

Date: January 13, 2022

Case: Hearing on CSX/Pan Am Merger - Application Review



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SURFACE TRANSPORTATION BOARD

HEARING ON CSX/PAN AM MERGER

APPLICATION REVIEW

DOCKET NO. FD 36472 et al

PUBLIC HEARING

Thursday, January 13, 2022 -- Day One

9:30 a.m.

Via Zoom

The above-entitled matter came on, pursuant to notice, at 9:30 a.m., Chairman Martin Oberman presiding.

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

2 9:30 a.m.

3 CHAIRMAN OBERMAN: I think we are here.

4 Good morning everybody and welcome to our remote
5 public hearing. I want to thank everyone for joining
6 us in the hearing on the CSX/Pan Am Significant
7 Transaction, which is Docket Number FD 36572.

8 Briefly, the Applicant's revised
9 application seeks Board approval for CSXT and related
10 entities to acquire control of the seven railroads
11 controlled by Pan Am Systems and Pan Am Railways,
12 and for CSXT to merge six of the seven railroads into
13 CSXT. In addition, there are six related
14 transactions to which parties seek Board approval.

15 We are looking forward to the hearing and
16 the witnesses today and tomorrow, and discussing this
17 transaction and the relevant issues. This is our
18 first hearing with our new Board composition, and I'd
19 like to take this opportunity to welcome Karen
20 Headland our newest Board member who I'm sure many of
21 you in the rail industry know.

22 We are delighted to have her on the Board.

1 She is up to speed as fast as anything I've ever
2 seen, and ready to go along with the rest of our
3 Board, Patrick Fuchs, Robert Primus and Michelle
4 Schultz. So we are ready. This is the first time to
5 my knowledge that the Board has ever had an entire
6 virtual hearing in homage to the current surge. We
7 had hoped to be there in person, and inaugurate our
8 new taxpayer-funded hearing room, which I promise you
9 we will do sometime this year on other matters.

10 And I want to start out by expressing our
11 gratitude to our IT team who both in house and our
12 contractors who have just done a fantastic job
13 getting us ready, and I think, and I hope -- think
14 this is going to go smoothly. If anybody makes it not
15 go smoothly it will probably be me.

16 So let me move ahead to -- I also want to
17 acknowledge the fact that while there will be a large
18 number of witnesses who have asked to appear in
19 person, many people have filed written comments who
20 are not going to be here in person, but of course
21 those comments are in the record and will be taken
22 into account.

1 Let me go over a few procedural and
2 technical matters at the outset. The usual
3 admonitions. Please silence your cell phones, and
4 when you are not speaking please turn off your
5 cameras and mute yourselves in Zoom. Your panel is
6 up for appearance, then please turn on your camera
7 and keep it on for the entire duration of the panel.

8 When you are presenting a timer will
9 appearing counting down your allotted time. When
10 that timer reaches zero your time will have expired,
11 and we ask that you conclude your remarks. But I
12 want to underscore that I am not a harsh task master,
13 there are a lot of important issues to be discussed
14 here, and I am sure Board members will have many
15 questions for witnesses.

16 So this is not like an Appellate Court
17 when your time expires even though the Judge has
18 taken up all your time. So we will continue asking
19 you to address us and answer questions, and finish
20 your presentations so you have a full opportunity to
21 tell us what needs to be told. And I assure you that
22 as has happened in our past two public hearings, at

1 least that Patrick and I participated in, you will
2 probably be interrupted at some point for questions
3 when you are making your presentation, but then you
4 can get back to where you were.

5 If by the way, if anyone has a slide or an
6 exhibit that you have not previously filed with the
7 Board for presentation, please get it to us
8 immediately. Another technical point for panelists,
9 you have access to the chat function in Zoom. Please
10 only use this for technical questions. If you become
11 disconnected from the hearing and are not able to
12 connect via Zoom, there's a phone number you may use
13 to call in, included in the hearing information that
14 you were already provided.

15 You can also refer to the frequently asked
16 questions section on the Boards website for further
17 troubleshooting or contract information. But if in
18 fact a witness does run into that kind of problem we
19 want to get it fixed. We don't want you to be
20 disadvantaged at all when speaking to us.

21 This hearing is also being streamed on
22 YouTube, and that link is available on the Board's

1 website. A transcript of the hearing will be placed
2 on the Board's website after the close, and the
3 recording will be available as well. For the benefit
4 of our Court Reporter, please speak clearly into your
5 microphone, and minimize background noise.

6 The Court Reporter is welcome to interject
7 if he can't hear, which does happen you know in legal
8 proceedings, so if that happens let's address the
9 Court Reporter's concern. Further, we're trying to
10 keep this record open for a week following this
11 hearing, until January 21, to allow for the filing of
12 any additional written materials, but I want to
13 underscore that is not an opening of the record to
14 file stuff that you just thought of for the first
15 time.

16 If things come up at the hearing that were
17 new information to you, and you feel a need to
18 respond, or we ask a question that you needed to do
19 some more homework on, those are the reasons for
20 keeping the record open. The plan is to take a 30
21 minute lunch break each day somewhere around midday
22 when there's an appropriate time to break. I also

1 plan to take several short breaks throughout the day
2 to allow you know people to just do what they have to
3 do, and in the interest of time let's try to adhere
4 to those timeframes that I set. The breaks will be
5 five minutes really.

6 If someone really needs a break for any
7 reason let us know, and we'll accommodate that. In
8 the interest of time we have all decided not to make
9 any opening statements for ourselves. We will have
10 plenty of time for questions, so we will begin with
11 the first panel. Pardon me, the first panel. And as
12 I think most of you will know from looking at our
13 recent order we plan to call people up in groups.

14 The first panel consists of CSX. And I'm
15 going to read the names. There are quite a few
16 people just so we all know who is supposed to be on
17 these panels, and perhaps the leaders of these
18 groups can tell us if any of these people are not
19 going to appear. But according to our schedule, the
20 first panel consists first of CSX, and of course Jim
21 Foote who I am looking at, so I know he's there,
22 James Boychuk, Kevin Boone, Sean Pelkey, Dr. David

1 Reishus, Anthony LaRocca and Peter Denton, so let me
2 stop there. Are all of those folks present Jim?

3 MR. FOOTE: Yes Mr. Chairman.

4 CHAIRMAN OBERMAN: Okay thank you. The
5 panel will also include one of the names are long,
6 it's really B&E Pittsburgh and Shawmut Railroad,
7 d/b/a Berks and Easter. And I have Michael Miller,
8 Matthew Walsh, Leonard Wagner and Erik Hocky, are all
9 of those folks present as well?

10 MR. WALSH: We are all here.

11 CHAIRMAN OBERMAN: Okay thank you. And
12 finally for Norfolk Southern Bill Melton.

13 MR. MELTON: I am here Mr. Chairman.

14 CHAIRMAN OBERMAN: All right. So
15 everybody is present and accounted for, that's great.
16 Why don't we start Jim the floor is yours.

17 MR. FOOTE: My name is Jim Foote, and I'm
18 the President and Chief Executive Officer of CSX. I
19 have more than 45 years of the Berks Railroad
20 industry experience, including the successful
21 completion of numerous railroad mergers and
22 acquisitions, including Chicago Northwestern's

1 acquisition of Rock Island Railroad Lines, and sale
2 to Union Pacific.

3 And while at the Canadian National the
4 acquisition of the Illinois Central, BC Rail,
5 Wisconsin Central and Great Lakes Transportation. I
6 believe this merger between CSX and Pam Am Railway if
7 approved, will significantly improve and strengthen
8 freight and passenger rail serve in New England and
9 beyond, and it is my pleasure to be here to discuss
10 the many public interest benefits of this
11 pro-competitive merger.

12 I want to begin by thanking the STB
13 members for holding this hearing and providing us the
14 opportunity to talk with you firsthand about why this
15 proposed merger between CSX and Pam Am is good for
16 rail shippers, passenger rail customers, the national
17 transportation network, and the public at large.

18 We are eager to explain why this proposed
19 transaction should receive Board approval, and are
20 ready to answer any questions you may have. In a few
21 minutes my colleagues will outline specific aspects
22 of the merger, but first I want to share with you my

1 thoughts on the numerous benefits that will result
2 when Pam Am is integrated into our Class 1 rail
3 network:

4 Benefits for rail shippers, passenger rail
5 customers, and state and local communities. CSX
6 plans to make significant infrastructure investments
7 in Pan Am's network. These network upgrades will be
8 good for the environment as I will discuss in a
9 moment, and customers will benefit from seamless
10 single line service into and out of New England.

11 This transaction is a huge step forward
12 for rail users in New England, and will further
13 strengthen our national transportation network
14 overall. It's widely known that this New England
15 rail network was on the brink of bankruptcy not too
16 long ago before it was saved by the Guilford Group,
17 now Pan Am.

18 That effort did a great job of keeping the
19 New England network viable, and now we have higher
20 aspirations for Pan Am and its customers. We want to
21 bring Pan Am and its customers into a new era, which
22 will start by bringing them into our Class 1 rail

1 network.

2 For nearly 200 years CSX has played a
3 vital role in the nation's economic expansion and
4 industrial development. Our 23 state-wide network
5 connects the eastern half of the United States,
6 where nearly two-thirds of the nation's population
7 resides. Our network connects more than 230 short
8 line railroads, 70 ocean, rail and lake ports in the
9 national rail network with major population centers
10 and farming towns alike.

11 I am very proud of the job that the men
12 and women at CSX do every day in serving our
13 customers. Over the last four years we have
14 significantly changed the focus of the company to be
15 more customer and service focused. Since I became
16 CEO at the end of 2017, CSX has evolved to become by
17 far a leader in the industry in terms of faster
18 transit times and service reliability.

19 We introduced specific service
20 measurements such as trip plans, and innovative tools
21 for customers to have greater ability to track
22 shipments. At the beginning of 2020 CSX had the best

1 service product in its history, and the best well,
2 train speed, and fewest cars online in the industry,
3 and our plans for the future are to build on this
4 platform and to continue striving to improve all of
5 those numbers measurably.

6 And we plan to do so by growing our
7 business. Pan Am is key to those plans as you will
8 hear more about today. Why this intense focus on
9 service? Because if we don't provide a better
10 product we cannot grow the business. And growing the
11 business is our goal. When we do this successfully
12 we take trucks off the highway, improve the
13 environment, and create more jobs.

14 For decades this industry has ceded share
15 to trucking. And at CSX we are focused on reversing
16 that train. In fact, 2019 was the first year our car
17 load business grew since 2015, and we have plans to
18 continue this trend into 2022 and beyond. Of course
19 I wish I could say we delivered these record service
20 levels in 2020 and 2021.

21 Unfortunately, our business, like every
22 other essential business in the world has bene

1 operating to very tough conditions due to the impacts
2 on our people and business from COVID. Let me
3 provide some perspective. 4,804 of our employees
4 have contacted the disease since the pandemic began.
5 31 of our employees died. In just the last two weeks
6 nearly 800 of our employees have been off because of
7 COVID, but we have continued to operate and serve
8 all of our customers, not with the level of service
9 we would like, but I know our hard working men and
10 women have been doing a remarkable job under these
11 trying circumstances.

12 In all the turmoil last year we moved more
13 loads than we did in pre-pandemic 2019. I am well
14 aware that Board members have expressed concerns
15 about rail crew shortages across the nation,
16 including at CSX. I want to discuss this directly
17 with you and provide you some background on our
18 approach to addressing this issue.

19 As business levels began to quickly
20 recover in late 2020, we were presented with an
21 unexpected new challenge. Employees were not
22 returning to work at normal rates, and as we began to

1 gear up to aggressively hire new employees, our
2 traditional hiring practices and markets for
3 employees weren't panning out.

4 This is not a problem that is unique to
5 CSX. We had to expand the pool of job candidates and
6 how we hire. We rapidly did that and over the last
7 15 months we have hired over 1,000 T and E employees
8 and will continue to hire. In addition we offered
9 significant financial incentives to existing
10 employees to work extra days, or transfer between
11 crafts to help fill voids and keep our service as
12 fluid as possible during this pandemic.

13 I make these comments because I believe
14 that CSX is a great company with great employees who
15 work hard every day to serve our customers. I also
16 believe that Pan Am is a great company with great
17 employees. In fact, we plan on making sure that
18 every Pan Am employee who wants to have a job with us
19 will have a job with us.

20 I am committed and determined to filling
21 positions and providing the best service product we
22 can to our customer. Combining Pan Am with CSX will

1 bring substantial benefits to our network and beyond.
2 New seamless single line service will provide
3 shippers with low cost, environmentally friendly rail
4 service with truck like reliability.

5 Pan Am shippers can more effectively reach
6 a wider customer base over an expanded territory.
7 Together we'll create new services so customers can
8 capitalize on a robust pipeline of market
9 opportunities to move freight to, from, and within
10 New England.

11 Pan Am shippers will benefit from CSX's
12 superior customer service, greater schedule
13 reliability, and greater transparency. For example,
14 we have made major investments in our customer facing
15 technology, including our innovative trip plan
16 performance tool which allows customers to see
17 detailed performance data on every container and
18 railcar they ship.

19 New England will also benefit from CSX's
20 track record as an environmental leader. Through the
21 adoption of new technology we have increased our
22 sustainability advantage over our competitors,

1 setting records for fuel efficiency and exceeding our
2 emissions reduction targets.

3 In fact, CSX is the only Class 1 railroad
4 to operate below one gallon of fuel per thousand
5 gross ton miles. On average, CSX moves a ton of
6 freight 508 miles on a single gallon of fuel, which
7 is three to four times more fuel efficient than
8 truck. This reduces emissions, takes trucks off the
9 highway, and relieves highway congestion, and reduces
10 America's carbon footprint.

11 CSX will use newer, high horsepower
12 locomotives which will allow us to operate the Pan Am
13 network with a more reliable, and more fuel efficient
14 fleet, significantly reducing fuel consumption.
15 These benefits are a large reason why this merger has
16 tremendous support from shippers and business
17 organizations throughout the region.

18 As you know there is no opposition to this
19 merger in the shipping community, none. And as you
20 will see and hear throughout this hearing there is
21 abundant support from those essential stakeholders.
22 On that note I'd like to thank each of the shippers

1 and other proponents who are appearing to voice their
2 support for this transaction.

3 The proposed transaction has substantial
4 public support in New England, as evidenced by the
5 many letters received from local, state and federal
6 officials and legislators. This support reflects
7 broad recognition that the agreement CSX has already
8 reached will enhance competition while strengthening
9 the rail network in the region.

10 While there is overwhelming support for
11 the transaction, there have been a few expressions of
12 concerns. We do not take any of those concerns
13 lightly, even though in most cases these concerns
14 are really not about our proposed transaction, but
15 about the state of the existing rail network.

16 However, we take all concerns seriously and have been
17 working hard to address every concern we can that has
18 been raised by these common parties.

19 By example, I'll start with the
20 Commonwealth of Massachusetts, which wants to make
21 sure that existing passenger rail service in the
22 Boston area will not be adversely affected. We have

1 reassured the Commonwealth, and its representatives
2 many times that we are not making any traffic changes
3 that will negatively impact passenger rail service,
4 rather we expect it to improve.

5 And our track record over the last few
6 years supports that expectation. The Commonwealth
7 can rest assured that we will treat passengers
8 service as a priority throughout our network, and we
9 will do so here. The Commonwealth has also raised
10 concerns about the rail lines running along the
11 Wachusett Reservoir near Boston.

12 The conditions of those rail lines has
13 been a concern of the Commonwealth for many years.
14 This proposed transaction is not the source of the
15 Commonwealth's concern, but we have committed to
16 make major improvements on those rail lines to make
17 that quarter safer and more secure. As in other
18 areas, our transaction is going to produce a better
19 and safer rail network throughout the region.

20 The Islington Creek neighborhood of
21 Portsmouth, New Hampshire has also shared its concern
22 about locomotives idling in a local yard. We have

1 reached out to the neighborhood to assure them that
2 we will work with them to address their concerns. As
3 the Board knows Amtrak has also raised some issues.
4 I have good news regarding Amtrak. Yesterday we
5 submitted a letter to the Board reporting that we
6 have agreed to begin hosting the Berkshire flier
7 service, and we have also accepted all of Amtrak's
8 remaining requests for conditions.

9 This is a significant commitment by CSX
10 that puts teeth behind their assurances that we will
11 continue to work collaboratively with Amtrak and
12 other passenger rail stakeholders. Since I have
13 become CEO, we have worked to achieve an outstanding
14 record hosting Amtrak service, having progressively
15 improved from a 73 percent on time performance in
16 2017, to mid-90 percent levels today.

17 Amtrak itself has congratulated us on our
18 industry leading performance. In addition, we have
19 worked hard to ensure that we have no disputed
20 schedules under the FRA's metric and standard
21 regulation. I'm proud to say that we're the first
22 U.S. Class 1 to have agreement with Amtrak on 100

1 percent of our schedules.

2 Canadian Pacific has recently raised
3 concern about the continued viability of the Patriot
4 corridor on PAS as an independent railroad between
5 Upstate New York and the Boston area. We are the
6 second largest user of Pan Am Southern, much larger
7 than CP, so we have a strong incentive to keep PAS
8 viable. I believe Norfolk Southern, the largest user
9 of this corridor, will also comment on its commitment
10 to this line's viability.

11 CP's concern appears to be focused on the
12 aging Hoosac Tunnel which has a long history of
13 maintenance issues. I've written to CP's President
14 and CEO, and assured him that our part ownership of
15 Pan Am Southern with NS will ultimately serve to make
16 PAS a better railroad.

17 And in the event there is a blockage of
18 the Hoosac Tunnel we have expressly committed to
19 making available our alternative route to Boston
20 through Selkirk yard should it be necessary.

21 Finally we know that the Board has been
22 rightly focused on the unprecedented supply chain

1 challenges facing our country. We at CSX will
2 continue to do all we can to work with our
3 transportation partners to help restore the network's
4 fluidity, and we take this merger transaction very
5 seriously.

6 We are committed and determined to
7 smoothly integrate Pan Am into CSX. It is imperative
8 that we put the two companies together properly, and
9 without needless destruction to customers or other
10 carriers. The team at CSX has the experience and the
11 expertise to ensure a smooth integration for all
12 parties involved, and we are ready to go.

13 Thank you for your attention this morning,
14 and I look forward to addressing any questions you
15 have.

16 CHAIRMAN OBERMAN: Jim, I'd like to,
17 before you move on, ask a few general questions and
18 other Board members may have some as well. And then
19 we might have some for your other members of the
20 team. But here at the outset a couple of things.
21 First of all I noted late last night the agreement
22 that was filed with Amtrak, and I think we'll be

1 going into that in more detail.

2 I just wanted to make the observation that
3 I hope this is shades of things to come involving
4 Amtrak in general, and I think you know what I'm
5 talking about. But let me get into some of the
6 broader comments that you've made, and that have been
7 of concern to the Board.

8 You know that the Board has focused on
9 service issues at CSX and others, but certainly at
10 CSX over the last year. We've exchanged some
11 meaningful correspondence on the questions that
12 we've raised. Our RCPA office continues to get
13 complaints about service problems.

14 As recently as November, which is I think
15 your last letter to me, you acknowledged and I'm
16 quoting, "That current CSX service levels are not
17 where the carrier wants them to be." And you've
18 pretty much acknowledged that this morning. What I
19 heard you say in your statement is the same general
20 promises that you are committed to first class
21 service and so forth.

22 But it really does raise a question in my

1 mind that you're planning to take over the operation
2 of some 1,200 more miles of railroad. How is your
3 team going to manage all of that and continue to
4 improve the service you have? It is a problem which
5 seems to stand out at this point in the history of
6 CSXT.

7 You're taking on a big new challenge, a
8 railroad that you acknowledge needs a lot of work,
9 Pan Am. How can we have confidence that you really
10 are going to be able to get your service levels back
11 to where you say they should be, so we can stop
12 hearing about it from your customers?

13 MR. FOOTE: Mr. Chairman yes you and I
14 have dialogued about this topic for more than a year.
15 When we started this process of acquiring the Pan Am
16 I don't think any of us anticipated that we'd be
17 sitting here today doing this virtually, with 99
18 percent of the people in this room wearing masks with
19 800 of our employees off sick, listening to the CEO
20 of Delta Airlines this morning talking about their
21 disruptions over the holiday weekend with 8,000 of
22 their employees currently off sick.

1 United yesterday 3,000 employees off sick.
2 Chicago Public Schools shut down for a week, no snow
3 plow drivers, no nothing, and complete chaos. And as
4 I've said to you on many occasions the principal
5 reason that we are having service delays across our
6 network, even though we did a fantastic job as the
7 economic switched to e-commerce, and we performed
8 extremely well during the peak season and the holiday
9 rush, again making sure that everybody, all the kids
10 got their toys this year.

11 The reason we're having problems is
12 because of the pandemic. And the pandemic is going
13 to be over one of these days. When? I don't know.
14 Is there such thing as herd immunity? I don't know.
15 Every transportation and service provider in the
16 world is struggling, so we're struggling too.

17 So and we have hired 1,000 employees
18 keeping up with the number of people that are off
19 sick, so that we can continue to run the railroad.
20 With industry leading metrics -- industry leading
21 metrics. Your metrics, that the STB established to
22 judge the performance of a company throughout this

1 process.

2 So why do I have confidence? Because I
3 know and I trust, and I believe in the people at CSX,
4 and when the cases subside, there's no reason in the
5 world to believe that we will not get back to the
6 point where we were in 2019, when you didn't hear
7 anything about CSX. And from a service perspective,
8 and continue to do even better in the future.

9 Our goal is to not get back to 2019. Our
10 goal is to get back to 2019 because that would be
11 kind of the base camp for the launching to get even
12 better and better and better in the future. And --

13 CHAIRMAN OBERMAN: Well let me talk about
14 what you're trying to get back to because that is an
15 issue I have raised in other contexts many times, not
16 only with CSX, but with others. And while you say
17 that your metrics are industry leading, I don't think
18 it's stretching it to say they're leading this
19 industry at this time and service -- and lack of
20 service complaints is not a particularly impressive
21 standard.

22 But the thing that concerns me, and I'd

1 like to hear you address it specifically if you can,
2 is that aside from other industries, and whatever
3 problems they may be going through, what we know
4 about the rail industry is the tremendous cuts in
5 work force over the past five or six years.

6 CSX has led the industry in cutting 35
7 percent of its workforce since 2016. And I wonder if
8 you will agree with me specifically that when the
9 pandemic hit having cut so much of your workforce
10 prior to the pandemic, you were left with little
11 cushion, no cushion. And this isn't unique to the
12 pandemic. We have it when the polar vortex's hit,
13 and they hit predictably and regularly.

14 What I'd like to know is, is your hiring
15 plan just to fill in the gaps that you now have
16 because of the pandemic, or is it to restore any
17 level? I don't suggest the entire 35 percent of
18 your workforce to a level higher than what it was
19 before the pandemic, so that you can operate the
20 railroad as you and many others tell me, as an
21 outdoor sport, and have a cushion when you run into
22 unexpected problems? Do you have any plan or

1 commitment to do that?

2 MR. FOOTE: I think our plan always
3 envisions having the appropriate level of employees
4 to run the railroad in all circumstances. Yes, we
5 have during the pandemic yes, we had polar vortex
6 during the pandemic. How many hurricanes did we have
7 during the pandemic? We had the hurricanes, we had
8 sun kinks, we have issues constantly, and we staff
9 the railroad appropriately, so we have enough
10 employees to be able to operate in those difficult,
11 and recurring circumstances.

12 And we will get the railroad back staffed
13 appropriately to make sure that we can continue to
14 operate at the levels that we were operating in,
15 excluding the pandemic. In 2019 we planned to
16 continue hiring. We told everybody in the world that
17 in 2020 we would be hiring, and we will get back to
18 that point and continue to staff appropriately.

19 CHAIRMAN OBERMAN: Jim, the word
20 appropriate doesn't give me a lot of comfort. The
21 railroad obviously thought it was appropriate that 35
22 percent fewer employees in 2019 than it had in 2016.

1 What I want to know is, is the appropriate level
2 going to be higher than it was before the pandemic,
3 so that you have some cushion that you've removed
4 when you went into full PSR mode to get back in
5 whenever that started.

6 That's what I want to know, not what you
7 think is appropriate. What's appropriate has not
8 been enough to sustain your railroad and many others
9 in a pandemic, in hurricanes and polar vortex's.
10 There are crew problems. Whenever there are these
11 events, so appropriate doesn't tell me an answer.
12 Are you going to hire more people back up to some
13 percentage of that 35 percent you've cut? That's the
14 specific question. Can you answer that?

15 MR. FOOTE: Well again yes, if the volumes
16 continue to increase like we expect the volumes to
17 continue to increase. We would need to hire probably
18 additional employees yes.

19 CHAIRMAN OBERMAN: Well it's really a
20 staffing strategy that I'm interested in hearing.
21 You had a lot more employees before you began PSR,
22 and as a result of that strategy you reduced the

1 entire footprint of the workforce on the railroad.
2 Is that going to continue to be your strategy that
3 way because it doesn't leave you a cushion.

4 If you have more volume to serve, but you
5 still have no cushion you're going to run into
6 problems, but that's my question, and I'm not sure
7 I've gotten a clear answer as to whether you're
8 going to rehire any of these folks.

9 I know you're under a lot of pressure to
10 strip down your cost structure, but the public's
11 under a lot of pressure to have a good rail network,
12 and so that's why.

13 MR. FOOTE: I do not feel like I am under
14 any kind of pressure to strip down our cost
15 structure. What we did from 2017, starting in 2017,
16 and when I took over basically in 2018, and into '19
17 when the railroad continued to improve significantly,
18 was dramatically change the way the railroad ran. .

19 We eliminated significant amounts of
20 excess, unnecessary work throughout the railroad that
21 was left over as a legacy of many, many decades of
22 not properly realigning the operations with the rail

1 network that had been assembled through multiple
2 mergers and acquisitions historically.

3 Process re-engineering of the rail network
4 results in millions, the elimination of millions of
5 unnecessary work activities that had the result of
6 improving our transit times by 48 hours. The rail
7 network speeded up because we just didn't stop at
8 places and do work that was unnecessary because no
9 one had ever done the appropriate analysis and
10 re-engineering of how the work got done across the
11 network which was slowing down the railroad and
12 adding a tremendous amount of unnecessary touches.

13 That's what we did. By eliminating
14 unnecessary work we speeded up the railroad, we
15 improved the quality of our product, and we were at a
16 good spot in 2019, had no plans to make any kind of
17 further headcount reductions anywhere across the
18 network, and were fully anticipating that we were on
19 a trajectory of growth, and at that point in time we
20 began to hire the appropriate amount of people to run
21 the railroad.

22 I don't think you think I'm being evasive.

1 We're not going to go back and put in unnecessary
2 work into the rail network when I think we have a
3 fiduciary responsibility to our customers. We have
4 an obligation to try and run the rail network in the
5 best way we can.

6 CHAIRMAN OBERMAN: Jim nobody is
7 suggesting that the railroad do unnecessary work.
8 The customers who complain to our RCPA about missed
9 switches, where are my cars, where's the service,
10 would not think that the work they're not getting is
11 unnecessary. Let's move on because I know the other
12 members are going to have some questions.

13 One specific point on employee work
14 levels, and then there's one other area I want to
15 deal with quickly, and then hand it off to the Board
16 members, or to your other witnesses. You said in
17 your opening statement that everybody who works at
18 Pan Am now will have a job if they want one.

19 As I understand it the B&E proposal, and
20 if you think I should ask this question to B&E that's
21 fine, I will, is to cut staff that's currently on
22 PAS. Are you going to have jobs for those people at

1 CSX?

2 MR. FOOTE: The principal reason, and
3 correct me if I'm wrong Mr. Pelkey, the principal
4 reason for the reduction in the workforce at the B&E,
5 on the PAS is because they won't be doing capital
6 work on the railroad. We will be doing it right?
7 Right, we will be doing the capital work on the
8 railroad. So those people are redundant.

9 We will hire those people to work
10 elsewhere on the Pan Am, and if necessary we will
11 hire those people to work on CSX.

12 CHAIRMAN OBERMAN: Well are those people
13 going to be included in the group that you say will
14 all have jobs if they want one.

15 MR. FOOTE: They work for them today, they
16 can work tomorrow, the next day. Post transaction
17 day one they'll have a job.

18 CHAIRMAN OBERMAN: And just to be
19 specific, the ones that B&E says it doesn't need?

20 MR. FOOTE: Absolutely.

21 CHAIRMAN OBERMAN: Okay. Just one other
22 area because it relates to this whole area of service

1 and growth, which is intimately related in my view to
2 the level of work force. Here's the problem I'm
3 having, and I'd like you to address us. All of the
4 things that you have said are going to be
5 improvements to what is now the Pan Am system and
6 network through what you say is CSX's best in class
7 operation for additional capital improvements and so
8 forth.

9 When you made your projections for our
10 environmental evaluation, the projections we got were
11 only a growth of 2.3 percent over the first three
12 years that you were going to operate this railroad.
13 That's a growth level that just matches the general
14 economic growth in the economy that any railroad
15 would get without trying to increase traffic.

16 And when we asked for five year
17 projections, it was projected that there would be
18 after the third year -- after the third year, an
19 increase of 1.5 percent derived from moving truck
20 traffic to rail. Those do not in my view reflect a
21 so called pivot to growth, which the industry has
22 been touting as a result of PSR. Those are modest.

1 To me there's almost no growth at all
2 attributed to the merger itself. So where is it that
3 CSX is going to take trucks off the highway, help the
4 environment, help the highways, really grow the
5 railroad? I don't see it in the numbers you have
6 given us.

7 MR. FOOTE: The numbers that we presented
8 yes, they have growth projections that are consistent
9 with the growth basically, the GDP, and there's some
10 question about whether or not the Pan Am in its
11 current state would have even been able to handle
12 that level of growth.

13 As I discussed in my comments, the
14 strategy for our involvement in Pan Am, and what we
15 think is the future improvement in the Pan Am service
16 levels, primarily comes from us improving the
17 infrastructure of the rail network, improving the
18 speed and reliability of the network.

19 Mr. Boychuk will present this morning as
20 well and show you a few pictures of what the current
21 Pan Am main line track looks like compared to what it
22 will look like compared to our main line traffic in

1 the future. So it's going to take some time for us
2 to improve the overall network speed, reliability,
3 efficiency, and once those capital improvements have
4 been in place, that's when yes, there is an
5 additional step up from GDP to GDP plus.

6 And so we do expect what I guess would be
7 referred to as outsized growth once we have improved
8 the overall network performance of Pan Am.

9 CHAIRMAN OBERMAN: That's going to take
10 five years to get there?

11 MR. FOOTE: That's going to take at least
12 a couple, and I think the numbers were like in three
13 years we'll start to see this step up.

14 CHAIRMAN OBERMAN: That's not the numbers
15 I've seen, but you know what if Jamie is going to
16 address that I know others have questions, you know,
17 maybe I'll talk about that with him. Patrick Fuchs
18 has a couple of questions for you Jim.

19 BOARD MEMBER FUCHS: Thanks Marty. I want
20 to start by recognizing that you know CSX has worked
21 through a number of the most challenging issues with
22 its application, with parties, and came to reasonable

1 settlement agreements. And so you know our
2 preference at the Board echoing the Chairman, is
3 always for parties to work out issues amongst
4 themselves, and so I want to recognize the fact that
5 CSX had done that, and that's a very good thing.

6 You know where Marty left out Jim I'm
7 going to ask you in your experience is a substantial
8 portion of the service issues that CSX encounters
9 related to switching as well as interchange with
10 other railroads? And I wanted, I know you're going
11 to cover this later in your presentation, but I want
12 to quick get your thoughts on what CSX is planning to
13 do proactively in terms of reducing, switching an
14 interchange where we saw, and see some of the service
15 problems?

16 MR. FOOTE: Well again in terms of
17 developing single line service across the network,
18 and the resulting service improvements, when you
19 eliminate the delays associated with the hand-offs,
20 which is the biggest reason for train operation
21 delays, that's where you see the trans in time
22 improvements and the reliability levels, which is the

1 critical number that the customer wants.

2 The customer wants reliability, and that's
3 door to door. That's not just train operations.
4 That's what our trip plans do. They measure it from
5 door to door, which takes into consideration the
6 delays, not only just over on the main line trains,
7 or the local deliveries, but the switching operations
8 as well. So all of the changes that will come from
9 having an integrated network as opposed to the
10 stop/start, stop/start that you get when you have
11 multiple railroads involved in a shipment would be
12 improved, and that will have a result in increase in
13 the key metric, which is reliability.

14 BOARD MEMBER FUCHS: Would it be fair to
15 say that CSX has observed delays and service
16 challenges at Barber's Junction where you currently
17 interchange with the Springfield terminal?

18 MR. FOOTE: I think that's part of the --
19 I'll turn that over to Jamie who can answer that
20 question directly.

21 MR. BOYCHUK: Yeah I would say that we
22 have Barber's Station seeing some delays with respect

1 to the interchange. I'll talk a little bit about
2 some of those issues that go on with respect to their
3 yards and the infrastructure we're looking at adding
4 into that location. But you know Pan Am, like every
5 other railroad has been struggling with what's going
6 on with COVID and with people, so yeah, I would say
7 that we see delay in today's environment.

8 And even before this pandemic there is
9 delays in 24 hours of moving any type of interchange
10 traffic between railroads.

11 BOARD MEMBER FUCHS: Jamie, on your
12 interline moves you know the potential delay at
13 Barber's Junction, potential delay which I know
14 you'll get into with the equality of the track
15 currently on the Pan Am, and as I understand it the
16 transaction is looking to make improvements on both
17 those single line service through capital investment.

18 Are there other key sources of delay, some
19 of the service issues existing in interline moves
20 that CSX plans to address through the transaction?

21 MR. BOYCHUK: Yeah. you know I'm going to
22 discuss a little bit about how we can use the South

1 Brickyard or hump yard in New York to be able to
2 improve some of movement that currently occurs on
3 that.

4 BOARD MEMBER FUCHS: Hey Jamie I don't
5 know if it's just me, but I'm having a bit of
6 difficulty hearing you.

7 CHAIRMAN OBERMAN: Yeah there's a volume
8 problem here Jamie.

9 MR. BOYCHUK: Okay. Can you hear me
10 better now?

11 CHAIRMAN OBERMAN: A lot better.

12 MR. BOYCHUK: Okay thanks. All right.
13 I thought they tested of these ahead of time my
14 apologies. With respect to some of movements that
15 are moving up and down, up and through the Pan Am,
16 we will be utilizing, and I'll talk a little bit
17 about our Selkirk, New York hump yard, on how we'll
18 block traffic differently to and from on the north
19 which will help assist on going beyond locations
20 where currently that traffic goes to, to be flat
21 switched in a smaller yard.

22 And then from there it may go out miles,

1 it may not. It takes a longer time for that point
2 you know to move on to the customer. So we will, and
3 I will discuss a little bit about the benefits that
4 we can certainly work on and with respect to our
5 current network.

6 BOARD MEMBER FUCHS: Appreciate it thank
7 you.

8 MR. FOOTE: I'm sorry Mr. Oberman, you're
9 on mute.

10 CHAIRMAN OBERMAN: Thank you Jim. Any
11 other Board members, Karen? You're on mute too.
12 There you go.

13 BOARD MEMBER HEDLUND: Yeah. Thank you
14 very much. Mr. Foote you said that you anticipate
15 being able to make significant improvements in
16 passenger rail, and at the same time significantly
17 growing your freight business. Do you see any
18 conflict between the two? How are you going to
19 handle both?

20 MR. FOOTE: Well Commissioner Hedlund,
21 first of all it's a pleasure to meet you for the
22 first time. I wish it was in person. You know we

1 are railroaders, and we don't mind running whether
2 they're trains, whether they're passenger trains or
3 freight trains, and we are the largest railroad in
4 terms of Amtrak service today, and the number of
5 trains that we host on our network.

6 And Jamie and his team have done an
7 exceptional job of improving the overall quality and
8 experience that Amtrak has when they're on our
9 railroad. If you saw what we have done in terms of
10 being open and willing to work with the State of
11 Virginia, and expanding the passenger service in the
12 Virginia, and into the Washington area, that was
13 really revolutionary I think for our freight railroad
14 to have wholeheartedly endorsed that project, and
15 worked with the states to make that happen.

16 The one area of concern that I always have
17 is the comingling of passenger and freight service,
18 and making sure that it's done safely. So with the
19 appropriate level of infrastructure in place, we're
20 wholeheartedly able, willing and able, to do that.
21 Like I say we do that every day. We do that on a
22 regular basis.

1 As you can imagine with our network,
2 Amtrak trains operate on our main lines. So you know
3 I spent 15 years in Chicago. We're working with the
4 Chicago Northwester. I know metro, and we interfaced
5 there on a regular basis, so I'm aware of the
6 complexities of what's needed, so I'm not concerned
7 that we are going to do something that would limit
8 our ability to grow and provide service to our
9 freight customers while providing an exceptional
10 level of service to the passenger trains at the same
11 time.

12 BOARD MEMBER HEDLUND: Well the Congress
13 as you know has appropriated an unprecedented amount
14 of money for passenger rail in the Infrastructure
15 Bill, 66 billion dollars, so in addition to just
16 making the existing passenger rail system work more
17 effectively, they are really encouraging a
18 significant level of investment to grow passenger
19 rail.

20 You talk about taking trucks off the road.
21 They want to take cars off the road too, that's of
22 significant importance. Let me ask you one final,

1 very general question. You have spoken quite
2 optimistically about the advantages to you and your
3 customers, passenger rail, the general public, about
4 this merger.

5 What concerns do you have? What do you
6 worry about? You know what's keeping you awake at
7 night? For example if inflation continues on the
8 path that it's on right now, how might that
9 negatively impact plans? Are there other things that
10 you're really concerned about that what are the major
11 risks?

12 MR. FOOTE: The number one thing, the
13 primary thing that keeps me up at night and I worry
14 about constantly is safety for our employees, and
15 safety for the communities. And that was my number
16 one objective when I took over four years ago. And
17 we had dramatically, dramatically improved the
18 overall safety performance of the company.

19 We put forth in our filing an extensive
20 safety plan, including Norfolk Southern who has a
21 rock solid safety plan including the Genesee in
22 Wyoming, and their operations, their safety numbers

1 are extremely low. So we take safety extremely
2 serious, and that's the number one thing that I worry
3 about. Inflation is inflation, you know.

4 It's part of just doing business and
5 managing a company and trying to figure out how to do
6 it. Inflation is not going to stop us from making
7 the necessary capital improvements. We've made
8 capital improvements at CSX consistently over the
9 last four years putting in more rail ties, ballast
10 into the infrastructure of the railroad, improving
11 the yard operations of CSX since I've been here.

12 Investing in whatever technology is the
13 cutting edge to improve the overall quality of the
14 operation and improve the safety. And we bring that
15 wherewithal to Pan Am, which you know simply can't
16 afford to have that cutting edge -- invest in that
17 kind of cutting edge technology.

18 So besides safety, over the last two years
19 have no idea what the next event is going to be, and
20 I'm waiting for a meteor to crash into the river out
21 there, outside our building, and you know cause you
22 know floods or whatever it might be. You know the

1 black swans we're trying to figure out.

2 So I'm confident, I'm extremely confident
3 again having done this before many times in my
4 career, but I am extremely confident that we have the
5 team, the wherewithal, the expertise and the
6 commitment to make sure that this gets done right.

7 BOARD MEMBER HEDLUND: Thank you. And I
8 certainly appreciate your comments about making
9 safety, or having safety be your number one priority
10 yes.

11 CHAIRMAN OBERMAN: All right. Any other
12 --

13 VICE CHAIRMAN PRIMUS: Yeah I'd like to
14 jump in if you don't mind.

15 CHAIRMAN OBERMAN: Yeah Robert?

16 VICE CHAIRMAN PRIMUS: Thank you. Hey
17 Jim, good morning. I'm a little surprised at your
18 last answer. I thought you know your top answer what
19 kept you up late at night would be you know coming
20 before us and this firing squad that you have to
21 endure for the next hour or so. You know --

22 MR. FOOTE: You're not that scary.

1 VICE CHAIRMAN PRIMUS: Not yet, not yet.

2 MR. FOOTE: No, Mr. Oberman
3 was right, I hear from the customers all the time.
4 They call me all the time, so you guys are I'm used
5 to getting beat up.

6 VICE CHAIRMAN PRIMUS: No. Well you know
7 it's not about you know beating anybody up, but I
8 think we have to call you know a lot of this you know
9 for what it is. I mean you know this is a dog and
10 pony show. You know you guys are going to be here
11 saying you know everything is going to be blue skies
12 and sunshine going forward, there's going to be no
13 problems.

14 You know, no one will have an issue, no
15 one will have anything going on. And I think the
16 reality is we all know that's not true. We all know
17 that you know mergers always come with risks. We
18 know that you know when you're looking at trackage
19 rights, interchanges, you know the world is full of
20 failed trackage rights.

21 And you know failed promises on
22 interchanges and other things. And I think the

1 reality is we have to call it for where we are and
2 what we're going forward. You know I acknowledge the
3 fact that COVID has did a number on the industry, but
4 I also think the industry has also done a number on
5 itself with PSR, and with these cuts that we've
6 endured.

7 I think COVID has just exposed that we
8 have no slack left in the system, and because we have
9 no slack left in the system we're not able to recover
10 the way we are. And you're right, there are
11 employment challenges out there, but we knew that.
12 And I think you know COVID just exacerbated it, and
13 now we realize that we don't have a plan to get them
14 back. People aren't coming back, but you know again
15 you want to grow, but you can't grow if you don't
16 have a labor force.

17 You can't grow if you don't have the
18 people out there running it at the level that we're
19 running it, and I think that's a big challenge. And
20 I think taking over a network in New England that
21 shows tremendous promise that you're right. That was
22 rescued from bankruptcy, but also has a lot of

1 capital expenditure needs.

2 The industry has been cutting their
3 capital expenditures along with you know lowering OR,
4 to win over Wall Street. You know we're at a point
5 now where the reality is you know a lot of people
6 you know yes, you get a lot of letters from folks
7 that support you, but you've got a lot of people also
8 wringing their hands because they're nervous as to
9 what they're going to get.

10 Because of what's out there now, yes,
11 you've improved. You know coming in 2019 you did
12 better than 2016, and some of the others when you
13 guys were stumbling. That's great. But you know
14 it's not the platinum level where I think the
15 industry should be, whether it's you or others, and I
16 think here we're looking at you know we've got to
17 take that into consideration as to where we are now
18 and where we're going.

19 And you know as someone who you know
20 worked in the mass delegation of 20 years in New
21 England, I'm very familiar with the network there,
22 and also how well it works with passenger rail. You

1 know this is a network now where you have more
2 passenger rail than freight rail.

3 And so you know, you and I had a
4 conversation almost a year ago, and I remember asking
5 you how you felt about passenger rail. And to a
6 certain extent, you know I'm going to paraphrase,
7 but you said you know hey, you know, I don't like an
8 increase in passenger rail, but we're working. You
9 know passenger rail and freight rail don't really mix
10 together. That was sort of what you were saying.

11 Well it mixes a lot in Massachusetts in
12 particular, and it mixes, it's going to mix a lot in
13 New England as well. And I know you know you guys
14 have these you know late night deals with Amtrak and
15 you know I applaud you for that, for getting them,
16 getting that moving, but there's a lot more to it.

17 We've got MBTA concerns. I'd like to hear
18 you know your thoughts on the dispatching issue. I
19 want to hear your thoughts on New Hampshire, talking
20 about their regional, their commuter line intercity
21 passenger because this is a lot that we're going to
22 be looking at you know, this is what the future is in

1 these regions.

2 And I know you're not interested too much,
3 and I know you said you're ready and willing to
4 address the passenger rail, but I don't know again,
5 from the conversations we had I don't know how much
6 willing you're looking at expanding passenger rail,
7 and that's what these states want to do, you know,
8 expanding potential Amtrak service.

