13 you're mentioning is potentially a customer who

14 transports chlorine.

15   In those conversations, that was their

16 opportunity, in some cases more than one

17 conversation, to come back and say, well, maybe one,

18 we don't agree with the math, two, you don't

19 recognize fully the sensitive nature of some of our

20 shipments, let's go back and forth and try to find a

21 place where we can land, where together we're still

22 contributing to resolving the issue, but to your

1   point, not blindly just going forward.

2   And so where we sit today is we've

3   completed those conversations with 60 total

4   customers. We understand that some of them are not

5   going to be able to make adjustments, yet we've also

6   had customers who say they can make adjustments. It

7   may not be to the level that we initially asked, but

8   it's a step in the right direction for us.

9   So we're going to continue that

10   communication because it's critically important to

11   your point. We're not doing it in a vacuum.

12   BOARD MEMBER HEDLUND: Let me ask a

13   completely unrelated question. I think you

14   mentioned that the congestion now is -- it's not in

15   the yards, it's out on the line. What kind of

16   impact is that having on Amtrak that you post?

17   MR. GEHRINGER: So as you're very aware

18   of, we have our Amtrak storage, especially in light

19   of the legislation passed last year, we have our 10

20   primary corridors of Amtrak. Seven of them are

21   compliant with the thresholds that we established,

22   three of them are noncompliant. The ones that are

1 noncompliant will not surprise you, they are our

2 longer-haul Amtrak corridors, and it's because we

3 have those excess trains that are out sitting on the

4 mainline, in a sense acting as a hurdle to fluid

5 train operations.

6   So this inventory work, it doesn't just

7 benefit the customers, it doesn't just benefit Union

8 Pacific, it benefits Amtrak. Much like the BN, our

9 commuter operations remain strong, but we still want

10 to make sure that we're delivering on Amtrak.

11   BOARD MEMBER HEDLUND: I'm sitting here

12 looking at their OTP for the last year, the Zephyr

13 is 37 percent, the Southwest Chief on BNSF is 37

14 percent, Capital Limited is 28, the Sunset Limited

15 is 28.

16   Those are not sustainable numbers, and

17 we're going to have to figure out what to do with

18 that eventually.

19   MR. GEHRINGER: Not sustainable at all,

20 and to the two that are ours, they are our longest

21 haul lines, absolutely.

22   BOARD MEMBER HEDLUND: One final question.

1   Again totally unreeled but it goes to your planning.

2   And maybe this isn't the right place to talk about

3   it.

4   But I'm worried about the next crisis, and

5   it may be a cyber security crisis. And are you

6   incorporating those concerns into your planning?

7   MS. WHITED: We take the cyber security

8   concerns really seriously, and we have a chief

9   information security officer at Union Pacific who

10   has a team of specialists who are constantly looking

11   for threats, staying in very close contact with the

12   government agencies that provide us a heads up about

13   chatter of anything that might be a threat to the

14   freight rail industry. And from time to time we do

15   get those warnings, and we take action.

16   And I would say on a daily basis, that

17   team is engaged very appropriately to ensure that

18   we're doing everything we can to ensure that none of

19   our critical systems are compromised, so that we

20   would go back to the days of notebooks and, you

21   know, pencils, trying to run the railroad, which

22   would be unsustainable over any length of time.

1   So yes, it's a focus.

2   CHAIRMAN OBERMAN: Karen, are you done?

3   BOARD MEMBER HEDLUND: I'm done.

4   CHAIRMAN OBERMAN: Patrick?

5   BOARD MEMBER FUCHS: Very quick follow-on

6   from Karen's metering question.

7   Eric, I know you have been here all day

8   and heard the testimony from the gentleman from

9   Pilot Travel Centers. And it strikes me what he was

10   describing in terms of not an overall increase in

11   volume but just a change in the identity of who the

12   person is.

13   I'm not asking you to comment on a

14   particular shipper in a public forum, I don't know

15   the status of your relationship, contractual or

16   otherwise.

17   But I'm asking you to respond to that type

18   of situation, where it is not driven by an overall

19   increase in volume but on the identity of shipper.

20   Is that the type of thing that's possible under your

21   system and is that the type of thing UP would seek

22   to correct if it found out about it?

1   MR. GEHRINGER: The answer is yes. And

2   rest assured, we shared that feedback, I asked the

3   question this morning.

4   And it was very much in line with your

5   comment about, okay, we sat down, we had the

6   conversation. That's not a customer that's

7   committed yet because we're still working through

8   those details.

9   So we're not pressuring them into saying

10 you have to be at this level by this date. We're

11 still in the collaborative phase of how can we do

12 this together, even if doing it together means it's

13 a compromise in the middle of what we're asking them

14 to release on a daily basis. So that's a perfect

15 example.

16   BOARD MEMBER FUCHS: Thank you.

17   CHAIRMAN OBERMAN: Mr. Garland, I have a

18 few more questions for you and then for both.

19   Yesterday a couple of working engineers

20 told us that they are under, generally speaking,

21 under orders, and they have handed them in as

22 exhibits, to keep the throttles at 40 miles an hour.

1 And then they gave us a copy of an order dated April

2 15 that says that limit is off for two weeks.

3   So why do you limit the trains to 40 miles

4 an hour, and what caused you to take it off but only

5 for two weeks?

6   MR. GARLAND: So in conjunction with our

7 fuel conservation efforts, that's really what drives

8 it. It's about making sure that we're really

9 focused on fuel efficiency and sustainability. And

10 burning for fuel unnecessarily, and I think Cindy

11 did a good job providing that testimony yesterday in

12 terms of how we use trip optimizer, we use it in a

13 similar fashion.

14   We've always used this lever, so it's a

15 recovery lever that we can put on or put off. And

16 so historically, I mean, it's something we look at

17 from a data perspective, and I know that the

18 gentleman yesterday just provided anecdotes, but we

19 look at this on a subdivision level on every

20 subdivision where we have fuel conservation

21 measures, to see is it negatively impacting velocity

22 or our relief crew percentage.

1   We sit down weekly, we look at that from a

2   data perspective. And by that large, typically, it

3   does not impact overall train speed.

4   But when the network is congested, running

5   in a faster speed only to get up to a stop signal

6   that much more quickly, that does not help our

7   efforts in terms of fuel conservation,

8   sustainability or the overall environment.

9   CHAIRMAN OBERMAN: Well, I'm looking at

10   your velocity. It dropped from 26 in October to 24

11   in March. So it did affect -- something is

12   affecting velocity.

13   And, you know, we're all here probably, as

14   much as anybody on this Board, concerned about the

15   environment. I think we all are equally. But I

16   certainly have voiced my views in other settings.

17   But don't think it helps the environment

18   if your trains are running so slowly that they're

19   not delivering service and the customers have to put

20   their stuff on the highway. Whatever fuel you save

21   by running at 40 miles an hour is going to be way

22   offset by all those trucks.

1   And in a time that I think we're in now,

2   crisis, and I'm not the only one who calls it a

3   crisis, our friends from Wall Street call it a

4   severe crisis, I'm just wondering if this is not the

5   time to run the trains a little faster and to figure

6   out how to do that.

7   What I would really like to ask you, and

8   then I would like to ask Eric, to respond to, and

9   unfortunately, I think the engineers couldn't stay

10   any longer, maybe they had to get back to work, but

11   they said yesterday that if you let them run the

12   trains faster than 40 miles an hour and let them run

13   all the power they have, that some of this

14   congestion, not all of it, they weren't saying it

15   would be a miracle, but it would be a way of making

16   a dent in it, and they're not allowed to do it.

17   And I would like to -- you know, these

18   guys run the trains. They see probably more than

19   anybody else what's going on out there.

20   So I would like to hear why that isn't

21   happening, from both of you, but you can start.

22   MR. GARLAND: Sure. As mentioned, that is

1   one of the levers that we pull, and as you saw the

2   notice yesterday, that was one of the things that we

3   enacted to help speed our network.

4   The reason that we have that in terms of a

5   short-term lever is we want to go back and make sure

6   we reevaluate to make sure we're making progress so

7   we're not burning fuel unnecessarily.

8   So we will continue to deploy those action

9   levers in addition to all the different actions that

10   we talked about today, with the additional

11   locomotives, the additional crew resources and also

12   getting our active inventory down to decongest the

13   network.

14   CHAIRMAN OBERMAN: Is that the kind of

15   metric you could report to us weekly as well as to

16   where you are on locomotives? Using the power and

17   velocity restraints?

18   Speed restraints?

19   MR. GARLAND: I think we need to consult

20   with Jill and probably the Board and various others

21   on what we want to report. We have access to

22   millions and millions of metrics, but I think

1   deciding on what the right metrics are would be

2   important.

3   CHAIRMAN OBERMAN: Well, we -- and I

4   appreciate that, and we'd rather have you be

5   comfortable with what we require. But we may

6   require things anyway. We need to be on top of

7   this. No decision has been made, but we are I think

8   all interested in exploring this.

9   Eric?

10   MR. GEHRINGER: Well, I definitely echo

11   your opening comment. The best ideas definitely

12   come from those that are the closest to the work.

13   As we went out and you look at the railroad on Union

14   Pacific, we don't have any broad blanket 40 mile an

15   hour speed restrictions.

16   The two ways we do put restrictions out,

17   the first one is based on the geography, if you're

18   going up a steep grade or curvature, we will

19   restrict the speed for all types of trains.

20   The other way that we would restrict

21   speed, in fact you heard it from one of the union

22   leaders yesterday, he had mentioned taking a coal

1   train from Clinton to Missouri Valley. We reduce

2   the speed on loaded coal trains to 40, but that's

3   because of our safety risk profile.

