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**Case:** Proposed CP/KCS Merger



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SURFACE TRANSPORTATION BOARD  
Hearing on the Proposed CP/KCS Merger  
Docket No. FD 36500  
REMOTE PUBLIC HEARING

Thursday, October 6, 2022

10:00 a.m.

Surface Transportation Board  
395 E Street, S.W.  
Washington, DC

The above-entitled matter came on,  
pursuant to notice, at 10:00 a.m., Chairman Martin  
Oberman presiding.

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

2 CHAIRMAN OBERMAN: Good morning everyone,  
3 and welcome to the sixth day of hearings on the  
4 proposed merger between CP and KCS, Docket 36500. A  
5 couple of introductory remarks and observations  
6 before we get underway. Number one, before we get to  
7 CP/KCS's rebuttal case, we have one witness who  
8 because of our own modifying the schedule to  
9 accommodate people was unable to testify before this  
10 morning, and so we're going to hear him first.

11 It's a very short presentation, and then  
12 we will move right into CP/KCS. I have noted some  
13 observation out there in commentary land about how  
14 long these hearings are taking, but I'd like to  
15 re-emphasize that this Board is committed to as much  
16 openness and transparency in our process as possible.  
17 We had a large number of interested persons who  
18 wished to be heard.

19 It was not my view that any of them should  
20 be cut -off, and that we are a public agency. This  
21 is a transaction which could affect the entire  
22 country, or a good part of the country. And it's

1 our duty as a public agency to hear from people. And  
2 if it took us six days to adequately hear from  
3 people, then that's what it takes.

4 Democracy as they say is sometimes messy,  
5 but this is our process and our commitment, so I  
6 would never cut people off who want to be heard  
7 particularly on something as significant as this  
8 proposed merger. So, with that we will continue in  
9 that vein, and we will conduct this hearing to its  
10 fullest extent until we have the information we need,  
11 until everybody who needs to be heard is heard from.  
12 We are not going to open it up of course beyond the  
13 people who've already asked to be heard and have  
14 testified.

15 So, with that our first witness today will  
16 be Rob Ritchie from Ingredion. Rob are you there?

17 MR. RITCHIE: I am. Can you hear me,  
18 okay?

19 CHAIRMAN OBERMAN: Yes.

20 MR. RITCHIE: Great. Well good morning,  
21 everyone, and good morning, Mr. Chairman. Thank you  
22 for the opportunity to speak with you today. As

1 mentioned, my name is Rob Ritchie. I'm the Regional  
2 President for our Mexican, U.S. Canada sweetener  
3 industrial business, concentrates in global core  
4 strategy for Ingredion, Incorporated.

5 I'm here today to express Ingredion's  
6 support for this CP/KCS combination, which we believe  
7 will enhance competition, provided expanded supply  
8 chain options, including expanded single line  
9 service, and drive other operating efficiencies for  
10 Ingredion.

11 Ingredion is a global ingredient solution  
12 company making sweeteners, starches, and unique  
13 ingredients from plant sources such as corn, tapioca,  
14 rice, sago and potato. Ingredion innovates for  
15 almost 60 industry sectors, spanning more than 40  
16 countries.

17 In North America we have plants and  
18 facilities in the United States, Canada and Mexico.  
19 One of our key assets is located in the Chicago area,  
20 in Bedford Park, Illinois. The facility in Bedford  
21 Park, also known as Argo, brings in significant  
22 amounts of corn for processing and starch sweeteners

1 and other foods and industrial ingredients.

2 Our experience with CP over the past five  
3 years has been that the company is a very  
4 customer centric supplier, focused on innovation to  
5 assist us in getting our product to our customers  
6 more reliably. The Argo facility is served by  
7 multiple rail carriers, and CP must continuously  
8 complete for Ingredion's business, which it does  
9 successfully and effectively.

10 We fully expect that this competition will  
11 continue post transaction. Efforts to connect  
12 Ingredion directly to the CP origination elevator  
13 network have been welcomed, and sign of CP's  
14 collaborative approach to growing our business. CP's  
15 longer grain train model supports one of Ingredion's  
16 core principles, which is operational excellence.

17 We also ship finished starch and  
18 sweeteners on CP from our Argo facility and primarily  
19 in private cars. CP's operational focus helps us to  
20 reduce ingredient's wheat costs by shipping longer  
21 trains at faster speeds with tighter car cycles. We  
22 are impressed that CP's strong focus on safety and

1 importance of safe sustainability.

2           The drive for sustainability is a key  
3 tenant for Ingredion, and our goals are specific and  
4 aggressive in this area. We recognize CP as a like  
5 minded organization, and we're excited to see CP's  
6 safety and sustainability efforts roll out to a  
7 larger rail network.

8           We believe it is important that the Board  
9 support improved freight arteries serving the vital  
10 Chicago region. CP has provided us with good  
11 service, but it's reach is limited today as its lines  
12 only go as far south as Kansas City. Currently, for  
13 Ingredion, shipments to destinations beyond Kansas  
14 City and the U.S. and Canada, CP must interline with  
15 other railroads.

16           We know from experience that a single line  
17 rail service options are far superior. KCS and CP  
18 have had a cooperative relationship in the past, and  
19 CP/KCS joint routes are among our transportation  
20 options. However, as separate companies they have  
21 not been able to offer the kind of seamless, single  
22 line service most needed from our transportation

1 providers.

2                   Therefore, this transaction will improve  
3    Ingredion's transportation options to the  
4    marketplace.   Ingredion also has an extensive  
5    Ingredion ingredient manufacturing in Mexico, with  
6    facilities served by KCSM at San Juan Del Rio and Tlalnepantla and --  
7    .   These facilities combined receive upwards of  
8    18,000 railcars per year of U.S. corn.

9                   Origination optionality for that corn is a  
10   key factor for this, particularly when there are crop  
11   production challenges in regions where the corn  
12   typically originates.   The extended single line haul  
13   reach that will be created with a combined CP/KC into  
14   corn production regions into Iowa and Minnesota, will  
15   create supplies chain diversity and efficiency that  
16   could potentially be beneficial to our model.

17                   From our perspective the transaction  
18   promises to provide improved service options and  
19   transportation competition in the markets we serve.  
20   CP has a proven record of accomplishment for  
21   operational excellence, and we expect that to  
22   continue with the seamless integration of the CP/KC.



1 We're excited about the transaction because it will  
2 enable a combined CP/KC to provide new, more  
3 efficient and reliable sales service options.

4           Ingredion will benefit from this  
5 strengthened competition between CP/KC and other  
6 large rail carriers, and trucks that service our  
7 markets. For these reasons, Ingredion, Incorporated  
8 is voicing strong support for the combination of CP  
9 and KCS. We respectfully urge the STB to approve  
10 CP's acquisition of KCS as swiftly as possible so  
11 that we and other stakeholders can realize the  
12 end-to-end benefits of the new CP/KCS. That would  
13 conclude my comments.

14           CHAIRMAN OBERMAN: Thank you Mr. Ritchie.  
15 Appreciate it. Are there any questions for Mr.  
16 Ritchie?

17           BOARD MEMBER HEDLUND: I have one. Mr.  
18 Ritchie you mentioned your facilities in Mexico, and  
19 the advantage that KCS/CP would have gotten that  
20 product north of the border. Do you currently  
21 interchange with any other railroads at the border?  
22 At the Mexican border, in particularly in Laredo?

1                   MR. RITCHIE:     Specifically, right now  
2     it's with KCS only, so it would be specifically with  
3     the KCS.

4                   BOARD MEMBER HEDLUND:   Thank you.

5                   MR. RITCHIE:   You're welcome.

6                   CHAIRMAN OBERMAN:   Any other questions?  
7     All right.   Mr. Ritchie, appreciate it, and  
8     appreciate your forbearance and willingness to stick  
9     it out and provide us with your views when you  
10    could, and I happy with --

11                  MR. RITCHIE:   Enjoy the rest of your day.

12                  CHAIRMAN OBERMAN:   All right.   Well, I'm  
13    sure it will be very, very pleasant, so thank you.  
14    All right.   With that we are going to begin CP's  
15    reply or rebuttal, I'm not sure which we properly  
16    call it, and that is the last presentation for these  
17    public hearings.

18                  I do want to say by way of scheduling we  
19    will be breaking at noon Eastern for one hour, so I  
20    think we will be able to go for the next hour and 20  
21    minutes without a break unless somebody absolutely  
22    needs one, they'll let me know, and then we will

1 reconvene at 1:00 Eastern, and keep going until we  
2 finish.

3               So, I have the following people listed. I  
4 see that you all seem to be gathered in the same  
5 place. You can tell me that but let me read off the  
6 names to see if everybody who says they're going to  
7 be present is here. Keith Creel, Pat Ottensmeyer,  
8 John Brooks, James Clements, Raymond Elphick, John  
9 Orr, Robert Majure, David Meyer and is everybody  
10 present?

11               MR. MEYER: Not everybody is present.  
12 Good morning, Mr. Chairman. Just a quick logistical  
13 note on our end. Mr. Orr is in another location in  
14 Boston where he is attending a program that he could  
15 not be released from during the case. He will have  
16 availability, it may line up with your break, between  
17 I think it's 12:15 Eastern and 1:15 Eastern, and then  
18 he'll be available after 2:40 if we're continuing  
19 after 2:40.

20               We've structured our presentation to not  
21 require his presence, so when we get to the issues  
22 that he's familiar with, particularly the shared

1 lines in Texas, and other operational issues you know  
2 we'll proceed and hope that it lines up with his  
3 availability, but he will be joining us for periods  
4 of time, and we'll be able to answer questions.

5 CHAIRMAN OBERMAN: So, for the record  
6 David, John Orr is not online right now.

7 MR. MEYER: That is my understanding.

8 CHAIRMAN OBERMAN: All right. So, when,  
9 if and when he shows up, just so that the court  
10 reporter has a record, we should note for the record  
11 that somebody else is appearing. But all of the  
12 other names that I read off are present?

13 MR. MEYER: Here.

14 CHAIRMAN OBERMAN: All right. And I think  
15 our court reporter has a question.

16 COURT REPORTER: Yes, excuse me, I can't  
17 see your faces, so if you would do me a favor and  
18 please let me know who you are when you're speaking  
19 so I have the right name with the right  
20 presentation.

21 MR. MEYER: We will certainly try to do  
22 our best to remember to do that, and we will not

1 object if you ask us and remind us on those occasions  
2 where we forget.

3 COURT REPORTER: All right, thank you.

4 CHAIRMAN OBERMAN: It does look like a  
5 very large roundtable. I assume that it's symbolic  
6 of your commitment to an inegalitarian operation.  
7 So, do you want to start off David?

8 MR. MEYER: I may, if I may make just one  
9 other logistical note before we start, and that is  
10 because of the remote location, and the logistics  
11 associated with that, we haven't been able to get  
12 each of you members a binder containing our slides.  
13 And so, we are going to do our best to you know, cast  
14 I think is the right technical term, the slides into  
15 this visual screen at the appropriate time.

16 But what we're going to try to do, and our  
17 goal today really is not so much to present to you,  
18 as to have a conversation about the issues that  
19 you're interested in exploring further. So, when we  
20 put up a slide, unfortunately it makes the view of us  
21 and our view of you go away for the most part.

22 So, there may be times when you put up a

1 slide and you take it down so that we can continue  
2 the interaction, but if there's a slide you want us  
3 to put back up just let us know, and we'll go find it  
4 and put it back up on the screen.

5 CHAIRMAN OBERMAN: All right.

6 MR. OTTENSMEYER: Just one David, I don't  
7 think he mentioned Bill Mullins.

8 CHAIRMAN OBERMAN: No, I did Pat.

9 MR. OTTENSMEYER: Okay.

10 CHAIRMAN OBERMAN: I did mention Bill, but  
11 Bill seems to be one of those who is off the screen.

12 MR. MEYER: We do have a couple of views  
13 of the table. There's one on the right side, and  
14 there you see Bill, and there's one on the left side  
15 that includes Dr. Majure. And I think we can pan out  
16 if necessary.

17 CHAIRMAN OBERMAN: All right.

18 MR. MEYER: We'll play it by ear as we go.

19 CHAIRMAN OBERMAN: All right. Well, I can  
20 see that everybody is there, so that would seem to  
21 work David pretty well.

22 MR. MEYER: Excellent. And with that I'll

1 hand it to Mr. Creel.

2 MR. CREEL: Okay. Good morning, and we're  
3 honored and eager to have this opportunity again this  
4 morning to be back before the Board to answer  
5 questions, number one that you've raised previously  
6 with us, as well as those that get developed today,  
7 and also to respond to what we've heard from other  
8 witnesses during the testimony that's occurred over  
9 the past week.

10 And Chairman Oberman I'd like to echo your  
11 comments and the Board's comments relative to the  
12 process itself that were made Tuesday morning and  
13 again this morning. We are extremely pleased that  
14 the Board has taken the time to engage with each of  
15 the hearing participants to probe the areas of  
16 interest, and/or concern, and the responsive to what  
17 we've heard at the time that we have with the Board  
18 today.

19 So having sat through the previous five  
20 days of testimony I can tell you that I'm even more  
21 excited about our transaction and the opportunities  
22 that it will create for all stakeholders. And I'm

1 even more confident than I ever have been that the  
2 arguments made against it by our rivals have no  
3 merit. The truth matters.

4 And I saw the Board's thorough process to  
5 allow it to be heard. That said, we have listened  
6 carefully, and in our presentation today we will  
7 outline what we're prepared to do to address the  
8 remaining concerns. David will walk you through the  
9 framework in our presentation and some of the legal  
10 issues that were raised, and my team and I will jump  
11 in to address the specific topics and respond to the  
12 Board's questions throughout our rebuttal today.

13 MR. MEYER: Okay. Thank you, Keith. So  
14 almost everything you've heard from the condition  
15 seekers and the other commenters over the course of  
16 these hearings is extensively and fully addressed in  
17 detail in not only the application, but the July  
18 12th rebuttal filing, and the other submissions we've  
19 made on the record in this case.

20 One of the things we'd like to do is  
21 commend that record to you. We can tell from your  
22 questions that you and your staff have poured over it



1     carefully. I think the answers to almost every  
2     question ultimately are found in that record. We're  
3     going to do our best to speak to them, and to explain  
4     where those facts are, and how they line up with the  
5     arguments that have been made.

6             Our goal today as Mr. Creel indicated, is  
7     to try and hit the highlights of the topics that have  
8     been raised during the past week and respond as  
9     specifically as we can to the points we've heard, and  
10    the questions that the Board Members had of others,  
11    and how those questions were dealt with by others.

12            We think it's really important here that  
13    the Board look at the facts as Mr. Creel said, the  
14    facts matter, and not be misled by some of the  
15    rhetoric by some of our opponents. So let me start  
16    by giving you a brief roadmap of how we're planning  
17    to proceed today, so the topics we're trying to  
18    address in the order, so that you'll have an idea of  
19    what's coming and when.

20            Obviously, we're delighted to respond to  
21    any questions you have at any time, so we're not  
22    going to dictate any kind of order. It's your time

1 with us. But we're planning to start with what we  
2 heard about the benefits of the transaction,  
3 including from the shippers that we heard from this  
4 morning, again.

5 Second, we're going to address the issues  
6 that have been raised relating to our service, and  
7 alleged operational impacts, which we see as closely  
8 intertwined I think, and again, I said this last  
9 week, but we're only going to succeed if the service  
10 we provide is good, and we think the operational  
11 impacts that folks fear creates a self-defeating  
12 situation even for our own plan's benefits.

13 But where we're going to start is to talk  
14 about the planning that went into the applicant, and  
15 to the service design. Talk a bit about our general  
16 service assurance related commitments. Then we're  
17 going to dive in and focus on Chicago. And then  
18 we're going to dive in and focus on Texas. Shared  
19 lines in Texas and Houston, in particular.

20 After that we plan to address the vertical  
21 competitive issues that were discussed last week, and  
22 a little bit on Monday, particularly around Laredo,

1 but you know the issue, the gateway issue is to some  
2 extent a general one. We're going to explain the  
3 merits of the -- of our view of the merits of those  
4 issues, and we think that's the place to start and  
5 end frankly, that there's no evidence, no case made  
6 that there's going to be likely competitive harm from  
7 the transaction.

8 And as a result of that there's just no  
9 occasion for any condition. Now we're not walking  
10 away from our gateway preservation commitment, not at  
11 all. We offer that as a reassurance to stakeholders.  
12 It's just part of our commitment about what we're  
13 going to be about.

14 We're also going to spend a little bit of  
15 time talking further about the anti-competitive  
16 nature of the proposals at BNSF, UP and you heard  
17 from the shipper groups had put forward regarding  
18 mileage pro-rate regulation.

19 Four, we're going to spend a few minutes  
20 addressing the TIH tariff issues that Mr. McBride  
21 discussed on Monday, and particularly the desire to  
22 roll back the tariff that he says is already illegal

1     that CP has in the marketplace.

2                   Fifth, we're going to address some of the  
3     requests by Class 1 railroads in this case that we  
4     think truly have no relationship to the issues in the  
5     case at all and are really only examples of  
6     competitors using this proceeding for I think the  
7     word I would use is grabs, for rights or assets that  
8     they covet, but they didn't acquire at the  
9     marketplace.

10                  So, we'll spend some time with CN's  
11     divestiture proposal. And then we'll spend a very  
12     little bit of time talking about Norfolk Southern's  
13     trackage right requests. And then finally, we'll  
14     address some of the environmental comments I think  
15     you've heard over the course of the week,  
16     particularly as they regarded the area around  
17     Chicago, and the Houston area.

18                  And you'll hear from Mr. Clements about  
19     that. And then at the very end we'll wrap up by  
20     trying to summarize once all of the commitments we've  
21     made in this case that we think are those that we  
22     would accept conditions. We don't think conditions

1 are necessary for this transaction to be in the  
2 public interest, not at all, but we are certainly  
3 willing to live up to our promises. So with that  
4 I'll turn it over to Mr. Creel.

5 MR. CREEL: Okay thank you David. Before  
6 we dive in I think it's important that we set the  
7 record straight on the severity via -- that enter the  
8 Class 1's railroads, suggested to the Board last  
9 week, suggesting that they were at the proceedings  
10 only because somehow we at CP or KCS didn't do what  
11 was required which, in their view, was to come down  
12 with our hat in hand, and negotiate acceptable  
13 concessions by their definition.

14 And I can tell you we take offense to  
15 that. We've engaged reasonably the reasons we've not  
16 made more commitments or entered more agreements  
17 addressing the concerns of straight boards. The same  
18 reason why conditions, beyond those that we will  
19 explain that we're willing to accept, which we'll  
20 elaborate on, are not warranted.

21 The record does not support the concerns.  
22 Addressing them would affirmatively harm the public

1 interest by interfering with our competition and our  
2 investment. This is about competition, not giving  
3 into competitors seeking protection that are  
4 unwilling, and I would argue in some cases, perhaps  
5 not even equipped to complete.

6 MR. MEYER: Okay. Thank you for that.  
7 So, I'm going to start with benefits. If we could  
8 cue the next slide. Just to review briefly. I don't  
9 want to belabor it. You heard from a number of  
10 stakeholders at these hearings who are real shippers  
11 in the marketplace, who are creating the kind of  
12 competition and single line service that the  
13 transaction will unlock.

14 Current themes, the same themes from all  
15 of them, covering a wide array of commodities, a wide  
16 array of geographies. I speak not only to the quest  
17 for the benefits of the transaction, but they  
18 validate their experience with CP living up to its  
19 promises, as Mr. Irving explained in regard to its  
20 recent -- CP's recent CMQ application.

21 These benefits will support investment,  
22 provide better service, allow shippers to reach more

1 markets, support economic growth, all of the things  
2 in our case you heard echoed by the shipper  
3 testimony.

4           What did we hear from the adversaries? We  
5 heard from the adversaries with some of the same.  
6 They all want something out of this transaction, but  
7 they acknowledge, you heard from BNSF that single  
8 line competition is stronger competition.  
9 Transactions create single line benefits. They know  
10 this from their own experience of course, in merger  
11 after merger.

12           They have to acknowledge it. Our  
13 application and our supporting materials, or rebuttal  
14 materials in July withdrew some of those  
15 acknowledgements. CN and NS, both last week made  
16 clear that what you need in order to align interests  
17 to support investment is ownership right?

18           So being separate companies doesn't work  
19 to unlock the kind of investment that we're planning.  
20 We heard it directly from Canadian National and  
21 Norfolk Southern. Many of those same railroads  
22 compliment Canadian Pacific as a great operator, and

1 a railroad that does what it promises.

2 And then finally we heard from  
3 Commissioner Bentzel of the Maritime Commission. He  
4 has a certain perspective about the role of Canadian  
5 investment imports, and what U.S. ports need to do  
6 to step up, and we understand that, and we appreciate  
7 that and we're of course not going to stand in the  
8 way of any efforts by U.S. ports to do a better job  
9 of competing in the marketplace.

10 But I think what came through to me was  
11 what he said about the ability of the west coast  
12 ports to handle more traffic. What he said was it's  
13 just not there. That to me underscores the value to  
14 the U.S. public interests of our improved  
15 transportation link between -- and the U.S. Midwest,  
16 which will allow U.S. consumers to bypass congestion  
17 and have another alternative, and another pipeline  
18 for important import commerce.

19 All of these benefits that you've heard  
20 about have a direct nexus to the U.S. public  
21 interest. Member Hedlund you asked a very good  
22 question last week about what percentage of our



1 anticipated new traffic arises from the transaction  
2 involves movements to or from the United States as  
3 distinct from movements from Mexico and Canada. And  
4 the answer is on this slide, and it's over 90 percent  
5 in every case. So, there are three categories of  
6 traffic gains that we anticipate, so the first  
7 category on the slide is traffic shifting from one  
8 rail route to a CP/KC railroad, or a longer CP/KC  
9 railroad.

10 In 93 percent of those cases that's  
11 traffic to or from the United States. Another group  
12 of traffic opportunities that was testified to in the  
13 application principally by the CP and KCS marketing  
14 witnesses, Mr. Laubach and Mr. Naatz, and then the  
15 Board echoed in their rebuttal verified statement are  
16 new growth opportunities, traffic that's not  
17 currently moving in identifying new destination  
18 payers as we're generating new traffic, new lanes by  
19 developing new better alternatives.

20 98 percent of those opportunities that  
21 you've identified involve traffic that either  
22 originates in the United States or terminates in the

1 United States. And then finally we anticipate  
2 taking trucks off the highway and attracting trucks  
3 onto our intermodal services, our new intermodal  
4 services.

5 100 percent of our anticipated gains there  
6 involve traffic that's moving to or from the United  
7 States. But turning to the next slide I just want to  
8 emphasize that the U.S. public interest has benefited  
9 by 100 percent of the traffic gains that we  
10 anticipated that the transaction would generate, even  
11 if it happens to be attracting traffic that's moving  
12 between Mexico and Canada, and just passing through  
13 the United States.

14 And why is that? Because those gains will  
15 reflect and support a more competitive North American  
16 rail ecosystem. It will support a stronger CP/KC  
17 network, the investment in a more robust  
18 infrastructure by CP/KC. Those trains will generate  
19 new jobs, locomotive engineers and the other  
20 employees who support that traffic will be U.S.  
21 employees in most cases.

22 Obviously there will be employees in

1 Mexico and Canada as well. That traffic, if there  
2 were trucks taken off the highways that are moving  
3 between Mexico and the United States, well those  
4 trucks won't be clogging U.S. highways. It's a U.S.  
5 public benefit.

6 All of this will support USMCA trade  
7 agreement, and continent-wide economic development.  
8 And wherever that economic development occurs it's  
9 good for the U.S. economy and U.S. consumers, and the  
10 North American supply chain and its resiliency. So,  
11 I think the right perspective here is that everything  
12 that we're going to be doing to create a more  
13 competitive rail network is in the United States,  
14 it's a citizen of the United States, it's a  
15 participant of the United States, transportation  
16 ecosystem.

17 Everything that touches that is in the  
18 U.S. public interest. But I want to flip to the next  
19 slide here and just emphasize a point. We heard a  
20 little bit of criticism from some of our fellow  
21 railroads about our benefits being private revenue  
22 gains, and that's just not the case. Sure, the

1 revenue that we gain has a private benefit associated  
2 with it.

3                   It is an additional revenue that goes into  
4 the company, but that revenue both reflects and  
5 supports public interest benefits. It reflects them  
6 because the reason we're gaining that revenue is by  
7 competing more effectively and offering better  
8 options to customers than they have today.

9                   All of those revenue gains are a measure,  
10 one way of measuring the fact that we will be  
11 competing more strongly and bringing benefits to  
12 customers. That's all in the public interest.  
13 There's another respect though in which everyone  
14 benefits from this. It's not just the shippers who  
15 move their traffic over the CP/KC routes, it's all  
16 the shippers in all of the markets that we're going  
17 to be serving because what we're going to be doing is  
18 sparking a competitive response by the other  
19 railroads, and the other transportation providers in  
20 all of those markets.

21                   By us competing more strongly, even if we  
22 don't win, even if we don't gain revenue in any

1 particular lane, shippers, customers of the  
2 railroads, customers of the trucks will benefit  
3 because everyone is going to have to sharpen their  
4 pencils and do better and provide better service and  
5 lower rates, and all the things that shippers desire.

6 So then turning to the next slide, I just  
7 want to make a note about the fact that as we see it,  
8 the competitive response to CP/KC has already begun.  
9 Mr. Chairman, you mentioned this episode in last  
10 week's remarks that you had Union Pacific in front of  
11 you. And I think you described this as retaliation.  
12 It's not exactly how we see it.

13 We don't see it as retaliation so much as  
14 a reflection of two things. First, it's a reflection  
15 of the fact that Class 1's understand that CP/KC  
16 coming on the scene with stronger, competitive  
17 options is going to require them to adjust, make  
18 changes. This is the kind of marketplace response we  
19 may not have asked for, but we understand.

20 It's UP seeing that it's going to need to  
21 be sharpening its own pencils and doing things  
22 differently. The other thing, unfortunately, that

1     this episode reflects in my opinion, relates to a  
2     separate issue in this case. But it's pretty obvious  
3     that the same competitors who want us to retain every  
4     single option that they benefit from today, are  
5     perfectly willing to take down options for customers  
6     themselves.

7                 So, customers aren't going to have access  
8     to the empty boxes moving in interchange from Mexico  
9     onto CP routes in Canada, across the UP system and on  
10    the CP routes in Canada, or on to KCS in the United  
11    States, and across the CP routes in Canada.

12                We're not saying that's a problem, but  
13    it's an interesting inconsistency with the desire of  
14    UP and BNSF in particular, that every single option  
15    needs to be preserved for them to participate in all  
16    of these markets.

17                CHAIRMAN OBERMAN: David? David?

18                MR. MEYER: Yes sir?

19                CHAIRMAN OBERMAN: I would only make one  
20    observation. Reflecting on my previous musings that  
21    perhaps the STB ought to ban the use of euphemisms in  
22    our hearings, you're referring to this as an

1 interesting -- what did you just say was an  
2 interesting development.

3 MR. MEYER: Inconsistency I believe.

4 CHAIRMAN OBERMAN: Interesting  
5 inconsistency falls under my potential ban on  
6 euphemisms but go ahead.

7 MR. MEYER: I stand corrected. So that's  
8 where I will transition to the discussion that we  
9 want to have about a planning that we undertook with  
10 respect to not only the operating plan, but all of  
11 the ordinary course work that we're doing to plan for  
12 this transaction.

13 There were some issues raised over the  
14 course of the week, and Mr. Elphick and Mr. Clements  
15 will address them.

16 MR. CLEMENTS: Yeah, thank you David, and  
17 I'd start by saying that you know the criticism,  
18 really there's no issue around what we've done in  
19 terms of the planning and the economic data that  
20 we've supplied. We've endeavored in all of our  
21 working papers, and everything that we had submitted  
22 to give a reliable accounting and estimate of what

1 the impact of the transaction would be.

2 I know that Canadian National raised some  
3 issues that I would describe as immaterial and minor  
4 in terms of the methodology, you know, particularly  
5 criticize the rate at which the benefits would accrue  
6 in year one, and what that mean relative to the  
7 operating ratio and other factors related to the  
8 combined CP/KC.

9 And the first thing I'd just comment on is  
10 that when you looked at the benefits that were  
11 described in the CNIC, they had a similar profile in  
12 terms of how the benefits on the operating expenses  
13 reductions would accrue, and when they would accrue.  
14 So, we're not putting something out there that is  
15 unprecedented or unusual.

16 Our modeling is consistent with how we  
17 would see other transactions in the past generate  
18 benefits. And I want to refer if I can briefly to a  
19 slide that Mr. Elphick had shown previously,  
20 outlining a train pair, 174-175, Cassandra if you can  
21 put it up. And what I'd want to note relative to  
22 this is that we described in this particular case



1 before a reduction in the number of intermedia  
2 handlings at various yards, you know Sanchez, and  
3 Shreveport, and Kansas City, as we move from an  
4 interline service today where we can't optimize the  
5 train design.

6 And we go into a single line train that is  
7 moving from the origin to the destination  
8 efficiently. And when you look at all those work  
9 centers what we're doing is changing how fast cars  
10 move, how fast locomotives move, what people are  
11 doing on the ground in terms of having to switch cars  
12 and handle cars.

13 And all of that is money and expense. And  
14 when we introduce the new combined service, and we do  
15 have plans to put on our operating plan in place  
16 early on, we're not going to make changes to the  
17 systems as I've said before, but we will have an  
18 integrated operating plan, that's why the expenses  
19 start to come out in year one. And the number that  
20 we've expressed is what we think the benefits will be  
21 through the course of the first year.

22 And so, I don't think there's anything

1     unrealistic there, and the numbers that we provided  
2     have been built on thorough planning that Ray and  
3     everybody had done in terms of how the operating plan  
4     would work, how it would flow the traffic that we  
5     see happening, and then those associated benefits.

6                 What we would then do, and we have talked  
7     about employment gains, and I think this is important  
8     to know, is we would redeploy those resources to  
9     enable the growth, enable the synergies. So, if you  
10    hadn't been able to achieve those benefits, we would  
11    have more employment growth, but we will be reusing  
12    the locomotives that we free up by being more  
13    efficient in the use of that, we'll be having the  
14    people that we freed up using our crews more  
15    efficiently to crew the new trains that we're putting  
16    on the network. So that's where we see the  
17    challenges in the CN.

18                MR. CREEL: If I could as well on that,  
19    comment to that. There's another area of I think  
20    false aspersions that seem to be suggesting that  
21    we're not investing in the infrastructure to be able  
22    to accommodate this growth that we're going to

1 compete for. They failed to consider or mention that  
2 we have committed, and this is in our proceeding, to  
3 maintain the level of capital that we spend today at  
4 CP.

5 UNIDENTIFIED SPEAKER: The Court Reporter  
6 is waving to us.

7 COURT REPORTER: I'm very sorry sir, but I  
8 need each of you please to say who you are before you  
9 start to speak. I want to make sure I have the right  
10 person, giving the right presentation.

11 UNIDENTIFIED SPEAKER: We appreciate the  
12 reminder. That's Mr. Creel.

13 COURT REPORTER: Yeah. I know it's  
14 awkward, but if you could just say who you are before  
15 you start speaking. I can't see your faces, and that  
16 will help me a lot.

17 MR. CREEL: Okay thank you. This is  
18 Keith, and I will endeavor to do that. So, picking  
19 back up the point that I was making, in our filings  
20 we have committed to maintain the level of capital  
21 that we spent today at Canadian Pacific, which is at  
22 an all-time high.

1                   Matched by KCS's level of capital, is we  
2                   moved forward to invest in this infrastructure. The  
3                   key point being within that spend that spend today,  
4                   just in CP's alone, we have an ongoing investment of  
5                   proper cars -- this was mentioned last week in  
6                   testimony, which is annually exceeds 100 million  
7                   dollars, as well as locomotive overhaul capital  
8                   spend, both of which when we come together the  
9                   hoppers will be completed this year, so that makes  
10                  that 100 plus million dollars available.

11                  The overhauls will not be needed because  
12                  we have a surplus of locomotives that we will inherit  
13                  with the purchase of ACS combining the two entities  
14                  together. So those two alone represent an additional  
15                  200 plus of incremental capital that will be invested  
16                  into the infrastructure to accommodate this growth.

17                  So again, the facts matter, and the facts  
18                  were not represented clearly or accurately with the  
19                  Board last week.

20                  BOARD MEMBER HEDLUND: Well Mr. Creel, go  
21                  ahead Robert.

22                  BOARD MEMBER PRIMUS: I'm sorry Karen.

1 Keith, just to follow-up on that, and I'm not  
2 challenging that those numbers. I think for me,  
3 again I'm not speaking for anyone else on the Board.  
4 If there's any concern that I have it's in the  
5 potential areas, choke point areas of Chicago and  
6 Houston where you don't have control of the  
7 infrastructure.

8           You're going over other lines and other  
9 lanes, and so it's going to have to be you know a  
10 partnership of that construction again. You're  
11 building the second bridge at Laredo, and you are  
12 controlling that. But moving through Houston you  
13 know once you get in there you don't have control of  
14 that infrastructure, and I think for me some of the  
15 concerns that I have are in those areas where it's  
16 already congestion, and we already have problems.

17           So, I'm not thinking you know what they're  
18 saying. I understand that you know your counter to  
19 that argument I think for me it's in those areas that  
20 I see some concern, and what's going to happen if  
21 there's not a partnership in that infrastructure  
22 development.

1           MR. CREEL: Member Primus, your comments  
2   are well said, it's certainly understood. I can tell  
3   you that partnership is the key word. We have in  
4   Chicago partnered and contributed to CREATE. We've  
5   invested tens of millions of dollars so that the  
6   overall Chicago infrastructure would benefit when it  
7   comes specific to some of Metra's concerns, which  
8   they shared last week.

9           Later in our rebuttal we'll explain what  
10   we're willing to do to further our partnership to  
11   support needed investment. And then when it comes to  
12   Houston, we're taking the same approach. There is a  
13   mechanism that exists today that has worked in  
14   partnership with the KCS and has participated in for  
15   the last 16 years.

16           We certainly insist on and intend on  
17   actively participating in that in a go forward basis  
18   to pay our fair share. We're not coming to town to  
19   impose our needs on our partnership. We're coming to  
20   town to carry out --

21           BOARD MEMBER HEDLUND: Mr. Ottensmeyer, in  
22   the Houston Beaumont area there was a recent study

1     done called the Houston Beaumont freight rail study  
2     that suggested a series of both short-term and  
3     long-term projects. I think most of those are on UP  
4     or BNSF, but the report noted you didn't even  
5     participate in the study. Why was that?