9 I understand you know, having passenger
10 service now, and I know you added Berkshire, and I
11 appreciate that. But you know moving forward the
12 growth in the passenger rail side. You know how are
13 you going to come to terms with a growing freight
14 line that you want? You know again, you've got to
15 answer to your stakeholders, but also a growing
16 passenger rail network. We're not your
17 stakeholders.

18 You know I'd love to hear you know your
19 comments on that. And I know you've got your team,
20 and I'll be asking your team that too. But you know
21 like I said you know I get what you're saying. I
22 understand like you said, you know, you want to take

1 trucks off the highways, you know. That same notion
2 was said during the Conrail deal, yet there's tons of
3 trucks still on I-95 running up and down there.

4 As a matter of fact the industry hasn't
5 really made that much of a dig in in the trucking you
6 know since the early 2000's, so you know how is that
7 going to be different now you know? I really want to
8 hear the real answers to how you're looking forward
9 and dealing with some of these issues.

10 MR. FOOTE: Yeah that's a lot of
11 information.

12 VICE CHAIRMAN PRIMUS: It is.

13 MR. FOOTE: Yeah. That's fine and you
14 know I apologize if you think this is a dog and pony
15 show. As I said earlier we take this extremely
16 seriously. We have put a tremendous, tremendous
17 amount of effort into this transaction. We have
18 looked at every detail to make sure that this
19 transaction is successful, it is good for all the
20 constituents, and I believe -- I could be wrong, I
21 believe this is probably the first time ever that the
22 STB has ever looked at a major -- a railroad

1 consolidation where there was no shippers
2 complaining.

3 There is no shippers. There is no
4 NIT League, there's no American Chemistry Counsel.
5 There is no granite theater organization, there's no
6 pulp and paper. The shippers endorse this deal
7 wholeheartedly because it's good for the shipping
8 community.

9 And all the other people who have raised
10 issues, the passenger rail entities, we have met
11 them, and we have met their requests, so in Amtrak
12 --

13 VICE CHAIRMAN PRIMUS: Hey Jim I haven't
14 seen that. I haven't seen anything from Mass or
15 NBTA. Does that include those two?

16 MR. FOOTE: I think it did. Boston is
17 the only area where we still have some concerns, but
18 we --

19 VICE CHAIRMAN PRIMUS: New Hampshire too?
20 I know you did Vermont, but New Hampshire as well?

21 MR. FOOTE: There's no issue in New
22 Hampshire.

1 VICE CHAIRMAN PRIMUS: Okay. So that
2 commuter line that they were talking about that
3 they've been working with Pan Am, yeah you have no
4 problem with their continued, yeah they asked for
5 good faith negotiations on your part.

6 MR. FOOTE: To the best of my -- there's
7 no issue with New Hampshire.

8 MR. DENTON: Yeah sorry this is Peter
9 Denton. Hi Vice Chairman Primus. So we have no
10 issues with New Hampshire. Representative Pappas and
11 Kuster asked about us supporting commuter rail
12 options into New Hampshire, and we were clear that
13 we're willing to consider the introduction and
14 expansion of passenger service on request, just as
15 Mr. Foote has been saying.

16 MR. FOOTE: As I said earlier you know
17 what I say is what I mean. Do I have concerns about
18 comingling passenger trains with freight trains?
19 Yes. That's why it needs to be done correctly.
20 That's why it needs to be smoothly. Done. That's
21 why there needs to be the appropriate amount of
22 analysis to make sure that that gets done.

1 I think Chairman Oberman referred to it
2 earlier that he would like us to resolve the issues
3 of the Gulf Coast Amtrak commuter trains they want to
4 put in between New Orleans and Mobile. I told Amtrak
5 two years ago, we'll run the train tomorrow. We're
6 not opposed to putting passenger service in the Gulf
7 Coast. We're not opposed to that transaction
8 whatsoever, but it has to be done properly with the
9 appropriate level of infrastructure, so that it's
10 safe. So it could be done safely.

11 That line down there is a single line
12 piece of railroad that's extremely busy freight
13 traffic that the Port of Mobile has spent billions of
14 dollars on developing in order to put more freight
15 traffic on it, and they want to startup a train
16 without an analysis, without a study and saying that
17 they don't have to spend any capital to do it.

18 There's not even a freight station.
19 There's not even a passenger station on the line. Do
20 I have concerns about that? Absolutely. I don't
21 want anybody to get killed just because somebody
22 wants to say oh my God we have a national edict to

1 start putting passenger trains on, let's go out and
2 do it. So --

3 CHAIRMAN OBERMAN: Jim I know you know
4 that I gave you some encouragement to resolve that,
5 but if we litigate the Gulf Coast case in this case
6 we'll never finish with this case.

7 MR. FOOTE: All right. Well I'm sorry for
8 getting off track.

9 CHAIRMAN OBERMAN: That's all right. I
10 started it, so I'm going to try to finish it.

11 MR. FOOTE: You finished it perfect.
12 We'll leave that for another day. Your other
13 question about capital, railroads cutting capital. I
14 said before we haven't cut capital. We have
15 increased the capital that we put into this railroad.
16 We have increased the amount of rail ties ballast.
17 The infrastructure of the rail network, we've
18 increased investment over the last four years, and
19 we're committing to rebuilding the rail network of
20 Pan Am. Again, Mr. Boychuk will get to it. You ought
21 to take a picture of some of these main line tracks.
22 Is that what we want in perpetuity? It was so

1 overgrown with trees and weeds you don't even know
2 there's a railroad there.

3 So we think that our abilities to enhance
4 and improve service to the customers, and do it in a
5 more safe and efficient manner is a good thing, and
6 that's why we think that you know we're here today
7 earnestly putting forth, and with a significant
8 amount of filings already, explaining what our plans
9 are.

10 VICE CHAIRMAN PRIMUS: Hey Jim and I
11 appreciate that. You know and thank you. You know
12 when I said dog and pony, I didn't mean that this was
13 you know, you're coming here with you know other
14 issues. What I'm saying you know is everything
15 you're saying is everything is going to be perfect,
16 and you know I get that because you know you're going
17 into this merger thinking everything is going to
18 happen and it's going to be perfect.

19 Well my issue is that you know I know that
20 it hasn't in the past, I know more likely it won't in
21 the future, and just sort of acknowledging what are
22 the challenges coming into this merger and you know

1 how are you going to address those. Let me ask this
2 one last question. You know you're talking about
3 growth. You know where do you anticipate that growth
4 coming from within the region?

5 MR. FOOTE: Well I think it's kind of
6 broad based growth, and again Mr. Boone has a
7 presentation about the benefits associated with the
8 customers, he'll get into a little more detail. If
9 you improve the quality of the rail service, one of
10 the reasons that the railroads have not grown
11 historically is because they have had a product that
12 was not as good as the truck in terms of
13 reliability, and if you improve the reliability of
14 your product, and the reliability comes from a lot of
15 things, but principally you know do you run a good
16 operation, and then do you have seamless services,
17 and do you have a network?

18 One of the biggest reasons that we have
19 delays that customers don't get their goods is
20 because there's a mechanical breakdown, there's an
21 engineering defect in the rail that causes the
22 railroad to slow down. You've got slow orders out

1 there. Take a look at you know, take a look at how
2 many slow orders they've got on the Pan Am.

3 Take a look at the track speeds on the Pan
4 Am. The reason they got low slow track speeds is
5 based upon the quality of the track, that's what
6 determines how fast you can go. So when we make the
7 investments we will improve the quality of the
8 service and the reliability, and we believe that we
9 can grow across the board up there.

10 There is again, the shippers have already
11 talked to us about opportunities of expanding into
12 new markets further down into the U.S. from where
13 they can't go today. And so it's broad based, and as
14 I said Mr. Boone in his presentation will get into
15 specific details of customers.

16 VICE CHAIRMAN PRIMUS: Thank you.

17 BOARD MEMBER FUCHS: I'll very quickly
18 jump in and mention that you know I think the Vice
19 Chairman rightly points out the trade-offs of tax
20 mergers and that certainly some mergers difficulties
21 have ensued afterward.

22 I do want to point out though in the

1 recent history of the Board there are actually in my
2 observation, have been substantial benefits that
3 we've seen through some of the capital investment
4 promises of Class 1 railroads, as well as single line
5 service.

6 What comes to mind specifically is the CP
7 CMQ transaction where we've recently seen CP commit
8 about 74-75 million dollars for capital investments
9 and really opening up the Port Saint John. So you
10 know there have been several noteworthy instances,
11 particularly recently where some of these capital
12 investment promises and single line service claims
13 were validated by the facts that emerged after the
14 merger, but you know of course there are other
15 instances where transition has been difficult.

16 I just wanted to quick add that, that the
17 history goes both ways. But I think Michelle was
18 going to pop in with more questions.

19 MS. SHULTZ: Thanks Patrick. Hi Mr.
20 Foote. I'd just like to take a moment to reiterate
21 the comments of my colleagues, Chairman Oberman and
22 Patrick with the number of agreements that have been

1 entered into in this transaction. Most recently
2 yesterday with Amtrak, and speaking on behalf of
3 myself, I for one believe that the best outcome for
4 the network is always when the parties themselves
5 hammer out the terms of the agreements, and then
6 enter them, so appreciate that.

7 Just one question for you today. The
8 Department of Justice has recommended that the Board
9 condition the transaction on a requirement that CSX
10 divests interest in PAS. What if there isn't a buyer
11 that has both the ability and incentive to run PAS
12 successfully, and the Board required that divestiture
13 anyway. What would be the impact on the network, and
14 on the customers or other stakeholders?

15 MR. FOOTE: Well I think that they
16 transaction that we put together here is truly the
17 best solution for all the parties involved,
18 especially the shippers. It's you know when we began
19 the process to acquire Pan Am, we stood in the shoes
20 of the past 50 percent ownership with Norfolk
21 Southern.

22 And so, having a partner with the

1 wherewithal to make the appropriate levels of
2 investments in that railroad is the good thing, is a
3 good thing. Recognizing that there may be some
4 concerns raised by our involvement in the past we
5 took a step back and said okay, so we'll stand in the
6 shoes, but we are not in any way, shape or form going
7 to be involved in the commercial decisions over that
8 line, that that would rest with the B&E.

9 So we have the two strongest railroads,
10 the two largest users of that line involved in it
11 with a third party to make sure that there are no
12 issues raised from a commercial standpoint, and we
13 believe that that is the absolutely best decision.
14 Should the decision be made that you know somebody
15 else should own that line, or some other decision,
16 then we would have to take an assessment of what
17 would that mean, and decide you know what the
18 implications are on that decision on the overall
19 transaction.

20 BOARD MEMBER SCHULTZ: Thank you.

21 VICE CHAIRMAN PRIMUS: Marty I just want
22 to if I could real quick.

1 CHAIRMAN OBERMAN: Go ahead Robert.

2 VICE CHAIRMAN PRIMUS: I want to follow-up
3 on something that I just wanted to look up. You said
4 that you were with respect to Amtrak scheduling you
5 guys were in 100 percent agreement on the
6 scheduling. Is that correct?

7 MR. FOOTE: Correct.

8 VICE CHAIRMAN PRIMUS: Are you talking
9 about just in New England, or all your scheduling?

10 MR. FOOTE: The entire network.

11 VICE CHAIRMAN PRIMUS: Okay.

12 MR. FOOTE: All of 40 some trains.

13 VICE CHAIRMAN PRIMUS: Okay. Because I'm
14 trying to figure that out, because in May 2021, FRA
15 called us and said that you guys had 12 certified,
16 and 42 disputed schedules, so are those 42 schedules
17 now cleared up, Or did you guys?

18 MR. FOOTE: Yes, yes, 100 percent
19 agreement.

20 VICE CHAIRMAN PRIMUS: Okay. Since when?

21 MR. FOOTE: I want to say a month, six
22 weeks.

1 VICE CHAIRMAN PRIMUS: Okay.

2 MR. FOOTE: Maybe longer, two months at
3 the most maybe.

4 VICE CHAIRMAN PRIMUS: Okay. Thank you.

5 CHAIRMAN OBERMAN: Jim one quick follow-up
6 to your response to Michelle. When you said your
7 plan is to take a step back on PAS, I'm sure I want
8 to explore this later with other members of your
9 team, but just to be clear it is true is it not that
10 in terms of capital investment on the PAS line, you
11 will have a veto right. You have a 50/50 vote on
12 that, and so they can't go ahead unless you agree
13 with NS on the capital improvement plan. Is that
14 fair?

15 MR. FOOTE: Yeah that's a fair assessment.
16 Yeah it's 50/50 on capital correct.

17 CHAIRMAN OBERMAN: All right. I want to
18 go into that further, but I'm going to save it for
19 other witnesses. If the Board members are finished
20 for the moment Jim, we should let you get back to you
21 presentation, which I think you were in the middle
22 of, or?

1 MR. FOOTE: No I think I was just wrapping
2 up, and I was ready to turn it over to Mr. Boychuk to
3 go through.

4 CHAIRMAN OBERMAN: I meant your team's
5 presentation so.

6 MR. FOOTE: Oh, okay great.

7 CHAIRMAN OBERMAN: Yeah go for it.

8 MR. BOYCHUK: Well good morning, and thank
9 you for the opportunity to present our vision for the
10 future of Pan Am under CSX's operation. My name is
11 Jamie Boychuk, and I am CSX's Executive Vice
12 President of Operations. I oversee mechanical,
13 engineering, transportation, and network operations,
14 as well as the company's safety and facilities
15 functions.

16 I have been involved in the analysis of
17 CSX's acquisition of Pan Am since the beginning of
18 the bid process, and I sponsored the CSX operating
19 plan. First I'd like to reiterate Jim's point that
20 CSX's overarching philosophy is to be a safe, leading
21 railroad that grows the business through an
22 unrelenting focus on service.

1 And to do that we need to have all the
2 right resources in place. First among them are
3 people. My team has been laser focused on hiring and
4 retaining throughout all of last year, and into this
5 year. We've seen tremendous progress, and we will
6 continue these efforts for the foreseeable future.

7 As Jim explained, our acquisition of Pan
8 Am will extend our customer focused Class 1 rail
9 service to New England. I plan to briefly discuss
10 how the New England rail network, and all of its
11 users will benefit from joining the CSX network. I
12 intend to cover four topics -- all of which were
13 described in greater detail in our filings.

14 First, the benefits of the transaction to
15 New England passenger rail service. Second, the
16 infrastructure investments that we plan to make in
17 the PAR system, increasing safety and efficiency.
18 Third, I would plan to modernize PAR's rail
19 operations and have this more consistent and reliable
20 service will benefit all rail users and the
21 environment.

22 And fourth, how the interest of rail labor

1 will be protected. But before I discuss the
2 benefits, I'll begin by providing a brief overview of
3 the transaction, and the two railroad systems at
4 issue. Pan Am owns and operates the railroad network
5 known as Pan Am Railways, or PAR.

6 PAR extends about 800 miles primarily
7 through Massachusetts, Maine and New Hampshire. The
8 PAR network is shown in red on these maps. After CSX
9 acquires PAR, CSX will integrate the PAR system
10 directly into our national network which is shown in
11 blue on these maps.

12 Pan Am also owns a 50 percent interest in
13 Pan Am Southern, or PAS. An independent railroad
14 established in 2009, as a joint venture between Pan
15 Am and Norfolk Southern. The PAS network is shown in
16 green on these maps. It consists of two principal
17 lines -- one running more south between Vermont and
18 Connecticut, and one running east/west between
19 Massachusetts and Upstate New York.

20 Pan Am currently operates PAS on a
21 contract basis. As we will discuss in more detail
22 today, we've negotiated a restricting of PAS that

1 will result in PAS hiring, the Berkshire Eastern, or
2 the B&E to operate and set rates for PAS, all for the
3 benefits of PAS and its owners.

4 As Jim briefly discussed earlier, we
5 recognize the importance of passenger rail to these
6 railroads and their communities. We treat passenger
7 trains as a top priority across our network, and we
8 have dedicated 24/7 passenger rail team that works
9 around the clock to closely resolve any issues raised
10 by our passenger rail partners.

11 Amtrak operates over more than 3,000 miles
12 on CSX's network. They operate 40 trains per day.
13 Combined with our commuter rail partners, about 112
14 trains per day run on our network. Additionally, we
15 have extensive experience hosting and partnering with
16 commuter rail services such as VRE in Virginia and
17 MARC in Maryland.

18 We recently entered into a major line sale
19 transaction with the Commonwealth of Virginia to
20 bring more passenger rail onto our system. CSX also
21 operates as a tenant if a rail line is owned by seven
22 different passenger railroads, just as Pan Am does

1 with MBTA and Mass DOT on certain lines. We expect
2 to apply all of this experience to our work on the
3 PAR system.

4 Our Amtrak performance level has recently
5 hit historic highs. The chart here shows how our
6 Amtrak on time performance levels have improved over
7 time from 60 to 70 percent prior to our
8 implementation of our scheduled plan in 2019, to more
9 than 90 percent after that time.

10 We also recently became the first U.S.
11 Class 1 to achieve certification of all Amtrak
12 schedules on CSX lines in accordance with the
13 customer on time performance, metrics and standards,
14 put in place by the FRA. The improved infrastructure
15 and more reliable operations that would result from
16 CSX and B&E taking over operations from Pan Am of the
17 PAR system and the PAS network, will provide great
18 benefit to passenger rail services that run on these
19 rail networks.

20 We will maintain or improve existing
21 passenger service, and fully step into the shoes of
22 Pan Am with respect to all of its obligations to the

1 sponsors of passenger rail services. This includes a
2 commitment that dispatching for any MBTA, or Mass DOT
3 lines will be conducted indefinitely at the new
4 dispatching center built by MBTA and Pan Am. Since
5 announcing our proposed acquisition of Pan Am we have
6 engaged in many discussions with rail, passenger rail
7 stakeholders, yielding a number of settlement
8 agreements and statements of support.

9 These include the Connecticut, New
10 Hampshire, and Maine Departments of Transportation,
11 and the Northern New England Passenger Rail
12 Authority, the state sponsor of Amtrak's downeaster
13 inner city passenger service.

14 You will hear from many of these
15 supporters later in the hearing. We've made several
16 commitments to preserve existing passenger service,
17 including infrastructure upgrades and Ayer that will
18 benefit MBTA commuter rail service, and installation
19 of positive train control on the power line that
20 hosts the Amtrak downeaster.

21 I'll talk about these infrastructures a
22 bit more in a minute. Additionally, we have

1 committed to explore with Mass DOT the introduction
2 of additional, or expanded passenger service in
3 western Massachusetts.

4 The second topic I'd like to address is
5 infrastructure. To the unending credit of the
6 Springfield Terminal employees, the PAR system has
7 been maintained for decades with limited resources.
8 I have personally ridden across most of the Pan Am
9 system, and I have seen both the resourcefulness and
10 the deferred maintenance first-hand.

11 CSX will upgrade and modernize the
12 infrastructure, elevating the network's potential,
13 and maximizing its efficiency. My team and I have
14 identified a number of capital projects, totaling
15 more than 100 million, including 50 million this year
16 alone, that will transform the PAR network, and bring
17 it up to the standards that New England rail users
18 deserve.

19 Pan Am has done an amazing job running the
20 rail network with such limited resources. But New
21 England deserves better, and we're going to upgrade
22 it to a Class 1 rail network. I'll walk through a

1 few images here that show you some typical conditions
2 on the PAR network as compared to the CSX network.

3 This slide shows the main line on the PAR
4 network alongside the main line on the CSX network.
5 You can see the differences in surfacing, tie
6 condition, and overall quality of the track, as well
7 as the general cleanup from previous work. Our
8 next slide --

9 CHAIRMAN OBERMAN: Jamie where was that?
10 What part of the network are you showing us?

11 MR. BOYCHUK: This is for us it's a --

12 CHAIRMAN OBERMAN: No the PAR, the PAR.
13 When you go through these photos would you tell us
14 where in the geography you're taking these pictures,
15 on the PAR network?

16 MR. BOYCHUK: Yes absolutely. This end
17 here that you're looking at the pictures off of
18 Branch Line that connects just north outside of the
19 Worcester connection.

20 CHAIRMAN OBERMAN: Now how many shippers
21 are on that line, or where does it connect?

22 MR. BOYCHUK: There's just a couple of

1 shippers out towards that line.

2 CHAIRMAN OBERMAN: It would be helpful as
3 you're showing us these to put them in the context of
4 how they have -- I think it would save time, for me I
5 don't want to go back. But in terms of the
6 conditions of the PAR network that needs work, it
7 would be helpful to put that in place as to where,
8 how this network is going to function after the
9 merger, what trains are going to be on it, how many
10 trains and so forth. So if you put it in context it
11 would be helpful.

12 MR. BOYCHUK: As well as velocity.

13 CHAIRMAN OBERMAN: Pardon? I didn't hear?

14 MR. BOYCHUK: Velocity, to any velocity.

15 CHAIRMAN OBERMAN: Yes. That would be
16 helpful too Jamie, thank you.

17 MR. BOYCHUK: So the one that you're
18 looking at there is the main line north of
19 Waterville. Okay that's a track that operates
20 anywhere -- there's so many slow orders on some of
21 this track, there are anywhere from 15 to 25 miles
22 per hour on that track. There's one train a day that

1 services up and down that area, but there are some
2 locals that run in that area with respect to some of
3 the customers that are north of Waterville.

4 So the next picture if we move on, so this
5 is an image on the left that shows a condition on the
6 PAR network, that's a road crossing on the Worcester
7 main. The crossing has deteriorating conditions you
8 can see, clearly not been maintained. This also
9 includes the vegetation overgrowth which causes
10 necessary site line issues.

11 This main line again is an interchange
12 main line that operates one train up and down daily.

13 CHAIRMAN OBERMAN: Where is it Jamie?

14 MR. BOYCHUK: This is on the Worcester
15 main, so this is between Barber station and up
16 towards Ayer. And the image that you see on the
17 right shows a crossing on our CSX Somerset County in
18 Pennsylvania. The crossing is in good condition, but
19 as you can see there's material on the ground, which
20 is still being, this crossing is going to be updated,
21 which is part of our routine maintenance program. We
22 would consider this a deteriorated poor condition

1 crossing on the CSX network.

2 VICE CHAIRMAN PRIMUS: Hey Jamie the
3 Worcester main yeah, how much traffic are you guys
4 anticipating on that line? How much do you see
5 having to spend to fix that?

6 MR. BOYCHUK: We are anticipating still
7 one freight train a day up and down that main for the
8 next couple of years as we grow this business. We
9 move anywhere from 40 to 60 cars interchange with the
10 Pan Am on that main. This is an area that if elected
11 there would be a intermodal train at some point in
12 time that NS would use, running down along our lower
13 route in order to get to Ayer so they could double
14 stack instead of doing the current single stack
15 operations that they run today from Mechanicsville
16 across to Ayer.

17 VICE CHAIRMAN PRIMUS: What would be the
18 velocity on that track?

19 MR. BOYCHUK: Well this is slow track.
20 We're 10 to 15 miles an hour. There are some
21 sections at 25, but this is slow track. Everywhere
22 we're dealing with respect to freight operations

1 with the number of slow orders, and the condition of
2 the track, we're anywhere from 10 to some areas five
3 miles an hour on branch lines, up to a maximum of 25
4 miles an hour where the freight operations are
5 running. Now you do have sections that comingle
6 with Amtrak and other areas that would be running
7 anywhere from 50 to 60 miles, but of course those are
8 smaller sections.

9 BOARD MEMBER FUCHS: Hey Jamie, you
10 mentioned slow a couple of times. I think Jim did
11 too. Can you put some numbers around slow order
12 volume on the Pan Am in comparison to what you would
13 expect on equivalent track of the CSX, or by
14 equivalent I mean you know traffic characteristics,
15 topography, et cetera.

16 MR. BOYCHUK: There are 200 miles of long
17 term slow order on the Pan Am network. Just remember
18 it's not a very big network. On CSX our network, you
19 might find about 20 slow orders maximum on our entire
20 network, 20 miles worth, so think about the
21 difference of our network compared to what you see on
22 the Pan Am network.

1 CHAIRMAN OBERMAN: I'm going to interject
2 here Jamie, if you don't mind, in terms of your
3 presentation, and suggest a short break.

4 MR. BOYCHUK: Yes sir.

5 CHAIRMAN OBERMAN: We've been going for
6 about an hour and a half here. Is this a convenient
7 time for you Jamie, are you okay with that?

8 MR. BOYCHUK: Yes sir, absolutely Mr.
9 Chairman.

10 CHAIRMAN OBERMAN: All right. And just
11 one announcement for our participants in this
12 hearing. I am told that there have been some access
13 problems from our original YouTube link on our
14 website. I am told that that has been fixed by the
15 miracles of modern electronics, so if you need to
16 re-enter through YouTube, I think the updated link on
17 our website should solve your problems, if not be
18 sure to let somebody know.

19 With that let's take a break of 10
20 minutes, does that work for everybody.

21 MR. BOYCHUK: Yes sir.

22 CHAIRMAN OBERMAN: Because we're all not

1 physically moving around that much, we will convene
2 promptly at 10 minutes after 11:00 Eastern.

3 (Break).

4 CHAIRMAN OBERMAN: Alright I think we have
5 reconvened. Jamie the floor is yours.

6 MR. BOYCHUK: Thank you Mr. Chairman. The next
7 slide. Next you can see a PARS Hillsboro Branch line
8 on the left. This branch line is jointed rail, as you
9 can see marginal tie conditions, surface conditions,
10 alignment issues, and vegetation which is
11 encroaching again on the line, which is poorly
12 maintained rails.

13 CHAIRMAN OBERMAN: Where is that Jamie, I'm
14 sorry.

15 MR. BOYCHUK: So the Hillsboro Branch is up
16 north connecting off of again, I believe it's just
17 south of Waterville.

18 CHAIRMAN OBERMAN: And what kind of traffic
19 does that carry?

20 MR. BOYCHUK: Again, these branch lines don't
21 have a lot of traffic on them. This is, I believe, a
22 as needed basis for service for customers.

1 CHAIRMAN OBERMAN: Okay.

2 MR. BOYCHUK: It's all ten mile an hour track.

3 And as I talk about some of the conditions that you
4 see on the branch lines, it's good to note that if
5 you compare some of the rail defects, Pan Am being
6 around 1300 miles, there sitting with 1700 FRA rail
7 defects, on CSX which is 23,000 miles we have less
8 than 200 rail defects that we're constantly repairing
9 and changing out. So, very big numbers when you take
10 a look at the difference in the rail condition.

11 On the right of this screen here is our CSX
12 Dalton line branch, if you go back, which has good
13 vegetation control, ties are in good condition,
14 ribbon rail and track surface. This is what we
15 expect when we've done our infrastructure projects
16 for Pan Am, to look like over the next number of
17 years, as we continue to look at the dollars and
18 capital that we put in.

19 On the next image here, on the left is PARS
20 Rigby yard in Portland. While the image on the right
21 is our CSX Avon yard in Indianapolis. You can see the
22 big differences. The image on the left shows of

1 course, alignment issues, surface issues, and this is
2 their main switching lead, with the small rail. On
3 the right you'll see one of our mains switching leads
4 at CSX, a ladder track that has 136 pound rail,
5 improved walking conditions for employees, and train
6 crews along with ergonomic switch handles for
7 employees. Again this is --

8 CHAIRMAN OBERMAN: But what gets
9 interchanged there in the picture on the left Jamie?

10 MR. BOYCHUK: On the left is where they do
11 all of their switching with respect to their traffic
12 to go north and south, so pretty much all of the far
13 north track.

14 CHAIRMAN OBERMAN: From where is this
15 yard?

16 MR. BOYCHUK: That would come out of both
17 Deerfield and/or off of CSX lines today, so all PAR
18 north traffic heads up to this location where it gets
19 switched in Rigby Yard gets blocked, and then either
20 sent south to customers, or further north for
21 customers.

22 This is their main switching yard other

1 than Waterville, which would have a smaller
2 footprint, but this location is Pan Am's main
3 switching yard.

4 CHAIRMAN OBERMAN: Thank you.

5 MR. PRIMUS: Hey Jamie where would your
6 main switching yard? Were you guys doing it
7 somewhere in the Ayer?

8 MR. BOYCHUK: No, no, Ayer yard for us as
9 I'll mention here next is really a location that
10 we're going to help support building some bypass
11 tracks and some more capacity. We don't plan on
12 doing switching at Ayer, our plan would be to upgrade
13 what you see here in Rigby, as well as doing some of
14 the blocking I had mentioned in Selkirk Yard, so that
15 blocking would be pre-blocked ahead of going up on
16 the northern line, so we can service customers
17 between that location, and then we would switch here
18 as well to continue the traffic to go north.

19 VICE CHAIRMAN PRIMUS: How much more
20 capacity are you expecting Selkirk to endure?

21 MR. BOYCHUK: Selkirk is the well
22 underutilized hump yard today. We process around

1 1,600 to 1,700 cars. That is a hump yard that could
2 handle 2,500 to 2,600 cars each day. Most of the
3 cars today that go to the north off of our railroad
4 already goes through Selkirk yard and gets put into
5 one block which heads to Worcester, and then connects
6 on an interchange to the Pan Am, so we'd still be
7 handling the same number of cars today, but we would
8 expect that would be an encouragement of growth in
9 the future to have such a direct connection, and it's
10 been that much faster to get into the National Rail
11 Network.

12 VICE CHAIRMAN PRIMUS: How much and
13 thanks, how much growth. I asked that to Jim you
14 know expecting, looking at the lines that you
15 currently have. You know what type of capacity are
16 you looking in? You can only grow due to your
17 capacity, and due to you know the rail
18 infrastructure. You know how do you envision that
19 you know going forward sort of hand in hand, and you
20 know what's going to happen?

21 You can't grow until you I guess I'm
22 looking at you know you improve that infrastructure,

1 but how do you sort of measure that, or sort of look
2 at you know how you're going to measure growth with
3 that infrastructure?

4 MR. BOYCHAK: Right. And I'll let Kevin
5 on his comments talk about some of the growth
6 itself. But with respect to the operating side we
7 look at a 3 percent increase in a lot of
8 circumstances means you know five or six cars on the
9 tail end of a current train that we run today.

10 So the business that's up there really
11 isn't extraordinary when we think about the PAR
12 network itself, so as we continue to bring in better
13 product up to New England, and Kevin and his team are
14 able to grow that business, and I'll talk a little
15 bit about our connection that we're looking at
16 putting in, which is 113 miles that connect up to the
17 Port of St. John.

18 We want to, and we will compete on that
19 route with the two Canadian Class 1's in order to
20 move that traffic down that route, so this is a very
21 competitive lane that we feel we can be in
22 competition with those two Canadian Class 1's to

1 connect to the eastern United States, and further
2 into the U.S. network really from a great connection
3 that we have in New York.

4 The map you see on your screen here --
5 where am I at? Slide 13. The map you see on your
6 screen here highlights many of the areas and types of
7 projects that we plan to implement. The small
8 colored circles are placed along the PAR lines at
9 locations where we plan to implement projects.

10 Each colored circle represents a different
11 type of project, and at the bottom center of the map
12 is the key identifying the various types of
13 infrastructure projects. For example, a green
14 circle represents a track upgrade intended to fix
15 speed restrictions that result from deferred
16 maintenance or needed capital investment.

17 You can see many green circles on the PAR
18 lines. We plan to restore the PAR system main line
19 track, eliminating long-term slow orders that
20 currently reduce the efficiency of the PAR system.
21 Yellow circles represent bridge improvements that we
22 will make.

1 Red circles identify yard improvement
2 projects that will reduce derailments and improve
3 yard fluidity. CSX led Class 1 industry with the
4 fewest engineering derailments in 2021, and we
5 expect to make the necessary investments to achieve a
6 similar safety performance on the PAR system.
7 There's a lot of information on this map. I don't
8 intend to go into all the detail about each project,
9 but I'd like to give you a flavor of the various
10 infrastructure projects by walking through this map
11 from the bottom up.

12 The first region includes the PAR line
13 that connects CSX's network at Worcester to the
14 important junction point of PAR and PAS at Ayer.
15 This line segment passes along the reservoir outside
16 of Boston. We appreciate that there are
17 long-standing concerns about the PAR system and the
18 rail infrastructure and operations along this line.

19 We have committed to making extensive
20 upgrades to the PAR line near the reservoir that will
21 protect public health and the local ecosystem. We
22 will upgrade and maintain the tracks and structure.

1 We will set a 25 mile per hour speed limit. We will
2 not park or idle trains on the segment, and we'll
3 improve communications with local stakeholders.

4 This project is a priority for CSX, and we
5 plan to complete this work within a year of starting
6 it.

7 CHAIRMAN OBERMAN: Jamie before you leave
8 that, I'm trying to identify this location on a
9 larger map.

10 MR. BOYCHUK: If you take a look sir at
11 the map I just put up now, you will see a circle of
12 where that location is at.

13 CHAIRMAN OBERMAN: I know, but I'm looking
14 at a larger map, so I can identify it. Is this
15 between Harvard and Ayer?

16 MR. BOYCHUK: Yes sir it is.

17 CHAIRMAN OBERMAN: And that is a line
18 that's currently owned by PAS right?

19 MR. BOYCHUK: No. This is a PAR line.
20 This is where it connects up to Ayer, which then goes
21 on to PAS for a number of miles before it gets back
22 onto PAR.

1 CHAIRMAN OBERMAN: Okay. Because the map
2 I am looking at that you filed, the line between
3 Harvard and Ayer is red, which I thought was symbolic
4 of PAS. So I'm just trying to make sure I
5 understand what you're talking about.

6 MR. LARocca: Mr. Chairman, this is
7 Anthony LaRocca. Let me just clarify. The line that
8 we've circled here goes between Barber Junction,
9 which is a little bit north of Worcester. Just a
10 little bit north of Worcester.

11 CHAIRMAN OBERMAN: I see it.

12 MR. LARocca: And it goes all the way up
13 to Ayer. The line between Barber Junction and
14 Harvard is actually a PAR line.

15 CHAIRMAN OBERMAN: I see that, but from
16 Harvard to Ayer it looks like it's PAS does it not?

17 MR. LARocca:

18 That's exactly right. That's a PAS line, and we
19 have trackage rights over that line, and extending
20 from Ayer to the north, trackage rights to a location
21 you'll see there called Willow.

22 CHAIRMAN OBERMAN: Yeah I see it, so.

1 MR. LAROCCA: And from there it's PAR
2 again.

3 CHAIRMAN OBERMAN: All right. So what is
4 the reservoir? That's my -- Clinton, is that?

5 MR. LAROCCA: Closer to the Barber
6 Junction, down in the southern part of that line.

7 CHAIRMAN OBERMAN: Okay, all right.

8 MR. BOYCHUK: And this reservoir is the
9 main reservoir for Boston drinking water.

10 CHAIRMAN OBERMAN: Right. Okay. Just
11 trying to place it. Thank you.

12 MR. BOYCHUK: Absolutely. Let me show you
13 what it looks like. The two photos show examples of
14 the main line tracks through water reservoirs. As
15 you can see on the left a PAR line near the
16 reservoir is overgrown with vegetation, which
17 inhibits the ability to inspect or perform
18 maintenance on the track. When you think about it,
19 vegetation does not grow on rocks. This is a
20 condition typically caused by contaminated ballast
21 sections. It needs to be shoulder ballast clean,
22 undercut in order to improve the drainage, and allow

1 for easier vegetation management without the use of
2 harsh chemicals.

3 Now the photo on the right is the CSX line
4 that runs adjacent to Lee Hall Reservoir in Newport
5 News, Virginia, where we operate safely and
6 efficiently for over 100 years. Moving north the
7 next region includes Ayer yard. Ayer is an important
8 location because it is both the eastern and a PAS
9 Patriot corridor, and also a crucial link between the
10 CSX network and PAR locations to the north and east.

11 There are also passenger operations that
12 use the infrastructure around the yard. The photo on
13 the right shows the current state of Ayer yard, with
14 many of the tracks occupied on a typical day. CSX
15 has agreed to make substantial investments in Ayer.
16 With these improvements operations around Ayer will
17 become much more efficient, we will free up tracks,
18 reduce congestion at the MBTA commuter station, and
19 provide additional capacity.

20 By utilizing our current network --

21 CHAIRMAN OBERMAN: Do you have a picture
22 of what the Ayer yard looks like now compared to the

1 one --

2 MR. BOYCHUK: That is it right there.

3 CHAIRMAN OBERMAN: Okay.

4 MR. BOYCHUK: What you see now is what
5 Ayer yard looks like.

6 CHAIRMAN OBERMAN: I thought that was one
7 of your yards, okay. All right thank you.

8 MR. BOYCHUK: Yes sir. By utilizing our
9 current network, CSX will now be able to pre-block
10 certain traffic bound for PAR territory and our
11 Selkirk yard in New York. Rather than switching the
12 traffic at smaller yards on PAR, Selkirk is a gateway
13 to the National Rail Network, and is under utilized
14 today.

15 Blocking PAR traffic at Selkirk will free
16 up capacity at Ayer for traffic inbound to the PAR
17 network, providing efficiencies above and beyond the
18 infrastructure projects I just discussed. For
19 outbound movements from PAR using Selkirk will
20 provide a faster, further reach into the National
21 Rail Network.

22 In short, we believe using Selkirk to

1 block cars headed to and from PAR will encourage
2 growth.

3 BOARD MEMBER FUCHS: Hey Jamie?

4 MR. BOYCHUK: Yes.

5 BOARD MEMBER FUCHS: Just quick bounce
6 back to Ayer for a second. In the I believe the
7 settlement agreement, there's an attachment B about
8 operations, protocols, engineering planning, and
9 capacity roadmap. And there's discussion about
10 levels of service. You know both, and aesthetic yard
11 plan, and appreciating that some aspects of that may
12 be commercially sensitive, I was wondering if there
13 is information you can provide publicly, in terms of
14 how you are thinking about levels of service at Ayer,
15 what the Board and the public should expect in terms
16 of service improvements.

17 MR. BOYCHUK: We've stated, and my team is
18 fully committed to maintaining the service levels
19 that everybody has today, if not improving those
20 levels. The number of days that folks, our
21 customers, are being serviced and will be maintained.
22 If they require more service because of the fabulous

1 work that I know Mr. Boone and his group will do,
2 we'll provide more service to those customers.

3 The project that we are looking at doing
4 at Ayer Yard is more of a bypass track, so we don't
5 have to fight through the current volume that's out
6 Ayer in order for us to bypass on the PAS section, in
7 order to get to the Northern part of the Pan Am
8 system. Along with that are more discussions with
9 respect to whether or not the requirement is to build
10 more tracks in some of the areas where there is open
11 land, but those are of course discussions that would
12 take part between ourselves and our partners on PAS.

13 BOARD MEMBER FUCHS: Thank you.

14 MR. DENTON: Commissioner Fuchs this is
15 Peter Denton. I would just add that I think a
16 critical part of our agreement with Norfolk Southern
17 with respect to Ayer is that there's an existing cap
18 on the amount of trains that Pan Am railways can run
19 across that section of PAS that we were talking about
20 there starting in Ayer.

21 And part of what we've done with Norfolk
22 Southern here is agreed to lift that cap, such that

1 our single line service will be able to run freely
2 and efficiently through that PAS portion through
3 Ayer.

4 BOARD MEMBER FUCHS: Thank you.

5 VICE CHAIRMAN PRIMUS: And I have a quick
6 question too. So I know the MBTA also brought up an
7 issue about working together with you guys in the
8 Ayer region, especially about between Ayer and
9 Willow, and their thoughts of increasing their
10 passenger service there. Can you comment on that?

11 MR. BOYCHUK: We are going to be working
12 on some double track out there, and I'll mention some
13 of that here coming up, but with respect to any
14 passenger service running in those areas, and/or
15 increasing, we've told all of our partners that we're
16 willing to sit down and listen. We feel like we are
17 very good at what we do with respect to moving
18 passenger trains.

19 We understand what this corridor is all
20 about and what it means for passenger rail, and
21 commuter rail, and you know we're going to sit down
22 and listen to every one of these requests that are

1 made. If there is some infrastructure that needs to
2 be done on the PAS section we have a partner that we
3 need to make sure that we confer with, and have a
4 discussion to ensure that Norfolk Southern and
5 ourselves are both aligned on this, but I know that
6 we have all committed to continuing to improve and
7 expand where it makes sense for everybody, commuter
8 and passenger service.

9 VICE CHAIRMAN PRIMUS: Okay. Their
10 concern of course is capacity in that area as you
11 guys are growing, you know, and they're worried how
12 it affects passenger rail. You know they've asked to
13 be a part of that planning. I mean do you guys have
14 any opposition to them being a part of that?

15 MR. BOYCHUK: Absolutely not, we encourage
16 it. Absolutely encourage it on the operating side.

17 VICE CHAIRMAN PRIMUS: Thank you.

18 MR. DENTON: I would just Jamie briefly,
19 Vice Chairman Primus the area there they're concerned
20 about, Ayer to Willows is a PAS line, so CSX would be
21 50 percent owner. Any potential changes in PAS
22 traffic that Mass DOT is concerned about just don't

1 have -- do not result from this transaction.

2 The transaction itself will actually be
3 moving trains, Norfolk Southern trains on CSX's
4 southern route coming into Ayer, taking it off the
5 Patriot corridor there. The transaction brought
6 before you won't have negative impacts from that Ayer
7 lines.

8 CHAIRMAN OBERMAN: Who is that who was
9 speaking? I'm sorry?

10 MR. DENTON: Yeah Chairman Oberman, this
11 is Peter Denton with Steptoe and Johnson.

12 CHAIRMAN OBERMAN: Oh Peter, I'm sorry
13 your thumbnail is so small I couldn't see you. Thank
14 you. But I know you have a bigger presence, so it's
15 okay.

16 MR. DENTON: Thanks.

17 MR. BOYCHUK: All right. Moving north
18 this region covers the PAR main line north of Ayer
19 and into Maine. As is clear from the map, we're
20 going to make numerous track, yard and facility
21 improvements along this line. Let me highlight just
22 a few of those projects. We have pledged to assist

1 in the installation of PTC along the PAR lines
2 between Massachusetts, New Hampshire state line, and
3 the Brunswick Station to support safer operations of
4 Amtrak's downeaster passenger trains.

5 There are six bridge improvement projects
6 along the line. We will be adding several miles of
7 double track capacity, via extension of the well
8 siding, as well as the signaled interlocking system
9 to support the siding extension.

10 And in the northern region where PAR
11 connects the lines running to the New Brunswick Port
12 of Saint John. We will be upgrading 113 miles of
13 main line track in order to allow for direct
14 interchange. This will allow us to compete with
15 Canadian Class 1's at the Port of St. John's with
16 more efficient connections into the National Rail
17 Network.

18 On the next slide --

19 CHAIRMAN OBERMAN: Something I'm missing
20 here. How could you have service on that main line
21 now without PTC already being installed?

22 MR. DENTON: So PTC requirements, Chairman

1 Oberman, are not necessarily relevant to a Class 2
2 railroad such as Pan Am that currently hosts the
3 downeaster.

4 CHAIRMAN OBERMAN: Isn't it well --
5 wherever the passenger runs there has to be PTC does
6 there not?

7 MR. BAYCHUK: No, only Class 1 railroads
8 are required.

9 CHAIRMAN OBERMAN: All right. Thank you.

10 MR. BAYCHUK: Yep.

11 CHAIRMAN OBERMAN: So what you're really
12 saying is you have to, once you take it over you're a
13 Class 1, you have to put the PTC in, it's not
14 something you're volunteering to do.

15 MR. DENTON: So Chairman Oberman I'm not
16 sure if that's the case. They have an MTEA, which is
17 a main line track exception. I think we would coming
18 in that exception when we take it over. We've been
19 in discussions with FRA about this, but the bottom
20 line is that we are going to install PTC on this
21 line.

22 CHAIRMAN OBERMAN: Okay.

1 MR. DENTON: It's something that wouldn't
2 happen otherwise, unless we were coming in.

3 CHAIRMAN OBERMAN: All right thank you.

4 MR. BOYCHUK: On the next slide the image
5 on the left shows a typical segment of PAR main line
6 in Maine at the town of Lincoln. The image on the
7 right shows a typical main line on a CSX network
8 located just south of Selkirk. Again these photos
9 provide another example of the difference in rail,
10 tie and surface conditions of the two railroads.