4   We know from our historical performance

5   loaded coal trains greater than 40 miles an hour

6   pose a risk that we're not willing to accept, so we

7   restrict them to 40. Otherwise, we will go back and

8   look just to make sure that there's not another

9   train type, but we have no blanket restrictions at

10   least on the UP.

11   CHAIRMAN OBERMAN: Let me say one other

12   thing on that score.

13   What we've heard from a number of labor

14   representatives today is not new. I've been hearing

15   this for a year about signalmen covering territory

16   that they could no longer physically cover, car men

17   being limited to one minute a car for inspections.

18   Before we meet again, I would like to

19   invite one of the people in the C-suites here,

20   contact these guys, meet them in the yard, and you

21   physically watch them what they're going through,

22   examine then come back so we have the same database.

1   I find it very frustrating. They're

2   either given one minute a car or they're not. I

3   didn't hear any deception from these people.

4   If you don't know, as you said Eric,

5   seeing what's going on out there is one of the best

6   ways to keep track of it, and I know you're all

7   busy, but based on the level of reports I have heard

8   about this, and I may visit one of your yards myself

9   sooner rather than later, but I think somebody at

10 this table ought to walk around the trains with

11 these car men and see what they are seeing, and then

12 you see if that's the way you want your railroad to

13 operate. And then you tell us, and we'll hear back

14 from them as well.

15   MR. GARLAND: We certainly value our

16 employees as our greatest asset, and just as Eric

17 mentioned, those that are closest to the work are

18 typically the ones that do have the best ideas. And

19 some of the best ideas that we have come from our

20 employees. I welcome the opportunity, we would love

21 to host you and also we can show one of our

22 operations.

1   But back to what I provided in my

2   testimony, I do spend time out there, I spend

3   anywhere from two to four days per month out on the

4   railroad looking at it, inspecting it, working with

5   employees, looking at our yards. That's very

6   important to us, so we welcome the opportunity.

7   CHAIRMAN OBERMAN: Well, there seems to be

8   a disconnect, because you may, a C-suite, have one

9   view, but it sounds like the direct supervisors in

10   the yard are under some other kind of incentive. I

11   don't think they're trying to derail trains, but

12   they're in some kind of incentive that is telling

13   these guys, move faster and don't complain, and as

14   one said, we're in the car moving business, not the

15   car repair business, so don't send a car into the

16   repair shop.

17   And that's troublesome. And there seems

18   to be a disconnect someplace here, and I invite you

19   all to get to the bottom of it.

20   Robert has some more questions. We

21   probably ought to try to wind up this panel. I'm

22   sure you guys would like us to wind up.

1   BOARD MEMBER PRIMUS: I do.

2   CHAIRMAN OBERMAN: Go ahead, Robert.

3   BOARD MEMBER PRIMUS: Thanks, Marty.

4   And Eric, I appreciate you being here, and

5   again you're in the firing squad. We've always had

6   good conversations, and I appreciate that.

7   And like I said, I wish your boss was here

8   as well, take the pressure off of you. But since

9   he's not, I have to put it where it is.

10   But I want to talk real quick about

11 locomotives once again. Can you tell me right now

12 how many locomotives you now have out in the field?

13   MR. GEHRINGER: In total right now, we

14 have active locomotive fleet of 4400 -- excuse me,

15 4300 locomotives, and then we have approximately

16 2200 that are in storage.

17   BOARD MEMBER PRIMUS: Would you say that

18 the 4300 right now meets the need?

19   MR. GEHRINGER: Right now based on the way

20 they're operating, we had to add in 150, and with

21 those 150 in, it meets the need for us to be able to

22 recover the system. The remaining 2200 will help us

1   to meet the need as we grow.

2   BOARD MEMBER PRIMUS: So do you now have a

3   power plan for loaded and billed trains, so one of

4   the big things that I've been working with your

5   customers and actually with folks on your team here

6   in D.C. is the fact that we're coming up, we're

7   getting complaints that there are a lot of trains

8   that are built and ready to go and they're billed

9   and they're not picked up, between seven and 14 days

10   they're sitting there without a locomotive, so what

11   we're trying to do is I'm trying to get to whether

12   or not again those 4300 and 150 you just pulled out,

13   or however many you just pulled out, we're not going

14   to have that problem anymore.

15   MR. GEHRINGER: So it's the first step in

16   working towards the solution of not having that

17   problem. And the way to think about that, at least

18   the way I think about it, is when I mentioned to you

19   that we have 70 to 90 excess trains on the network,

20   the average train across the system will have three

21   locomotives on it. So in that, you have 210 to,

22   say, 270 locomotives.

1   It's those locomotives that are continuing

2   to be on manifest trains predominantly. That's

3   where we have the excess inventory.

4   As we work those off, they become

5   available or more available to go to the bulk system

6   that you're referencing, so we cannot have that many

7   trains holding.

8   So it's all connected, and I believe

9   you're seeing that the correct way.

10   BOARD MEMBER PRIMUS: Okay. So -- but in

11   the end, so when are we going to get to the point

12   where we're not going to have, like I said, the sort

13   of delays that we're having now?

14   MR. GEHRINGER: When we get train -- or

15   active train count, which has been in the 690 to 720

16   range, every train that we reduce will help us. But

17   to make a meaningful difference to your question, we

18   need to be able to get back into the 630 number,

19   where we can free up those additional locomotives.

20   BOARD MEMBER PRIMUS: And how long do you

21   think those 70 to 90 trains will need to be off the

22   network?

1   MR. GEHRINGER: I think that's largely a

2   function of how successful we are collectively at

3   reducing the operating inventory, the excess

4   operating inventory that's out there. And as I

5   mentioned earlier, we're seeing progress on that. I

6   see it internal to our decisions when we reduce 2 to

7   4 percent of our own fleet.

8   When I see our operating inventory over

9   the last 10 days drop from 205 to 199,000, that's

10   encouraging. To see some of tower customers

11   voluntarily agree to reducing inventory, that's

12   encouraging.

13   So that's the momentum we need to keep up.

14   I realize you probably would prefer that I tell you

15   it's going to be on this specific date.

16   I think it's in the first half of this

17   year. But we've got to see continued progress

18   across the board as one collective unit.

19   BOARD MEMBER PRIMUS: I don't need a date.

20   We're moving forward, and that's the most important

21   thing.

22   Next subject is the embargoes. And you

1   know, I have to tell you that I take -- I know we're

2   going to differ, but I take a different look at that

3   embargoes. It's sort of -- for me it's put in place

4   to sort of keep yourself out of trouble, if you

5   will, or to protect yourself.

6   And, you know, unfortunately for you guys,

7   it's more common than anybody else. To date, you

8   guys are far and away the most embargoed railroad of

9   all of them.

10   I mean, so far this year, well, at the end

11   of March you guys had over 299 embargoes. There's

12   nobody closer than that. I think the closest one is

13   12. Embargoes last year, 662.

14   I mean, to me that just shows a great

15   inefficiency in the line and what's going on and an

16   inability to really deliver, honestly, to the

17   customers. I think it's any embargoes, metering,

18   whatever you want to call it, that's penalizing your

19   customers for the inefficiencies on the network, is

20   how I see it, because you're telling people that,

21   look, you know, we have a business to run and we

22   signed a contract with you to move our freight. And

1   even though our productivity and what we're saying

2   is not going up, it's going up to inefficiency on

3   the lines, we've got to pull cars out of our own

4   storage to keep our productivity around.

5   But you're telling them now that, okay,

6   we're going to penalize you for doing that. But

7   it's not their fault, as you just said. You know, I

8   appreciate you when you said that, that hey, this is

9   not -- that's not their problem.

10   But you're making it their problem because

11   now, you know, we've heard from oil producers and

12   saying that, you know, they can't just turn a lever

13   and shut down production because that's going to

14   increase gas prices. We've got, you know, grain

15   folks and others who have been -- who are delayed,

16   and that's raising the price of food.

17   We've gotten grain overseas that, you

18   know, the wheat, their wheat is not going to be on

19   market, so our American farmers have to be able to

20   take advantage of that. That may not happen for

21   reasons.

22   So, you know, I've got to -- like I said,

1   and the fact that you guys are doing it far away

2   more than any other railroad is, frankly, beyond

3   concerning to me.

4   Like I said, you're averaging 100

5   embargoes a month now, this year, which will put you

6   way over 600 -- where you were last year. And if

7   you talk how last year was a tough year, you know,

8   it looks like this is even tougher this year.

9   So, you know, how do we get out of this

10   embargo phase? I see that as the wrong way to go,

11   but how do we do that? How do we address that?

12   MR. GEHRINGER: Sure. So if you will, I'm

13   going to differentiate between the two ways you

14   talked about embargo and make sure we talk about

15   both of them.

16   So let's put aside the current

17   conversation around metering at this moment, and

18   we'll focus on, to your point, the embargoes year to

19   date.

20   I'll remind you, and I'm sure you're aware

21   of it, but for everyone else, we go through an

22   exhaustive process way in advance of an embargo

1   where we engage the customer through our customer

2   care service group, when we're talking to them about

3   why are you accumulating inventory. Those may be

4   private cars or UP cars, but they are asking the

5   question of why do you continue to accumulate

6   inventory at your facility, and then also what our

7   serving need is.

8   You heard today in the testimony somebody

9   mentioned minimum inventory thresholds. Those are

10 thresholds that are designed to establish a certain

11 number of slots in a serving yard for a customer.