6                   MR. OTTENSMEYER: I don't know the answer  
7     to that question. I don't know if we were invited to  
8     participate, or not since I don't recall the scope of  
9     the study, where the boundaries were in terms of the  
10    infrastructure that was studied. I don't know if Mr.  
11    Elphick, do you?

12                   BOARD MEMBER HEDLUND: Mr. Creel if  
13    Houston were to adopt something, or like CREATE which  
14    I would note was an initiative started by this Board,  
15    by our former Chairman Linda Morgan, of Happy Memory,  
16    would you even though you don't own the  
17    infrastructure, you do have trackage rights through  
18    Houston, would you participate in such a  
19    collaborative effort?

20                   MR. CREEL: Member Hedlund we would be  
21    happy to participate in a unique, combined effort  
22    that allows all uses of that asset to benefit.

1 BOARD MEMBER HEDLUND: Thank you.

2 MR. MEYER: Thank you. Thank you for  
3 those questions, and we will be absolutely focusing a  
4 lot of attention on Chicago and Houston concerns that  
5 were raised, and we have I think some very  
6 educational material. My infamous part of the  
7 presentation, so we'll be back to those areas, you  
8 can count on that.

9 I think the takeaway from what Mr.  
10 Clements was saying in his first point is we're not  
11 going to be stripping the railroad of the assets and  
12 resources necessary for us to grow and succeed.  
13 That is not the case at all. We're doing everything  
14 that we need to do to plan carefully for growing, and  
15 I think that comes through in all the materials in  
16 this case.

17 We also heard from Canadian National in  
18 particular, a pitch that we be required to go back to  
19 the drawing board and refile in some form a service  
20 assurance plan in compliance with the merger rules.  
21 Frankly, I think this is a pretty transparent  
22 attempt by CN having previously asked the Board to



1     require us to do that, to come back and get a do  
2     over, and interpose additional delay in this process.

3             There's one thing that Canadian National  
4     has tried to do over the last two years, it's to  
5     prevent our transaction from coming into the  
6     marketplace and competing with them. We understand  
7     the covet some assets that KCS has. They weren't  
8     able to acquire them in the marketplace. This  
9     proceeding is not the place to give them another try  
10    at that.

11            But with respect to the service assurance  
12    plan in particular, I just wanted to review some of  
13    this was put up on the screen in the slides of the  
14    Canadian National presentation, but this is what we  
15    said we would do. This is our filing back in April  
16    of last year.

17            I know it's been a long time. We were  
18    responding to the requests of all the Class 1's  
19    except for CSX to apply the new merger rules to us.  
20    CN has among those seeking that really. What we said  
21    was it wouldn't be appropriate in this case to apply  
22    the new rules.

1           We said we were going to be provided all  
2   of the information the Board needed to address the  
3   public interest implication of our transaction, every  
4   application in a major merger case had always  
5   required that applicants do that, and this case was  
6   no different, and we said so.

7           But we also made clear that that didn't  
8   mean that we were going to go ahead and comply with  
9   the new merger rules anyway while we were  
10   simultaneously asking to be relieved from the burdens  
11   associated with that. We weren't. On the service  
12   assurance plan point, and that's the second  
13   highlighted passage hereon this slide, this is what  
14   we said.

15           We would provide the Board the information  
16   that the Board needed to satisfy itself that we,  
17   applicants, had carefully planned for the integration  
18   of these railroads. We've done that, and we will  
19   implement measures to monitor and adjust service  
20   levels during the integration process, so that  
21   shipper service levels are safeguarded.

22           We've explained in detail in both Mr.

1 Clements and Mr. Brooks verified statements, as well  
2 as in the operating plan how we're going to go about  
3 approaching that. And then we said all under  
4 appropriate Board oversight of course, and we have  
5 stood behind that. We have accepted up to five years  
6 of Board oversight, which would be coupled with a lot  
7 of reporting by us of our progress in implementing  
8 the benefits, and in providing service levels,  
9 operating metrics.

10 We'll talk more about those details, and  
11 certainly happy to talk about them now if you wish,  
12 but we've done all of these things. We have  
13 demonstrated that the implementation of this  
14 transaction isn't going to cause a disruption.  
15 That's what service assurance plans are for. They  
16 were put in place because of the experience in two  
17 cases, and you heard our opponents refer to these  
18 same cases, UPSP and Conrail.

19 They referred to them as if they are --  
20 those cases are generic mergers. They were not  
21 generic mergers. Union Pacific, Southern Pacific  
22 combination took two largely parallel networks that

1     spanned almost the entire southwestern United States,  
2     south central states and the southwest, with  
3     crisscrossing and parallel lines, and had to stitch  
4     all of those lines together.

5             Almost every terminal across the west had  
6     significant integration by Union Pacific and Southern  
7     Pacific to combine you know work into an SP yard, or  
8     into a Missouri Pacific Union Pacific yard, or  
9     completely restructure operating patterns to have  
10    directionally run single direction lines where the SP  
11    line would be north, and the UP line would be south,  
12    or vice-versa.

13            There was an extraordinary amount of work,  
14    and on top of that Union Pacific, Southern Pacific  
15    went into that merger with Southern Pacific in a very  
16    fragile state. Southern Pacific was not performing  
17    well, it was weak. It had not been investing in its  
18    infrastructure.

19            Maplewood Yard in Houston was a basket  
20    case, and as soon as traffic was pushed into that  
21    yard it collapsed, and that was the Houston service  
22    precedent. Nothing like that, nothing like that is

1 going to happen in this case, and there's nothing  
2 like that for us to plan for.

3 We start with two railroads that connect  
4 at one point, and on day two they're going to connect  
5 at one point, but it's not going to be an  
6 interchange. It's going to be the same trains, the  
7 same traffic, the same operations, and there just  
8 isn't any special calamity for us to prepare to  
9 remedy.

10 I think the Conrail case, the other  
11 example that was given is equally inapplicable, and  
12 there were difficulties that Conrail had. It wasn't  
13 Conrail that had them, it was Norfolk Southern and  
14 CSX, so on day one you know the Conrail network was  
15 split into two parts, with all kinds of new  
16 connections between Conrail systems and Norfolk  
17 Southern systems, so all of a sudden, a Conrail car  
18 became Norfolk Southern car around certain parts of  
19 Conrail, and Conrail car became a CSX car in other  
20 parts of Conrail.

21 And all of those systems had to be  
22 perfectly constructed, and work perfectly in order

1     for that integration to go smoothly. Well, it didn't  
2     as it turned out, and cars got lost, and the service  
3     suffered, and sure like more service assurance  
4     planning associated with the transaction like that  
5     was something that the Board in 2001 saw as required  
6     if there was going to be another major merger.

7                 We don't do anything like that as Mr.  
8     Clements has explained. All the systems stay in  
9     place, and then they are methodically and diligently  
10    cut over as everything is ready.

11                MR. CLEMENTS: David this is James.

12                MR. MEYER: James jump in for a minute.

13                MR. CLEMENTS: Yeah. James Clements here.  
14    I'm going to jump in. And the other piece that I  
15    think CN suggested led to some of the problems in UP  
16    and SP, was arrogance. They described that as the  
17    root cause. And I can tell you we don't come into  
18    this transaction with any arrogance.

19                We know we have a big merger to put  
20    together. We have to do it right, and we take that  
21    seriously, and we're not thinking we're like God's  
22    gift to railroading, and it's just going to go well

1     because we show up. We're doing a ton of planning,  
2     and when I want to say a ton of planning, the kind of  
3     scope that we've got going on in the planning,  
4     working with the KCS as we are allowed to prepare for  
5     the integration.

6                 We have over 1,000 people that have  
7     contributed to the process of planning for this  
8     integration to start if we have approval. And within  
9     that we have set up a dedicated, integration  
10    management office. We have provided dedicated  
11    resources into that office of very knowledgeable  
12    skilled and experienced people.

13                We have 167 different projects in flight  
14    that are getting us prepared to be able to start to  
15    put the companies together in the event that we get  
16    approval. And we have a diligent process within that  
17    to track the progress on those projects, to track  
18    where they're regular green. And that process goes  
19    all the way up to the senior executive.

20                Mr. Creel participates in a review every  
21    two weeks. We got through all the details of all  
22    those projects, and so there is comprehensive detail

1 the process that underlies all of our planning. And  
2 I want to say this is what's called an ordinary  
3 course. We have people that are very focused on  
4 getting this done, and there has been some suggestion  
5 that we should be filing a whole bunch of information  
6 about what the integration management office is doing  
7 and reporting out.

8 And you know I respectfully submit that  
9 what we need is the team focused on the integration  
10 planning, and we don't need people writing a whole  
11 bunch of pleadings and reports and everything to file  
12 in the proceeding to move this forward. And as  
13 David has said, it's not like UPSP or Conrail. When  
14 you look at the growth profile, we're talking about  
15 something like two to four trains a year of growth  
16 that's related to this synergy.

17 That when you look at the scope of the  
18 hundreds of trains that both KCS and CP run today, is  
19 not a step function major redesigning and rewiring of  
20 the network. It's not loading it up in you know huge  
21 ways that are going to cause yards to fail, or  
22 anything like that.



1                   And so, you know we think we're well  
2     positioned for that, and we have certainly dedicated  
3     a ton of resource to it. And the other thing I want  
4     to mention is we are engaging with our shippers, and  
5     we're being transparent with our shippers. Last week  
6     we had what we called the Customer Advisory Council.

7                   We had many shippers from different  
8     commodity groups, and different geographies in  
9     Calgary meeting with the team, and one of the  
10    sessions we did with them was how do you want us to  
11    proceed with the integration in the event that we get  
12    to control the combined CP/KC?

13                  And the summary of some of the output is  
14    put operations first. CP is best in class and  
15    operations, and we want you to remain that way. They  
16    said you need to communicate, and we're committed to  
17    communicating transparently with our customers about  
18    how we're doing and where we're going with the  
19    integration. And then they all said you have to pace  
20    yourself. Do not try to do everything on day one.  
21    Have a consistent and prolonged schedule.

22                  And so that's from our customers. And

1     that's exactly what I told the Board last week is our  
2     plan, and so we're aligned with our customers. We're  
3     listening to our customers, and we're involving them  
4     in how we are, and how should we move forward with  
5     the integration planning for this property.

6                 MR. CREEL: And James if I could, this is  
7     Keith. I want to add one more comment to that for a  
8     bit more color to close this point out. Experience  
9     and leadership matters in these regards. To me it  
10    was a bit ironic and disingenuous to sit there last  
11    week and listen to the Canadian National commenters  
12    suggest that we don't have the experience, and we  
13    don't have the ability to integrate these two  
14    railroads without jeopardizing ourselves to the  
15    catastrophic memories of the CN, or I'm sorry of the  
16    SPUP combination, as well as the continental carve  
17    out.

18                I can tell you from experience being an  
19    operating officer, during those two combinations, on  
20    the ground working, experiencing the service  
21    disruptions, it wasn't pleasant. It wasn't pleasant  
22    for the operating officers of these railways across

1     this station, it wasn't pleasant for the customer.

2                     Fast forward to a senior leadership  
3     position at Canadian National, speaking from  
4     experience, every successful transaction integration  
5     that is in CN's recent history, that goes back to  
6     CNIC, CNWC, CNEJ&E and CNBC rail, there was only one  
7     person in that room last week providing testimony  
8     that had a leadership role in integrating those  
9     accommodations, and he's sitting in Bensenville  
10    speaking to you this morning.

11                    He wasn't sitting at the table  
12    representing Canadian National. And I say that not  
13    with any arrogance, but with humility to say that  
14    experience matters, which is why I'm so confident  
15    that the planning that we're doing will make the  
16    difference to make sure that we deliver on our  
17    commitments, as well as Mr. Clements, as humble as he  
18    is.

19                    His history with Canadian Pacific before I  
20    became a part of the CP family, also includes  
21    successful integrations with the purchase of the DM&E  
22    railway, and together with the purchase of the CMQ

1 with he and I together leading the integrations.  
2 That combination will have a material impact to a  
3 different outcome when we put these two railways  
4 together.

5 MR. CLEMENTS: Thank you Keith. This is  
6 James again. And I just want to move on a little bit  
7 to we talked about data reporting. I'll put up our  
8 pillar three again around what we've committed to  
9 doing. And as we've said we're going to be  
10 transparent. We're happy to report a number of  
11 metrics, and I just want to put a little bit of meat  
12 on the bones here, and then adding a bit around  
13 what's new.

14 As we've said before we're committed to  
15 continuing to report the scope of metrics for both CP  
16 and KCS networks that were described and required in  
17 EP 724 and 770. And this is the important piece here  
18 is this is regardless of whether those proceedings  
19 continue to require those reporting requirements or  
20 not.

21 We will continue them through the entire  
22 oversight period that is required by the Board. And

1     there were some concerns that were raised by specific  
2     commenters, and we will augment those requirements of  
3     720 and 770. We'll commit to providing transparency  
4     in terms of how we're performing on key corridors,  
5     that's the Laredo corridor from the border north to  
6     both St. Paul and Chicago.

7             And we also heard some concerns around the  
8     Meridian Speedway. We're happy to report metrics in  
9     terms of performance on the Meridian Speedway. Some  
10    of the key yards, and I will agree all of these key  
11    yards are in the existing reporting, but we will  
12    ensure that all of the key operating yards have  
13    metrics reported on them.

14            And then importantly, and you've already  
15    raised some questions today about this around Chicago  
16    and then Houston. We will develop and report  
17    performance metrics in terms of transit times and  
18    other details over the Metra and UP portions, so if  
19    you want to flip to the next slide. What we would  
20    propose for both of those geographies, there was  
21    concerns raised about train lengths, train counts,  
22    we'll be transparent on that.

1           We think transit time is also important in  
2 terms of the transparency of how the operations in  
3 question are reported, so we'll provide that. And  
4 then finally with specifically around Metra, and not  
5 just limited to the Milwaukee District West where  
6 we're adding eight trains west of Bensenville, we  
7 provide visibility to CP's performance on how its  
8 freight operations is interacting with the Metra  
9 trains, and report anywhere where our freight trains  
10 have caused a delay, whether or not they ultimately  
11 trigger a Metra train to go beyond the six-minute  
12 window or not.

13           And so, those are some additional  
14 reporting requirements and transparency that we're  
15 committed to, to address concerns that we've heard  
16 from other participants.

17           MR. MEYER: Thank you James. This is  
18 David again.

19           CHAIRMAN OBERMAN: David, I have a couple  
20 of questions here. I'm looking at your rebuttal or  
21 reply filing, where you list the five pillars. And  
22 so, I'd note with interest what Mr. Clements was just

1 suggesting here under pillar three, which is more  
2 detail than is actually in your pleading.

3 MR. MEYER: Yes.

4 CHAIRMAN OBERMAN: Which I assume results  
5 from you're having more time to reflect on what we've  
6 heard from other railroads. And I was going to ask  
7 this question anyway, and you may be dealing with  
8 other parts of it in this presentation. So, you may  
9 want to embellish your answer.

10 But and I'm going to ask this question  
11 being fully cognizant of the fact that we determined  
12 to apply the so-called old rules, and so the question  
13 about having a service plan that meets the new rules'  
14 requirements is not part of my question. You did  
15 say that we would have all the information we needed  
16 to make a decision on this.

17 And you have provided us with a lot of  
18 information, but as I read the five pillars, and the  
19 descriptions of them in your rebuttal pleading. Not  
20 to question the good faith of the representations,  
21 but the lawyer in me is saying there's a lot of nice  
22 language in there, but it's not precise enough for

1     somebody to come in and say well they didn't meet  
2     this condition.

3                     And so I'm pleased to see what Mr.  
4     Clements was just representing in some more detail in  
5     so-called pillar three. And I'd like to hear, not  
6     necessarily today unless you're prepared to talk  
7     about it, but at least in your final briefs, I'd like  
8     you to put to use his terms, I know it's a term I've  
9     used in other contexts. A little more meat on the  
10    bones of the five pillars in more precise language  
11    that allows us to measure CP's compliance with its  
12    representations, and more importantly allows other  
13    stakeholders to measure, and then to bring an alleged  
14    non-compliance to our attention in a way that we know  
15    what you're talking about.

16                    You know for example, you know, number two  
17    we will proactively monitor our own performance to  
18    identify areas requiring adjustments. That's very  
19    good management concept, but I don't know how to  
20    enforce it proactively monitoring language. It's a  
21    little too general.

22                    So, to the extent your own representations



1 in this area can be crafted into conditions that are  
2 measurable and enforceable, that would be very  
3 helpful to see at least what you're offering. You  
4 may or may not agree, but I can't quarrel with most  
5 of the platitudes in this language. It's all great  
6 and what Keith is saying today is impressive, and  
7 it's much, you know, much of that is backed up by his  
8 own history, and the history of the railroad, but  
9 we've got to look at this going forward, so that's a  
10 concern of mine.

11 MR. MEYER: Chairman Oberman if I may  
12 David, David speaking. So, first thing I'd say is I  
13 think if you look at the reply verified statement, or  
14 rebuttal verified statement of John Brooks, you'll  
15 see a discussion of some of the pillars and go into  
16 more detail than was in our lawyers narrative for the  
17 pillars themselves.

18 Probably not enough to satisfy the desire  
19 that you just articulated, but I want to address that  
20 right now, and we of course can think about how else  
21 to address it to you in the brief. But so I commend  
22 you, John's more developed explanation of how he sees

1     those pillars working.

2                     But I really would caution the Board about  
3     the desire to have sort of detailed specific metrics  
4     associated with each and every potential customer  
5     circumstance on the railroad.  It's just not possible  
6     realistically to say for any given customer today  
7     that's served in a certain way by certain train  
8     operations, certain origins and destinations, with  
9     certain you know other impacts from elsewhere in the  
10    network and you know seasonality and weather, and  
11    all the things that go into railroading, to come up  
12    with a precise set of you know for this shipper  
13    they're going to get exactly this exactly in these  
14    circumstances with no change in this, that or the  
15    other operational metric.

16                    It's just not realistic.  So, what we're  
17    suggesting is not to try and get hyper detailed, you  
18    know rigid way, we're proposing a broad commitment  
19    that we're going to do the things that we say we're  
20    going to do.  We are going to support shippers  
21    service, we are going to be transparent with them  
22    about changes, so forth and so on.

1           Every shipper's circumstance is likely to  
2     be somewhat different, you know, large shippers,  
3     small shippers, grain shippers, chemical shippers,  
4     intermodal shippers, across a lot of geography. And  
5     if there's a problem, and we're going to report a  
6     lot of metrics and a lot of data, but these shippers  
7     also are part of an ecosystem in a transportation  
8     marketplace where they know what's going on.

9           They're going to be able to come to us,  
10    and we're going to be very proactive about engaging  
11    with them. We're prepared to mediate service  
12    disputes. If they think the merger caused some  
13    problem for them that's inconsistent with one of  
14    these metrics, we'll mediate that at the very least.

15           And ultimately, we're going to have up to  
16    five years of oversight. And I've lived through  
17    oversight proceedings. I don't you know necessarily  
18    think anyone looks forward to them, but there's no  
19    reason for anyone to think that a problem that we  
20    create, that a shipper experiences, we don't think  
21    we'll be doing this right, but if the shipper  
22    experiences a problem, we're going to fully expect

1     them to bring that to the Board attention as part of  
2     oversight.

3                     And then we can solve the problem, and we  
4     can address how to solve the problem, and obviously  
5     address whether there really was a problem. In the  
6     context of all the facts that relate to that  
7     shipper's circumstance. But trying in advance to  
8     specify exactly what every shipper and every  
9     circumstance is going to receive, and if they don't  
10    receive it then they have an instant claim.

11                    You know, not only is that I think an  
12    effort that would inherently fail, it would also  
13    overly legitify the railroad. So, you heard just to  
14    take an example, you've heard from the shipper  
15    associations a desire to impose on us a rigid 30 day  
16    advance notice requirement for any change in the  
17    service that they receive at their shipper facility.

18                    We're certainly going to try and be  
19    proactive and transparent about all the things that  
20    you know we might do, not whether they're merger  
21    related or not, associated with our service at our  
22    shipper facility, but if we can't make a change

1 without waiting 30 days, we're going to have a very  
2 rigid network that could create all kinds of  
3 problems.

4           So, the other thing I'd say about the idea  
5 of coming up with a very precise matrix of which  
6 violations trigger what relief, is that's not even  
7 what's required by a service assurance plan. That's  
8 not what the Board said in its regulations under the  
9 new rules. They just said go plan and tell shippers  
10 what you're going to do when you cause a problem at a  
11 terminal, or when you over congest a line, or when  
12 you, you know, can't deliver their cars because you  
13 can't find them because your systems had failed.

14           That's the kind of thing service assurance  
15 plans are designed to do. It wasn't designed to say  
16 to every shipper on the railroad, you know here's  
17 your sort of bill of particulars, and if you see  
18 these two things happening you can collect this money  
19 from us. That's just not even under the new rules,  
20 what a service assurance plan is attempting to  
21 accomplish, in my view.

22           But we will absolutely you know think

1     about -- think further about whether there's more  
2     particularity we can provide around all of these  
3     pillars, but we think the flexibility of them, and  
4     the generality of them is frankly a feature, not a  
5     bug because we are making broad commitments. We  
6     won't be shutting out any shipper who thinks that our  
7     transaction has caused a service problem for them,  
8     whatever the circumstances are, and we can address  
9     them on those facts, on those circumstances, and find  
10    the right solution for that shipper in the right  
11    circumstances.

12                   CHAIRMAN OBERMAN: I appreciate what  
13    you're saying David, but to a large extent you were  
14    shooting down a straw man that I wasn't raising. I'm  
15    not inquiring about a hyper detailed commitment for  
16    shippers. I don't disagree with your concerns about  
17    that.

18                   I think there's some place between what  
19    you've submitted so far, and hyper detail where you  
20    could make something more specific. I am thinking  
21    about this. Look, if everybody was a saint, we  
22    wouldn't need any of these plans because there would

1 be no problem. So, the only reason we need something  
2 written down as to what your representations are, and  
3 what we might include as a condition, is when it  
4 can't get otherwise solved that somebody seeks relief  
5 from us. We know what we're enforcing. That's my  
6 concern.

7           So, I'd like you to take your very  
8 excellent legal mind when you in your final brief,  
9 examine each of your pillars and they're good. You  
10 know, I don't have any quarrel with the general  
11 concept in the pillars, but to -- and I have to  
12 confess I haven't re-examined Mr. Brooks verified  
13 statement, so it's not in my head as I sit here.  
14 Maybe there's more detail in there, but I don't know  
15 that you're representing whatever is in Mr. Brooks  
16 verified statement is something you would find  
17 acceptable as conditioning by the Board.

18           So, what I want you to do is to be very  
19 specific as to the conditions regarding service that  
20 you're offering to be in any order which might  
21 approve the merger. As far as you feel you can go in  
22 a practical sense, we'll then make some judgments

1 obviously if we think that's enough, or do we have to  
2 put more in it. But my own, and I'm only speaking  
3 for myself, not the other four, reaction to your  
4 rebuttal is that the concepts are admirable.

5 CP's management record, I think Keith made  
6 very valid points. You know, if we knew all of these  
7 people were going to be presiding over this for the  
8 indefinite future that gives some comfort, but you  
9 know our job is to put something on paper that  
10 everybody can live with for the long term. So that's  
11 what I'm encouraging because if you don't do that  
12 then the challenge will be for us and our staff to  
13 try to do it for you if we think more is needed.

14 And I'd rather see your best efforts  
15 beyond what you've already put in, then our trying to  
16 write some language, which will turn out to be a non  
17 sequitur, or something that doesn't deal with the  
18 reality of your railroad. You know it better than we  
19 do, but I think we need you know, put yourself on the  
20 other side of the fence if you were trying to enforce  
21 one of these conditions, you know, where would you  
22 find the frustration of saying well what did they



1 really commit to? That's what I'm concerned about.

2 But not hyper detail. I don't think  
3 anybody thinks that a merger condition says what day  
4 you have to serve some particular shipper on your  
5 line. Nobody is suggesting that.

6 MR. MEYER: So, Mr. Chairman, at least  
7 speaking for myself, and I think speaking for the  
8 applicants, the message is very much received, and  
9 rather than brainstorm on the fly here.

10 CHAIRMAN OBERMAN: No. That's why I  
11 suggest you do this in your final brief. I think it  
12 requires a little more thought. It requires me to go  
13 back to look at Mr. Brooks statement, and I'm not  
14 going to do that while we're sitting here.

15 MR. MEYER: I appreciate that. And I do  
16 want to say one other thing about this, and I don't  
17 want it to be misinterpreted at all. You know, I'm  
18 certainly not suggesting that we're in the slightest  
19 backing away from our arguments. We're not at all,  
20 and I think we'd probably be --

21 CHAIRMAN OBERMAN: I didn't hear that.  
22 No, I didn't hear you were suggesting that either.

1                   MR. MEYER:   Probably be able to come  
2 forward with some more specificity. I can't make any  
3 promises, but we'll do our best. But the other point  
4 I do want to make, and this point has really more  
5 resonance when we come to another set of commitments  
6 that we've made, and we'll talk about them later in  
7 the presentation regarding gateways.

8                   But a starting point here really in the  
9 Board's evaluation in this transaction is to ask are  
10 we going to create a public interest arm that  
11 requires a remedy, right? That's where conditions  
12 come into play. We've made commitments to reassure  
13 everyone that we're all about improving service and  
14 improving competition right, but you have to ask  
15 yourself is there anything about this transaction  
16 that we're proposing that will create a likely harm  
17 to service?

18                  The answer is absolutely not, and we'll  
19 explain all the reasons why not, but the very first  
20 reason, like right there a flashing light, a flashing  
21 green light, I think. I don't -- maybe I'm getting  
22 railroad signaling all screwed up, is nobody in this

1 transaction, nobody in this proceeding, nobody in the  
2 North American Rail Network is going to have a  
3 stronger set of incentives to make sure that our  
4 service measures up because the very driver of the  
5 transaction is to attract more traffic from  
6 customers.

7           There's no way we achieve that if not only  
8 do we not provide service that brings new traffic to  
9 us, but if we provide service that drives our  
10 existing traffic away. And I think you know Mr.  
11 Creel and others can speak to that much better than I  
12 can. But if the Board starts with the question is  
13 there anything about this transaction that's going to  
14 lead to a harm to rail service, I think the only way  
15 to answer that question on the record, and we'll  
16 talk more about Houston and Chicago and other places  
17 for sure, and we have more specific things about  
18 those areas.

19           But as a general proposition there's just  
20 no predicate to think that we're going to cause any  
21 service problems. There just isn't.

22           CHAIRMAN OBERMAN: Well David, I don't

1 disagree with you in terms of the structure of it,  
2 and what would appear to be in the CP/KCS obvious  
3 self-interest in terms of what the incentives are.  
4 I would only reflect in a broad sense that I would  
5 think everything you just said would apply to every  
6 Class 1 railroad in terms of what their incentives  
7 are, and without belaboring this hearing. It's no  
8 secret that I don't see it. And the truth is if you  
9 sent it at the outset, if you look back at this  
10 year's problems, CP and KCS have not been railroads  
11 that have brought, caused us to have those emergency  
12 hearings.

13               So, your record at least this year is  
14 positive contrasting to the others, but I am thinking  
15 about the overall network, and that's not to  
16 challenge or undermine the intentions or good faith  
17 of your clients. I guess I would just leave it by  
18 saying I think it would be in your interest to give  
19 us as much specificity as you think you are  
20 comfortable with in terms of how to best operate your  
21 railroad.

22               That would be the measuring stick, and you

1 know, we will obviously seriously consider where you  
2 think those conditions should stop in terms of  
3 specificity. I think you can do more. That's my  
4 sense of it. If you think I'm wrong, then you'll  
5 tell me that in your brief. But I just think you  
6 should put in the effort before we do.

7 MR. MEYER: And as I said Mr. Chairman,  
8 David again, I was not meaning to back away from what  
9 -- message received, and we'll certainly do that. I  
10 just wanted to perhaps you know orient us around what  
11 ultimately is what we're trying to solve for is to  
12 answer the question is the transaction in the public  
13 interest, and you know, conditions. You know  
14 conditions are warranted where there is a real likely  
15 public interest harm that can be avoided through some  
16 requirement published by the Board.

17 And I think here there's not a need for  
18 the Board to regulate our service, specifically you  
19 know, in a way different from what other railroads  
20 realize. But with that said we've made commitments  
21 because we believe strongly in the mission of this  
22 transaction, and we'll go back you know as we prepare

1     our brief and think about how much more specificity,  
2     we can provide about that.

3                   CHAIRMAN OBERMAN: I will say this David,  
4     that as I think about this proposed merger, and our  
5     task of ruling on it, and I think this is consistent  
6     with what you're saying. To me the whole is greater  
7     than the sum of the parts, or at least it ought to  
8     be, and therefore any specific pillar of your five  
9     pillars are other drilling down on those conditions  
10    are important in terms of measuring whether they  
11    contribute to the whole being greater than the sum of  
12    the parts. Is that a fair way to think about it in  
13    your view?

14                  MR. MEYER: Well, I certainly think the  
15    Board ought to look at the whole of our transaction  
16    in evaluating whether it's in the public interest. I  
17    agree with that completely. I don't think our  
18    service commitments frankly are remotely required to  
19    conclude that our transaction is in the public  
20    interest. We've made our commitments because we  
21    wanted to respond to the nature reaction of many in  
22    the rail shipper community that you know merger

1 equals scary and bad.

2                   And so we want to reassure folks that we  
3 aren't the Conrail case. We aren't the UPSP case.  
4 We're planning carefully. We're going to be mindful.  
5 We're going to be proactive; we're going to be  
6 transparent with our customers. All the things that  
7 Mr. Brooks and Mr. Clements and Mr. Creel can say  
8 much better than I.

9                   And so, we wanted to like reassure and  
10 underscore, but we're not relying on the regulatory  
11 obligation to have good service as what makes our  
12 transaction in the public interest. It's in the  
13 public interest because we're going to be able to  
14 provide better service and compete with that better  
15 serviced in the North American Rail Network, and  
16 that's going to drive more traffic and support  
17 investment, and it's a virtuous cycle. That's what  
18 makes it in the public interest.

19                   CHAIRMAN OBERMAN: Well, I think if that's  
20 carried out I think you're right. But of course, if  
21 we could always rely on a virtual cycle we could just  
22 go out of business, so it's just a bad idea some

1 days.

2 MR. MEYER: Frankly, Chairman, you'd have  
3 plenty of problems that would arise in the rail  
4 industry where the argument about a virtuous cycle  
5 would not be applicable. In this particular case we  
6 think it is, but we also understand the importance of  
7 probing, and we understand the importance of making  
8 sure that our commitment is as clear as it can be,  
9 and so we'll take another look.

10 CHAIRMAN OBERMAN: I think Patrick has  
11 some questions. I'll hand it over to him.

12 BOARD MEMBER FUCHS: I appreciate it  
13 Marty, and I'll pick up right where you left off. I  
14 do want to acknowledge that applicants' additional  
15 reporting commitments in my view fill in some of the  
16 gaps that might be in 770 and 724, particularly  
17 around transit times and the Metra train, so I want  
18 to acknowledge that that has a synchronicity with  
19 some of the concerns we've heard on this record, and  
20 I think that's positive.

21 I also want to say Mr. Chairman I agree  
22 with you that you know I don't think that we'd be



1 looking for something hyper detailed, and I think  
2 that there's broad agreement on that. I do wonder as  
3 I'm thinking about transit times, and perhaps some of  
4 the other metrics, whether or not they can continue  
5 to be reported in aggregate, but whether or not it  
6 would factor in kind of customer before and after.

7 By that I mean -- so, you know, and it  
8 could be for a broad base of customers you know that  
9 have traffic that go through Houston or go through  
10 Chicago. Because if we just report overall transit  
11 time on the CP/KC without some sort of baseline,  
12 we're going to be affected by traffic mix and other  
13 factors.

14 So, I do wonder whether or not there's a  
15 way to think about transit times on a relative basis,  
16 understanding that it would be still reported in  
17 aggregate. And as I say that I say that  
18 acknowledging that there is great heterogeneity on  
19 the rail network. There are complexities. Sometimes  
20 there's a rate service trade off.

21 You all might have a longer transit time,  
22 but there might be a different rate that is

1 associated with a particular transit time. And  
2 there's complexity on the network in terms of the  
3 things that could go wrong that might for any given  
4 period, make transit times appear longer than they  
5 would be you know otherwise.

6           So anyway, I say that to say something to  
7 think about as you are flushing out the concept of  
8 transit times is allowing us to think in aggregate  
9 about how a customer is treated before and after the  
10 transaction. And then I guess another point I would  
11 make in addition to kind of the gaps and the hyper  
12 detail is I think I have a personal preference to  
13 keep things from the Board going forward. And that  
14 includes issues that might come up in terms of merger  
15 enforcement, particularly if things aren't fully  
16 flushed out, it sort of leaves open questions that I  
17 think we could do better to resolve right now.

18           And so, what I have in mind in particular,  
19 is for you all to examine the Tex-Mex transaction,  
20 the KCS NIT League agreement, which spoke to service.  
21 And what you all committed to -- what KCS committed  
22 to in that case if I'm not mistaken, is basically

1 establishing sort of a baseline service level in  
2 aggregate. Not hyper individualized, but in  
3 aggregate.

4 And if you all fell below the baseline  
5 that you all established. And this is how I read it  
6 working. You all can correct me if you have a  
7 different understanding. If you all fell below a  
8 certain aggregate level, you would automatically  
9 submit to the Board a corrective action plan,  
10 including addressing, including whether or not the  
11 reason you fell below was not your fault.

12 So in particular in that agreement, you  
13 mentioned that a very significant portion of the  
14 transit is on the Union Pacific, so you would address  
15 whether or not you believe that Union Pacific was at  
16 fault. You may address whether or not you feel  
17 weather is at fault, et cetera, but it's automatic  
18 and self-enforcing.

19 And you all come to us with what you're  
20 going to do instead of the Board getting a complaint  
21 and telling you what to do. And there's a certain  
22 alignment with how the Board approaches service

1 recovery plans in this most recent about service  
2 problems more broadly on the network.