11 In addition to infrastructure
12 improvements, both rail operations and the
13 environment will benefit from our replacement of
14 high maintenance, older and less fuel efficient
15 Springfield terminal locomotives, to the more modern,
16 fuel efficient and powerful CSX fleet.

17 Better and cleaner locomotives will result
18 in operating reliability and environmental benefits
19 to the PAR system. We will also implement our
20 industry leading operating practices to modernize
21 operations, improve reliability, and introduce
22 careful data measuring and management.

1 Pan Am currently uses a manual combination
2 of magnetic boards, paper forms, and spreadsheets to
3 operate their system. The photo on the left shows
4 the magnetic board which tracks locomotive movements
5 on the Pan Am system. CSX's modern tool includes our
6 real time locomotive tracking and health system shown
7 here on the screen on the right.

8 We will replace the outdated Pan Am
9 approach with the CSX approach. On a daily basis my
10 operating team reviews detailed performance metrics
11 regarding the CSX system, including charts and data
12 on a wide range of issues, such as a train velocity
13 and on time performance. We will apply that same
14 approach to the PAR network.

15 Additionally, we anticipate operating the
16 PAR system on a scheduled basis to bring more
17 reliability and consistency to PAR customers. I
18 recognize current rail operations are experiencing
19 the effects of crew shortages caused by COVID, but we
20 expect that to be short-lived. Over the longer term
21 the network will be improved by scheduled operations
22 that will provide more reliable service.

1 All of these efficiencies will result in
2 safer, more efficient, and more environmentally
3 friendly railroad operations that will benefit all
4 users and the New England public at large.

5 Finally, fair labor will be fully
6 protected. CSX does not anticipation any reduction
7 of the Springfield terminal workforce that is
8 providing service today over the PAR system. In
9 fact, we plan on hiring additional employees to work
10 on that territory, and we will leverage our
11 world-class Atlanta training center to develop
12 current and future employees working on the PAR
13 network.

14 Moreover, the standard New York dock labor
15 protective conditions will apply here. One of the
16 strongest benefits of the proposed transaction for
17 rail labor is the expected improvements in safety.
18 Safety is a vital component of both our operating
19 philosophy and goals. We have led the industry with
20 the lowest FRA reportable injury rate in 2019 and
21 2020.

22 Let me turn the microphone over to Kevin

1 Boone who will describe the customer benefits that
2 will result from the infrastructure and operational
3 improvements that I have identified.

4 MR. BOONE: Jamie real quick.

5 CHAIRMAN OBERMAN: Go ahead Patrick.

6 MR. BOONE: No Marty you go.

7 CHAIRMAN OBERMAN: Jamie before you leave
8 -- I know you're not leaving, but before you turn it
9 over can we go back to the map of the overall capital
10 infrastructure projects? There we go, yeah. So what
11 -- are you able to say here publicly, what is the
12 total amount of capital you are budgeting for all of
13 these projects?

14 MR. BOYCHUK: Yes. We are looking at this
15 point in time we've put together 100 million dollar
16 plan. 50 million of that being in our first year, so
17 50 million expected to spend this year, and the
18 additional capital over the next couple of years.

19 CHAIRMAN OBERMAN: So that 100 million
20 will be done within three years?

21 MR. BOYCHUK: Yes sir. As a matter of
22 fact the 100 million will be in the next three years

1 and that number may even grow as we continue to
2 analyze the railroad.

3 CHAIRMAN OBERMAN: All right. And here is
4 where I'm having trouble understanding about this
5 overall transaction, and I'll direct it to you, but
6 if anybody else on the team wants to weigh in please
7 do. I asked some of these questions of Jim at the
8 outset.

9 You're spending a significant sum to make
10 this purchase. I'm not putting that in the record
11 unless you want to, plus at least 100 million on top
12 of it. The traffic projected growth of 2.3 percent
13 for three years, and then an additional 1.5 percent
14 for the next two years assumes that most, if not all
15 of these capital expenditures will have been made to
16 the extent it's necessary to serve the existing
17 traffic and natural growth.

18 I'm having trouble understanding how you
19 are committing 100 million dollars of more
20 expenditure, and you say it may be more on top of the
21 purchase price to generate basically no new growth
22 resulting from the merger, but only normal growth for

1 the growth of the economy. I still don't understand
2 the economics of that.

3 And it troubles me because as it relates
4 to the overall traffic for National Rail Network, I
5 don't see the pivot to growth in the numbers you
6 actually sent to us. And I think it's crucial if
7 we're going to have a healthy national rail network,
8 so can you explain how you're going to pay back that
9 100 million dollars or more in capital investment
10 with virtually no additional growth?

11 MR. BOYCHUK: Before I turn it over to
12 someone else, this is a 100 year asset. We're
13 purchasing something that is going to be with us,
14 that we're bolting on to our network a lot longer
15 than you know multi-generation as we sit and think
16 about the people who are at this table. So the
17 investments no matter who takes it over has got to be
18 done.

19 I'm showing you a few photographs and
20 pictures, but really if nobody puts this money into
21 this railroad at some point in time, I'm not sure
22 what kind of a railroad is going to be left up there.

1 So we're looking at it as an approach that 100 years,
2 what's the business going to look like, the growth
3 that Jim had explained, and I know Kevin will go
4 through maybe minimal to start off with, but when we
5 start to get up into that region, and Kevin and his
6 team starts working with the customers, we believe
7 that there may be opportunities further years down
8 the road.

9 I mentioned to you the connection for us
10 to be able to compete with the two Canadian Class 1's
11 up in New Brunswick. You know we're hoping that over
12 a period of time we're going to be able to grow
13 business up in that area as well, whether that's five
14 years from now, or ten years from now.

15 So the opportunities as we continue to
16 look at the investment that we're putting into this,
17 we're doing this not necessary for the next two or
18 three years, we are doing this because it's the right
19 thing to do, and we're doing it because we believe
20 that the business over 50-100 years is going to be
21 providing more than enough to continue to pay for any
22 of the capital that we've been putting up there.

1 CHAIRMAN OBERMAN: Well Jamie I'm not an
2 MBA, but I'm going to take a wild stab and say that I
3 don't think your shareholders are looking to wait 100
4 years to recover this investment, both the purchase
5 price and the 100 million. So I'm wondering if you
6 could enlighten us, and maybe it's a different
7 member of your team.

8 What is the time period you're projecting
9 on which these investments are worth making in terms
10 of increased traffic and growth on the railroad.
11 That's what I'm concerned about. Of course railroads
12 have long-term investments, but there's been a long
13 period of time in my view since the railroads have
14 not picked up their share of the increase generated
15 by the growth in our economy, and 50 years is too
16 long to wait in my view, and you've only given us
17 projections for five years, and we haven't seen the
18 growth there, so how much longer than five years
19 justifies this investment?

20 That's really what I'm talking about, and
21 I wonder if you have some numbers. You must have
22 some numbers that would warrant making these

1 expenditures.

2 MR. BOYCHUK: I'll let Sean answer, but I
3 just want to make one comment that I'll take it a
4 compliment that as the railroad was always accused of
5 doing everything for the shareholder, you're right.
6 We believe that this is something that is the right
7 thing to do for a lot more reasons than that. I'll
8 turn it over to Sean.

9 CHAIRMAN OBERMAN: Yeah well we haven't
10 heard from the shareholders yet.

11 MR. PELKEY: Thank you Jamie. So look
12 we've got a rigorous financial model that we put in
13 place as we went through this transaction. That
14 financial model included the investments that Jamie
15 just talked about. It also included the traffic
16 projections that we provided to the Surface
17 Transportation Board. In addition to that it
18 included the fact that we expect to run a much more
19 efficient railroad than what the Pan Am is able to
20 run today, simply because of the infrastructure
21 that's in place.

22 When you've got infrastructure that looks

1 like that, and you're running it 10 miles an hour as
2 opposed to 25 or 40 miles an hour, you're going to
3 have more crew changes, you're going to have more
4 overtime, you're going to be less fuel efficient,
5 you're going to have locomotives that break down in
6 the line of road.

7 There's going to be significant additional
8 cost, and that additional cost prevents Pan Am today
9 from generating the kind of profitability they would
10 need to make the kind of investments that we are
11 going to make in that railroad. Do we expect growth
12 above and beyond the projections that we set forward
13 in the transaction?

14 We are going to fight vigorously to try to
15 win new business over from the trucks. And the
16 investments that we're making in the rail
17 infrastructure give us confidence, and our service
18 product that we're going to bring forward, give us
19 confidence in our ability to beat those projections,
20 I think as Jamie said, with these investments we will
21 have the capacity to be able to do that.

22 So Kevin will give you a lot more in terms

1 of the types of customer acquisition efforts that
2 we'll have, and a few of the opportunities that we
3 may get into, but it is absolutely our goal, whether
4 it's three years, or five years, or seven years I
5 don't know, but what I can tell you is that we
6 wouldn't be doing our job if we didn't invest at a
7 purchase price that generated a return in excess of
8 our cost to capital, and that's what we fully expect.

9 CHAIRMAN OBERMAN: I appreciate that.
10 Just want to follow-up with Patrick. But you know as
11 a sophisticated business operation I just have to
12 assume that there are some more concrete projections
13 here. And I'm wondering if you would be comfortable
14 sharing those with us on a proprietary confidential
15 basis because I am, as you know, laser focused on the
16 growth of the National Rail Network.

17 So it would be very enlightening for us to
18 measure how this develops over the next ensuing
19 years, and when we could expect to see that growth
20 based on your expertise. You have more than we do,
21 and you're the ones investing the money. You've got
22 the skin in the game, so I assume you're not doing it

1 just on a wing and a prayer.

2 Would you be willing to share those kinds
3 of projections with us on traffic growth to justify
4 these investments?

5 MR. FOOTE: Well Mr. Oberman we're focused
6 on growth too. And we invest 1.8, 1.7 billion
7 dollars each year in CSX. So you know and we do a
8 vigorous analysis to justify that level of
9 investment back into our private company. And if the
10 --

11 CHAIRMAN OBERMAN: I assume you've done a
12 rigorous analysis. I'm just wondering if we can see
13 it.

14 MR. LAROCCA: Mr. Chairman we submitted
15 the forecasts to you, and they're quite detailed. I
16 would point out that your concern about rail traffic
17 not tracking the national economy is directly
18 addressed. The baseline we assumed, is that we will
19 keep up with the growth of the economy. That's
20 something far better than you can say about the
21 current Pan Am railway right now.

22 We will keep up with that, and after year

1 three we have forecasted growth once we start
2 implementing a more consistent scheduled system that
3 can attract shippers, and see that they have
4 opportunities to compete with trucks. And it's at
5 that point that we see the beginning of a pivot
6 toward a growth that actually exceeds economic
7 forecasts.

8 CHAIRMAN OBERMAN: Well what we saw, what
9 you submitted to us is that after year three for the
10 next two years an addition of 1.5 percent. Is that
11 all you need to justify this investment? That's what
12 I'm trying to get at.

13 MR. FOOTE: I think it's 1.5 on top of
14 GDP.

15 CHAIRMAN OBERMAN: Yes. But it's an
16 additional 1.5. It's not -- listen, I'm not making
17 the investment Jim. It's hard for me to imagine that
18 you're making both the purchase price capital
19 investments here just to keep up with GDP, that
20 doesn't make sense to me for merging the railroad,
21 but maybe it does in the railroad business.

22 I'm just trying to find out what traffic

1 numbers we can look forward to over the long haul,
2 and are we going to see this general movement of
3 freight.

4 MR. FOOTE: Well I would say again you
5 know this is not a huge intermodal franchise. Based
6 on my 45 years of freight railroad experience anybody
7 that can grow their freight railroad, car load
8 business at 1.5 times plus GDP would be off the
9 charts rock stars. It hasn't been done. It hasn't
10 been done since deregulation.

11 The freight railroad system has been
12 shrinking. That's just the facts, so it's the facts.
13 So we're saying that we're going to outgrow
14 historical rates of growth, we're comfortable with
15 the internal rate of return on that investment, and
16 we have presented to you the required information to
17 make your determination.

18 CHAIRMAN OBERMAN: We found your
19 application complete, so I agree with you. You don't
20 have to commit to in here if you don't want to, but
21 I'm going to -- I am requesting if you were
22 comfortable, of sharing with us what kind of

1 long-term growth we can expect up here. Obviously it
2 can be kept under a confidential basis. So you don't
3 have to answer that now if you don't want to.

4 Patrick had a follow-up question.

5 BOARD MEMBER FUCHS: Yes. I think first
6 of all I want to say that I you know obviously share
7 that transparency in terms of wanting to see the
8 freight network grow, and you know I think the
9 essential question here is what will happen to Pan Am
10 before and after the transaction.

11 So you know to me the relevant comparison
12 is I think what Jamie, Jim and Tony eluded to, which
13 is what would happen in the absence of the
14 transaction. So as you are evaluating your capital
15 improvements, and you know I think Jim you reference
16 your internal rate of return, you're taking a look at
17 what additional would be gained on top, you know on
18 top of what's to be expected.

19 So maybe could you provide to us, or
20 summarize what you would expect the growth numbers to
21 look like if CSX were not to take over the line --
22 the lines?

1 MR. FOOTE: Well I think I stated earlier
2 that we don't think that the existing infrastructure
3 could keep up with GDP growth.

4 BOARD MEMBER FUCHS: Would you expect the
5 traffic to decline in absolute terms?

6 MR. FOOTE: I don't know if we make that
7 function.

8 MR. LAROCCA: Commissioner Fuchs, Patrick
9 the supplemental verified statement that sets out our
10 traffic assumptions includes a kind of range of
11 possible growth in traffic without the transaction.
12 And that's all we can do. We really don't know what
13 would happen. I think there certainly is the
14 possibility that there would be no growth, or even a
15 decline given the current state of the rail network,
16 but we assumed that there would be at least we
17 assumed for purposes of just modeling this, which is
18 all we can really do when you're looking into the
19 uncertain future.

20 We assumed that a range of possible growth
21 scenarios for the Pan Am network, but you know
22 starting with a kind of minimal, minimal growth to

1 correspond with economic growth extending to a
2 somewhat healthier growth, and I think that's about
3 all we can really, really do at this point in terms
4 of forecasting what would happen without the
5 transaction.

6 BOARD MEMBER FUCHS: And if you could
7 provide anything publicly in terms of you mentioned
8 that some of these capital investments have
9 offsetting cost savings. I think Sean you mentioned
10 it, and I think you did a very good job at the
11 revenue adequacy hearing explaining what goes into a
12 capital investment decision for CSX.

13 Can you put any numbers around what you
14 would expect, you know, maybe percentage-wise, or in
15 absolute terms what you would expect the cost savings
16 operationally, or otherwise from some of the capital
17 investment decisions, the 100 million that Jamie
18 would.

19 MR. PELKEY: Yes. So I think it would
20 probably not be appropriate on a public mic to give
21 you kind of exactly what that looks like, but I can
22 give you in general terms. I think there's two

1 things to think about. The first is these capital
2 investments are supportive of growth, so they're not
3 -- it's not simply I'm looking for cost tradeoffs
4 that are going to support and give me a return on a
5 stand alone basis on 100 million dollars of capital.

6 That being said look, the Pan Am railways
7 today operates at an operating ratio that's
8 significantly worse than any Class 1 carrier operates
9 at, regardless of where that carrier operates. It's
10 a lower density line. Is it going to end up becoming
11 as efficient as our main lines due to the density of
12 traffic? Probably not, but we do think there are
13 significant opportunities from an expense standpoint
14 to generate a lot more efficiency than what Pan Am is
15 at today. I can't give you a specific number, but
16 hopefully that gives you a general idea.

17 BOARD MEMBER FUCHS: And directly related
18 to that 100 million as well, not just from you know
19 the single line service and general CSX operating
20 practices, but I think I heard you correct to say
21 that the 100 million itself you know generates some
22 offsetting cost savings as well.

1 MR. PELKEY: That's right. And we've seen
2 it here within our own network simply you know
3 focusing on the investments in the yard, the main
4 line track that Jim and Jamie talked about. We've
5 seen a significant decrease in track caused
6 derailments, best in the industry, and that has real
7 cost savings associated with it. We expect to see the
8 same thing at Pan Am.

9 BOARD MEMBER FUCHS: And I just have one
10 last question for Jamie, I know he's handing it over.
11 But you know you mentioned that you believe that the
12 totality of CSX's actions would lead to better
13 service and more reliable service. You know when you
14 wake up in five years what numbers are you going to
15 look at to judge whether or not CSX was successful in
16 what it set out to do?

17 What will tell you what are your
18 thresholds from a service metrics standpoint?

19 MR. BOYCHUK: The basic service metrics
20 obviously of our you know dwell, speed, any other
21 type of velocity metrics that's out there, but I
22 think the real success with this is growth right?

1 We're not purchasing a railroad just to keep it at
2 status quo. We're going to grow.

3 And to Jim's point the amount of growth
4 that we've committed to is more than probably anybody
5 else has done in a very long time. So you know when
6 we see that we're able to grow this railroad because
7 the service metrics are where they are, and we've
8 been able to improve the fluidity of that network,
9 we're able to move traffic better for our customers.

10 We have a better connection in through the
11 National Rail Network. That's our success in five
12 years from now.

13 BOARD MEMBER FUCHS: Okay thank you.

14 MR. BOYCHUK: Peter you're on, you're not
15 coming through.

16 CHAIRMAN OBERMAN: Who's up here? Peter?
17 Sorry.

18 MR. DENTON: Can you hear me now?

19 CHAIRMAN OBERMAN: Yes.

20 MR. DENTON: Okay great. So Commissioner
21 Fuchs I just wanted to direct you to a point in the
22 record where we do quantify some of the cost savings,

1 specifically with respect to locomotive improvements
2 and the better locomotives that Jamie talked about.

3 Dr. Reishus calculated the savings, 2
4 million dollars just on fuel levels alone. He also
5 calculated annual locomotive cost savings of
6 \$800,000.00 not including fuel. So that's at page
7 57 of the operating plan if you'd like to look at
8 that in closer detail. Thank you.

9 BOARD MEMBER FUCHS: Thank you.

10 MR. FOOTE: All right. So if we're ready
11 we'll move over to Mr. Boone now.

12 VICE CHAIRMAN PRIMUS: Actually I'm sorry.
13 I thought someone else had a question. This is --

14 CHAIRMAN OBERMAN: Well actually you have
15 Robert and then Karen had a question as well. Why
16 don't you go ahead Robert?

17 VICE CHAIRMAN PRIMUS: Okay thanks. Hey
18 Jamie before we let you go I got a few more
19 questions. So in terms of this growth over the next
20 five years I know we've mentioned it briefly before,
21 and you know as you're improving the tracks, are you
22 planning you know with the growth that's expected,

1 this 1.5 that's going to be coming up, are you
2 expecting to add just the cars, or are you going to
3 add more trains to that network?

4 MR. BOYCHUK: Well the growth that we're
5 talking about really is something we can absorb with
6 the current train plan that's out there. You know
7 three, four, five years from now, or if something
8 breaks loose that we don't expect at this point in
9 time with the Port of St. John, then maybe we do talk
10 with our stakeholders about another train start.

11 But at this point in time the growth will
12 be absorbed with our current trains that are running
13 out there.

14 VICE CHAIRMAN PRIMUS: Okay excellent,
15 thank you.

16 CHAIRMAN OBERMAN: Karen you had a
17 question?

18 VICE CHAIRMAN PRIMUS: No, no.

19 BOARD MEMBER HEDLUND: Go ahead Robert.

20 CHAIRMAN OBERMAN: Sorry.

21 VICE CHAIRMAN PRIMUS: That's okay. And
22 thank you for indulging me Karen. Yeah if the merger

1 goes through you're talking about also having a 50
2 percent stake in Pan Am Southern who actually you know
3 they're going to have part of that, they're going to
4 have the northern route.

5 You'll have 50 percent of that. Are you
6 guys talking about any sort of improvements to the
7 northern route at all?

8 MR. BOYCHUK: Well our plan is to continue
9 along with all the great work that the NS and Pan Am
10 has done together. They've put 100 million plus I
11 believe of capital up in that area, and we'll
12 continue to work with them to continue to improve
13 that line.

14 So for us it's on a contract basis. We
15 said the B&E will run it, but we'll partner with NS,
16 and we absolutely will continue to make sure we
17 contribute to make that line viable.

18 VICE CHAIRMAN PRIMUS: So no part of the
19 100 million dollars, or is there any part of that 100
20 million in improvements are going to go to Northern?

21 MR. BOYCHUK: Nope that's separate.
22 That's a separate. This year's capital has already

1 been put together between Pan Am and Norfolk
2 Southern, and as soon as the snow melts and
3 everything starts -- the frost comes out of the
4 ground they've got a tie program, and a rail program
5 that they're getting onto, so no this is separate.

6 MR. FOOTE: The Pan Am Southern on the
7 freight network excluding the lines that the Amtrak
8 or commuter trains operate over today is by far the
9 best conditioned line on the network because it is a
10 key and critical route which you'll hear from later
11 from Norfolk Southern, for their business into and
12 out of Boston, so it has been maintained at a higher
13 standard than the rest of the network.

14 VICE CHAIRMAN PRIMUS: And Jim so then is
15 there any effort to increase growth or traffic on
16 that line since it's already as you're saying it's in
17 much better shape?

18 MR. FOOTE: it's our plan to try and grow
19 the business on the entire network. If the customers
20 that are local to that line originating or receiving
21 traffic can grow because of the --

22 VICE CHAIRMAN PRIMUS: And sometimes that

1 1.5 that you guys are talking about, is that included
2 in that on that line?

3 MR. FOOTE: That would be PAR.

4 VICE CHAIRMAN PRIMUS: Okay thank you.
5 Hey Jaime moving over to are you familiar with the
6 Springfield master plan, which includes Union
7 Station?

8 MR. BOYCHAK: No I'm not myself.

9 VICE CHAIRMAN PRIMUS: Okay. I know M DOT
10 had put it into their submission, talking about a 950
11 foot long shoefly track. Are you familiar with that?

12 MR. BOYCHUK: Yes I am familiar with that
13 at Springfield yes.

14 VICE CHAIRMAN PRIMUS: Okay. Do you guys
15 have any opinion on that? You know their concern is
16 whether or not we're able to -- would like to keep
17 that and not have it go away.

18 MR. BOYCHUK: We don't have any plans to
19 remove it at this point in time.

20 VICE CHAIRMAN PRIMUS: Okay.

21 MR. BOYCHUK: A request was made. I
22 wasn't even aware of the shoefly until the request

1 was made. I had spoken with my head of engineering,
2 and we have no plans to remove that. There's no
3 plans to remove that shoefly.

4 VICE CHAIRMAN PRIMUS: Okay. And you said
5 you are not familiar with the master plan?

6 MR. BOYCHUK: I am not familiar with the
7 master plan, no sir.

8 VICE CHAIRMAN PRIMUS: Okay. Just saying
9 that that's an important part for M DOT and hopefully
10 you folks in your discussions can talk about that.

11 MR. BOYCHUK: I will make sure that
12 personally this afternoon or tomorrow I will be up to
13 date on that.

14 VICE CHAIRMAN PRIMUS: Right. Great thank
15 you. Go ahead I'm sorry.

16 MR. DENTON: Commissioner Primus can I,
17 this is -- can you hear me now, Peter?

18 VICE CHAIRMAN PRIMUS: Absolutely yep.

19 MR. DENTON: Okay good. Yeah I just want
20 to be clear we have committed to work on the
21 Springfield master plan. We have a long history,
22 CSX, of working with Springfield on the Union Station

1 project, and the Springfield master plan we see you
2 know as something that we're going to continue to
3 work on.

4 But this is not, we're not pushing back
5 against working with Mass DOT on these issues in
6 Springfield and elsewhere.

7 VICE CHAIRMAN PRIMUS: No I didn't suggest
8 that you guys were pushing back. I just wanted to
9 make sure that you guys were aware of it, and what
10 you know your stance is on that shoefly track, and
11 start working with them on the project. Last --

12 MR. LAROCCA: I'm sorry, Commissioner
13 Primus Tony LaRocca again. I want to go back to your
14 question about infrastructure on PAS.

15 VICE CHAIRMAN PRIMUS: Okay.

16 MR. LAROCCA: And I'll refer you to the
17 Vermont settlement agree that --

18 VICE CHAIRMAN PRIMUS: Right.

19 MR. LAROCCA: We recently filed. There's
20 Section 16 talks about investments that are ongoing
21 in the Hoosac Junction area, which is a very
22 important point on the line to the west of the Hoosac

1 Tunnel which is an important interchange point for
2 traffic going through the Vermont rail.

3 And that is an infrastructure project that
4 the settlement agreement, the parties have pledged to
5 continue supporting.

6 VICE CHAIRMAN PRIMUS: Okay.

7 MR. LAROCCA: And we'll have one concrete
8 project that is underway, and will have clear
9 benefits for transportation on PAS, and for the
10 Vermont shippers.

11 VICE CHAIRMAN PRIMUS: Okay thank you.
12 Thank you for that. Last question Jamie, I brought
13 it up earlier with Jim about operations, and I'd like
14 for you to comment on CSX's position with MBTA and
15 their request for the right to dispatch on MBTA and
16 Mass DOT owned track.

17 MR. BOYCHUK: This is something that you
18 know we thought about extensively, and you know we
19 feel very, very comfortable with the way we dispatch.
20 We dispatch a very large number of commuter trains,
21 VRE, MARC and others, and really ultimately we've
22 committed to leaving the dispatch center indefinitely

1 up in the New Hampshire area.

2 And truly we believe that we're the best
3 at it, and we don't want to give up that piece of
4 dispatching because it's important for us to be able
5 to live within the windows that are provided, and to
6 have control over those windows, so when it is our
7 turn to get a train through we've had past
8 experiences where we didn't control certain sections,
9 and it turned into some type of a battle day in and
10 day out.

11 We believe that we have proven that we --

12 VICE CHAIRMAN PRIMUS: Are you talking
13 about that, are you talking about in the region?

14 MR. BOYCHAK: No. Not in that region at
15 all, a total separate corner of the railroad. You
16 know ultimately we would like to be able to maintain
17 control of those trains that are moving in those
18 areas that we run, and we're comfortable we can do it
19 right. You know we commit to moving those trains the
20 way that their schedules call for them to move.

21 VICE CHAIRMAN PRIMUS: I mean I've got to
22 say that VRE and MARC are a lot smaller than MBTA

1 number one. And I think a little bit, and MBTA is a
2 little bit more complex. I've seen some of the
3 problems in the past with MARC especially, in terms
4 of you know on time in terms of scheduling, in terms
5 of that. So you know there is for me, there is
6 concern there, and I think that you know when you're
7 considering such an integral part in terms of what
8 MBTA has to offer, in terms of what they're doing
9 right now, I think you know I really think that this
10 you know deserves more than just you know I think we
11 can do it better.

12 I think it deserves a sort of sitting down
13 and really you know having that conversation as to
14 how this can coordinate. There's a lot at stake as
15 you well know, you know with the dispatch, and what
16 goes on coming out of Boston, coming in and out of
17 Boston on a daily basis, and I think that's
18 important. You know we look at it I think a little
19 bit closer than has been looked at up to this point.

20 MR. DENTON: Yeah. Vice Chair Primus I
21 would just say that we've had multiple conversations
22 with Mass DOT about dispatching. We commit fully to

1 cooperate with them. We will need to be partners
2 with Mass DOT going forward. We recognize the
3 importance of Mass DOT and MBTA service on those
4 lines. I would also say that --

5 VICE CHAIRMAN PRIMUS: When you say
6 partners what are you guys proposing as a
7 partnership? Are you, you know, in terms of sharing
8 information, in terms of you know having people in
9 the room, you know what is this you know, what does
10 this entail?

11 MR. BOYCHAK: Yeah sure. With a new
12 dispatch center being built they're all going to be
13 together right. So you're going to have the folks
14 that dispatch both sides are going to be in the same
15 room, the same building, the same area, and you know
16 we've committed to providing the service that's
17 required there, and today it's being done.

18 It's being done really well, and we've
19 committed to live up to whatever Pan Am's commitments
20 are with passenger service, and we are going to fill
21 their shoes. So whatever commitments they have made,
22 we are right along with those commitments. We have

1 fully stepped into those shoes if this goes through.

2 MR. LAROCCA: And I just want to add one
3 other thing which is that there is an existing
4 agreement in place which has protections. It's been
5 worked out over the years. It was a negotiated
6 arrangement between Pan Am and the local authorities,
7 agencies, and it provides for remedies in the event
8 of a problem.

9 So we're stepping into the shoes of an
10 existing contractual relationship, and we're not
11 changing it. We're not moving the dispatching
12 center. We're going to occupy the joint one that's
13 being created, that's being constructed right now.
14 And so there's really no reason to be concerned that
15 anything is going to change.

16 VICE CHAIRMAN PRIMUS: Okay all right.

17 CHAIRMAN OBERMAN: Karen?

18 BOARD MEMBER HEDLUND: Yeah. I want to go
19 back to Jamie with a question. As you analyzed what
20 the capital needs are for upgrading the PAR system,
21 when you looked at it did you also take into account
22 issues related to resiliency? You're buying a

1 railroad that is in part a coastal railroad. It is
2 going to be exposed to the result of climate change,
3 having looked at portions of that railroad that are
4 likely to be impacted by floods, and sea level rise.

5 The scientists are predicting we're going
6 to have more hurricanes. What would happen if
7 another Katrina -- not to get into the south coast
8 issues, Gulf Coast issues, but you know hurricanes
9 are going to be they're saying more frequent,
10 potentially more severe.

11 Sandy completely disrupted the northeast
12 corridor in flooding the Hudson River Tunnel, so have
13 you looked at the sections of the Pan Am system that
14 may be exposed to future climate change issues?

15 MR. BOYCHUK: That's a great question.
16 And if anybody, or any railroad out there who knows
17 hurricanes, I think we got that one with respect to
18 how to restore them and how to deal with them. But
19 the areas of any concern of ours when we looked at
20 the railroad was more of the Portland area, with
21 respect to some of the climate change you're talking
22 about.

1 It is elevated to a point where you know
2 we're comfortable for periods of times, there's more
3 work we're going to have to do. We probably have
4 more issues on our railroad for climate change down
5 in the south, down in Florida and other places in the
6 Gulf as you mentioned, and our concerns are up north.

7 I'm from the great big white north myself,
8 so I understand snow conditions well, and how to deal
9 with rail conditions in cold weather and snow, so as
10 that may ramp up in the future, we feel we have that
11 taken care of, and we have a fantastic team who knows
12 how to shore up rail lines for hurricanes. We do it
13 every year, and we do a heck of a good job to restore
14 the line as we did this year when we lost up to 12
15 miles of our Gulf line, and had it restored within
16 seven days, so we're constantly looking at those
17 issues.

18 BOARD MEMBER HEDLUND: Yeah I'm not asking
19 about restoration. I'm asking about building
20 resiliency into the network that you have, so that
21 you don't have the disruptions, and don't have all
22 the work, restore the railroad after an event occurs,

1 that was really my focus.

2 MR. BOYCHUK: Right.

3 MS. HEDLUND: You're acquiring a 100 year
4 asset. You want to know it's going to be there in
5 100 years.

6 MR. BOYCHUK: Right. I'm not sure what
7 else I can add to that, but there are a lot of short
8 lines that run around there, we've talked a little
9 bit about Vermont and others. You know we have to
10 continue to work with some of our connections. If we
11 lost a piece of our railroad like we did today, in
12 some areas we're able to work with the NS, and the NS
13 vice-versa with us to be able to move traffic around
14 areas while you're restoring and repairing, so those
15 are relationships that we would continue to build as
16 we would move forward with this deal.

17 MS. HEDLUND: Thank you.

18 MR. BOYCHUK: Thank you.

19 CHAIRMAN OBERMAN: Any other questions?
20 Why don't you folks proceed where we cut you off. I
21 think Jamie you were handing it off to Kevin. We
22 lost Kevin?

1 MR. BOONE: Let me start over. I
2 apologize for that, my mic wasn't working. Well good
3 afternoon. I think maybe before I get into my
4 prepared remarks, I'd like to talk a little bit about
5 the growth discussion that we've been having. I'm
6 sure we'll have more of that over the next few
7 minutes here.

8 We've been very successful here recently
9 in attracting new business to the railroad. You may
10 have heard about the EV plants that have been
11 announced, the Ford plant in Tennessee and the Rivian
12 plant in Georgia, and just recently here yesterday we
13 got a new steel plant that was announced in West
14 Virginia all on our lines.

15 These are three, four year projects for
16 our customers, so not only do we have to invest in
17 our rail network, we would have suspected the
18 customers to have to make those decisions, and those
19 can be multi-year decisions, and based on improved
20 service, based on reliability, based on the
21 opportunity to reach new markets, my expectation as
22 we get into that with the customers is they're going

1 to be more willing to make those investments over
2 time, so that's why we have the accelerating growth,
3 and beyond five years I'll expect that to accelerate
4 because these investments are long-term, and really,
5 really start to accelerate over time.

6 And the other thing is I would say you
7 know when you put it in a discount and cash flow
8 model you know even year six, seven, eight, can have
9 huge returns for the company as the growth
10 accelerates, so I just wanted to make that point.
11 I'm sure we'll get into it more, but now I'll give it
12 in the prepared remarks.

13 My name is Kevin Boone, and I'm CSX's
14 Executive Vice President of Sales and Marketing. I
15 oversee the company's growth strategies, as well as
16 the customer service, customer engagement, and
17 business development activities. As you heard from
18 Jim we are exciting about the incredible customer
19 support.

20 Not a single shipper has expressed
21 opposition to the proposed transaction, and dozens of
22 shippers have submitted support letters and written

1 op-ed columns. And many of these shippers will
2 appear at this hearing later today and tell their
3 individual stories.

4 During this presentation I will focus on
5 four broad points that cover the benefit to shippers.
6 First, freight rail customers located on Pan Am will
7 be able to better control their logistics through
8 CSX's state of the art customer support tools.

9 Second, single line service between the Pan Am and
10 CSX network will improve the ability of Pan Am's
11 shippers to access national markets and CSX shippers
12 to access New England markets.

13 Third, the proposed transaction should
14 lead to the reduction of truck traffic from congested
15 highways, and deliver significant environmental
16 benefits that come with it. And fourth, we
17 anticipate commercial opportunities will become
18 available as Pan Am customers can competitively
19 access new markets.

20 We will illustrate these opportunities by
21 walking through a few specific markets. First I will
22 walk through and talk about customer support tools.

1 Pan Am's customer will benefit from CSX's
2 considerable investments in customer facing
3 technology, including ship CSX, an industry leading,
4 customer facing tool that provides exceptional
5 transparency into railcar shipments and management.

6 Access to ship CSX will be a major
7 improvement for Pan Am customers who currently have
8 limited insight into the status of their rail
9 shipments. CSX will provide Pan Am customers with a
10 suite of tools that integrates the ability to price
11 rail shipments, ship and trace railcars, track trip
12 plant compliance, and pay for services, including
13 account invoices, and assessorial charges.

14 Rail customers in New England will have
15 increased transparency, allowing for improved
16 pipeline management and asset utilization. Pan Am
17 does not have the resources or scale of operations to
18 implement a type of sophisticated operating systems
19 and practices that customers are looking for.

20 Expansion of CSX's integrated operations into New
21 England will allow customers to schedule their supply
22 chains more precisely, better manage inventory, and

1 reduce costs.

2 This slide shows how CSX works seamlessly
3 on mobile devices, allowing customers to access the
4 tools from any location. The slide also depicts the
5 trip point performance dashboard within Ship CSX.
6 Each shipment is assigned a trip plan with a number
7 of expected days from original to destination.

8 A trip plan performance metric allows
9 customers to monitor and measure performance over
10 time. Additionally, Ship CSX offers a track and
11 trace feature. This allows CSX customers to monitor
12 specific railcars or shipments, whether at the
13 customer's facility and the serving yard, or in route
14 to the destination.

15 Customers can create customized reports
16 based on traffic types or events, along with reports
17 to monitor inbound and outbound pipeline by location.
18 Technology innovation is a core pillar of CSX's
19 strategy, and we will continue to invest in these
20 customer tools.

21 A second major benefit for rail customers
22 is expanded market access. The combination of CSX

1 and Pan Am will create opportunities for New England
2 customers to compete in new markets by leveraging
3 efficient, single line service. Customers will also
4 have more direct and efficient access to New England
5 markets.

6 This will enhance their ability to reach
7 new markets, increase speed to market and improve
8 asset utilization. One of our primary objectives in
9 acquiring Pan Am is to support the growing New
10 England economy by offering superior rail
11 transportation service to customers. That growth in
12 economic activity can be further promoted by
13 expanding New England rail users access to markets on
14 the CSX network, and to CSX interchange partners
15 across the country.

16 Customers utilizing port facilities across
17 the Pan Am can expect expanded market opportunities
18 due to the improved service and reliability that
19 result from the proposed transaction. The merger
20 will also expand customer choice by creating more
21 efficient access to consumption points, warehouses,
22 and distribution locations across the CSX network.

1 Next I would like to talk about truck
2 diversion opportunities, the railroad's largest
3 competition in New England. We expect that a major
4 benefit of the CSX Pan Am combination will be the
5 movement of freight, from trucks to rail as we
6 improve service and reliability of rail
7 transportation across the Pan Am network.

8 We have seen that shippers often prefer
9 rail service, but choose trucks when they do not have
10 sufficiently reliable rail service, and cannot manage
11 their inventory easily as they can with trucks. By
12 increasing the reliability of rail service, and the
13 ability of shippers to track their shipments, we can
14 attract business from trucks and deliver
15 environmental and infrastructure benefits by reducing
16 congestion on the region's roads and highways.

17 As shown on this map -- sorry?

18 BOARD MEMBER FUCHS: Sorry to jump in. I
19 just want to quick ask on your previous point about
20 fewer handlings and decreased mileage, and I know you
21 provide detailed training information in the record,
22 but maybe you could summarize in aggregate what you

1 expect in terms of the decreased interchanges, maybe
2 on a daily or weekly basis, as well as putting some
3 numbers around the decreased mileage.

4 MR. BOONE: Yeah maybe I'll hand that over
5 to Jamie to discuss.

6 MR. BOYCHUK: All of it. When you think
7 about it everything is interchanged to us, which I'll
8 say any interchange points you have across any of the
9 rail networks it's a 24 hour period that you have to
10 plan on those cars taking a delay. So every one of
11 the cars that come off of the Pan Am North, the PAR
12 side of the business will all get that 24 hour speed
13 up.

14 Again, you're going to see on the opposite
15 direction the same type of deal with respect to the
16 cars I explained that go to Portland to get switched.
17 A lot of those cars are going to go more direct to
18 the smaller yards that serve the customers, so every
19 one of these cars are effected. They are all
20 interchanged.

21 Mileage -- I wouldn't necessarily say that
22 there is a backhoe on mileage, there are cars that go

1 up to Portland as I explained, they get switched, but
2 then head south, so there is a number of backhoe
3 miles that will be saved also through our use of
4 Selkirk yard.

5 BOARD MEMBER FUCHS: When you talk about
6 the emission savings you mean both what you're
7 describing on this slide before us right now, and the
8 diversion of truck, but also just more efficient rail
9 operations as well, the CO2 savings, and other
10 pollutants on both fronts.

11 MR. BOONE: Yeah absolutely, and utilizing
12 the best in class fuel efficiency that we have as a
13 railroad today. You know that's really important
14 too. You know over the last four years we've just
15 seen a 30 percent improvement in our fuel efficiency,
16 and really leveraging that to you know additional
17 volume.

18 When you look at this map here there's a
19 lot of opportunity to gain traffic from long haul
20 truck movements once we upgrade the Pan Am network.
21 This map focuses on a few key commodities that move
22 in and out of the New England region. The arrow

1 represents the truck movements from the New England
2 that are over 500 miles.

3 We will be in a position to complete this
4 freight with the improvements that we'll be making.
5 And most of these movements, approximately 75 percent
6 are going to regions east of the Mississippi River
7 where we can offer customers more options. Truck
8 conversion to rail has significantly carbon emission
9 savings as we talked about.

10 A CSX Pan Am combination will allow
11 customers who leverage these environmental savings
12 and deliver benefits to the consumer. We have seen a
13 dramatic shift in the prioritization that customers
14 have placed on opportunities to improve their carbon
15 footprint. Additionally, highway congestion in the
16 New England region remains high.

17 An opportunity to transition trucks to
18 rail will help reduce the need for additional
19 government investments in road infrastructure as
20 well.

21 Finally, let me give you some more detail
22 on the types of commercial opportunities --

1 CHAIRMAN OBERMAN: You know Kevin could I
2 just ask a question about the movement, the trucks
3 that you're seeking? Is there some way for us to be
4 able to measure that as time goes on here?

5 MR. BOONE: We'll certainly be measuring
6 it internally, and that's a key element to our
7 commercial strategy.

8 CHAIRMAN OBERMAN: Is there some way for
9 you to keep us informed on that strategy? I mean it
10 is one of the major issues I think for the entire
11 rail network if CSX is going to show the way, I'd
12 like to be able to know about it.

13 MR. BOONE: Yeah I would tell you about
14 three years ago we started a team here, a commercial
15 team within the sales and marketing team that's
16 strictly focused on looking at all the truck
17 movement throughout the U.S., and solely focused on
18 the over 500 miles. We think that can come down over
19 time, maybe it's 400 miles, and really identifying
20 those opportunities and going out to market and
21 working with customers.

22 There couldn't be a better environment to

1 have those discussions right now, so not only are we
2 going to do it for Pan Am, we're doing it across the
3 whole network right now, and we have a team really
4 put up against it.

5 CHAIRMAN OBERMAN: Well I appreciate that.
6 I'd like to see the results of it if there's a way to
7 do that, so I'm going to make that request of CSX to
8 somehow supply that kind of information to us. I
9 think it's key.

10 MR. DENTON: Yeah Chairman Oberman this is
11 Peter Denton. CSX is committed to a five year
12 oversight period with respect to this transaction. I
13 think something like that sounds like an appropriate
14 request for that oversight period, and we'd be
15 pleased to evaluate it at that time.

16 CHAIRMAN OBERMAN: All right. So are you
17 saying Peter that the oversight can explicitly
18 include some kind of regular reporting on transfer of
19 your success of bringing truck on the rail?

20 MR. DENTON: For PAR, for the PAR system I
21 think that sounds appropriate yes.

22 CHAIRMAN OBERMAN: Okay thank you.

1 MR. DENTON: Yep. Okay.

2 MR. BOONE: As I've mentioned we have done
3 extensive work looking at the freight movements in
4 and out of the New England region, and believe there
5 are many opportunities that CSX and Pan Am, the
6 combination can deliver. This slide specifically
7 shows three of those commodity types on Pan Am for
8 new opportunities we believe will be available.

9 Take for example forest products like
10 printing paper and lumber moving from Pan Am's
11 service territory into the greater New York
12 Metropolitan area, a consumption market of over 20
13 million people. We also know about the significant
14 highway tunnel and bridge congestion in the region,
15 and the infrastructure challenges that come with it.

16 As shown on this slide much of this
17 commodity moves today on Pan Am to Ayer where it is
18 trans-loaded to trucks for movement to New York. The
19 yellow arrow shows the truck movement. A CSX Pan Am
20 combination will remove operational complexity in
21 these shorter haul moves, a necessity to create a
22 service product, and cost profiled as competitive

1 with trucks. Customers will benefit from an
2 integrated network that improves reliability and
3 service.

4 In addition, Pan Am customers will have
5 access to a larger fleet of railcar equipment, like
6 boxcars and center beams, which will allow them to
7 grow their rail business. We believe there is
8 significant opportunity to convert these movements to
9 single line rail into the New York area as shown on
10 the right.