12   So they actually have in most cases, in

13 fact the majority of cases, they have two places to

14 park. They first have their facility to hold cars,

15 and then they have our serving yard where we

16 allocate them spots.

17   That process, we to your point do not take

18 that lightly. We ask them in advance of the embargo

19 to say can you provide us a plan to be able to work

20 this out without an embargo.

21   We also look at our own service. If we're

22 not delivering on first mile-last mile above 80

1   percent, then we can't embargo them because it's

2   just as much our fault, maybe even all of our fault.

3   But then only after the plan they provide doesn't

4   work would they do the embargo, so kind of period.

5   On the metering/embargo that we're talking

6   about here, you heard what I said, and I won't even

7   reinforce it more than to say that you were

8   absolutely right, we are asking the customers to

9   partner with us on this.

10   And the reason is very straightforward.

11   In the absence of collective partnership, as well as

12   the six items that we have to do really well as part

13   of our recovery, we'll continue to either perpetuate

14   about the same operating inventory or we'll grow

15   that inventory.

16   And as we've clearly shown and as you've

17   seen and I think commented on before, the railroad

18   will slow down. And now what we consider to be, as

19   has been described as a crisis now, it will only get

20   worse.

21   So our effort right now, our new thing to

22   try to focus on getting out of this faster, Member

1   Primus, is to have those conversations and see if we

2   can drive it. I'm sure we will learn a lot of other

3   things as part of the process, but that's the one

4   thing that makes us unique.

5   We are not trying to grind out a business

6   the old way of doing it. We're trying to identify

7   new opportunities to get out of it faster for the

8   benefit of the customers.

9   BOARD MEMBER PRIMUS: I appreciate that.

10   I look forward to following up and working with you

11   on that.

12   And so -- and I note the day is late. So

13   my last issue is about long trains. We've all been

14   talking about, that trains are getting longer.

15   Let me ask -- and people have talked about

16   reducing the size of trains.

17   Do you see the growing number of trains?

18   I mean, these trains that are 10,000 feet longer,

19   most don't fit in sidings, most block right away so

20   you can't get around these trains.

21   So if there are crew issues with these

22   trains, power issues with these trains, it doesn't

1   just affect that train, it affects every train

2   behind it and even in front of it.

3   And I think the issue is, you know, how do

4   we -- you know, when you look it turns into the

5   outlaw of trains, you know, that go past the hours

6   of service and so you run into crew issues there.

7   And it just sort of exacerbates and sort of next

8   thing you know, you've got a waterfall of events

9   where the crew shortages and everything adds up and

10   that potentially goes to the capacity issue.

11   So have you guys thought about that idea?

12   Because everyone is talking about longer and longer

13   trains.

14   But is that really the best way to reduce

15   capacity? Should we be looking at trains that do

16   fit in sidings, that aren't outlawed, that can --

17   that we can move a little bit more efficient and

18   effective for all the network?

19   MR. GEHRINGER: So I would share two

20   perspectives with you. The first thing I would

21   share is this is the fourth year, when it's

22   completed, of our work to continue to invest in

1   siding and siding extensions.

2   In total we've invested $400 million.

3   We've increased or installed new siding at 52

4   different locations.

5   Why is that critically important? It's

6   important because when we build our transportation

7   plan, we restrict train length on certain corridors.

8   So we don't take, for example, a

9   12,000-foot train and put it on a corridor that only

10   has 8800-foot sidings. We want to continue to make

11   the investments in the areas where we can run longer

12   trains and be able to then run those longer trains

13   on there.

14   That will not be over the entire railroad.

15   There are places that geographically it just doesn't

16   make sense to do that.

17   BOARD MEMBER PRIMUS: So are you saying

18   you don't run long trains on routes that don't have

19   sidings to handle them?

20   MR. GEHRINGER: It's a matter of how many

21   long trains you run. So you've got your balance on

22   every one of your corridors.

1   So, for example, we can go and look at the

2   corridors from El Paso to, say, Kansas City. That's

3   designed to run a certain number of trains that are

4   longer than, say, 8000 feet. That would be true of

5   every single corridor, but that doesn't mean that we

6   do it every case just because we can.

7   It depends largely on what we're

8   transporting and what we could build that train to.

9   BOARD MEMBER PRIMUS: But the longer train

10 on that network does slow the network down because

11 it can't go on sidings, so if there needs to be a

12 crew change, if there is a power issue, that train

13 has to sit in the right of way and other trains

14 can't get around it.

15   MR. GEHRINGER: I think you could find

16 examples that would be across the whole spectrum,

17 from trains that make that part of the network go

18 faster because the corridor can handle that so

19 others in some cases it may make it a little bit

20 slower.

21   But it's the whole spectrum. I wouldn't

22 say definitively it's going to make them slower.

1   BOARD MEMBER PRIMUS: I would suggest that

2   again, you guys spent that $400 for those 50. I

3   think there's a lot more money that you guys have

4   that you should spend on those projects.

5   I think it's more than 50 you need. There

6   are a lot more, if you want to reduce capacity, if

7   you want to increase velocity, you've got to do all

8   those things. And if you're doing one 50, there's

9   more that you can do.

10   And there's plenty of money. I know you

11 guys have plenty of money to do it. You're spending

12 more on buybacks than you are on capital

13 expenditures.

14   So I think you should seriously look at

15 that operation in terms of how you want to expand

16 that network and grow that network so you can in

17 turn grow velocity.

18   MR. GEHRINGER: This year is an example of

19 that exact point. You know, last year we had $300

20 million in our capacity and commercial facility

21 budget. We increased that 100 percent, so there's

22 600 million in there this year.

1   It does not just include siding

2   extensions. That's about 25 percent of the spend.

3   It also includes portions of double track, to your

4   point in certain areas that are bottlenecks or that

5   we believe based on our volume growth could become

6   bottlenecks.

7   So I agree with you.

8   BOARD MEMBER PRIMUS: Good. Tell Lance

9   that.

10   MS. WHITED: I do think we want to be

11   clear though, we do spend more in capital than we do

12   on stock buybacks. We were clear about that in our

13   earnings release.

14   BOARD MEMBER PRIMUS: How much did you

15   spend last year in capital expenditures?

16   MS. WHITED: 3.1 billion.

17   BOARD MEMBER PRIMUS: How much did you

18   give in buybacks last year?

19   MS. WHITED: 1.2?

20   BOARD MEMBER PRIMUS: No, it's total.

21   Total is almost -- a little bit more than that.

22   MS. WHITED: Sorry. I was quoting a

1   quarterly number. I apologize for that.

2   BOARD MEMBER PRIMUS: Because I was around

3   7 billion, so from that, I mean, I've seen the press

4   releases on it. So I mean, that's a big difference.

5   MS. WHITED: I apologize. I was quoting a

6   quarterly number. That's my mistake.

7   BOARD MEMBER PRIMUS: Okay. Mistake

8   taken. But I think the idea is you're spending a

9   lot more and giving it back to your shareholders

10   than putting it into -- investing it in there,

11   especially when you have, you know, these service

12   issues.

13   Like I said, I'd rather see that money

14   going to pay raises and expanding of the

15   infrastructure. I think that's more -- or even

16   rebates for your customers who are getting screwed

17   on service right now. I think that's a great way to

18   put it.

19   But anyway, I appreciate you guys, Eric,

20   under fire. We've had our conversation before, and

21   I appreciate that as well. So thank you, and thank

22   you to the Board for indulging me.

1   CHAIRMAN OBERMAN: I'm going to just

2 follow up with a couple of points and then I will

3 try to wrap up this panel.

4   Just according to our reports that we

5 have, and this is just a follow-up on Robert's

6 point, in 2021, UP had about $7-1/2 billion in stock

7 buybacks and about 2-3/4 billion in dividends,

8 somewhere close to 10 billion back to the

9 shareholders.

10   Here's my question, and it really is a

11 follow-up dealing with the long trains. We got a

12 report from KCS, who are not here but they weren't

13 asked to be here, and I don't know if you've seen

14 it, but in terms of an immediate alleviation of a

15 problem, let me just read a couple of excerpts.

16   Other carriers have made operational

17 changes such as operating longer trains through the

18 Houston area and shifting work from closed yards

19 into the main yards in Houston. These changes have

20 caused their trains to sit on the mainline instead

21 of in sidings because they no longer fit in the

22 siding, or to be assembled and broken up on the

1 mainline because they are too long to clear the main

2 completely without being split to move into and out

3 of the yard.

4   They then say, to help resolve the Houston

5 congestion problems, KCS has actually offered its

6 crews on several occasions to move BNSF and UP

7 trains that lack crews off the mainlines so KCS

8 trains can pass.

9   Can we do something about easing

10 congestion in Houston at least in the immediate

11 future, a temporary measure if not a permanent one?

12 I think it involves both of you.

13   MR. GEHRINGER: Okay. So let me start.

14 When we talk about Houston, we're talking about

15 Engelwood yard, and we're talking about when KCS

16 comes in, it would be on the Union Pacific yard.

17   I haven't seen that report. So I will

18 take away the follow-up of looking at that.

19   CHAIRMAN OBERMAN: I believe they filed it

20 on Friday.

21   MR. GEHRINGER: Okay. I'll pull it up.

22   My initial reaction would be one of

1 surprise. We've put a quarter of a billion dollars

2 into those two yards in the last three years. Those

3 investments have focused on the extension of tracks

4 in the Indy yard so we can yard trains.

5   It's also fed by our toll road which is a

6 triple track section of track. So the idea we would

7 have three tracks blocked all the way across, I

8 don't see that very often. But rest assured, we

9 will follow up.