3           There's a certain alignment there that may  
4 be appealing to my fellow members. So, I basically  
5 you know to summarize, would say take a look at  
6 whether or not you can think about transit times at  
7 the customer level, while reporting in aggregate.  
8 And take a look at Tex-Mex, and whether or not  
9 there's a framework there for service reporting and  
10 corrective action that might provide an additional  
11 level of insurance to those that are concerned.

12           MR. MEYER: Member Fuchs, thank you very  
13 much for those thoughts. I think those are excellent  
14 ideas for us to consider. I'm not going to say we  
15 haven't you know had ideas in the same ballpark  
16 swirling in our heads from time to time in this  
17 proceeding, and thinking about all of this, but I  
18 think we could absolutely take those notions to heart  
19 and do our best to incorporate something like what  
20 you are describing as best we can.

21           No doubt that in you know in some form or  
22 fashion, you know, in the oversight process, you know

1 the kind of outcomes that would lead to metric  
2 changes that you're describing would end up being  
3 aired in some form, you know, as a result of  
4 complaints, or because we brought them to your  
5 attention anyway.

6 So you know there's complete alignment  
7 with the spirit of what we're trying to accomplish  
8 here, and so let's as I said, we will go back to the  
9 -- I'm not going to say back to the drawing board.  
10 We're going to go back to the office and think hard  
11 about what we can come forward this.

12 BOARD MEMBERS FUCHS: That's great, thank  
13 you.

14 MR. OTTENSMEYER: This is Pat Ottensmeyer  
15 just to pass the circle back to Member Hedlund's  
16 question. I have been able to confirm with both our  
17 operating people and government affairs people that  
18 we were not invited or asked to participate in the  
19 most recent tech stock study. We did participate in  
20 2013's study, not the 2020 or 21 study.

21 And it appears that the only east of KCS  
22 owned track that was covered by the study was the Neches

1 River Bridge east of Houston, which we will talk  
2 about extensively later on in this discussion.

3 CHAIRMAN OBERMAN: All right. Thank you,  
4 Pat.

5 BOARD MEMBER HEDLUND: Thank you very  
6 much. And are we going to take a break now Mr.  
7 Chairman?

8 CHAIRMAN OBERMAN: Right now. That's what  
9 I was about to say.

10 BOARD MEMBER HEDLUND: Thank you.

11 CHAIRMAN OBERMAN: We are going to break  
12 for one hour. We will be back at 1:00 Eastern, thank  
13 you all.

14 (Break.)

15 CHAIRMAN OBERMAN: All right we are going  
16 to reconvene, and I'm only going to say this very  
17 briefly. We have a hard stop at 5:30 eastern, so we  
18 really need to finish. So, I admonish everybody  
19 involved, but having said that I don't want to short  
20 circuit either the applicant, or the Board Members  
21 with questions. So let us just be efficient, as  
22 efficient as we can. David you're one.

1                   MR. MEYER: Thank you very much Chairman.  
2     The break came right at the transition between the  
3     issues we were discussing before the break, and  
4     Chicago. We want to make three broad points today in  
5     response to the concerns you heard raised by Metra  
6     and the Chicago Coalition last week.

7                   First, all of these concerns about Chicago  
8     really start with the Marquette subdivision. That's  
9     that line that connects Kansas City through Sabula  
10    Junction, Iowa with St. Paul and the Twin Cities.

11                  Mr. Elphick will explain that these  
12    concerns about the Marquette subdivision really are a  
13    red herring in this case. We are not going to detour  
14    or move trains off of the Marquette subdivision into  
15    Chicago and invert the coalition unities or Metra.

16                  Once the record is understood about that,  
17    we can focus on Chicago and understand the facts of  
18    changes that will come from the transaction. As  
19    we'll explain, there's ample capacity for us to  
20    operate along with Metra on these tracks without  
21    causing adverse impact for Metra operations.

22                  And third, we are committed to

1 constructive engagement with Metra. But and we will  
2 speak to exactly what kind of constructive engagement  
3 we intend to undertake. But a forced shift of  
4 dispatching and other forced changes in the  
5 contractual arrangements between CP and Metra are not  
6 warranted and would harm the public interest.

7 So those are the three points we're going  
8 to focus on in response to the concern you heard last  
9 week. Fundamentally there's no harm that will be  
10 caused by the transaction that warrants the  
11 imposition of conditions with respect to our Chicago  
12 operations. We will speak to the commitments that  
13 we're making that I would hope would provide  
14 reassurance to Metra and the Board that that will be  
15 the case.

16 So, I'll turn it over to Ray Elphick, and  
17 he'll begin with a map that I think you saw last week  
18 of the Marquette subdivision. This is the map we put  
19 up on the screen last week to orient you as to where  
20 the Marquette subdivision is. As I said between  
21 Sabula Junction and River Junction. This is along  
22 the Mississippi River and serves the traffic moving



1     between Kansas City and the Twin Cities.

2                   MR. ELPHICK:   Thank you.   So Ray is  
3     speaking.   You've seen this slide before as David  
4     said.   We discussed the flow of traffic west of  
5     Bensenville, and the split of traffic at Sabula  
6     Junction.   So, traffic will move from St. Paul at the  
7     top of the graph, through River Junction onto the  
8     Marquette subdivision and into Kansas City, and  
9     vice-versa.

10                  The other arrow notes traffic moving to or  
11     from Kansas City up to Sabula Junction, and then east  
12     of Bensenville Yard in Chicago.   Okay.   Again, you  
13     can see that our Marquette subdivision starting at  
14     River Junction and running south to Sabula Junction.  
15     This section is 161 miles long.   It is the most  
16     direct and shortest route for freight traffic that  
17     needs to move from St. Paul to Kansas City.

18                  The route from River Junction to  
19     Milwaukee, Chicago, and then across to Sabula  
20     Junction, these 413 miles, or 250 miles longer than  
21     the River Junction to Sabula route.   CP would never  
22     route a freight train from St. Paul to Kansas City

1 via Milwaukee to Chicago, except in the event of an  
2 unlikely emergency.

3 It doesn't make sense operationally or  
4 commercially to go the extra 252 miles wasting crews,  
5 locomotives, wearing out track, not to mention having  
6 much longer transit. This would erode CP/KC's  
7 competitive edge. It will put to waste all of the  
8 capital investments that we have plans for the  
9 merger, growth on the Marquette subdivision.

10 So, let's look at capacity on the  
11 Marquette subdivision. That's been the focus on  
12 Metra's comments. You've heard that the Marquette  
13 subdivision can't be further extended. We are  
14 certain that the Marquette will have capacity for  
15 growth. Looking at the right map again, from River  
16 Junction at the top of the map to Sabula Junction in  
17 the bottom, I've noted all of the sitings this time.

18 The ones in the yellow boxes are merger  
19 related. So, starting at River Junction at the top,  
20 there's one of the proposed merger related sitings to  
21 be build at Brownsville, followed by existing sitings  
22 at Canes and Harper's Ferry, the next citing is

1     Eckards. You could work your way south and see all  
2     of the proposed new merger related and existing  
3     sittings.

4             Criticism was also put forth the capacity  
5     of the Marquette subdivision can't be further  
6     expanded, and that is simply wrong. In addition to  
7     the capacity projects that I've mentioned, the state  
8     of protected growth, there are other capital projects  
9     that we can deploy if growth exceeds our expectation.

10            For example, I've shown three green stars  
11     along the track which would represent other locations  
12     CP could build additional sittings. This list is not  
13     exhaustive. It's simply a list of contingent capital  
14     projects that could add capacity should it be  
15     required.

16            The green star at the bottom near Sabula  
17     Junction is a siting that actually is already built  
18     today, and it's used for the storage of cars. And as  
19     we speak today, we're adding CTC the switches, and  
20     therefore have the potential to rapidly deploy use of  
21     that siting when the CTC is complete.

22            So, I'd like to just say that you can see

1     that a lot of existing merger related and future  
2     potential infrastructure projects on the Marquette  
3     subdivision. Of course, we plan capital to be brought  
4     on in advance of the anticipated volume growth. To  
5     illustrate capacity relative to the traffic volume on  
6     the Marquette subdivision, we present the two graphs  
7     on the left.

8                 The top one is looking to capacity  
9     projects north of Marquette Junction, and the bottom  
10    one for capacity projects south of Marquette. We  
11    split the data this way given the different train  
12    counts on each of the segments. The north segment  
13    will see fewer trains that move south, reflecting  
14    trains coming from the west of Marquette.

15                Okay, so inside the solid gray bars then  
16    is the kind of trains we anticipate by year for each  
17    of the three years subsequent to the transaction.  
18    I've also included the year five volume, which  
19    includes organic growth. Above each gray bar is two  
20    lines. The green line represents sustainable  
21    capacity, and the top blue line represents maximum  
22    capacity.

1           As you can see, we are planning to add  
2   capacity to stay ahead of the protected growth.  
3   Looking at the top graph for the north portion of the  
4   Marquette subdivision, for example in year one you  
5   could see that we have sustainable capacity for 11  
6   trains. That capacity is sufficient for the  
7   projected volume of 7.46 trains in year one, and the  
8   8.26 trains in year two.

9           Looking out to year three where we project  
10   10.66 trains, we will be building the Brownsville  
11   subdivision starting in year two for completion in  
12   year three that will raise the sustainable capacity  
13   to 14.4 in time for the growth. That same pattern  
14   can be seen in the bottom graph reflecting the south  
15   segment.

16           We have noted that in year one the train  
17   count is at 65 percent of the sustainable capacity  
18   line. That 65 percent though is not an indictment on  
19   our capacity to run well. It is what we monitor  
20   though to ensure we are planning capital proactively.  
21   Nonetheless, even though the volume is perfectly  
22   management at sustainable capacity to ensure that we

1 have extra room, we have made the decision to  
2 accelerate the Bell View siting project for  
3 completion in year one, rather than year two.

4 By year five on the right of the same  
5 graph, which includes organic growth, we anticipate  
6 17.97 train on the capacity, with the additional  
7 track will produce a maximum capacity of 32 trains.  
8 As we do in normal course, we will be constantly  
9 monitoring the traffic levels as they materialize and  
10 have the ability to adjust our capital projects  
11 accordingly.

12 Now I would like to turn to Metra. And  
13 Metra's consultants provided an RTC analysis --

14 CHAIRMAN OBERMAN: Before you leave that,  
15 on your earlier slide you have a number of siting  
16 projects shown south of Sabula Junction. Are those  
17 notes relative to this capacity?

18 MR. ELPHICK: No. I was strictly speaking  
19 to the Marquette subdivision here because of Metra's  
20 thesis that that subdivision will be under capacity,  
21 and therefore trains would route via Chicago.

22 CHAIRMAN OBERMAN: Well will those other

1 sitings have any beneficial impact on the Marquette  
2 subdivision?

3 MR. ELPHICK: Yeah. That's a very, very  
4 good question. Even in the simulation that was  
5 completed, the siting south of Sabula Junction are  
6 very important to setting up the meets and the  
7 capacity on the Marquette subdivision. You know  
8 we're doing sitings all the way down through Kansas  
9 City, and all the way to Texas, so I have just chosen  
10 to show those ones here to discuss the Metra  
11 simulation.

12 CHAIRMAN OBERMAN: The other question is  
13 based on your construction schedule, and I realize  
14 you're giving us you know your best projections of  
15 what will happen once these sitings are added. But  
16 in the real world we're not going to know how things  
17 perform until the sitings are actually up and in  
18 operation, is that a fair statement?

19 MR. ELPHICK: That is a fair statement  
20 yes.

21 CHAIRMAN OBERMAN: So, and the only reason  
22 I asked is that we're going to be pretty close to the

1 end of the five year proposed oversight before we  
2 really know how well things are functioning on this  
3 subdivision, and whether or not it does relate to  
4 Metra. If you're a skeptic on Metra's side, you're  
5 not going to know until three and a half, four years  
6 from now, or close to five.

7 MR. MEYER: Well Chairman, if we could go  
8 to the slide that shows the phase in of the traffic,  
9 and the phase in of the capacity. You know year five  
10 is shown here not as a year in which anything is  
11 changing because of the merger, but just to  
12 illustrate that with the organic growth that occurs  
13 you know in expanded economic activity in the  
14 economy.

15 You know, all the things that would happen  
16 without the merger, Mr. Elphick was illustrating that  
17 as you go out past year three, we're not going to see  
18 anything impinging on anything. So, with respect to  
19 your question about timing, Metra and other  
20 stakeholders will see traffic begin to come on the  
21 railroad during the course of year one, which would  
22 be presumably you know during most of 2023, and into



1 the beginning of 2024.

2           They'd see you know that's the first year  
3 of oversight. They'd see the same thing happening  
4 over the course of year two, the beginning of 2025,  
5 if I've got my numbers right. And then you know by  
6 the end of year three we anticipate that the merger  
7 related traffic route would have been achieved, so  
8 that would be 2026, early 2026. Now the oversight  
9 that we've been discussing could continue up to five  
10 years.

11           And obviously, if there's a problem in  
12 year five, you know, it would be certainly within its  
13 rights to extend oversight, and we would not fight  
14 that if there were a basis for it. But there would  
15 be at least two years of that oversight period during  
16 which you would be examining essentially a steady  
17 state, you know, post merger environment.

18           CHAIRMAN OBERMAN: Well, let's move on.  
19 It's you know how the railroad may modify its own  
20 traffic patterns and so forth could change as you  
21 build these sitings, and so you may want flexibility  
22 to make modifications. And it's my sense in the

1 railroad business that it takes some years for  
2 traffic to settle into a post merger pattern, and  
3 you're all seeing how it really works.

4 It just occurs to me that you're bumping  
5 right up against that five-year period, but I take  
6 what you said David, about extending it, something I  
7 want to think about in this context. Thank you. So,  
8 let's keep going.

9 MR. ELPHICK: So, Metra's consultants  
10 provided an RTC analysis, covering not only the  
11 Marquette subdivision, which we just looked at, but  
12 the other lines between River Junction, Chicago, and  
13 Sabula Junction. I'm going to start by saying it was  
14 difficult to hear Metra's consultants critique CP  
15 regarding a primitive modeling of not having provided  
16 all the data requested by Metra, and then providing a  
17 mountain of data within a short timeframe to react.

18 To start, our process for managing capital  
19 is strong. We use a variety of models, tools and  
20 measures to assess capacity, depending on the  
21 circumstances. I think our track record for  
22 performance speaks for itself, and we don't take

1     lightly the baseless criticisms that were leveled.

2             Any allegation that Metra is not provided  
3     the information that we needed to conduct a study is  
4     false. CP was transparent and responsive to their  
5     request for information throughout. I personally  
6     listened to a call 10 months ago with my team,  
7     checking to see that Metra's consultants have what  
8     they required.

9             In fact, Metra's consultant was told that  
10    our track charts, giving their age, may not reflect  
11    all of the capacity additions. And so, we had  
12    suggested the use of time tables and GIS data, which  
13    is more complete and correct, and frankly modern.  
14    All of this was provided by us in discovery.

15            Metra's consultants made numerous errors  
16    in their work, and to be clear, we did not submit a  
17    CP RTC model. Rather, as stated in my verified  
18    statement, we looked at Metra's RTC model and saw  
19    that it was filled with the errors. On the Marquette  
20    subdivision I asked the team just to correct the key  
21    errors and doing that we were able to make the  
22    subdivision run successfully.

1           On the Elgin subdivision I asked the team  
2   to go far more deeply into their model to see if it  
3   reflected CP's operations and correlated to what we  
4   know to be true. So I can summarize I would say the  
5   four major types of errors we discovered in their  
6   model. The larger list is set out in my reply  
7   verified statement.

8           On the infrastructure there were 27  
9   errors, 3 major examples include missing important  
10   sittings, turning 23 miles of double track into single  
11   track, missing crossovers, all of that affecting  
12   capacity. The next two, delays and randomization,  
13   they go hand and glove. Modeling is there to help  
14   you potentially identify delays.

15           As standard practice, you don't hard code  
16   delays as Metra's consultant had done. They should  
17   have used the randomization feature, which throws  
18   randomness into the network, and then let the model  
19   calculate the delay. Those delays would then tell  
20   you if you have a scheduling issue, or a capacity  
21   issue. By hard coding their delays into the model,  
22   their consultants artificially compounded the

1 challenge that simulation had to find a solution from  
2 a dispatching perspective.

3 The last one is priority settings. It's  
4 the crux of railroading. Metra misprioritized the  
5 freight trains. A bulk train would have a higher  
6 priority for example than the local train, or an  
7 intermodal train would have a higher priority than a  
8 manifest train, and a passenger train would have a  
9 higher priority than all of those.

10 And because Metra's consultant got those  
11 priorities wrong, the model did not prioritize the  
12 train performance the way we would dispatch it in  
13 reality. So, to be frank on this item, my read is  
14 their consultants just assumed the issue was track  
15 capacity on the Marquette, and not their modeling in  
16 place.

17 BOARD MEMBER FUCHS: If I could jump in on  
18 the priority question?

19 MR. ELPHICK: Yes.

20 BOARD MEMBER FUCHS: How much, or to what  
21 extent did Metra's selection of priority differ from  
22 the default priorities in the RTC software?

1                   MR. ELPHICK: I think Metra in one of  
2 their responses just didn't pay a lot of attention to  
3 the priorities, so it's not that there's a default  
4 setting, it's just that they didn't set for a freight  
5 operation.

6                   BOARD MEMBER FUCHS: Okay.

7                   MR. MEYER: So, I think just to bridge to  
8 the next sub-point within this Chicago discussion,  
9 you know, I think that the first point we've made is  
10 that there's just absolutely no foundation to the  
11 idea that we would need to route trains through  
12 Chicago and Milwaukee, rather than across from  
13 Marquette subdivision, or that we wouldn't do that.

14                   And in fact, we have as you've heard,  
15 actually committed not to do that because it wouldn't  
16 make any sense for us either. The next I think  
17 foundational fact to understanding that we want to  
18 touch on is this confusion bout where in Chicago are  
19 we going to cause an increase in freight traffic?

20                   We've tried to be very clear that the only  
21 place that we are going to increase the number of  
22 freight trains is west of Bensenville Yard on that

1 line that was referred to either as the Milwaukee  
2 District West by Metra, or the Elkin subdivision on  
3 the CP railroad that it goes from Bensenville Yard to  
4 the west.

5 That's where the eight new freight trains  
6 are going to be. They're not coming in all at once.  
7 You know this is phased in over three years. The  
8 traffic on those trains, on those new trains will be  
9 they won't disappear as folks have suggested, it will  
10 be going into the Bensenville intermodal terminal, it  
11 will go into on a ramp facility at Bensenville, or it  
12 will go onto other trains that will take it you know  
13 either east of Bensenville through Chicago to places  
14 like Detroit and Eastern Canada, or connections to  
15 other railroads.

16 And as Mr. Elphick will now explain you  
17 know none of those -- that train activity is to  
18 Bensenville will go up, and there is ample room on  
19 the existing trains for the incremental traffic that  
20 will be coming from the merger.

21 MR. ELPHICK: Thank you. To address the  
22 comment about operations then in Bensenville, or east

1 of Bensenville, we'll discuss what the commenters  
2 have put forward in this proceeding. So first as  
3 stated, and contrary to the assertions there are no  
4 additional trains planned east of Bensenville.

5 And I'm going to talk about three parts of  
6 the operations. The first being in Schiller. The  
7 second being our operations towards the IHB, or the  
8 Indiana Harbor Belt, and then our operations towards  
9 the Belt Railway, BRC. So, to help us understand  
10 CP's operations in these locations let's look at the  
11 map of the area.

12 So, looking at the map on the far right  
13 you will see a box that outlines the tracks around  
14 Bensenville Yard. Bensenville Yard is at the bottom  
15 left of the box. To the east of it are tracks  
16 leading to Schiller Park, and to B-12, the town of  
17 B-12, and ultimately you can go across all the way to  
18 Tower 85.

19 You can see the IHB line connect at B-12,  
20 and you can see just near A-5 you can see the  
21 connection to the BRC. So, to start again, as David  
22 said, there's no change in the operating plan as it



1     pertains to Schiller operations. At Schiller Park,  
2     at CPS and operates in the world of compound and in  
3     intermodal terminals. The transfer runs daily  
4     between Bensenville and Schiller.

5             This is a local service with no change in  
6     frequency from the transaction. Though the  
7     automotive compound at Schiller is on plan to close  
8     at the end of this year. This traffic will move to  
9     CP's new automotive compound just outside our window  
10    here in Chicago. And the construction to complete  
11    that is well underway.

12            So, turning back to the intermodal then,  
13    an intermodal train is designed to run daily out of  
14    Schiller, straight down the IHB, with a reverse train  
15    routing on the IHB back to Schiller. I note we will  
16    ultimately also move into Bensenville Yard as well.

17            In the meantime, this intermodal train in  
18    Schiller is running small today, and the traffic  
19    anticipated by the merger will return this train to  
20    productivity levels we've seen in the past, but it's  
21    still well below CSX and what they permit on their  
22    network. Those two trains do cross the Diamond at

1 B-12, running across Metra's tracks, but they're  
2 timed to avoid peak operations.

3 I'd like you to look at little more  
4 closely at Bensenville's connection on the left, the  
5 IHB, and that's the gray that she's highlighting, at  
6 Tower B-12. CP runs trains and transfers out of  
7 Bensenville to both UP's proviso yard and the IHB.  
8 These do not interact in any way with Metra's  
9 operations. There are two tracks there which run  
10 directly out of Bensenville to the IHB.

11 Looking further east on the diagram, you  
12 can see the connection to the BRC, by -- Junction,  
13 that's also engraved further down the track. CP  
14 trains, the BRC, take a short distance run on track  
15 three to Galewood Yard. They first wait for a clear  
16 path or slot by the BRC to Galewood Yard, which  
17 affects the yard itself acts as a fourth track clear  
18 of Metra's operation.

19 Again, we do not anticipate any increase  
20 in trains to BRC. So, as I said earlier, the  
21 Bensenville reconfiguration project will relocate the  
22 automotive compound this year from Schiller Park to

1     Bensenville, and we are here today looking at this  
2     yard and the work that's underway, and we do plan to  
3     move the intermodal very soon into Bensenville Yard.

4             MR. CELEMENTS:   And Ray, could I just jump  
5     in for a minute on this one.   This is James speaking.  
6     In the discussions one of the things that came up was  
7     this idea that there was misreported, or non-reported  
8     data on a segment, and if you look on the map from  
9     B-12 up to Schiller Park, 2.3 miles.   And I just  
10    wanted to talk to that.

11            As you've heard Ray say, there is no  
12    incremental trains, there's nothing changing on that  
13    part, but also importantly what Ray has described is  
14    that at the completion of the expansion of the  
15    Bensenville Yard, there will be no traffic going to  
16    Schiller.   Our intention is to have all the autos  
17    that would need to go to Schiller today unloaded here  
18    in Bensenville Yard.

19            And the intermodal expansion that we will  
20    complete in Bensenville, will handle all the  
21    intermodal traffic.   So, you won't be transferring  
22    any work, sort of cargo over to Schiller to be

1 loaded on to that train that then crosses the BRC.

2 And so, we didn't build this into the model in terms  
3 of reduction in trains, but that train today that  
4 crosses right across Metra from Schiller Park, is now  
5 going in the future, once we're done with the work in  
6 Bensenville, going to take that avoiding route out to  
7 the IHB, and go straight down and never even  
8 interfere with Metra.

9 Never move up to Schiller Park Yard on the  
10 CN operation. And so there really is no data to  
11 report on that 2.3 miles because we're ultimately  
12 going to have no traffic.

13 MR. ELPHICK: Thanks James. The final  
14 comment that I would like to make is that CP has  
15 stood by its commitment of 35.2 million towards the  
16 CREATE Project. We're currently investing 5.5  
17 million towards that over the next two years towards  
18 the 75th Street project, and we still have 2.2  
19 million outstanding in that on top of that waiting  
20 for the next projects.

21 One of the projects that we did do was  
22 install five new crossovers just to the east of this

1 yard here, which provided both ourselves and Metra  
2 with a lot of flexibility of the east end of that  
3 yard, so unless there's questions, I'll turn it over  
4 to you David.

5 MR. MEYER: So, the dropping, the  
6 crossovers you're describing, that was in that triple  
7 track segment east of Bensenville on the slide that  
8 you had up just a moment ago?

9 MR. ELPHICK: That's correct.

10 MR. MEYER: That was a CREATE Project?

11 MR. ELPHICK: That was a CREATE Project.

12 BOARD MEMBER HEDLUND: Is there a current  
13 project in Franklin Park that's applying for rate  
14 separation money? Are you aware of that?

15 MR. ELPHICK: I'm not aware, no.

16 BOARD MEMBER HEDLUND: Okay. Something  
17 that I think would be helpful when you file your  
18 final brief, I mean the track charts are interesting,  
19 and easy to follow. But I think it would be also  
20 helpful to get a Google map look at the area because  
21 it's only -- I just pulled up Google, and that's  
22 where you get a better idea of what is really going

1 on, and where Bensenville is, and that it's sitting  
2 underneath O'Hare Airport and so forth.

3 So, if you would do that, that would  
4 certainly help me.

5 MR. MEYER: If we could indulge the Board  
6 to have a map appendix to our brief, we would be more  
7 than happy to include visual aids of that sort that  
8 will help tell the story, thank you.

9 So, picking up from where Mr. Elphick left  
10 off with regard to the impact of the transaction on  
11 the Chicago terminal more broadly, and then I want to  
12 come back and say a few words about the impact on  
13 Metra's operation more directly. You know one of the  
14 things we've said you know from the beginning in the  
15 application is that if anything, the long run impact  
16 of the transaction on the Chicago terminal is to take  
17 some of the pressure off of interchange at that  
18 terminal, and the overall load in the terminal.

19 You know we will have a new north, south  
20 route that we believe will be very attractive, and  
21 for certain traffic, you know, it's not easy to pick  
22 this up in traffic analysis, in a traffic study, but

1     you know over time certain bulk traffic that would  
2     otherwise get interchanged in Chicago between CP and  
3     other carriers going to the Gulf, the Union Pacific,  
4     I almost said Illinois Central, Chicago, Canadian  
5     National and others, you know might end up going by  
6     our single line route, and bypass Chicago entirely.

7                 And in the illustration of that, if we  
8     could show the next slide, was actually in the slides  
9     presented by Richardson last week. You know this is  
10    an example of their actual move where they -- you  
11    could advance the slide to maybe animation here, I'm  
12    not sure. My printed version shows their current  
13    route.

14                I guess not, well let's go back to that  
15    slide. If you remember the slide from last week, it  
16    was this map, but it also showed the current route  
17    that they use today, which is over CP from Tolley in  
18    North Dakota, through Milwaukee to Chicago, and then  
19    there's an interchange with the Union Pacific, and  
20    Union Pacific takes their traffic to their facility  
21    in East St. Louis.

22                And what they're excited about regarding

1 the transaction, at least as I heard them last week,  
2 is the opportunity to explore and use the single line  
3 route that would be via CP/KC's network, CP network  
4 to Kansas City, the Kansas City Southern Springfield  
5 St. Louis line, to East St. Louis.

6 Now, you notice on this map where that  
7 traffic would not go. It would not burden the  
8 Chicago terminal at all. It wouldn't cross any Metra  
9 tracks. It wouldn't affect the overall you know  
10 terminal load, and demand in the Chicago area. But  
11 we think that's a plus for the Chicago terminal in  
12 the long run, and I think that's an important thing  
13 to consider about this transaction. Now --

14 CHAIRMAN OBERMAN: David, how many trains  
15 would you anticipate would avoid Chicago by taking  
16 that route?

17 MR. MEYER: I think I would defer to  
18 others, but you know when we did the traffic study we  
19 identify -- we don't identify a train number  
20 reduction on the current route for the Milwaukee and  
21 Chicago. We identify no change at all, as a result  
22 of our traffic examination.



1           And I think part of what Richardson is  
2   saying is that there is other traffic that may not  
3   show up in the scope of a traffic study that will  
4   have new options, and new potential to avoid Chicago.  
5   So, we don't have an estimate of a specific number  
6   at this time, but I think pointing to it more as an  
7   illustration of the ability to bypass the Chicago  
8   terminal that doesn't exist today.

9           MR. BROOKS: David, if I can jump in.  
10   It's John Brooks here. So to turn it over with this  
11   example, out of the North Dakota area, and  
12   specifically Tolley. So, Richardson purchased that  
13   Tolley facility that you see on the map.

14           CHAIRMAN OBERMAN: Can we put the map back  
15   up so I could see what you're talking about?

16           MR. BROOKS: Yeah. So, if you see in the  
17   upper left corner Tolley, North Dakota. So,  
18   Richardson purchased that grain elevator facility,  
19   and they also purchased the largest North American  
20   durum mill that's in St. Louis. And in any given year  
21   that St. Louis market, not only for milling wheat,  
22   but also for loading barges to go on the Mississippi

1 River for ultimate export, CP has done let's say  
2 anywhere from 10,000 to 25,000 cars a year out,  
3 depending on market conditions, out to that route.

4 So, in a good year you might see -- do the  
5 math on that, but you might see 150 to 200 trains  
6 that would no longer traverse through that Chicago  
7 area. I might also add we think there's a fairly  
8 significant market opportunity for automobiles that  
9 currently route up and interchange in that Chicago  
10 market. And then potentially would traverse up into  
11 the Western U.S., but also up in the western portion  
12 of Canada that would then route to us by Kansas City  
13 up that river, ultimately up through that Tolley line  
14 and up into Canada.

15 CHAIRMAN OBERMAN: Okay. Thank you.

16 MR. MEYER: Thank you. So, turning back  
17 to the specific allegations and concerns you heard  
18 from Metra in their extensive filing to the record,  
19 since I think it was March when they filed their  
20 comments, and as recently as last week when you heard  
21 from them directly, I think I wanted to say a few  
22 words about that.

1           The first is I wanted to address Metra's  
2 math. Yeah, so when they talk about the load of  
3 additional trains on the lines that they share, they  
4 express fears about that being a very high number of  
5 additional trains. And the way they get to that  
6 number, we've covered this already, but just to review. Is  
7 they're adding six trains from the Marquette  
8 subdivision that they're worried about being rerouted  
9 over the Elgin subdivision and as well as the  
10 Milwaukee district north line, which is the Chicago  
11 and Milwaukee subdivision.

12           They also talk about this one additional  
13 train that they think we missed. We didn't miss any  
14 additional train, there wasn't an additional  
15 train, I think they were just confused by  
16 something that was said in the original operating  
17 plan that they misinterpreted it. The fact is there will  
18 be 11 total trains as a result of the transaction  
19 related increase. And that's all there would be.  
20 And it's eight additional trains, that's all there is  
21 coming through the merger.

22           And that's only western Bensenville as Mr.

1 Elphick explained. So now once you understand that I  
2 think it's easy to see that what Metra's really  
3 complaining about in this case isn't so much finding  
4 room for eight additional trains. They're really  
5 complaining about a lot of things that have --  
6 really are a part of the pre-merger landscape.

7           They're complaining about what they claim  
8 is bad CP dispatching, lots of delays to their trains  
9 as a result of CP's, frankly you know I think that  
10 they even accuse us of being incompetent dispatchers.  
11 And they complain about the contract that they have,  
12 they complain about a lot of things, but none of it  
13 is related to the merger first of all.

14           But second of all none of it is true. So just  
15 to focus in on one aspect that Metra made a big deal  
16 of. And do you remember we said last week looking at  
17 hard data from Metra, that less than 1 percent of  
18 Milwaukee District west Metra trains are delayed by  
19 CP freight trains.

20           More than 99 percent are not delayed by CP  
21 freight trains. Well, what was their response to  
22 that? Well Mr. Godfrey, their chief dispatcher came

1 in front of you and said it's not 1 percent, its 15  
2 percent. That was untrue. If I listened to them, I  
3 thought it was intending to say we got it wrong, it's  
4 not 1 percent, it's 15 percent. That's actually not  
5 what he even said. It was the impression he tried to  
6 leave.

7 He didn't question the less than 1 percent  
8 number. What he said is that of all the delays to  
9 Metra trains, 15 percent of those delays are caused  
10 by CP freight trains. That means 85 percent of all  
11 of the delays to Metra trains are not caused by CP  
12 freight trains.

13 CP has nothing to do with those delays,  
14 and those delays aren't going away not matter how  
15 good the dispatching is for CP freight trains. I  
16 think understanding what I think is sort of a shell  
17 game that Metra is trying to play here, is important  
18 in realizing there's just absolutely no truth to  
19 their suggestion that we handle their trains poorly.

20 And once you understand that it's also  
21 easy to see, and turning to the next slide, this is  
22 the streamline diagram, and Mr. Chairman I apologize,

1 I would love to have the time to -- I love these  
2 diagrams, and I would love to have the time to help  
3 you understand exactly how to read them because  
4 they're fabulous. I was in Turkey a week ago, in a  
5 rural train station that happened to be a dispatching  
6 office as well, and they had on the wall a  
7 streamline diagram of the entire passenger line in  
8 that part of Turkey.

9 And I love that stuff. But in any event  
10 --

11 CHAIRMAN OBERMAN: Let me just interject  
12 two things. You don't have enough hours today to get  
13 me to understand this line. But we do have our  
14 staff, you know, is experienced with this, so before  
15 this case is ruled on somebody will put this into my  
16 head, in a way I can understand it.

17 MR. MEYER: And I think what I'm  
18 suggesting Chairman, is that once you come to  
19 understand how these work you will probably love them  
20 as much as the rest of us. But in any event the real  
21 point I want to make here is once you understand that  
22 there's just nothing to this idea that we're

1     incapable of operating a railroad sufficiently, and  
2     dispatching well, and avoiding delays to Metra  
3     trains.

4             You also understand that there's just no  
5     issue associated with interweaving an additional  
6     eight trains into the available slots across the  
7     24-hour period every day. And you know the  
8     streamline diagram is one good illustration of that.  
9     Mr. Elphick has explained it from other perspectives.  
10    The one point I wanted to make here, and I'm not sure  
11    how clear it was last week, is that the Metra trains  
12    that we put on this diagram aren't Metra's current  
13    schedule.

14            They include all of Metra's current  
15    schedule, but they also include all of Metra's  
16    pre-COVID schedule. So, Metra already has substantial  
17    room to grow its operation back to its pre-COVID  
18    schedule without ever raising any issue about fitting  
19    in with the new freight trains that we're planning to  
20    operate.