11 Another example is liquid propane gas, or
12 LPG opportunities. The New England region is heavily
13 reliant on propane for home heating during the colder
14 months. A CSX Pan Am combination will link low cost
15 sources of propane in the Appalachian region and
16 Sarnia with large New England consumption areas on
17 the Pan Am.

18 This will provide a competitive
19 alternative to overseas imports in western Canadian
20 sources. On this slide you can see the improved
21 routing and service options for the movement of
22 energy products between the Port of St. John and U.S.

1 customers. The new and efficient route from St. John
2 over Pan Am will support new opportunities for
3 propane and refining products into the United
4 States.

5 As you can see on the right customers will
6 have more options, allowing them to reach new markets
7 with the reliable rail service.

8 CHAIRMAN OBERMAN: Kevin on the propane
9 traffic do you anticipate an increase in the amount
10 of propane traffic totally going into New England?

11 MR. BOONE: No. I think this one is more
12 about giving them more options -- the customer more
13 options at a lower cost, and as you know if there's
14 more customers competing for the same business that
15 generally can be a good thing for the customer.

16 CHAIRMAN OBERMAN: So I'm trying to follow
17 this, particularly on the propane. The propane
18 that's going into New England now via both you and NS
19 right, as well as CN and CP? So all four?

20 MR. BOONE: That's right. Right, but you
21 don't see -- you can see on the right where there's a
22 new route coming from the south that opens up new

1 opportunities.

2 CHAIRMAN OBERMAN: I understand. But
3 currently the current map, I'm not sure I understand
4 in terms of the propane traffic. Oh there, there you
5 have it, so.

6 MR. BOONE: Yeah.

7 CHAIRMAN OBERMAN: So there you have some
8 its coming from CSX, and is some coming from NS as
9 well?

10 MR. BOONE: Yeah you can see from CN CP
11 with the red lines, and then the blue line is over
12 you know, using the PAS as well.

13 CHAIRMAN OBERMAN: Right. But is part of
14 that NS, or is it all just CSX, that's what I'm?

15 MR. BOONE: I think that could be both.
16 This business is very transactional.

17

18

19

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21 CHAIRMAN OBERMAN: So are we trying to
22 suggest that you're going to compete with CN CP, and

1 have more of it move on your line rather than theirs?

2 Is that what this is trying to suggest to us?

3 MR. BOONE: I think that would be the
4 customer has the option, more options going forward
5 than they do today.

6 CHAIRMAN OBERMAN: Well I understand they
7 have more options, but are you only showing us
8 options, or are you showing us how the traffic is
9 going to be actually be projected to be divided up.

10 MR. BOONE: We would expect some of this,
11 you know, the new access to some of these markets to
12 be very competitive with the current sources, so we
13 would expect some more traffic moving from the
14 southern parts of that.

15 CHAIRMAN OBERMAN: To win some of that
16 traffic, that's what you're trying.

17 MR. BOONE: We would.

18 CHAIRMAN OBERMAN: Yeah.

19 MR. BOONE: We would.

20 CHAIRMAN OBERMAN: Yeah okay. I just
21 wanted to make sure I understood, but we're not
22 talking about a total growth in the amount of

1 propane, you're just talking about being competition
2 for it, where PAR is not now. Is that the point?

3 MR. BOONE: Right. And this market will
4 probably grow with GDP as the consumption grows.

5 CHAIRMAN OBERMAN: Okay. Thank you.

6 VICE CHAIRMAN PRIMUS: Hey Kevin this is
7 Robert. Just sort of following-up on that, and so
8 the questions that I think that some of the members
9 have been asking before. Do you see your growth
10 going forward, is it going to be in energy? I mean I
11 know truck traffic as well, you know, do you see you
12 know the majority of your you know immediate growth
13 coming off of trucks, or is it you know going to be
14 once you've finished this, you know, the
15 improvements, would it be more energy, you know, how
16 are you looking to break that down sort of going
17 forward in your targets?

18 MR. BOONE: Yeah. When you look at the
19 division of the business today energy represents 7
20 percent roughly of the carloads today, so that's not
21 you know this is one of the many, many examples, but
22 it probably is not the larger growth driver, it's

1 more the truck conversion that we see over the longer
2 term as the big opportunity.

3 VICE CHAIRMAN PRIMUS: Okay. Have you
4 guys identified specific industries, you know from
5 the paper, or other yet, or is it to be determined?

6 MR. BOONE: Yeah when you think about
7 paper and packaging and the boom we've had in
8 e-commerce in the corrugated boxes, this market has
9 -- the Pan Am market is big in that particular
10 market, and so that will continue to be a growth
11 opportunity for them, and also for them to be able to
12 reach new markets that they don't today in that
13 business.

14 VICE CHAIRMAN PRIMUS: Okay.

15 CHAIRMAN OBERMAN: Kevin, can I just go
16 back to this map for a minute.

17 MR. BOONE: Sure.

18 CHAIRMAN OBERMAN: The red arrows of CNCP,
19 they're just left hanging in the air there. What
20 rail line do they get to? Do they get --

21 MR. BOONE: We're just showing that yeah,
22 they're coming into that Pan Am network today. I

1 know it's not showing the connection right now, but
2 if we had a bunch of lines it gets convoluted, so. I
3 think how you need to think about it is the CN and CP
4 markets today, the Canadian western markets, reach
5 into the Pan Am and serve that market, and now you
6 know post the transaction, we believe some of the
7 other sources of energy could actually reach that
8 market efficiently as well, as efficient as those
9 markets.

10 CHAIRMAN OBERMAN: Can you pinpoint the
11 access points on PAR?

12 MR. BOONE: Let me defer to my colleague
13 Jamie who is an expert on that area.

14 MR. BOYCHUK: Really the only access
15 points that you would have where they would connect
16 across is either PAR or PAS that would then move up
17 towards the northern parts of the PAR line.

18 CHAIRMAN OBERMAN: Which junctions Jamie,
19 that's what I'm trying to get at.

20 MR. BOYCHUK: So the Canadian stuff coming
21 down and around the junction, I would say that the
22 way it moves today would probably come down around

1 through the Vermont railroad I would imagine, that
2 would then connect across. I'm not sure the exact
3 junction where they would come in.

4 Upon the northern part they'd probably
5 come down into Bangor, and then off of CP, which was
6 an interchange point at this point in time in Maine,
7 so some of that northern route would flow down
8 through there and head south as well.

9 CHAIRMAN OBERMAN: So you're talking not
10 about the green PAS line on this map, you're talking
11 about a Vermont line that's not shown on this map
12 that would then go all the way south to PAS, and then
13 back up north to Bangor?

14 MR. BOYCHUK: Some of those lines do
15 connect directly into some interchange points where
16 they cross the current PAR railroad.

17 DR. REISHUS: You see, Dave Reishus, you
18 see LPG traffic going into Maine through CPM and CMQ,
19 and then down from Canada into eastern -- I mean into
20 western New England, you know Vermont, New Hampshire,
21 you know, coming down off of the RS and CR.

22 CHAIRMAN OBERMAN: Are you saying it's

1 coming in by ocean into the port and then on to CP?

2 DR. REISHUS: No. Some of the CP's, no,
3 it's coming from Canada west, or possibly St. Johns,
4 but then over the CMQ.

5 CHAIRMAN OBERMAN: To where does it then
6 interchange with PAR some place from the CMQ?

7 DR. REISHUS: Yeah. Is it Bangor?

8 MR. BOYCHUK: Bangor, Maine is where it
9 would interchange from CP to PAR, and a lot of this
10 traffic would come out of the Sarnia area, and that's
11 where you see this propane flow out of which is where
12 Kevin had those arrows heading up and around.

13 CHAIRMAN OBERMAN: So you're saying once
14 you have the merger you can compete for those
15 customers by bringing up propane from the south?

16 MR. BOYCHUK: Yeah, so we own about a 15
17 mile piece of territory in Sarnia where we service
18 customers. That traffic is routed then on a haulage
19 agreement with CN, which would come around through
20 Toledo, and then could connect up south of the Great
21 Lakes on our water line heading to PAS and/or PAR.

22 CHAIRMAN OBERMAN: Got it, okay. So then

1 yeah.

2 BOARD MEMBER SCHULTZ: Some follow-up. A
3 follow-up question. I think you've indicated that
4 the transaction could potentially increase
5 competition for propane. Could the transaction also
6 potentially compensate for what seems to be lack of
7 propane pipeline going into New England?

8 MR. BOYCHUK: That's a great point, and
9 the discussions I've had with David Fink and his team
10 is a lot of commitments that governors have made with
11 David to make sure that there is sufficient numbers
12 of propane sitting around in some areas waiting for
13 cold snaps and other items and market conditions, but
14 yes this would open up not only to Kevin's point of
15 competition, but also some better routing that might
16 work for customers in order to have more access to
17 propane.

18 MR. LARocca: And let me add the
19 resiliency. I mean more options means more
20 competition. It means a more resilient network
21 that's able to deal with you know climate change and
22 other disruptions that are impossible to predict. So

1 more options which are being created here, improve
2 both the competitive landscape and the service.

3 MR. BOYCHUK: Right. And I think to
4 Tony's point there when the Canadian lines were
5 dealing with the first nations who were having
6 blockades on their railroad, this would be another
7 route in order for customers to be able to get that
8 needed propane.

9 CHAIRMAN OBERMAN: Let me ask a question.
10 I'm sorry Michelle were you finished? I didn't want
11 to cut you off.

12 MS. SHULTZ: Oh yeah I'm finished, thanks
13 Marty.

14 CHAIRMAN OBERMAN: Yeah. Let me just ask
15 this question. I have a number of questions
16 involving these access interchange points and the
17 pricing that's talked about in the application. Are
18 those questions appropriate for Kevin or for Jamie,
19 or for one other member of your team, since I've been
20 holding them for the moment?

21 MR. BOONE: It would probably be in my
22 area, someone might help me out as well, but yeah

1 that's probably.

2 CHAIRMAN OBERMAN: Kevin you're the tariff
3 person?

4 MR. LAROCCA: And Marty if the questions
5 involve the settlement agreements as well, maybe the
6 lawyers will have some -- could help clarify if
7 that's --

8 CHAIRMAN OBERMAN: Well I have a number of
9 questions which are going to take a few minutes, and
10 I don't want to interrupt the flow at this point
11 because I really want to get into it, but I will save
12 them for when Kevin is done, but Robert did you have
13 a question?

14 VICE CHAIRMAN PRIMUS: Well I can come
15 back to it. I had a question for Jamie, and I'm
16 sorry you guys had talked about sort of the access
17 and how you know things were connected to PAS, and
18 PAR, and I could wait until later if it's more
19 appropriate to do it then as a wrap up. Kevin if you
20 want to keep going?

21 MR. BOONE: Yeah I've only got one more
22 slide to wrap up, so I can quickly do that, and then

1 we can get into all of these questions.

2 VICE CHAIRMAN PRIMUS: Okay go ahead.

3 MR. LAROCCA: And Robert, I'm sorry, in
4 the meantime map 1E from our application is a
5 detailed listing of all of the interchange locations
6 on the system, if you'd like to point out.

7 VICE CHAIRMAN PRIMUS: Yeah I'm aware of
8 that. So Kevin it was basically a follow-up on that,
9 just one question, but thank you. Go ahead Kevin
10 because I have questions for you too, so why don't
11 you go ahead.

12 MR. BOONE: Okay. All right. I think
13 we're on slide 32 now. So finally our last example
14 focuses on the waste market. New England landfill
15 capacity is limited, and becoming scarcer with
16 pronounced near term challenges in Connecticut and
17 Massachusetts. Shrinking local capacity will require
18 municipalities to seek alternatives to dispose of
19 construction and municipal solid waste.

20 The improved service and integrated
21 operations of the combined CSX Pan Am network will
22 support development and implementation of rail based

1 solutions for waste disposal in the New England
2 region. CSX will bring its expertise as the largest
3 hauler of waste by rail to support safe, compliant,
4 and cost effective rail service to the Pan Am
5 communities.

6 As you can see through these examples, a
7 CSX Pan Am combination can deliver many new market
8 opportunities to New England customers and consumers.
9 We expect many other opportunities beyond these to
10 develop as we work closely with customers and invest
11 in the network.

12 That kind of wraps up my prepared remarks,
13 and maybe we'll get into the Q and A now.

14 CHAIRMAN OBERMAN: I'm wondering if the
15 assemblage is ready for a short break, and then
16 reconvene, and then break again maybe in an hour or
17 so for lunch. Does that seem comfortable with
18 everybody? We've been going for an hour and a half
19 since our last break.

20 VICE CHAIRMAN PRIMUS: Marty what time do
21 you want to do lunch? It's a quarter to one time in
22 the east coast.

1 CHAIRMAN OBERMAN: Well would you rather
2 break for lunch non on the east coast? In the
3 Midwest we just finished breakfast. Would people
4 prefer to just take their lunch? I think it's a good
5 time to break. Would you like to break for a half an
6 hour for lunch now? Everybody feel comfortable with
7 that?

8 VICE CHAIRMAN PRIMUS: Works for us.

9 CHAIRMAN OBERMAN: All right. Why don't
10 we reconvene at 1:15 Eastern.

11 VICE CHAIRMAN PRIMUS: Thanks Marty.

12 CHAIRMAN OBERMAN: All right gang. Okay.
13 Thank you everybody.

14 (30 minute lunch break.)

15 CHAIRMAN OBERMAN: Good afternoon. I
16 assume everybody has refueled and refreshed. So we
17 will keep going. So Kevin were you done with your
18 slide presentation?

19 MR. BOONE: Yes I was. Yeah I think we
20 were going to move into Sean after there was any Q
21 and A.

22 MR. DENTON: And Chairman Oberman this is

1 Peter Denton. I might suggest, it seemed like there
2 were a couple of questions that might start coming up
3 about Pan Am Southern. We think it would probably be
4 best to let Mr. Pelkey and then Dr. Reishus provide
5 their presentations which go into some depth on that
6 topic, and then --

7 CHAIRMAN OBERMAN: I actually had some
8 questions dealing with the rest of the network, which
9 I'd like to follow-up with Kevin, and then if he
10 needs to hand it off to Mr. Pelkey and Dr. Reishus we
11 can then defer those questions so they're finished,
12 but I'd like to get back to the traffic flows that
13 Kevin was describing because this is an area of
14 particular concern to me, I think the Board in
15 general.

16 So Kevin when you showed us the flow of
17 various commodities now versus the future, and I know
18 we were focused on propane for the moment, or I was
19 focused on it anyway. So I'd like to get back to
20 that and ask you some questions about propane as an
21 example, and then we might you know see if I can get
22 an understanding of how that applies to general

1 movement of freight.

2 So there's a couple aspects of the
3 application, which I want to read to you, and then I
4 want to focus on what those actually mean. At page
5 12 of the application it says that CSX has committed
6 to keeping all gateways to other rail carriers open
7 on commercially reasonable terms to ensure that PAR
8 system shippers continue to have access to other
9 carriers.

10 It doesn't say receivers, but so that's
11 one question I have. And then there's another
12 statement at page 287, which says CSXT has committed
13 to waive any rights CSXT might otherwise have under
14 the Board's rules to refuse requests by shippers to
15 establish local separately challengeable rates for
16 movements on the PAR system to interchange with the
17 other rail carrier.

18 So I want to flush out what that means in
19 terms of some specific examples of the shipments
20 we're talking about. I just want to make sure I am
21 clear on it, and that it is clear on the record. So
22 let's just take the propane that we were talking

1 about Kevin, that a reasonable -- some amount of
2 propane leaves Narnia, which is served by CSX -- I'm
3 sorry, Sarnia. Narnia may get us into another world
4 here, sorry about that.

5 Sometimes I feel like I've gone through
6 the wardrobe into Narnia since I've been at the
7 Board, but that's a different problem. So right now
8 you have traffic that comes from Sarnia that is
9 served by CSX, CN and CP as I understand it.

10 And some of this propane comes from Sarnia
11 and interchanges with PAR at Bangor I think is what
12 you told us. So the question I have is that after
13 the merger, but for these commitments that I've just
14 read from in the application, under the bottleneck
15 rule because CSX also serves that route, you would
16 not have to quote or provide access to CN and CP to
17 bring that same traffic in at Bangor.

18 And that you're committing to waiving that
19 right, and you will let them in, at least for some
20 period of time. Is that an accurate way to
21 understand the commitments you're making?

22 MR. DENTON: Yeah Tony I think this is an

1 appropriate one for you to jump in on.

2 MR. LAROCCA: Oh great, I'm the
3 bottleneck.

4 CHAIRMAN OBERMAN: I think this is the
5 bottleneck question, and I want to get it flushed out
6 here.

7 MR. LAROCCA: Yeah. Under the bottleneck
8 rule of course if a carrier can provide service
9 through service from an origin to a destination, it
10 is not obligated to quote a Rule 11 rate for an
11 interchange that would have the traffic move in
12 inter-lying service. It can simply quote a rate for
13 its through service. That's what the bottleneck rule
14 -- that's one of the principles underlying the
15 bottleneck rule.

16 CHAIRMAN OBERMAN: I understand that.
17 That's my question. My question is now what happens?

18 MR. LAROCCA: So what happens now is we
19 have said if a situation exists today where a shipper
20 could, or could ask for interlining service for a
21 particular movement where say the origin was provided
22 by Pan Am with an interchange to another carrier,

1 that we will not invoke that principle that I've just
2 describe as to prevent, or to refuse to quote a local
3 rate for movement to that existing interlining
4 partner that we will not invoke the principle that we
5 would otherwise have to refuse to quote a local rate
6 for interline.

7 Therefore, and that's one way of keeping
8 the gate, the existing gateways open, that if a
9 shipper wants a rate to an existing gateway we'll
10 give them a rate. That's basically the principle.

11 CHAIRMAN OBERMAN: All right. Tony, let
12 me stop you right there. We were talking about
13 propane, what about a rate for a receiver company
14 getting the commodity in from some place else into
15 the PAR line? Is this gateway -- because you said
16 there's a place where the application says you're
17 going to keep all the gateways open, at page 12, so
18 it's got to be open in both directions, as I read
19 your application. Is that correct?

20 MR. LARocca: Yes, that's right. I mean
21 the same rule would apply that we could not refuse to
22 quote an interline rate where we were the destination

1 receiver simply because we could provide the through
2 service without the interchange yeah.

3 CHAIRMAN OBERMAN: Well the reason I ask
4 is because in your previous statement you were
5 talking about shippers, but it's fair to say you mean
6 shippers and receivers, traffic in both directions?

7 MR. FOOTE: Tony this is Jim. Yeah, I
8 mean I guess in the railroad industry we would refer
9 to it you know they're all shippers. I'm sorry that
10 we were not clear.

11 CHAIRMAN OBERMAN: Well it depends, the
12 reason I ask Jim is that there's not a lot of as I
13 understand it in New England, not too many factories
14 shipping stuff out anymore, it's more people that are
15 receiving good than shipping them out, but whatever
16 the amount is, this commitment to keep the gateways
17 open and not invoke whatever rights you have under
18 the bottleneck rules applies to traffic going in to
19 New England, and ending up on PAR, or starting on PAR
20 and leaving New England, is that?

21 MR. FOOTE: Absolutely, absolutely,
22 whoever, whether it's the receiver, the shipper,

1 whoever is paying the freight, it's got the bill that
2 gets the rate from us today, or rate from them today
3 will get the same -- they'll get the same routing
4 tomorrow.

5 CHAIRMAN OBERMAN: All right. So just to
6 be clear, to use the propane as an example, if CP is
7 bringing propane gas from Sarnia to Bangor today,
8 after the merger you will give them a rate on PAR,
9 and keep that gateway open to bring that same propane
10 gas in?

11 MR. FOOTE: Yes.

12 CHAIRMAN OBERMAN: All right. And does
13 that commitment apply to every commodity? We were
14 using propane because we've got the nice chart up
15 here, but those movements, without going through how
16 every commodity under the sun moves to New England.
17 Does this not invoking, let me put it that way, the
18 bottleneck rule apply to every commodity from every
19 source that now goes into New England?

20 MR. FOOTE: Yes.

21 CHAIRMAN OBERMAN: All right. So that's
22 very helpful. So now let me get to the rates as I

1 understand it. Presently, and I'm looking at PAR
2 tariffs, I can give you the numbers if you would
3 like to follow along. The one I'm looking at now is
4 4127-L1 in which the same rate is provided to all
5 interchange points.

6 Well this one is really a PAS
7 Mechanicville, Rotterdam, Hoosac, all have the same
8 rate quoted for interchange regardless of the
9 carrier that's coming in. It's an equalized
10 treatment as I understand the PAR pricing policy.

11 Going forward, and again we'll hold off
12 for how long this commitment is because I know you've
13 got some limits there, but when we say you're going
14 to keep these gateways open, are you going to keep
15 them open under the same equalized pricing policy to
16 all comers?

17 MR. FOOTE: Well it's a tariff rate that
18 they're saying from this origin point to any offline,
19 or any gateway. They have a rate in place that I'm
20 sorry I'm not familiar with every tariff that they
21 might have, but if that's what their tariff says,
22 that from this origin point to any of these gateways,

1 here's what we charge for copper ton, for mile
2 whatever it is that the rate is. Yeah, like I said
3 we'll honor it.

4 CHAIRMAN OBERMAN: And that applies to
5 every gateway, or interchange point on the entire PAR
6 system?

7 MR. FOOTE: Yes. Absolutely yes.

8 CHAIRMAN OBERMAN: All right. So and
9 these will be tariff rates you're going to offer
10 obviously, not contract rates right?

11 MR. FOOTE: No. I think it's contract
12 rates too. We're not just opening tariffs up. If
13 someone has -- the concept is Mr. Chairman, if
14 somebody has a rate today to move freight, you know
15 there's two ways to physically close a gateway. One
16 is to physically close the gateway, you don't go
17 there anymore, and the other one is to do something
18 with a price that financially closes the gateway.

19 Our commitment is we are not going to do
20 anything either physically or financially that is
21 going to take away a competitive option that exists
22 today.

1 CHAIRMAN OBERMAN: All right. Well that
2 is precisely what I was going to get it, and I assume
3 if you can -- if somebody wants to negotiate a
4 contract rate you're not going to shy away from that,
5 but when you say challengeable rate I assume you mean
6 a tariff rate in the application, that's one of the
7 reasons I asked the question, that's correct right?

8 MR. FOOTE: If that's what we said in the
9 application, yes, and that's what we meant yes. But
10 I mean again most freight moves under contract, so
11 everybody knows what the rate is, and the question is
12 you have to maintain the rate structure so that the
13 gateway remains viable.

14 CHAIRMAN OBERMAN: All right. So let's
15 talk about time periods. Are these commitments time
16 limited?

17 MR. LARocca: They're not.

18 CHAIRMAN OBERMAN: These are permanent
19 commitments?

20 MR. FOOTE: Yes I believe so yes.

21 CHAIRMAN OBERMAN: Okay. Because I know,
22 and I think some of this may be confidential, so I

1 have not wanted to mention year periods. You can
2 tell us when we get to those parts of the case
3 involving certain commitments for a period of years.
4 But whatever those commitments are, what we've just
5 been talking about about keeping the gateways open,
6 and having equalized pricing, that is in perpetuity.

7 MR. FOOTE: Yes.

8 CHAIRMAN OBERMAN: Okay.

9 MR. FOOTE: Open gateways, it's you know
10 it is a concept that I developed along with a couple
11 other people that don't work here. When we did the
12 NIT League arrangement and when CN bought the -- it
13 was Wisconsin Central, that's where this concept
14 comes from, so I helped develop it, I know how it
15 works.

16 You can't close it off. If the customer
17 has an option to go on an interline rate today, you
18 keep it open.

19 CHAIRMAN OBERMAN: Well Jim the philosophy
20 of openness, I hope you will hold on Jim for two
21 months so we can talk about it in another context at
22 the reciprocal switching hearing, but I'll pass on

1 that for the moment. But I am pleased to hear the
2 way you have described it. I think it is the way it
3 seems to me that CSX is one way that CSX's commitment
4 in this merger to not decrease competition will be
5 carried out. Is that a fair statement?

6 MR. FOOTE: Yes.

7 CHAIRMAN OBERMAN: Yep, okay. That was
8 all I had on this point. I don't know if anybody
9 else had follow-up questions, or should we move on to
10 Mr. Pelkey? Does anyone else have a question, or
11 should we move on to Mr. Pelkey?

12 VICE CHAIRMAN PRIMUS: Yeah I mean I had
13 one question, and --

14 CHAIRMAN OBERMAN: Go ahead Robert.

15 VICE CHAIRMAN PRIMUS: Jim since you're
16 there. You know you had mentioned before that you
17 know no shippers are opposed to the proposed merger,
18 or filed anything, but you're right no one has
19 opposed it, but none of the big guys have endorsed it
20 either, and as a matter of fact ACC did file
21 something that said a comment that asked us not to,
22 if we're going to approve it, not to approve it

1 before the B&E transaction has gone forth because of
2 anti-competitive concerns.

3 In your response you guys said basically
4 that you're going to go forward, hope to go forward,
5 and consummate this merger before that. And so what
6 I'm asking is that still your intended plan of
7 action, or are you guys going to wait until the B&E
8 transaction is completed, until they take over PAS,
9 and then move forward?

10 MR. DENTON: Yeah. Vice Chairman Primus
11 this is Peter Denton. We kind of walked through in
12 our application the various steps of the
13 transactions, and the way we see it playing out is
14 there is an immediate close of the merging agreement
15 with PNM systems. We would then control Springfield
16 terminal. We would not merge Springfield terminal
17 with CSX at that time. That would occur at a later
18 date.

19 So it wasn't entirely clear to me which
20 step in the process ACC was referring to, but again
21 --

22 VICE CHAIRMAN PRIMUS: What I'm saying a

1 B&E transaction has to be completed first.

2 MR. DENTON: Yeah exactly. I don't think
3 that is a necessary step the way we've laid it out
4 right, so the way we've laid it out is that we would
5 acquire control of Springfield terminal. We have
6 certain protections in place to ensure that during
7 any period between our control, Springfield terminal,
8 and B&E taking over that there be no anti-competitive
9 effects. That's all laid out in our application.

10 But the way we've laid it out I think is
11 the best approach, and the way we plan to proceed.

12 VICE CHAIRMAN PREMUS: Well if it's the
13 best approach for you guys, but you know overall, you
14 know why wouldn't it be prudent to let B&E go ahead
15 and get that transaction out of the way?

16 MR. DENTON: I just don't think it's
17 necessary. I think the way we've laid it out we will
18 control Springfield terminal. There's steps in place
19 during the pendency of you know the B&E takeover
20 which requires some labor in many agreements, and we
21 believe that the way we've presented the transaction
22 works.

1 MR. LARocca: Let me jump in also to add
2 to that. The only reason that B&E will not operate
3 day two is because they need to enter into
4 implementing agreements with labor, that's it. And
5 as soon as those are done they're going to be
6 operating PAS. We're hopeful that that could be done
7 quickly. We don't know, but it would be a problem
8 for all of the stakeholders to leave everything up in
9 the air until all that's done.

10 What's going to happen to all of these
11 investments that we're planning along the reservoir
12 line and everything else? In the meantime there's
13 adequate protection. Springfield terminal will be
14 run by the same people that are running it today, and
15 we have committed to keep the rate structure, and the
16 operating arrangements stable at static as they are
17 today until B&E takes over, which shouldn't be more
18 than a few months at the latest.

19 So in the interim there's no risk of
20 competitive harm because nothing is going to change,
21 and but nevertheless we will be able to move forward
22 with our plan to modernize Pan Am right away, which

1 is what we are very anxious to do. That's why we've
2 structured it this way, with a very short period
3 until B&E takes over, hopefully the shortest possible
4 period where everything stays the same, and there
5 would be no impact on competition.

6 VICE CHAIRMAN PRIMUS: Well if it's such a
7 short period I don't see why you then have to put
8 those in place if it's relative short, a few months.
9 Why not just let it play itself out and then just go
10 forward after the transaction is completed?

11 MR. LAROCCA: Well a few months is a few
12 months of deferral on the benefits that we're going
13 to be bringing, and think about it.

14 VICE CHAIRMAN PRIMUS: And I mean you guys
15 say it's a generational you know, acquisition, so a
16 few months versus a generational position, that's not
17 that long.

18 MR. FOOTE: I'm sorry again, this is the
19 ACC that's -- who -- the American Chemistry Council
20 wants us to delay. They're protecting the labor
21 agreements? Well I mean if they want us to delay,
22 and we've explained that the reason for the delay is

1 for them to enter into labor agreements, and
2 implement labor agreements, so the American Chemistry
3 Council wants to delay to make sure that the labor
4 agreements are correct, because that's the only
5 reason.

6 VICE CHAIRMAN PRIMUS: Jim, I don't see it
7 as necessarily a delay. I just see it as look, you
8 know, and they're looking at it from an
9 anti-competitive standpoint, and I get that. I
10 understand that. And you know they're saying let's
11 just get that done and then we can move forward. No
12 one is saying that they want to stop it. No one is
13 saying that you can't go forward at the end, just
14 it's an important part to establish that.

15 You know to get B&E on the record, get the
16 transaction done and we can move forward. Again, no
17 one is saying it's going to hold them up for a year,
18 or for a long period of time. I mean even Tony just
19 said it should be quick.

20 MR. FOOTE: Okay. Well as I said you know
21 we want to get to the public benefits. We want to
22 get to the competitive advantages that the customers

1 are going to realize, and the customers all want us
2 to get going, and to get this done, and I don't
3 understand why the Chemistry Council wants to worry
4 about the labor agreements with the B&E, so we set
5 forth that you know we think it's in the best
6 interests of everybody to move forward.

7 MR. LARocca: And there are provisions
8 that we discuss in confidential filings about the
9 timing here, and how delays in being able to
10 consummate these transactions could create some
11 severe problems for the negotiated arrangements.

12 So the question really is you know of
13 course a little bit of time isn't you know in the
14 vast ocean of time isn't going to make that much
15 difference, but it could have an impact because of
16 the way the transactions have been put together. And
17 the question really is how much benefit do you get by
18 taking that huge risk? We've committed to doing, to
19 keeping everything stable during this time period.
20 The risk is negligible.

21 VICE CHAIRMAN PRIMUS: I don't think it
22 puts us in an unstable position. I mean again you're

1 looking at B&E, you know they're going to be a
2 neutral operator. I mean if anything it's about
3 transparency, and making sure this goes through so
4 people you know like ACC aren't worried about
5 anti-competitive, or any other sort of issues. You
6 guys have stated that in your notes as well, you and
7 NS has said that.

8 That you know B&E's operations are key
9 protections you know against those competitors, so I
10 don't see what the big deal is over you know a couple
11 months of making sure this thing, of B&E's
12 transaction gets done.

13 MR. DENTON: Well I don't think -- yeah we
14 acknowledge those concerns, and that is the reason
15 why we put in the protections that we stated in our
16 application, and we think that solves the issue.

17 VICE CHAIRMAN PRIMUS: Well I don't think
18 you need the protections if you just let B&E just go
19 ahead and get the transaction done. You don't need
20 those protections. That's enough.

21 MR. PELKEY: Let me just make one more
22 point, and then I hope I'm understanding this

1 correctly. But two things, one just to emphasize the
2 point Tony made. This deal turns into a pumpkin at
3 one point in time here, you know, that's confidential
4 in terms of the timeline, but I think it's important
5 just to note that and emphasize it.

6 So you know hopefully that's not before
7 whenever everything that needs to fall in.

8 CHAIRMAN OBERMAN: Who's speaking here.
9 Who is speaking?

10 MR. PELKEY: I'm sorry this is Sean
11 Pelkey.

12 CHAIRMAN OBERMAN: Oh I'm sorry Sean, I
13 couldn't see you. Sorry go ahead.

14 MR. PELKEY: No problem. So there is a
15 timeline in terms of the transaction. The other
16 thing is you know remember this, the agreement have
17 B&E operate over Pan Am Southern is an agreement
18 between the co-owners of Pan Am Southern, which right
19 now are Norfolk Southern and Pan Am. CSX is not a
20 co-owner until the transaction closes.

21 And so I'm just trying to think through
22 and maybe from the legal side you could help me, but

1 how does Pan Am agree to B&E operating a line that it
2 still owns? They're the operator today, so I think
3 there's some complexity if we were to try to reorder
4 things versus how it is currently structured.

5 VICE CHAIRMAN PRIMUS: Like I said you
6 guys are going around in circles. On one side you've
7 got Tony saying hey, we're going to get this done
8 only a few months after. Now you're saying there's
9 complexities involved in how we're going to get it
10 done, and you're going to turn into a pumpkin you
11 know, if something doesn't get done in that
12 timeframe.

13 MR. PELKEY: Yeah, the complexity is
14 simply that you know Pan Am is the current owners, 50
15 percent owner of Pan Am Southern, you know, I can't
16 speak for them as to whether they would agree to
17 have B&E take in and start operating the line prior
18 to the sale, that's up to them to decide.

19 MR. LARocca: And this is all driven by
20 the labor, by the need for implementing agreements so
21 that this all comes together without unnecessary
22 disputes. The very limited concern about operations

1 during the period where those implementing agreements
2 are being hammered out is not worth jeopardizing all
3 the benefits that this deal brings.

4 VICE CHAIRMAN PRIMUS: So you're saying
5 that this whole thing hangs in the balance of B&E?

6 MR. PELKEY: Not at all no. I think you
7 know the other point is we don't foresee any
8 challenges getting B&E fully approved as the operator
9 post-closing, but we have a fallback. If that
10 doesn't work the agreement states that immediately
11 CSX and NS would put out essentially an RFP to find
12 another operator who could do what we envision B&E
13 doing today.

14 So you know I don't think there's any
15 reason for concern here.

16 VICE CHAIRMAN PRIMUS: Okay. I'm done for
17 now.

18 MR. PELKEY: Okay. So why don't I turn to
19 the section of my presentation here, and I do want to
20 thank the Commissioners for the opportunity to
21 describe why we think our acquisition of Pan Am will
22 be a major step forward in the development of the

1 rail network in New England.

2 As you know I'm Sean Pelkey, and I'm the
3 Vice President and Acting Chief Financial Officer of
4 CSX. As I explained in verified statements filed in
5 support of CSX's application for authority to acquire
6 Pan Am, I was heavily involved in the analysis and
7 negotiation of the proposed acquisition since the
8 beginning of the bid process.

9 I was also directly involved in the
10 negotiations with Norfolk Southern, and Genesee in
11 Wyoming. As such I'm going to focus my comments this
12 morning on those negotiations, which aim to realign
13 the rail network in New England, and ensure that rail
14 users will have competitive and high quality rail
15 service.

16 When we learned that Pan Am was part of a
17 sale process we recognized the unique opportunity to
18 extend our rail network into an important region of
19 the country that is not directly served by Class 1
20 rail carriers today. Our network currently reaches
21 the Boston area, but does not penetrate further into
22 New England.

1 We were excited to bring a proven level of
2 rail service, investment in technology, to this
3 important and growing region. As you can see on the
4 map our acquisition of Pan Am would be a straight
5 forward end to end combination of the CSX rail
6 network that currently ends in Worcester,
7 Massachusetts, and the Pan Am railways network that
8 extends to the north of Worcester.

9 There is virtually no overlap between the
10 two networks, and there is undisputed overwhelming
11 public benefit associated with CSX's acquisition of
12 this route. Pan Am also owns 50 percent of another
13 independent rail carrier, the Pan Am Southern. NS
14 owns the other 50 percent.

15 Turning to the next slide the map you now
16 see shows the CSX and PAS lines that run roughly
17 parallel from Upstate New York into the Boston area.
18 The east west line toward the north is PAS's Patriot
19 quarter, south of that line is CSX's southern route.

20 CSX uses both the Patriot corridor and the
21 southern route to move traffic from upstate New York
22 into Boston. In fact, most of the traffic that we

1 move on PAS, goes to or from PAS locations that we
2 don't serve ourselves directly. Having these two
3 routes available gives us tremendous flexibility.

4 In acquiring Pan Am, CSX would become a 50
5 percent owner of PAS along with NS. As the Board is
6 aware, there are many examples of facilities jointly
7 owned by railroads, including facilities jointly
8 owned by CSX and NS that are highly effective
9 providers of competitive rail service.

10 Conrail is perhaps the most notable. CSX
11 and NS co-own and utilize Conrail to provide
12 competitive service to some of the most important
13 markets on the east coast. Since 2019, I have
14 served on the Conrail Board of Directors. I can
15 speak firsthand to the success of the structure.

16 During my tenure on the Conrail Board I've
17 witnessed significantly improved safety performance,
18 increased investment, and important changes to the
19 operating plan designed to better serve customers.
20 We've also worked together closely with NS to
21 resolve key issues in a way that Conrail on its own
22 would be challenged to do.

1 When Conrail was created the Board saw the
2 joint ownership structure as highly pro-competitive,
3 and while it does require time and attention to
4 ensure things are working properly, the joint
5 ownership of Conrail has been a resounding success.
6 We have proven this can work, and neither party has
7 any doubt we can replicate this track record with
8 PAS.

9 Against this backdrop we began discussions
10 with NS to work out a structure for our joint
11 ownership of PAS. Our discussions had two basic
12 objectives. First, we wanted to make sure that the
13 two routes into New England would continue to be
14 viable, both operationally and financially.

15 Second, given that CSX and NS contribute
16 the lion's share of traffic across PAS today, we were
17 jointly incited to create an agreement that resulted
18 in significant service improvements. After lengthy
19 discussions we reached a settlement agreement with NS
20 that will not only achieve these objectives, but will
21 in fact improve the competitiveness of PAS. Let me
22 now walk through the principal elements of that

1 settlement.

2 We agreed to several provisions that will
3 preserve PAS as a competitive route. CSX will remove
4 itself from all PAS competitive decisions, and will
5 have no say in rates or service offerings, in short,
6 PAS will continue to operate as an entity that is
7 independent of CSX.

8 Second, we made a commitment on Pan Am
9 rates that will ensure that rail carriers using PAS
10 to reach locations on Pan Am railways will have the
11 exact same access they have today. Third, PAS will
12 be operated by an independent proven rail operator
13 that will be responsible for setting PAS rates. We
14 agreed to retain the Berkshire and Eastern, a G&W
15 subsidiary.

16 As I'll explain in a minute we also agreed
17 to a compensation arrangement for the rail operator
18 that will create a strong incentive to grow the PAS
19 business, and continue to compete with CSX and other
20 railroads.

21 Finally, we agree to allow NS, or someone
22 designated by NS to acquire our interest in PAS, for

1 a period of time at a predetermined valuation. With
2 this agreement there is no reason for the Board to
3 consider a forced divestiture. Our settlement
4 agreement with NS also went beyond simply preserving
5 competition in New England. It will result in
6 substantial enhancements to competition.

7 Most important is our grant of trackage
8 rights to NS to move intermodal and automotive
9 traffic over CSX's southern route. Intermodal
10 accounts for the largest volume of rail traffic
11 moving into and out of New England. The problem for
12 NS is that PAS's Hoosac Tunnel has a height
13 restriction that prevents NS from moving double stack
14 intermodal cars on PAS into New England, a far more
15 efficient form of intermodal traffic than single
16 stack.

17 By giving NS trackage rates for intermodal
18 trains on CSX's southern route, competition for
19 intermodal traffic into New England will be
20 substantially improved. You heard earlier about the
21 importance of Ayer Yard for competition in the
22 region, and about the improvements we've agreed to

1 make to infrastructure and operations at Ayer.

2 As a result of these improvements, PAS and
3 CSX will both be stronger competitors for traffic
4 into and out of New England. Our agreement to retain
5 B&E as PAS operator will result in improved rail
6 service levels. This was important to both CSX and
7 NS because between us we have a significant majority
8 of traffic on PAS.

9 We need a strong and viable PAS to serve
10 that business. Today PAS is operated on a contract
11 basis by a Pan Am carrier, the Springfield terminal.
12 It also operates all of the other Pan Am lines. In
13 contrast, B&E will be exclusively responsible for
14 operating PAS. We believe that the ability to focus
15 only on the success of PAS will enable better
16 service.

17 We have also agreed to require B&E to
18 establish non-discriminatory prices for PAS
19 transportation so that all rail carriers seeking to
20 use PAS to reach markets in New England will have
21 equal access to those markets. The assurance of a
22 neutral route into New England will encourage

1 competition to serve New England shippers.

2 Finally, we have agreed to include
3 financial incentives in the operating agreement that
4 will give B&E strong motivation to improve service
5 and expand PAS's business. B&E through a profit
6 sharing mechanism, participates in the upside, and
7 therefore has a significant incentive to grow the PAS
8 business, and to improve the financial viability of
9 PAS.

10 The incentive is based on the financial
11 performance of PAS, and could represent a meaningful
12 share of B&E's total compensation. B&E is highly
13 motivated to achieve the incentive, and the only way
14 they get it is if they are able to help secure PAS's
15 long-term financial viability. All parties are
16 aligned to ensure PAS endures. We're confident this
17 model will be successful, however if at any point CSX
18 and NS as the owners of PAS, determine that B&E is
19 not living up to its contractual obligations, we can
20 terminate the contract and hire a new operator.

21 There are two other competitive issues
22 that our economist Dr. Reishus will address in more

1 detail. First, the Vermont Transportation
2 Department and Vermont Rail Systems, or VRS
3 originally expressed concerns about the retention of
4 B&E to operate PAS. But we have reached a settlement
5 agreement with the Vermont parties, and they have
6 withdrawn their concerns about the transaction.

7 In fact, there are elements of the
8 settlement agreement that will significantly
9 strengthen VRS in serving Vermont shippers. Second,
10 CP raised concerns that the restructuring of PAS
11 might jeopardize the viability of the Patriot border
12 route. These concerns are unfounded.

13 As I have noted previously, CSX and NS
14 together account for the vast majority of freight
15 handled on PAS, and we as co-owners will have a
16 strong incentive to keep PAS viable to handle this
17 traffic. We have also agreed to implement safeguards
18 regarding critical governance issues, such as future
19 capital funding decisions. NS is the party with the
20 most to lose if PAS's viability were to decline.

21 But NS is clearly satisfied that the
22 agreed upon structure is the best way to strengthen

1 PAS as a viable and competitive route into New
2 England. The restructuring of the rail network in
3 New England through these settlement agreements was a
4 difficult task, given the fragmented and complicated
5 structure of the network in place today.

6 But we have created a new structure that
7 has resulted in tremendous support from the shippers
8 and railroads that connect with PAS. Indeed when it
9 comes to the PAS structure, not one shipper has
10 expressed concern, and if we turn to all the
11 railroads in the region that connect to PAS, only one
12 has expressed concern -- CP.

13 The strong support we have received from
14 so many other rail stakeholders shows there is
15 widespread confidence that we have created a stronger
16 and more resilient structure for rail transportation
17 in New England that will better serve rail
18 stakeholders.

19 Finally, I'd like to ask the Board to be
20 very careful in considering requests by some
21 commenting parties for fundamental changes to the
22 negotiated restructuring of PAS, particularly the

1 DOJ's request that CSX be forced to divest its
2 interest in PAS. The tri-party arrangements involve
3 numerous commitments and trade-offs that could not
4 easily be renegotiated if fundamental changes were
5 required, particularly in light of the time
6 constraints that I have described for the Board in
7 confidential pleadings.

8 If fundamental changes were required, the
9 entire interconnected set of proposed transactions
10 could unravel, with the loss of public benefits
11 described above that have generated such widespread
12 support for the transaction. I thank you for your
13 time. And I think we would now send it over to Dr.
14 Reishus.

15 CHAIRMAN OBERMAN: I think Karen had a
16 question. And I have a few questions about the
17 arrangement with B&E. Karen?

18 VICE CHAIRMAN PRIMUS: I have a question
19 too.

20 BOARD MEMBER HEDLUND: Yeah my question is
21 this, understanding that you're obviously not subject
22 to all the procurement rules, could you at least

1 describe what methodology you used in the selection
2 of B&E? Did you solicit proposals from other
3 potential operators, and so forth?