10   MR. GARLAND: Similar comment. I haven't

11 seen the report, but the Houston complex is

12 something we collaborate on an almost daily basis

13 really well with the UP.

14   That scenario, it's a joint-type

15 operation, and we look at train speeds on a daily

16 basis, we have multiple service reviews every other

17 month. So we'll definitely look at that report and

18 get back with you.

19   CHAIRMAN OBERMAN: Well, thank you. I

20 mean, this is a report, John Orr wrote the report, a

21 pretty well established railroader. One of your

22 fellow Class Is. You guys have to talk to each

1 other, but I'm going to ask you both to follow up

2 with him and get back to us. Anywhere we can get

3 some immediate congestion relief by temporary

4 operational changes, if not permanent, we need to do

5 it.

6   Really, you need to pull out all stops. I

7 think that's clearly the message from this hearing.

8   That was all I had.

9   Thank you all. Your endurance is

10 appreciated and well noted. We will be in

11 communications, I'm sure. Thank you.

12   It is 4:42. We're going to take a

13 10-minute break, and then we're going to finish up

14 with CP and CN.

15   (Recess.)

16   CHAIRMAN OBERMAN: We are back in session.

17 We have CP and CN. Let me just make sure we have

18 everybody we're supposed to have. Rob Reilly, it's

19 Kathy Gainey, I see, David Meyer.

20   MR. MEYER: I'm over here.

21   CHAIRMAN OBERMAN: Wait, I skipped ahead.

22 Matt Warren, sorry. You all look alike. And James

1   Clements.

2   You two railroads have the distinct

3   advantage of being at the end of the very long day,

4   so let's move quickly.

5   CN, you're on.

6   MR. REILLY: Good afternoon. My name is

7   Rob Reilly, I am executive vice president and chief

8   operating officer at CN. I testified at last

9   month's hearing on reciprocal switching, and I

10   welcome the opportunity to speak to you again today

11   about service.

12   As I mentioned in my last testimony, I am

13   responsible for CN's operation in Canada and the

14   U.S. with responsibility for the company's

15   transportation, engineering, mechanical, network

16   operations and safety functions.

17   I'm also responsible for resource planning

18   for crews and maintenance, as well as locomotives.

19   With me today is Kathy Gainey, our deputy general

20   counsel, Matt Warren of Sidley Austin, and Tom

21   Sullivan, CN's director of labor relations in the

22   United States.

1   The Board is understandably concerned

2   about rail service in the United States, and the

3   Board's weekly service data that it collects from

4   railroads provides that transparency in service

5   trends.

6   CN welcomed the invitation to participate

7   in this hearing to provide the Board with

8   information about CN's service and employment

9   efforts in the U.S. during these unprecedented

10   times.

11   From a global pandemic where demand for

12   rail transportation dropped more than 20 percent to

13   supply chain disruptions and ocean shipping, port

14   throughput, truck driver shortages, to a war in

15   Ukraine, to inflation and more. One shock can have

16   ripple effects in other areas, and challenges on one

17   railroad can impact others on the interconnected

18   rail network.

19   CN is facing a landscape that could not be

20   predicted, and while CN is forecasting

21   low-single-digit volume growth this year for 2022,

22   uncertainty remains and fear of recessions are not

1 uncommon.

2   I am proud of the way CN has navigated

3 through these challenges, and our recovery at the

4 end of Q1 2022 from recent external shocks is a

5 testament to the resilience of our network and

6 reflects the benefit of the historic capital

7 investments CN has made in our network.

8   In the last three years, CN has invested

9 upwards of $10 billion just, just over 20 percent of

10 its revenues. CN's historic investment in its

11 network is based on our growth mind-set.

12   For example, in the past decade, CN has

13 grown its intermodal volumes more than 80 percent,

14 leading the way in converting truck to rail. It is

15 a testament to our railroaders who work hard each

16 and every day to provide safe, reliable service for

17 our customers.

18   A significant challenge for CN in

19 particular has been the unprecedented severe weather

20 in western Canada. Catastrophic rains in British

21 Columbia at the end of 2021 caused significant

22 highway, track and bridge washouts. CN worked

1 around the clock to return our tracks to service,

2 restoring more than 50 outages that had portions of

3 our mainline out of service for approximately three

4 weeks.

5   These major disruptions were followed by

6 extreme cold temperatures in western Canada. For 85

7 percent of the days in January and February this

8 year, temperatures triggered what we call tier 2

9 operating freight rail conditions. That's when

10 conditions are minus 23 degrees Fahrenheit and

11 colder.

12   At these temperatures, train lengths must

13 be reduced to maintain safe braking functionality.

14 Running more trains that are shorter requires more

15 locomotives and crews, and tier 2 restrictions

16 essentially reduce available freight capacity on

17 those corridors. And the end result is CN moves

18 less traffic while these are in effect.

19   This occurred at a time when demand has

20 been strong, and as a result, traffic to and from

21 this part of our network became backlogged until the

22 temperatures improved on a consistent basis. We saw

1   that break towards the end of February. These

2   challenges at the end of 2021 and first quarter of

3   2022 coincided with the surge in COVID basis from

4   the omicron variant during which we had a

5   significant number of employees out.

6   Thankfully, those numbers are now trending

7   down, but there still is uncertainty about future

8   variants as we continue into 2022.

9   With the weather moderating at the end of

10   February, we were able to regain fluidity on our

11   network in the month of March and catch up most of

12   the backlogged traffic. We saw all of our core

13   operating metrics on our network rebound in March

14   and continue to improve in April.

15   Our daily GTMs are up 24 percent, train

16   speed improved 18 percent, train length up 9 percent

17   from January lows. And our car velocity is up 35

18   percent, which is a systemwide metric of how many

19   miles a car moves per day that CN publicly updates

20   every week on our Web site.

21   CN's metrics reported on a weekly basis to

22   the STB tell a similar story. As of April 20, our

1 average train speed and average terminal dwell have

2 improved since February even as traffic levels have

3 continued to increase.

4   In fact, CN has handled all time record

5 volumes on our U.S. portion of our network in March

6 and in April so far. Last Friday, in fact, CN broke

7 an all time record for volume moved in the U.S., and

8 then that was followed by Saturday, which was just

9 slightly behind the volumes we moved on Friday.

10   I am pleased these metrics are trending in

11 the right direction, we're still cognizant of the

12 challenges face the transportation sector and are

13 taking proactive steps by planning for demand.

14 Today I will focus our plans for crews and

15 locomotives, starting with crews, I'll address CN's

16 train and engine or T&E employment, as I understand

17 the Board wants to understand whether railroads have

18 sufficient crews now and sufficient plans for

19 staffing demand anticipated in 2022.

20   Because it can take a minimum of six

21 months and up to a year to recruit and train crews,

22 CN must begin the hiring process months in advance

1   if there is anticipated increased demand or traffic

2   exchanges. To determine the appropriate T&E

3   employee levels, CN evaluates a number of factors,

4   but one of the most important is forecasted traffic

5   demand. Our planning for crews depends on frequent

6   and up-to-date forecasts from our customers.

7   Unfortunately, it's been very difficult to

8   reliably forecast the demand for 2022 with the

9   pandemic, various external shocks, such as the war

10   in Ukraine, chip shortage, high prices of natural

11   gas and lumber, and supply chain disruptions in

12   vessel schedules. We review and update our forecast

13   at points in time to compare our plan for staffing

14   and change the staffing plan if needed.

15   The trends in those forecasts suggest our

16   plan for crew hiring in the U.S. would be adequate

17   for the month of March 2022. Actual demand in March

18   2022 came in unexpectedly higher on those forecasts.

19   CN has hired more than 120 T&E in the U.S.

20   in 2022 through mid-April, in addition to hiring

21   engineering and mechanical employees. In some

22   locations of our U.S. network where CN is needed to

1 unexpectedly and quickly increase T&E head discount,

2 we have offered signing bonuses and retention

3 bonuses of up to $10,000 as an incentive to hire

4 experienced conductors or engineers who can start

5 sooner than someone new to the rail industry.

6   CN's hiring efforts are reflective in the

7 data we report to the STB each month. Compared to

8 July of 2020, we've hired more than 516 more than

9 what we had at that time. And as of March 2022, our

10 T&E employee level is higher than it was in 2021.

11   There are some regions in our network

12 where demand has been unexpectedly high with the war

13 in Ukraine, including shipments of grain to the Gulf

14 for export. Typically in Q2, we see grain shipments

15 in the U.S. start to decrease as some customers ship

16 to barge shipments on the Mississippi River. But

17 that typical decline has not occurred thus far this

18 year.

19   With the unexpected demand in grain and

20 strong demand in other commodities and based on our

21 forecast for the remainder of 2022, we are

22 continuing to hire in preparation for Q4 2022.

1   Through the end of 2022, based on projected demand

2   for later this year, we have a plan to hire over 300

3   T&E employees in the U.S.

4   I heard concerns about the railroad's

5   ability to attract and retain talent given the low

6   unemployment rate and the Great Resignation.

7   CN is investing for the long term in our

8   talent and developing the next generation of

9   railroaders. Focusing on T&E in the United States,

10   our conductors are paid based on an hourly system

11   rather than mileage-based system of other collective

12   bargaining agreements.

13   Yesterday rail labor raised the quality of

14   life for T&E employees. CN generally does not use

15   pool assignments for our scheduled trains or over

16   the road trains. Our philosophy of the scheduled

17   railroad allows CN to offer day-on, day-off

18   schedules for our train crews.

19   The general pattern are six days on and

20   two days off for scheduled over the road

21   assignments, five days on with two days off for

22   local and extra board assignments. All days are --

1   all days off run consecutively. In addition to the

2   scheduled days off, the hourly pay agreement also

3   provides CN T&E employees with attractive

4   compensation for entry-level conductors in the U.S.