21            And you know others will speak too, but we  
22    are prepared to deal with Metra in a collaborative

1 way to make sure they understand how our operation is  
2 unfolding, and we work together to plan ahead for  
3 changes in our operation as well as theirs, so that  
4 this rail line can serve the interest of both freight  
5 and passenger.

6 MR. MEYER: So the other evidence that  
7 Metro has put forward regarding the train delays on  
8 this part of the system, on the Elgin subdivision is  
9 the RTC study that Mr. Elphick has addressed with  
10 respect to Marquette and with respect to some of the  
11 broader issues that Metra faced when they tried to do  
12 this modeling.

13 But I wanted to highlight one thing that  
14 you heard last week from Metra's consultant. So you  
15 recall that the way RTC came into this case was  
16 Metra, in their February -- excuse me, their March  
17 comments, using an RTC study to suggest that we were  
18 going to radically increase the amount of delay  
19 caused to Metra freight and their Metra passengers.  
20 That was their first RTC study.

21 And it's aggregate result is shown in this  
22 little diagram you may remember from our rebuttal



1     comments. That's the amount of additional delay that  
2     they forecast initially. And then they filed  
3     several other rounds of RTC evidence even after the  
4     date for their comments, and you know that's been the  
5     subject of a lot of back and forth in this  
6     proceeding, which I won't get into on the procedural  
7     side.

8                     But on the substantive side, I think it  
9     makes a really strong point about the care the Board  
10    needs to take making policy decisions based on RTC  
11    modeling. And this point has application here in  
12    Chicago. I think it has application to the issues  
13    that have been raised about Houston as well, and  
14    we'll come back to that. And the point really came  
15    in what Mr. Mulholland said, explaining that bump  
16    from the blue bar on the left, to the much higher  
17    delays in the second round of evidence Metra  
18    submitted, and then the elimination of that and more  
19    in the third round of evidence Metra submitted.

20                    Now we submitted -- I think that third  
21    round was on a Thursday if I recall before our  
22    comments, our reply comments were due on a Monday or

1 Tuesday. If I'm misremembering the dates of the  
2 week, I apologize. And what we showed is they were  
3 heading in the right direction. The right answer is  
4 zero. But my point isn't that.

5 My point is that what was it that caused  
6 such a wild swing in the results? It was one tiny  
7 little error, the transposition of a one and a two  
8 after a decimal point with respect to the milepost  
9 indication somewhere in the model. What did that  
10 do? That caused one Metra train to sit, and other  
11 Metra trains to back up behind it. And just that one  
12 little thing, that one little error among what we've  
13 shown are dozens and dozens of errors had this effect  
14 on the results.

15 Now any time the Board is looking at an  
16 RTC model that's offered to say this proves that you  
17 should do X, you need to be skeptical and make sure  
18 that what you're looking at has been rigorously  
19 tested, and is really answering the right question,  
20 and has all the right inputs.

21 And then, even then, consider it in light  
22 of real world evidence about how operations actually

1     work out on the railroad. And when we look at that,  
2     first I'll say, and maybe Mr. Elphick can jump in and  
3     explain this. This is a synopsis of what we found  
4     when we corrected Metra's model, going from the  
5     current, or what Metra called the base.

6             Metra's trains are in the blue bar. The  
7     aggregate amount of delay for their trains is shown  
8     there, and then we went to the future case, which  
9     included the merger traffic increases, and we made  
10    other changes to correct the errors in Metra's  
11    modeling. What we found was there was no increase in  
12    Metra delays. That's what we found.

13            We're not offering this RTC as proving  
14    that point, but showing that there's no basis for  
15    thinking that Metra's RTC analysis proves that there  
16    will be a problem. If there are no questions about  
17    that I think where I want to transition now is to  
18    talk about Metra's argument about circumstances  
19    having changed over the last 40 years since the  
20    contract that they are operating under was originally  
21    negotiated.

22            And there's no doubt circumstances have

1 changed in a lot of respects, but we would submit  
2 that nothing has changed about the importance of  
3 having the freight railroad dispatch the lines that  
4 the freight railroad shares with Metra. So we've got  
5 a brief kind of chronology here, and Metra acts as if nothing  
6 happened after 1982 when the Milwaukee Road trustee  
7 and the Chicago's RTA entered into the agreement that  
8 gave birth to Metra's right to operate over the  
9 Milwaukee Road.

10 And Milwaukee was going bankrupt. It was  
11 shedding its commuter operations as one of the  
12 burdens that it was incapable of bearing, and so this  
13 relationship was created at the beginning.  
14 Milwaukee Road had always dispatched all the trains  
15 on the line. It continued to do that in 1982  
16 naturally.

17 Well CP became a party to this in 1985 when  
18 the CP acquired this line out of the Milwaukee  
19 bankruptcy, the Soo Line Milwaukee Road's successor.  
20 In 1985 the trackage agreement was entered between  
21 the Milwaukee trustee and the Soo Line, passing  
22 along to Soo the rights and obligations associated

1 with that 1982 agreement, and Soo Line naturally  
2 retained dispatching responsibility.

3 And that's where I think Metra wants you  
4 to think everything ended, and they weren't even in  
5 the picture, and they didn't have anything to do with  
6 this, and so it's entirely unfair that they don't get  
7 to renegotiate the contract because of this merger.  
8 Well that's not exactly accurate.

9 In 1993 there was an amendment agreement  
10 negotiated between Soo Line and Metra. It was a  
11 comprehensive renegotiation of numerous aspects of  
12 this agreement. It's in the record in this case, in  
13 our filings. One of the things that that did was it  
14 transferred maintenance responsibility from Soo Line  
15 to Metra.

16 So there was careful consideration of who  
17 was responsible for what in respect to this line.  
18 But what it didn't do was change anything about  
19 dispatching. It left dispatching with the Soo Line.  
20 And that was because that was the right thing to do.  
21 Now Metra, in 2003, entered into another negotiation  
22 with CP regarding the admission of ICE to the joint

1     trackage.

2                   CP again, retained dispatching as a result  
3     of that. Now somewhere along the way Metra decided  
4     it wanted to take over dispatching on this line, and  
5     we know they had that interest for a very long time  
6     because just a few years after this in 2008 in the  
7     DM&E case, Metra came before the Board saying hey,  
8     we've got a merger, let's ask for something.

9                   And what they asked for was a transfer of  
10    dispatching. The Board, consistent with precedent  
11    across the board, declined to revise that  
12    relationship based on changes in traffic and traffic  
13    patterns resulting from that transaction. It should  
14    reach the same -- excuse me. The Board should reach  
15    the same conclusion here.

16                  MR. CREEL: So David if I could, I want to  
17    say a few things about that. So I want to echo --  
18    and by the way this is Keith, I apologize. I've got  
19    to echo some of his points about the Board getting it  
20    right in 2008, and let me tell you why. No  
21    different than our predecessors, my predecessors and  
22    those multitude of negotiations preserving the right

1 and the responsibility to dispatch these lines.

2 And it comes down to experience, and it  
3 comes down to perspective. And I can tell you with  
4 30 years of experience and perspective as an  
5 operating officer, the thought of Metra dispatching  
6 these lines is not only a terrible idea, it's a  
7 dangerous idea.

8 And the danger starts with their view.  
9 Metra's view of what they dispatch is a micro beacon.  
10 It's a small portion of the network that CP runs the  
11 grain trains to and from Chicago on the Milwaukee  
12 North Line as well as the Milwaukee West Line. If  
13 you take a look at the map we'll pull up, it shows  
14 their limited view. No, that's not it.

15 MR. MEYER: We replaced the slide with  
16 this. This is familiar map.

17 MR. CREEL: Okay. That's fine. If you  
18 take a look at this map the top line between River  
19 Junction and Milwaukee pretty much where that red line  
20 comes down is actually a place called Portage,  
21 Wisconsin. That's where we crew our trains that  
22 operate from Portage eastward towards Milwaukee, and

1 down into Chicago to 820, which is where Metra takes  
2 over dispatching.

3 We take a right for the lack of better  
4 term to come down to B-17 there at the dot where you  
5 see Bensenville. The issue, Metra's view is isolated  
6 to only 20 miles of that route. The last 20 miles of  
7 that route. In practical terms that's a 178 mile run.  
8 The train crew gets on duty. They have a limited  
9 amount of time to operate their train to the City of  
10 Chicago to deliver the train into Bensenville.

11 If there are suboptimal dispatch decisions  
12 that are made in those last 20 miles, the unintended  
13 consequences ripple up the railroad for a lack of  
14 disability to train meets that are being made on  
15 trains that are running for Chicago. The end result  
16 in simple terms, we have veteran windows that we  
17 protect, they're the holy grail. They have the  
18 railroad. We have trains that don't make a window  
19 that are in route to Chicago.

20 The crews run out of time. The trains get  
21 parked on the main line. And I draw particular  
22 attention to this specific main line because of the



1 service sensitivity of it. Because not only the CP  
2 trains run on it running into Chicago, there are 14  
3 Amtrak trains a day that run to and from the City of  
4 Chicago and Milwaukee.

5 This is an area not by what I've said  
6 about what we've done. We have protected again the  
7 timeliness of these trains for Amtrak. So we have  
8 Amtrak that's impacted if we have our train sitting  
9 on the main line. We have CP that's impacted, and  
10 ultimately the points that were made before you can't  
11 disentangle the complexities of Chicago.

12 It is one large physical plant that all  
13 users either directly or indirectly are affected by  
14 when it runs. So we have to get it right. We  
15 absolutely have to get it right. A dispatcher that  
16 doesn't have the ability to see, the ability to  
17 understand the macro view, is fundamentally put at a  
18 disadvantage where they can't get it right at the  
19 micro view.

20 That's exactly why we can't allow that  
21 dangerous practice to exist. If you go to the next  
22 slide beyond the operational dangers in the

1     unintended consequences, I'm going to speak for the  
2     case for change. There is none. If you look to the  
3     left on the graph you'll see Metra's dispatchers  
4     performance. And I commend their performance. 94  
5     percent, 95 percent, I'll draw attention to though  
6     the complexity of the line they dispatched  
7     interacting passenger trains and freight trains.

8                 On the southwest service line the  
9     complexity is defined by all passenger trains  
10    interacting with one freight train. On the Rock  
11    Island line we move it up to four. Now let's compare  
12    it to the CP dispatch lines. In Milwaukee West, the  
13    Milwaukee North, both of which similar, if not  
14    exactly the same dispatching outcomes and  
15    performance, but much more complicated complexities.

16                The Milwaukee West line, seven trains.  
17    Four of those on B-17, three on freight, that number  
18    will go up with the growth that we're talking about  
19    to 11. We go to the Milwaukee North line, 11  
20    freight trains, and what's not captured on that graph  
21    are those 14 Amtrak trains I just mentioned as well.

22                So it's the complexity of Metra trains.

1 It's the complexity of Amtrak trains. It's the  
2 complexity of freight trains. This is a recipe in a  
3 complex operation that you need the experience, and  
4 you have to have the macro view to get to the right  
5 solutions.

6 CHAIRMAN OBERMAN: Keith, before you leave  
7 this slide, my memory is, but I don't want to go by  
8 my memory, that there were more Metra trains on the  
9 Milwaukee lines than there were on certainly on the  
10 southwest service. Do you have the number of Metra  
11 trains that are interacting with these freight trains  
12 because I think you need to have that too to have a  
13 true comparison.

14 MR. CREEL: Chairman Oberman, I don't have  
15 the exact number today. I know when it peaked the  
16 number was around 60 passenger trains that ran west.  
17 On the alternate we're talking about the Milwaukee  
18 West Line that interact with these freight trains  
19 that are shown. So it is a busy railroad, I guess is  
20 the best way to say it, and the complexity between  
21 mixing freight and passenger is 10 fold there  
22 compared to the complexity of some of these other

1 lines, but I do --

2 CHAIRMAN OBERMAN: I don't disagree, but  
3 there's also fewer Metra trains to interact with the  
4 one freighted train on the southwest service  
5 relatively speaking, so you have to have all of  
6 those numbers to try and get some sense of a  
7 comparison. That's all I'm asking.

8 MR. CREEL: That's a very good  
9 observation. We'll make sure that we specify those  
10 numbers in our summation as well.

11 CHAIRMAN OBERMAN: Yeah. It's I mean if  
12 you want us to draw these comparisons I think we need  
13 to know this.

14 MR. CREEL: Yes sir, we'll clarify that.

15 CHAIRMAN OBERMAN: Good, thank you.

16 MR. CREEL: Okay. Moving on to what about  
17 a world where our freight trains didn't exist at all?  
18 This is the opportunity that we're trying to capture,  
19 or that Metra is suggesting they might be able to  
20 capture in exchange for the risk that I've tried to  
21 explain.

22 If you take away CP freight trains

1 completely from this railroad you go from 95 percent  
2 to 95.8 percent. So we're taking a tremendous amount  
3 of risk, and what I would argue is the most service  
4 sensitive and complex rail infrastructure that North  
5 America has to serve commerce, all for to me a  
6 minimal, minimal gain.

7           And I'm not suggesting that one delayed  
8 Metra freight train is okay. The objective to delay  
9 none. But the reality from perfect world and an  
10 aspirational world is what we see. 95.8 considering  
11 the risk that Metra is asking us to take, and asking  
12 the Board to impose. It's just a very slippery  
13 slope, and a very dangerous outcome, but in the end  
14 it would do detrimental damage to the entire freight  
15 network and destroy public interest benefits,  
16 specifically in Chicago.

17           But because of the way Chicago connects to  
18 our nation, it would reverberate across the nation.  
19 When Chicago is sick and history has shown, and I don't  
20 think you would argue that our U.S. rail network gets  
21 sick too.

22           BOARD MEMBER SCHULTZ: Keith, can I just

1 ask a question.

2 MR. CREEL: Absolutely.

3 BOARD MEMBER SCHULTZ: On that last slide  
4 the difference between the on time performances, was  
5 that based off of the RTC model?

6 MR. CREEL: No. That's just a theoretical  
7 where we take our freight train delays out  
8 completely. If you'll see on the left side the  
9 orange line, that represents our percentage of their  
10 delays and their overall, all time performance. So  
11 if you park all the trains, take them off the lines,  
12 imagine they're not there, it goes to 95.8 versus the  
13 95 with our freight trains.

14 BOARD MEMBER SCHULTZ: And how did you  
15 arrive at those percentages? In other words if you  
16 didn't rely upon the RTC, could you maybe just speak  
17 to how you reached this conclusion?

18 MR. CLEMENTS: This is James. If you look  
19 we use the Metra description of 15 percent of the  
20 delays attributable to the freight train  
21 interference. The other 85 percent are theirs, so  
22 using the 95 percent on time performance as we said,

1     theoretical, if 15 percent is freight, and then the  
2     85 percent is non-freight, it's the elimination of  
3     the 15 percent freight that was specified by Mr.  
4     Godfrey.

5                   BOARD MEMBER SCHULTZ:   Okay, thank you.

6                   MR. CREEL:   Thank you for the question.  
7     I'm moving to the next slide.   The other point I  
8     would make is good railroading is universal.   You  
9     know Mr. Godfrey and I applaud him for his comment, made  
10    this quote.   He said he's personally given  
11    instructions to run a freight train several times  
12    during rush hour because it's the right thing to do  
13    for the network.

14                   Well I would suggest that if it's the  
15    right thing to do for Mr. Godfrey, it's the right  
16    thing to do for us.   And again, I applaud his  
17    honesty, but I can't ignore his narrow network  
18    perspective and the implications it most probably  
19    would have not only Chicago network, but Canadian  
20    Pacific's network.

21                   So all this said, let's sort of bring this  
22    to a bottom line of where my head's at on this entire

1 issue. The relationship with have with Metro is  
2 important to me. It's important to our team. You  
3 know I'm engaged in this personally. Quite frankly,  
4 through this process I own this. I have not engaged  
5 with Dewinski as I likely should have engaged.

6 So with that thought as this thing played  
7 out back in January I reached out to Jim, and I went  
8 downtown to have a meeting with Jim, and I wanted to  
9 apologize and just frankly say at 95 percent I know  
10 in his mind it's not good enough, or it can be  
11 better, and we're going to be committed to doing  
12 that.

13 So since that meeting taking part of the  
14 feedback he gave me, and some of the criticisms that  
15 I was exposed to, I challenged our team to engage  
16 with Metra in a rhythm that looks like, and this is  
17 what's happened since January, they interact daily on  
18 trains that are delayed.

19 They did before. They will continue. On  
20 a weekly level we have the most senior operating  
21 officer, Mr. Tracy Miller, that runs our U.S.  
22 operations, interacts with its counterparts at Metra



1 to review weekly performance. And then on a  
2 quarterly basis our most senior operating officer in  
3 the system, Mr. Mark Red, as well as Mr. Miller, as  
4 well as the local general manager and superintendent  
5 that run the Bensenville Yard, engage with their  
6 counterparts in Metra for a quarterly review of  
7 performance, where they have an ability to discuss  
8 systemic issues, or strategic opportunities.

9 So the rhythm and the commitment is there  
10 today. I would commit that that will continue. This  
11 provides an opportunity for those discussions where  
12 Metra might think that they don't know what CP's  
13 planning to do, can be dispelled.

14 And in addition to that I can tell you I  
15 reiterate what David said, we're not going to force  
16 CP freight trains east of River Junction to come to  
17 Chicago to get to Kansas City. It's not going to be  
18 done unless we don't have another route, and to  
19 fulfill our common carrier obligation in commerce,  
20 and commitment to our customers.

21 We'll run it 250 miles out of route, but  
22 that's a worse case scenario, only if we have no

1 other alternative. As David said, we'll not object  
2 to Metra resuming its full pre-COVID schedules on  
3 Metra's west lines and north lines, and as the line  
4 graphs demonstrated, there's ample capacity for them  
5 to be able to do that.

6 We'll work collaboratively with Metra and  
7 improve real time communications about our  
8 dispatching decisions, which we're doing, but  
9 continue that on a daily basis, or on a minute to  
10 minute basis if it's required. We'll support  
11 collaborative assessments of operational changes  
12 outside of peak windows when Metra needs our consent  
13 to add the trains, they'll engage with us, and we'll  
14 be reasonable in working out an ability to the best  
15 of our ability to accommodate the request.

16 We'll also support an agreed upon  
17 escalation process to avoid or resolve disputes about  
18 issues that impact the performance. On a reporting  
19 basis we'll report monthly real time performance and  
20 delays, either freight train interference, we'll  
21 continue to reach and collaborate and look at an  
22 agreement on mutually agreed, an RTC models for the

1 west lines, and the north lines.

2 And Chair Oberman, that addresses your  
3 concern about what about the growth beyond year  
4 three? What about the growth that we know comes a  
5 decade from now, or two decades from now? We are  
6 more than willing to sit down with Metra today or  
7 tomorrow, or a year from now, or five years from now,  
8 in a very robust process where we collaboratively  
9 together, perform RTC modeling, so that we get all  
10 the inputs right.

11 So that we get the route outcomes, and we  
12 can protect their capacity as well as our ability to  
13 serve our customers on the freight side. And we'll also  
14 include our quarterly reviews as I said earlier, our  
15 estimates about future freight demand on the west  
16 lines and the north lines.

17 MR. ELPHICK: And sorry I just want to  
18 jump in if there's no more questions before we move  
19 off of Chicago. There was the question about  
20 Franklin Park grate separation by Member Hedlund.  
21 And my understanding is that they have applied for a  
22 planning grant, unrelated to the transaction for a

1 grate separation in Franklin Park, and we provided a  
2 letter of support to that application.

3 CHAIRMAN OBERMAN: I have one question. I  
4 want to go back to the slide. I have it up here  
5 myself, about the different times that the agreements  
6 between the Soo Line and Metra, were amended. And I  
7 don't know who's the appropriate witness here.  
8 David, I think that you were talking about this  
9 slide.

10 MR. MEYER: I was.

11 CHAIRMAN OBERMAN: Yeah. I was nowhere  
12 around obviously in 93 and 03. At the time of those  
13 negotiations did the Soo Line put the dispatching  
14 rights on the table as something to be discussed?

15 MR. MEYER: So I'm not aware that the  
16 dispatching rights were with the allocation and  
17 responsibility for dispatching was ever discussed.  
18 But the point we were making was in 1993, and there  
19 are a wide array of issues that were opened up  
20 between Metra and Soo Line, including the allocation  
21 of important aspects of the responsibility for these  
22 lines.

1           The lines are owned by Metra. They came to  
2   be owned by Metra because the physical assets were  
3   excluded from Milwaukee by the sale, but the  
4   Milwaukee Road sale was conditioned on this 1985  
5   agreement that protected and preserved the freight  
6   railroad's role with respect to those lines to  
7   preserve the freight railroad's common carrier  
8   obligation responsibilities.

9           And the full measure of ability to control  
10   it's destiny as a freight operator. It would have  
11   had to be approved by this agency had it done  
12   anything different.

13           CHAIRMAN OBERMAN: Well the question I'm  
14   putting is the inference I assumed you were asking us  
15   to draw from this slide was that Metra at five  
16   different times over the past had an opportunity to  
17   negotiate it for the dispatching rights and didn't do  
18   it.

19           And what I'd like to have somebody who was  
20   there, if you have a history, tell us if that's a  
21   correct inference because it was my impression that  
22   once the trustee and bankruptcy assigned the

1     dispatching rights back in -- it's blocked out here. I  
2     don't have the date in front of me.

3                   MR. MEYER: 1982.

4                   CHAIRMAN OBERMAN: 1982, before Metra even  
5     came into existence, that was the end of it, and I  
6     think for a lot of the reasons that Keith has just  
7     explained, I don't think the railroad ever opened up  
8     the idea that they were open to even negotiating a  
9     change in traffic rights, dispatching rights, and  
10    that may or I'm not offering any opinion on the  
11    merits of Keith's presentation. It was persuasive.

12                  But the notion that Metra had an  
13    opportunity to obtain the dispatching rights and forewent  
14    it, strikes me as not an accurate account of  
15    history, but I wasn't there. So but I suspect David  
16    that for those people who were there, if anybody from  
17    Metra had raised the dispatching rights in 93 or 03,  
18    they were told that was a non-starter. But I may be  
19    wrong, so I don't want to go on just an assumption.

20                  MR. MEYER: So Mr. Chairman, I certainly  
21    wasn't attempting to imply, or to have the Board draw  
22    and inference from that history that Soo Line asked

1 Metra if it wanted to dispatch the line, and Metra  
2 said no. That's not what we were saying. What  
3 we're saying is it isn't the case that the structure  
4 of this contract as it exists today, has nothing to  
5 do with Metra.

6           There was a fairly comprehensive  
7 negotiation of this contract that covered all kinds  
8 of issues, including allocation of basic  
9 responsibilities. In this case I was pointing to the  
10 maintenance responsibility you could go into the 1993  
11 amended agreement -- amendment agreement, excuse me, and you can see  
12 wholesale areas where it was replacing aspects of the  
13 original agreement.

14           Metra and Soo Line came to the table and  
15 discussed the overall relationship. We don't have  
16 anyone who dates back to that period that I'm aware  
17 of, who has any first-hand knowledge of exactly how  
18 those negotiations were done. We're not suggesting  
19 that Metra took a pass on taking over dispatch, we're  
20 really not. We're just saying it plays a roll in  
21 this relationship.

22           They didn't just get handed a relationship

1     they had nothing to do with by the trustee.

2                   CHAIRMAN OBERMAN:   Well, actually the  
3     trustee made his decisions before Metra even existed.  
4     So I think that cake was baked in 1982 by a person  
5     who didn't know much about railroads, but that's for  
6     another day.   I just really only asked the question,  
7     and you clarified it that of the inference I was to  
8     draw from that slide because that's not in accord  
9     with my understanding of how this all came to be, but  
10    as I said I wasn't there.

11                   So if you think it's relevant, and you  
12    have some way of enlightening us on that, I would  
13    invite you to do so.   And I suppose Metra who are  
14    listening in could say something about it in a final  
15    brief, to the extent it's even relevant here, it may  
16    or may not be.   So go ahead, I don't want to drag  
17    this on.   I was ready if everybody else was, but oh  
18    Patrick, you had a question.

19                   BOARD MEMBER FUCHS:   Very quick concluding  
20    question.   In your CP/KC's commitments to Metro  
21    there's a bullet point about the fact that you all  
22    will support an agreed upon escalation process.   Mr.



1 Brooks elaborated in his verified statement about  
2 when the escalation process reaches a terminus you  
3 will agree to an independent mediator.

4 Should I interpret that commitment as  
5 applying to this particular bullet point that you'll  
6 go through an escalation process, and at the end if  
7 you cannot reach agreement, you will submit to an  
8 independent mediator?

9 MR. MEYER: I think if I'm following where  
10 you're pointing, we've certainly with respect to both  
11 Metra, and with respect to our broader commitments  
12 regarding service that we are committing to an  
13 escalation process for internal dispute resolution.  
14 We're going to try and resolve all of these issues.

15 BOARD MEMBER FUCHS: Right.

16 MR. MEYER: Not involving formal  
17 litigation processes or the Board to the extent  
18 possible. That is that point. And so I think is  
19 your question about a specific mediation point  
20 addressed specifically to Metra, or more broadly?

21 BOARD MEMBER FUCHS: Yeah, so Mr. Brooks  
22 says in his verified statement despite best

1 intentions, if a mechanism does not lead to  
2 resolution, CP/KC will participate in non-binding  
3 mediation with the independent dispute resolution  
4 professional, with the aim of facilitating a mutually  
5 acceptable resolution of the issue in a fair or  
6 timely cost-effective manner.

7           The context of that I believe coming out  
8 of pillar five I believe in your commitments, is  
9 really about freight service disputes, and I'm  
10 wondering if this bullet point in your commitments to  
11 Metra is meant to represent a commitment that  
12 incorporates that other commitment I think that is  
13 probably -- that I interpret it is to freight  
14 customers where if you cannot reach an internal  
15 dispute resolution, you'll engage an independent  
16 mediator, like you would a freight customer.

17           Or whether or not those are two separate  
18 processes. It's really sort of trying to get a sense  
19 of what the scope of your commitment described in  
20 that slide is.

21           MR. MEYER: Let me say one thing and then  
22 I'll hand it to Mr. Creel. You know you're correct

1 the thrust of the pillars was a customer, a freight  
2 customer focus, and those are commitments we're  
3 making to our customers. They're not commitments  
4 we're making to other railroads, they're not  
5 commitments we're making to third parties that may  
6 have some you know interest that we don't  
7 understand. It's to our customers.

8 That said, I think we have no difficulty  
9 saying that we would be delighted to mediate a  
10 dispute with Metra if one materializes.

11 MR. CREEL: I completely support Member  
12 Fuchs what David just said.

13 CHAIRMAN OBERMAN: Let me on this point,  
14 thank you Keith. I think it would be a good -- this  
15 is another example David, where I think in your final  
16 briefs you try to articulate the wording that you  
17 would find acceptable in terms of a condition on this  
18 subject matter to at least suggest it to us, rather  
19 than have us try to draft it up, not that we're  
20 committing to accepting anything that you submit, but  
21 it would be more helpful for you to tackle it before  
22 we do.

1                   And I think that applies to across the  
2 board to things that are discussed here in terms of  
3 commitments and conditions.

4                   MR. MEYER: We are certainly taking as  
5 good a set of notes as we can, and share with you  
6 them.

7                   CHAIRMAN OBERMAN: Okay. And if you have  
8 nothing else to do you can re-listen to the whole day  
9 on YouTube over the weekend.

10                  MR. MEYER: Looking forward to it.

11                  CHAIRMAN OBERMAN: All right. Let's  
12 proceed.

13                  MR. MEYER: So if no further questions  
14 about Chicago, we are planning to accompany the Board  
15 to the south, to the Texas shared lines area, and  
16 just as an overview let me use this slide to tell you  
17 what we're planning to cover in what order. So  
18 really we have three big points about the shared  
19 trackage in Texas and Houston in particular.

20                  Number one, as we will demonstrate to you,  
21 there is no urgent problem here that demands an  
22 instant solution. There is room for our measured

1 growth, and we'll explain that. Second, nonetheless  
2 we affirmatively want a collaborative process, these  
3 lines are more important perhaps for us than for  
4 anyone. If you include the lines all the way from  
5 Robstown to Beaumont.

6 We need for this part of the railroad to  
7 be fluid. We want to be active participants in  
8 making sure that it stays that way, and you'll hear  
9 us address that. Third, and related to the second  
10 point, as we'll explain the existing agreements that  
11 were created in 1996 by the Board, in the rights that  
12 were granted to Tex-Mex between Robstown and Beaumont  
13 over the Union Pacific, and most of this line  
14 includes those rights.

15 There's this segment in the middle where  
16 after Tex-Mex got the rights, KCS, and after the SP I  
17 think it was had abandoned, or not abandoned,  
18 discontinued operation over the Wharton Branch which  
19 goes between Victoria in the south and Rosenberg,  
20 which is near Kendletown as shown on the map in the  
21 north, and invested a lot of money to upgrade that to  
22 acquire the line from Union Pacific, and then to

1 upgrade it into a KCS owned property.

2           So what you see here, other than that  
3 segment in the middle is rights that were granted to  
4 Tex-Mex in 1996, and we'll come back and talk about  
5 where those came from and why that's relevant. But  
6 what we're going to show you is that those  
7 agreements that were created back then provide the  
8 mechanisms that will work, not only for the sort of  
9 collaboration around service that's required, but  
10 also for the sharing in financial responsibility  
11 associated with any infrastructure that might end up  
12 being necessary, whether it's to support CS or CP/KC  
13 growth, or to support UP and BNSF growth on these  
14 lines.

15           It's done so for the entire time since  
16 those rights were created, and those relationships in  
17 those agreements will serve those interests. The  
18 alternative that BNSF and UP offer is really a very  
19 one sided set of conditions that they're insisting  
20 upon that would give incentives to them to hold up  
21 our activity, to insist that we not start competing  
22 until they are satisfied, so what will that mean?

1                   They'll ask for the moon? Knowing that  
2                   we're over a barrel. We'll have no choice. We'll  
3                   pay whatever it takes to get our merger started, and  
4                   I'm sure their price tag will be high.  
5                   Alternatively, they'd be just as happy if we never  
6                   started because they don't want the competition from  
7                   us to materialize. That's not a constructive path  
8                   for the Board to take, or for the public interest to  
9                   take.

10                   Our incentives today, and under these  
11                   agreements, will be to do what's right. Will be to  
12                   make sure that operations are fluid, will be to make  
13                   sure that the collaboration is constructive. Why?  
14                   Because as I said our operations will depend upon it.

15                   So, coming back to where we're going to  
16                   start with why, there's no urgent problem to be  
17                   resolved. And turning back to that map if I could  
18                   for one moment just to orient the Board. We're  
19                   going to start in the south, in the segment between  
20                   Victoria and Robstown. That's the circle in the  
21                   bottom of the big bubble.

22                   Mr. Elphick will explain, respond, to some

1 of UP's assertions regarding capacity on that  
2 segment.

3 CHAIRMAN OBERMAN: David, just wanted to  
4 make sure I'm clear on something. Do I understand  
5 that the trackage rights provisions that govern trains going  
6 back and forth through Houston, govern  
7 infrastructure needs as the needs arise?

8 MR. MEYER: Absolutely, and we'll explain  
9 that in detail.

10 CHAIRMAN OBERMAN: Okay. Thank you.

11 MR. MEYER: So, first we're going to cover  
12 briefly the Robstown Victoria segment. Mr. Elphick  
13 will cover that. Then he'll explain our assessment,  
14 and the condition is that the Neches River Bridge,  
15 which has been studied extensively recently by all  
16 three of the railroads that use that bridge, UP,  
17 BNSF, and KCS, in 2018 and 2019.

18 And then he'll turn his attention, along  
19 with Mr. Creel, and Mr. Orr if he can join us, to the  
20 Houston area itself, to the City of Houston between  
21 the points on the east of Houston where those two  
22 lines from Beaumont come together across Houston.



1                   We've heard that described as the  
2                   expressway across Houston, some stoplights in the  
3                   middle. We'll come back to that in detail, and we'll  
4                   follow that through to the west side of Houston. And  
5                   so with that let me just hand it over to Mr. Elphick.

6                   MR. ELPHICK: Thank you. So Ray speaking.  
7                   We've heard from UP's panel that our review of  
8                   capacity was extremely aggressive. On the contrary,  
9                   CP's assessment of capacity was based on actual  
10                  observations, our experience, and using conservative  
11                  measures.

12                 So I'll start as David said by looking at  
13                 the shared traffic to the west of Houston between  
14                 Robstown and Victoria. UP's Brownsville subdivision  
15                 runs north from Brownsville north all the way to  
16                 Bloomington. For our purposes today we'll be looking  
17                 at the portion of track, UP's ground rule  
18                 subdivisions, specifically the shared track from  
19                 Victoria to Robstown.

20                 The track diagram for that segment is  
21                 shown at the bottom of the slide. Inside that shared  
22                 track section, UP pointed to the track segment

1     between Bloomington and Inari, by the red star, as it  
2     had the longest between siding run time, and  
3     therefore would be the next segment to require  
4     capital should the train counts demand it.

5             You'll see in the box at the top left,  
6     UP's statement made to you last week, that this  
7     segment between Bloomington and Inari has a  
8     bottleneck problem in 2022. The way their table  
9     reads the segment is 1.6 trains below sustainable  
10    capacity in 2022. UP used an earlier version of CP's  
11    table header in their presentation taken from the  
12    Alpha car or RBS.

13            It was a typographical error in that  
14    table. In the header row year 2022 should have read  
15    2025. This error was corrected and filed in the  
16    record as an errata on August 12th. You'll see in  
17    the corrected chart on the right the corrected table  
18    header for the column. That's the last column at the  
19    end, shows train per day at the end of 2025 versus  
20    our 65 percent sustainable capacity, and that's after  
21    the growth of the eight trains.

22            The UP also adjusted their formula to

1 demonstrate capacity. So we're again seeing that  
2 we're aggressive. I'll address that in a moment.  
3 But before doing so, I'd ask you to look at that  
4 table on the right, and each of the segments there,  
5 and you'll note that other than that 1.7, the  
6 remaining segments all have much higher capacity with  
7 the other lowest point being 6.2 trains.

8           So we're assessing that room for growth  
9 ourselves across the line in considering after our  
10 trains were routed, how much room is available? Well  
11 the 1.7 would be a location that we would monitor  
12 with UP and BN for sure. You know I'd note that  
13 CP/KC's eight trains will not materialize you know  
14 all in the first year.