4 MR. PELKEY: Thank you for the question.
5 The process was one that was it was critically
6 important that we find the right operator, and I
7 think it's important to recognize that it was in the
8 mutual best interests of both CSX and NS to find an
9 operator we were both confident could operate it
10 efficiently, and with better levels of service than
11 what Springfield terminal is providing today.

12 The pool of potential operators who could
13 do that in short order that have the financial
14 resources to mobile quickly, and that you know given
15 the time line that we have on the closing of this Pan
16 Am transaction could do it in short order, was fairly
17 small. We discussed several names between the two
18 parties, and we narrowed in on Genesee and Wyoming,
19 who has a tremendous presence in the area, has done
20 this many times across North America, and have done
21 it successfully.

22 And we also needed a party that was

1 interested in participating. This is a complicated
2 situation to step into. When we began those
3 negotiations with G&W they not only expressed
4 interest, but also excitement about that opportunity,
5 and so we moved forward very quickly to begin to
6 draft the terms of an agreement with G&W that would
7 allow them through Berkshire and Eastern to operate
8 Pan Am Southern.

9 BOARD MEMBER HEDLUND: So as I understand
10 it you didn't formally solicit letters of interest,
11 or proposals from other operators, you just discussed
12 various potential operators among yourselves and
13 decided that B&E was the right entity.

14 MR. PELKEY: That's correct. Yeah, you've
15 got to sort of go back to where we were in the
16 transaction. You know we had already announced that
17 we were going to acquire Pan Am. We then needed to
18 shift our attention to you know getting an agreement
19 with Norfolk Southern around how this structure,
20 50/50 ownership of Pan Am Southern was going to work,
21 getting an operator was one piece of that.

22 Had we gone to a full RFP, you know,

1 that's a process that takes a fair amount of time,
2 and I think both parties were very confident G&W
3 could do this. If it fell apart we were open to
4 going forward and doing something different, and the
5 agreement like I mentioned already, stipulates you
6 know, if the B&E arrangement doesn't pan out, that's
7 exactly what we would do as a next step is go to an
8 RFP process.

9 BOARD MEMBER HEDLUND: Thank you.

10 CHAIRMAN OBERMAN: Sean I have a few
11 questions about the relationship between CSXT and how
12 the PAS line is going to be operated on this question
13 of independence. You know we did get a fairly strong
14 argument from DOJ that they think structural
15 solutions are the way to go. Your contention is the
16 structural solution is not needed here because of the
17 protections, and I'd really like to explore those a
18 little bit more at this point.

19 You seem to be the person who was
20 responsible for setting this up, but Tony or Peter
21 may want to weigh in as well. As I understand the
22 term sheet with B&E, according to your application,

1 it says that NS and CSXT will agree on a suite of
2 operating metrics and goals that B&E will measure and
3 report on at certain intervals.

4 So doesn't that, and the LLC agreement
5 provides that both CSX and NS will have
6 representatives on the PAS management committee,
7 "responsible for amending PAS's investment policy,
8 setting the budget, and carrying indebtedness and
9 making capital calls." That doesn't seem to me that
10 you're removed from decisions about PAS.

11 MR. PELKEY: Yeah I think the way I would
12 frame is I don't know if the right terminology is
13 removed from decisions, but I think you know that PAS
14 will operate independently of CSX right? We're not
15 setting the rates. We're not setting the schedules
16 we're not setting the you know the terms of service.
17 Are we going to monitor it? Absolutely.

18 Is it our investment? It's 50 percent our
19 investment, 50 percent Norfolk Southern. So we'll
20 monitor the budgets, we'll approve the budgets, both
21 operating expense and capital, and I think everybody
22 will be jointly incented to have a better run

1 railroad.

2 CHAIRMAN OBERMAN: Well you know that's
3 not a structural solution. That relies on the
4 intentions of the human beings that are in place at
5 any moment, and with no aspersions on any particular
6 human beings, the reason we have conflict of interest
7 rules, and other kinds of rules is that we don't want
8 to put human beings in positions where they have
9 conflicting loyalties.

10 And if the occasion were to arise where it
11 was in CSX's best interest to devote resources to the
12 southern route, and to let the northern route
13 deteriorate, if CSX has got veto rights over budgets
14 and capital expenditures and so forth, how are we
15 protected? We being the public from such an outcome
16 two, three years from now when the world will change,
17 or ten years from now?

18 MR. PELKEY: I think there's two things
19 I'd say, and lawyers may want to chime in too. The
20 first is you know I brought up the example of Conrail
21 for good here. The management committee has
22 envisioned Pan Am Southern is very similar to the

1 Board of Directors as constructed at Conrail. I
2 happen to sit on that Board. We've got lively
3 discussions and debates amongst both parties, as well
4 as with Conrail who is the operator, in a similar
5 way that B&E would be the operator of Pan Am Southern
6 here. Somehow we figure it out, and we create a
7 capital plan.

8 Our engineering team goes in, Norfolk
9 Southern's engineering team goes in, Conrail's
10 engineering team weighs in, and we come up with a
11 budget that's in the best interest of all parties as
12 well as the customers who are on that line, so it's a
13 structure that can work.

14 I would also say in terms of capital
15 expenditures specifically on Pan Am Southern, while
16 we do have a 50 percent vote, and while I do envision
17 that reasonable parties across that management
18 committee will come to a good agreement about what
19 capital to invest in the line, we've agreed that in
20 the event that there's any dispute that lingers over
21 our you know, our view versus Norfolk Southern's that
22 we would submit it to accelerate in arbitration, and

1 that arbitration would be using the standard of an
2 independent investor in that line, and we want it to
3 maximize its return.

4 We'd be subject to whatever that
5 arbitration came out with, and that would be the
6 capital budget that would be set.

7 CHAIRMAN OBERMAN: Do you have an
8 arbitration provision like that at Conrail?

9 MR. PELKEY: I am not aware of that. I
10 don't know if the legal team does. It's not
11 something we've ever had to even envision using
12 frankly I do not.

13 CHAIRMAN OBERMAN: That actually is an odd
14 way to run a railroad, to have your business
15 decisions being made by -- you've got to stop what
16 you're doing and go into arbitration. You know a
17 lot of these decisions are time sensitive.
18 Obviously, right now NS has an interest for example,
19 in raising the height of that Hoosac Tunnel.

20 CSX has a completely different motivation.
21 I don't think that you can change that. The day
22 could come, it could be a P3 with the State of

1 Massachusetts and some other interest in investing in
2 that Hoosac Tunnel and CSX's team may have no
3 interest at all in spending money on that. And
4 everything has to stop when it goes into arbitration.

5 MR. PELKEY: Yeah so we have agreed to
6 support any kind of public funding proposals that Pan
7 Am Southern agrees it's in the best interest of Pan
8 Am Southern to put forward to that specific point. I
9 don't know Peter is there anything you'd like to add?

10 MR. DENTON: Yeah. I would like to add.
11 I think we set out in the record how CSX is
12 incentivized to keep the PAS Patriot corridor viable.
13 So when you said that CSX wouldn't have an incentive
14 to repair the tunnel, or to --

15 CHAIRMAN OBERMAN: Not to repair it, but
16 to make it available for double stacks. It doesn't
17 need it, it's got the southern route.

18 MR. LAROCCA: NS doesn't need it either
19 now.

20 CHAIRMAN OBERMAN: Well.

21 MR. LAROCCA: In light of -- that's really
22 the beauty of this. When you think about it from a

1 social policy economic perspective, would it make
2 sense to spend the magnitude of millions of dollars
3 to double stack that several mile long tunnel? Or to
4 run those double stack trains over the trackage
5 rights?

6 I think from a perspective of the public
7 who ends up having to pay for all of these costs, the
8 solution that we have come up with is a far more
9 efficient one, and one that is going to benefit
10 competition and the public far more than just
11 spending more money on something that isn't needed.

12 CHAIRMAN OBERMAN: Well for the moment
13 it's not needed, but NS has topped out at one 9,000
14 foot train each way. If intermodal grows the day may
15 come when they may need more. If the funds were
16 available they may well find it to their business
17 advantage to deepen the Hoosac Tunnel and not have to
18 rely on trackage rights because they own half the
19 railroad.

20 So I just don't know in the long-term you
21 can assume that the motivations will be the same, and
22 that is the reason I think that the DOJ has urged

1 divestiture to avoid ever having to be put into that
2 conflict. And I'm trying to ferret out here, you
3 know, how you've come if not equal to the incentives
4 in a divestiture, at least close enough to satisfy
5 the public interest. That's what I'm trying to
6 explore here.

7 MR. LARocca: Well in a balance Mr.
8 Chairman, think of the risk that you're contemplating
9 here, and compare the risks. The risk here of an
10 inappropriate decision by CSX to not fund an
11 investment that would otherwise make sense. That's
12 one risk on one hand. On the right on the other hand
13 is that this whole deal goes away, and all of the
14 modernization that we're talking about goes away.

15 You have to be considering the relative
16 risks here. On the first risk I don't even think
17 that that's much of a risk, but if it were that is
18 that CSX would do something that is not economically
19 rational. But if it were, the point is we have
20 established a back stop. We have established a
21 remedy that is not perfect, but it would be
22 effective, and it would be a way of addressing that

1 risk.

2 And so I think it's important to weigh the
3 relative benefits that you get by divestiture, which
4 would be -- or the relative risks that you get if you
5 were to require divestiture, compared to the relative
6 risks that CSX who uses this line for a substantial
7 amount of traffic is going to make an uneconomic
8 decision, and I don't think that there's really much
9 of a comparison there between those two concerns.

10 CHAIRMAN OBERMAN: Tony I think the question
11 is that I'm focused on is given the fact that CSX has
12 a parallel line which it owns 100 percent of. The day
13 may come when it may well make economic sense for CSXT
14 to not want to invest further in PAS. And that is what
15 we're focused on here.

16 So yes, I don't assume that CSX will shoot
17 itself in the foot someday, but it may well be in
18 CSX's selfish interest to not make the same
19 commitments that NS might, or some other independent
20 owner. That's what I'm trying to get at, and the
21 solutions, the structural solutions that have been
22 proposed strike me as being somewhat awkward, either

1 to stop what you're doing and go into arbitration, or
2 the one you suggested that you don't like, and that
3 is to have a fiduciary come in and make these
4 decisions.

5 I for one am trying to figure out how you
6 put a fiduciary in the same with -- how you instill
7 in a fiduciary the same incentives to make business
8 decisions as an actual owner and entrepreneur would
9 be. I mean contrary to popular belief I believe in
10 the entrepreneurial system and the free market.

11 And I think there's nothing like having an
12 ownership interest in it to motivate you to make the
13 best economic decisions, and so but yet we're trying
14 to leave CSX in kind of a dual position. An owner,
15 but the person who is going to make the decisions
16 isn't an owner. I'm just find it problematic to
17 figure out how this is actually going to protect the
18 public interest in the long run. I'm not saying it
19 can't, but I'm trying to explore it.

20 MR. LARocca: That's why we don't favor
21 the fiduciary. We think it would be a way of dealing
22 with if you really believe that the risk was

1 un-takeable, that CSX would do something irrational,
2 then that's a solution. We don't like it. We don't
3 think it's necessary.

4 We think as an owner CSX is going to make
5 decisions in the interest of an owner of this line,
6 and while you are absolutely right, we do have the
7 southern line, most of the traffic that we use, that
8 we run on PAS is local to PAS. We don't -- most of
9 that traffic is not served, cannot be served directly
10 from the southern line. So we will have the same
11 incentives that an owner, an independent owner would
12 have to keep this line viable.

13 And that's why we don't favor the
14 fiduciary approach. It's one that we put out there
15 if you really don't believe that we are capable of
16 acting rationally, but we don't think that that's
17 the right approach either. We think that we have the
18 correct incentives to keep this line operational,
19 viable, and indeed better served than it is today.

20 MR. DENTON: Mr. Chairman there's a reason
21 why traffic, CSX traffic runs on PAS today, and that
22 reason will remain post-transaction. This traffic,

1 we're not just moving it on PAS for you know the good
2 of PAS right now, we're doing it because that's the
3 most efficient way to run this traffic. And that's
4 not going to change after the transaction, the
5 traffic flows will remain the same.

6 CHAIRMAN OBERMAN: How much traffic is CSX
7 running on PAS now?

8 DR. REISHUS: If I can go ahead and say
9 this. They account for a little over a quarter of it
10 on the tape recorder.

11 CHAIRMAN OBERMAN: But that's a relatively
12 small absolute number though isn't it.

13 DR. REISHUS: Well it's a relatively small
14 absolute number on the corridor as a whole.

15 CHAIRMAN OBERMAN: Yeah I understand so a
16 quarter of it is even smaller.

17 DR. REISHUS: Yeah.

18 MR. DENTON: Chairman Oberman with respect
19 I think Dr. Reishus's presentation discussion is
20 going to touch on it.

21 CHAIRMAN OBERMAN: All right. Well let's
22 hold off then because I wanted to get back to one

1 other part in the application that I found a little
2 bit concerning speaking of fiduciary duty. One of
3 the representations that was made to the Board is
4 that another protection in terms of CSXT functioning
5 in the best interest of PAS is a statement in your
6 papers that says CSX representatives on the Board of
7 PAS would be bound by their fiduciary duties under
8 corporate law to act in the best interests of PAS.
9 Are you familiar with that? Peter, are you familiar
10 with that?

11 MR. DENTON: Yes. Yes I am.

12 CHAIRMAN OLBERMAN: We looked at the LLC
13 in whose shoes you're going to step, and it appears
14 that the LLC has exercised its rights under the
15 Delaware Corporate Code to excuse all
16 representatives of CSX "to the fullest extent
17 permitted under Delaware law to owe any duties of law
18 or equity, including fiduciary duties to PAS."

19 So that's really not much of a protection
20 is it? They don't have any fiduciary duties to PAS
21 because you have exempted them from it. Not you
22 have, but the LLC did.

1 MR. DENTON: And it's a good question
2 Chairman. We'd have to take this back and look at
3 the LLC agreement in order to present a good answer
4 to you.

5 CHAIRMAN OBERMAN: All right. Well maybe
6 you can do that before the close tomorrow because we
7 read the LLC, and maybe we're missing something,
8 unless maybe you've amended the LLC, but the current
9 status of that LLC utilizes the Delaware law
10 exemption from fiduciary obligations, so that's a
11 little bit troublesome.

12 MR. DENTON: Right, just for clarity
13 you're referring to the existing agreement, is that
14 right? In place between Pan Am and Norfolk Southern,
15 or are you referring to the revised version that we
16 submitted.

17 CHAIRMAN OBERMAN: I think it's the one
18 you submitted. But I'll check.

19 MR. DENTON: Okay because we submitted
20 both.

21 CHAIRMAN OBERMAN: I'll check them both,
22 and I'll check with my staff to make sure.

1 MR. DENTON: Sure.

2 CHAIRMAN OBERMAN: But that's my
3 understanding. And that's problematic. I mean it
4 would be a little bit more comforting if they hadn't
5 exempted themselves from their fiduciary duties which
6 are strong under Delaware law if they're in place.
7 If they're not in place there's no protection at all.

8 The other thing I find a little quizzical
9 about the CSX's position in terms of the protections
10 on the PAS is that in your papers you talk about the
11 B&E contractual obligations in terms of its
12 obligations and how to run PAS. You talk about the
13 CSX fiduciary obligations, and you say that the
14 public is protected because the STB stands there to
15 enforce all these obligations.

16 What you say and quoting is an important
17 function of the STB has historically been to provide
18 efficient supervision of the implementation of rail
19 transactions, and ensure that commitments made in
20 these transactions are carried out. I am flattered.
21 I do think that is what the Congress expects us to
22 do, but I must say that in the three years I've been

1 on the Board I have heard continuously from certainly
2 the Class 1 community, that the STB should keep its
3 nose out of the Class 1's business.

4 And you're now telling us that the best
5 way to protect the public on your keeping your
6 commitments is that the STB should stick its nose
7 right into the business by making sure B&E operates
8 the place the way its supposed to be, and CSX doesn't
9 act as an obstructionist in the best interest of PAS,
10 so I'm a little confused Peter, to be honest about
11 what you want the STB to do.

12 You want us to keep our nose out, or stick
13 our nose in?

14 MR. DENTON: Well from a policy
15 perspective Mr. Chairman, I think there's a big
16 difference between enforcing your condition of a
17 merger, and you know any other activity. There's a
18 well trod process here. We've proposed a five year
19 oversight period. Many other mergers there are
20 commitments made that are then subsequently enforced
21 as necessary at the STB. I'm think of some UP SP
22 conditions that you know have been in place for 25

1 years now, and still come up from time to time when
2 an enforcement decision is necessary.

3 So I think not speaking for the entire
4 Class 1 community here. I think that people
5 recognize that merger commitments are important, and
6 that the Board serves an important role as a
7 backstop to enforcement.

8 CHAIRMAN OBERMAN: Well I don't disagree
9 at all. It's one thing to enforce commitments for
10 access, or trackage rights and so forth. It's
11 another thing to get in there and manage the
12 business of B&E if we don't think they're managing it
13 correctly. That's what I was talking about. That
14 seems awfully intrusive request of the STB to in lieu
15 of divestiture, to step in there and make sure
16 they're making the right business decisions, and
17 they're offering you know pricing strategies to not
18 disadvantage NS.

19 Those are pretty minute business
20 decisions. That's really what I was focusing on.
21 And to be honest Peter, I don't feel particularly
22 equipped to make those decisions. I don't run a

1 railroad.

2 MR. DENTON: Yeah Mr. Chairman I believe
3 those decisions, that's the reason we've set up a
4 robust LLC agreement, and other oversight from the
5 owners of PAS. I mean CSX and NS says, each
6 one-half owners of PAS are incentivized to make sure
7 that B&E runs this the right way.

8 And we first will be the ones who see
9 something like that, and frankly to the extent it's
10 necessary we'll correct it. I think that is a very
11 you know remote risk of something like that needing
12 to come before the STB.

13 CHAIRMAN OBERMAN: Well maybe so, you
14 know, it's hardly perfect. We're right now engaged
15 in a case in which CSX and Norfolk Southern are
16 pretty much at each other's throats at the Norfolk
17 and Portsmouth Port issue. We're still sorting out
18 Lake Charles merger conditions. That case has been
19 pending for ages. You know it's not always so
20 smooth. And you know I think that's why structural
21 solutions are urged.

22 It may not be appropriate in this case,

1 but I really wanted to air out here that the
2 solutions you are presenting as to how to ensure
3 competition here, that's really what we're talking
4 about, are not without meaningful risk. The attorney
5 talked about risk. To me there is meaningful risk if
6 the STB has to get in here and try to manage this
7 situation.

8 We don't want it, and I'm sure you don't
9 want it, but that's what you're setting up as the
10 backstop.

11 MR. DENTON: Yeah, Mr. Chairman I would
12 offer that I think most mergers don't, you know what
13 the two scenarios you described are kind of a very
14 tip of the iceberg right? I think most issues get
15 resolved in a commercial basis. They are not
16 required to be brought before the Board, and you know
17 merger conditions are dealt with by the Class 1
18 community you know every day.

19 Every Class 1 is basically living on the
20 backs of their prior mergers. So I really don't see
21 this as any different than those other issues.

22 CHAIRMAN OBERMAN: Well I hope you're

1 right.

2 MR. LAROCCA: And I would also add Mr.
3 Chairman that my experience is we don't want to get
4 brought before the Board. We resolve things so that
5 we don't have to. And the fact that this is you know
6 an available remedy likely ends up resolving the
7 problems before they are forced to be resolved by
8 you.

9 It's I mean, and that goes more broadly
10 than I don't want to get into it. We've got enough
11 to talk about here, but I mean that truly is a
12 dynamic that is very important in the railroad
13 industry. The fact that you're there means we
14 resolve an awful lot of stuff because we don't want
15 to have to litigate.

16 CHAIRMAN OBERMAN: And Tony I appreciate
17 that, and I think that we're on exactly the same
18 wavelength. I have said many times in public
19 statements, and particularly since I've become
20 Chairman, that the best solutions are ones where the
21 industry resolves these issues themselves.

22 You've done that in this case with some of

1 your settlement agreements so far. But I am just
2 felt it very important to air out these backstops
3 that you're asserting as a reason to avoid what DOJ
4 has urged. And they're not pain free. That's all I
5 am suggesting, and we have to weight that.

6 MR. LAROCCA: And I think, and I fully
7 understand what you're saying and I agree. And I
8 think the precedent though is relevant here. I mean
9 these issues have come up in the past, and the agency
10 has recognized that they're not risk free, some of
11 these solutions, but they also recognize that the
12 risks associated with forced structural changes are
13 far greater.

14 CHAIRMAN OBERMAN: And that is an issue
15 that we have to decide, so but I hear what you're
16 saying. Robert I think you had a question?

17 VICE CHAIRMAN PRIMUS: I defer to Patrick.
18 I think Patrick wants to follow-up. I'll come back.

19 BOARD MEMBER FUCHS: I appreciate it
20 Robert. I think my follow-up is what Tony said is a
21 great segue. You know in terms of comparing whatever
22 analysis that can add an effect to the overall

1 benefits of the transaction, you know, which you all
2 spend a good bit of the morning presenting.

3 You know CP DOJ, the two parties that took
4 issue with the current arrangement on the northern
5 route, has either party to your eyes made a showing
6 that the claims to anti-competitive effects outweigh
7 the benefits of the transaction?

8 MR. DENTON: No, no. Moreover, I don't
9 think either has made a showing that the claims are
10 likely or substantial, which is the statutory
11 standards that you must first grapple with.

12 BOARD MEMBER FUCHS: And the second
13 question is did either party contemplate -- let me
14 ask you this. Does Norfolk Southern's grant of
15 trackage rights on the southern route. Your
16 negotiation with Norfolk Southern, the 50 percent
17 ownership stake that you're going to have in the
18 northern route was important, was an important reason
19 for why you gave them trackage rights over the
20 southern route. Is that a fair thing to say?

21 MR. DENTON: Yes that's correct.

22 BOARD MEMBER FUCHS: Did either CP or DOJ

1 analyze the effects of some sort of condition, the
2 effects of some sort of condition would have on the
3 benefits of NS trackage rights?

4 MR. LAROCCA: No. And indeed I mean I
5 would not to be critical of the DOJ, but I don't
6 believe they understood how trackage rights work, and
7 how extensive they are in the railroad industry, and
8 how effective they are in railroad industry, and how
9 relatively free from dispute they are.

10 So I don't think that the Justice
11 Department really understood the benefits side of
12 that deal as it relates to the trackage rights.

13 MR. DENTON: And Tony I would also add
14 just briefly that kind of the quasi structural nature
15 of trackage rights. I mean this is not just a
16 contract that can go away tomorrow. Trackage rights
17 are you know regulatory entry, exit authority. It
18 would be a conditions of the merger, this is not some
19 kind of transitory system that could disappear you
20 know at a whim.

21 BOARD MEMBER FUCHS: And you know Norfolk
22 Southern is a result of getting trackage rights on

1 the southern route, it's going to be automotive and
2 intermodal. You know in a global sense that is
3 traffic that would compete with the CP. Perhaps
4 that's a question for Norfolk Southern hey?

5 MR. LARocca: Yeah I think so.

6 MR. FOOTE: No that statement would be
7 incorrect. CP doesn't move any intermodal in that
8 territory.

9 BOARD MEMBER FUCHS: Do you think that the
10 origination points for Norfolk Southern in terms of
11 whatever they are originating for intermodal or
12 automotive, would compete with CP somewhere else on
13 CP's network? For example, are there shippers that
14 they would have in common that if Norfolk Southern
15 offers a better intermodal, or automotive product
16 would somehow have any negative effect on CP?

17 MR. FOOTE: Well we all compete with one
18 another in various different lanes, and I'm sure NS
19 does compete with CP in some lane or another. But
20 today CP doesn't move any traffic into Boston.

21 BOARD MEMBER FUCHS: Okay. And then
22 switching back to what I think Peter and Tony alluded

1 to in terms of the standard. When Congress added
2 Subsection D, D1 being likely substantially less than
3 the competition, or trade or monopoly, is it fair to
4 say that that language was drawn from Section 7 of
5 the Clayton Act?

6 MR. DENTON: I need to brush up on my
7 legislative there.

8 BOARD MEMBER FUCHS: Well the language
9 pretty much mirrors Section 7 does it not?

10 MR. DENTON: Honestly, I just don't have
11 the Clayton Act in front of me, but.

12 BOARD MEMBER FUCHS: The reason I mention
13 it is because in DOJ's brief they extensively quote
14 the remedies manual of the DOJ.

15 MR. DENTON: Right.

16 BOARD MEMBER FUCHS: Which as I understand
17 it draws you know, is mean to implement Section 7.
18 And the D1 criteria is very similar to the Section 7
19 standard, but what's I think relevant, and kind of
20 circling back to my first question, is the Congress
21 didn't stop at that standard. The Congress added a
22 provision that said that not only is there likely

1 substantially less competition, but those effects
2 have to outweigh the benefits.

3 And I think a review of the record of the
4 time would, is actually on point for what we're
5 discussing right now, which is there was a concern,
6 DOJ -- the Carter administration proposed that we
7 just go under Clayton. Everything goes under Clayton
8 except for coordination, would have a two part
9 standard.

10 And the Congress deliberately decided not
11 to just put it under a Clayton standard, which is
12 what DOJ was referring to in its remedies manual, but
13 to also consider the broader public benefits of the
14 transaction, which is 1F D2, and so not only did it
15 reside with the Board as an expert agency, but the
16 standard was different than what could be brought
17 under an anti-trust case.

18 And I only put that forward to say whether
19 or not if we're only looking at conditions through
20 the prism of a remedies manual, we're ignoring a key
21 criterion that the Congress added deliberately to
22 avoid being treated like we're under Clayton. I

1 think you all will have any commentary on that.

2 MR. DENTON: It's a great point Patrick,
3 and I'm going to get into this in my kind of prepared
4 remarks a little bit later, but what we see as the
5 key here is that under either of the approaches that
6 have kind of been debated amongst Board members it
7 seems like in recent decisions, there's a threshold
8 issue. It's whether or not there are substantial and
9 likely anti-competitive effects that would flow from
10 the transaction.

11 And we believe that we have established
12 here that that is simply not the case. So regardless
13 of whether you need to evaluate public benefits, we
14 don't believe any of the conditions that have been
15 requested even get past that initial D1 standard that
16 you talked about for likely substantiality.

17 BOARD MEMBER FUCHS: And to your point
18 Peter neither party made an attempt to show
19 substantiality. MR. DENTON: That's
20 absolutely correct yes.

21 MR. LAROCCA: Well and we, and Dr. Reishus
22 in fact focused much of his analysis on showing that

1 there is not, that the substantiality factor is not
2 met, or the likelihood factor.

3 BOARD MEMBER FUCHS: And last question for
4 me and Robert, thank you for your indulgence very
5 much. It's also true that the Board denied
6 conditions in BL&E decision four by citing the lack
7 of substantiality, and that the Board denied
8 conditions, actually in this very area, and the CMQ
9 transaction by citing a lack of unsubstantiality, and
10 has done so repeatedly throughout its history.

11 So it's you know would you say that the
12 bulk of precedent is that the Board doesn't give
13 conditions unless substantiality is established, and
14 no party in this case had made an attempt to do so.

15 MR. DENTON: Likelihood and
16 substantiality, and I completely agree.

17 BOARD MEMBER FUCHS: All right thank you.

18 CHAIRMAN OBERMAN: I want to follow-up on
19 that Patrick because you raised as always important
20 points. And by the way Peter I can't answer any of
21 those questions either. No one knows the statutes
22 and the history better than Patrick. Now if he

1 weren't here we'd all be lesser for it.

2 So but it adds to the discussion. I just
3 want to be clear here, you recall the exchange that I
4 just had with Jim and others about keeping these
5 access points open on equalized tariff rates going
6 forward into perpetuity. That is being done by CSX
7 to avoid diminishing competition.

8 So whether we weight it as likely or
9 substantial, if it eliminates a diminution of
10 competition we don't have to get to the likely and
11 substantial part, wouldn't you agree?

12 MR. DENTON: Absolutely.

13 CHAIRMAN OBERMAN: Yes. So it's an
14 important commitment by CSX that it's going to keep
15 those access points open for all these other carriers
16 on equalized tariff rates going forward in
17 perpetuity. You may raise them, but they have to be
18 equal to everybody correct? Is that the commitment?

19 MR. DENTON: Yes that's the open gateway.

20 CHAIRMAN OBERMAN: What?

21 MR. DENTON: That's the gist of the open
22 gateway commitment yes.

1 CHAIRMAN OBERMAN: Yeah, yeah. So I think
2 that's important because if we were to conclude that
3 that avoids -- that's one way of avoiding a
4 diminution in competition, then we don't have to get
5 to this -- weighing part under D1 and D2 correct?

6 MR. DENTON: That's exactly what we
7 offered yes. Mr. Chairman is that essentially if you
8 don't get past D1, you don't have to even consider
9 the weighing of D1 and D2.

10 CHAIRMAN OBERMAN: Right. These facts
11 that we've been going into we were just talking about
12 particularly the gateways, which I find important, is
13 one of the ways that you would argue anyway that we
14 don't get to D1 in the first place.

15 MR. DENTON: Absolutely.

16 BOARD MEMBER FUCHS: That is really the
17 ideal scenario right Marty? That we don't have to
18 get passed either.

19 CHAIRMAN OBERMAN: Yes, well if the goal
20 here is to have as much competition in the railroad
21 world as possible, which as you all know is one of my
22 goals, then I agree Patrick, that is ideal.

1 The only other thing I wanted to explore a
2 little bit on what Patrick asked at the outset here
3 about the motivation for giving the traffic rights to
4 NS. There is something that caught my attention
5 Peter. I don't know if you're the right person, or
6 Tony. As I understand the agreement between NS and
7 PAS when NS bought in its 50 percent ownership
8 interest, whatever it was, 12 years ago.

9 Their agreement provides that if the PAR
10 system is sold as is being proposed here, NS
11 immediately takes control of the management of PAS.
12 So the new owner coming in who succeeds that 50
13 percent ownership, basically has no control over PAS.

14 MR. LAROCCA: Right.

15 CHAIRMAN OBERMAN: Is that right? And --

16 MR. LAROCCA: It's a right that they have.

17 CHAIRMAN OBERMAN: Yeah right.

18 MR. LAROCCA: It's a right that they have,
19 and it's unclear exactly how it would get triggered
20 or implemented, but.

21 CHAIRMAN OBERMAN: Well I thought the sale
22 itself is what triggers the right to take over the

1 management. And I have been assuming, and I'd like
2 you -- so I'm glad Patrick asked the question,
3 because I wanted to get some enlightenment in this,
4 that CSX would be highly motivated if it was going to
5 you know you've all said you didn't want to buy PAS
6 in the first place, but it was the only way that Mr.
7 Mellon would make the deal. That's the way we
8 understand it.

9 At least we understand that's what you've
10 told us. CSX I assume would very much like to not
11 have a situation where it's stuck owning 50 percent
12 of the railroad over which it has no control. So
13 I've been assuming that the motivation to make a deal
14 with NS was for NS to say okay, we will give up our
15 right to take control.

16 What do we get in return? And what they
17 got were the double stack trains on the southern
18 route. Is that a fair understanding?

19 MR. DENTON: There are many levers, I mean
20 Chairman Oberman there is so many different moving
21 pieces with respect to the NS settlement agreement.
22 I don't think you can identify one particular one.

1 CHAIRMAN OBERMAN: Is that part of it at
2 least?

3 MR. DENTON: Yes. I mean we've committed
4 that both parties, CSX and NS, NS has basically said
5 that they're not going to exercise their change of
6 control rights under the project.

7 CHAIRMAN OBERMAN: And they got something.
8 They didn't give that away for nothing fair?

9 MR. DENTON: Sure. Yeah that's the
10 essence of the settlement agreement.

11 CHAIRMAN OBERMAN: I'm not criticizing it,
12 I'm just trying to get it aired out.

13 MR. DENTON: Yeah, yeah, true.

14 CHAIRMAN OBERMAN: It seems like a normal
15 business trade-off you know in this context, so.

16 MR. DENTON: I think each side got things
17 and each side gave things in the settlement agreement
18 honestly, and I think it came out in a you know a
19 good place market commercially.

20 CHAIRMAN OBERMAN: The best of our world.

21 MR. DENTON: Exactly.

22 CHAIRMAN OBERMAN: Okay. I think that --

1 MR. FOOTE: I'm sorry Mr. Chairman one
2 second.

3 CHAIRMAN OBERMAN: Go ahead.

4 MR. FOOTE: I don't want there to be a
5 misunderstanding on this topic.

6 UNIDENTIFIED SPEAKER: And you guys should
7 mute your mics.

8 MR. FOOTE: It's not super secret.

9 MR. DENTON: Yeah just to be clear. As I
10 was saying Chairman Oberman, there was not one
11 particular quid pro quo in that agreement. There is
12 you know each party gave certain things. Each party
13 got certain things. You know NS agreeing to not
14 exercise its change of control rights was not a
15 trigger for you know the trackage rights that we gave
16 NS, or any other part of the settlement agreement so.

17 CHAIRMAN OBERMAN: Not be itself, but it
18 was part of the pro quo. Is that a fair statement?

19 MR. DENTON: Again, we all decided that
20 the terms of the settlement agreement made sense
21 based on all the various pieces yes.

22 CHAIRMAN OBERMAN: All right. I'll end

1 the psychoanalysis. All right. I think Robert you
2 had a question.

3 VICE CHAIRMAN PRIMUS: I appreciate it.
4 And it's always tough following Patrick I'll tell
5 you, whether this or any place else. Yeah, great
6 statement, questions Patrick. Mine will be quick.
7 Will any of PAR traffic move to connect at Rotterdam
8 Junction over PAS following this transaction? Is it
9 the plan of CSX to connect at Rotterdam Junction?

10 MR. FOOTE: Yes.

11 VICE CHAIRMAN PRIMUS: Okay. Can you just
12 elaborate more on you know what you see at that junction,
13 sort of an increase in traffic in that type of
14 traffic. Is that going to be a substantial move?

15 MR. FOOTE: It would stay the same as it
16 is today. It's local traffic originating or
17 terminating on that line, and that's what we said all
18 along. We have a vested interest in making sure we
19 keep that business, and so that business will stay.
20 And along with earlier conversations grow over time.

21 VICE CHAIRMAN PRIMUS: Okay.

22 MR. LAROCCA: Yeah. Rotterdam is the

1 entry today for CSX's traffic onto PAS, and it will
2 remain the same tomorrow. It will go through
3 Rotterdam as it does today.

4 VICE CHAIRMAN PRIMUS: Okay. So the PAR
5 traffic will continue to be connected there?

6 MR. LAROCCA: No, no, no the PAS traffic.
7 The traffic that CSX.

8 VICE CHAIRMAN PRIMUS: That was what my
9 question was, is any PAR traffic going to be
10 connected at Rotterdam?

11 MR. LAROCCA: You mean overhead traffic
12 that goes overhead on PAS to PAR on the eastern end?

13 VICE CHAIRMAN PRIMUS: And some like PAS
14 heads off some CSX traffic right now at Rotterdam,
15 which includes some freight from PAR. And what I'm
16 saying is will PAR -- that PAR traffic, will that
17 continue to be and connected there?

18 MR. LAROCCA: Yes.

19 DR. REISHUS: It is my understanding that
20 much of that traffic would still go over PAS and
21 Rotterdam following the transaction based on existing
22 operational leases is what I understand.

1 MR. DENTON: Yeah, so to get into some
2 detail here, the traffic moves over PAS today from
3 CSX for a reason right? That was kind of one of the
4 principles I laid out earlier. And the traffic that
5 moves out to PAR over the PAS line right now, over
6 the northern corridor, it does so because it's easier
7 for it to come off of PAR at Ayer, and then get
8 routed into certain PAR locations like New Hampshire
9 near the Boston area.

10 Otherwise, if we had taken the southern
11 route, and Jamie can feel free to elaborate on this,
12 we would need to take it past there all the way up to
13 Portland, and then back down to Ayer to get it shut
14 off into various PAR locations. So the same
15 principles that you know there are reasons why
16 traffic moves on PAS today, and those reasons aren't
17 going away as a result.

18 VICE CHAIRMAN PRIMUS: Yeah, and I'm just
19 saying from the PAR side of the world. You're going
20 to increase a lot of that traffic there at Rotterdam,
21 do you see that increasing?

22 MR. DENTON: I think that we've described

1 kind of the traffic growth forecasts, and I think
2 that's you know it's just --

3 VICE CHAIRMAN PRIMUS: And I'm saying is
4 that a yes or no? Do you see it increasing?

5 MR. DENTON: Yes. I mean consistent with
6 our traffic growth forecast, yes.

7 VICE CHAIRMAN PRIMUS: Okay.

8 BOARD MEMBER SCHULTZ: I wanted to circle
9 back to -- Robert, I'm sorry were you finished?

10 VICE CHAIRMAN PRIMUS: Go ahead I'll let
11 you go.

12 BOARD MEMBER SCHULTZ: Are you sure? And
13 back to the issue of divestiture, and propose a
14 possible scenario, and that is if the Board ordered
15 divestiture, and there wasn't a buyer that could run
16 PAS successfully, what would be the impact to
17 network, and the customers?

18 MR. DENTON: Well I think one of the
19 issues with divestiture, one of the big issues is
20 that there are a lot of unknowns. And a large amount
21 of risks that come up if the Board were to take that
22 extreme step to order divestiture. So we would have

1 to if the Board made such an order, we would have to
2 re-evaluate our agreement with Norfolk Southern. We
3 would have to essentially consider a restructuring of
4 the entire deal.

5 And I think we've described in the record
6 how we have serious concerns that this transaction
7 could unravel to the extent that such an extreme
8 measure were.

9 MR. FOOTE: Well I think to make sure I
10 understand your question is B&E can't do the
11 operator, go find somebody else to operate. We can't
12 find anybody to operate? I guess we shut the
13 railroad down. Man, I guess the railroad stops
14 running, there's nobody to move freight from -- it's
15 done, the railroad is done. We shut it off, turn off
16 the lights, there's no operator.

17 MR. LARocca: Well and I also I would add
18 as well the uncertainty that would prevail while all
19 of this is playing out in the market. I mean these
20 things take a long time as we have seen here in this
21 transaction itself. A forced divestiture, or
22 something radical like that could take years to play

1 out. And so think if you're a shipper, and you rely
2 on service from the railroad, or you're a connecting
3 carrier, or you're Vermont, and you rely on VRS
4 shipments of propane that come over PAS. You're
5 going to be living with some extreme uncertainty for
6 a long time, while this plays out.

7 And I think that really is why it's a much
8 better approach to allow the market to let these
9 things work the way the market is calling for them,
10 rather than try to inject tremendous uncertainty that
11 would ultimately harm shippers.

12 MR. PELKEY: Yeah Tony, let me just add
13 one point here. One is you know in a forced
14 divestiture there's going to be a buyer right? It's
15 a matter at what price, and you know they're going to
16 know there's a fire sale going on. You may end up
17 with a financial party that steps in that doesn't
18 have the same interests that we do, and preserving
19 the viability of that line long-term, you know it can
20 be a very challenging scenario that would not
21 necessarily result in that line getting the attention
22 that it's going to get under this structure.

1 The other thing I'd add is you know think
2 about the employees of Springfield terminal today who
3 are operating every day that line across Pan Am
4 Southern that know today each and every one of them.
5 If they were listening today they heard they will
6 have a job when this transaction closes.

7 If you've got a financial buyer coming in,
8 it's going to be a rock bottom fire sale, who knows
9 what happens. That puts those employees who've
10 already been waiting a very long time to see this
11 transaction close, in an even more precarious
12 situation.

13 BOARD MEMBER FUCHS: Are you all aware of
14 any scenario in a Subsection D transaction where the
15 Board has issued a divestiture without even knowing
16 who the operator was, would be?

17 MR. LARocca: No. Absolutely not.

18 And to be clear this
19 is a significant transaction, not a major
20 transaction, and Patrick I think you're referring to
21 that with respect to Subsection D. This is a
22 different legal standard that the Board would

1 consider in a for example, a Class 1 versus Class 1
2 merger.

3 BOARD MEMBER FUCHS: And typically even
4 when we would order trackage rights, or something of
5 the sort, you would expect to see an application
6 where the Board could evaluate the relative merits,
7 and we have nothing here right?

8 MR. DENTON: Correct. There would be a
9 responsive application where someone would bring the
10 transaction before the Board and say we prefer this
11 solution. To be clear, even in a you know major
12 merger scenario, a divestiture, the Board has very
13 explicitly declined to impose divestiture remedies.

14 VICE CHAIRMAN PRIMUS: I have a follow-up
15 to my question earlier. So you know would it be fair
16 to say that CSXT's interest in PAS is primarily
17 north/south traffic, and not east/west traffic?

18 MR. DENTON: I don't think that's
19 necessarily fair. I think CSX like we've discussed
20 is a major user of the PAS Patriot corridor, the
21 east/west. Along with Norfolk Southern I think we're
22 the second largest user and when Dr. Reishus makes

1 his presentation we'll going into kind of the more
2 details about the incentives of CSX to move that
3 east/west traffic.

4 VICE CHAIRMAN PRIMUS: I mean you look at
5 that east/west that she said, it's a quarter of the
6 traffic, and that traffic is not as big if you
7 measure it compared to the southern route. I mean it
8 may be equal up to maybe 20 or 30 percent of CSX's
9 traffic, so you're taking a quarter of that.

10 So you know it stands to reason that I
11 mean in terms of what you're looking for in growth,
12 and looking at that line, and that's one of the
13 reasons why I was asking that other question about
14 the junction. It seems that it appears to be that
15 it's going to be a north/south.

16 MR. DENTON: I can see why that wouldn't
17 make sense in the abstract, but once you really dig
18 into the details and the traffic flows, and again
19 Dr. Reishus can speak to this, but there are reasons
20 why CSX moves traffic east/west on PAS. I mean today
21 if it made sense we wouldn't be moving that on the
22 southern corridor on our route.

1 VICE CHAIRMAN PRIMUS: You're about to own
2 it, so I mean I understand today, but if it goes
3 through and you get the southern route, you know then
4 it makes perfect sense.

5 MR. DENTON: No, wait, wait, to be clear
6 we own the southern route now. I mean, but you know
7 all the more reason after the transaction why we will
8 be even more incentivized to keep the northern route
9 viable, as a 50 percent owner. That kind of gets
10 into the argument that Marty made before, but you
11 know I'll wait for David to go into that further.

12 DR. REISHUS: Let me say nearly all the
13 traffic on PAS runs on the Patriot corridor. Not all
14 of it runs the full length of the Patriot corridor,
15 but virtually all of it uses the corridor to one
16 extent or the other.

17 VICE CHAIRMAN PRIMUS: I guess my question
18 is do you still see that existing after this deal
19 goes through?

20 DR. REISHUS: Yes because --

21 VICE CHAIRMAN PRIIMUS: And to the same
22 level?

1 DR. REISHUS: Most of it yes. Most of the
2 revenue and you know most of the revenue of PAS will
3 remain, and most of CSX's traffic that uses the
4 corridor uses it now because the southern corridor is
5 not a competitive option. If they're already a
6 competitive option for that traffic, it would be
7 doing it today.

8 The traffic that CSX is running over PAS
9 is for the most part incremental traffic that they
10 wouldn't otherwise have.

11 VICE CHAIRMAN PRIMUS: Okay.

12 MR. BOYCHUK: One thing I think is
13 important to mention that we haven't at this point is
14 the PAS line has got better grade, and less mileage,
15 so a PAS line if we route any type of traffic like a
16 grain train as an example, onto the CSX line, it
17 takes extra locomotives and another crew.

18 So it is more cost-effective to continue
19 to utilize the PAS line compared to our current CSX
20 route that goes by Worcester. And I apologize we
21 haven't brought that up yet, but that's a real
22 important point as to why that line is so viable.