5   can earn more than $90,000 annually.

6   Changing to locomotives, there has been a

7   lot of interest about whether railroads have

8   sufficient locomotives in place to handle the demand

9   in 2022. We work hard to ensure that we have the

10 locomotives that we need on our network, and we have

11 taken various steps to increase the availability of

12 locomotives in 2022.

13   Because acquiring new locomotives

14 typically take nine to 12 months, CN must plan

15 acquisitions of new locomotives well in advance.

16 Since 2018, we have acquired over 260 new

17 locomotives.

18   In 2021, in the first quarter of this

19 year, we acquired an additional 75 high-horsepower

20 locomotives, and added an additional 13

21 low-horsepower locomotives from the secondary

22 market. That secondary market can be made available

1   sooner than new locomotives.

2   As shown in our service metrics, CN's

3   weekly average trains held per day for locomotives

4   has been extremely low and in the most recent week,

5   it was zero.

6   On customer demand, I'll give you a

7   perspective on our customer demand in 2022. CN's

8   recent recovery from the washouts from extreme cold

9   in western Canada has occurred in the context of

10   strong current demand across multiple commodity

11   groups, and unexpected changes in traffic mix. For

12   one thing, there have been surprising shifts in

13   demand in certain industries, including increase in

14   exports from the Gulf of U.S. grain, iron or

15   originating in Minnesota, crude oil terminating in

16   the Gulf and coal originating from the Illinois

17   Basin.

18   In addition, forest products have seen

19   volatile demand since the pandemic started. Prior

20   to the pandemic, volume for forest products were

21   trending down as much as 20 percent. This trend was

22   followed by an unexpected surge in demand in

1   response to new home construction, home improvement,

2   do-it-yourself projects during the pandemic, which

3   triggered higher lumber prices.

4   Today high inflation levels and rising

5   interest rates could negatively impact the housing

6   market and the price and demand for lumber.

7   CN has also taken steps to respond further

8   to accommodate the current unexpectedly high traffic

9   demand in the Gulf due to the war in Ukraine. CN

10   has adjusted its track and other infrastructure

11   maintenance work block schedules so maintenance work

12   blocks between Jackson, Mississippi, and Memphis,

13   Tennessee, have been rescheduled for later in the

14   summer rather than in the spring, while maintenance

15   work near Memphis yard and Fulton, Kentucky, are

16   planned for the spring.

17   We're also focusing on hiring, as I noted

18   earlier. I would also point out some of our efforts

19   to improve safety and increase track capacity will

20   also be beneficial should demand remain high.

21   For example, CN's autonomous track

22   inspection program, which we call ATIP technology,

1   is mounted on a railcar that operates on a train in

2   revenue train service and provides real-time

3   geometric data without interrupting railroad

4   operations. The data we collect supports predictive

5   maintenance capabilities and reduces the time

6   required for manual inspections, which increases

7   network capacity and fluidity.

8   Our use of the ATIP technology in the U.S.

9   has resulted in a 51 percent reduction in delays

10   from engineering related am stores, on our key

11   Chicago-New Orleans freight corridor since its

12   introduction in 2019. Maintenance and repair

13   workload has increased 16 percent through 2020, as

14   more conditions were identified by this technology.

15   This is critical on CN's mostly single

16   track network with passing sidings in the U.S.

17   Additionally, CN has responded to

18   unprecedented challenges resulting from the

19   disruptions to international and domestic intermodal

20   supply chains. The volatility and flows of

21   international container traffic through CN's inland

22   intermodal terminals, and increased container dwell

1   times have made it difficult to plan for resource

2   allocation and move shipments as quickly as we'd

3   like.

4   However, CN has taken creative and

5   decisive action to help alleviate these impacts,

6   including offering rebate incentives for customers

7   to pick up containers and leasing additional

8   off-site storage locations in Chicago to relieve

9   congestion.

10   CN also initiated a new priority

11   intermodal train service between the Port of Prince

12   Rupert and Chicago, cutting the overall transit time

13   from Shanghai to the Midwest significantly.

14   The war in Ukraine has significantly

15   shifted global trade patterns with regard to grain

16   and crude and these patterns might further shift

17   moving forward, and COVID continues to impact the

18   global supply chains, the most recent example being

19   Shanghai going into lockdown starting in late March.

20   Although there's uncertainty when it will

21   fully reopen, with the exception that containers in

22   Shanghai will continue to resume moving in 2022, we

1   are taking steps now to promote fluidity in our

2   terminals and working with our customers to plan for

3   demand late in 2022.

4   CN has remained relatively congestion free

5   at our intermodal terminals in the U.S., including

6   the Chicago terminal.

7   Looking ahead to the rest of 2022, we

8   carefully are monitoring the uncertainty around

9   demand and proactively communicating and meeting

10   with our customers. We take pride in our ability to

11   communicate with our customers, especially as it

12   relates to their expected service.

13   Therefore, we have implemented several

14   communication tools and resources to help keep our

15   customers informed. The CN One Web site is a

16   comprehensive platform that allows customers to

17   track and trace their CN shipments in real time,

18   review updates to planned service and make changes

19   to their scheduled service, just to name a few of

20   the features.

21   This resource complements our 24-7 service

22   delivery team who are available to assist customers

1 with more complex requests or situations.

2   The service delivery team can be contacted

3 via toll free number, 1-866-926-7245, or via a

4 direct e-mail.

5   With respect to our customers, I do want

6 to address one thing I heard from yesterday's

7 conversation. CN does not retaliate against its

8 customers.

9   CN promotes the highest business

10 standards, including integrity and respect in

11 everything we do, and everyone we deal with. This

12 includes our employees, our customers and more

13 broadly, all of our stakeholders.

14   I am proud of how CN has navigated the

15 tumultuous times during these last five months. We

16 will continue to take proactive steps to address

17 present challenges and plan for the rest of 2022 to

18 provide reliable, safe service for our customers.

19 And thank you for the opportunity to speak, and

20 welcome your questions.

21   CHAIRMAN OBERMAN: Rob, you have to --

22 thank you. And by the way, even though you said the

1 hour was late, nobody is going to be cut off. We'll

2 hear everything you want us to hear.

3   So CP, you're up.

4   MR. CLEMENTS: Thank you, Mr. Chairman and

5 esteemed board members. CP appreciates the

6 opportunity to be here this morning and give you a

7 little bit of an overview in terms of how we

8 approach our operations and our resource planning.

9   I am James Clements, I am the senior vice

10 president, strategic planning and technology

11 transformation. I have a 28-year career in Canadian

12 Pacific that's covered many different departments

13 from finance, sales and marketing, car management

14 and my current corporate responsibilities. Within

15 those current responsibilities include what we call

16 our network service center that does much of the

17 transaction processing and customer service for the

18 company, so I have a direct perspective in terms of

19 what's going on on the customer service side.

20   I'm going to provide you a few brief

21 remarks. I'm going to overview how we approach

22 resource planning, go through a few of our key

1 metrics. I will review our workforce and our hiring

2 plans and approach, and I will close with some

3 finishing remarks on how we execute on PSR.

4   Going to the first slide on resource

5 planning, we have what I would call a robust

6 approach to resource planning. The goal of that

7 resource planning approach is to put the right

8 resources in place to meet the demand that we're

9 seeing in the marketplace.

10   I would describe it as a bit of an art in

11 terms of resource planning. When you look, it's

12 easy to eliminate resources and respond in a

13 downturn. It's much trickier to respond in an

14 uptick in demand.

15   And a lot of that comes from the lead

16 times, I think you've heard from others around

17 locomotives that, depending on what type of

18 locomotive you're looking for in the market, that

19 can take over a year. Hiring and training crews is

20 a six- to eight-month process for us.

21   And the other one that's important to

22 network operations is adding infrastructure. And

1   when you look at things like permitting and lining

2   up construction with order lead times, and depending

3   on where you are, the length of a construction

4   season, that can be a one- to three-year process to

5   put significant assets in the ground that would

6   allow you to expand network capacity.

7   So when you're looking at your resource

8   planning, you have to have those effective processes

9   so that you can see and make estimates about what's

10 out in the future and make assumptions and adapt

11 your network and your resource plans to that.

12   And one of the things that really is a

13 challenge, and I've heard the Canadian national talk

14 a little bit about it, is when you have that

15 unforeseen variability in demand.

16   If you have been looking out and you think

17 that the grain crop is growing at a traditional

18 improvement in yield and market share and what your

19 customers are doing from their feedback, and then

20 you suddenly have a bumper crop or you have

21 additional demand from another line of business

22 moving through that area, and you've made

1   assumptions, that's where the responsiveness gets

2   more challenging.

3   In order for us to address that, we have a

4   process that looks three years out. We do update

5   that annually.

6   And you can imagine, when you're trying to

7   look out three years, a lot can change in the world.

8   And many events happen. So that's why we refresh it

9   annually.

10   We then take it down to a more granular

11   level on an annual basis. That's where you really

12   get into, and I think others have described it, how

13   many crew starts do I expect in a territory, how

14   much volume do I expect, what operating plans do I

15   have. And you go through all the mathematics to

16   estimate what resources you need in terms of

17   capacity, locomotives, railcars, crews, maintenance

18   employees, et cetera.

19   But again, that's something that's a point

20   in time, and the markets change. So we then also

21   have a monthly cadence where we are trying to

22   collect information. We rerun the plans for the

1   balance of the year and continuously calibrate our

2   resources within that shorter-term period.