15           It will take three years to get there.  
16 But we had actually noted in the Rucker/Turner verified  
17 statement from February of last -- of this year, that  
18 they communicated a plan to build a siding at Lin, a  
19 15,000 foot siding, so that's between in the diagram,  
20 that's between again Bloomington and Inari.

21           And that would increase the capacity on  
22 that segment significantly, well above the 6.2 trains

1     you know that is the next lowest watermark. As  
2     recently as September 27 of this year they again  
3     confirmed that that's in the plan for 2024. So I  
4     just wanted to declare that we did in fact consider  
5     there was a reasonable amount of room for growth in  
6     the section even after three years.

7                 What I would like to address my comments  
8     about the 1.7, and the fact that they're declaring  
9     our calculations to be aggressive. I would dare say  
10    you know we are realistic and conservative. I'll  
11    start by saying we used 65 percent in the formula as  
12    the standard at CP. That's equivalent to not running  
13    trains for a total of over eight hours a day.

14                CP uses this number to assess the harshest  
15    conditions on our network, on our mountains grades  
16    through the Rockies, where our operations are the  
17    most challenging. The 65 percent is not aggressive.  
18    By planning to operate at 65 percent, that leaves 35  
19    percent that can be used if they are needed. It  
20    provides flexibilities to handle other train events,  
21    to accommodate search capacity, maintenance, or other  
22    unforeseen issues.

1 CP has been using this process for over a  
2 decade to monitor sustainable capacity, and that's  
3 not the only measure we use. We use a number of  
4 performance measures. We use correlations on speed,  
5 you know, a number of factors. We look at varying  
6 conditions on each of the subdivisions, and we're  
7 always looking at this formula to understand what our  
8 available capacity is.

9 But in terms of how you look at run times,  
10 there's different approaches across the industry. We  
11 took a conservative approach here on the segment  
12 between Robstown and Bloomington to figure out the  
13 run times. We calculated that using real data of  
14 course, my team rode trains though, across the  
15 territory, and they made observations on the trains.

16 They looked at the PTC screens, and the  
17 bulletins on the trains for slow orders, and they  
18 noted that the subdivision was a relatively rough  
19 ride, and the track had several slow orders due to  
20 the track condition. So this, coupled with our look  
21 at downloads let us to put in 30 minutes when we saw  
22 it to be 27 minutes.

1                   It's not clear to see why these slow  
2 orders are out there, but I just want to say that  
3 with the slow orders removed, it would be possible to  
4 do that run in 13, which is 13 miles in about 21  
5 minutes, not in 30 minutes.

6                   So a small change does make a difference  
7 in the formula as Mr. Turner declared. It can change  
8 the outcome, but if we were to take that 9 minutes  
9 off our 30 minutes and use our formula, there would  
10 be much more capacity than the 1.7 that's declared  
11 there. So capacity --

12                  CHAIRMAN OBERMAN: So what's wrong with  
13 that track? And what needs to be done and how much  
14 would it cost?

15                  MR. ELPHICK: Yeah, I don't have the  
16 answer to that question sir. It looks to be a  
17 surface condition requiring surfacing, and I believe  
18 they have a rail program out there as well.

19                  CHAIRMAN OBERMAN: Is this UP track?

20                  MR. CREEL: If I could to provide a bit of  
21 color. Hopefully John Orr should be able to join and  
22 hopefully soon. We may have to double back to this

1 to give you much more intimate details on this phase.

2 But effectively, this track aligns here  
3 the trains that move over this track, over the  
4 trackage rights piece of railroad are actually KCS  
5 trains, more than 50 percent. The next largest --  
6 the remaining 50 percent I guess, the best way to say  
7 it is its fleetingly between BNSF and UP. So another  
8 way to say it, 75 percent of the trains are actually  
9 trains that compete with UP. They're BN or KCS.

10 A track speed obviously is determined by  
11 the class of track, but optimizing the class of track  
12 means you'd have to make sure you have the  
13 maintenance rights. So if you don't have adequate  
14 ties, rails, ballasts, surface conditions, tie  
15 condition, whatever reason, the only way to protect  
16 safe operation is to apply to get those.

17 This piece of track historically has been  
18 challenged with KCS's experience for UP's, whatever  
19 reason, the lack of taking the rent that KCS is  
20 paying to maintain the track and track speeds to the  
21 reality of the way they run it day in and day out.  
22 And the danger of that, these models as we've pointed

1 out are sensitive to minutes.

2 If you bake in a slow track condition in  
3 your capacity analysis, you're baking in that  
4 inefficiency. And if we were to reward UP with that,  
5 and to say okay, we need more capacity, disregard the  
6 fact that you're not maintaining the track to its  
7 potential, essentially we're adding infrastructure  
8 that's not needed, and we're also rewarding that bad  
9 behavior.

10 So UP would not have the incentive to  
11 maintain the track to the standard that we deserve as  
12 payers of rent. They as the landlord and in fact  
13 they too would benefit from the service they provide  
14 to their customers. So to me this is a very micro  
15 example of what competition brings.

16 If UP will maintain this track to its  
17 capacity and to its potential, we're going to get  
18 better ride, we're going to get a better transit  
19 time, UP trains will as does the BNSF trains. All  
20 three of our customers will benefit from doing the  
21 right thing in this particular piece of track.

22 CHAIRMAN OBERMAN: How long is this



1 stretch of track?

2 MR. CREEL: What's the total distance.

3 344 to -- it's about 100 miles, 84 miles. A little  
4 less than 100 miles, 84 miles.

5 CHAIRMAN OBERMAN: Well I've previously  
6 expressed my observations, and I guess that's how  
7 I'll characterize them as, why railroads making  
8 billions of dollars a year don't keep their track up  
9 to improve service in general. Forget, you know, the  
10 relationships here you know between the railroads,  
11 but it affects everybody.

12 So I just I assume UP is listening to this  
13 broadcast. A word to the wise UP, if there's a  
14 problem with maintaining your track do something  
15 about it. And if you don't think so you can tell us  
16 in your final brief why CP is wrong. Go ahead.

17 MR. OTTENSMEYER: And Mr. Chairman this is  
18 Pat Ottensmeyer. The KCS has spent over the last 16  
19 years I suppose, 70 million over and above the total,  
20 the trackage rates on capital improvements in this  
21 stretch. So 70 million, I think you've heard, or  
22 will hear that we spent a total of 120 million on the

1     trackage rights.

2                     70 million of that has been on this  
3     particular stretch. As Keith pointed out, we're the  
4     main user of this. BNSF also uses this, so and it's  
5     not as critical to the UP as several of the other  
6     areas that they run in Texas and South Texas,  
7     certainly their route to Laredo.

8                     UP has to do the work on this. We pay for  
9     it, on some of these specific projects. We've been  
10    willing to pay for it, but UP does the work. And you  
11    know I'm not dismissing at all the challenge of  
12    managing a multi-billion dollar annual capital spend  
13    that UP manages across the entire western two-thirds  
14    of the country, but some of these projects don't  
15    necessarily get to prioritization that we would like  
16    for it to get.

17                    CHAIRMAN OBERMAN: Well, Pat maybe I might  
18    -- this should be directed to KCS. I mean if this is  
19    a stretch of track that is going to be used by the  
20    merged corporation, and you have the bulk of the  
21    trains over there, and you have a trackage rights  
22    agreement that calls for maintenance, why isn't it

1 going to be the merged corporations obligation to get  
2 this track up to speed?

3 MR. MEYER: Okay. Mr. Chairman it's  
4 David. If I understood your question it seems to be  
5 asking the question of why wouldn't we become  
6 responsible for maintenance.

7 CHAIRMAN OBERMAN: Well, whether you're  
8 legally responsible, or just from a business point of  
9 view, it's a problem here with capacity because of  
10 the slow speeds. I mean I just found it frustrating  
11 at various parts around the whole country's network  
12 that railroads don't always spend money.

13 They come in and tell us -- we had this  
14 come up in the Gulf Coast situation that they're slow  
15 areas, there are congested areas, it's on their own  
16 lines, and they don't fix them up and they want  
17 somebody else to fix them up. So to me this sounds  
18 like an area that whatever the legal obligation is  
19 you have a self-interest in getting this track fixed  
20 so it doesn't have these slow areas. Am I missing  
21 something here?

22 MR. MEYER: Let me make three points in

1 response to that, and maybe the other two will have a  
2 comment. So the first point I want to make is just  
3 to come back to the thrust of what Mr. Elphick is  
4 saying here. We're not suggesting that there's a  
5 problem here and UP needs to fix it. That's not what  
6 we're saying.

7           What we're saying is there is capacity for  
8 the trains we intend to operate, or anticipate  
9 operating over this segment. That there is already a  
10 plan to add an additional siding in the one space  
11 where the analysis of capacity comes close to the 65  
12 percent limit. The point we're making is there are  
13 opportunities for there to be even more capacity if  
14 the line were maintained to its appropriate standards  
15 for track speed, rather than slow order speed.

16           And just those little efforts that are  
17 short term in nature, and much easier to make than  
18 capital expenditures, can radically improve capacity,  
19 rather than relying on longer term, or  
20 infrastructure heavy investments. So that's our main  
21 point.

22           The second point we would make is, and I

1 know this, it's part of our presentation more  
2 generally about the Houston area. We absolutely take  
3 onboard the desire and need to be very proactive  
4 about making sure all of this works. We're not going  
5 to sit back and hope that UP does what it's supposed  
6 to do, and then complain about it if it fails.

7 We're going to be proactive in making sure  
8 that everything's happening that needs to happen,  
9 that's appropriate to happen, and we're going to be  
10 very engaged as we said. And maybe I said there were  
11 three points, but I remember only two of them, so if  
12 there are others who want to comment.

13 MR. CREEL: I think the final point, the  
14 third point is we can be assertive. We can be the  
15 squeaky wheel, and we will, but at the end of the day  
16 UP owns the track. UP owns the responsibility, and  
17 they have the labor of their employees contractually  
18 own the work. UP has to execute the maintenance work  
19 to maintain the infrastructure.

20 They have to take their interest payment,  
21 and as landlord, maintain the property to extent that  
22 the benefits are for all users.

1                   MR. MEYER: It was exactly the point I was  
2 going to make.

3                   CHAIRMAN OBERMAN: Well look, I'm only  
4 making this observation. There seems to be an  
5 attitude in the rail industry I've seen too often,  
6 that it's okay to have this 84 miles of slow area  
7 because you don't need the capacity right now. But  
8 if the trains could run faster, everything in the  
9 network would be better, and people would get better  
10 service I would assume.

11                   That's why everybody comes in and pats  
12 themselves on the back when your velocities are  
13 improved. So whichever railroad is responsible, I'm  
14 not clear, why do we have a network where on a line  
15 here that seems to be one that's particularly if the  
16 merger is approved, is a very important line, where  
17 we settle for slow speeds because we don't need the  
18 capacity today.

19                   Why shouldn't that track be improved now,  
20 even before you get to a point where you need the  
21 capacity? What is the business philosophy about  
22 letting in language there? I really don't

1 understand it on a line which has apparently some  
2 very important and a lot of traffic even now, even  
3 before the merger.

4 MR. CREEL: And Chairman Oberman, I'm  
5 going to agree completely with you. I would suggest  
6 that it boils down to motivation and priority.

7 CHAIRMAN OBERMAN: Well if it helps us you  
8 know, if the merger takes place, if it helps move  
9 things along you know, I think whoever has both the  
10 legal and the business obligation to deal with it  
11 should deal with it, and just leave it at that.

12 MR. OTTENSMEYER: Yes. And just to  
13 clarify, this is Pat again, my understanding, and I  
14 don't know if John Orr has joined us yet, is that  
15 because of the fact that Keith mentioned UP employees  
16 own the right to this work, so we couldn't just  
17 unilaterally decide to go do the work with our  
18 employees or contractors.

19 We pay for it, we pay for it in the  
20 trackage rights fee. We pay for it in some cases  
21 discreet projects outside of that. But they have the  
22 right to do the work.

1                   CHAIRMAN OBERMAN: Pat, are you -- I  
2 understand that. Are you saying that as the entity  
3 paying for the work you don't have any position to  
4 say to UP fix it, we're paying for it, do it?

5                   MR. OTTENSMEYER: We do. But then we  
6 don't get to determine where that project ends up on  
7 their multi-billion dollar capital project.

8                   CHAIRMAN OBERMAN: Well that's odd to this  
9 layman's perception, maybe not out on the railroad  
10 world.

11                  MR. MEYER: My apologies, so David again.  
12 So we would be delighted to have a broader  
13 conversation about the trackage rights relationship  
14 between the future of CP/KC and UP over these  
15 segments. For purposes of addressing the issues that  
16 have come up in this merger I think as Mr. Elphick  
17 said, there just isn't a short term problem. There  
18 are lots of opportunities for expanding capacity,  
19 even beyond what's needed to accommodate our trains.

20                  And so we just see no issue. And that's  
21 not to say we're putting it to bed and ignoring it.  
22 There's no urgent need for anything to hold up the



1 merger benefits, and we will be collaborative and  
2 proactive going forward making sure that everything  
3 that needs to get done, get done, exercising all the  
4 rights that we have.

5 So Mr. Elphick is now going to, unless  
6 there are other questions about this geography,  
7 address the issues about the Neches River Bridge.

8 MR. ELPHICK: Thank you. So Ray speaking.  
9 And Keith, I'll try not to go too quick, although  
10 feeling the time pressure here a bit for the team.  
11 On this track's map here you can see the Neches River  
12 Bridge in the middle crossing that Neches River.  
13 That's in blue.

14 So starting from the far right is KCS's  
15 siding at Vidor. Moving left you can see that KCS  
16 junction with UP's Lafayette subdivision, and then  
17 you see a large terminal called KORF, and that's a  
18 bulk receiver of crude. All three railroads went in  
19 there.

20 As you continue to move along the tracks  
21 you cross the Neches Bridge, and then you run into  
22 Up's double track territory. Vidor Beaumont Yard,

1 and ultimately you go to the direction running on the  
2 left side. So UP had noted that we had used a  
3 different methodology for calculating our bridge  
4 capacity here. They used the same methodology that  
5 we had done on the Brownsville sub for this location,  
6 and came up with a much lower rating of capacity  
7 than we did.

8 We did use a different methodology because  
9 we had to. This is not a typical signal track. To  
10 explain CP's approach if you're looking at capacity  
11 over the bridge, give me a close up here on the KCS  
12 tracks. In the close up you can see the relevant  
13 measure for calculating available capacity is the  
14 time for each train to clear the relevant points.

15 In the single track on the top the measure  
16 is a function of the time to run between the two  
17 sidings and clear, and there's only one diversion  
18 point as you run across. But on the bottom, in the  
19 Neches River Bridge area you have multiple different  
20 diverging plants, so obviously you have Lafayette  
21 subdivision in the KORF terminal, and then again on  
22 the other side of the bridge.

1                   So we can't use the same formula. We  
2                   actually calculated the run times of all of the  
3                   different train types moving over the various  
4                   segments. So for example a freight train for UP from  
5                   the double track to the Lafayette sub takes 25  
6                   minutes, but an Amtrak train only takes 15 minutes on  
7                   the same segment. A KCS train running across from  
8                   over the bridge to the Vidor siding takes 30  
9                   minutes.

10                  So we did that. We also looked at  
11                  maintenance. We didn't assume that the maintenance  
12                  work could be done in the shadow of trains, or in  
13                  between trains. We looked at the bridge openings.  
14                  We did a calculation of the time the bridge is  
15                  occupied during the day, and then looked at it over  
16                  the course of the day and calculated the remaining  
17                  capacity.

18                  So we came up with a number of 66, and  
19                  that number is quite close to a study actually that  
20                  UP, BN and KCS jointly did where they came up with  
21                  the number 70, so UP's presentation that the capacity  
22                  is much lower, the sustainable capacity is much

1 lower, differs very much from ours.

2 Coordination here again is the most  
3 critical aspect of the operation. It's shown in many  
4 studies. So if you go back to the broader view, and  
5 if you look from point A to point B, that's between  
6 crossovers on UP's double track. You'll see that  
7 there's 11,000 feet of track there, so it can fit a  
8 fairly large train.

9 So this double track is critical. If the  
10 train is sitting there, and blocking one of the two  
11 tracks, then you're effectively single tracking. You  
12 have the complexity of dealing with the track to the  
13 west of there, the directional runs, they're  
14 crossing trains over, you're working around the train  
15 parked on that single track, and it really congests  
16 the area.

17 All the parties are involved and need to  
18 work together to coordinate that capacity, even  
19 though it's UP's track. We also learned a lot from  
20 KCS in our time out there. We were riding trains  
21 again. We were sitting in the dispatch center trying  
22 to learn from everyone, including KCS how it all

1 operates.

2                   And it confirmed for us that there are  
3 still tremendous opportunities out there. You know  
4 one of my team was riding a train to the KORF  
5 terminals, they were moving from the west to the  
6 east, to the KORF terminal, and it got to the gate  
7 and the security guard took a half hour to get out  
8 and look at the driver's licenses before they were  
9 allowed to back into the KORF terminal.

10                   So maybe that's a one off, but all three  
11 roads could get together, go to the KORF terminal,  
12 and try and get pre-cleared. Try to come up with a  
13 process to be faster into that terminal. That's just  
14 an example of the kinds of opportunities that are out  
15 there to improve coordination.

16                   You know while it's not needed at this  
17 time in my view, based on our capacity calculations,  
18 there's are infrastructure opportunities there. I've  
19 shown, or depicted on the right side KCS could extend  
20 their siding to the west, and we could do that, and  
21 that would shorten that run time up between the  
22 double track and our siding, KC's siding.

1                   So minutes matter again. We could do that  
2     within two years for a cost of about 8 million  
3     dollars. That's what KCS's engineers tell us.  
4     There's projects we can do on the UP side. There's a  
5     tremendous amount of opportunity both for  
6     coordination at the Neches River Bridge, but also for  
7     us to coordinate on what are the next priorities  
8     there.

9                   My view is this area has been studied  
10    excessively, it's really just about sitting down and  
11    figuring out the next steps cooperatively.

12                  UNIDENTIFIED SPEAKER: You're slow today.

13                  MR. ELPHICK: I think we're moving on to  
14    -- okay so the next section here.

15                  BOARD MEMBER HEDLUND: Excuse me, I have  
16    one question.

17                  MR. ELPHICK: Sure.

18                  BOARD MEMBER HEDLUND: The Neches River  
19    Bridge, that's a moveable bridge it goes up and down  
20    and how often, how many times a day does it do that,  
21    and how does that affect traffic through that area?

22                  MR. ELPHICK: Yeah, UP speculated that it

1     could go up, and our research suggests that right now  
2     it's setting about once a day it's going out. We  
3     haven't seen evidence of it you know it going up  
4     more. It's you know it takes about 20 minutes I  
5     believe for it to go up and down as the barge goes  
6     through.

7                   BOARD MEMBER HEDLUND: Thank you.

8                   MR. ELPHICK: So in a few moments here  
9     we'll offer a look at Houston through a video. What  
10    I'd like to do though is offer a perspective on, or  
11    some context around Houston. And what is depicted in  
12    this graph, or the main route for UP, BN, Amtrak and  
13    KCS run on.

14                   This expressway as it's called, runs in  
15    both directions across Houston, light blue arrows  
16    again indicate the westward route, and the dark blue  
17    arrows indicate the east route. UP positions the  
18    operations in Houston as slow moving, measured in  
19    many hours per train. UP and BN indicate this area  
20    mainly serves local traffic, with some traffic never  
21    leaving the Houston terminal.

22                   I would note that a lot of the complexity

1 -- my first point would be is south of that  
2 expressway, below the blue arrows. The local part of  
3 the operations of the south is creating significant  
4 handlings and train movements in and out of the  
5 numerous courtyards to and from the various customers  
6 in the area for sure. Just change slides there.

7 That's why John's Orr's slide from last  
8 week I think is an important slide measuring the  
9 total train counts in and out of Houston. The  
10 overall count of trains is an indicator of the  
11 overall utilization of that terminal. It provides  
12 the indicator in my mind of the level of activity  
13 throughout the entire complex, and particularly in  
14 that area south of the east west main line.

15 This graph you know is trying to address  
16 the point that was made that even one train of  
17 additional capacity out there would need to be  
18 studied. What you're looking at here is the  
19 absolutely value of changes in trains per day, day  
20 over day. So if you had 100 trains over there one  
21 day and went up to 110 the next, comparing to the day  
22 before it went up ten, and down five, and up ten.



1                   And so the point being in the black dash  
2     line, that's CP/KC's eight trains. I would suggest  
3     to you that it's normal in that plant for that kind  
4     of you know change day by day, day after day. Eight  
5     trains is not unusual.

6                   And then before we get into the video  
7     here, one last kind of set up here, you know we've  
8     rounded numbers here but --

9                   BOARD MEMBER PRIMUS: Do you mind if I ask  
10    a question question, I'm sorry.

11                  MR. ELPHRICK: Sure.

12                  BOARD MEMBER PRIMUS: So the eight trains,  
13    do you have an idea of the average length those  
14    trains will be?

15                  MR. ELPHRICK: I do. You know CP/KC or  
16    KCS right now is running about 7,300 feet. I think I  
17    did the math, you know we're going to increase by  
18    about 15 percent, so we'll be just over 8,000 feet.  
19    We've been clean and clear that we're going to run  
20    trains up to 10,000 feet. In this complex UP, we've  
21    seen trains out there bigger than 10,000 feet.  
22    12,000-14,000 feet.

1                   And so we're restricted to 10,000 feet as  
2     we take the trains into Mexico. There's rules around  
3     train length. But the average length will be less  
4     than the 10,000 feet.

5                   BOARD MEMBER PRIMUS: Thank you for that.  
6     Is there you know, you mentioned how UP has longer  
7     trains in that area, is that a challenge to  
8     operations to have UP operating longer trains,  
9     because looking at some of the sidings, it means that  
10    they may not fit you know if you guys were trying to  
11    get around them. They may not fit in those sidings.  
12    You know is there a challenge to that with UP having  
13    longer trains in that area?

14                  MR. CREEL: Yep, Member Primus this is  
15    Keith speaking. Absolutely your observation is spot  
16    on. And in our video we'll speak to some of the  
17    challenges real world that have been experienced by  
18    all users on the highway through Houston that are  
19    trains today and tomorrow have to navigate.

20                  BOARD MEMBER PRIMUS: Thank you.

21                  MR. ELPHICK: Again with that one last  
22    slide. There we go. Again, these are rough numbers.

1 We've rounded them up, but CP/KC will not grow all at  
2 once. You know we put this on the record here. It's  
3 an estimate of course, and traffic comes early, goes  
4 late, but we think that it's realistic to assume that  
5 year one there will be two trains going through the  
6 complex.

7 And then it will back loaded. Then you'll  
8 see five or six trains towards your three so. I  
9 just wanted to set that context as well.

10 MR. MEYER: This is our estimate of the  
11 phase in of the traffic growth and how it gets  
12 handled by trains being added to the train side. So  
13 it's not all at once but within the first year it's  
14 the two. Within the second year we don't see  
15 additional trains beyond the two. Then the third  
16 year we see the balance of the additional trains  
17 coming on.

18 And of course it could be two and a half  
19 in year two, or something with you know grain trains  
20 that you know operate less than once a day, et  
21 cetera. But it's a phased approach that will give  
22 everyone time to adjust going back to that saw tooth

1 slide, we don't need to go back to it, but  
2 remembering it you know where we showed the daily  
3 variation at least in volumes.

4 Houston is capable of handling  
5 fluctuations in trains on a daily basis, this isn't  
6 going to be a day to day fluctuation. It's going to  
7 be a planned and methodically phased addition of  
8 trains.

9 MR. ELPHICK: Okay. So we're going to  
10 look at a train that traveled from Mesa Crossovers to  
11 West Junction on this map. So it's a westward train.  
12 It's a grain train that we used one of CP's  
13 locomotive counts on the head end of a KCS grain  
14 train to film. You know we have that on our trains.  
15 We can download it and take a look at what the road  
16 looks like.

17 So this footage goes back to August the  
18 1st of this year. It's a train originating out of  
19 Manitoba, Canada destined to Mexico City. It's 100  
20 cars, 5,000 feet and 10,000 tons.

21 MR. MEYER: Let me just say something.  
22 This is David. So I just want to make sure the Board

1 understands. So we did not stage this. This was a  
2 train that was running in the ordinary course, and  
3 the CP team because a CP locomotive happened to be on  
4 the lead on this train, and it probably is because it  
5 originated in Manitoba.

6 The CP locomotive happened to be in the  
7 lead, and we realize that we had this in the system,  
8 and we're able to show you how that train experienced  
9 traversing this expressway, so to speak, from the  
10 east, where we're going to start east of Englewood  
11 Yard, move past it through downtown Houston to the  
12 west end of Houston, and you know again, this was  
13 just a random train experiencing random conditions on  
14 August 1, 2022.

15 We're changing drivers on the video, so  
16 give us a moment to share the screen. Board Members  
17 can you see the view out of the locomotive windshield  
18 at this point?

19 BOARD MEMBER FUCHS: Yes.

20 MR. CREEL: Okay. So this is Keith  
21 speaking. I'm going to do my best to operate this  
22 train to the Houston complex. I'm going to provide

1 each of the members with the video, our  
2 co-conductor. So you're in the conductor seat, not  
3 the engineer seat as the conductor would see it as he  
4 moves west towards the town, or City of Houston.

5 CHAIRMAN OBERMAN: Is your license up to  
6 date Keith?

7 MR. CREEL: Absolutely. Again, so we're  
8 starting at the east side of Englewood Yard at a  
9 location called Mesa, because that's the crossovers  
10 there for trains to go from track one to track two.  
11 That's a stub-in lead track. And again, we're  
12 traveling westward. We're going to go by Tower 87,  
13 Englewood Yard.

14 We're going to point to the Creosote track  
15 and then continue on through Tower 26 and down to  
16 West Junction.

17 MR. MEYER: So just to interject one  
18 observation here. This route is the route of the  
19 normal route for westbound or southbound KCS trains.  
20 It is the former Southern Pacific sunset route  
21 between New Orleans and Los Angeles. It became part  
22 of UP, it's in the UP/SP merger. It is operated not

1 just by KCS through trains, but UP has through  
2 operations to the New Orleans gateway.

3 Amtrak operates between New Orleans and  
4 Los Angeles on these tracks. This is the route.  
5 It's the same route for all of those three operations  
6 I just described.

7 MR. CREEL: And I think to add a bit more  
8 color, this is Keith speaking as well. Just to get  
9 an orientation, the track to the right lane one, the  
10 track that we're on lane two, the track to the left  
11 where the cursor is located is actually a lane that  
12 goes into the east end of Englewood Yard.

13 So we're going to proceed west now in lane  
14 two. Track speed in this area is 30 miles per hour.

15 MR. ELPHICK: There's the east end of Englewood Yard. You know,  
16 eight or nine 5,000 foot tracks. And if you look up  
17 on the right you can see a train on track one, on  
18 lane one. And I'll stop here. And then this train  
19 here is actually diverging towards Settegast yard.

20 So you could see how the tracks shift to  
21 the left, lane one is actually on the right. Lane  
22 two will be to the left of the locomotive. We're

1 going to proceed straight through. And if you look  
2 on the left you can kind of see behind the signal. I  
3 mean that's a locomotive pushing the cars up the hill  
4 at Englewood Yard to process over the hump.

5 MR. CREEL: And explain this as well  
6 where this is going to.

7 MR. ELPHICK: Yeah that train again, that's  
8 diverging and it will go north towards Settegast  
9 Yard.

10 MR. CREEL: And Settegast Yard, this is Keith again  
11 speaking, just for reference is where as of 2021 UP  
12 shifted the intermodal work that was done previously  
13 in Englewood Yard as part of their unified plan, they  
14 shifted the work to Settegast Yard.

15 So the intermodal work that  
16 would have been done in Englewood to the left, has  
17 been shifted to Settegast, which is to the right, and  
18 the diverging route where this train is headed. So  
19 two different work locations in near proximity to  
20 each other. Let's talk about this. So this is  
21 actually the interlocker. We're at cross traffic.  
22 If you take a right it goes up this track, that's



1 where that train was heading up to Settegast.

2 If you were standing on this interlock you  
3 literally can look up, look north for the lack of a  
4 better term, and you'll see the south end of  
5 Settegast Yard.

6 MR. ELPHICK: It's a double track interlock in  
7 both directions. At Tower 87. Yeah, so we're now  
8 stopped alongside the main body of the yard, and  
9 we're sitting on track one.

10 MR. CREEL: And let me, this is Keith  
11 again speaking if I can. This is a perfect point. I  
12 want to elaborate a bit on Member Primus's question.  
13 So what you see to the left, these are what we call  
14 receiving and departure tracks, or R and D tracks.  
15 So in the trains that arrive here, outbound trains  
16 would historically and typically be designed to be  
17 built here.

18 So a train comes in. These tracks  
19 historically, and still are today, the industry  
20 standard is R and D tracks were somewhere between 6  
21 and 7,000 feet long. These particular R and D  
22 tracks are about 7,000 feet. And the reason they

1     were designed that way is to match the line capacity  
2     on the railway.

3                 So if you go to a typical traditional rail  
4     network, and this was true at IC, it was true when I  
5     worked at BN. It was true when I went to CN. It was  
6     true when I went to CP. And I'm sure it's true at UP  
7     it's the standard. Typically every 10 or 11 miles  
8     you're going to have 6 to 7,000 foot siding to meet  
9     train needs, and other than double track.

10                And when the arrive at terminals you have  
11    adequate capacity to be able to take the train off  
12    the main line, or off the through fare and to Member  
13    Primus's point, yard in the terminal for the train to  
14    be classified, and/or when the new train is ready to  
15    depart from. That allows you to clear your  
16    thoroughfare routes, your highway routes, keep them  
17    free and clear so that through trains get received  
18    east or west.

19                So in this case again, originally built  
20    and still today, around 7,000 feet track capacity at  
21    the longest length of track here in the R and D  
22    tracks at Englewood Yard.

1                   BOARD MEMBER PRIMUS:   So I'm sorry Keith,  
2   so what does that do again for the larger trains that  
3   they may run.   How does that affect you guys like in  
4   that area?

5                   MR. CREEL:   Practical experience, and I  
6   share this from my personal experience.   I took an  
7   inspection trip here Member Primus several months  
8   ago.   Actually at that time these two tracks that  
9   were lane one, lane two, were being used to build  
10   trains on.   So as opposed to fitting in the departure  
11   tracks, which we showed you, they're limited by  
12   length.   They were doubling trains out at the west  
13   end of the yard, which I'll show you in a few moments  
14   how the infrastructure is set up.

15                   And shoving these tracks that we're on,  
16   and effectively utilizing the thoroughfare as a  
17   parking lot.   I liken it and being here at Bensenville  
18   by O'Hare, a reference was made earlier to O'Hare, I  
19   can't imagine landing a plane on the runway at O'Hare  
20   and taking passengers on, and taking passengers off.  
21   It's just not designed that way.   It's not the place  
22   to do it.

1                   If you do it that way I don't care how  
2 much money you spend, you'll never build enough  
3 runways. The use matters. That was the point that I  
4 made last week. This is a shared asset. UP owns it,  
5 we all have to use it. We all have to deliver  
6 service depending upon it. The level of service, and  
7 the velocity through the Houston terminal is  
8 profoundly impacted by our ability to get this right.

9                   Parking trains on this track is the  
10 absolutely last thing to do operationally if you're  
11 concerned about throughput and capacity in the  
12 Houston terminal.

13                  MR. ORR: Keith, if I could join in just  
14 to add emphasis. This is John Orr. Member Primus,  
15 in my reply verified statement I included a snapshot  
16 from a dispatcher overview panel from the spring  
17 Texas UP dispatch panel. And it was the day I was on  
18 the rail, and we were rerouted under clear route.

19                  We were taken 7 miles out of route because  
20 you'll see in that overview all of these tracks --  
21 all of them, were occupied by either standing trains  
22 waiting to get into the yard, or occupied by trains

1     that were built that didn't have either a crew or  
2     power.

3                   And you'll see a lot of red lines denoting  
4     occupying trains in that whole Houston complex in  
5     that dispatch overview in my replied statement. And  
6     like Keith, I observed 7 trains with power and crews  
7     on top of standing cuts of cars that were being  
8     built. It really gets to use. And while Keith uses  
9     the analogy of an airport, I think that this is truly  
10    an interstate.

11                  It's like tractor trailers stopping on the  
12    you know, the right hand lane, even before the exit  
13    ramp, and stopping and then moving onto the exit ramp  
14    and stopping, and then getting onto the exit ramp and  
15    stopping, and not fitting into the parking lot in  
16    whatever place they're going.

17                  So it's not just the fact that these  
18    trains won't fit into the arrival or departure  
19    tracks, and there hasn't been appropriate timely  
20    investment in the yard structure, but it's also  
21    allowing these trains to go into the terminal, into  
22    Houston, knowing full well they can't go anywhere and

1     localized decisions that are allowing decisions to be  
2     made within an operating yard to impact and impact  
3     trains that are meant to go through, and having  
4     either re-routing or a cascading effect of trains  
5     stopping..

6                     And again, that's a very telling dispatch  
7     overview that's in the replied verified statement  
8     that I submitted from personal experience.

9                     CHAIRMAN OBERMAN:    So what's the -- are  
10    you saying that they should build longer yard tracks,  
11    or run shorter trains on UP?

12                    MR. CREEL:   Well I think there's an  
13    ability to accomplish their objectives of running  
14    trains and running trains efficiently.  I've got a  
15    bit of experience in doing this, and I'll get back to  
16    my history even at Canadian Pacific.  We had a desire  
17    to run bigger trains in Canadian Pacific.  That's  
18    part of the efficiencies and the synergies and the  
19    service improvements that the operating model  
20    allows.

21                    But you can't let your ambitions get ahead  
22    of your physical plan.  You have to match yard

1 capacity with main line capacity. Size of trains,  
2 I'll take the St. Paul, Chairman Oberman. At St.  
3 Paul at our yard, the receiving and departure  
4 tracks, much like here in Houston and Englewood,  
5 Dunyard is what we call it. Adjacent to our  
6 receiving and departure tracks is a -- is a main line  
7 as well as a BNSF main line. It parallels in towards  
8 St. Paul.

9 CHAIRMAN OBERMAN: Somebody's microphone  
10 is on that shouldn't be one.

11 MR. CREEL: At CP we went through an  
12 extensive capital plan where we effectively invested  
13 tens of millions of dollars to take those 6,000 foot  
14 receiving and departure tracks and turn them into  
15 10,000 foot receiving and departure tracks because we  
16 knew we could not use the thoroughfares, one of which  
17 we own, and one of which BN owns, that parallel the  
18 yard to build big trains.