1 It's cheaper to use, and it's just it's just makes
2 more sense. Less assets to get across.

3 MR. FOOTE: Okay. Can we move to our next
4 presenter then?

5 MR. DENTON: Yeah. Dr. Reishus I think
6 is up next David, okay.

7 DR. REISHUS: Thank you. I'm my own IT
8 guy here, so give me a second. Thank you. I
9 originally said good morning, but I'll say good
10 afternoon, and thank you for the opportunity to speak
11 with you today about the competitive effects of this
12 transaction.

13 My name is David Reishus. I'm an
14 economist at Compass Lexicon, an economic consulting
15 company. I have conducted a thorough analysis of the
16 competitive impacts of the proposed transaction,
17 including the associated commitments and settlements
18 that have been entered into by and among CSX, NS, GW,
19 and the other interested parties.

20 I should point out that much of the
21 analysis uses confidential data regarding existing
22 New England rail traffic, and confidential

1 information on the structure of the transaction and
2 its associated agreements. So I provide in this
3 hearing a high level public overview of the findings,
4 but I encourage the members and staff, to refer to
5 the reports that have been filed under seal, or more
6 specific and detailed results.

7 I have three main findings to share with
8 you today. First, the transaction is overwhelming
9 pro-competitive. It will enhance competition and
10 rationalize and improve New England Rail Network.

11 The transaction extends the benefit of
12 single line service by a Class 1 railroad to portions
13 of New England that lack such service. You've heard
14 CSX witnesses describe the anticipated
15 pro-competitive investments and operating
16 improvements, and the benefits of integrated single
17 line service to PAR shippers that will result from
18 the transaction.

19 The transaction introduces for the first
20 time, competing double stack intermodal service into
21 the heart of New England. The transaction achieves
22 this now, and does not depend on uncertain market

1 portions to otherwise induce the required investments
2 in the future.

3 The various agreements from PAS's yard in
4 Ayer, Massachusetts will enhance competition by
5 making PAS more efficient. Similarly, the
6 transaction and associated agreements preserve
7 existing competition, and introduce new competitive
8 alternatives.

9 Second, as structured, the acquisition by
10 CSX of PAR and a 50 percent interest in PAS, poses no
11 risk of significant competitive harm. Any risk has
12 been eliminated by the various commitments and
13 agreements. The transaction imposes no competitive
14 harm on shippers.

15 A handful of jointly served shippers
16 between CSX and PAR, as well as between PAS and the
17 GW owned railroad, have been provided conditions that
18 preserve the benefit of existing competition. I was
19 unable to identify any other reasonable risk that
20 would pose competitive harm to shippers.

21 I am also unaware of any shipper that
22 opposes the transaction. The non-shipper parties

1 have raised two competitive issues. One involving
2 the GW owned railroad operating PAS over the
3 Connecticut River north line, and the second
4 involving CSX's 50 percent ownership interest in
5 PAS's Patriot corridor.

6 I know that these parties will not
7 continue to raise these issues in recent briefs, or
8 in this hearing. In either case, even if there was a
9 valid basis for a theoretical competitive concern,
10 there is virtually no traffic that could have been
11 harmed by the proposed transaction.

12 I've traded a couple of figures to try to
13 illustrate this point. The figures summarize the
14 proportion of traffic on each of these corridors that
15 was exposed to a risk of reduction in competitive
16 options from the transaction. The potentially
17 competitive traffic that could be affected by the
18 transaction is identified by the blue sliver at the
19 bottom of the bars, and I should point out that since
20 again this is derived from highly confidential data,
21 I've only identified a relative proportions without
22 including any units on the figures.

1 In the case of the Connecticut River north
2 line, this competitive traffic represents a small
3 volume, and a small share of the total traffic on the
4 line. Since the time I originally performed the
5 analysis for the Conn River north line reflected in
6 this figure, the parties have reached agreements to
7 eliminate any risk of competitive harm, for even the
8 small portion of interline traffic, and instead
9 enhances competitive options that did not exist
10 before this transaction.

11 And if we turn to the Patriot corridor, an
12 analysis of the east/west Patriot corridor shows
13 similar results. The figure indicates that little of
14 the traffic could be subject to potential diversion
15 or competitive harm by CSX. The transaction is
16 structure however, eliminates CSX's ability to affect
17 pricing on the Patriot corridor.

18 Instead, the pricing for traffic on the
19 corridor is determined by existing haulage
20 arrangements with NS, or by the new operator who has
21 incentives to retain and attract traffic over the
22 Patriot corridor. Moreover, the transaction provides

1 open gateway and pricing benefits to preserve the
2 existing benefits of competition, and the ability of
3 PAS to compete for traffic from CSX owned PAR lines.

4 Third, I addressed the concerns that have
5 been raised by Canadian Pacific regarding the
6 potential ongoing viability of the Patriot corridor.
7 We use it as a competitive option available for
8 interchanging traffic with CP. These concerns are
9 misplaced.

10 As I've just showed most of the cargo
11 traffic on the Patriot corridor is not currently
12 competitive with the CSX main line. NS and CSX each
13 have the incentive for the Patriot corridor to remain
14 a viable and effective rail option.

15 This figure shows the proportion of
16 traffic on the Patriot corridor that NS and CSX will
17 participate in. This figure accounts for the end
18 level trackage rights the transaction will provide to
19 NS, so therefore assumes no NS intermodal traffic
20 over PAS. Collectively, CSX and NS account for most
21 of the traffic on the Patriot corridor, both before
22 and after the transaction.

1 VICE CHAIRMAN PRIMUS: Doctor, can you
2 break that down between NS and CSX into how much,
3 what percentage either one has of that traffic?

4 DR. REISHUS: Yeah NS is number one, CSX
5 number two. I think of that.

6 MR. LAROCCA: I wouldn't go too far into
7 detail on that in public. These are confidential
8 waybill data, not STB waybill data.

9 VICE CHAIRMAN PRIMUS: It's not STB
10 waybill but.

11 MR. LAROCCA: Data from PAS waybill.

12 DR. REISHUS: If you look I guess at page
13 numbers at the bottom of the source in the highlight
14 confidential version identifies the traffic numbers,
15 it lists the NS and CSX key shares, NS is really
16 bigger than CSX, but CSX is not a small percentage of
17 that. It's not below that bar.

18 VICE CHAIRMAN PRIMUSE: So staying on my
19 line of questioning before. You know can CSX exist
20 in the northern route without going the entire route?
21 For example, maybe you know transferring to
22 Springfield instead of Deerfield? I mean would that

1 be something that's more you know competitive, or I
2 should say just more to their advantage doing
3 something like that.

4 DR. REISHUS: Well right now they
5 interchange virtually no traffic on Springfield for
6 reasons that CSX might have to go into more detail,
7 but I believe.

8 VICE CHAIRMAN PRIMUS: Yeah I'm just
9 saying would it make more sense if this goes through
10 you know that they could do it much more efficiently
11 going and doing that at Springfield rather than
12 Deerfield?

13 DR. REISHUS: For purchases of keeping
14 traffic over the Patriot border, my understanding
15 would be no, but.

16 VICE CHAIRMAN PRIMUS: Anybody else?

17 MR. LARocca: Can you repeat your
18 question?

19 VICE CHAIRMAN PRIMUS: No I just said that
20 you know does CSX have to use the entire northern
21 route? I mean can't they if this merger goes
22 through, you know, you can actually be more

1 efficient if you're transferring at Springfield and
2 Deerfield, go ahead.

3 MR. BOYCHUK: I'm sorry sir. I wouldn't
4 say it would be any more efficient at all, more
5 efficient at all. Of that knowledge corridor you are
6 dealing with a whole lot of different type of traffic
7 as you're trying to get a window to go to up that
8 way. For us it would make more sense to continue to
9 go around the other way, as well as the grades
10 issues.

11 VICE CHAIRMAN PRIMUS: When you say
12 different types of traffic.

13 MR. BOYCHUK: With passenger operations,
14 and things like that that run up and down the
15 knowledge corridor, you get in the way of each other.
16 For us you know we'd have to tiptoe our way around
17 that. We could do it if we needed to at some point
18 in time because of an outage, which we have in the
19 past.

20 But it makes more sense for us to continue
21 to go around through Rotterdam, again the grade is
22 better, we can move more traffic with less

1 locomotives. The cost is less, and it just makes
2 more sense.

3 VICE CHAIRMAN PRIMUS: All right thank
4 you.

5 DR. REISHUS: All right so, NS as the 50
6 percent owner, and the largest ongoing interline
7 partner on PAS per carload traffic, retain
8 substantial economic interest in the ongoing
9 viability of PAS, even though the shift to more
10 efficient double stack intermodal service on the CSX
11 main line.

12 The Patriot corridor remains NS's
13 independent routing for carload traffic to and from
14 New England. With a large portion of NS carload
15 traffic moving under haulage with terms struck under
16 its initial investments into PAS. NS retains a
17 significant economic interest in the continuing
18 viability of PAS in the Patriot corridor.

19 NS, as CSX's primary competitor across the
20 eastern U.S. has no interest in allowing service on
21 the Patriot corridor to degrade. B&E, as the
22 operator of PAS, will have the incentive and

1 opportunity to provide pricing and service that can
2 attract additional traffic to PAS independent of
3 CSX's other interests.

4 CSX also has the incentive to keep the
5 Patriot corridor viable. A large portion of CSX's
6 traffic using the corridor, goes to locales
7 effectively served only by PAS. CSX has also
8 proposed a mechanism by which potential disputes
9 between NS and CSX about future capital investments
10 could be resolved by an accelerate arbitration
11 process.

12 CSX lacks both the incentive and the
13 ability to block economically efficient future
14 investments in PAS. It's unreasonable to conclude
15 that the Patriot corridor would not continue to be a
16 viable, economically efficient option for traffic to
17 and from New England as a result of this transaction.

18 Thank you. I think Peter has some concluding
19 remarks, but I'll take questions.

20 MR. DENTON: Thank you David. So we have
21 talked a bit about the legal standards here in the
22 last round of Q and A's, but I wanted to cover a few

1 different things here, and then Tony is going to talk
2 about some of the transportation policy options.

3 CHAIRMAN OBERMAN: Peter, I thought you
4 were going to elaborate a little bit more on Dr.
5 Reishus. I just had a couple of questions for him.

6 MR. DENTON: Sure.

7 CHAIRMAN OBERMAN: I didn't want to
8 interrupt the train of thought here. You know I just
9 want to be clear on something. You've talked about
10 the incentives that CSX will have to you know to keep
11 PAS viable. But wouldn't it be accurate to
12 understand what happened here this way.

13 CSX has told us in their briefs -- I'm
14 just looking at the reply, PAS is a low-density line
15 with marginal financial performance, and CSX sought
16 to exclude PAS from the purchase. Didn't want it at
17 all. So would it be just for our understanding,
18 you're not trying to suggest that CSX saw PAS as a
19 good business investment, they didn't have any choice
20 but to buy it.

21 Now that they own it maybe they have an
22 incentive to keep it up. But they didn't go into

1 this with the idea that PAS was a desirable line to
2 buy 50 percent of. Wouldn't that be an accurate way
3 to understand it?

4 DR. REISHUS: I'd leave it to CSX to tell
5 us what they were thinking, but yes my understanding
6 is that you know they wanted Pan Am systems, and they
7 wanted PAR, and you know the 50 percent interest in
8 PAS is part of that deal.

9 CHAIRMAN OBERMAN: Yeah, but their desire
10 if they have one, which you said they do to maintain
11 it, it's because they were backed into owning it, not
12 because they saw it as a good business opportunity
13 upfront. That's all I'm trying to get at. But
14 basically.

15 DR. REISHUS: I would say if I understand
16 the incentive, they have the incentive for PAS to
17 remain viable, whether they have the incentive to
18 want to own it or not, I'm you know it's part of the
19 deal.

20 CHAIRMAN OBERMAN: Well they told us they
21 didn't want to own it, but I'm just going by what CSX
22 has told us, so I assume they didn't want if they

1 thought it was a good business opportunity they would
2 have wanted to own it. I mean. Am I missing
3 something here?

4 DR. REISHUS: A different question about
5 whether you'd want to own it, and when you'd want it
6 to remain a viable line.

7 MR. DENTON: Exactly. Exactly. Mr.
8 Chairman I think you're conflating our desire to keep
9 this as a viable line, which would be the case
10 regardless of ownership, given the traffic profile
11 that we have over the line versus our desire to own
12 PAS.

13 Once we become the 50 percent owner
14 though, the viability you know reasons why we have to
15 keep PAS viable will certainly remain the case, and
16 even become more so, given our 50 percent ownership.

17 CHAIRMAN OBERMAN: I guess I would ask
18 this Peter. If it was important for CSX to keep it
19 viable, the best way for CSX to protect themselves
20 would be to own half of it, which was being offered
21 for sale. So because if CSX succeeded in convincing
22 Mr. Mellon to sell it to a hedge fund or somebody

1 else, then CSX is not in much of a position to keep
2 it as viable as it would be if CSX owned half of it.

3 Just stands to reason that the importance
4 of the 50 percent -- I guess what I'm trying to
5 measure is the importance of the 50 percent ownership
6 that CSX is now going to have if this deal goes
7 through can be measured in connection with CSX's
8 desire or lack thereof to buy it in the first place.

9 MR. DENTON: Mr. Chairman the history is
10 history. I mean we have a transaction before you
11 where we are seeking to own 50 percent, and we've
12 described to you why we want to keep the line
13 viable, and why that 50 percent ownership will only
14 help in wanting to keep that line viable.

15 CHAIRMAN OBERMAN: I understand, but one
16 of the things that is being argued by CP at least, is
17 a lack of desire to keep it viable, and I'm just
18 trying to measure what we're hearing, but there is a
19 desire, and I'm trying to measure it against a lack
20 of desire to buy it in the first place. I mean it is
21 a factor just in terms of human behavior in my mind,
22 so unless I'm missing something here.

1 MR. DENTON: Yeah I think those are just
2 two different issues that are being kind of put into
3 one, and unnecessarily so. I think we will have an
4 independent incentive to want to keep this line
5 viable, whether or not the transaction ever you know
6 was even contemplated, given our traffic profile
7 there, and given our 50 percent stake that we're
8 going to have now, we'll have all the more incentive
9 to do so.

10 CHAIRMAN OBERMAN: Well that may be yes,
11 but I think we've covered it so go ahead. Thank you.

12 MR. DENTON: Okay. Okay. Unless there
13 are any other questions for Dr. Reishus I'll make a
14 few remarks on the legal standards here. Okay,. So
15 we got into this a little bit in my back and forth
16 with Commissioner Fuchs earlier.

17 But I'd like us for a few minutes here
18 just to focus on the relevant legal standards at
19 issue here. And the first is approval or
20 disapproval. Under the statute that applies to
21 non-major mergers like this one, Section 11 324 D,
22 the Board must approve a transaction unless there

1 would be adverse competitive impacts that are both
2 likely or substantial -- and substantial.

3 Even if the Board were to find that there
4 would be likely and substantial anti-competitive
5 impacts, the board may not disapprove the transaction
6 unless the anti-competitive impacts outweigh the
7 benefits and cannot be mitigated through conditions.
8 As we have described throughout this hearing and in
9 the record, we have worked diligently since
10 announcing our proposed acquisition to Pan Am to
11 satisfy the reasonable concerns of all stakeholders.

12 This hard work has resulted in a number of
13 settlement agreements and conditions that applicants
14 have requested the Board impose on its approval of
15 the transactions. In short we've clearly
16 established in our submissions that with those
17 requested conditions it's unlikely there would be any
18 adverse competitive impacts arising from the
19 transactions, let alone substantial ones.

20 Under the Board's legal framework for
21 approval or disapproval, the analysis can stop there.
22 The Board should approve the transaction. However,

1 we've gone further to show that the merger will
2 result in overwhelming public benefits to New England
3 rail customers and stakeholders. So even if the
4 Board does find that some anti-competitive effects
5 may occur, the public benefits would clearly outweigh
6 those concerns.

7 Second, the imposition of additional
8 conditions. As we talked about a bit earlier with
9 Commissioner Fuchs, there has been some debate
10 clearly amongst Board members in recent non-major
11 merger proceedings, about whether the Board's
12 authority to impose conditions in non-major mergers
13 is constrained by each of the two approval criteria
14 in Section 11 324 D.

15 In one view for competition related
16 conditions the Board must only find that the first
17 criteria is met, that the issue to be addressed would
18 likely cause the anti-competitive effects. In the
19 other view the Board must also find that those
20 anti-competitive effects would outweigh the public
21 benefits of the transaction, this would clearly
22 impose a higher hurdle to the imposition of

1 conditions in non-major mergers.

2 As I discussed earlier we respectfully
3 offer that under either analysis no additional
4 conditions are necessary or warranted. Under each
5 approach in order to impose requested competition
6 related condition, the threshold requirement is that
7 the transaction is likely to result in substantial
8 anti-competitive effects. And that simply will not
9 be the case here.

10 Additionally, the Board has been clear
11 that there must be some sufficient nexus between a
12 requested condition, and the transaction before the
13 agency. In our filings we have established that
14 certain conditions requested by parties simply do not
15 meet this threshold. I'd now like to turn it over to
16 Tony to talk about some rail transportation policy
17 issues.

18 CHAIRMAN OBERMAN: Peter I just have one
19 question for you.

20 MR. DENTON: Sure.

21 CHAIRMAN OBERMAN: And Patrick has one
22 too, but when we look at this transaction CSX has

1 described many facets of what it is going to agree to
2 in its papers, and over the last few days, including
3 as late as last night, agreements it has reached with
4 various parties.

5 And it has answered a number of questions
6 today very concretely I hope, I think. I think it's
7 been a good exchange. Would you not agree that as
8 the Board evaluates the transaction and applies D1
9 and 2, that the only sensible way for us to evaluate
10 whether the standards have been met is to look at the
11 transaction that's in front of us?

12 In other words, CSX has said we agree to
13 condition A or B or C, that becomes part of the
14 transaction that we're evaluating. So I would find
15 it intellectually almost impossible to say well if I
16 didn't have this condition, then maybe the
17 anti-competitive effects outweigh the benefits. To
18 me our job once CSX has made it clear what the
19 transaction is, and what you're willing to agree to
20 as part of the transaction holistically, everything
21 we've talked about.

22 MR. DENTON: Yes, right.

1 CHAIRMAN OBERMAN: That is what we should
2 weigh under D1 and D2.

3 MR. DENTON: I agree with that. We are
4 presenting a package Mr. Chairman, and we spent a lot
5 of time preparing that package. This could have gone
6 many different ways, and you know when we announced
7 acquisition of Pan Am's systems, we didn't have all
8 this together yet. We spent the time, we spent
9 months putting this together, and bringing something
10 before you that addresses each of the concerns.

11 CHAIRMAN OBERMAN: And the package is a
12 dynamic, at least up until this moment, you know it's
13 changed as of last night with the Amtrak agreement,
14 and with some of the specificity of the answers to
15 questions today, all of which is good. I'm not
16 criticizing, and I think it's been constructive. But
17 it's the package when the record closes that we're
18 going to look at. Is that a fair way to look at it?

19 MR. DENTON: Absolutely. Absolutely.

20 CHAIRMAN OBERMAN: Yeah okay. I just
21 wanted to be clear because you could argue that some
22 of the things you agreed to you didn't have to agree

1 to. But rather than our picking our brains whether
2 you would have had to agree to it or not, if you've
3 agreed to it fair enough?

4 MR. DENTON: I think that's a fair way to
5 think about it yes. I mean we have made that you
6 know consideration for each of these conditions that
7 we've asked you impose, and we think the package as a
8 whole presents a great transaction that has zero
9 anti-competitive effects.

10 CHAIRMAN OBERMAN: By the way since
11 there's an opportunity to keep the record open here
12 for a few days, if you make any other deals between
13 now and then. I don't want to discourage you if you
14 think they're constructive.

15 MR. DENTON: You're the first who will
16 know Mr. Chairman.

17 CHAIRMAN OBERMAN: I'm guessing that's
18 true. Thank you Peter. Patrick?

19 BOARD MEMBER FUCHS: Marty I think you
20 made the point perfectly. And also I say to myself
21 with your remarks that I think we couldn't do our
22 jobs if we couldn't have people adhere themselves to

1 their representations, and obviously we also want to
2 encourage people coming to voluntary settlement, and
3 your view of looking at voluntary settlements and
4 adherences as part of the overall transaction I think
5 is one that I share.

6 CHAIRMAN OBERMAN: We've been working
7 together for too long. All right Peter, I'm sorry to
8 have interrupted, go ahead.

9 MR. DENTON: No problem. I was going to
10 throw it over to Tony next for a few brief remarks,
11 and I think that will conclude our prepared remarks.

12 CHAIRMAN OBERMAN: By the way let me
13 interject here, I'm sorry. I was aiming for a break
14 right about now, but if Tony's remarks aren't long,
15 maybe we should let him finish, and then that would
16 be a more convenient time to break. But I don't want
17 to cut him off.

18 MR. DENTON: I think that's appropriate.
19 Tony.

20 MR. LARocca: Do you think people can old
21 off for my very brief remarks that I will try to
22 present even more rapidly than I otherwise would have

1 presented them.

2 CHAIRMAN OBERMAN: Well I don't want to
3 truncate your moment in the sun, so.

4 MR. LAROCCA: No sunshine I'm not sure.
5 But I will say that Congress has tasked the board
6 with making sure that market forces work properly in
7 rail transactions. And the way markets work is
8 through negotiations and bargaining, and that's what
9 you have here.

10 This transaction, the related
11 transactions, and all of the various settlement
12 agreements that you referred to Mr. Chairman, that
13 we're presented to you are the product of lengthy,
14 careful, detailed, negotiations with numerous rail
15 stakeholders in New England. We've spent months and
16 months negotiating with many different parties,
17 working out the terms of a restructured real network
18 that will serve the interests of New England's rail
19 stakeholders.

20 The economy of this important region needs
21 a modernized rail network, and this transaction will
22 bring it to New England. It's strongly in the public

1 interest, and the interest of New England's economic
2 development that you allow these market produced
3 transactions to go forward. And we thank you very
4 much for your time today.

5 CHAIRMAN OBERMAN: That was concise Peter.
6 Let's take a recess for 10 minutes, and during the
7 recess, so that will bring us back here at 3:26, we
8 will endeavor to figure out the remaining, you know,
9 how many more panels we can get here, and what an
10 ending time might be today, at least we'll make a
11 stab at it.

12 All right. Thank you all. I will see you in ten
13 minutes.

14 (Break.)

15 CHAIRMAN OBERMAN: All right are we back?
16 Can everybody hear me? Okay. Thank you all. So I
17 want to just talk a little bit about scheduling, and
18 this is perhaps somewhat ambitious, but what would be
19 good, what I'd like to aim for is that we finish the
20 first panel, which includes the folks from B&E and
21 Norfolk Southern, and that we also then because the
22 request of time are very small, try to finish panels

1 2, 3, and 4. It all depends on the questioning.

2 And wrap up tonight by 6:30 Eastern, so
3 that we have an excellent chance of finishing
4 tomorrow at a reasonable hour. So let's make that
5 our goal, but I do not want to sacrifice anybody's
6 need to talk to us, or for us to ask questions just
7 to reach the goal, but I think that is reasonable
8 based on the progress we've made today.

9 So if that makes sense let's continue on.
10 I think we're at the point of bringing on the folks
11 from B&E are we not?

12 MR. DENTON: We have concluded our remarks
13 Mr. Chairman.

14 CHAIRMAN OBERMAN: Okay. All right thank
15 you Peter. So that is Mr. Miller, Mr. Walsh, Wagner,
16 and Hocky. And I believe Eric Hocky is going to kick
17 us off. Is that right Eric? Are you?

18 MR. HOCKY: Yes. I'm going to start.
19 Thank you to the Board for this opportunity to speak
20 with you this afternoon now regarding the petition of
21 Berkshire and Eastern Railroad for an exemption to
22 enter into the contracts required to enable B&E to

1 become the contract operator of the lines of Pan Am
2 Southern.

3 My name is Eric Hocky. I'm a member of
4 Clark Hill. I'm outside counsel for B&E. Appearing
5 with me this afternoon to speak on behalf of B&E and
6 to respond to your questions are Michael Miller,
7 President of North American operations for Genesee
8 Wyoming; Matthew Walsh, G&W's Executive Vice
9 President for Global Corporate Development; and
10 Leonard Wagner, Regional Senior Vice President of
11 G&W's Northern Region, and President of B&E.

12 In its amended petition as supplemented,
13 B&E is seeking an exemption, under 49 USC Section
14 10.5.02 to allow B&E to enter into contracts for the
15 operation of the PAS lines. In Decision number four,
16 the Board ruled that B&E's use of an exemption was
17 permitted, as was its filing in a separate subtitle.

18 Under the statute the Board is directed to
19 grant an exemption from regulation, if regulation is
20 not necessary to carry out the rail transportation
21 policy of Title 49, and regulation is not needed to
22 protect shippers from abuse of market power. In

1 analyzing whether regulation is necessary to carry
2 out the RTP, the focus in this proceeding for an
3 exemption for a rail carrier to enter into a contract
4 to operate the property of another carrier, is
5 whether the transaction would have a substantial
6 adverse impact on competition.

7 As the transaction is structured, there
8 will be no anti-competitive effects. PAS will remain
9 an independent railroad, controlled by CSXT and
10 Norfolk Southern. B&E will be the contract operator
11 of the PAS lines who will operate for and on behalf
12 of PAS. No shippers or connecting railroads will see
13 any reduction in the number of serving railroads.

14 Whether the transaction as initialing
15 proposed would have had any impact on competitive
16 effects, it's clear now that with the voluntary
17 conditions proposed by the owners of PAS, and G&W and
18 B&E, including in the settlement with VRS, and
19 Vermont Agency of Transportation, anti-competitive
20 effects would be neither likely, nor substantial.

21 Significantly at this time, no connecting
22 railroads or shippers are objecting to B&E becoming a

1 contract operator of the PAS lines. In a prior
2 proceeding the Board noted that a lack of shipper
3 opposition suggests that the transaction will not
4 cause substantial competitive harm. The only
5 remaining party that has raised objections to the B&E
6 exemption is the Department of Justice.

7 B&E's responses to the Department's
8 concerns are set forth at length in our response to
9 comments filed in October, and in our final brief we
10 filed on January 3. Additionally, we note that the
11 Department's objections were raised prior to the
12 Vermont settlement, which addresses issues of concern
13 to the Department, including the independence of B&E
14 and the protection of confidential information.

15 Since the Department has elected not to
16 file a final brief, or to appear at this hearing, we
17 do not know the Department's current position, but we
18 do believe that its concerns have been fully
19 addressed.

20 Finally, and significant to note that
21 based on B&E's agreement to the imposition of New
22 York DOT effective conditions, including the

1 obligation to negotiate implementing agreements, none
2 of the commenting labor unions oppose B&E becoming
3 the contract operator of the PAS lines. I would now
4 like to turn the panel over to Matt Walsh to continue
5 our presentation of how and why B&E is the best
6 independent operator for the PAS lines.

7 MR. WALSH: Great. Thanks very much Eric,
8 and good afternoon Board members, Chairman Oberman,
9 and Vice Chairman Primus. My name is Matt Walsh.
10 I'm the Executive Vice President for corporate
11 development here in Genesee Wyoming, a company I
12 joined 21 years ago, and I'm based out of our
13 Connecticut office.

14 While Eric, our legal counsel, has just
15 introduced our goals here today with a focus on the
16 procedural and regulatory position of our
17 application, I, and some of my other colleagues, are
18 focused on highlighting the significant benefits we
19 are confident we bring to the proposed transaction,
20 and to answer any questions that you have clearly,
21 and in as straightforward manner as we can.

22 First, as Eric laid out, the role of

1 Berkshire and Eastern is to be the contract operator,
2 which I know is well spelled out in our filings and
3 briefs to the Board. This is a role at G&W that
4 we're used to performing throughout the United
5 States, however in this specific case we clearly
6 believe we are uniquely qualified to be the operator
7 of the Pan Am Southern.

8 Second, Pan Am Southern, as operated by
9 B&E, will continue to be independent and serve
10 customers, just as it does today, as well as all
11 connecting carriers. But through the proposed
12 operating agreement, and the facts and circumstances
13 of the proposed transaction as operated by B&E, PAS
14 will be even more independently operated than it is
15 currently.

16 This increased independence under the B&E
17 operation, we feel is a very important distinction,
18 and one we'll talk a little bit about more on the
19 forthcoming slides. Finally, we want to make sure
20 it's clear that not only is the B&E contractually
21 obligated to operate PAS for the sole benefit of its
22 owners, but that as we will discuss today, we'll have

1 full alignment with the PAS owners, and the
2 stakeholders, to maximize the full potential of the
3 railroad.

4 This alignment includes operational
5 alignment, as PAS is a key competitive corridor for
6 New England, but also for G&W's other railroads,
7 particular our Province and Worcester railroad,
8 which PAS provides a very important competitive link,
9 and my colleague Michael Miller will speak to in just
10 a bit.

11 Economic alignment, and I know CSX spent a
12 lot of time on this, but as the operator of PAS, we
13 are eligible to earn an operating management bonus,
14 which is effectively works as a profit share. Some
15 very simplistic terms, obviously the better PAS does,
16 the better we will do as operator. This is very
17 material to us, and one of the big reasons for us
18 wanting to be the operator of PAS.

19 And finally, reputational alignment, both
20 with the PAS owners, and with all of the New England
21 stakeholders. So this includes all of the local
22 communities, the passenger operators, including

1 Amtrak whose Vermont's service traverses both PAS, as
2 well as our New England Central in a very coordinated
3 fashion.

4 A large number of the same customers, and
5 then the union's employees that they represent. So
6 we're all very familiar with this territory, and
7 reputationally it's very important to us that we do
8 as good a job here as we can do. I think for all of
9 these reasons we have very, very broad support.

10 I think as you've heard nearly 100
11 customers are proactively supporting the overall
12 transaction. This includes Cushman Lumber, who
13 you'll hear from hopefully later today or tomorrow,
14 which is one of the customers, one of the two
15 customers that is served both by PAS, and by G&W's
16 New England Central, and they're proactively speaking
17 today in support of the transaction, and as our role
18 as operator.

19 Not one customer has raised a concern with
20 the proposal for B&E to operate PAS, and finally, no
21 connecting railroad or state, opposes B&E's operation
22 of PAS, and some are here today to support the

1 transaction and we thank once again them for their
2 time.

3 For those Vermont parties that raised
4 initial concerns, although we believe without merit,
5 we have worked cooperatively with them on an
6 agreement to address these concerns, and we ask the
7 Board to impose them as a condition. As it is
8 currently for Springfield terminal, one of B&E's role
9 as operator will be to market PAS and set rates.

10 Under the B&E this will be done with the
11 sole focus of benefiting PAS and PAS only, with every
12 incentive and obligation to do so, contractually and
13 otherwise. These include very specific language and
14 obligations where first, B&E is specifically
15 prohibited from providing any advantage to any PAS
16 owner other than those that currently exist, or to
17 any G&W affiliate.

18 Rates must be set to make PAS sustainable
19 and for the benefit of PAS, open gateways are a key
20 component of this, and one that we look forward to
21 enforcing for the benefit of PAS and for growing
22 traffic on PAS. B&E is prohibited from sharing any

1 existing rates with any G&W affiliate, with strict
2 protocols in place, and fourthly B&E is limited to
3 making rates on that traffic where it can actually
4 make rates.

5 As the Board would be aware through this
6 transaction, a set significant amount of traffic that
7 does move, or will move, does so under separate and
8 haulage agreements that are either pre-existing, or
9 have been offered as part of the transaction, in
10 which rates will only change by reference to an index
11 or general market reference.

12 All of these obligations around rates, and
13 all services are clearly defined, and there's
14 considerable oversight, and far more independent
15 oversight than currently exists with Springfield
16 terminal as operator. As part of this if B&E fails
17 in these obligations PAS can terminate the agreement,
18 and if B&E can't operate PAS profitably, PAS can once
19 again terminate the agreement.

20 Conversely, as B&E improves operations and
21 will be increasingly rewarded. As the management
22 bonus increases not only in absolute terms will it be

1 more profitable for the B&E, but as actually the
2 profit margins increase so does B&E's share of
3 profits. So under the proposed operation of PAS by
4 the B&E I'd like to emphasize again that we are
5 increasing the independence of this key railroad,
6 simplifying its operations, and adding not only
7 increased oversight from the Independent Joint
8 Operating Committee, but also providing a direct line
9 of communication to the Joint Operating Committee
10 regarding PAS performance as laid out in the Vermont
11 settlement.

12 To illustrate some of these points and
13 benefits we sort of created a before and after slide
14 assuming that the transaction would be approved. So
15 currently as you've heard from CSX in their
16 presentation, Springfield terminals employees manage
17 both their 50 percent on Pan Am Southern, as well as
18 100 percent owned PAR system, and currently there's
19 no incentive compensations in place.

20 Under the operation by B&E all employees
21 will be totally dedicated to PAS, and there will be
22 in place a full incentive compensation scheme that's

1 based solely on PAS performance, and not related to
2 anything else. There will be a dedicated commercial
3 function with specific protections that we talked to
4 before.

5 So currently today the same Springfield
6 terminal commercial team that handles Pan Am
7 railways, also handles Pan Am Southern, handles their
8 rates and industrial development. There's no
9 contractual restrictions on rate sharing between PAR
10 and PAS.

11 Going forward under B&E the commercial
12 team will be purely dedicated to PAS. The sales
13 director of B&E will report only to the B&E general
14 manager, and B&E obviously has those contractual
15 protections that we talked about that limits their
16 ability to set rates for the good of all parties and
17 to establish information barriers to other affiliated
18 railroads.

19 In terms of independent oversight with the
20 PAS operator, which is a very important point, and I
21 know one that was discussed previously, right now
22 Springfield terminal is obviously as a 50 percent

1 owner of PAS is a member of JOC. So in other words
2 they are one of those who are supervising their own
3 performance.

4 Going forward obviously, if CSX is
5 approved as part of this transaction and becomes an
6 owner of PAS, along with Norfolk Southern they'll be
7 fully independent, you know providing oversight of
8 the operating agreement and the B&E as the operator.
9 B&E general manager will be accountable to the Joint
10 Operating Committee.

11 Another important component, and I think
12 probably one of the benefits of having the
13 independent provider of service here as a contract
14 operator is currently overhead costs, which are an
15 important and material cost for Pan Am Southern, are
16 basically allocated between PAR and PAS. So in this
17 case there's just a general allocation between those
18 two railroads, and as you would imagine there would
19 be potential and incentive for Springfield terminal
20 to push more overhead costs to PAS, versus their 100
21 percent owned PAR.

22 Going forward instead of their loose sort

1 of allocation of overhead, which may not be related
2 to PAS activity, there will be a fixed overhead
3 charge made by B&E to PAS with no linkage to any
4 other relative performance by how PAR is doing, and
5 purely related to the activities of B&E.

6 And then finally with the Vermont
7 settlement agreement currently, obviously this is not
8 something that exists. There is no trackage or
9 operating rights available to VRS in the State of
10 Vermont over PAS or NDCR. Going forward as part of
11 this we have offered to the Vermont settlement
12 agreement to provide permanent overhead trackage
13 rights for VRS over the NDCR between Bellows Falls
14 and White River junction, and we've also offered
15 service related pop up overhead trackage rights to
16 East Deerfield.

17 And then as well as the other price
18 stability which are all part of that agreement
19 concerning certain rights. So I think through these,
20 hopefully this is a decent illustration of the
21 benefits that we believe will be enjoyed by the
22 stakeholders of PAS, but to further talk about why we

1 feel we're uniquely positioned to be the best
2 operator, I'm going to turn it over to Michael
3 Miller. Michael? We'll just give Michael one moment
4 he was here. Oh apologies, he just said his computer
5 locked up and he's rebooting all right.

6 Can we Mr. Chairman if you don't mind,
7 maybe just one minute.

8 CHAIRMAN OBERMAN: Matt I have a few
9 questions.

10 MR. WALSH: Oh sure if you have questions
11 that's a great use.

12 CHAIRMAN OBERMAN: Why don't I and others
13 may as well. So the way this is set up B&E is going
14 to establish the pricing on PAS right?

15 MR. WALSH: We are to the extent that
16 those rates are not already in place through haulage,
17 or otherwise you know offered as CSX had discussed
18 you know to PAR destinations, to existing VRS
19 shippers, so the whole litany of items that have been
20 offered to various shippers as part of that. So for
21 some of them yes, the B&E would be establishing
22 rates, but there's a whole slew of traffic honestly

1 that has to do with haulage and are pre-existing.

2 CHAIRMAN OBERMAN: Agreements which you
3 would inherit, the ones that are --

4 MR. WALSH: Exactly, absolutely.

5 CHAIRMAN OBERMAN: You heard the
6 discussion at some length that I engaged in with the
7 various CSX officials, including -- well everybody
8 jumped in on it at some point, including Jim Foote,
9 about their commitment to keep the gateways open, and
10 to keep the pricing of the tariff rates equalized
11 among all gateways, and among all comers.

12 So is that something that binds B&E when
13 it comes to setting the pricing, that commitment?

14 MR. WALSH: I believe some of their
15 commitments, and please maybe correct me, relate to
16 certainly open gateway commitments 100 percent
17 related as much to traffic on what is now PAR, but in
18 terms of providing rates on PAS, I believe that we
19 have the same incentive to do that, and obviously we
20 are very focused on growing these lines as much as
21 possible on Pan Am Southern.

22 CHAIRMAN OBERMAN: More of an incentive,

1 do you have the same commitment that you will
2 equalize rates at each, for each carrier at each
3 interchange point?

4 MR. WALSH: I believe our commitment on
5 the gateways those are primarily made by connecting
6 carriers for NS and for CSX traffic across the line.
7 When you say -- I guess I'm trying to understand.
8 Honestly we want to run the Berkshire and Eastern to
9 maximize volumes. I'm trying to think we obviously
10 are very committed to making sure that traffic moves,
11 and has every advantage to move on that. So
12 obviously you know VRS is receiving the Vermont
13 settlement agreement, has been provided with you know
14 effectively fixed rates to reach NS and CSX, at
15 Hoosac Junction and East Deerfield, and then for
16 further connection to what is currently Pan Am on the
17 northern route. So those are all in place.

18 But otherwise as the operator of PAS, and
19 operating for the benefit of PAS, we are only
20 operating that east/west north/south line. We want
21 to put as much traffic on that as possible, so we
22 don't have gateways in other words. We only have

1 one railroad to operate and to maximize traffic on
2 that, so hopefully that.

3 MR. HOCKY: Mr. Chairman if I could.

4 CHAIRMAN OBERMAN: Yes.

5 MR. HOCKY: It's PAS that makes the open
6 gateway commitments, and creates and maintains those
7 connections, and B&E as the operator would be
8 obligated to keep you know, to follow the direction
9 of PAS and keeping those gateways open.

10 In terms of the pricing, you know that
11 would similarly you know be in place. The operating
12 agreement itself requires that B&E set
13 non-discriminatory rates, so.

14 CHAIRMAN OBERMAN: Does that mean equal
15 rates for all comers at the same interchange?

16 MR. HOCKY: For the same traffic and the
17 same service you know there are -- it's not just for
18 going from A to B, so all propane traffic would have
19 the same rates to the same areas that they're
20 traveling the same size process.

21 CHAIRMAN OBERMAN: Once they get to PAS
22 regardless of the origin right?

1 MR. HOCKY: Yes it should.

2 CHAIRMAN OBERMAN: And the same for
3 traffic that's going outbound, the rate on PAS will
4 be the same wherever the traffic is going, whether
5 it's going to Atlanta on CSX, or Detroit on NS, it
6 doesn't make any difference?

7 MR. HOCKY: No.

8 CHAIRMAN OBERMAN: All right. And is that
9 an in perpetuity commitment as Jim puts it?

10 MR. HOCKY: It's in the operating
11 agreement, so it has the -- lasts as long as the
12 operating agreement.

13 CHAIRMAN OBERMAN: All right. I guess
14 your agreement is not in perpetuity.

15 MR. HOCKY: We're not the owners, and ours
16 is not in perpetuity. We hope it will be for a very
17 long time.

18 MR. WALSH: And in the agreement, sorry
19 one of the points that is very specifically in there
20 is that we certainly can't set any rates to benefit
21 one owner over any other G&W railroad. Our focus is
22 on growing traffic for PAS and for B&E. We're

1 indifferent to whose traffic that is.

2 Effectively in this case the way that the
3 B&E is most successful is the effectively being
4 Switzerland in this situation, and just driving as
5 much traffic across it, and has every incentive to do
6 so, so hopefully that's it. I think Mr. Chairman
7 you're on mute.

8 CHAIRMAN OBERMAN: I got muted. I didn't
9 do it. And not only not discriminating against, or
10 in favor of CSX and NS, but not against CP or any
11 other carrier that might be interchanged.

12 MR. WALSH: Absolutely, that's right. And
13 it's very much what I would call a short line model.
14 You know your pure focus is on growing volumes, and
15 you're not dealing with a much larger national
16 network, you're very much open to all comers.

17 CHAIRMAN OBERMAN: I think one of the
18 pluses as I understand it of PAR and PAS is that it
19 was non-discriminatory to all comers, and basically
20 you're standing in those shoes in that respect. Is
21 that right?

22 MR. WALSH: I think that's fair. I would

1 say even more so just because of the dedication of
2 the workforce, and just in all honesty all the
3 additional oversight that there is that separation
4 between the JOC and the operator.

5 CHAIRMAN OBERMAN: All right. I have two
6 other areas that I wanted to cover. Your bonus
7 agreement is based on in part on the OR that you will
8 generate. And would you agree with me that you can
9 increase the OR by lowering expenses, even if
10 revenues don't go up?

11 MR. WALSH: I would suggest that's
12 mathematically possible certainly. I think that's
13 not the --

14 CHAIRMAN OBERMAN: It's not only possible,
15 it's going on all over the entire Class 1 network.

16 MR. WALSH: It is absolutely. And I
17 appreciate that, and certain and I know maybe I'd
18 even ask my colleague Len Wagner who runs our
19 northern region to address this a bit, but you know
20 from a short line railroad perspective, you know
21 we're often the shock absorbers of precision
22 scheduled railroading is often how we defined it, and

1 I don't mean it to be about that, but the success of
2 a regional railroad, or a short line railroad that's
3 not operating a large network is to grow volumes,
4 because you're dealing with a much more fixed cost
5 base, and you don't really have the opportunity to
6 cut costs in that same way. You know your focus
7 really is on driving the top line.

8 But Len I think you're probably well
9 positioned to answer.

10 MR. WAGNER: Mr. Chairman I certainly
11 understand the question, and you're absolutely right.
12 I did not in my 38 years, I came previously from a
13 Class 1 environment. I understand exactly where
14 you're coming from. However, in a short line
15 regional model that's not the way we ultimately want
16 to grow our business, or influence the operating
17 ratio.

18 We survived on providing as you know that
19 first and last mile of customer service. And the
20 only way that we can do that is to take the shipper's
21 needs into consideration, do what will benefit them,
22 ultimately for them to grow their business, and for

1 us to grow ours.

2 And you're dealing with a smaller
3 operation. It's not that easy to take let's say
4 three crews and cut them down to a crew and a half,
5 or five locomotives, now we're going to go to two and
6 a half. It just doesn't work in this model. It's
7 not the model that we want to go forward with with
8 this entity.

9 I think that we have a very strong
10 operating ethic that will help this railroad to grow,
11 and grow it through the top line on the OR.

12 CHAIRMAN OBERMAN: Well thank you for
13 saying that. You know I have generally not said it
14 before. I am a fan of the short line industry
15 because I think it's more entrepreneurial, and more
16 aggressive quite frankly. So I share that impression
17 about what motivates short lines.

18 But we're being presented with a structure
19 here in which you're not the owner. When you're the
20 owner there's little doubt of the motivations you've
21 just described, but if you're in here as just the
22 operator with a set sort of contractual financial

1 incentive, and I am wondering whether it would not be
2 better for all concerned if your bonus was expressly
3 tied to growth and revenue, or growth in car loans,
4 growth in volume, however you want to measure it
5 without the incentive to be cutting expenses.