3   And then obviously, once you come down

4   into trying to execute, you need to be very

5   tactical. And so we have weekly planning and, if

6   needed, daily resource allocation and tactical

7   planning sessions to continue to drive the resources

8   to the demand and react to the dynamics in the

9   market, plus events that occur across the railroad.

10   One of the things we think that helps us

11   there is we've designed the organization structure

12   to really focus on this activity. And we have a

13   vice president of market strategy and asset

14   management, he reports directly to our CEO, and I

15   would call it his role to create constructive

16   tension in the organization.

17   As an example, the salespeople are going

18   to have all sorts of ideas and huge, you know, if I

19   can get extra boxcars or grain cars, I could then go

20   after this opportunity. So they have one view of

21   the world.

22   The operating team is going to have

1   another view of the world. The job of that person

2   is to be the meat in the sandwich between the

3   operating team, the sales team and try and figure

4   out what the best approach to meeting the demand,

5   doing it with the right resources, getting them in

6   the right place and being successful and efficient

7   at the same time.

8   And so that organization of structure

9   allows us to be nimble and dynamic in terms of how

10   we manage the resources and find that balance

11   between operations and sales and the customer

12   demand.

13   So when we look at that model and how

14   we've applied it, I think on the next page, if you

15   look at our performance metrics, it has resulted in

16   we think success. There are certainly what I would

17   describe as episodic issues that have affected the

18   network from time to time. We too saw the cold snap

19   in January, and that does, you know, in Minnesota

20   and North Dakota and the western part of our

21   Canadian network, certainly result in shorter

22   trains, slower trains and reduced capacity.

1   We saw a wave of omicron in January that

2   affected crew availability.

3   When you look across from 2019 where our

4   train speed has been, our terminal dwell and trains

5   held for crews as examples, there hasn't been what I

6   would call a systemic degradation in the metrics.

7   But certainly I will admit there has been episodic

8   events that have affected them.

9   The other thing I wanted to point out, I

10   know that grain has been specifically a concern

11   that's been raised in these proceedings, and so on

12   the right-hand side of the chart, I have put a

13   little bit of a focus on U.S. grain.

14   Where we sit today, our orders that are

15   greater than 11 days as we report to the STB is

16   better than it was at this same time in 2019, before

17   the pandemic. We did have a bit of a spike that had

18   some episodes in there, but I would also point out

19   demand in U.S. grain is 50 percent higher than it

20   was in 2019, at least for movement on CP. And we've

21   had a very unique situation.

22   And while your markets, the CN's markets,

1   were flowing to the Gulf, we saw a huge demand

2   increase of flowing corn for feed into Alberta from

3   Minnesota and North Dakota because of an extreme

4   drought that occurred in that part of the country.

5   We've had a 2100 percent increase year

6   over year in demand in that lane. We were looking

7   at supply chains that were built for small volumes

8   and small block shipments turn into unit train

9   movements overnight into infrastructure not designed

10   for that.

11   So we did respond. We've been moving that

12   successfully, but I think some of that, as we

13   adapted and responded to that huge spike in demand,

14   is part of what drove the delays in grain car orders

15   in late last year and early part of this year.

16   So that's just an example of how our

17   planning process works, and again what we think has

18   been successful performance in 2022.

19   Moving to the next slide, I will segue to

20   another important issue that's been sort of the

21   focus of inquiry here, is about the employment and

22   resources that we have available to move freight.

1   And we have been through our planning

2 process trying to maintain an appropriately sized

3 workforce. We certainly see demand increase in the

4 year.

5   We think we will have single-digit carload

6 volume increases this year. And that means the back

7 half of the year is going to be quite strong.

8   And so we have a robust hiring plan

9 process to respond to that demand that we see

10 increasing.

11   At the very bottom, I'm showing you what I

12 would call our pipeline and the funnel of how we

13 have been seeing applicants come into our hiring

14 process. We've had over 23,000 applicants come into

15 CP this year.

16   As you go through the process, we've

17 screened -- we're currently screening about 4000.

18 We're in the process of interviewing another 2000.

19   We have to go through preemployment

20 security checks and drug tests, et cetera. We have

21 600 in that step on the process and 400 we're

22 working on finalizing the offers and bringing them

1   on board.

2   And to date this year, we've hired 662

3   people. I apologize for the eye test, but about

4   500-some of those are front-line unionized employees

5   that maintain track, maintain locomotives, fix

6   signals and operate trains.

7   So from that perspective, our target is to

8   hire a total of about 2000 people, 1500 front-line

9   unionized employees this year. That is designed to

10   meet both the growth and attrition that we're

11   forecasting across the company.

12   Where we sit today compared to the

13   pandemic, unionized labor in 2020 to now, we're up a

14   couple hundred in the U.S. We're down a little bit

15   in the U.S. on the management side. And we're

16   continuing to hire as we go into this.

17   I will reiterate the concern. We have

18   certainly seen record low unemployment as the labor

19   market has rebounded, and so that is certainly going

20   to make it more of a challenge for hiring for every

21   employer in both Canada and the United States.

22   So what are we doing about that tougher

1   labor market? Certainly one of the things that we

2   look at is we talk about what's the applicant

3   experience. So you talk about customer experience

4   on one side, we want the applicants to have an

5   efficient, clear, effective hiring process so that

6   they don't go, are they going to hire me, where am I

7   at, you know, and keep them moving and have them --

8   have their first touch with CP be a positive touch

9   so that it encourages them in what it might be like

10   to work for us as they get the job offer later in

11   the process.

12   We've also focused on the types of

13   candidates. You've heard about washout rates. So

14   we look at what are the experiences that the

15   candidates have in their backgrounds that would tend

16   to suggest they are going to be more successful in

17   the 7-24 railroading-type job, where you're out on

18   the property and working.

19   And so we've tried to screen and assess

20   candidates based on experience to maximize the

21   success.

22   We're leveraging technology to improve the

1 hiring process. We're doing virtual interviews.

2 We're doing social media campaigns now, where if

3 you're going to run, let's say, a job fair in

4 Davenport and you have somebody that's searching for

5 jobs in the Davenport area, you can actually now

6 with hiring -- paying for pop-ups in the Google

7 searches, et cetera, get pushed to the top of the

8 results list on those type of searches.

9   So we're enabling that through various

10 social media campaigns.

11   We're applying automated processes to the

12 recruiting workflow to both speed up the experience

13 and improve the experience for the applicant, as

14 well as maximizing the capacity of our HR team.

15   We're also using data and analytics to

16 drive our recruiting, target our recruiting and

17 enable our hiring decisions.

18   And then we're expanding our tools in

19 terms of how we market and attract applicants, why

20 do you get 23,000 applicants and how can you get the

21 best quality of applicant that maximizes the number

22 of employees you can productively put into our

1   workforce.

2   So we've again taken many steps to be

3   proactive to respond to a changing labor market.

4   And, you know, it doesn't guarantee success, but

5   we're very focused and working extremely hard to

6   meet the employment needs and work through the

7   demand on our network.

8   So finally, I'm going to pivot just a

9   little bit more here and talk a little bit about

10   PSR. And I think we've been successful in PSR. We

11   implemented it in 2012 and have been working at

12   getting better at doing it ever since.

13   And one of the critical pieces that we

14   would say, and I think we've heard a little bit of

15   commentary about siding lengths, et cetera, is you

16   need the network to be configured to support your

17   approach, your PSR approach to operations. The --

18   next slide. I missed the cue there.

19   When we think about that, there's a couple

20   pieces that are part of that PSR operating model.

21   You need the yards configured to be able to

22   efficiently handle the trains that are being

1 targeted into that yard, to be able -- you need the

2 yards to be able to handle the blocking and other

3 work that you're asking them to do. And then you do

4 need the sidings and the infrastructure between the

5 terminals so that you can efficiently move the

6 trains over the road.

7   We have spent about $750 million over the

8 last decade creating the infrastructure that is

9 needed to support our approach to PSR operations.

10 This has included many new sidings, many siding

11 extensions.

12   We have put in more centralized traffic

13 control on the network than we had a decade ago.

14 And then we have reconfigured various yards.

15   One example is that the St. Paul yard, we

16 had many of our tracks that were positioned at 68-

17 to 7200 feet in length, and we've extended those

18 from 98- to 10,300 feet. Obviously, some of that is

19 on the basis of the real estate that you have

20 available in the yard.

21   And so we have built what I would call the

22 foundation upon which you operate the PSR model.

1   And again, that goes to our ability to deliver those

2   metrics that I described and the success that we've

3   had in the last few years.

4   And when we look at that as a couple of

5   examples, customer satisfaction, which we started

6   tracking in 2014, we have seen it rise from 6.5

7   using the same survey methodology up to a 7.3. And

8   we actually do make commitments in our annual

9   reporting for ESG towards customer satisfaction.

10   And the other metric that I think is very

11   critical here is you have to do all of this safely.

12   And we've heard concerns about the ability to

13   operate long trains safely. And we have had the

14   lowest train accident frequency in the industry for

15   16 years. And in the last decade, we've improved

16   from a train accident frequency of about 1.8 down

17   to .99 at the end of 2021.

18   So through the implementation of PSR with

19   the right infrastructure, we've been able to

20   continuously improve on our safety record.

21   My closing comment would just be this, is

22   that, you know, we will continue to be focused on

1 running the operation that meets the needs of our

2 customers, and if we do that, you provide service --

3 you have what I would call a virtuous circle, and

4 you will see the other metrics improve in terms of

5 velocity if you execute on that service plan, asset

6 utilization.