19 We had big train aspirations. It took big  
20 investment to be able to realize that vision. Now  
21 with that said let's go west, and I'll show you the  
22 opportunity. Again rural main lanes, lane two

1 parallel in the yard to our left. We get towards the  
2 end -- just stop here.

3           Okay, to the left is the series of tracks  
4 that come out of the west end of Englewood Yard. So  
5 if you were to process a train, build a train, depart  
6 a train, those are the leads that you would by design  
7 come out of, as opposed to coming out of those yards  
8 because those tracks aren't long enough. You're  
9 limiting factor when you run a big train now means  
10 you have to pull them out directly ahead of, and line  
11 up and on the track that we're on, and shove it back  
12 to clear those crossovers.

13           Therefore, congesting or blocking the  
14 thoroughfare route, and forcing trains when that  
15 track is occupied to take the circuitous route  
16 literally around Englewood Yard, the way Mr. Orr  
17 described. Now the other point I'll point out as we  
18 go down the track to the right, you're going to see  
19 our train.

20           We call it turnout, or go through the  
21 turnout into the furthest track to the right. That's  
22 called the Creosote track. That particular track as



1 we sit here today is about 3,400 foot long. So the  
2 dispatcher for whatever reason, as you can see the  
3 track ahead of us is clear, we're taking the  
4 diverging route through a 10 mile an hour turnout off  
5 a 30 mile an hour track, into a 3,400 foot siding.

6 And you'll see in a moment just to come  
7 out the other end in the moment, for no apparent  
8 reason. So as we continue to go west I'm going to  
9 pause as we slowly move to the Creosote track. And  
10 again here's the Creosote track, 3,800 feet, I stand  
11 corrected. It's a bit longer. But we've got a 6,000  
12 foot train.

13 Now let's go here. As we proceed down the  
14 Creosote track, immediately to the left -- and I said  
15 this earlier.

16 BOARD MEMBER PRIMUS: Hey Keith before you  
17 do it, so were you dispatched by UP to take that  
18 line?

19 MR. CREEL: Absolutely.

20 BOARD MEMBER PRIMUS: Okay.

21 MR. CREEL: And I can't begin to explain  
22 why we would have gone through this turnout track unless

1     there's some kind of auto dispatch mode and/or bad  
2     railroading practices just programmed into people's  
3     minds, and they're just repeating bad behavior. I  
4     don't know.

5                 As an operating officer it makes my  
6     stomach hurt to think that we're wasting capacity  
7     like this.

8                 BOARD MEMBER PRIMUS: That's exactly what  
9     I was going to ask you, and you answered you didn't  
10    know. So I was going to ask you why they would do  
11    that.

12                MR. CREEL: Yeah, there's no logical  
13    reason for it Member Primus. To the left, as I  
14    mentioned earlier, back in 2021, part of UP's unified  
15    plan as I understood it, they shut down the  
16    intermodal terminal which was located here, in this  
17    area. I call it the field of dreams. That's UP's  
18    property, that's part of Englewood Yard.

19                They took that work, they moved it back to  
20    Settegast Yard, which we just passed earlier on our  
21    trip on the east end of Englewood Yard. Part of  
22    phase two of their plan in designing Englewood Yard,

1 phase one in 2021 they extended the actual  
2 classification tracks inside of the yard, which I  
3 applaud. And it gives you additional capacity within  
4 your footprint.

5           However, the R and D tracks still remain  
6 7,000 feet. Phase two as I understand it, is to take  
7 this footprint, and to create those 10,000 foot R and  
8 D tracks that would match their big train  
9 aspirations. The problem is it hasn't happened. I  
10 don't know why, but to suggest as Mr. Turner did last  
11 week, that it's so complicated it would take multi  
12 years to create capacity to handle growth in Houston  
13 is just a misrepresentation of the facts as I see  
14 it.

15           You could take that piece of railroad that  
16 has tracking grade, and convert that with capital  
17 investment into 10,000 foot trains in a matter of  
18 months, not years, thereby eliminating the need to  
19 park 10,000 foot trains on the thoroughfares that we  
20 all depend upon to move through the complex of  
21 Houston. It's not complicated.

22           All right. So we'll continue at 10 miles

1 an hour down this Creosote track, and in a moment  
2 we'll be able to turnout at 10 miles an hour, and  
3 eventually pick back up to track speed, which was 30  
4 miles an hour had we stayed on the track we were  
5 taken off of.

6 But this is an additional point. This is  
7 work that's currently occurring today. So this  
8 particular track, the Creosote track, part of that  
9 capital program, is being extended alongside main  
10 line to the right, all the way down to a point where  
11 they're going to create just under a 10,000 foot  
12 passing track, which again will benefit all users of  
13 the physical plant in Houston.

14 So this in and of itself is supposed to be  
15 done January 2023, adds additional capacity, a  
16 meaningful amount of additional capacity, to get in  
17 and around Englewood Yard, certainly ahead of any  
18 trains that CP/KC might be bringing to this railway.

19 MR. ORR: Keith, if I could just to add  
20 one point for the Board. This is John Orr once  
21 again. You know we're talking about you know some  
22 capacity capital projects. We're talking about a

1     number of you know things that we see as immediately  
2     available that don't take a lot in railway terms, of  
3     work to get finished.

4                     And of course there's going to be bigger  
5     ones. But there are so many small wins that  
6     cumulatively add up to significant improvement on  
7     capacity use. And I don't want to restate this too  
8     much, but just going through a 10 mile per hour  
9     turnout you're not just slowing down to 10 miles an  
10    hour at the turnout, you're having to start to slow  
11    down almost a mile, three quarters of a mile away  
12    from that switch, so you're starting to get closer to  
13    that off ramp.

14                    You have to drag an entire train, an  
15    entire train, whether it's 6,000 feet, 8,000 feet, or  
16    whatever distance at 10 miles an hour through that  
17    entire turnout, and then you have to do the same  
18    thing on the other end. So absorbing almost five  
19    times the time that you slow down, go through the  
20    turnout, go through the next turnout, pick up speed.

21                    Almost five times as long as it would  
22    normally take to go that 3,000 feet. And that on its

1 own may not seem like a lot, but time after time  
2 after time we're seeing that, including the slow  
3 orders, and the track maintenance issues that you've  
4 already heard about on the Brownsville side.

5 And as an operating officer of 38  
6 years. I have a catalogue of these things already  
7 understood. Looking for available funding, having  
8 monthly discussions with the CFO, or having a GM come  
9 to me with these suggestions and ideas because we  
10 all have our boots on the ground, understanding where  
11 these small wins are.

12 And I won't say it's frustrating, but it's  
13 encouraging to me, to see all these small wins still  
14 available to unlock capacity as we see this trip  
15 progress. I'm not going to stop at every small win,  
16 but please understand cumulatively, they're there for  
17 the taking, and it's important to us to be able to  
18 have this voice with UP because this is our primary  
19 route.

20 This is our franchise going through  
21 Houston, and these cumulative wins actually can  
22 contribute more than a stand alone capacity project

1     because it instills discipline, it creates  
2     reliability, it encourages safety and safety  
3     engagement, and it does all of the things from an ESG  
4     component on governance, and environment and all of  
5     the things that really add up to a value proposition  
6     for railroads, in addition to capacity.

7                 So you know as an operating person, I get  
8     really excited about the opportunities to improve.

9                 MR. CREEL: This is Keith again. Your  
10    point John, this specific train, this is an absolute  
11    fact based on the daily load from the train, moved by  
12    Englewood Yard at 12 miles an hour. And to John's  
13    point, the slow speed, 12 miles an hour on 30 mile an  
14    hour track, that engineer did not want to run at 12  
15    miles an hour, but in order to control this train  
16    safely, to slow down to take the turnout, which only  
17    allows you to go 10 miles an hour, he was forced to  
18    drag his train the entire length of Englewood Yard,  
19    thereby essentially doubling the time it took to  
20    actually make it from east end to west end of this  
21    physical plan.

22                And that's going to matter. You'll hear

1 in the end of this presentation contrary to Mr.  
2 Turner's allegations, that it takes hours to get from  
3 through the plant. This train took much less, and I  
4 would argue based on these facts, it could have been  
5 a lot better than it actually was.

6 So let's proceed west. Yeah that's  
7 actually the Creosote track will be extended to that creates  
8 that 9,800 foot capacity track.

9 MR. ELPHICK: Yeah this is Tower  
10 26, and the interlocker with the Westfell, and what  
11 you're going to see up here is that we're going to  
12 diverge -- just pause there.

13 It's still double track, but the tracks  
14 are diverging. We're going to take this route and go  
15 by the Amtrak stations.

16 BOARD MEMBER PRIMUS: John, I understand.  
17 Real quick, that Tower 26, is that another you know  
18 big congestion area too? I think you were pointing  
19 it out on a slide earlier that someone had indicated  
20 that that was a big problem in that location?

21 MR. ELPHICK: Tower 87 and Tower 26 are both  
22 double track diamonds. If you're not moving swiftly



1 through them you could back up around them. I'm not  
2 sure I would call it congested, but it can get  
3 congested if the operation's not fluid.

4 MR. ORR: And Ray, this is John Orr.  
5 Member Primus, the one thing that's very compelling  
6 about this route is it's directional. So as the  
7 train split it's double track, but they physically  
8 you know come further apart from each other, you know  
9 geographically apart. It's primarily the southbound  
10 trains that are running in this lane, and you'll see  
11 it later in some directional maps.

12 And you saw it when John Turner put some  
13 maps up as well. So Tower 26 was a point of concern.  
14 The fluidity here as you can see is important. And  
15 the one thing to note as well, in Tower 26, it's  
16 going to see only the southbound growth trains. It  
17 won't see the north and the southbound, so while it's  
18 an issue of importance to keep the trains fluid, and  
19 to dispatch appropriately through the entirety of  
20 this single track component of a directional run, as  
21 long as the trains are running it doesn't in itself  
22 present a problem.

1           MR. MEYER:   Member Primus, this is David.  
2   Just from my perspective listening to what I heard  
3   from the UP witness, Mr. Turner, last week.   You know  
4   he described the route that we're looking at as this  
5   expressway, you know, the interstate at both ends.  
6   And that it comes downtown and it has stop lights.  
7   And I think what we're trying to -- to me at least,  
8   what this demonstrates is that the only stop lights  
9   that really exist here is Englewood Yard, and the  
10   activity around Englewood Yard.

11           And certainly the cross traffic at those  
12   two interlockings.   We've seen Tower 87 and Tower  
13   26.   Those are the two points where cross traffic  
14   goes across this, but we've now come out on the west  
15   end of the interstate, and I think you'll see coming  
16   up there are no more intersections.   It's just a  
17   double track main line from here on.

18           Although as Mr. Orr pointed out, if you  
19   look at the map and you see where the arrows point on  
20   the map, we're in the westbound and the southbound  
21   flow, so pointing you know from right to left.   And  
22   we're on the part of the separated double track

1     that's on the south, and if we could somehow see to  
2     the right, and through some buildings I think, we'd  
3     see the north and eastbound track over to the right.

4             And the two will come back together before  
5     we get to a place called Eureka Junction, and then  
6     continue on to West Junction. So I don't know if  
7     that helps orient you again to where we are, but  
8     we're in that stretch actually right near downtown  
9     Houston, right near the Amtrak station.

10            This train is going to go right through  
11     the station where the sunset limited stops.

12            BOARD MEMBER PRIMUS: No, I understand,  
13     and I appreciate that. I was just again on the  
14     diagrams and some of the testimony I heard last week  
15     that you know in that area where you have the  
16     interlockings at. And I don't know how much traffic  
17     goes across on the other side from that, but it  
18     seemed like that was sort of potentially a major  
19     choke point at 87, you know, I just wanted to see if  
20     that was -- just confirm that.

21            MR. CREEL: Okay. We're going to continue  
22     west to the Amtrak station. Amtrak station to the

1 left. Then we'll proceed.

2 MR. ELPHICK: This is just where the main  
3 lines come together, and what we were talking about,  
4 so we'll continue on here. We'll go by Eureka  
5 Junction, which you'll note is not a diamond. It's a  
6 junction, but not a diamond. It's just a  
7 progressive move between the two sets of tracks.

8 So what you're going to see as we progress  
9 along here, and we could probably for the sake of  
10 time let it mostly roll, is that you know again  
11 there's no industry double track, you know, it's  
12 definitely a thoroughfare or speedway.

13 There's Eureka Junction there. Now this  
14 is basically the end of the route, or the video that  
15 we took. As Keith said we went through Creosote  
16 track. You know we had a good run, it was a clean  
17 run without exception. Did it in 74 minutes. If you  
18 could do the math on double track on 74 minutes over  
19 that distance looking at the exact pockets they have  
20 to fit trains, you know the maximum capacity is in  
21 the neighborhood of 196 trains a day through there.  
22 You know that's not sustainable.

1           Double track tend to like to think about  
2   50 percent in those kinds of areas, call it 96 trains  
3   a day. Our 8 trains with the other, you know, I  
4   don't have UP's data, but I would suggest to you that  
5   there's capacity for these trains. Our presentation  
6   is really that Englewood Yard is the one area that  
7   we're concerned with, and UP's plan is to extend the  
8   arrival departure tracks you know would be a win for  
9   all parties moving through that.

10           MR. MEYER: This is David again circling  
11   back on sort of how we perceive where things stand on  
12   this record, and how we are approaching Houston from  
13   a service and capacity standpoint. So you know I  
14   just want to make clear what we are, and we're not  
15   saying here.

16           I think what you are definitely hearing us  
17   say is our analytical approach to the issues in  
18   Houston supported by all the analysis that Mr.  
19   Elphick described, the hands on experience that Mr.  
20   Orr, Mr. Creel and Mr. Elphick had explained, as well  
21   as our other witnesses, shows that this expressway  
22   that we just passed across has ample capacity to

1 accommodate the measured growth in our trains.

2 We are going to depend on you know Houston  
3 operates fluidly for everyone, and so we're not just  
4 resting on that analysis, we are committing to  
5 collaboration with UP and BNSF to address everything  
6 that affects all of our operations with respect to  
7 Houston, so that the whole complex works for  
8 everyone.

9 We are motivated to make it work, and if  
10 we can go we surrender control of the slides at this  
11 point. If we can go to the next slide.

12 BOARD MEMBER HEDLUND: Could you just stop  
13 for one second. I have an observation, and I don't  
14 know if it's correct. They put up a slide that  
15 showed percentage increase over some maximum amount  
16 that the four trains each way, each day, were going  
17 to --

18 MR. MEYER: I can explain what that was.

19 BOARD MEMBER HEDLUND: Yeah. And but when  
20 I looked at it, and thought about it, you know some  
21 areas it's a 26 percent increase, other areas it's a  
22 2. But my observation was that it kind of flipped

1 the script, what in fact the congestion was because  
2 four trains, if it's a 2 percent increase means the  
3 denominator was a much larger number.

4 And if it was 26 percent it meant the  
5 existing number of trains was actually relatively  
6 small. Is my analysis of that correct? I'm not a  
7 mathematician. I did four years of math in high  
8 school, but.

9 MR. MEYER: your reaction to that was  
10 exactly the same as mine, and I think there are a  
11 couple things I would say about the charts that Mr.  
12 Turner put up. The first thing I'll say just as a  
13 matter of process, Union Pacific up until the day  
14 before yesterday I believe, regarded information on  
15 the segment specific train counts of operations in  
16 Houston as highly confidential.

17 It wouldn't share them even with KCS, who  
18 it needs to share these lines with. So, KCS didn't  
19 know the segment specific train counts that were  
20 underlying the percentage increases that Mr. Turner  
21 shared. We did obtain the work paper, and they were  
22 willing to share that thankfully with our team here

1 for use in this proceeding.

2 But I can tell you what their calculation  
3 was, which was a little bit different than what it  
4 may have seemed to be, although I'm not suggesting  
5 Mr. Turner misdescribed it, you know my first  
6 reaction is the same as your Member Hedlund.

7 They did an analysis of the maximum number  
8 of trains on each of those segments in each quarter  
9 over the period of 2015 to 2019, and asked the  
10 question what was the highest number of trains that  
11 could be operated.

12 BOARD MEMBER HEDLUND: Right.

13 MR. MEYER: It wasn't capacity. It was  
14 just what's the most we've ever seen.

15 BOARD MEMBER HEDLUND: Right.

16 MR. MEYER: On each segment. And then  
17 they asked what's the maximum number of trains during  
18 2019 that we saw. And in a number of the segments,  
19 the number of trains running in 2019 was  
20 significantly below the maximum that had been  
21 experienced over the prior period okay, and they only  
22 looked at this expressway. They didn't look at the



1     Houston complex as a whole.

2                     And what they were saying is on certain  
3     segments if you add in the eight trains, certain  
4     parts of this, like the portion from West Junction we  
5     just saw from West Junction and Eureka where there's  
6     no yards, there's no local service, it's a double  
7     track, and you know I think Mr. Elphick would say  
8     hundreds of trains could operate there every day.

9                     What they're saying is our eight trains  
10    are 33 percent of the most number of trains that they  
11    have seen since 2015. But there's plenty of room for  
12    that increase on that segment. In other areas right,  
13    if you look at you see smaller percentage increases,  
14    what they're saying is that since the highest number  
15    of trains that have fluidly operated over those  
16    segments we've actually seen in 2019 the number of  
17    trains come down.

18                    And so when you add our trains to the  
19    number -- the 2019 maximums, they're only coming a  
20    little bit above, or maybe not even up to the level  
21    of previous fluid operations. So that's what that  
22    analysis is showing. I think what Mr. Elphick is

1     saying with respect to this double track expressway,  
2     is if you just look at this as a double track  
3     expressway, and set aside for a moment the cross  
4     traffic and the Englewood arrivals and departures,  
5     there's room for hundreds of trains.

6             We're not saying that we should set aside  
7     those other things, those are part of the real world,  
8     and we know it, and we're certainly going to deal  
9     with it. But that's where you get to the  
10    perspective of the right way to look at this isn't  
11    the number of trains on the expressway, it's the  
12    overall load of traffic in and out of Englewood Yard,  
13    and crossing the expressway that tells you the whole  
14    picture of whether we're pushing up against some kind  
15    of limit on Houston capacity.

16            And that's where that yellow diagram that  
17    Mr. Orr offered last week, and Mr. Elphick reviewed a  
18    short while ago comes into play. That's not a  
19    precise capacity analysis. It's just a perspective  
20    that we are below the level of activity in the  
21    Houston complex that leads to things like trains  
22    crossing at Tower 26 or Tower 87. It leads to trains

1 in and out of Englewood Yard, et cetera.

2 We're below the level that was experienced  
3 in 2016, and well below the level that's been  
4 acknowledged to be -- it's a fluid operation for the  
5 terminal. So where does that bring us?

6 BOARD MEMBER HEDLUND: Yeah. Well one  
7 thing I would note is that the Englewood Yard was  
8 apparently studied as solutions to the problem in  
9 that Houston Beaumont freight rail study.

10 MR. MEYER: And I think as Mr. Creel  
11 pointed out, you know, Union Pacific is a very  
12 capable railroad, and they have I'm sure very  
13 carefully studied all the things that need to be done  
14 to implement what they announced in 2020 or 2019, the  
15 Unified Plan 2020.

16 They said a lot of things about it in  
17 their earnings calls over that period of time very  
18 publicly. You know, one of the focal points of what  
19 they were doing with their plan according to their  
20 public statements, was to focus in this Houston area,  
21 in the southeastern Texas southern region of Union  
22 Pacific, they were shutting down various operations,

1 and bringing work into Houston, and building longer  
2 trains.

3 And one of the things they did was they  
4 shut down the hump at Pine Bluff, Arkansas, and they  
5 said they were moving classification activity into  
6 Englewood Yard. Another thing they said they were  
7 doing was they were shutting down their plan to  
8 build another classification yard at Brazos, which is  
9 sort of not too far from Texas A&M in the triangle  
10 between Austin and Houston.

11 And again, that was ultimately putting  
12 more pressure on the Houston complex. They knew they  
13 were doing that, and they also knew they were  
14 planning to run longer trains. And I have every  
15 confidence that they had immaculate and tremendous  
16 plans about all the things that they needed to do to  
17 put that operation in place.

18 Mr. Creel described one of the things that  
19 we know they were planning to do, which was to build  
20 long arrival and departure tracks in Englewood Yard.  
21 We don't think that has to happen in order to avoid a  
22 meltdown at Houston. We're not saying that.

1           But there is huge opportunity to improve  
2     the capacity of the terminal and this expressway if  
3     that project goes forward, and it's not the kind of  
4     project that requires the very long lead times of the  
5     sort that Mr. Turner was describing.

6           BOARD MEMBER HEDLUND:   Thank you.

7           MR. MEYER:   So where does this leave us?  
8     It leaves us --

9           UNIDENTIFIED SPEAKER:   Excuse me Mr.  
10    Chairman, when we get to a convenient stopping point  
11    I could use a five or six minute break.

12          CHAIRMAN OBERMAN:   Well we've been going a  
13    long time, and I will tell you we only have about two  
14    more hours to go.

15          UNIDENTIFIED SPEAKER:   Yes.

16          CHAIRMAN OBERMAN:   So I don't know how  
17    much longer your presentation is going to take, and  
18    of course we have questions.   But let's make it, can  
19    we make it five minutes sharp?

20          MR. MEYER:   We'll be ready in less than  
21    five minutes.

22          CHAIRMAN OBERMAN:   All right.   We'll be

1 back here at 3:40 Eastern. Thank you.

2 (Break)

3 CHAIRMAN OBERMAN: All right. Are we  
4 back?

5 UNIDENTIFIED SPEAKER: We're here.

6 CHAIRMAN OBERMAN: Everybody here?

7 MR. MEYER: Ready to go.

8 CHAIRMAN OBERMAN: Is the reporter ready?  
9 All right. Okay David.

10 MR. MEYER: Okay. So if I could go to the  
11 next slide. So we've been talking about the  
12 collaboration that we think is vitally important for  
13 us, and something we seek out. We're not at all  
14 trying to resist. We've actually if you could go to  
15 the slide before this.

16 One point we'd make is you know in the  
17 trackage rights agreements themselves is a mechanism  
18 that it was established back in 1996 between Tex-Mex  
19 and the Union Pacific. There is this joint service  
20 committee concept. You know we think this provides a  
21 pre-established and factual pathway for us to engage  
22 in extensive collaboration with UP.

1                   And we are as you will see in the next  
2     slide, if you turn there, we are committing to  
3     collaborate with both UP and BNSF, not only regarding  
4     the kind of reporting we've talked about, about  
5     Metra's regarding Houston, but also a commitment to  
6     work with them extensively you know, and fully, and  
7     transparently with regard to everything that needs to  
8     be done in and around Houston.

9                   You know and one of the key points I would  
10    make about that is our commitment of course. You  
11    know we can only control what we do. We're not  
12    committing to work magic and achieve things that  
13    can't be achieved if they won't come to the table and  
14    share transparently with us things like their plans  
15    for operation change, their traffic volume plans.

16                  Obviously this would all be handled in an  
17    appropriately confidential way. But you know we are  
18    100 percent committed to being a full participant in  
19    that kind of collaboration, make sure that Houston  
20    remains fluid and is improved if possible, going  
21    forward into the future.

22                  Turning to the next slide I think just a

1 quick note. You know one of the foundations for that  
2 kind of collaboration that I want the Board to take  
3 note of, and Member Hedlund mentioned this you know.  
4 We also mentioned the you know, as to the Neches River  
5 Bridge, there's been extensive study about the rail  
6 network around Houston.

7 Not a need here as a result of this  
8 transaction to spool up an entirely new set of  
9 analyses from the ground up. There's a ton of  
10 knowledge that all of these railroads have  
11 accumulated about the steps, both simple and more  
12 long-term, and perhaps more complex that could be  
13 taken to continue for the Houston rail infrastructure  
14 over time.

15 And what I'm trying to communicate, and  
16 others here may echo it, is as I said, we are  
17 committed to being a full participant in this kind of  
18 collaboration, getting our trains across Texas will  
19 be vital to the success of CPKC, and we have the  
20 strongest interest of all stakeholders to make sure  
21 this works.

22 Now let me review briefly the question



1     that came up last week in a fair amount of detail  
2     about compensation. Who pays for all of this  
3     infrastructure? And first of all, we're not so sure  
4     there is all of this infrastructure that needs to be  
5     added right now, or that is directly connected to our  
6     merger traffic as we've said.

7                 But setting that question aside you know,  
8     we certainly anticipate that over time there will be  
9     infrastructure added on these lines, and we're going  
10    to pay our share. And the appropriate mechanism we  
11    believe for handling all of that is under the  
12    existing framework of the existing trackage rights,  
13    which you heard a lot about from the BNSF lawyer.

14                You didn't hear as much from UP, even  
15    though UP is our trackage rights landlord, BNSF is  
16    worried that they're going to end up footing the  
17    bill. But let me explain how these trackage rights  
18    work. First of all, where did they come from? I  
19    mentioned they came from conditions imposed on Union  
20    Pacific in the UP/SP merger.

21                Trackage rights were granted to Tex-Mex  
22    from Beaumont all the way to Robstown permitting

1 Tex-Mex to gain a connection to the Kansas City  
2 Southern at Beaumont. Those conditions were designed  
3 to ensure that competition was preserved and  
4 strengthened.

5 This transaction furthers that goal of  
6 course, as has Kansas City Southern's growth since  
7 1996 using these trackage rights. There's this  
8 question that has been raised about whether the  
9 trackage rights contemplate this kind of step  
10 function of growth. Well, there's been a lot of  
11 growth over the years for a lot of reasons, by all of  
12 the carriers using all of the lines around Houston,  
13 Texas.

14 And these trackage rights agreements were  
15 intended, explicitly intended by the Board to allow  
16 Tex-Mex to gain additional traffic. The whole idea  
17 behind them was to let Tex-Mex grow. So  
18 foundationally, the organic provisions of this  
19 agreement were designed to accommodate how to deal  
20 with issues about adding the capacity necessary,  
21 doing the things necessary to support growth.

22 Next slide please. One thing I want to

1 call your attention to in the agreements is that the  
2 agreements contemplated that Tex-Mex might merge with  
3 other rail carriers. There is an assignment clause  
4 in the Tex-Mex terms that explicitly makes automatic  
5 that the purchaser of substantially all of Tex-Mex's  
6 rail properties, or in this for now, KCS's rail  
7 properties, would become a tenant of UP, entitled to  
8 all of these trackage rights.

9 It wasn't a mystery that Tex-Mex might  
10 some day be subsumed in a broader rail system, or  
11 that KCS might be subsumed there by a broader system.  
12 And of course, that kind of transaction means merger  
13 related growth, next.

14 You know we've reviewed some of this with  
15 you before. All of these trackage rights agreements  
16 are in the record. I think these are attachments to  
17 the reply verified statement of Mr. Simmons, but just  
18 to review a couple of key points right?

19 The responsibility, there is a  
20 responsibility placed on the owner to make the  
21 necessary changes and additions to the joint  
22 trackage to accommodate the traffic of owner and

1 user, while maintaining existing service standards,  
2 including transit times.

3           So that provision is there, nothing needs  
4 to change about it to accommodate all of the traffic  
5 of CP/KC that may come from any source whatsoever.  
6 Just as the same provision applies with respect to  
7 Union Pacific's traffic, or Burlington Northern Santa Fe's  
8 traffic.

9           I want to highlight the bubble on the  
10 bottom. We're not -- KCS is not really appropriately  
11 thought of as a tenant, even though this is very much  
12 a landlord, tenant relationship as trackage rights  
13 are. But Kansas City Southern is given rights to  
14 the trackage, equal to the rights that the owner has  
15 to the trackage.

16           Union Pacific certainly doesn't have any  
17 restrictions on all the ways it might grow its  
18 traffic on these lines, nor does Kansas City  
19 Southern. Next slide please. So let's talk a bit  
20 about how funding occurs for additions and  
21 betterments that are the responsibility of Union  
22 Pacific to make to support all the traffic.

1                   Obviously it's a collaborative exercise,  
2     and there may be some, you know there's certainly a  
3     role for KCS and for CP/KC in the relationship. But  
4     there's also covered by these agreements, a very  
5     specific set of requirements regarding how to pay for  
6     additions and betterments.

7                   BNSF was trying to suggest that KCS wants  
8     all of the infrastructure added for free. That's  
9     just not true.

10                  MR. MEYER: So the way if you look  
11     carefully at the words of this contract, we're really  
12     not asking the Board to decide how the contract  
13     should be interpreted, and I'll point out there's an  
14     arbitration clause in this contract, so if there's a  
15     dispute with Union Pacific about who should pay for a  
16     particular project and, or how much CP/KC should pay  
17     for a particular future project, or what have you, it  
18     would be arbitrated.

19                  It wouldn't need to come back to the  
20     Board. But there's a GTM, a gross ton mile  
21     calculation of how many GTMs does KCS operate over  
22     the track during a particular period. As KCS grows,

1     its GTMs grow. And it pays more. As it pays more  
2     and new additions are made to accommodate that  
3     growth, along with growth of UP and any other growth,  
4     KCS would be paying more money towards the capital  
5     associated with that infrastructure.

6             That's the way the contract reads, and if  
7     you have a question about whether that's a position  
8     that KCS or CP/KC would be taking that doesn't have  
9     grounding in the text of the statute, I would suggest  
10    read the contract carefully, it's pretty clear. But  
11    it is true as BNSF pointed out that disputes arose  
12    between KCS and UP about how to fund capital, to go  
13    back to the prior one, about how to fund past  
14    improvements.

15            And as Mr. Ottensmeyer pointed out, KCS  
16    has in fact paid Union Pacific more than 100 million  
17    dollars towards additions and betterments made to  
18    expand capacity on the joint track that KCS uses in  
19    Texas. But the real question that came up I think  
20    last week that we heard, was well what about a  
21    situation where the only reason we'd be making this  
22    addition, making this investment, is because of

1 CP/KC's needs.

2 Well the contract specifically calls out  
3 that scenario. If you look at Section 5B right under  
4 i, not Roman I, little i. If the change is for the  
5 sole benefit of one party, that party shall be solely  
6 responsible for the entire cost and expense. So we  
7 already have a contract that contemplates a  
8 determination being made about whether a particular  
9 addition is solely for the benefit of CP/KC.

10 If it is under the contract CP/KC would be  
11 obligated to pay 100 percent. If there's a dispute  
12 about that, it could be arbitrated. This is --

13 CHAIRMAN OBERMAN: What is the mechanism  
14 for determining whether it's for their sole benefit?  
15 The gross ton miles?

16 MR. MEYER: I don't think the contract  
17 says anything more than that to ask the question  
18 whether the party, whether there is a party for whom  
19 the change is solely benefitting, and so if it's  
20 something that is only needed and only used by CP/KC,  
21 CP/KC would pay for it. Now I think --

22 CHAIRMAN OBERMAN: Well you know based on

1 the video we saw the suggestion that the yard tracks  
2 aren't long enough to build trains on for UP, and it  
3 would benefit the through movement of KCS's trains, I  
4 could see a big debate on putting longer yard tracks  
5 in as Keith was suggesting as to who benefits, or  
6 whether both benefit.

7 So if you have that situation, how does that  
8 dispute get resolved as to whose benefit it's for?

9 MR. MEYER: Well I think so a couple of  
10 observations about that particular issue. First of  
11 all I think the yard tracks aren't part of the joint  
12 trackage. It's UP's yard, it's not covered by that.  
13 I believe it's not covered by the trackage rights  
14 agreement. The second point though I made is to my  
15 earlier point about the unified plan 2022 and Mr.  
16 Creel's point about Union Pacific's phased plan to  
17 expand the yard tracks.

18 This was UP's plan to add yard tracks  
19 completely independent of the transaction. Now there  
20 may be a benefit to the operations of all users in  
21 Houston for UP not to park its yarding trains on the  
22 main line, but there's no principal of you know



1     trackage rights compensation that would say the  
2     trackage rights tenants ought to pay for Union  
3     Pacific to get its yard and trains off of the main  
4     line.

5                   CHAIRMAN OBERMAN:   I'm a little stumped  
6     David.   You know if the problem that we were just  
7     looking at, this Creosote tracks and so forth, slow  
8     speeds, is caused by UP's inadequate yard track  
9     length, and no plans to increase the yard tracks are  
10    unrelated to the merger, then are you saying that if  
11    this causes the slow movements of the Houston  
12    terminal for everybody including KCS, there's nothing  
13    for us to do about it.   Is that the conclusion?

14                  MR. MEYER:   No.   I don't think I'm saying  
15    that.   That's certainly not the conclusion that I'm  
16    asking you to reach.   I think let me try and organize  
17    the way I'm thinking about it, and perhaps I'm  
18    missing a bit of your question.   So one part of the  
19    question that I'm trying to address, and that I think  
20    is part of your question is there's a trackage rights  
21    relationship between Union Pacific and KCS today, CP/KCS  
22    in the future if we are allowed to merge.

1                   And within the scope of that trackage  
2     rights relationship there may be a question of what  
3     rights and obligations do the two have with respect  
4     to maintaining service standards on this line that is  
5     part of the joint trackage. So there is an  
6     obligation to maintain service standards on that  
7     line.

8                   That's Union Pacific's obligation. If  
9     additions and betterments are needed to the joint  
10    trackage to support that, like a siding, a double  
11    track, whatever, that's where this set of provisions  
12    I've briefly covered with you would come into play,  
13    and there would be an obligation if KCS or CP/KC  
14    benefits from the expansion of capacity, whether that  
15    was because UP added trains, and so you need double  
16    track, and so you know we all benefit, so we all pay  
17    because UP grew.

18                  Or if we grow, and then we all pay because  
19    we grew. It's handled the same way, and it's handled  
20    under the contract. If there's something  
21    specifically necessary only because of one party's  
22    activity, and it's only benefiting them to add a

1 particular track or what have you, well that's where  
2 this provision comes in the terms of sharing.

3 I think the issue about you know what  
4 obligations might UP have to expand its yard tracks  
5 in Englewood Yard. We're not asking the Board to  
6 decide that UP has a contractual obligation to  
7 expand its yard tracks in Englewood Yard. You know  
8 if they do, then we'll certainly have an interest in  
9 pursuing that, if they don't pursue that project on  
10 their own.