6 Not that people don't want you to run
7 efficiently, of course everybody wants that.

8 MR. WAGNER: Yes sir. I may add something
9 unique to the Genesee and Wyoming is that while the
10 agreement is not structured exactly the way you said,
11 or would like it to be, one of the unique positions
12 of G&W is that we have an outside third party that
13 ultimately surveys all of our customers across the
14 United States, and is measured against not only the
15 -- and you'll see this a little bit later in the
16 presentation, not only trucking inside the railroad
17 industry, but the trucking industry as well.

18 And I think that we take those numbers
19 very, very seriously. In the New England market they
20 are above eight, which is world class as far as
21 service is concerned, and we intend to provide that
22 on this railroad, and ultimately grow to that. We

1 take this number very, very seriously, our owners do,
2 and it will be implemented as well on the B&E.

3 CHAIRMAN OBERMAN: Wouldn't we all be
4 better off if the idea was to grow traffic if your
5 incentive was tied only to growing traffic in some
6 way, and not -- I understand, and G&W has a
7 reputation, a good one. There's no doubt about that,
8 but you know once this transaction is approved we've
9 got to rely on the contractual documents that are in
10 place.

11 We may not be there tomorrow, or there may
12 be a different business philosophy someday. Wouldn't
13 it be better just to tie it to growth in revenues, or
14 growth in volume? Leave out the OR part?

15 MR. WALSH: I guess you know one of the
16 advantages is that we are stepping into the existing
17 contract in many ways, and I think that we're
18 comfortable to do that, so we are replicating in
19 many ways what existed as the way that the operating
20 bonus worked. I would suggest you know looking at
21 some of the traffic density on the line, you know
22 that you have your hands on, and the discussion

1 about you know train length.

2 I mean there just aren't enough for us to
3 make this as viable and successful as possible that
4 we know it can be. I think that there's real
5 limitations on the ability to be successful by
6 cutting costs here. So I mean what we want to do is
7 running you know longer -- there's definitely excess
8 capacity on the trains that are being run today.

9 And the way that we'll be successful is
10 not to cut the train service, but really to put more
11 cars in the back of that train at much higher
12 incremental margin to be able to just create you
13 know, a more successful railroad.

14 I do know that our President Michael
15 Miller has rejoined. Michael spends a lot of time
16 thinking about this, and obviously preaching us to
17 our operations. So Michael do you have anything you
18 would like to add to that?

19 MR. MILLER: I would just say I was
20 previously the Chief Commercial Officer, and if all I
21 was accountable for was growth you know that would be
22 nice from a commercial standpoint, but bad from a

1 business standpoint. So I do believe you know I've
2 been around this business a long time, both at a
3 class, one on a short line. We will be successful
4 here through growth, but we're also going to be
5 accountable for really operating an efficient
6 operation.

7 So the owners generate enough returns so
8 we can continue to invest in this business because
9 you can grow carloads a lot and make no money, and
10 put your railroad out of business because you can't
11 reinvest in it. So it certainly is you know,
12 obviously I'd love to just go out here and sell, but
13 we also have to run a very safe and efficient
14 operation, and there's probably some level of
15 balance between what your operating ratios should be,
16 and what your carload growth should be.

17 But I think both of my teammates here have
18 mentioned growth on the short line world, that
19 incremental carload is where you create the
20 advantages here because there's only so many levers
21 you can pull on the call side running a short line
22 operation.

1 We can be creative, we can be efficient,
2 but ultimately carload growth is really what
3 ultimately leads to success.

4 CHAIRMAN OBERMAN: I appreciate what
5 you're saying, and I don't disagree. Everybody wants
6 you to run as efficiently as possible, but as you may
7 know from remarks I have been making all year the
8 cult of the OR seems to be undermining the Class 1
9 networks, and I didn't want to infiltrate the very
10 robust short line operations, particularly G&W.

11 Let me ask one other question. I am not
12 sure who to direct it too, but it has caused some
13 curiosity on my part since I saw the documents. I
14 won't mention the number unless you tell me it's a
15 public number, because I can't remember. But CSX
16 told us this morning about all the bottom locomotives
17 that it's going to replace on the PAR system.

18 But I noted that B&E is committed to
19 buying 33 locomotives at a price. I know the price.
20 I'm not sure you want to say it publicly, maybe you
21 can, but when I saw the price I wondered if these
22 were Lionel trains or what we were talking about.

1 I've never seen locomotives at that price before, and
2 I wonder if somebody can tell me what kind of
3 locomotives you're going to have to operate this
4 system.

5 MR. MILLER: Yeah. I'm not sure what's
6 public on the pricing side, but I will tell you
7 there's really two types of locomotives here.
8 There's the switching locomotives, and there's the
9 line haul locomotives. We are actually will be
10 acquiring the vast majority of the locomotives that
11 are dedicated to the Pan Am Southern operation today.
12 And they're typical short line locomotives. I would
13 say in some cases their line haul locomotives are
14 better. They're GE locomotives, a little more newer
15 as it relates to the short line world, probably
16 better maintained because they were running inner
17 modal, automotive service which is a premium service
18 on that railroad.

19 So we feel pretty comfortable with the
20 locomotive fleet that they have. It's very similar
21 to the locomotive fleets we operate today in that
22 general geography. And if you don't know what the

1 typical locomotive costs for short line issues, about
2 nine times less than what a Class 1 buys a locomotive
3 for, so that's kind of the delta between us buying a
4 used locomotive versus a Class 1 going out and buying
5 a brand new locomotive.

6 CHAIRMAN OBERMAN: All right. Well that
7 helps. Just for the record I didn't say line haul.
8 I said Lionel. It's okay.

9 MR. WALSH: I would say that please when
10 you view that number, it's also part of the holistic
11 offer, it's part of the transaction so.

12 CHAIRMAN OBERMAN: All right. Let me --
13 Karen Hedlund had some questions and then Patrick.

14 BOARD MEMBER HEDLUND: Pardon me if this
15 information is in the record. As you may know I just
16 very recently joined the Board, and I've tried to
17 read as much records as I can, but I haven't
18 committed it all to memory. What is the relationship
19 between G&W and B&E? Is it a special purpose
20 subsidiary that was just created for this
21 transaction, or does it have other businesses, and if
22 it's not confidential to what extent does Genesee and

1 Wyoming stand behind the contract commitments of B&E?

2 MR. HOCKY: I'll try and answer that from
3 a legal perspective.

4 BOARD MEMBER HEDLUND: Yeah.

5 MR. HOCKY: So B&E is a fictitious name
6 that was registered to operate the PAS lines.

7 BOARD MEMBER HEDLUND: Okay.

8 MR. HOCKY: But it is an existing Class 3
9 railroad by virtue of its ownership of rail lines in
10 western Pennsylvania.

11 BOARD MEMBER HEDLUND: Okay.

12 MR. HOCKY: As the Pittsburgh and Shawmut
13 Railroad. It owns rail lines and leases them where
14 they're operated by another affiliated railroad, so
15 it's a non-operating entity currently.

16 BOARD MEMBER HEDLUND: So currently does
17 not operate any of its own railroads, or railroads
18 owned by anybody else?

19 MR. HOCKY: Correct. So this would be its
20 initial operations, and you know we're using it
21 because it's an existing railroad, and therefore
22 qualifies for certain things, or triggers certain you

1 know regulatory reviews.

2 BOARD MEMBER HEDLUND: Got it.

3 MR. HOCKY: And G&W is the ultimate parent
4 company, so it stands behind it in the same way as it
5 stands behind any of its subsidiaries, but it is not
6 the direct operator, but it does provide certain
7 resources, and that it can provide to its you know
8 safety training, and IT, and things like that.

9 So it's there. It's been involved in the
10 negotiations because it is the parent company, so.

11 BOARD MEMBER HEDLUND: I understand that.
12 One sort of related question. Can you just generally
13 describe the insurance arrangements with respect to
14 B&E?

15 MR. HOCKY: Go ahead Matt, no.

16 MR. WALSH: I was going to say yeah, so the
17 B&E will go out and purchase its own insurance, and
18 have its own policy. To be honest this is something
19 that we will work out with the owners in terms of
20 what levels of insurance, but it will be
21 substantially similar to what we carry at Genesee
22 Wyoming, and you know I would imagine no less than

1 certainly what they have today. My expectation would
2 be significantly more but.

3 BOARD MEMBER HEDLUND: Thank you.

4 MR. WALSH: Are there other questions, or
5 I think Michael had a couple slides he was going to
6 walk the Board through.

7 CHAIRMAN OBERMAN: Hey Pat did you have a
8 question?

9 BOARD MEMBER FUCHS: I was actually just
10 going to make an observation which is that I think
11 making this point was essential Marty on your
12 previous line of questioning in that first the
13 Board's objective in these cases is not necessarily
14 -- while I believe that there is large public
15 benefits from growth of volume by rail, that is not
16 the Board's standard for evaluating the transactions,
17 or imposing the condition on the maximization of
18 growth.

19 And the other is I think if not only you
20 know anything with management incentives be a blunt
21 way to address competitive harm, which is the Board's
22 focus in these proceedings, but it also would

1 undermine the rail transportation policy objective,
2 which is what I think what Mike alluded to in terms
3 of revenue adequacy.

4 And ensuring that you can invest in your
5 network. And so I view a little bit of a tension
6 between going too far in the maximization of growth,
7 and there's a viability question that we're also
8 exploring with this line, and I think it's important
9 that competitors be able to make sufficient profits
10 to reinvest back in their lines, and I think over
11 focused on just the maximization of growth undermines
12 that objective to some extent. So I just wanted to
13 make that observation. Thank you.

14 CHAIRMAN OBERMAN: All right.

15 VICE CHAIRMAN PRIMUS: I've got a question
16 Marty.

17 CHAIRMAN OBERMAN: Yeah go ahead Robert.

18 VICE CHAIRMAN PRIMUS: And following up on
19 what you said, you know, and the notes provided from
20 the staff. You know based on you know B&E's comments
21 previously that they said you know that they would be
22 able to operate and maintain PAS properties with 25

1 percent fewer positions, are you guys looking to
2 reduce when you take over by 25 percent? Is there
3 any talk of reduction in staff?

4 MR. WAGNER: Vice Chairman that's a great
5 question and let me address that initially here. The
6 biggest component of that as was talked about with
7 CSX a little bit earlier today, a contingency of
8 maintenance of way folks that did capital work.
9 That capital work will now be done by the owners of
10 the railroad, and thus that was where the reductions
11 were seen from and MOW standpoint.

12 From a transportation standpoint it's
13 probably a guess at this point. I don't think those
14 are hard numbers. I think we could certainly go up
15 as opposed to standing on them. It is reflective
16 again of what CSX acknowledged today of NS's
17 investment in the PAS line that has actually taken
18 the slow orders and the other impediments to velocity
19 away, and literally the railroad has gone from 10
20 miles an hour up to 25 miles an hour on average, so
21 two and a half times improvement.

22 But really I think and that only

1 represents I think a 10 percent reduction of people
2 if it ultimately came to that. We have no intent of
3 cutting for anything other than that was just an
4 estimate. We don't know for sure, but the railroad
5 is going to be operating more efficiently, I think a
6 little bit higher velocity. We're going to bring
7 some technology into the railroad as well. I think
8 you saw a few slides from CSX demonstrating where
9 there's a little bit of a lack of IT, but that will
10 certainly allow us to run where they're doing mostly
11 paper today.

12 We can certainly have some efficiency
13 there as well, but again I think those are -- I
14 wouldn't call those hard, fast numbers.

15 VICE CHAIRMAN PRIMUS: Okay. And I
16 appreciate that. So let's just say it hovers around
17 10 percent. That 10 percent would not be sort of T
18 and E would it be that the maintainers of what
19 you're saying the inefficiencies of that paper were
20 of sort of that older system?

21 MR. WAGNER: Well I think it's that and
22 the velocity of the railroad. Literally the velocity

1 of the railroad blowing up two and a half times.
2 Again without having our hands on the steering wheel
3 it is a vapor look, it is not hard and fast.

4 VICE CHAIRMAN PRIMUS: I appreciate that.
5 I mean I kind of look at it if they're promising to
6 upgrade and improve those tracks, you're going to
7 need some folks, at least in the interim to actually
8 you know put the new tracks in, and you know, fix it
9 up. Not necessarily you know reduce those
10 maintenance of way folks and others.

11 So that's why I was asking where you would
12 see those cuts happening if they were to happen.
13 Again it would be sort of the maybe redundancy, or
14 maybe the inefficiencies of like you said the
15 paperwork, you know stuff being transferred digitally
16 instead of paper, or otherwise.

17 MR. WAGNER: Well having the
18 responsibility of running this line the last thing I
19 want to do is to go in there and not have sufficient
20 resources. So I would much rather err on excess
21 than less.

22 VICE CHAIRMAN PRIMUS: Let me ask one last

1 question, and I do appreciate your answers. Would
2 PAS put pressure on you to make those decisions,
3 since they're the owners? Would they influence that
4 decision-making?

5 MR. WAGNER: I don't believe that the
6 structure is set up for that at all. I think we're
7 going to be a very independent operator that is going
8 to operate that to the best of our ability
9 ultimately for efficiencies, and for our customer
10 service.

11 VICE CHAIRMAN PRIMUS: Okay. So you guys
12 will be the ultimate maintainers of that track?

13 MR. WAGNER: As far as capital work goes,
14 the Class 1's will be, or the owners will be
15 responsible for the capital. Maintenance yes, we
16 would have the maintenance, yes sir.

17 VICE CHAIRMAN PRIMUS: Okay thank you.

18 CHAIRMAN OBERMAN: All right. Who's next?

19 MR. MILLER: Sorry about my technical
20 difficulty after being on for eight hours my computer
21 decided to lock right when it was about time for me
22 to speak believe it or not. Anyway, as noted

1 earlier I'm Michael Miller, President of G&W's North
2 American operations. I'd like to cover really three
3 primary areas today. First, why B&E is uniquely
4 positioned to operate PAS. Second, why the B&E was
5 selected by NS and CSX, and then third why the
6 long-term success of PAS is so important to G&W.

7 First the transition of the PAS operation
8 is a material undertaking. It is not an easy
9 transition. It's more complex than people may think,
10 and it's certainly more complex than a normal short
11 line startup. G&W has more experience acquiring,
12 starting up and integrating regionally short line
13 railroads than anyone else, which we believe
14 minimizes the startup risk, and helps to ensure the
15 customer service levels are maintained during the
16 integration and startup period.

17 As an example I would point to G&W's
18 acquisition and startup of the Rapid City Pierre and
19 Eastern Railroad in 2014. A similar transaction
20 which was an asset purchase from Canadian Pacific.
21 The RCP&E startup was larger and more complex than
22 the Pan Am Southern is expected to be as it included

1 the hiring of over 180 employees, including the
2 implementing agreement, procuring 50 locomotives and
3 2,500 railcars.

4 In addition you have to transition the
5 inventory as well as the traffic over into a new
6 transportation management system. So this is a very
7 similar transaction, a little bit larger in scale,
8 but really representative of the complexity of the
9 integration, and I would encourage the Board to feel
10 free to reach out to any of the key stakeholders of
11 South Dakota to get feedback on our startup of that
12 operation.

13 Second, as the largest owner of short line
14 railroads in New England, G&W is very familiar, and
15 has positive relationships with PAS's key
16 stakeholders, all of them should benefit from the
17 B&E operations. First, it obviously starts with our
18 customers, and G&W understands the New England market
19 and customer base very well.

20 As Len noted, every two years G&W conducts
21 a global customer satisfaction survey led by an
22 industry leading third party. Based upon the results

1 of the last survey, which was conducted at the end of
2 2021, the customers of our New England Railroad
3 scored us 8.5 out of a possible score of 10, with 8.0
4 or higher being considered a satisfied customer.

5 This was better than the rail industry as
6 a whole, which scored at 6.9, and believe it or not,
7 it was better than the trucking industry as well
8 which scored as a 6.7. And I think Matt pointed this
9 out that there is no customer opposition, which is a
10 reflection of our strong relationship with the
11 customers in the New England marketplace.

12 As we look at the second point here, the
13 next key stakeholder for us is the employees, and
14 this will be a unionized operation, and all of G&W's
15 New England railroads are unionized and operate with
16 substantially the same labor unions as the ST
17 operates today.

18 We have a close working relationship with
19 the unions, and this should be very helpful as we
20 develop the implementing agreement and bring
21 employees over into our work environment.

22 Third, the government entities. G&W

1 railroads in New England have a long and successful
2 history working with both the State Departments of
3 Transportation, and other rail agencies in the
4 region, and we have grown and developed key strategic
5 relationships in this area for over 20 years.

6 Passenger operations is the final bullet
7 point here, and G&W in New England both host and
8 operate passenger operations. We have close
9 relationship with both Amtrak and Metro North, and we
10 feel like those strong relationships will help us
11 here with this integration, and we're certainly
12 focused on ensuring that passenger rail service meets
13 the needs of the public.

14 As we turn to the next slide you can see
15 here G&W is the recognized safety leader. You know I
16 think Mr. Foote pointed this out. We're both a
17 regional short line and national rail leader in the
18 industry with regards to safety, and this is our
19 number one priority in any operation we have, and
20 certainly a focus that we will have.

21 G&W has a demonstrated record of operating
22 expertise and financial strength, which is important

1 for an operation of this size and this complexity.

2 Genesee Wyoming railroads as noted, have significant
3 presence in this geography, beyond the relational
4 benefits of us being in this marketplace, we also had
5 managerial and operational capabilities located
6 nearby. We have physical resources

7 in close proximity to the PAS, and these resources
8 create redundancy and resiliency whether needed
9 during the startup period, or when there's
10 challenging times such as a polar vortex, a major
11 snowstorm, or a derailment.

12 These will come in handy and create a
13 better service product ultimately with more
14 redundancy and more reliability for our customers.
15 And the last point on the page is NS and CSX are
16 very confident that G&W's ability to provide the most
17 competitive, independent solution, and are confident
18 in the ability for us to integrate and operate the
19 Pan Am Southern as the B&E as we go forward.

20 The next slide will highlight how
21 important the Pan Am Southern is to Genesee Wyoming.
22 And if you look at this map the Pan Am Southern line

1 is highlighted here in blue. The existing G&W rail
2 properties are in orange, and one of the things that
3 makes short line railroads very attractive to
4 customers, very attractive to our partners, is our
5 ability to connect with multiple Class 1 railroads.

6 When you look at our Providence in
7 Worcester, we ship thousands of carloads annually
8 across the Pan Am Southern, so we are certainly
9 incented and aligned to make sure that Pan Am
10 Southern is a competitive alternative, and a
11 competitive gateway to both NS and CP to the east, as
12 well as traffic that may want to flow to CSX at
13 Rotterdam Junction.

14 But we also have the ability on the
15 Providence and Worcester to interchange traffic to
16 CSX and Worcester as well. Similar story for the
17 NECR. We have traffic that flows across the NECR
18 that wants to move across the Pan Am Southern, and
19 across CSX, ultimately being able to keep these
20 gateways open, to keep these gateways competitive,
21 and to keep the service product is definitely in the
22 best interest of Genesee Wyoming's Providence and

1 Worcester railroad, and all of our New England
2 customers, and we view this as a key alignment
3 feature of us being the operator of the B&E.

4 In conclusion, I'd just like to highlight
5 the public benefits for the B&E as the operator PAS.
6 The B&E will be focused only on operating growing PAS
7 as an independent railroad. We've talked a little
8 bit about the structure of the agreement, and how
9 important it is, and how alignment is built into that
10 operating agreement.

11 The B&E's sole responsibility is to
12 operate PAS as efficiently, as safely, and as
13 successfully as possible. The B&E will participate
14 and benefit fully as a subsidiary of G&W, where we
15 will have the best in class safety and service
16 culture.

17 We'll also get significant rail management
18 expertise and resources to apply to the B&E, and
19 we'll be able to deploy both company and industry
20 standard technology to enhance the efficiency of the
21 B&E operation, as well as to improve the customer
22 experience for all customers that use the Pan Am

1 Southern line.

2 G&W and B&E are fully incentivized and
3 aligned with improving Pan Am's service. We're
4 certainly incentivized to increase Pan Am's rail
5 volumes, and lower its operating costs, to make it a
6 more sustainable and viable and investable rail line.

7 G&W is committed to PAS's success, and
8 anticipates investing approximately 20 million
9 dollars directly into the B&E, in addition to
10 thousands of man hours as we bring this line home,
11 as we develop the implementing plan, and as we
12 transition to us operating the PAS operation.

13 The B&E contract, and G&W's approach to
14 this operation with PAS on behalf of PAS's
15 shareholders and owners, is similar to many other
16 rail contracts that we operate successfully today.
17 Matt noted some of these.

18 We have joint facility agreements, port
19 operating agreements, entities with states where we
20 operate rail lines that are very similar to these
21 operating agreements, and we're comfortable operating
22 in this environment, and all of the stakeholders we

1 have our agreements with would be proud to represent
2 that we do a fine job running the railroads, and
3 growing business on those properties.

4 So with that I'll turn it over, and we'll
5 open it up to questions for the group.

6 CHAIRMAN OBERMAN: All right. Does anyone
7 have any further questions? Mike you're questioned
8 out on your presentation.

9 MR. MILLER: We're supper lucky then.

10 CHAIRMAN OBERMAN: Well look, G&W comes in
11 with a very good image I think for most of us, so. I
12 am tempted to say after listening to the presentation
13 maybe we'd all be better off if G&W ran the whole
14 PAR, not just this part of it, but I won't say that.

15 VICE CHAIRMAN PRIMUS: I want to ask you a
16 question, Marty?

17 CHAIRMAN OBERMAN: Yeah go ahead.

18 VICE CHAIRMAN PRIMUS: Yeah. Hey thanks,
19 I appreciate the presentation. It was very
20 informative. I have a question about the Hoosac
21 Tunnel. You know any concerns on that, and you know
22 even about the idea you know it's had its problems in

1 the past. You know do you have any sort of insight
2 in terms of you know repairs to the tunnel, and you
3 know how would you want you know the owners to
4 respond, and for the operations.

5 You know is that a concern for you?

6 MR. MILLER: I would say the collapse of
7 the Hoosac Tunnel last year probably got a lot of
8 light on the ability to get that track back in
9 service, and I would say the owners, Pan Am and NS,
10 spent a tremendous amount of time, money and effort.
11 They put that tunnel back into good state of repair.

12 We have not inspected the tunnel, but
13 we've had actually multiple conversations with NS
14 around the tunnel. They have really high engineering
15 standard, and we feel really comfortable as they
16 made these repairs they made them for the long-term.
17 So we feel good about it.

18 Obviously you know when we are awarded --
19 hopefully awarded, the operator's agreement of this
20 operation, we will go across every stitch of this
21 rail line to make sure we're comfortable, that it's
22 safe and it meets the needs of the customers.

1 But right now I would say based upon what
2 we're hearing, and what we're seeing, that to
3 continue to invest -- and the track state itself has
4 actually improved over the past couple of months, so
5 we know they're continuing to put money into the
6 property which is good. It's an asset that NS is
7 very focused on in maintaining that connectivity to
8 New England.

9 VICE CHAIRMAN PRIMUS: And how much of an
10 influence do you hope to be in terms of you know
11 maintaining the track, and even the tunnel? I mean
12 and again they own it, you operate it, but again you
13 know it's your people who are on the line, and you
14 know your reputation for delivering those goods and
15 services.

16 So you know do you feel that you guys have
17 significant sort of a seat at the table for that, and
18 for some of the other issues? Again, it's kind of
19 hard just running it you know, and not being the
20 owner, because again there are things that are going
21 to come up and you know you may think one thing, they
22 may think another, I mean there's a hope that that

1 doesn't happen, but again you know you've got to
2 think that way in a real world.

3 Everyone is staying on the same page right
4 now because you know a deal has to happen, but you
5 know five, ten years from now, you know, you don't
6 want to be in a position where you know you're
7 pleading for someone to fix the track, and having to
8 deal with it.

9 So do you feel comfortable being in that
10 position?

11 MR. MILLER: you know we have a really
12 strong relationship with all of our collaborating
13 partners, and I would say at least on the engineering
14 front Vice Chairman Primus, I feel very comfortable,
15 because the standards of engineering are very clear.

16 If there's a safety concern we're not
17 operating, and that's going to impact the
18 shareholders, the owners of the property. It's going
19 to impact our customers, and we're not going to want
20 to deal with that, so if there's a safety concern, an
21 operating concern, I feel very comfortable based upon
22 engineering standards across our industry that if we

1 brought those to the owners they would quickly react
2 and do what's in the best interest of Pan Am
3 Southern, and the customers and our employees.

4 I think Jim started off his presentation
5 talking about safety. The one thing that I think
6 with everybody involved in this transaction is we're
7 not going to jeopardize safety of any employee, or
8 anybody who traverses our railroads, so I think that
9 gives us a lot of credibility and a big seat at the
10 table.

11 And almost all of our engineering
12 practices we coordinate with our Class 1's and our
13 stakeholders as we develop engineering plans, so I
14 feel pretty comfortable about that. To say it's
15 going to be perfect, and we're not going to disagree
16 I will definitely tell you we'll probably have some
17 disagreements, but I don't think we'll get to a point
18 where safety is a concern, or long-term viability of
19 the line is ever a concern because it will get to a
20 point where we'll have to raise our hand and say we
21 can't operate on this from a safety standpoint.

22 VICE CHAIRMAN PRIMUS: Yeah. I certainly

1 know, I totally agree with you from that standpoint
2 you know. My concern honestly long-term is allowing
3 you guys to grow and get the business you need, and
4 of course you know some of the talk amongst Board
5 members is the competition between the southern route
6 and the more open that becomes, and you know whether
7 it's you know allowing double stacks or others, you
8 know how the attention is going to turn from you know
9 serving both, to maybe serving one more than the
10 other.

11 And so for us the idea of having two
12 viable lines you know is very important and critical
13 to us, and so we know you're there because you got
14 you know that focus. Your focus is on PAS. You
15 know, but at the same time you know you've got the
16 other two, even though they're in it and they're
17 50/50, the idea is you know how much they're in it,
18 versus focusing on the southern route as well.

19 So that's one of the reasons why because I
20 think you deserve a stronger seat, and a stronger
21 voice, because I think again you guys are investing
22 heavily into that and the success and growth on that

1 line. That wasn't a question, just a comment. That
2 last part. No need to answer. I'm done Marty thanks
3 a lot.

4 CHAIRMAN OBERMAN: All right. Any further
5 questions for B&E? All right. Thanks folks. Bill
6 Mullins is up next.

7 MR. MULLINS: Thank you Chairman Oberman,
8 Vice Chairman Primus, Members Fuchs, Shultz and
9 Hedlund. My name is Bill Mullins, and I'm a partner
10 at Baker Miller PLLC.

11 CHAIRMAN OBERMAN: Bill I can't see your
12 video.

13 MR. MULLINS: You can't see my video okay.

14 CHAIRMAN OBERMAN: I don't know why that
15 is. But I don't see you.

16 MR. MULLINS: I can see you. Maybe it's
17 something.

18 CHAIRMAN OBERMAN: maybe it's something on
19 my end. Oh there you are. I got it okay, thank you.

20 MR. MULLINS: Okay. So I appear today on
21 behalf of Norfolk Southern. NS respectfully submits
22 that the transaction should be approved without

1 conditions except the standard labor protective
2 conditions, and those commitments voluntarily made by
3 the applicants.

4 It is important to put this proceeding in
5 context from NS's perspective, and how the various
6 pieces fit together in a way that we believe
7 protects, not only NS's interest, but preserves and
8 enhances access and competition. A comprehensive
9 analysis requires a bit of a look back before we do a
10 look forward.

11 After the split of Conrail, and before the
12 creation of Pan Am Southern, NS had a difficult time
13 providing a cost-efficient and effective competitive
14 alternative to CSX for shippers in the New England
15 market. I'm going to share a map. Hopefully you'll
16 be able to see that.

17 As you can see NS had very little
18 presence. NS is the black line. We had trackage
19 rights from Binghamton up to Schenectady over the D&H
20 which is a CP line. We had very little presence, in
21 fact relied on two other railroads to actually serve
22 the area. As a result NS was disadvantages and

1 competing with CSX into the northeast markets.

2 NS and Pan Am decided to change that. So
3 in 2008 Pan Am and NS created Pan Am Southern as a
4 50/50 joint venture. PAS was to serve as a vehicle
5 for NS and Pan Am to create intermodal and
6 automotive services into New England and to compete
7 with CSX in the Northeast markets.

8 This map is a map after the formation of
9 Pan Am Southern. The key was the NS orange line, the
10 Patriot corridor between Mechanicsville and Ayer,
11 which is the NS landing zone for competition into the
12 entire New England region.

13 NS spent over 165 million dollars to
14 execute the Pan Am's southern transaction, including
15 over 114 million dollars in initial capital outlays
16 and line upgrades, entire on or along that orange
17 route.

18 NS has invested millions more since, and
19 in 2015 NS purchased the Delaware and Hudson line
20 from CP for 214 1/2 million dollars, even better
21 able to serve New England shippers and competition
22 with CSX. Overall, NS has committed over 400 million

1 dollars in investments in this area to more
2 effectively compete.

3 CHAIRMAN OBERMAN: Bill where on the map
4 is the Delaware and Hudson?

5 MR. MULLINS: This was the former Delaware
6 and Hudson that we now -- we used to have trackage
7 rights over that.

8 CHAIRMAN OBERMAN: Okay.

9 MR. MULLINS: Now we own it.

10 CHAIRMAN OBERMAN: Got it.

11 MR. MULLINS: So this is sort of a zoomed
12 in map. This map focuses on Massachusetts and the
13 greater Boston area. As the map shows the creation
14 of PAS and the purchase of D&H provided New England
15 shippers with a stronger NS presence, and the ability
16 to compete.

17 NS is now a major interchange partner with
18 PAS. While CP interchanges with PAS to serve New
19 England, it can also serve New England markets via
20 its own lines, something NS does not have the
21 ability to do. Various existing G&W railroads, New
22 England Central, Providence and Worcester, Connecticut

1 Southern, also depend upon the Pan Am Southern, as
2 competitive alternative, or as a competitive
3 supplement to CSX.

4 CSX itself uses Pan Am Southern for
5 shippers, but CSX cannot serve directly. In terms of
6 rail competition the shippers in the area, a strong
7 and independent Pan Am Southern is important. And in
8 the context I have just laid out no other railroad
9 party has more to lose than Norfolk Southern, if Pan
10 Am ceased to be a viable independent alternative to
11 CSX.

12 Given CSX's significant investments in Pan
13 Am Southern, and the D&H, it's dependence upon
14 interchange with the PAS, for access to New England,
15 and the substantial investments that NS has made over
16 the years, Pan Am Southern must remain viable for NS
17 to compete.

18 When NS first learn of CSX's proposed
19 acquisition of Pan Am, and with it Pan Am's 50
20 percent interest in Pan Am Southern, NS had
21 significant concerns. In this sense, when the CSX
22 proposed acquisition was initially announced, NS

1 shared some of the same concerns that have more
2 recently been expressed by even DOJ.

3 Because of these concerns CSX and NS had
4 lengthy negotiations to create a solution set that
5 would ensure that CSX's purchase of Pan Am would not
6 reduce the vitality and the independence of Pan Am
7 Southern. The outcome of those discussions was the
8 NS CSX settlement agreement, and a series of other
9 agreements.

10 As a result of these agreements NS, the
11 rail carrier with the most to lose, is convinced that
12 the proposed transaction as presently modeled,
13 maintains the viability, financial strength, and
14 independence of PAS. The agreements ensure that NS
15 can continue to provide a competitive alternative for
16 New England shippers.

17 The agreements are complex, and carefully
18 balanced. Any changes or disruptions in their
19 structure and wording risk literally the entire
20 transaction and the loss of public benefits. Indeed
21 with the agreements NS now believes that the
22 transaction not only preserves competition, but

1 enhances it in ways that could not occur without the
2 transaction.

3 Of course an important element in
4 preserving competition is the use of B&E as a neutral
5 operator of PAS. First and foremost, B&E will not be
6 a stand-alone rail carrier moving traffic over the
7 PAS lines in B&E's name and revenue waybill. B&E
8 will be the contract operator at PAS, moving traffic
9 for PAS, maintaining PAS's lines, and managing
10 operations for PAS.

11 B&E will be contractually obligated to set
12 PAS rates in a non-discriminatory competitively
13 neutral fashion. There are various financial
14 incentives for B&E to not only maintain service and
15 neutrality, but to grow the traffic. In order for
16 B&E to flourish financially under the agreements, B&E
17 must maintain PAS's access to NS, CP, and CSX and to
18 each of the short lines that connect to the PSA
19 lines, including those in the Vermont rail systems
20 and G&W systems.

21 Further there are numerous protections in
22 place to ensure that CSX cannot interfere with B&E's

1 pricing and service levels, and to ensure that CSX
2 can't block needed capital improvements. Perhaps the
3 most important check on CSX is that NS has the right
4 to purchase CSX's 50 percent in PAS if NS at any time
5 does not believe CSX and B&E are abiding by their
6 contractual commitments.

7 NS is convinced that the various
8 agreements ensure that competition will be preserved,
9 even with CSX owning 50 percent of PAS. Even more
10 than simply preserving competition, the proposed
11 transaction actually creates a more competitive
12 environment than exists today.

13 From NS's perspective, the most
14 significant of these pro-competitive enhancements is
15 the grant of trackage rights over CSX's southern
16 route to NS for two intermodal automotive stack
17 trains a day. This eliminates NS's need to use the
18 Hoosac Tunnel, which is a 4.7 mile tunnel that was
19 built nearly 150 years ago.

20 We have had a lot of discussion about the
21 tunnel today, but I don't believe that anyone has
22 actually shown a picture of it, so there is a picture

1 of the Hoosac Tunnel, and as you could see the tunnel
2 cannot accommodate intermodal double stack trains.
3 So the grant of trackage rights over CSX's southern
4 route to NS will permit the creation of a double
5 stack cleared route for NS into the greater Boston
6 market area, further strengthening NS's competitive
7 foothold in the region.

8 Further, moving the NS intermodal
9 automotive traffic to the CSX line frees up a
10 significant amount of capacity on the patriot
11 corridor that can be used by merchandise traffic to
12 which for PAS is more valuable. Even CP recognizes
13 the value of NS's ability to compete against CSX
14 using the trackage rights.

15 But rather than seeing those rights as a
16 positive force and a pro-competitive measure, CP uses
17 those rights as a basis to seek conditions that
18 merely benefit CP, and at the expense of NS and Pan
19 Am Southern, and thus at the expense of competition.

20 More on CP later, but the point is that
21 all parties recognize that the transaction, and only
22 the transaction, gives NS the ability to provide New

1 England shippers with a new and enhanced competitive
2 alternative intermodal service. This can only be
3 achieved if the transaction is approved as currently
4 presented, without changes in the agreements,
5 disruptive divestiture proposals, or market
6 constraining conditions such as those proposed by CP.

7 The transaction as currently presented,
8 and with the voluntary agreed upon conditions, is
9 unopposed by the short line community, the vast
10 majority of public bodies, and most importantly the
11 shipping community. Indeed not one shipper or
12 shipper association actually opposes the transaction.

13 Over 80 shipper statements have been
14 submitted in support. Several of those shippers have
15 taken time to appear at this hearing and express
16 their unequivocal support, and NS thanks those
17 shippers for their support and their testimony.

18 There are now few critics of the
19 transaction left, other than theoretical conjectures,
20 none of those critics have provided actual evidence
21 to show that as a result of the transaction there is
22 likely to be a substantial lessening of competition,

1 creation of a monopoly, or restraint of trade in
2 freight service transportation in any region of the
3 United States, which is the legal standard
4 applicable to this transaction.

5 Absent such a showing, Section 11324D
6 states that the Board shall approve the transaction.
7 As relevant to the statutory standard, DOJ submitted
8 comments, but no evidence. DOJ expressed some
9 concerns about the parallel pricing in CSX's 50
10 percent ownership of Pan Am Southern, yet NS and the
11 shipper community, the parties who are most impacted,
12 do not share DOJ's views.

13 DOJ did not submit a reply brief, and did
14 not appear at this hearing. A proposal submitted by
15 DOJ, that CSX is required to divest its stake in Pan
16 Am Southern, or that B&E be replaced as a Pan Am
17 Southern operator, is not only entirely unnecessary,
18 it would be counterproductive by prolonging the
19 transaction review, adding unknowns and uncertainty
20 into a market solution that can and will work.

21 And if we are wrong though, that
22 contingency has also been considered and provided

1 for. NS can take either or both of those actions.
2 NS can force CSX to divest its stake, or to replace
3 B&E as an operator, though it's provided for under
4 the agreements.

5 As for CP, it too has not presented any
6 evidence. No shipper statements, no expert
7 testimony, no rate analysis. No diversion analysis,
8 not even a verified statement, mere speculation. And
9 what philosophical conjectures they do make do not
10 show a substantial lessening of competition, creation
11 of monopoly or restraint of trade.

12 The comments submitted by CP concentrate
13 on the need to ensure that PAS remains a long-term
14 viable rail carrier for competitive rail service in
15 New England, but what CP doesn't fully acknowledge is
16 that NS shares that exact precise goal. CP
17 expresses concern that the rerouting of NS's
18 intermodal traffic will leave PAS financially harmed,
19 and the two future owners of PAS may not keep PAS
20 viable over the long-term.

21 But NS is the last party who would want to
22 see an erosion of PAS's viability. NS does not have

1 the option to route traffic away from an NS/PAS
2 routing, except for the two intermodal automotive
3 trains on CSX's east/west line. As such, NS must
4 maintain PAS's viability if NS is to maintain a
5 competitive balance with CSX with respect to the
6 remaining merchandise business.

7 Indeed the entire point of the various
8 agreements is to maintain PAS as a viable entity, so
9 that NS can remain a competitive balance to CSX.
10 Further, NS as an owner of PAS has every incentive to
11 keep PAS viable in the long term. NS has two major
12 intermodal facilities, two major automotive
13 facilities, and the largest share of interchanged
14 merchandise traffic moving on PAS.

15 NS will continue to have every economic
16 incentive, a strong incentive, to keep PAS viable, to
17 ensure NS's continued access to this traffic. If CP
18 were truly concerned, CP could have taken measures to
19 protect it. Indeed when Pan Am Southern was
20 created, NS reached out to CP to offer them to
21 partner with NS in creating Pan Am Southern.

22 That offer was rejected. Here today CP

1 could have bid on Pan Am, but instead of acting in
2 the marketplace, CP wants to use this agency to grant
3 it conditions that may be in CP's interest, but
4 certainly are not in the public interest.

5 CP wants this agency to impose service and
6 investment standards on PAS. Conditions that have no
7 precedent in any merger procedure in recent memory,
8 and are not supported by any other party, including
9 DOJ, and certainly not by the shipper community.

10 CP wants such standards without any volume
11 or rate commitments to route traffic over PAS. CP
12 wants to impose costs upon the Pan Am system, and to
13 hamstring PAS's and NS's ability to react to
14 ever-changing market conditions. Such conditions
15 harm competition, not preserve it or enhance it.
16 Certainly CP will have no government imposed service
17 or investment standards on its lines serving the
18 northeast markets.

19 CP concerns are misplaced. NS, B&E other
20 G&E railroads, and even CSX itself, have every
21 economic incentive to route as much traffic as
22 possible, including CP traffic over the PAS system.

1 For some unforeseen reason PAS's service declines,
2 the necessary capital is not being invested, or NS is
3 not benefiting from B&E's operations, NS has a remedy
4 to fix that. NS can buy CSX's 50 percent interest,
5 or work with others to do so in partnership and
6 competition.

7 Finally the transaction as currently
8 presented not only preserves competition, but
9 enhances it. NS, CSX, CP, G&W, Vermont rail all have
10 the continued ability to use a neutral PAS. NS has
11 new premium routings over the CSX lines. The
12 agreement with Vermont rail gives them new routes and
13 opportunities that they have never had before.

14 And if for some reason none of the complex
15 and carefully negotiated agreements work as intended,
16 NS has a market based remedy. In the end the
17 shippers and the railroads indeed competition itself,
18 are all much better with the transaction than
19 without it, and NS urges its approval. Thank you.

20 CHAIRMAN OBERMAN: Thank you Bill. I have
21 a couple of questions, and I'm sure others will too.
22 You present NS's interest in PAS with a considerable

1 intensity befitting of your skills, but I wonder why
2 NS didn't send any of its operating, or sales or
3 marketing people to this hearing to talk from a
4 business point of view why this is important, not
5 that your arguments aren't persuasive, but it did
6 strike me that I saw that you were the only person
7 coming here.

8 MR. MULLINS: Well and I appreciate the
9 question. It is not our transaction obviously. We
10 are not the applicant. We're an effective third
11 party intervenor, and the fact that we don't have an
12 NS person here is not an indication of the lack of
13 influence or importance that NS sees on this.

14 You know NS's position on the record is
15 very clear. NS's testimony is very clear. Our
16 evidence is very clear. I'm fully authorized to
17 speak for NS, and if I can't answer one of your
18 questions I'm happy to go back to the client and ask
19 it, so we thought that given that we were not an
20 applicant, and given the tradition of non-applicants
21 not having a business person, and I was fully
22 authorized that that is the reason, and hopefully I

1 can address your questions.

2 CHAIRMAN OBERMAN: I'm sure you can. I
3 would say as a general principle I'm trying to
4 dispense with a lot of STB traditions in the past and
5 going forward. So let me ask a key question. If PAS
6 is so important, and I don't doubt what you've
7 suggested here, why didn't NS just buy it?

8 MR. MULLINS: Well we didn't need to. And
9 the reason why we didn't need to is when we first
10 went to speak with CSX about our concerns, we started
11 to enter into these negotiations. And it became
12 clear as these negotiations went on, that we could
13 maintain the structure of having a 50/50 joint
14 venture by basically replacing one partner with
15 another, and another partner that has a owner
16 financial position that has the ability to provide
17 capital that wasn't always available by our previous
18 partner.

19 And so we decided after the agreements
20 were all negotiated that our interest would be
21 protected. And sometimes a joint venture is better
22 than having just one party. You can share the costs

1 of capital, especially in this case where we've hired
2 an independent neutral operator to operate it
3 neutrally in a non-discriminatory fashion, so in that
4 sense there wasn't a need to buy it.

5 And we've also negotiated the right to buy
6 it if all this fails. So we pretty much got
7 everything we needed, plus enhanced competition --
8 infrastructure improvements, two new trains on the
9 CSX line, all of that would have not have been
10 possible without this agreement.

11 CHAIRMAN OBERMAN: Well it strikes me that
12 if we accept what CSX has told us that A, they didn't
13 want to buy it. B, they felt some compulsion not to
14 buy it for fear that we might not like it. You were
15 in a better position then. Once this deal goes
16 through if it does, your bargaining power to buy it
17 will have changed it strikes me.

18 MR. MULLINS: Well Chairman Oberman
19 actually in the agreement with our ability to buy it,
20 the price is already set. There's parameters, so we
21 actually do not lose our bargaining power because
22 we've already put that contingency in place in the

1 existing agreement.

2 CHAIRMAN OBERMAN: So I don't know that
3 this is in the public record, so I won't mention the
4 time period, but your right to buy it at these
5 pre-determined limitations on the price expires does
6 it not?

7 MR. MULLINS: I believe it does yes.
8 You're correct.

9 CHAIRMAN OBERMAN: Yeah, so then what
10 happens?

11 MR. MULLINS: Well if we haven't exercised
12 our right, and then we presumably at that point we
13 haven't exercised our right because we're happy with
14 our partner, and we're happy with B&E. We have the
15 ability to replace B&E at that point, and at that
16 point hopefully we would have had a period of time to
17 work with our partner and work these things out, and
18 if I think by that time, Chairman Oberman, we will
19 know whether or not we need to buy this, or continue
20 as joint venture partners.