7   What the outcome of doing all of that, of

8 providing the service and driving the asset

9 utilization is that you also do produce returns for

10 the shareholders. But that's sort of the output of

11 doing PSR well, it's not the reason that you do PSR.

12   With that, I would like to close my

13 comments.

14   CHAIRMAN OBERMAN: Thank you.

15   Patrick had questions.

16   I'm not sure who else does, but why don't

17 you go ahead.

18   BOARD MEMBER FUCHS: Thanks, Marty.

19   I want to start off by just highlighting

20 that your two railroads were not required to be

21 here, and you showed up and we appreciate that.

22   And I think the reason for that, and you

1   both have identified challenges, whether it's

2   flooding or strike. But we're not quite seeing the

3   same -- we're not quite seeing and hearing the same

4   issues with your network.

5   You know, I know that dwell and velocity

6   has gone in a negative direction. But, you know, we

7   just heard the other day from a large number of

8   agricultural shippers that, you know, CN's

9   north-south route and their agriculture lanes are

10   actually doing well. And I think, Rob, you spoke to

11   the demand that you're handling, and I think, James

12   you spoke to some of the infrastructure investments

13   you've made in the past.

14   So as a general question, looking at I

15   think what may have manifested to be some additional

16   resiliency, you know, is there something in your

17   incentives, say, on sidings or on assets or pay

18   practices that is different, or is it that you all

19   have adjusted to this operating model for longer?

20   You know, whoever wants to take it first

21   is fine.

22   MR. REILLY: Maybe I'll start. Just from

1   an incentive standpoint, and I'm not sure I can

2   speak for all of the Class I railroads, but all of

3   our senior leaders actually have part of their

4   incentive compensation tied to customer service.

5   We have a thing called a net promoter

6   score that actually goes out and surveys the

7   customers we serve and they rank us. And that is

8   part of all of our senior leaders' annual

9   compensation.

10   So I can't speak for the rest of the

11   railroads, but that certainly is one of them.

12   MR. CLEMENTS: You know, Rob has mentioned

13   incentive. We do have incentive on trip plan

14   compliance as a portion of our annual bonus

15   compensation calculation.

16   But in terms of, you know, does that

17   contribute to why we put the sidings in, we believe

18   that, as I said, the PSR model is the virtuous

19   circle. It provides service, and you do that by

20   executing your plan, your plan is focused on doing

21   that by spitting assets and controlling costs.

22   So just running the model well is how you

1   grow. I think we've had some of the strongest

2   growth in the last four or five years of any of the

3   Class I railways, and then it does result in the

4   return as well.

5   So we think just executing is the

6   incentive itself, and then you see the growth come

7   out of that.

8   BOARD MEMBER FUCHS: Thank you.

9   Robert Primus had some questions.

10   Robert?

11   BOARD MEMBER PRIMUS: Thanks, Marty.

12   I too want to thank both of you on the

13   panel for coming. Again, you guys weren't on the

14   firing squad list to be here, and yet you came, and

15   I do appreciate the presentation, especially being

16   so late in the day.

17   My interest is relatively quick.

18   Hey, Rob, you talked a little bit about

19   sort of operations and sort of like maintenance.

20   During the sort of Hunter Harrison years,

21   you guys sort of went away from the maintenance

22   curfew and having that sort of planned maintenance,

1   away -- maintenance, away -- window.

2   Do you see that coming back at all?

3   And both of you guys can answer that.

4   It's not just towards CN but CP also.

5   MR. REILLY: So I can't speak to Hunter

6   and that. He left CN 13 years ago.

7   But, you know, how we do it is very robust

8   in terms of how we plan our maintenance and how we

9   plan our capital. And it's actually daily, weekly,

10   we plan it out actually for the year in terms of our

11   capital gains, whether it's ties, rail,

12   undercutting.

13   And then we adjust it. And when I spoke

14   about that in my prepared comments, we're adjusting

15   it because the unforeseen -- we set that capital

16   plan up, we didn't necessarily see the demand for

17   grain that it is right now or ag products going to

18   the Gulf, mainly corn and soybean.

19   So we adjusted it because we needed to

20   increase that throughput for our customers. And

21   that's what I'm speaking about.

22   It is a very robust process where we

1   include our engineering team, our network

2   operations, our transportation team, and we adjust

3   our plan as needed.

4   BOARD MEMBER PRIMUS: So sorry, so

5   sticking with that, so as you adjust it, because

6   there's sort of the grain issue, so where do you

7   pick it back up? So how do you adjust it to

8   continue to meet that demand or that need for

9   maintenance?

10   MR. REILLY: So we still plan to finish

11   it, right. It isn't deferring it. But what I

12   mention there is that we've adjusted some of our

13   mainline work that would take capacity out of our

14   north-south route because the demand is so strong

15   really across all commodities north-south on our

16   railroad, we've adjusted that until maybe later in

17   the third quarter and moved some of that work into

18   the yards, where it doesn't impact that north-south

19   freight.

20   So that's what I'm talking about when I'm

21   talking about adjusting. And it's really getting

22   the work done but doing it in a different time frame

1   to adjust to where the demand is right now.

2   BOARD MEMBER PRIMUS: Thank you.

3   MR. REILLY: You're welcome.

4   MR. CLEMENTS: And I would say it sounds

5   like we have a very similar process in terms of a

6   robust planning process. When you talk about

7   looking out, we do know what the major maintenance

8   projects need to be, and again, our service design

9   team, engineering team and the operating center all

10   collaborate on figuring out the optimal way to

11   deliver the capital plan.

12   And Member Primus, to your question of

13   adjusting, one of the things that we did is in the

14   summer of 2020, we did have some lower volumes as a

15   result of things like auto-production and plants

16   curtailing with the pandemic. And normally in the

17   declining revenue space, the reaction may be to also

18   reduce your capital plan.

19   We saw that as an opportunity to pull

20   forward some capital because you had more track time

21   that you could make available to the engineering

22   guys. And we spent a little extra to get ahead of

1   it in anticipation that volumes ultimately would

2   respond and then that we would want to use some of

3   that track time and move volume when it returns.

4   So we took the opportunity when we saw the

5   window to get in. So it goes both ways.

6   If you need to clear out some capacity to

7   move a surge, you can do that. If you see a bit of

8   a lull, you can take that opportunity to deploy

9   extra capital.

10   BOARD MEMBER PRIMUS: Thank you. And I've

11   got one more question.

12   Since I've got you both Canadian companies

13   at the same table, I've got to ask this. I'm

14   interested to hear your perspective on how

15   regulatory requirements in Canada might have

16   impacted -- may have made the impact of PSR

17   different in Canada than it did in the United

18   States.

19   Everyone jump at that answer, I know. I

20   had to have one before you guys leave.

21   MR. CLEMENTS: At the end of the day, you

22   know, when you look at it, PSR is an overall

1 operating model, it's not driven by the regulatory

2 environment in which you operate. And so I would

3 say there's very little, if any, difference.

4   BOARD MEMBER PRIMUS: I guess what I'm

5 saying, I mean, we look at it on the American side

6 and we see how it didn't happen at exactly the same

7 way in Canada. You guys to admit that. The amount

8 of labor cuts that happened on the U.S. side for

9 those who implemented PSR, you know, cuts in capital

10 expenditures, you know, the sort of race to that OR,

11 and a lot of the issues, just talking about the

12 maintenance and deferred maintenance.

13   So it is a philosophy, I get that. But

14 there's also an implementation. And I think that,

15 you know, I want to see -- you know, I know

16 everybody praises Hunter Harrison as this guru.

17   I don't. I think, you know, his failures

18 showed more on the U.S. side than on the Canadian

19 side, and I think part of that is due to the

20 regulatory body that's there and the different

21 regulations that exist in Canada, and I just want to

22 get sort of that perspective.

1   If you don't think so, you don't think so.

2   You know, I've got to put you on the spot somehow

3   today, Rob.

4   MR. REILLY: So I will just give you my

5   perspective of 33 years in this industry, and most

6   of that was with a different company.

7   So I would just say from what I saw with

8   the CN experience, in terms of implementing PSR, it

9   was done probably a much longer period of time than

10 maybe what you've seen in the States. I'd probably

11 say the same for CP as well. I think it was

12 probably implemented over a longer period of time.

13   MR. CLEMENTS: The only other thing I will

14 jump in and say is that Canadian Pacific before PSR

15 was not exactly financially healthy. We were

16 issuing shares. We were issuing debt.

17   We had made decisions to downgrade a line

18 between Portage la Prairie and Edmonton from

19 mainline to branch line status. We were struggling

20 to have sufficient capital to deploy into our

21 network.

22   PSR or the operational changes that came

1   when Mr. Harrison became a CEO freed up capital

2   resources for us to reinvest in the network and make

3   it stronger and more robust and deploy, you know,

4   the sidings, the extensions, rebuild the yards and

5   put centralized traffic control in that we otherwise

6   would not have had resources to be able to do.

7   And so I think that the resiliency that

8   we've made shown in the last two or three years

9   would not necessarily have been there if we had

10   continued to operate the way we were operating prior

11   to PSR.

12   BOARD MEMBER PRIMUS: Thank you.

13   BOARD MEMBER FUCHS: Fair to say for both

14   of you all that not only would that free up capital

15   to invest but as you're evaluating specific

16   projects, if you were operating more profitably, you

17   can evaluate the ROI on those projects differently

18   and that also makes you more likely to invest. Is

19   that a fair -- fair assessment?

20   MR. REILLY: Very fair. And not knowing

21   how we put capital back into the railroad, but also

22   I talked about track inspection and some of the

1 technology reset the cash for that to do those

2 things that actually make us safer and more

3 efficient.