11 If they don't, they don't. And then the  
12 question is you know whose responsibility ought it be  
13 to maintain the service standards on the joint  
14 trackage if there's some other way to maintain the  
15 service standards on the joint trackage, well then  
16 you know that's all that would be required. It may  
17 not be necessary to expand the yard tracks in  
18 Englewood Yard. So I'm not suggesting --

19 CHAIRMAN OBERMAN: Where I'm stumped  
20 David, is that Keith just showed us all this  
21 expansion space that UP has to expand the yard tracks  
22 at Englewood, and that would avoid these slow

1 movements through the terminal.

2                   And if that's the way to solve the problem  
3 it sounds like the trackage rights agreements  
4 wouldn't apply, as you point out, don't apply to yard  
5 tracks, but if UP says we don't want to spend the  
6 money, so just keep going at 10 miles an hour over  
7 the Creosote track, is there a remedy?

8                   MR. MEYER: Well, so I want to unpack that  
9 question just a little bit. I think let me try to  
10 answer it bottom line first. I think there is a  
11 remedy. I think the remedy is ultimately a  
12 contractual remedy that UP has an obligation to  
13 support the service standards on the joint trackage  
14 via additions of betterments to the joint trackage.

15                   And you know, we don't think that there is  
16 an issue with respect to this particular stretch of  
17 track after you expand the Creosote track, and then  
18 you know assuming that there is appropriate use of  
19 the track to support the operation of everyone. We  
20 don't think that -- our starting point would be, we  
21 don't think that it is necessary as a precondition to  
22 our trains fitting on this track, or the merger in

1     Houston working, for Union Pacific to go build any  
2     particular yard tracks.

3                     We are identifying that as an opportunity  
4     to assist in adding capacity across the complex as a  
5     whole, and something UP had planned to do in any  
6     event. But on your remedy point, ultimately, you  
7     know ultimately yes. We have contractual rights to  
8     maintain service standards on the joint trackage to  
9     accommodate all the traffic of the owner, and all of  
10    the users.

11                    And we would need to work through that  
12    obviously if there were a dispute about what was  
13    necessary to do that, and ultimately that dispute  
14    would be subject to arbitration under the contracts.

15                    CHAIRMAN OBERMAN: So you're saying if it  
16    came down to a dispute between CP/KCS and UP over how  
17    to move traffic more fluidly through this terminal,  
18    and that the solution to it involved expanding the  
19    yard tracks, that is a matter -- it sounds like  
20    you're saying is covered by your contractual  
21    remedies, and is not something that you think should  
22    be part of any merger order that we might issue. Is

1     that a fair statement?

2                   MR. MEYER:   I think that is a fair  
3     statement.   That's correct.   And the only other thing  
4     I would say in partial exception to what I said about  
5     including something like that in a merger condition,  
6     and remember what I said about the collaboration that  
7     we are committing to with respect to making Houston  
8     work, the Board I believe, doesn't likely have  
9     authority expressly to order Union Pacific, or BNSF  
10    to do anything as a condition to our merger.

11                   However, the Board certainly could make  
12    our obligation contingent on their full involvement  
13    in the collaborative process that we're talking  
14    about.   And that would be an incentive for them to  
15    come to the table, and be as collaborative as we  
16    intend to be.

17                   CHAIRMAN OBERMAN:   Let me ask one other  
18    question.

19                   BOARD MEMBER HEDLUND:   And then I have one.

20                   CHAIRMAN OBERMAN:   Yeah, I don't want to  
21    cut people short, but I'm getting pessimistic about  
22    finishing today.   But I asked UP and BN when they

1     talked about the fact that their through trains go  
2     around Houston, at least that's what they said.  If  
3     there was a physical way for the CP/KCS through  
4     trains to go around Houston, perhaps trade off some  
5     existing trackage rights for new trackage rights.

6                   Can anybody in this panel shed any light  
7     on that?  Is that something physically that's even  
8     possible?

9                   MR. MEYER:  We have a slide for that  
10    Chairman.

11                  CHAIRMAN OBERMAN:  Okay.  All right.  
12    Karen had a question.

13                  BOARD MEMBER HEDLUND:  Yeah.  In terms of  
14    an expense that would be shared between the parties I  
15    note there is a 12 month look back.  And were the  
16    other parties essentially insinuating that if an  
17    improvement is required because of the step change  
18    increase in traffic, that provision isn't fair  
19    because it would be based on the prior split between  
20    the parties of their traffic.

21                  MR. MEYER:  So, a couple thoughts about  
22    that.  First of all --

1                   BOARD MEMBER HEDLUND: And then I have one  
2 more, yeah.

3                   MR. MEYER: Yeah. I think this was  
4 largely the argument of the BNSF lawyer, and I think  
5 they've got a misunderstanding about how all of this  
6 works. So the contribution to a fund if you will  
7 that pays for these additions and betterments, is  
8 through this GTM rate that increases as traffic  
9 increases.

10                   So as soon as traffic increases, KCS or  
11 CP/KC pays more, and that payment you know is the  
12 fund of the investment that would be made. It's not  
13 -- the contract is not designed, other than in these  
14 situations where 100 percent is responsibility of  
15 CP/KC. The contract is not designed to say write us  
16 a check. You've got 100 million dollar project,  
17 writes the check for whatever your percentage share  
18 was and we call it a day.

19                   It's as soon as the traffic increases  
20 we're paying the landlord. And notice our  
21 relationship is with Union Pacific, so BNSF is not  
22 talking about our contract. They're talking about



1     their arrangement with UP, whatever that is. As far  
2     as we understand a BNSF -- a KCS train is treated as  
3     a UP train for purposes of BNSF's relationship with  
4     UP.

5                 So if our trains go up, CP/KC trains go up  
6     on trackage that BNSF is using, their share goes  
7     down. So I think there's a little bit of a  
8     misunderstanding about how these contracts would  
9     operate. We are not going to saddle anyone with any  
10    obligation that doesn't already exist to support  
11    growth in the capacity of these lines. We're going  
12    to pay our share according to our GTMs.

13                BOARD MEMBER HEDLUND: I understand that,  
14    and I want to move on. We are not here to talk about  
15    the environmental impacts. I did note from your  
16    movie that you go through a lot of grade crossings,  
17    and one concern I have is that if there is an impasse  
18    between you and UP, one of the effects may be that  
19    there's more blocked grade crossings, or they're  
20    blocked for a longer period of time.

21                So that the costs are being off loaded  
22    really onto the neighborhoods. And again, I realize

1 we are not here to discuss you know the impact on the  
2 neighborhoods, but a concern I would have is that as  
3 you have today there would continue to be an impasse.  
4 You would be going 10 miles an hour, they wouldn't be  
5 building anything, and the people in the neighborhood  
6 would be the ones who are suffering.

7 So I would certainly hope that you and UP  
8 could come to a quick resolution of any issues  
9 related to your what they call step growth on this  
10 line. Thank you.

11 MR. MEYER: Mr. Clements will address it  
12 in a few minutes some points directly responsive to  
13 your observation about grade crossings in Houston.  
14 And one thing I would say is you know I'm going to be  
15 -- I'm going to try to resist borrowing the phrase  
16 step growth. I think one of the things we showed  
17 you, and I called it the saw tooth chart, is adding 8  
18 trains to across Houston isn't really a step change  
19 in Houston's overall rail activity.

20 It's just well within the range of  
21 variation on a day to day basis. We're not saying  
22 that we're not adding trains, and all of the things

1     that come with them. We're not suggesting that those  
2     don't raise important issues to be considered. But I  
3     think it's not really accurate to say that we're  
4     making any kind of quantum, or fundamental change in  
5     rail activity in Houston, especially in Houston,  
6     which sees so many trains.

7                 And then remember Mr. Elphick's point  
8     right at the beginning we talked about Houston. All  
9     the complexity, and all of the real burden of the  
10    Houston complex. Not all, that's an overstatement,  
11    but the real focus of the complexity is not on this  
12    east/west expressway so to speak.

13                It's south of there. It's over by the  
14    ship channels, where the PTRC is. It's where the  
15    east belt and the west belt are, and they're serving  
16    yards and shippers clustered all through that area.  
17    We're operating over the north of it on what used to  
18    be the Southern Pacific Los Angeles to New Orleans  
19    main line.

20                And when Mr. Clements comes back to  
21    Houston to take for a minute about environmental  
22    issues, he'll point out that the grade crossings that

1 create the greatest concern in Houston, of them,  
2 none of them are on this route.

3 So I'd like to come back to your question  
4 Mr. Chairman about bypass around Houston, and we did  
5 give that some thought, and in this math I'll let Ray  
6 or Mr. Creel speak to the details.

7 BOARD MEMBER SCHULTZ: Could I just ask a  
8 quick question?

9 MR. MEYER: Of course.

10 BOARD MEMBER SCHULTZ: I think you  
11 mentioned that it's clear that the Board would not  
12 have jurisdiction to impose a condition on either UP  
13 or BN, and that the terms of the trackage rights  
14 agreement controls with regard to who pays for what,  
15 so I just I guess David going back to you know, a  
16 reference to collaboration.

17 I was wondering if maybe you could just  
18 repeat again, specifically, what you think the Board  
19 should do, if anything, with regard to this issue?

20 MR. MEYER: Sure. Well where I would  
21 start is to say you know if I had my druthers I would  
22 say the Board doesn't need to do anything. You know

1 we've made the commitments we've made, we're going to  
2 honor those commitments. There's no need for a Board  
3 imposed condition to address issues that are not  
4 problems for the public interest here.

5           If the Board wishes to impose a condition  
6 requiring us to honor or commitment to collaborate  
7 with Union Pacific and BNSF with respect to Houston  
8 operations we understand that. And what I'm saying, I  
9 think, about that issue is what we don't want the  
10 Board to do is to make our commitment to collaborate  
11 with them into a hammer that they use against us,  
12 rather than an opportunity for mutual collaboration  
13 with them.

14           And so a way, if the Board were interested  
15 in ensuring that the collaboration wasn't a one-way  
16 street, a way for the Board to do that without  
17 reaching out to order them to do anything, is to  
18 make clear that our obligation to them under the  
19 condition you're imposing, only kicks in if they are  
20 reciprocating in the collaboration. Does that help?

21           BOARD MEMBER SCHULTZ: Yeah. That's  
22 helpful, thank you.

1                   CHAIRMAN OBERMAN: In other words, you  
2 want us to tell everybody to play nicely in the  
3 sandbox.

4                   MR. MEYER: Or at least not tell us to be  
5 the only ones trying to be nice.

6                   CHAIRMAN OBERMAN: Got it. Go ahead.

7                   MR. MEYER: Okay. I think I was through  
8 most of the trackage rights points I was trying to  
9 make. You know, I wanted to come to this point that  
10 you raised just now Chairman, about an alternative to  
11 Houston. And you know this is when we assess the  
12 situation we think, you know, there is an opportunity  
13 potentially, for a meaningful number of trains that  
14 would be CP/KC through trains moving between Mexico  
15 and north of Houston that wouldn't require any work,  
16 you know, by plan, wouldn't work between Laredo and  
17 Shreveport or Texarkana to use an alternative route  
18 if CP/KC had rights over that route.

19                   That route would be Union Pacific's main  
20 line north of Laredo through San Antonio and Austin,  
21 and on up to Texarkana or Shreveport. And I believe  
22 part of that line up towards Texarkana, or maybe

1 right at Texarkana is directionally operated.

2 And I don't think we are completely  
3 certain exactly how you would accomplish that route.  
4 But you know if UP for example, were you know,  
5 seriously concerned about a Houston meltdown, you  
6 know I don't think anyone is seriously concerned  
7 about a Houston meltdown here. That's rhetoric that  
8 we would hope that people would not be swayed by.

9 But if they were there's an opportunity to  
10 move you know in year three you know up to seven to  
11 eight of the CP/KC trains. And some of those would  
12 be existing trains, some of those would be new  
13 trains, but the kinds of trains that wouldn't have to  
14 stop anywhere between Laredo and Texarkana to do work  
15 on the CP/KC network that could relieve a problem at  
16 Houston that was either temporary or transitory, or  
17 unexpected by operating through San Antonio and Austin on  
18 this main line route.

19 I think this is the same main line that  
20 Union Pacific uses to bring its auto and intermodal  
21 traffic to Chicago. It connects back up to the  
22 Kansas City Southern at Texarkana, and/or

1 Shreveport. You know it's not set up to operate this  
2 way today. We don't have rights there.

3 We're not asking the Board to impose  
4 rights over Union Pacific. I don't think the Board  
5 would have authority to do that, but you know if  
6 there were a serious concern -- a sincere concern  
7 about Houston, a way to address that could be to work  
8 out an alternative for a certain number of trains to  
9 get this route.

10 CHAIRMAN OBERMAN: The only question I  
11 have David, is the -- I don't know where all the  
12 CP/KCS trains are going to and from. Could all of  
13 the trains that now go through Houston use this  
14 bypass, or do some of them still have to go through  
15 Houston because of where they're headed?

16 MR. MEYER: So not all of them could, so  
17 in the margin we note that of the traffic that KCS  
18 handles today, we think about three to four a day  
19 don't require work along the way between Laredo and  
20 north of Shreveport. So all these trains that we're  
21 talking about would be trains that are moving between  
22 north of Shreveport and south of Laredo.



1                   CHAIRMAN OBERMAN: Well do you have  
2 business where these trains have to stop between  
3 Laredo and Shreveport on the line that goes through  
4 Houston? That's what I was trying to find out.

5                   MR. MEYER: For the 3 to 4 existing trains  
6 and the 7 to 8 trains, you know at the end of the  
7 year 3, after the transaction, those would be the  
8 trains that wouldn't have to stop along the way.

9                   So they wouldn't be picking up blocks, you  
10 know, at Kendleton, or otherwise doing work. One  
11 thing I'm not sure the Board is fully aware of this,  
12 and I didn't mention it when I was describing the  
13 trackage rights agreements. You know, KCS's  
14 trackage rights allow KCS to handle traffic to and  
15 from Houston if that traffic is coming from Mexico,  
16 is using the original Tex-Mex line between Laredo and  
17 Corpus Christi.

18                   If the traffic is not using that original  
19 line, and it's you know take Houston Chemicals  
20 traffic for example, KCS is not allowed to use the UP  
21 trackage rights east of Houston, north of Houston, to  
22 handle any of that traffic. So very few of the -- or

1 relatively few of the KCS trains stop at Houston to  
2 pick up, or you know to do work because KCS doesn't  
3 have the right to compete for Houston traffic.

4 MR. ORR: David, if I could just clarify  
5 and add a little color. It's John Orr for the  
6 record. Mr. Chairman, two points. First, in  
7 2016-2017, when UP was doing extensive work on the  
8 Beaumont, we used this route that is in the yellow  
9 from Laredo to Texarkana as the detour route in  
10 collaboration with UP.

11 We did it at a very high cost to KC  
12 because it was treated as a detour, and it was very  
13 unfavorable conditions. But as a good partner we  
14 absorbed the costs, allowed UP to be more structured  
15 in their construction plans, and get the Beaumont up  
16 and running.

17 So it has been done before, and yes there  
18 are a number of trains that go through Houston that  
19 are either going to Beaumont, or Lake Charles that  
20 would not be good candidates for this to be done on a  
21 full scale all terrain basis.

22 CHAIRMAN OBERMAN: Have you had any

1 discussions with UP in connection with this merger to  
2 provide for this alternative to relieve some of the  
3 pressure on Houston if needed?

4 MR. MEYER: Mr. Chairman, I can jump in to  
5 say I don't -- I'm not going to speak for commercial  
6 discussions, but we would not be able to disclose any  
7 such discussions if they were had.

8 CHAIRMAN OBERMAN: Okay. Well it just  
9 seems to me when I'm hearing about congestion and a  
10 dense city terminal, not only from the transportation  
11 part, but from the community's part, if there's a way  
12 that's feasible that works, that doesn't ruin anybody  
13 else's network, and alleviate some of that pressure,  
14 I think it's responsible corporate citizens would  
15 take a look at it. Let me put it that way, and I  
16 hear what you're saying David.

17 We should move on I think unless Board  
18 Members have questions.

19 MR. MEYER: Okay. So basically at the end  
20 of my discussion of the contract, one other minor  
21 point that came up last week I'll just quickly touch.  
22 You know there was a suggestion that UP/SP agreements

1 and you know "good merger policy" in air quotes somehow required  
2 that the merging parties bear 100 percent of the  
3 costs associated with their merger.

4 And I think that that is another  
5 misunderstanding of history, and misunderstanding of  
6 the facts. So what was BNSF talking about? What  
7 they were talking about in UP/SP was the costs  
8 associated with linking the UP and the SP network  
9 together with new connecting traffic. UP of course  
10 paid to do that. That's 100 percent, that was what  
11 their merger was combining those networks.

12 As UP grew traffic across lines that they  
13 were going to be sharing with BNSF under the trackage  
14 rights, UP didn't pay 100 percent of the capital  
15 associated with that. That was shared according to  
16 the trackage rights agreements. I would note by the  
17 same token, when Tex-Mex obtained trackage rights in  
18 the same merger, there were connections required  
19 between Tex-Mex's line, and the UP line at for  
20 example Robstown, and the same principle applied.

21 Tex-Mex paid 100 percent of those  
22 connecting tracks. That has nothing to do with

1 growth over time after the "implementation of the quote  
2 merger". And if you look back over time you know,  
3 across mergers that have occurred in the industry  
4 over decades, you know every merging party is going  
5 to have trackage rights agreements in various places  
6 across their network where they're operating over  
7 track owned by others that the rail network is -- I  
8 don't want to say riddled, but I'll use that word  
9 because I don't have another in my mind, with these  
10 arrangements.

11 And there's never been a principle that if  
12 you grow because of a merger, suddenly you're the  
13 sole responsible party under those trackage rights  
14 arrangements. It's always just handled under the  
15 trackage rights agreement. So I think BNSF's  
16 argument is not well taken when the facts are  
17 examined.

18 So why is the UP and BNSF condition  
19 something that we think is bad policy, and contrary  
20 to the public interest? It's because as I pointed  
21 out at the beginning, if they're armed with a  
22 condition that they're seeking for us not to run a

1 single additional carload, or train, if they think  
2 there will be an impact on them in Houston.

3 Before we go to them, we stand up an RTC  
4 analysis, we reach complete agreement on the output  
5 of that, we identify capital, they are satisfied that  
6 we identified the right capital. They've designed  
7 the capital. They've put it fully in place in  
8 operation in the ground, and we fully paid for it 100  
9 percent. Until then we don't compete with them at  
10 all.

11 That gives them a veto that, and gives  
12 them tremendous incentive to do nothing but hold us  
13 up to keep us from competing, or to come up with a  
14 laundry list of things they want us to pay for  
15 because they know that we have no choice but to sign  
16 at the dotted line because we have no other choice.

17 We think it would be a terrible result for  
18 the public interest benefits that we're looking to  
19 raise information. And Mr. Creel has a few words  
20 about this.

21 MR. CREEL: This is Keith again. The only  
22 thing I would add to David's comments, I mean simply

1     said for BN and UP to be given what they're asking  
2     for it's a one-way street. It puts us in a position  
3     that we wouldn't be able to compete. It would be a  
4     road to foreclosure of competition. If they were  
5     given that they would have every incentive in the  
6     world to never agree to infrastructure that might be  
7     needed in order for us to be able to compete in this  
8     lane.

9                     MR. MEYER: So we had the slide, maybe to  
10    inject just a little bit of levity, but I think we're  
11    definitely serious about the consequences of this.  
12    It really would be the equivalent of putting on the  
13    welcome to Houston sign, a competitors apply within  
14    sign. You know, come ask us if you should be allowed  
15    to compete, and that's not the kind of incentive or  
16    holdup ability that UP and BNS ought to have with  
17    respect to Houston or anywhere else on this network.

18                    So with that we were going to transition  
19    to address the vertical conversation issues that were  
20    raised, principally by Union Pacific and BNSF,  
21    although we've heard some echoes of it earlier in  
22    the week by representative shipper associations. I

1     wanted to begin by level setting a bit. You know a  
2     lot of the presentations proceed from the premise  
3     that of course there's a competition problem, and the  
4     debate here ought to be how to design the right  
5     regulatory remedy to solve a proven problem.

6             That's certainly what I heard when I  
7     listened to the BNSF and UP representatives. Every  
8     time you press them, or even the shipper association  
9     witnesses for that matter. Every time you press them  
10    to provide evidence of likely foreclosure, or actual  
11    competitive harm, they came back to the same answer.

12            "Well applicants acknowledge it because  
13    they made this commitment." Let me be very clear. We  
14    don't acknowledge that there's a vertical competitive  
15    problem with this merger. There's no likely  
16    competitive harm of any kind, horizontal or vertical,  
17    and we can walk you through all the reasons why.

18            We have made a commitment in line with the  
19    commitments that have been made in minor, significant  
20    transactions since 2000 because when folks look at  
21    vertical mergers, they ask are we going to lose  
22    access to gateway options? And we know what our



1 intentions are, and so we've made a commitment not to  
2 close gateways, and not to take away bottleneck  
3 regulatory options that exist today.

4 But our commitments aren't a ticket to  
5 then take those commitments as proof of a problem,  
6 and then put design on top of the commitments of  
7 regulatory remedy that gets imposed upon us. The  
8 first question the Board has to ask is, is there a  
9 competitive problem that requires a condition at all?

10 So let's talk a little bit about what  
11 folks said on this issue. You heard a lot from Mr.  
12 --

13 BOARD MEMBER HEDLUND: Could I interrupt  
14 for just a second because I want to help set the  
15 stage on this.

16 MR. MEYER: Certainly.

17 BOARD MEMBER HEDLUND: And some of you --  
18 this may make some of you uncomfortable, but I think  
19 we've got to get it out here. I want to read you  
20 something first. Two years ago before this merger  
21 was proposed, Mr. Ottensmeyer gave an interview to  
22 Railway Age about the company.

1           I think it was the year Pat you were made  
2   Railroader of the Year by them. And this is what you  
3   said. "Because of our size where we're located, the  
4   strategy of developing service options with our  
5   connecting carriers and our partners in the railroad  
6   industry is very important.

7           I also think a really important part of  
8   our value proposition to our customers is that  
9   independence. If you're not a company building a new  
10   plant in Central Mexico, and you want service options  
11   to both railroads in the east, we're happy to do it.  
12   If you want service options to both railroads in  
13   Canada, we're happy to do it. I think we are more  
14   valuable to our customers because of our ability and  
15   our willingness to do that.

16           If we were part of a bigger network it  
17   might not be so easy." So thinking about that where  
18   we sit today Pat, or Keith, do you have any comment  
19   on what Pat said two years ago?

20           MR. OTTENSMEYER: Yes, Member Hedlund. I  
21   will be happy to comment. We worked hard, and I  
22   think if you look at some of the data, particularly

1 in a few business units, intermodal comes to mind.  
2 The vast majority of our cross border network today,  
3 and for the past several years has interchanged at  
4 Laredo, and/or Robstown, which you know is less than  
5 100 miles away from Laredo on the bigger networks  
6 because we don't have that reach.

7 So we developed a strategy around working  
8 with our interline partners. The merger transaction  
9 in our case, we talked about this last week, was  
10 started by a catalyst that we weren't seeking at the  
11 time, but I think if you look at the commitments  
12 that have been made, the nature of this transaction  
13 being purely end to end commitments to keep gateways  
14 open, that a lot of those statements will still be  
15 true.

16 There are markets that CP/KC is not going  
17 to have access to. We will certainly have access to  
18 some very large and growing markets that are very  
19 interesting, and are the basis of our revenue  
20 synergy projections. And we know because you've  
21 heard from customers, and I think you well understand  
22 the concept of single line service versus interline

1 service.

2 We know that our customers are interested  
3 in having new interline options, particularly to and  
4 from Mexico and the Great Lakes. We know that. We  
5 did the best we could with the interline options. We  
6 interchange a lot of traffic at the border.

7 We're going to be able to offer customers  
8 a new option and the commitment that we've talked  
9 about and described in this case for open gateways  
10 tells me that the traffic that we do interchange, and  
11 there's a fair amount of it at the border that goes  
12 to markets that CP/KC will not serve.

13 Or for whatever reason, customers that  
14 might still want to use interchange options that the  
15 open gateway commitment will protect that business.

16 BOARD MEMBER HEDLUND: So what you're  
17 saying is that you will continue to have an economic  
18 incentive to be true to your word on keeping those  
19 gateways open? The economic incentive will remain  
20 with respect to markets that the combined companies  
21 do not serve.

22 MR. OTTENSMEYER: Yes. I believe that

1 will be the case. The merger is about growth. We  
2 don't want to start off by going in the hole and  
3 losing a lot of traffic, particularly if you look at  
4 traffic that moves from deep into Mexico, that  
5 interchanges at Robstown, that's a nice decent length  
6 of haul for the combined network.

7 And if it's for whatever reason, if it's a  
8 geographic limitation, or other considerations,  
9 contractual limitations, I would think we would have  
10 an economic incentive to keep that business, yes.

11 BOARD MEMBER HEDLUND: Thank you.

12 MR. MEYER: If I may, if there are other  
13 questions, happy to address them. But I think our  
14 presentation on this subject goes directly to that  
15 last point, which is the incentive we will have is  
16 well recognized in economics, it's recognized as  
17 precedent in the KCS/Tex-Mex decision that former  
18 Commissioner Nober did a very good job of writing and  
19 understanding, and I'm not so sure that Mr. Nober  
20 actually recalls what he decided back then.

21 And we'll cover that. But more  
22 importantly, more importantly, the record in this

1 case shows that --

2 CHAIRMAN OBERMAN: David, in defense of  
3 Mr. Nober, I can't remember what I decided last week.  
4 Go ahead.

5 MR. MEYER: I'm actually sure that Mr.  
6 Nober needs no defense. But if we can go to the next  
7 slide, let's just start quickly with the argument  
8 that you heard that the STB missed it, the Board  
9 missed it in 2004 when it decided the case Tex-Mex  
10 decision.

11 Nothing could be further from the truth.  
12 If you look at these are some excerpts from that  
13 decision, and I commend to you to review the  
14 decision. But I also commend to you as I'll walk you  
15 through for just a few minutes after this, to review  
16 the record that led to the decision where all of the  
17 same arguments that are being made today were made  
18 then.

19 So this is a decision right? It focuses  
20 on the fact that what this was all about, UP and BNSF  
21 both coming to the Board, talking about Laredo and  
22 Robstown, and the fear that KCS with control of TFM

1 and Tex-Mex would force a bunch of traffic to  
2 inefficient routes north of the border.

3           The Board analyzed that as a competitive  
4 matter in great depth. They concluded that it was  
5 not a competitive harm. That there was not a showing  
6 that any condition was necessary to remedy any  
7 competitive harm. Ultimately, it was a concern about  
8 protecting divisions, a share of revenue that UP and  
9 BNSF wanted to preserve on the interline traffic that  
10 would continue to flow.

11           I commend to you that decision. And some  
12 of what you've heard from the Union Pacific  
13 representative last week was oh well, that's because  
14 this transaction really this KCS/Tex-Mex transaction  
15 had very little impact, it was so small, this was not  
16 -- it was never going to have this effect.

17           Well that's not what Union Pacific told  
18 the Board in 2003 in this proceeding. If you go to  
19 the next slide. Well I'm sorry we went out of order.  
20 Let me set this up. This is just an illustration,  
21 this next -- sorry about this, the next slide this is  
22 an illustration.

1           Okay. I apologize. The slide I'm looking  
2   for, so the slide from Tex-Mex shows you how the  
3   Board addressed the issues. The next slide I think  
4   that came up showed the matrix. That was taken  
5   directly from UP's testimony in the case. It's  
6   exactly the kind of example that you heard Mr. Nober  
7   walk you through last week of the mechanism by which  
8   KCS would manipulate rates south and north of the  
9   border in order to exact this foreclosure.

10           It was exactly the same theory as  
11   reflected in that slide. And then I wanted to show  
12   you, and perhaps we have somehow dropped the slide out of this  
13   presentation, but it was an argument made by Mr.  
14   Rosenthal about you know 1 percent of traffic  
15   diversions of UP traffic. Union Pacific's argument  
16   in the case at the time in 2003 in their reply  
17   comments, or actually their additional comments.

18           There was a long period of hiatus in that  
19   proceeding while there were questions about whether  
20   the transaction would go forward. So Union Pacific  
21   had filed comments, and then filed supplemental  
22   comments. And in those supplemental comments I



1 believe I had the quote here. This is what Union  
2 Pacific said, and if we could find the slide we'll  
3 put it up.

4 But this is what Union Pacific said.  
5 These were filed September 30 of 2004 summarizing the  
6 record. "In its August 2003 comments UP  
7 demonstrated that KCS's acquisition of TFM would have  
8 significant anti-competitive facts for huge volumes  
9 of cross border traffic moving between the United  
10 States and Mexico via the Laredo gateway.

11 KCS competes with UP for a majority of the  
12 Laredo cross border traffic via its own network, as  
13 well as in cooperation with its interline partners.  
14 UP certainly didn't regard KCS Tex-Mex as a nothing  
15 burger, and trying to reinvent that record, and what  
16 was shown to the Board, and what was adjudicated by  
17 the Board in 2003-2004 bears examination. I commend  
18 the Board to that record.

19 What we know is the Board got it right.  
20 And we know that from the history of the period since  
21 the transaction. That when repeatedly asked by  
22 members of where is the evidence of foreclosure, why

1 haven't we heard it before if all of this horrible  
2 foreclosure happened because of this transaction.  
3 The answer was always with one exception that I'll  
4 get to, we have no evidence.

5           We can go to I think it's the next slide.  
6 Maybe it was the previous slide. So individual  
7 shippers, individual shippers have testified here  
8 affirmatively, that the options over gateways were  
9 always kept open. We heard Bartlett express that  
10 precisely. They have options for ways to get to  
11 Mexico from their facilities in Council Bluffs, Iowa.

12           Those options have always been available.  
13 Why did they ship on KCS? Because they've always  
14 chosen KCS because of its single line service, its  
15 good service, and its good rates. There are no  
16 shippers coming here to complain about foreclosure,  
17 having lost options.

18           Instead we have railroads coming here to  
19 complain that they fear a commercial disadvantage, or  
20 fear new competition. When you ask the  
21 representative of NITL, ACC and TFI, Mr. Moreno, he  
22 gave essentially the same answer that Mr. Rosenthal

1 gave on behalf of Union Pacific. It's just there's  
2 no evidence. It's impossible to know. No one will  
3 ever know.

4 In my experience, sophisticated parties  
5 like these are fully capable of developing evidence  
6 of a real competitive problem if that problem exists.  
7 I submit that problem doesn't exist, that's why  
8 there's no evidence.

9 And that brings me to BNSF. BNSF took a  
10 different path in this proceeding. After 17 years of  
11 doing nothing to complain or raise issues about  
12 foreclosure, BNSF saw this proceeding as an  
13 opportunity to come forward and get some relief that  
14 it wanted, and it now has a frame that all the way  
15 back in 2006 it was foreclosed.

16 Let's examine that evidence. You can go  
17 two slides from here. Actually three slides. So  
18 first of all I listened to Mr. Nober, and what he  
19 said to the Board in plain terms was we did not know  
20 in 2006 that Tex-Mex raised its rate on grain traffic  
21 between Robstown and Laredo.

22 Had we known, surely we would have come to

1     you, but we didn't know. There's no transparency.  
2     Well the facts are to the contrary. BNSF was well  
3     aware of Tex-Mex's rates on grain traffic in  
4     2006-2007. Mr. Nober may be confused about what  
5     discovery in this case discloses that. It was  
6     discovery from BNSF to us of BNSF's internal  
7     documents from 2006-2007. I won't describe them in  
8     any more detail than that, but we will be filing  
9     these with the highly confidential version of this  
10    presentation when we file it.

11               The Bates numbers are referenced below.  
12    BNSF had no lack of awareness of Tex-Mex's rates in  
13    2006-2007. Now as Mr. Ottensmeyer will explain, and  
14    we've all really already explained, those rates weren't  
15    commercially unreasonable rates. There were reasons  
16    why Tex-Mex took its rate up, it's in the record,  
17    extensively.

18               What did BNSF do about it? They were well  
19    aware of it. What did they do about it? They  
20    certainly didn't come to us, or come to the Board  
21    claiming that anyone violated an obligation to -- or  
22    a commitment, excuse me, to offer commercially

1 reasonable rates, and not close the Robstown gateway.

2           Instead what BNSF did, and again, fully in  
3 the record, is it shifted its grain traffic from the  
4 Laredo gateway to the Eagle Pass gateway.

5           CHAIRMAN OBERMAN: David, what does HC  
6 stand for on this slide?

7           MR. MEYER: Highly confidential.

8           CHAIRMAN OBERMAN: Oh I see. Okay. Thank  
9 you.

10           MR. MEYER: So Mr. Hirsch, on behalf of  
11 BNSF said oh, no, no, we didn't shift any traffic, it  
12 was totally different traffic. Let's go to the next  
13 slide. You don't have to look very far under the  
14 hood to see that that's not exactly right. I'm sorry  
15 these are out of order. We'll go one more.

16           So this is the response to your question  
17 Chair Oberman, you know Mr. Hirsch said it's totally  
18 different kinds of traffic, to totally different  
19 destinations. You only have to look back at the  
20 verified statement of Mr. Hirsch in this proceeding  
21 to see the words he's using. BNSF shifted traffic  
22 from the Laredo gateway to the Eagle Pass gateway.

1 That's what BNSF did in 2006-2007.

2 That's what we've shown in the record is  
3 the sum total of BNSF's foreclosure model. Let's  
4 briefly address this question of transparency that  
5 BNSF raised a great deal last week. So BNSF  
6 actually lays out the answer to the question about  
7 transparency.

8 They said in their submissions to the  
9 Board, that they don't have transparency, i.e. a  
10 competitor. BNSF doesn't have full transparency.  
11 What they pointed out in their testimony is the  
12 reality that there is transparency, the transparency  
13 is to the shipper. This is what BNSF said. We  
14 understand that KCSM quotes Rule 11 rates for the  
15 Mexican portion of BNSF, KCS, KCSM routings.

16 So what do Rule 11 rates mean? I think  
17 the Board is fully aware that a Rule 11 rate is a  
18 rate that goes from one interline partner for the  
19 movement for example, from an origin to a gateway,  
20 where the customers knows what that interline carrier  
21 is willing to charge, or willing to accept in return  
22 for handling the traffic from the origin to the

1 gateway.;

2 The customer knows everything about that.

3 And then that customer can go get a rate for the  
4 other side of the gateway, and the customer will be  
5 fully informed about which one of those two carriers  
6 is not fully supporting an interline route because of  
7 the level of its rate.

8 It knows everything it needs to know to  
9 assess whether the rate in this case, on KCSM in  
10 Mexico, has somehow been manipulated upward in a way  
11 that closes the gateway. There is no lack of  
12 transparency here. The Rule 11 rate obligation, or  
13 the Rule 11 rate mechanism, excuse me, will ensure  
14 that.

15 One other example was given a couple of  
16 days ago by --

17 CHAIRMAN OBERMAN: David, before you leave  
18 this point, if the transparency reveals to the  
19 customer that CP/KCS is manipulating the Mexican side  
20 of the rate, what's the customer's relief?

21 MR. MEYER: So I'm going to violate my own  
22 advice to everyone on this team, and ask if you would

1     indulge my coming back to that question in a few  
2     minutes. We have a number of points we want to make  
3     about exactly how this commitment we've made about  
4     commercially reasonable terms, and keeping gateways  
5     open would function.

6             And I think we'll go through it very  
7     quickly, if I may indulge, but otherwise I'll answer  
8     your question now.

9             CHAIRMAN OBERMAN: No, no, no, I'd rather  
10    you proceed, put your case on the way it's you know  
11    most logical to you. We could do that. But let me  
12    take this moment to say what I think we all probably  
13    were anticipating. We are not going to be able to  
14    finish this in the next 45 minutes. We will know  
15    very shortly, but it is my anticipation that we will  
16    have the needed court reporter and Zoom operator to  
17    resume tomorrow morning at about 11:30 Eastern.

18            We will not go all day. We will go about  
19    two and a half hours at maximum if we need it. I  
20    don't know that we'll need that much, but I only say  
21    that now David. I don't want you to rush thinking  
22    you have to finish your whole case in 45 minutes, and



1 I don't want Board members to refrain from asking  
2 needed questions. There's just too much at stake  
3 here.

4 So I hope everybody on our end I think is  
5 available. I hope you will all be available on your  
6 end. We need to get this finished. So with that  
7 David go proceed.

8 MR. MEYER: Many thanks Chairman, and so  
9 maybe I will slow down just a touch, but before we  
10 left the review of the evidence put forward of  
11 foreclosure, I wanted to touch what Mr. McBride had  
12 to say on Tuesday. He mentioned a situation that he  
13 was describing the UP/CNW merger, in fact he was  
14 describing something that happened several years  
15 subsequent to that, and it was Union Pacific had a  
16 contract with a shipper in America, involving the  
17 movement of coal from the Powder River Basin to  
18 Sergeant Bluff I believe.

19 Sergeant Bluff is in Nebraska, but I may  
20 have that wrong. Thank you John. And you know he  
21 gave it as an example where you know UP didn't quote  
22 a bottleneck rate. Well this case actually

1 interestingly enough, is the Mid American case that  
2 is one of the three cases that the Board addressed in  
3 its consolidated bottleneck case ruling back in the  
4 late 90's.

5           And what happened there wasn't anything to  
6 do with a commercially unreasonable rate being  
7 offered as a result of a merger. What it was, was  
8 Union Pacific under the statutory framework for  
9 interline pricing and ratemaking, was a single line  
10 carrier between Powder River Basin and Sergeant Bluff  
11 as a result of the UP/CNW merger.

12           And formerly there had been an  
13 interchange, I believe, between CNW and BNSF,  
14 somewhere in the Omaha Council Bluffs area. And the  
15 shipper wanted to get a rate from UP for the segment,  
16 the bottleneck segment, former CNW bottleneck segment  
17 between Omaha, Council Bluffs and Sergeant Bluff.

18           That was what Mr. McBride was describing. UP  
19 exercising its rights as the Board ended up deciding,  
20 under the ratemaking standards applicable, refused to  
21 quote a bottleneck rate. And the Board said that was  
22 correct, UP did not have to quote a bottleneck rate

1     because it had a single line between the Powder River  
2     Basin and the destination.

3                     And you know as the Board knows, you know,  
4     in that circumstance, and absent some merger related  
5     condition, in that circumstance, a single line  
6     carrier is entitled to decline that request. And  
7     there is recourse if it's an inefficient single line  
8     route that the carrier is trying to force upon the  
9     shipper.

10                    That's standard Board precedent. This is  
11    a situation that cannot arise in this case. It  
12    cannot arise in this case because we have committed,  
13    and would accept a condition requiring, that we not  
14    create new regulatory bottlenecks. So if this  
15    situation described our merger, the bottleneck  
16    segment between Sergeant Bluff and Council Bluffs,  
17    that's the bottleneck segment, and the connecting  
18    carrier is you know between Omaha Council Bluffs and  
19    the Powder River Basin.

20                    We are going to quote a separately  
21    challengeable Rule 11 rate to the extent that we  
22    would have been required to do so absent the merger.

1 That's our commitment. We're not creating any  
2 bottleneck period. So this situation, interesting  
3 historical interlude in the case, it's just not  
4 applicable to our transaction. So let me move --

5 CHAIRMAN OBERMAN: David, I'm a little  
6 uncertain about how far this commitment goes. So  
7 today since CP ends at Kansas City, and KCS picks up  
8 there, it can't be a bottleneck because there's no  
9 through line. So are you saying that in that  
10 particular gateway this commitment will apply that  
11 there won't be any refusal of "separate Rule 11  
12 rates"?

13 MR. MEYER: So it's not just Kansas City.

14 CHARIMAN OBERMAN: No I know, but I'm  
15 asking specific, I'm trying to understand your  
16 qualification about no new bottlenecks. I'm trying  
17 to figure out where you have bottlenecks now.

18 MR. MEYER: So I actually don't know where  
19 we have bottlenecks today. You know the bottleneck  
20 rubric is describing a situation where there's a  
21 solely served customer at one end or the other of the  
22 route, right, and then there's a bottleneck segment,

1 i.e. there's only one railroad that serves a segment  
2 from the origin and destination to some gateway.

3 It's you know, the connecting point to  
4 other railroads. And you know I haven't done the  
5 homework to go figure out where today those  
6 bottleneck segments exist on the CP or KCS system.

7 But what we're saying is if there's a  
8 situation where today right, there's the ability of  
9 the shipper served by that bottleneck segment, has no  
10 rail option other than CP or KCS on that segment, who  
11 has the ability to get a rate for that segment from  
12 CP or KCS that can be challenged under the Board's  
13 regulatory processes.

14 And would lose the ability to do that by  
15 virtue of the fact that we would have merged, gotten  
16 a single line, and would be absent this commitment,  
17 able to say under the Board's regulatory framework,  
18 you can't get the bottleneck rate from us because  
19 we're going to give you the overall working to  
20 destination rate. In that situation we would not  
21 assert the fact that we had merged to avoid the  
22 obligation to quote the rate. That's what we're

1 saying.

2           Wherever that occurred, that situation  
3 would occur, that's what we're saying.

4           CHAIRMAN OBERMAN: But it sounds like you  
5 are also saying to be clear, and since CP is a longer  
6 railroad, and we'll use them as an example, but it  
7 could be KCS, that if you have a place now where CP  
8 is not required to quote a separate Rule 11 rate, and  
9 the origin to destination isn't changed because of  
10 this merger, you're not going to lift the bottleneck  
11 rights you have there, you're going to hold on to  
12 them.

13           MR. MEYER: That is correct. That is  
14 correct. We don't think there should be -- there's  
15 no basis for making any change to how the law would  
16 apply in those situations.

17           CHAIRMAN OBERMAN: Okay. It would be has  
18 anybody bothered to put together how many places the  
19 new commitment will apply, and how many places the  
20 existing bottlenecks will stay in place on your  
21 networks.

22           MR. MEYER: Again, I think the answer to

1     that is no. You know we have made no effort to do  
2     that, we've made a commitment that would apply in any  
3     case where you know it's really, it would be use  
4     interposing a defense to a request for a rate quote.

5             Right we'd say we don't have an obligation  
6     to quote a particular rate because of the fact that  
7     we now have a single line. There may be innumerable,  
8     you know, possible, origin destination pairs where  
9     that theoretically could arise. We're going to you  
10    know, we're going to stand by our commitment with  
11    respect to whichever ones end up materializing in the  
12    real world.

13            It may be that we would in the ordinary  
14    course of Mr. Brooks making offers to customers never  
15    refused, on any basis, to quote these rates. We  
16    don't know. But what we're saying is --

17            CHAIRMAN OBERMAN: No I understand, but  
18    there's the question.

19            MR. MEYER: A basis for avoiding  
20    challenges.

21            CHAIRMAN OBERMAN: The question is where  
22    you have the right to refuse to quote rates. I

1 understand you might for business reasons not  
2 exercise those rights. You know this question came  
3 up last week with regard to wanting to find what were  
4 gateways, and I think Keith had said any place you  
5 interchange now you're going to keep open, and I'm  
6 not sure everybody in this industry has the same  
7 understanding of the semantics of gateways and  
8 interchanges.

9           And I had suggested to the other railroads  
10 who wanted to make sure that these open gateways were  
11 going to be maintained that they submit a list. So  
12 everybody knew what we were talking about, and I  
13 think I'm not sure if I suggested the same to you,  
14 but rather than having some definition, to me it  
15 would be a much more reliable to actually identify  
16 all of these places.

17           And unless it's not reasonably possible,  
18 just thinking for myself, in your final papers, I  
19 would like to have some understanding of the  
20 magnitude of this bottleneck commitment you're  
21 making, where it will apply, and where you don't view  
22 the merger as creating some new opportunity for a



1     bottleneck. I'm not sure.

2                     Because as you said David, there's a wide  
3     variety of origins and destinations, and there might  
4     be some debate about whether you meant that or not, I  
5     would at least like to have a more concrete  
6     understanding of it.

7                     MR. MEYER: So we're happy to try to  
8     provide a better understanding of the scope of -- I  
9     think we're really thinking, talking about two  
10    somewhat separate.

11                    CHAIRMAN OBERMAN: Yes we are. They're  
12    separate points, but they're related I think.

13                    MR. MEYER: Yes. There is certainly some  
14    relationship, and I you know, I think what I really  
15    want to do is underscore that. I don't think it's  
16    going to be useful or constructive to identify every  
17    interchange point where potentially bottleneck  
18    traffic interchanges with another carrier, and  
19    cataloguing those across the entire network of both  
20    railroads.

21                    Because the simple answer is again, a  
22    shipper is going to know. They used to get a rate

1 from KCS to a gateway, and they could challenge that  
2 rate if they wanted to get a Rule 11 rate from  
3 them, and if they hear CP/KC say well no, we're no  
4 longer going to give you that because we now go all  
5 the way to the destination. Red flag. That's a  
6 violation of our commitment, okay?

7 And wherever that is. And you know we can  
8 certainly go try and assemble a list of every  
9 interchange point in the entire network where that's  
10 theoretically possible, but I'm not sure it's going  
11 to inform anyone of anything, frankly.

12 CHAIRMAN OBERMAN: Well take a look at it.  
13 I have no idea. Maybe I'm asking you for something  
14 that's way beyond reason, and if you think that's the  
15 case you'll be able to persuade me, but.

16 MR. MEYER: The question of the somewhat  
17 separate question of our commitment to keep gateways  
18 open, on commercially reasonable terms, right, these  
19 are we're talking about gateways where there are  
20 currently you know efficient, and I say efficient  
21 not as a limitation, but to reflect that you know there are  
22 places where interline service is actively used

1 today, and therefore shippers have chosen these  
2 options, and I view that.

3 We view that as an indication of those  
4 options efficiencies, so again we're not trying to  
5 limit it. You know we are certainly going to take a  
6 look at being more complete in our catalogue of which  
7 gateways we're talking about. But Mr. Brooks has  
8 done a little bit of homework, and I think he'd give  
9 you an idea of where the lion's share of the  
10 interline traffic that we're talking about that may  
11 be.

12 If I could use the phrase, affected by the  
13 transaction, not to acknowledge a harm, but just to  
14 say that over these gateways there is interline  
15 traffic moving that as to which CP/KC will have a  
16 longer, or single line haul as a result of the  
17 transaction.

18 And this is the list of the gateways that  
19 account for the lion's share of that traffic. Again,  
20 we're not saying these are the only places. We're  
21 not trying to be limiting here, but Mr. Brooks.

22 MR. BROOKS: Yeah, Chairman Oberman, if I

1     could just expand a little bit. I think maybe that  
2     just that in simpler terms than our lawyer is, we  
3     tried to do this in a fashion where we wrote it to  
4     allow any gateways, as long as they're efficient and used  
5     regularly by our shippers, would qualify for this  
6     preservation.

7                 So with not attempting to exclude  
8     anything, but clearly when we look at what could fit  
9     into this realm, and what moves today, and what we  
10    believe will move tomorrow, it really kind of boils  
11    down to I'd say the majority, the vast majority of  
12    the traffic, would hit on one of these 11 gateways  
13    that have the yellow dot on them.

14                BOARD MEMBER SCHULTZ: Can I ask a quick  
15    question here? Does this commitment apply to new  
16    shippers, to new movements, or just existing?

17                MR. BROOKS: Yeah, it will apply to new  
18    shipments. It would be shipments that again would be  
19    affected by this transaction that would go over those  
20    gateways.

21                MR. MEYER: All right. So we're not going  
22    to insist that it be a shipper who actually moved

1     itself by a specific prior option.  If there are  
2     other shippers that would have availed themselves of  
3     that service and that option in the past, there may  
4     be a question of -- there may be some questions  
5     raised by the fact that a shipper was new, and had  
6     never used an interline option as to whether it was a  
7     real option to them perhaps.  But we're not trying for  
8     exclude that potential.

9                   CHAIRMAN OBERMAN:  All right.  Go ahead  
10    David.

11                  MR. MEYER:  We do have some other I think  
12    fairly important things to say about the scope and  
13    application of this commitment that we've made, but  
14    perhaps in the next 25 minutes or so that we have  
15    today, I'll back up a bit on this foreclosure  
16    question.

17                  And complete the discussion that we  
18    were having about the merits of concern, and so I  
19    talked to you about a lack of evidence of foreclosure  
20    in the past.  The experience that we've had we've  
21    seen in the marketplace following the KCS,  
22    Tex-Mex/TFM transaction, and the you know lack of

1 evidence from all the other mergers that have  
2 occurred in the industry over the years, that  
3 extended single line service across broader  
4 geographies and the like.

5           You know I mentioned briefly the record  
6 evidence of the Tex-Mex rate increase. I think Mr.  
7 Ottensmeyer may want to add just a few words about  
8 that.

9           MR. OTTENSMEYER: Sure. And actually in  
10 the interest of time here, I'm going to refer to Mr.  
11 Nance's verified statement, Table 1 and Table 2,  
12 where he lays out the revenue variable cost, of the move  
13 from Robstown to Laredo and Corpus to Laredo.

14           But really Robstown to Laredo would have  
15 been the route that would have impacted BNSF as they  
16 described. And you can see based on Table 2 is  
17 actually the 2005 RBC calculation based on -- so this  
18 would have been immediately after giving effect to  
19 the rate increase. The truth is the rate that was  
20 offered by Tex-Mex was below variable cost using this  
21 methodology and giving effect to the rate increase to  
22 \$525.00.

1                   We had a revenue variable cost calculated  
2                   at 121 percent, so I think that sheds a little more  
3                   light on why there haven't been any rate complaints  
4                   in the last 17 years. And then over that period of  
5                   time.

6                   CHAIRMAN OBERMAN: Pat, whose statement  
7                   were you referring to? I didn't hear the name of the  
8                   person.

9                   MR. OTTENSMEYER: Mike Nance, the chief  
10                  marketing officer for KCS.

11                  CHAIRMAN OBERMAN: This Table is not in  
12                  the presentation you handed us up last week.

13                  MR. OTTENSMEYER: That's correct. It is  
14                  not.

15                  CHAIRMAN OBERMAN: I don't have it in  
16                  front of me. I was looking for it, okay, thank you.

17                  MR. OTTENSMEYER: And then just to finish  
18                  the thought I had we also calculated today based on  
19                  rate increases that have taken place since 2005,  
20                  which have been fairly modest, and that RBC  
21                  calculation to Robstown is now at 114 percent. So I  
22                  think under any definition of the term these are not

1 rates that would be unreasonable, and they certainly  
2 have been necessary for us to support the capital  
3 that is required to provide the service. Back to you  
4 David, or?

5 MR. MEYER: Thank you, thank you Mr.  
6 Ottensmeyer. So I recall the evidence was BNSF  
7 shifted its traffic to the Eagle Pass Gateway. I  
8 think that shift underscores just one of the many  
9 important constraints on CP/KC's pricing, just as  
10 they are today on KCS's pricing, that will be  
11 unaffected by the transaction.

12 And ultimately, going back to the question  
13 that was framed I think well by Member Hedlund, is  
14 why we won't have any economic incentive to, quote, foreclose  
15 interline options. The result of foreclosing would  
16 be to encourage the kinds of shifts that BNSF  
17 undertook to encourage trucks going onto the highway,  
18 and remember Mr. Hirsch made it very clear that as to  
19 intermodal traffic those trucks will be on the  
20 highway within an hour.

21 Well if they're on the highway in an hour,  
22 that means they're not generating any revenue for



1 KCSM or CP/KC, so our incentives will be to support  
2 these efficient interline options.

3 CHAIRMAN OBERMAN: David, before you leave  
4 the BN transferring its traffic to Eagle Pass, I  
5 thought the verified statement you cited, I  
6 understand why you cited it, I would have done  
7 the same, but it's a little if I were in your shoes,  
8 but it's a little vague, it's that it shifted its  
9 traffic.

10 There was a lot of traffic we talked about  
11 those. Grain traffic, and then BN talked about other  
12 traffic. Are you contending that BN shifted all of  
13 the traffic that previously went through Laredo to  
14 Eagle? There was no traffic it couldn't shift and  
15 didn't shift to Eagle Pass? And what is the evidence  
16 for that other than that one in my view, vaguely  
17 written sentence, its traffic.

18 MR. MEYER: Well so, a couple ways that  
19 I'd like to try to answer that question for you, and  
20 I think the first place I would start is with a  
21 direct answer. No. We're not saying that every  
22 carload that BNSF, every movement that was handled by

1 BNSF and interline service with KCS that moved over the  
2 Laredo Gateway.

3 BNSF picked up and moved over the Eagle  
4 Pass. BNSF continued to handle traffic over the  
5 Laredo Gateway. What I'd like to do, you know, but a  
6 lot of traffic to Eagle Pass. What we were taking  
7 on, we were starting with BNSF's contention as they  
8 framed it. Their contention was Tex-Mex raised this  
9 rate for grain traffic between Robstown and Laredo.

10 And because of that we couldn't compete.  
11 Okay? That's what they said. We were shut out.  
12 When you look at the facts, first of all you start  
13 with why did KCS raise the grain rate on Tex-Mex  
14 between Robstown and Laredo? It wasn't to foreclose  
15 anyone. It wasn't to close a gateway, it was to stop  
16 hemorrhaging, that's number one.

17 But number two you look at what happened  
18 to volumes of traffic moving over Laredo, we're talking grain  
19 traffic. This is where BNSF is starting with its  
20 argument about the foreclosure. It's all about this  
21 rate increase. It's grain rate. So where did the  
22 grain traffic go?

1                   Well, a couple of things, and Dr. Majure  
2 perhaps can address this in more detail based on the  
3 more granular analysis he did, but a whole bunch of  
4 things are going on at the same time. Number one,  
5 BNSF is making a concerted effort to move traffic  
6 from its grain origins into Mexico destinations.  
7 Remember, BNSF doesn't just serve Mexican  
8 destinations, they serve Pacific Northwest  
9 destinations, they serve Gulf destinations, they  
10 serve the entire west.

11                  BNSF's grain marketers are making a  
12 concerted effort that to the extent that Mexico is a  
13 destination option they're offering on their network,  
14 they're moving that traffic over the Eagle Pass  
15 Gateway into Mexico to Mexican destinations. Bring  
16 grain to a destination in Mexico to serve Mexican  
17 industry, there's a lot of ways to serve Mexican  
18 industry with grain being supplied.

19                  And they include the FXE, and Mr.  
20 Ottensmeyer can address that in more detail. So  
21 those are the facts right? It's grain volumes  
22 shifted, and that's what Mr. Hirsch acknowledged.

1 But the other thing is other things were going on  
2 too, right?

3 There was a decline in grain volumes  
4 overall that proceeded the quote unquote "alleged foreclosure."  
5 Those declines in grain overall are clearly not  
6 causally related to the KCS transaction, and yet BNSF  
7 was claiming that their bar graph proves their case.

8 What their bar graph does is focuses on  
9 Laredo, ignores the exogenous factors that were  
10 affecting grain volumes, and ignores Eagle Pass. And  
11 I need to add not just Eagle Pass but El Paso. So  
12 you know if you look at BNSF's network, this is very  
13 different from Union Pacific.

14 If you look at BNSF's network and ask how  
15 do you reach parts of Mexico that are well-served by  
16 the FXE, and if you could bring up the slide please.  
17 So look, a map of the Mexican rail network, and in  
18 red is KCSM, and in blue it's FXE.

19 And you'll see that FXE reaches down into  
20 the heart of Mexico, that Mexico City roughly where  
21 the blue line intersects the green line. The green  
22 line I think is Ferrosur, which is an affiliate of

1     FXE, so those two are really one network. The blue  
2     line also crosses over to Monterrey, and down to Veracruz.  
3     Most of the major destinations or origins in  
4     Mexico are served, or servable by both of these  
5     networks.

6                     But the point I was making about BNSF's  
7     network, and I'm sorry that the BNSF network isn't  
8     shown north of the border here. This is the map I  
9     came with. We've been talking about Laredo and  
10    Eagle Pass. They're really quite close together.  
11    From Eagle Pass, BNSF and UP can access the essential  
12    Texas rail network of both of them by heading east to  
13    San Antonio from Eagle Pass, whereas at Laredo, UP  
14    heads north to San Antonio.

15                    Come together in San Antonio where the two  
16    lines cross, and then it's the equivalent to having  
17    come through Laredo. But for the BNSF network, it  
18    looks like it's way out of the way in Mexico, but if  
19    you go to El Paso, El Paso is right there, and you  
20    go north from El Paso, only go a short distance into  
21    New Mexico, and you're at a place called Belen,  
22    B-E-L-E-N.

1           BNSF has a yard, a big yard there, big  
2   terminal, and that's where BNSF's southern Transcon  
3   crosses New Mexico. From Belen to Chicago on the  
4   southern Transcon is, you know, it's what I think of  
5   as a rocket ship. You know it's double or triple  
6   packed the entire way, and it's the fastest rail to  
7   Mexico. No offense to my client, or to Union  
8   Pacific, which I know is very proud of its  
9   intermodal service as well.

10           The southern Transcon is highly efficient,  
11   a highly efficient artery, super high capacity, super  
12   high speed. So if what you want to do is get to  
13   Mexico fast, it may be slower in Mexico, but it's  
14   fast to that point where you're almost in Mexico.

15           CHAIRMAN OBERMAN: David, it  
16   wasn't a rocket ship last summer when they embargoed  
17   it, but that's a separate story, go ahead.

18           MR. MEYER: Well I think that was southern  
19   California, Member, but point well taken. So my  
20   point was to say engaging with the facts about this  
21   shift of traffic to Eagle Pass, we're talking about  
22   grain traffic and taking on BNSF's allegations of

1 foreclosure on their terms. It just doesn't hold up  
2 to the facts.

3 Now we're not saying that there weren't  
4 shifts of traffic from BNSF, KCSM or excuse me, BNSF,  
5 Tex-Mex, TFM routes to KCS, KCSM single line routes.  
6 We're not saying that there weren't shifts of traffic  
7 from UP TFM routes over Laredo, to KCSM routes.

8 We're not saying that. In fact, we think  
9 there were. We think the evidence shows that. But  
10 as Dr. Majure pointed out last week, and in his  
11 analysis and into the record in this case, there are  
12 reasons why that shift occurred, and the best  
13 description of the reasons why that shift occurred, I  
14 would submit, came out of the mouth of the Bartlett  
15 witness.

16 Again, Bartlett has a facility in Council  
17 Bluffs, Iowa. Council Bluffs to Mexico is BNSF to  
18 Eagle Pass, BNSF to Robstown to KCS, KCSM, or it's UP  
19 to Laredo, UP to Eagle Pass, or UP to Brownsville, or  
20 it's KCS, KCSM.

21 From Bartlett's perspective all of these  
22 options are available to us today, and have been

1     since the KCS/Tex-Mex merger, and why is it that that  
2     traffic moves on KCS, KCSM? Because they've chosen  
3     to send it there. And why? Because of all of the  
4     things that KCS, KCSM single line route provides to  
5     the shipper, the shipper makes the choice.

6                 We expect -- this is why we expect to  
7     attract traffic to our single line routes. Not  
8     because we're going to close down the other ones, but  
9     because we're going to improve ours, and compete.  
10    That's the whole premise of this transaction. So you  
11    would expect to see that in the factual record, and  
12    you wouldn't expect to see all of BNSF's traffic get  
13    dumped and moved over to Eagle Pass because KCS won  
14    something. That's the point.

15                CHAIRMAN OBERMAN: So are you saying  
16    David, that just taking all those examples you gave  
17    from Bartlett that KCS, KCSM offers a shorter transit  
18    time, a more dependable service, or both, or what are  
19    you saying?

20                MR. MEYER: I would defer to my KCS  
21    colleagues to address the specific advantages that  
22    they offered to Bartlett.



1                   MR. ELPHICK: I think that is the case of  
2     Bartlett is our largest cross border shipper. They  
3     have developed, they've invested and done their part  
4     invested in facilities in Mexico to build a really  
5     solid business in Mexico.

6                   They understand Mexico very well. But  
7     it's because of the fact that virtually all the  
8     business that we handled originates and terminates on  
9     the KCS network, and we truly have a partnership  
10    there. I don't know if it would be helpful just to  
11    put a picture in front of you to go to the -- I think  
12    it's two slides out that shows what Mr. Meyer  
13    described, the various options.

14                  I think there were some questions about  
15    this the other day looking at the various options  
16    that Mr. Meyer described. So you can see the rail  
17    miles from Laredo and Eagle Pass to Monterey, so on  
18    the first chart on the left. So it is a longer route  
19    from Eagle Pass to Monterey via rail, but your  
20    question Mr. Chairman the other day to Mr. Hirsch,  
21    and I think this is from the transcript that if you  
22    will bear with me, I thought I had here.

1           Oh yes, your question was why can't you go  
2   into Mexico on Eagle Pass down to FXE and turn east  
3   and interchange and get right into the golden  
4   triangle. Why does that not work? And Mr. Hirsch's  
5   reply was well, there's as you know, different  
6   quality of the tracks in Mexico.

7           So I think to -- I prefer that be quoted  
8   from Mr. Hirsch. I didn't want to say anything  
9   negative about our competitor in Mexico here, but it  
10   is the efficiency of that route. It's the way we  
11   manage our flow of traffic over the bridge, because  
12   we have not only the IT, but the other resources, the  
13   capital alignment on both sides of the border.

14           And there is no doubt that we feel that  
15   that gives us a differentiated network versus the  
16   other options in Mexico, which in all cases, at all  
17   the other gateways, requires interchange between two  
18   independent railways.

19           CHAIRMAN OBERMAN: I'm glad you cited that  
20   because I was going to ask you the same question, so  
21   you beat me to the punch. Thank you.

22           MR. ELPHICK: I think if I may just to

1     elaborate a little bit on this map, Mr. Hirsch  
2     commented that Eagle Pass and Laredo really served  
3     completely different markets. You can see, and I  
4     don't have this data in the slide, but can certainly  
5     provide it if interested.

6                 But looking at what's happened over the  
7     last 17 years since 2005, traffic at all gateways has  
8     grown, no doubt about that. 336,000 carloads in  
9     2005, rail carloads at all gateways, to 484 in 2021.  
10    Laredo market share has fallen from 59 percent to 51  
11    percent.

12                Eagle Pass market share has grown from 7  
13    percent to 33 percent. So there has been, I think  
14    Mr. Majure used the phrase that I particularly like,  
15    a deliberate choice of gateways on the part of our rail  
16    competitors, and to some extent customers, and Eagle  
17    Pass has in fact grown quite a bit over that last 17  
18    years.

19                MR. MEYER: And I think Dr. Majure has a  
20    comment about his data analysis in this case that  
21    goes directly to this reference point.

22                DR. MAJURE: Yes. And speaking about the

1 grain traffic in particular, the BNSF witnesses did  
2 provide annual data about their shipments of grain  
3 over Eagle Pass and Laredo, and without getting into  
4 the confidential information about that I can say  
5 that you know if you look at my reply verified  
6 statement on this, I examined that data.

7 I examined what happens with their grain  
8 traffic over time. And there is a clear -- it's  
9 consistent with a common shock affecting their  
10 traffic both at Laredo and Eagle Pass in the time  
11 period they're talking about this price effect going  
12 into place.

13 And a common shock means just their  
14 business of doing grain into Mexico was affected  
15 because the price increase would only have affected  
16 the Laredo traffic, part of the grain traffic. So  
17 the fact that we see this shock happening on both is  
18 telling me that this isn't the reason that their  
19 traffic was falling off at Laredo.

20 Their traffic was falling off at both  
21 gateways. Looking at the data as well, I see that  
22 the timing of exactly when and how their grain traffic

1 moves between -- or the balance of their grain  
2 traffic moves between Laredo and Eagle Pass, does not  
3 seem to be correlated with when the price increase  
4 would have happened.

5 So I don't see anything in their grain  
6 traffic data that is actually supportive of the idea  
7 that they were foreclosed, or couldn't operate here.  
8 It all seems consistent with other things were going  
9 on.

10 MR. ORR: And Mr. Chairman, if I could  
11 just add in some of the feedback from the grain  
12 structure as we've improved our cross border grain  
13 capabilities, some of the feedback I've had from our  
14 customers is they certainly appreciate our safety  
15 management standards that go across from Mexico and  
16 the United States under the same leadership  
17 capability of inspecting mechanical cars to the  
18 standards that we would ask ourselves in the United  
19 States.

20 The level of training we give to our  
21 mechanical people, and those training and elements in  
22 our terminals that eck out throughput through our

1 terminal, like we're doing in the United States,  
2 those all contribute to the value that I heard back  
3 from our customers in improving the train's grain  
4 cycles.

5 But certainly, the safety and security  
6 from a mechanical perspective, and the standards we  
7 hold ourselves to cross border really add and  
8 contribute to that value.

9 MR. MEYER: So if we just have a few  
10 minutes I think before your hard stop Chairman, and I  
11 thought I would use those few minutes to try to close  
12 out this issue of the reason why we have the economic  
13 incentive to continue to support interline options  
14 for the Laredo, just like over in the gateway, but  
15 focusing on Laredo because that's where the Class 1  
16 attention has been levied.

17 A lot of what you've heard from them has  
18 to do with the traffic they really seem to care  
19 about, their intermodal traffic or their own modal  
20 traffic. Member Fuchs, you made a very good point I  
21 thought, that that's traffic that railroads regard as  
22 highly competitive. Certainly, CP regards that

1 traffic as highly competitive.

2           It's highly competitive in a number of  
3 dimensions, you know both because alternative  
4 terminals serving origin regions, or destination  
5 regions, are capable of competing with  
6 one another, supporting a broader  
7 array of rail to rail competition, and also because  
8 of the inherent -- certainly for intermodal, the  
9 inherent ability for trucks to compete for that  
10 traffic.

11           Now we had in our prior presentation, we  
12 pointed out how BNSF saw its intermodal business, and  
13 the potential ways in which they would adapt if KCS  
14 became a less cooperative partner, there are highly  
15 confidential documents that are included in that  
16 presentation that I think are worth a read.

17           But we also have a view from Union  
18 Pacific, and this was offered publicly at an earnings  
19 call in which Mr. Fritz, the CEO, participated. And  
20 he made the very astute observation that with  
21 respect to UP's network, they have an intermodal  
22 terminal right there at the border in Laredo, Texas.

1 And that terminal is capable of receiving trucks from  
2 Mexico.

3 And so the way Union Pacific sees the  
4 intermodal world, they inherently have an ability to  
5 replace an uncooperative KCSM, were there ever to be  
6 one, and again we are highly incentivized not to be  
7 an uncooperative partner, but they can replace an  
8 uncooperative KCS, or CPKC in Mexico, with trucking  
9 to their intermodal ramp in Laredo were that to be in  
10 their economic interest.

11 These are just examples of the ways in  
12 which CPKC is going to have every incentive to  
13 continue to support efficient interline service. I  
14 think we're probably out of time now, so I'll save  
15 the rest. I don't have much more on this topic  
16 before we get into the meat of the Board's questions  
17 about our commitment.

18 And so unless other guidance, I'll  
19 probably pause there.

20 CHAIRMAN OBERMAN: Unless any other Board  
21 member wants to add anything at this point, I think  
22 we should recess. But let me say this to everybody,



1 including to myself. We're going to finish tomorrow  
2 in two and a half hours at the most, hopefully less.  
3 So we're going to convene at 11:30. Bring a snack,  
4 Eastern. If we take breaks they will be no more than  
5 five minutes.

6 David, I think you -- it looks to me like  
7 two and a half hours should be more than ample. It's  
8 not expanded.

9 MR. MEYER: I absolutely agree. We should  
10 be you know I'm not going to predict well under two  
11 and a half hours, but two and a half hours ought to  
12 be ample.

13 CHAIRMAN OBERMAN: All right. We will  
14 convene tomorrow morning at 11:30 Eastern, and we  
15 will terminate at 2:00 Eastern. Thank you all, thank  
16 you for your patience, and again I think this is all  
17 well worthwhile, and enlightening. I think certainly  
18 to the Board and to our staff and we appreciate it.  
19 Thank you.

20 (Whereupon, the hearing adjourned to  
21 reconvene on Friday, October 7, 2022.)  
22

CERTIFICATE OF COURT REPORTER

I, GAYNELL CATHERINE, Court Reporter, do hereby  
certify that that the testimony contained herein is a  
true record of the testimony given by said witness,  
and I further certify that I am neither attorney nor  
counsel for, related to, or employed by any of the  
parties to the action in which this statment is  
taken; and, further, that I am not a relative or an  
employee of any attorney or counsel employed by the  
parties hereto, or financially interested in the  
action.

GAYNELL CATHERINE

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