4   MR. CLEMENTS: Yeah, I would agree as

5 well. And also it allows us -- we talk about

6 getting sticky with the customer. You know, we

7 built an import facility in partnership with Maersk

8 in Vancouver, and certainly we wouldn't have

9 necessarily been able to do those sort of things

10 that have allowed us to build supply chain solutions

11 in collaboration with our customers.

12   BOARD MEMBER FUCHS: Thank you.

13   CHAIRMAN OBERMAN: Karen?

14   BOARD MEMBER HEDLUND: You may have just

15 in part answered the question that I was going to

16 ask, and that is we've heard a lot of testimony

17 earlier, I think, in this hearing about how the

18 problems with the ports in the United States have

19 driven task to Canada, Vancouver and other Canadian

20 ports. How have the railroads reacted to the

21 increase in volume coming through the Canadian

22 ports?

1   MR. REILLY: So we have seen volumes

2   coming into both the Port of Vancouver and the Port

3   of Prince Rupert, which is kind of the south tip of

4   Alaska, if you think about it. And by no means are

5   those ports equal in terms of capacity to what the

6   L.A.-Long Beach -- I worked six years out there in

7   that place.

8   But they are playing their part in terms

9   of that. And one of the examples I used in my

10   prepared remarks is that during the supply chain

11   crisis, which I recognize is still going on, but

12   last year during it, our intermodal team worked with

13   our customers to actually create a service from

14   Shanghai to Chicago. And it comes across the ocean

15   with a solid Chicago train, loads up at Prince

16   Rupert, the next stop is the our Markham yard on the

17   South Side of Chicago.

18   What we saw during that time when there

19   was tens and tens of vessels queueing up in the port

20   of L.A. and Long Beach, it was actually cutting two

21   weeks off the supply chain.

22   So Prince Rupert and Vancouver stand

1   ready, to the extent they can, to handle surges in

2   terms of volume.

3   BOARD MEMBER HEDLUND: One last question.

4   Could you describe your relations in general, and I

5   realize this could be the topic of a very long

6   discussion, but how you relate to the interests of

7   the First Nations in Canada? I think it could be a

8   good learner for some of the issues that we're

9   having in the United States.

10   MR. REILLY: Yeah. First Nations in

11 Canada is a critical stakeholder to what we do.

12   We actually have a First Nations advisory

13 council at CN right now where we meet on a regular

14 basis. In fact, they just met yesterday in Montreal

15 with our board of directors.

16   So, you know, we work with them, partner

17 with them obviously as we add capacity in Canada, a

18 lot of that we need to consult with First Nations

19 and we want them to be part of it and be on the

20 front end as we see growth opportunities.

21   So, you know, they're a viable stakeholder

22 to what we do, and we recognize that, and those are

1   the steps we take.

2   BOARD MEMBER HEDLUND: I spent a little

3   time over the last couple of years working on a

4   potential high-speed rail project from Seattle to

5   Vancouver, and heard a lot about the importance of

6   early coordination with First Nations, the process

7   in the United States is more at the back end

8   unfortunately.

9   But I really appreciated the tremendous

10   work being done by the folks in Vancouver on that

11   project and the leadership that the Canadians have

12   taken on that. So thank you all for that.

13   CHAIRMAN OBERMAN: Michelle?

14   BOARD MEMBER SCHULTZ: I'd also like to

15   thank all of you for being here today voluntarily,

16   and especially at the conclusion of the long two

17   days.

18   I've heard a lot of testimony from a wide

19   variety of shippers during the course of the last

20   two days, and one issue -- many issues repeated, but

21   one that stood out to me was the value of

22   communication and effective communication between

1   shippers and the railroads. And I wondered if each

2   of you could speak to, you know, what is the ability

3   of your customers to track their shipments and to

4   know, you know, when they're going to be receiving

5   their shipment, as well as what you have in place in

6   order to further good communication.

7   MR. REILLY: So I'll start. And I

8   mentioned some of this my prepared remarks. We do

9   have a track and trace on our Web site that all of

10   our customers can get on and actually see where

11   their cars are at and what the ETAs are.

12   We have the 1-800 number that's available

13   24 by 7. Those are the basics.

14   But where we have taken this even further

15   in the first mile-last mile over the past few years

16   and we've actually put technology in the hands of

17   our conductors that actually service that last mile.

18   So as they're coming to the plant or the

19   industry with the cars that they are requested, they

20   are actually communicating with the customer on an

21   ETA just to take it one step further.

22   Having that actually the face of CN with

1   the customer at the most ground level is, you know,

2   I would say we're on the cusp of really creating a

3   better system for the customers, adding that to it,

4   with what we already have.

5   So the other thing I would just say is

6   that when we go through things like we did with the

7   winter of January and February and, you know, just

8   you create this backlog because of the cold weather,

9   communication becomes more frequent because changes

10 happen pretty rapidly because you don't know exactly

11 how trains are going to navigate through some of

12 those cold areas during the course of a night or

13 morning when you see your deep cold.

14   So, you know, we go to extra levels to

15 create war rooms where we have people, extra support

16 in there and communicating with customers.

17   MS. GAINEY: I wanted to add our filing

18 that we made in the first mile-last mile proceeding,

19 we included screenshots from the customer's

20 perspective on the CN One platform of what it would

21 look like for a customer to be able to walk into our

22 platform, what the reports would look like on the

1 track and trace but also what it would look like in

2 terms of the overall visibility from the cars coming

3 into their facility.

4   MR. CLEMENTS: Yeah, a couple of comments

5 I would like to make to that question. One, when we

6 do survey our customers, actually one of the pieces

7 of feedback we get from the survey that stands out

8 as a strength is the availability of CP staff when a

9 problem arises, and also the level of contact with

10 the CP sales team.

11   So we pride ourselves in making ourselves

12 available to our customers, and we believe based on

13 their feedback that we're doing a good job. We can

14 always do better.

15   But the other process that we've initiated

16 is we have something called the customer advisory

17 council, and we rotate membership over time. But we

18 bring a variety of customers together and we ask

19 them, what are your priorities? What do you want us

20 to do for you?

21   And so on that basis, we've been

22 developing technology, the real ask is, you know,

1 improving the technology to give us visibility, not

2 necessarily having the 1-800 number to call. They

3 want that when they need it, but on day to day, it's

4 can you push notifications to my phone, can you give

5 me APIs, application programming interfaces, so that

6 you can just go and suck the data into my system

7 that I want.

8   So we're marching down that path. We've

9 started to make available data through APIs on track

10 and trace and some other areas.

11   And we're going to continue to expand our

12 API offering. And we have started push

13 notifications as well.

14   Where we're going to go with push

15 notifications is things like if you have a

16 derailment and there are shipments that are planned

17 to go through where that derailment was, we'll be

18 pushing out and saying that your shipment has been

19 affected proactively and giving them status updates.

20   The other piece we're working at is with

21 our local crews, is they're doing a delivery, we're

22 calling it next customer.

1   So when the crew reports that they're at

2   one customer and they're doing the work, we send a

3   notification to the next customer that the train's

4   arrival is imminent and they're finishing up with

5   the customer before you.

6   So again, we're moving into that realm. I

7   would say we're not mature in that space but

8   certainly advancing quickly into that area. We

9   think that's where the next level of customer

10   service comes from.

11   BOARD MEMBER SCHULTZ: Thank you.

12   CHAIRMAN OBERMAN: Is that it? Well,

13   thank you all. I will add my thanks.

14   I would only comment that others said we

15   appreciate your being here voluntarily. I do add

16   that, but everybody was here voluntarily.

17   We don't have -- I don't think we have a

18   railroad police to send people out to bring them in

19   here. Obviously, our concerns were directed at the

20   four major U.S. Class Is. And we certainly wanted

21   them to be here, but we do appreciate your being

22   here and appreciate the fact that you're not in the

1   line of fire and you're not, at least for the

2   moment, creating the kind of problems that we have

3   here.

4   So thank you all. And I will just add, I

5   think again crowd has thinned out here, I understand

6   there's still people watching, we really appreciate

7   everybody's efforts.

8   We know it's a lot of work to prepare and

9   come here, and of course I really want to give

10   another shout-out to our staff. There are a lot of

11   staff members on this meeting which you can't see,

12   and they're working, they're sending memos, they're

13   writing memos.

14   You will be happy to know they're

15   preparing follow-ups for us, and the IT people

16   particularly have just done a spectacular job. And

17   we've all learned that we need to fix these buttons

18   on these microphones.

19   So I really want to express the Board's

20   appreciation for everybody concerned in having these

21   hearings. And you will hear from us and we will

22   hear from you. So thank you all.

1   We are adjourned.

2   (Whereupon, at 5:54 p.m., the hearing was

3 concluded.)

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1   CERTIFICATE OF NOTARY PUBLIC & REPORTER

2

3   I, CARMEN SMITH, the officer before whom the

4   foregoing deposition was taken, do hereby certify

5   that the witness whose testimony appears in the

6   foregoing deposition was duly sworn; that the

7   testimony of said witness was taken in shorthand and

8   thereafter reduced to typewriting by me or under my

9   direction; that said deposition is a true record of

10   the testimony given by said witness; that I am

11   neither counsel for, related to, nor employed by any

12   of the parties to the action in which this

13   deposition was taken; and, further, that I am not a

14   relative or employee of any attorney or counsel

15   employed by the parties hereto, nor financially or

16   otherwise interested in the outcome of this action.

17

18   CARMEN SMITH

19   Notary Public in and for the

20   District of Columbia

21

22   My Commission Expires: MARCH 31, 2023

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