21 CHAIRMAN OBERMAN: The other thing I
22 wanted to ask you about, I believe it's the same

1 time period. The agreement you have with CSX says
2 that they will keep the -- I'm just quoting from
3 their submission, to keep paying our system rates to
4 connection with PAS at current levels would cost
5 escalation for seven years. Then what happens?

6 MR. MULLINS: Well then the marketplace
7 will govern, and you know again, invested 400 million
8 dollars into this system. We have ever incentive to
9 put traffic over there. B&E has every incentive.
10 You can't freeze marketplace conditions forever, and
11 presumably again at that point we will have either
12 bought it, or we're comfortable with the way that it
13 is operating, so you know it's not a permanent right,
14 but it certainly gives us enough time to decide
15 whether this is working or not.

16 CHAIRMAN OBERMAN: One other area I just
17 wanted to ask about and I'll turn it over to the
18 others. As I understand the numbers it's not, I
19 don't think we have them with precision, the amount
20 of intermodal traffic that you're running now on PAS
21 would not fill up to one 9,000 foot train each way,
22 so you've got some room to grow because of the double

1 stack correct?

2 MR. MULLINS: Correct. That's a positive
3 enhancement transaction.

4 CHAIRMAN OBERMAN: But what happens when
5 you've used up your capacity, and you've filled up
6 your 9,000 foot train each way? Then what are you
7 going to do for intermodal?

8 MR. MULLINS: Well let's hope that happens
9 because at that point we can start working and
10 looking at the Hoosac Tunnel and trying to improve
11 the Hoosac Tunnel in sort of a public, private
12 partnership. Of course you're not going to do that
13 unless that's in the public interest, and unless the
14 traffic is there, so that's what would happen.

15 I mean that would be a positive thing.
16 Let's hope that happens because we're taking things
17 down the road.

18 CHAIRMAN OBERMAN; Yeah I didn't suggest
19 it as a negative, I hope you fill up the 9,000 foot
20 train. I want every one of those containers off the
21 highway, so we're on the same page there. But I'm
22 just wondering where you go from there, and you go

1 back to what it is filet toupee.

2 MR. MULLINS: That's true, or we can
3 continue to run depending on the market conditions,
4 we can also continue to run single stack at that
5 point you know. We don't have to you know, and the
6 Hoosac Tunnel, that route's not going away, so if
7 there's additional additive service there we can run
8 single stack, and if that's not working and the
9 market demands it, we'll work on improving that
10 Hoosac Tunnel.

11 CHAIRMAN OBERMAN: Well that brings into
12 play your need to engage CSX to come in with a
13 not-veto capital improvements, and they may not. I
14 can't see where they'll ever have the same interest
15 that you will in spending money on the Hoosac Tunnel.

16 MR. MULLINS: Well you never know with
17 public private partnerships available, and the
18 infrastructure money, and funding. It's hard to
19 gauge what type of percentage ownership or
20 improvements, or the cost of them would be, and how
21 much would be paid by NS, CSX, how much would be done
22 by government, so and again if the market conditions

1 actually justify that type of investment you know we
2 do have some remedies, and then our ultimate check is
3 if the market justifies that you know, we can always
4 buy the Pan Am Southern and alleviate that problem.

5 CHAIRMAN OBERMAN: Right. And you're also
6 subjecting yourself to the decision of an arbitrator
7 as to whether it's worth investing in that tunnel.
8 That's not the same decision as an entrepreneur would
9 make necessarily if NS owned the line. I mean I just
10 find you're putting yourself at some risk there as to
11 the future which you don't control.

12 MR. MULLINS: Yeah, that's why we have the
13 reserve the right at a certain price to buy it
14 Chairman Oberman. Look we understand what you're
15 saying, and we negotiated for that.

16 CHAIRMAN OBERMAN: Yeah, but let me ask
17 this question. I haven't seen any I've been
18 searching for it. Are there any estimates on what it
19 would cost to do what needs to be done on the Hoosac
20 Tunnel to run double stack trains through there?

21 MR. MULLINS: I don't know the answer to
22 that Chairman, but I'd be happy to get back with you.

1 CHAIRMAN OBERMAN: I don't know that it's
2 central to this you know, to our decision-making
3 here, but it has been a puzzle to me as to just how
4 costly that would be, what's preventative from
5 happening up until now. If there is even a ballpark
6 estimate, and I've seen reference to the State of
7 Massachusetts having some interest in participating
8 in that decision.

9 Obviously there is potential for the
10 federal infrastructure money made available for that
11 kind of a P3 project, but it would be interesting I
12 think for us to know at least what the ballpark
13 estimate is for that work.

14 MR. MULLINS: Absolutely Mr. Chairman.

15 CHAIRMAN OBERMAN: If you could supply
16 that to us.

17 MR. MULLINS: Sure.

18 CHAIRMAN OBERMAN: That's all I have for
19 now Bill. Thank you.

20 MR. MULLINS: Thank you.

21 CHAIRMAN OBERMAN: Patrick?

22 BOARD MEMBER FUCHS: Hey Bill, I wondered

1 if you could summarize kind of in practice terms what
2 the service impact is of routing those intermodal
3 automotive trains over to the southern route? What
4 does that mean for customers, especially in light of
5 the issues we have going on.

6 MR. MULLINS: It certainly cuts transit
7 times. It cuts you know we don't have to do the
8 filet toupee operation. It's more efficient, it's on
9 a main line CSX route that is you know kept at the
10 highest standards. We can run it at faster speeds.
11 We don't you know as we discussed even the Pan Am
12 Southern route is still pretty dang good, but this
13 would improve the efficiencies, and add densities to
14 the operation, so it's --

15 BOARD MEMBER FUCHS: Do you have numbers
16 around the transit time Bill?

17 MR. MULLINS: I can provide that. I can
18 provide that. I don't believe that's in the record,
19 but I could provide that.

20 BOARD MEMBER FUCHS: That would be great,
21 thank you.

22 CHAIRMAN OBERMAN: Anyone else questions

1 for Bill?

2 VICE CHAIRMAN PRIMUS: Yeah I have a
3 couple. Hey Bill thanks for hanging in there this
4 late in the afternoon. I appreciate that. Would it
5 be fair to say that without access to the southern route
6 you guys would rethink you know moving forward on
7 this merger agreement?

8 MR. MULLINS: It's fair to say that if any
9 part of the merger agreement is changed we would
10 reconsider moving forward with this transaction.
11 That's how important the entire package is.

12 VICE CHAIRMAN PRIMUS: All right, but the
13 southern route is pretty significant though.

14 MR. MULLINS: It is a significant part.

15 VICE CHAIRMAN PRIMUS: Okay. How you know
16 given the fact that you know it's going to enable you
17 guys to move those 9,000 foot trains, as you said you
18 know, it's on a better track, so you're talking about
19 reliability and improved efficiencies. You know what
20 do you see going forward on the northern route? I
21 mean how much are you guys now that you know you're
22 taking that off and looking at the future of the

1 northern route, I mean what's your vision going
2 forward for the northern route?

3 MR. MULLINS: Well we hope B&E is the
4 operator who is going to operate this efficiently,
5 plus with improvements into all the infrastructure in
6 Ayer and other places that you know the route now has
7 taken intermodal trains today and a lot of capacity,
8 so everybody has an incentive now to put traffic over
9 there, and to focus on merchandise traffic.

10 So that's the bread and butter. That's
11 where Pan Am Southern makes most of its money, so
12 there's complete economic incentive to focus on that.

13 VICE CHAIRMAN PRIMUS: So you guys don't
14 really have any sort of vision to sort of go out and
15 create business for Norfolk Southern on that line?

16 MR. MULLINS: Well we have invest 400
17 million dollars, so we have every incentive to put
18 traffic over that line, but B&E is really you know,
19 as the contract operator with the pricing and the
20 service, it all depends. So yes, we do have an
21 economic incentive to move traffic over that, just as
22 we do today.

1 VICE CHAIRMAN PRIMUS: All right. So are
2 you expecting more growth to happen on the northern
3 route or the southern route in this deal?

4 MR. MULLINS: We're hoping for both. I
5 mean we haven't done a strategic study to you know
6 how much growth will be on the north, or how much
7 would be on the south. Certainly the southern
8 route, since that's new service with double stack,
9 we're expecting that to grow certainly over the
10 long-term if we're successful with our plan to move
11 more trucks off the highways. So you know we'd like
12 to see growth in both.

13 VICE CHAIRMAN PRIMUS: Okay. So given
14 that you're seeing growth in both, and given now the
15 access to the southern route, you know, what's your
16 timeline for you know the re-establishment of that
17 connection in Voorheesville?

18 You know it's not up and running now. You
19 know you've got to get that set up. I mean walk me
20 through the process of getting that up and
21 operational because again nothing goes through there
22 until that gets fixed.

1 MR. MULLINS: That is correct Vice
2 Chairman, and we think we can get that done in the
3 time period while the labor negotiations are taking
4 place, while the incoming agreements are put in
5 place, and so that by the time there is a changeover
6 to the B&E operations, that will be the place. You
7 know it's hard to say exact. We don't see that
8 taking any longer than it would take to get the B&E
9 out there to get that done.

10 VICE CHAIRMAN PRIMUS: And last question,
11 so how long do you expect it to take. I know there
12 has to be other work on the Southern line before you
13 can start putting those double stacks up. When do
14 you guys expect to be fully operational on the
15 southern route?

16 MR. MULLINS: it's hard to estimate, and
17 you know we've heard anywhere from six months to a
18 year. You know it just kind of depends when all the
19 infrastructure improvements are done, and when the
20 you know, the trains could start running. But
21 certainly we have every economic incentive to do this
22 as soon as possible, but I don't think we have an

1 exact -- we can't give you an exact timeframe, you
2 know an exact deadline.

3 VICE CHAIRMAN PRIMUS: Right. Yeah you
4 know what's the optimum time that you guys are hoping
5 to get, you've got to get Voorheesville up and
6 running, you've got to get a couple other things, so
7 what's on that? What's that timeline?

8 MR. MULLINS: I mean we'd like to get it
9 done in six months, but you know, that's our hope.

10 VICE CHAIRMAN PRIMUS: Okay, all right.
11 Thank you.

12 MR. MULLINS: Thank you.

13 CHAIRMAN OBERMAN: All right. Any further
14 questions for Bill?

15 MR. MULLINS: I have since heard the Board
16 members, and Mr. Chairman I've been told that it
17 would be an estimate of 300 million for the tunnel.

18 CHAIRMAN OBERMAN: Okay thank you.

19 MR. MULLINS: Still need the transit
20 times.

21 CHAIRMAN OBERMAN: Yeah, yeah. All right.
22 Bill I think you've escaped.

1 MR. MULLINS: Well thank you very much. I
2 appreciate that.

3 CHAIRMAN OBERMAN: All right. It's
4 getting late, it's five o'clock. Do you think we can
5 get through panel two and then take a short break
6 everybody comfortable with that? All right. I
7 would like to call up Panel Two, and just because
8 it's taken most of the day doesn't mean that I don't
9 have a soft spot in my heart for local elected
10 representatives, because I once was that.

11 So I greatly respect your interest and
12 desire to participate and give us your views, so let
13 me call up State Senator Adam Hinds, the former
14 Connecticut Deputy Speaker, and State Representative
15 David McCluskey, Massachusetts State Rep John
16 Barrett, III, New Hampshire State Senator Regina
17 Birdsell, and another Massachusetts State Senator
18 Patrick O'Connor.

19 Are all five of you there? I see Mr.
20 Hinds, Mr. McCluskey, Mr. Barrett, let's see who am I
21 missing, Ms. Birdsell and Mr. O'Connor, are you on?

22 MR. HINDS: I'll text Senator O'Connor and

1 find out where he is.

2 CHAIRMAN OBERMAN: Okay. He may have lost
3 patience with us, I wouldn't blame him. But you know
4 in order to move along if you don't mind, why don't
5 we start Senator Hinds with you.

6 SENATOR HINDS: Okay. Thank you Mr.
7 Chairman, and thanks to the Board. I appreciate the
8 process that you're undertaking, and I appreciate you
9 giving us the space to contribute to it. So good
10 evening to all of you. I'm currently the
11 Massachusetts State Senator representing the 52
12 western-most municipalities in the State Senate, and
13 I'm here to relay the perspective that there is a
14 genuine resurgence in rail, in passenger rail in
15 western Massachusetts at the moment, elevating the
16 importance of this decision and our attention to it.

17 And right now in our small corner of the
18 country where Representative Barrett is as well, we
19 have four new passenger rail services in the works.
20 One underway, and three more under study or ready to
21 begin. And so I would say that this resurgence in
22 passenger rail is viewed with considerable excitement

1 and urgency here, not the least of which because we
2 view this as in rail, as a part of how we adapt to a
3 changing economy in the new COVID reality, where
4 people can live and work from anywhere.

5 And so in a region like mine for it to
6 survive, and this is a region characterized by
7 population decline in recent census counts, we need
8 investments in basic infrastructure, and we need to
9 put in place the basic infrastructure like internet,
10 and like transportation, and namely rail connections
11 with economic centers.

12 These allow people to enjoy lower cost of
13 living outside of urban areas, a high quality of life
14 and much more. So importantly, we are on the cusp,
15 as you've heard today, of one significant service in
16 particular that I wanted to come in and talk about,
17 that will contribute to making such an original
18 economic connection, and that's the Berkshire Flyer
19 passenger rail service from New York City to
20 Pittsfield, Massachusetts in Berkshire County here in
21 western Massachusetts.

22 It's ready to start this summer as a

1 result of years of study and preparation by Amtrak,
2 by the Massachusetts Department of Transportation,
3 and in coordination with CSX. The pilot would start
4 as seasonal weekend service, i.e. incredibly limited
5 in scope, and it would cover about 35 miles from
6 Albany into Pittsfield in an effort to connect to the
7 rail from Manhattan to Albany and over to Pittsfield.

8 Now as I've previously testified, and I
9 know others have as well, in written form for myself,
10 that we've been concerned about the level of
11 cooperation encountered by CSX in the process of
12 promoting critical passenger rail lines. I'm here
13 now as someone who is changing my perspective on
14 that.

15 Recently, as has been noted today, CSX's
16 has conditionally made a commitment to the Berkshire
17 Flyer, and we hope that this commitment truly
18 continues to move forward in the positive direct that
19 it is today.

20 It's that type of positive relationship to
21 meet regional economic needs in both the movement of
22 goods and people, that will strengthen CSX in my

1 view, and its customers because entire regions of the
2 country will be able to flourish. I should note that
3 of course this includes not only the Berkshire Flyer,
4 but also the proposed east/west passenger rail from
5 Pittsfield to Springfield to Boston, which is just so
6 critical for connecting our Commonwealth.

7 This is my vision for how CSX can engage
8 positively with the communities it serves, and I'm
9 grateful that this is what I'm experiencing, this
10 positive interaction and engagement in the most
11 recent period. For that reason I look forward to
12 continued close work with CSX, and I look forward to
13 them continuing to meet necessary conditions as they
14 work to expand their footprint in providing critical
15 rail services through our region.

16 Thank you very much, and I appreciate your
17 time and consideration.

18 CHAIRMAN OBERMAN: Senator Hinds just one
19 question. I assume I know the answer, but I take it
20 you're pleased with the commitment that CSX filed
21 with us just last night with Amtrak?

22 SENATOR HINDS: Yeah, I mean obviously I

1 think with the understanding that any kind of capital
2 investment would be contingent on the outcomes of the
3 pilot, so we're hoping that this pilot is at least
4 two years, in large part, so that we can see you
5 know the numbers outside the Omicron surge, and
6 outside of a maybe a COVID moment.

7 And also we're trying to market into a New
8 York market which takes some time and effort given
9 the size, and so this is a multi-year effort, and
10 then working through how we make sure that we're not
11 interfering with critical freight coverage into
12 Worcester and beyond is something that we're all
13 onboard with, and we understand its importance of
14 working together here.

15 CHAIRMAN OBERMAN: All right. Thank you.

16 SENATOR HINDS: Thank you.

17 CHAIRMAN OBERMAN: Representative
18 McCluskey.

19 REPRESENTATIVE MCCLUSKEY: Good evening
20 Chairman Oberman. First of all full disclosure I
21 want to say that I was at the University of Chicago
22 with the college democrats when you were the

1 alderman on the north side, and I want to say for the
2 record that serving in the Chicago City Council,
3 especially during the council wars with A. Berdoliak,
4 and Harold Washington is far more difficult than
5 being a member of the Connecticut General Assembly,
6 so I just wanted to say that for the record.

7 CHAIRMAN OBERMAN: But David not more
8 difficult than being Chairman of the STB.

9 REPRESENTATIVE MCCLUSKEY: That maybe
10 yeah, okay, fair enough. Just for the record to the
11 members of the Surface Transportation Board. I am
12 David McCluskey, the former Deputy Speaker for the
13 Connecticut House of Representatives. I was a
14 long-time member of the Transportation Committee, and
15 I was co-Chair of the Transportation Bonding
16 Subcommittee.

17 In that last position I worked on a
18 landmark transportation funding bill which dedicated
19 monies for freight railroads for the first time in
20 many years, as well as revitalizing the Hartford line
21 for commuter service and the purchase of new
22 passenger cars for the New Haven line.

1 Since I left the legislature, I maintain
2 my advocacy for freight rail. In particular, I've
3 communicated with both state and local public
4 officials about the importance of freight rail,
5 including this proposed purchase of Pan Am by CSX.
6 Why do I care about freight rail?

7 I believe a merger in freight rail in
8 general serve many important public policy goals, in
9 particular, reducing highway congestion, reducing
10 damage to roads and bridges, improving air quality,
11 and reducing greenhouse gas emissions. I also want
12 to say I can confirm the representations of Mr.
13 Boychuk earlier regarding the quality of Pan Am
14 Southern in Connecticut.

15 I actually have high railed the line that
16 Pan Am Southern owns in Connecticut from a
17 Burlington, Connecticut to Waterbury, and it is in a
18 state of poor repair. I actually toured it as
19 recently as April of 2021 because of an interest I
20 had. There was a development going on in Plainville,
21 Connecticut, which is very near the remnants of a
22 rail line that's still in operation called the Canal

1 route.

2 And I was very disappointed on the
3 quality. And in contrast, and I will say there have
4 been numerous derailments on that route, and there
5 have been numerous complaints of a lack of
6 responsiveness of Pan Am regarding those derailments,
7 and some complaints by some of the shippers that Pan
8 Am interfaces with.

9 In contrast, I have worked with Genesee
10 Wyoming as you know, they have three other lines in
11 Connecticut, and I have not received any of the
12 complaints regarding the lines that they have in
13 Connecticut in contrast to the complaints I have
14 heard about Pan Am.

15 I know that the G&W has worked with not
16 only state officials, but federal officials in
17 improving the Palmer line. And one other thing I did
18 want to say is that prior to the State of
19 Massachusetts buying the Connecticut River route from
20 Springfield to the Vermont border, that line was in
21 such poor condition that the Amtrak Vermonter had to
22 get off the route at Springfield and take a G&W

1 route, the Palmer line, north.

2 When the State of Massachusetts bought it,
3 they brought it into a state of good repair, but
4 under Pan Am Southern at the time it was in a real
5 poor condition. So I think G&W works well in
6 Connecticut.

7 They are a great partner to work with, and
8 I think bringing another Class 1 railroad into the
9 State of Connecticut, a much more active presence,
10 will only serve to increase the likelihood that more
11 freight gets diverted to rail in Connecticut. Thank
12 you. I'd be happy to answer any questions you have.

13 CHAIRMAN OBERMAN: Thank you David. Any
14 questions? All right. Thank you very much and you
15 obviously had great success at Connecticut politics
16 having gotten schooled at the University of Chicago.

17 REPRESENTATIVE MCCLUSKEY: Thank you.

18 CHAIRMAN OBERMAN: I'm sure. All right.
19 Representative Barrett?

20 REPRESENTATIVE BARRETT: Yes Mr. Chairman.
21 I don't know if I'm at the wrong hearing after what I
22 just heard about the Hoosac Tunnel, but before I get

1 into my formal testimony here, I would like to
2 encourage the members that maybe you've already read
3 it, but go back and read about the construction of
4 the Hoosac Tunnel and what a masterful feat it was
5 some 145-150 years ago, and why I will say in this
6 testimony beforehand, if they don't do more than what
7 I just heard, there will be a new revolution in the
8 State of Massachusetts.

9 But that being said let me first of all
10 thank you Mr. Chairman for the opportunity to talk
11 about the proposed acquisition of the Pan Am Railways
12 by CX. As a State Representative from the first
13 Berkshire District of Massachusetts, I feel compelled
14 to offer testimony today regarding this acquisition
15 of Pan Am by CSX.

16 The testimony I've given today is based
17 upon what I've observed in my previous experience as
18 Mayor of the City of North Adams for 26 years, and my
19 four plus years as State Representative from the
20 first Berkshire District. During my time as Mayor
21 and Representative, I had a unique and interesting
22 perspective.

1 As I saw firsthand how Pan Am operating
2 during my time as Mayor, and later as State
3 Representative. I can say quite honestly that I can
4 never recall anything remotely nice about my dealings
5 with them. In my interactions with officials from
6 that company Pan Am thought I found them to be most
7 uncooperative in most situations.

8 When making any type of request to them
9 their favorite word was usually no. Whether it was
10 getting them to slow trains down on certain stretches
11 along the route, getting approval to build a railroad
12 crossing for new industrial park, even getting them
13 to stop the practicing of running engines of a parked
14 train in a neighborhood for over 24 hours in duration
15 was ignored.

16 They didn't seem to care about it being a
17 nuisance, or the impact those emissions were going to
18 have on the surrounding environment. They didn't
19 care about the people it impacted, or the pollution
20 that they were spreading. The arrogance displayed by
21 the company officials was something I had never
22 experienced before, nor have I experienced since.

1 All I heard from them say every time that
2 I spoke with them that the federal and state laws
3 have given us a lot of power, and there isn't much a
4 local community or state can do about it.

5 While certainly this may be true, this
6 condescending approach is unacceptable, and of
7 critical importance to me. Our railroads must be
8 operated efficiently, and also in the best interest
9 of the abutters, as well as the users. I have heard
10 much in today's testimony about how protecting the
11 public, yet I am not seeing over the past 30 years
12 that happening. The real public that is out there.

13 I want a company that not only makes good
14 business decisions, but also who acts in the best
15 interest of the communities they are in. When I hear
16 the words protect it, protect the public. Just who
17 is this public? I've tried my hardest to forget
18 those prior experiences with Pan Am, but they just
19 sit with me, and I have tried to be objective.

20 It however, all comes back around to how
21 railroads deal with people and communities, and with
22 the public in general. How they interact with their

1 neighbors. Pan Am never cared about building
2 relationships. The question before this board is
3 whether the acquisition by CSX or Pan Am will be in
4 the best interest of the region they will interact
5 with, and as well as their users.

6 Will there be an approval if CSX acquires
7 Pan Am? Will they protect the real public who they
8 interact with every day? It is all about business
9 and making money, and we understand that, and I'm all
10 for it. But is the greater public being served? I
11 would like to address an issue which is of great
12 importance to those who live in the rural areas of
13 Massachusetts, and other places in New England.

14 I represent one of the greatest concerns I
15 have about CSX acquiring Pan Am is that of one of
16 passenger service from Boston to Albany, New York.
17 Since the last census 10 years ago, only two
18 counties in Massachusetts have lost population --
19 Franklin County and Berkshire County. These two
20 counties are contiguous, and they are both served by
21 rail, which is owned by Pan Am, and is often
22 referred to as the northern tier rail line.

1 Due to the persistence of my colleagues in
2 the legislature, the Mass Department of
3 Transportation has begun a study to determine the
4 feasibility of whether commuter service between
5 Boston and North Adams is doable. Pan Am has never
6 shown any interest in passenger service along the
7 northern tier.

8 If the northern Berkshire and Franklin
9 County hopes to see any significant growth over the
10 next decade, it must have two things happen. Improve
11 broadband, which is being addressed in Congress with
12 the ARPA money in the State of Massachusetts, and
13 passenger service from Boston to North Adams at
14 least.

15 People are moving west, and work places
16 are changing with adequate passenger service the
17 benefits to these counties will be enormous. When I
18 met with CSX officials they assured me that they
19 would take a serious look at commuter service along
20 the northern tier. I'm now questioning whether I met
21 with the correct people.

22 Passenger service along this stretch of

1 railroad is critical to the economic growth in
2 northern Berkshire County, and I was very direct
3 letting them know that they better be serious in
4 honoring their commitment to explore commuter service
5 on the northern tier.

6 I also told them if they didn't follow
7 through on their commitment I would become their
8 worst nightmare. While I can be sure that it will
9 happen, I was -- my statement original said I am
10 confident, I was confident that CSX will honor their
11 commitment.

12 The involvement of Genesee and Wyoming in
13 this transaction will provide the experience and
14 expertise of bringing commuter service to the
15 northern tier, if it is done right. As a Class 1
16 railroad CSX will have more resources available to
17 make the necessary investments needed, and there are
18 many safety issues which must be addressed.

19 The Hoosac Tunnel, which was previously
20 referenced, was closed nearly two months in 2020 due
21 to structural wear and tear according to the words of
22 a spokesman from P&E. CSX will have the necessary

1 resources to not only maintain this historical
2 tunnel, but also to begin upgrading the tunnel
3 itself.

4 As stated today double stack freight
5 trains will not be able to use this historic tunnel.
6 It also should be noted that when I referenced
7 reading about the history of this, and how it was
8 built, and the lives that were lost in building it,
9 and then they tell me in the year of 2022 that it
10 can't be fixed, and made available at a reasonable
11 price, it's almost laughable.

12 When I first learned of the potential
13 acquisition by CSX I was unsure as to whether it
14 would be in the best interests of the region I
15 represent. I don't like everything associated with
16 the merger, but the positives far outweigh the
17 negatives. I hope that if this acquisition is
18 approved that CSX will live up to its commitments
19 they have made, and provide us with the best railroad
20 possible.

21 It's what we deserve, and we should take
22 nothing less. And I hope that the Board will work to

1 ensure that these rail companies keep their promises
2 and commitments, especially ensuring the commitments
3 and statements made today by the representatives
4 from the interest here will be kept. As a public
5 official this type of hearing is usually our first
6 and last chance we may have to influence how rail
7 service is provided.

8 I would ask that the Board consider, I can
9 no longer support this on the information that I
10 received in this testimony today about the Hoosac
11 Tunnel, and the lack of commitment to the northern
12 tier. It is a must, and it has to be looked at very
13 carefully. We're no different than anybody else, and
14 we deserve to have the same attention paid to us.
15 Mr. Chairman I thank you and the Board today for
16 allowing me to testify here thank you.

17 CHAIRMAN OBERMAN: Thank you
18 Representative Barrett. I just have one question.
19 Have you submitted any of your comments in writing to
20 us?

21 REPRESENTATIVE BARRETT: No, but I
22 certainly will.

1 CHAIRMAN OBERMAN: Well I would like to
2 you referenced commitments in your discussions with
3 CSX, and without you know extending the hearing
4 because it's late in the day --

5 REPRESENTATIVE BARRETT: Mr. Chairman if I
6 could just interrupt. I've been here since 9:30 this
7 morning, so I'm willing to stay a few extra minutes.

8 CHAIRMAN OBERMAN: All right. Well I
9 appreciate that. What I'd like to do is so that it's
10 clear is if you would submit to us perhaps in a
11 written comment, if you have the time, what you
12 understand the commitments that CSX made in your
13 discussions with them. They may not be the same
14 commitments they're willing to make to us, but that
15 has different legal consequences.

16 But I'd at least like to know what you
17 understand CSX and B&E, if you've talked to them
18 about what kind of commitments they have made at
19 least to you and to your community, that would be
20 important for us to know.

21 REPRESENTATIVE BARRETT: I certain will
22 Mr. Chairman.

1 CHAIRMAN OBERMAN: Yeah, and with
2 precision, because we're dealing with you know a
3 legal decision that we have to make one way or the
4 other.

5 REPRESENTATIVE BARRETT: Well I would like
6 to make it clear that the commitment, and I can say
7 this verbally today, that they would take a long,
8 hard look in, but I will put that in writing, or
9 anything that you would like.

10 CHAIRMAN OBERMAN: And are you
11 specifically referring to a commuter type service to
12 North Adams as distinguished from another Amtrak
13 train?

14 REPRESENTATIVE BARRETT: The commuter
15 service going from Boston basically along the
16 northern tier of which the State of Massachusetts has
17 now begun a study, a feasibility study on to
18 address.

19 CHAIRMAN OBERMAN: All right. So well I
20 much appreciate that precision in language is the key
21 for us, so that's why I wanted you to meet specific.
22 All right Patrick?

1 VICE CHAIRMAN PRIMUS: No I just real
2 quick, John I want to tell you I appreciate your
3 comments. You know I hope I speak for everyone on
4 the Board, you know I've been here a little over a
5 year, but I can tell you that the public interest
6 weighs very heavily on the minds of folks, members
7 here on the Board.

8 We discuss this quite a bit, and fully
9 recognize how much public interest plays in this
10 decision as well, and so you know, I take your
11 comments very seriously, and just wanted you to know
12 that I believe the Board does too moving forward.

13 REPRESENTATIVE BARRETT: Thank you. I
14 appreciate that.

15 BOARD MEMBER FUCHS: I very much
16 appreciate the comments as well. I just want to ask
17 a quick, clarifying question. Representative Barrett
18 would you say that your concerns about the commitment
19 to the Hoosac Tunnel are caused, or exacerbated by
20 the transaction, or is it that it's just not the
21 parties to the transaction haven't made the
22 commitment that you'd like to see?

1 REPRESENTATIVE BARRETT: No. They made a
2 commitment that they would look at it. They didn't
3 make a commitment to build or do anything, but they
4 made a commitment. But I'm hearing testimony from
5 the speaker on the northern southern, his name I
6 can't even think of right now, but you know who I'm
7 referring to, that basically they don't even know if
8 they're going to go ahead with this deal, and things
9 like that concerning the Hoosac Tunnel. I should
10 have been speaking to them.

11 BOARD MEMBER FUCHS: What I'm asking
12 though is given your past interactions with Pan Am
13 and the Norfolk Southern is a joint owner already, as
14 it stands today, absent any transaction there would
15 still be this very serious concern you raised.

16 REPRESENTATIVE BARRETT: Yes. Yes.

17 BOARD MEMBER FUCHS: It'd probably be
18 greater than post transaction?

19 REPRESENTATIVE BARRETT: Yes, yes,
20 absolutely. They had to close it down. I don't know
21 what's inside that tunnel, but from what I'm told
22 it's in a dangerous situation, immediate work -- it

1 should be addressed immediately. I mean they closed
2 down for two months I believe back in April of 2020.
3 There's been other concerns, there's been washouts.

4 It's a serious situation which has to be
5 addressed, but you know I'm listening to the money
6 transactions from the Southern Railroad of what
7 they're going to talk -- it's going to take a lot of
8 money, and I'm assuming that because of the Class 1
9 designation be given to CSX, they would be addressing
10 that.

11 Because one thing that I've known, and I'm
12 not a railroad authority by any stretch, was I did
13 know that double stack cars weren't going to be able
14 to get through there. And I said my God that's going
15 to be perfect for more transportation, so if that
16 doesn't happen, and they can't fix that what's going
17 to happen now?

18 That's throws something into this that I
19 think has to be taken into consideration. Who is
20 going to pay for it?

21 BOARD MEMBER FUCHS: I appreciate it thank
22 you very much.

1 REPRESENTATIVE BARRETT: Thank you.

2 CHAIRMAN OBERMAN: Thank you
3 Representative Barrett.

4 REPRESENTATIVE BARRETT: Thank you.

5 CHAIRMAN OBERMAN: If there are no other
6 questions we will go to Senator Birdsell. Senator?

7 SENATOR BIRDSSELL: Thank you. Thank you
8 Mr. Chair, and I just want to say good afternoon or
9 good evening at this point, and thank you for
10 allowing me to weigh in on this critical transaction
11 to enhance freight rail operations in New England
12 that's pending before you today.

13 My name for the record is Senator Regina
14 Birdsell. I have proudly served my state since 2010,
15 representing Hamstead and Kingston in the House of
16 Representatives for four years, and the State Senate
17 now for almost eight years. In my current capacity I
18 also serve as Chair of the New Hampshire State Senate
19 Transportation Committee, so therefore I have a
20 vested interest in seeing our transportation system
21 managed most safely and efficiently.

22 As a dedicated public servant with a deep

1 knowledge of the ways and means of transportation in
2 New Hampshire, and the greater New England region,
3 I'd like to express my complete support for the
4 proposed merger between CSX and Pan Am Railways.

5 I believe this merger will bring forth
6 numerous benefits to New England by improving our
7 infrastructure and our environment, and the economy.
8 CSX has made it clear it is committed to investing
9 heavily in Pan Am's rail infrastructure, which is in
10 dire need of increased maintenance and modernization.

11 The necessary repairs and upgrades are
12 simply not feasible for Pan Am financially, but they
13 are for CSX, a Class 1 railroad with a stellar
14 reputation, which is in part why I stand behind the
15 deal. By implementing its best in class operations,
16 and elevating the current infrastructure to the
17 company's high operational and service standards,
18 freight and passenger rail operations in New England
19 will significantly improve.

20 This will bring with it many benefits to
21 freight rail, and to the businesses that depend on
22 it, as well as the passenger rail companies that rely

1 on the shared infrastructure. Excuse me,
2 furthermore, this would bring additional Class 1 rail
3 service into New England.

4 The infrastructure improvements that will
5 be made possible by CSX's investment will advance the
6 Pan Am network capabilities far beyond what they are
7 currently, which will lead to improved safety and
8 enhanced maintenance. This transaction will be a
9 benefit for my constituents as CSX's investment will
10 make both passenger and freight services far more
11 safe and efficient.

12 The environmental benefits is also
13 significant given CSX's record of investing in, and
14 implementing new technologies to make rail operations
15 more effective and sustainable. CSX is the most fuel
16 efficient freight rail operator in the United States,
17 moving one ton of freight 533 miles on a single
18 gallon of fuel, something I wish my car would do.

19 Expanded train capacity will greatly
20 reduce the number of trucks operating in the New
21 England region, which means that there were will be
22 less congestion on the road, fewer pollutants in the

1 air, including emissions of greenhouse gases, and
2 their commitment to efficiency and sustainability is
3 extremely encouraging, and I believe that New England
4 stands to benefit for decades to become one of the
5 company's strategic forward thinking.

6 It is my duty as a Representative, and a
7 Senator of the people of New Hampshire, to advocate
8 for, and support opportunities that foster economic
9 development, increase the quality of life, and
10 benefit the communities that we serve. It is for
11 these reasons that I fully support CSX's proposed
12 acquisition of Pan Am Railways, and I'm open to any
13 questions if I can.

14 CHAIRMAN OBERMAN: Senator thank you so
15 much for staying with us throughout this long day.
16 Much appreciated.

17 SENATOR BIRDSSELL: I got some of my
18 Christmas decorations down so.

19 CHAIRMAN OBERMAN: I hope everybody was as
20 productive while they were listening. Any questions
21 for Senator Birdsell? All right. Thank you all.
22 Senator O'Connor apparently had another commitment,

1 so I would like to somehow if we could communicate to
2 him to let him know we will hear him tomorrow if he
3 can appear.

4 Perhaps Senator Hinds, I don't mean to get
5 involved with the local political relationships, but
6 I'm taking it that you know him well enough that
7 maybe you can let him know to contact our people,
8 either Scott Zimmerman or Valerie Quinn, and we'll
9 arrange for him to speak when he's available tomorrow
10 if he still wants to.

11 SENATOR HINDS: Will do, thanks.

12 CHAIRMAN: Would much appreciate it. At
13 this point the next panel is Panel 3. One of the
14 members of that panel had to take off as well, and is
15 going to testify tomorrow. That leaves four people.
16 I'd like to take a 10 minute break, we've been going
17 here for a couple of hours, and I'm sure people need
18 a quick break, and get back and hear from Panel 3.

19 And depending on the length of time that
20 takes, I'd still like to see if we could hear from
21 Panel 4 this afternoon, but if we can't we'll start
22 with Panel 4 in the morning. So with that it is

1 5:33, let's get back here at 5:43 with Panel 3, and
2 just so we know it's Seth Hankowski, Dean Boylan,
3 Robert Brown, and Steven Cushman. See you all in now
4 9 minutes, thank you.

5 (Break)

6 CHAIRMAN OBERMAN: All right everybody.
7 We are back in session. I'd like to call up Panel 3.
8 Seth Hankowski who is representing All States
9 Asphalt, Dean Boylan who represents Boston Sand and
10 Gravel, Robert Brown, Broco Oil, and Steven Cushman,
11 Cushman Lumber. And I think we'll start in that
12 order. Mr. Hankowski are you here? I wonder if he
13 had to leave. Well let's go to the next person and
14 maybe he'll come back, and I see Dean Boylan, so I
15 know he's there, so Mr. Boylan why don't you take the
16 floor.

17 MR. BOYLAN: Mr. Chairman, thank you very
18 much and Board members, very much appreciate the
19 opportunity to give my views on the transaction. I
20 know obviously we're running late, so I'll try to
21 make this very brief.

22 My name is Dean Boylan. I'm the President

1 of Boston Sand and Gravel Company located in Boston,
2 Mass. I'm also the President of two of our wholly
3 owned subsidiaries. One is the New Hampshire North
4 Coast Railroad. Another is Ossipee Aggregates, both
5 located in Ossipee, New Hampshire.

6 Boston Sand was founded in 1914. We
7 produce and deliver ready mix concrete throughout the
8 Boston area. And we have participated in many of the
9 large infrastructure projects in downtown Boston,
10 obviously all of the building in downtown Boston.

11 Ossipee is a wholly owned subsidiary which
12 operates in Ossipee, New Hampshire, and produces
13 construction aggregate for our Boston operations.
14 New Hampshire North Coast is another wholly owned
15 subsidiary, which is a 42 mile long short line
16 railroad founded in 1985. It connects the short line
17 connects Ossipee Aggregates to the Pan Am main line
18 in Rollinsford, New Hampshire.

19 We have worked with Pan Am, Springfield
20 Terminal, and prior to them the Boston main since the
21 1960's, and our operation now in Boston frankly is
22 totally dependent on rail, which connects our main

1 aggregate source to our ready mix operations.

2 So I am here to speak in support of the

3 merger of

4 Springfield terminal into CSX Transportation. I

5 believe I've been told that our small little 42 mile

6 short line is the largest in terms of tonnage moved

7 in New Hampshire. We move approximately 6,000 cars

8 per year on our short line, roughly 5,000 of those

9 cars are moved to our internal operations, both in

10 Rochester, New Hampshire, all the way down to Boston.

11 We move roughly another 1,000 cars for

12 outside customers, propane, steel, waste oil. I

13 believe later on you'll be hearing from our propane

14 customer, obviously very critical that we get good

15 service, and give them good service for the winter

16 months throughout New Hampshire.

17 The cars that our short line ships

18 connecting to the main line takes approximately 16 to

19 17,000 trucks off the road annually, and allows us to

20 operate seamlessly in our main operation. We've had

21 a good, very strong relationship with the Springfield

22 terminal over many years, and we're looking forward

1 to continuing that strong relationship with CSX.

2 We feel that our short line will have
3 better access to national markets with this
4 transaction, and we feel that we will have continued,
5 efficient, reliable and safe service with the
6 commitment that CSX has made to invest in the
7 infrastructure. So we are strongly in support of
8 this transaction, and I very much appreciate the time
9 that you've afforded me, thank you.

10 CHAIRMAN OBERMAN: Well thank you much Mr.
11 Boylan, I appreciate your patience in taking the time
12 to stay with us, and I don't have any questions. Do
13 any of the other members? No? Very well stated.
14 Much appreciated.

15 MR. BOYLAN: Thank you very much.

16 CHAIRMAN OBERMAN: All right. Robert
17 Brown, Broco Oil Company.

18 MR. BROWN: Yes sir. How are you doing
19 Mr. Chairman?

20 CHAIRMAN OBERMAN: Very well thank you.

21 MR. BROWN: Good, good, I know it's a long
22 day and I thank you Board members for giving me the

1 opportunity to speak, and I'll just give you a brief
2 intro to what we do. I'm the owner of Broco Oil. I
3 was a start-up company out of the military in 2007.
4 So we started selling heating oil as our base.

5 And as we've grown, a lot of word of
6 mouth, we've become especially a big player in the
7 bio-diesel movement that we started in 2019 when we
8 purchased an old property in Haverhill,
9 Massachusetts where we now operate our biodiesel
10 terminals. That is our headquarters.

11 In 2019 when we first opened it there was
12 no real great incentives available. That is now
13 fully underway for the northeast, and getting
14 ourselves to a carbon neutral for heating oils and
15 diesel fuel.

16 So these new incentives that just took
17 place this year has really increased the volume of
18 our biodiesel imports, and so not only are we
19 supporting ourselves with the transportation of
20 biodiesel into our terminal, and selling that into
21 the markets to the northeast, we've realized we have
22 a really good strategic location to give the

1 northeast these incentives by the capacity we have in
2 Haverhill.

3 So it's been a real joy to deal with Pan
4 Am as we started you know bringing in one car at a
5 time. They really worked with us to help grow our
6 business. And even with the local rail yard the
7 service has been really, really good, so I can only
8 imagine the merger with Pan Am and Springfield
9 terminal where it will only be better with CSX, and
10 dealing with a single rail line will increase our
11 opportunities to import more biodiesel by enabling us
12 to capture all the opportunities with these suppliers
13 that are mostly situated in the Midwest, and
14 California.

15 So my company and I really look forward to
16 working with the CSX team, expanding our
17 opportunities, and getting the northeast to carbon
18 neutral with CSX being our main support and
19 supplier.

20 CHAIRMAN OBERMAN: All right. Thank you
21 Mr. Brown. I love hearing carbon neutral.

22 MR. BROWN: Thank you.

1 CHAIRMAN OBERMAN: Any questions for Mr.
2 Brown?

3 BOARD MEMBER HEDLUND: This is not a
4 question, but maybe more of a comment. First of all
5 Mr. Brown thank you for your service, and then
6 secondly, I hope you're going to have a great future
7 in selling biodiesel to the railroads.

8 MR. BROWN: Yes. That is our plan.
9 We have strong initiatives in place, and that was one
10 of the things I was looking forward to is helping we
11 have partnerships with REG selling distally
12 biodiesel, I think that would be amazing to have an
13 opportunity to help you and your team as well reach
14 that goal, so we look forward to working with you
15 guys.

16 BOARD MEMBER HEDLUND: Thank you.

17 CHAIRMAN OBERMAN: Okay. Thank you very
18 much. All right. So our next witness is Steven
19 Cushman.

20 MR. CUSHMAN: Thank you Mr. Chairman.
21 Good evening, and I just have some very brief remarks
22 to hopefully finish out the day here. My name is

1 Steven Cushman. I am Vice President of Cushman
2 Lumber Company. We are a family owned lumber trading
3 company located in Charlestown, New Hampshire.

4 We have two sidings at our facility that
5 are jointly served by Pan Am Southern, and Genesee
6 and Wyoming. One of the siting's is exclusively
7 served by Pan Am Southern, so we are in full support
8 of the CSX Pan Am merger, and that it should allow us
9 to access some new markets that CSX can connect to
10 that we weren't able to access previously.

11 So we are in full support of this, and I
12 am open to questions. Thank you for letting me
13 speak.

14 CHAIRMAN OBERMAN: Thank you Mr. Cushman.
15 That was short and sweet.

16 MR. CUSHMAN: I'm a man of few words.

17 CHAIRMAN OBERMAN: Yeah.

18 MR. CUSHMAN: Straight and to the point, I
19 like that.

20 CHAIRMAN OBERMAN: Less is more. All
21 right. Are there any questions for Mr. Cushman?
22 Okay. And has Mr. Hankowski rejoined us, or did we

1 lose him for the evening? All right. We perhaps we
2 can somehow communicate with him, and we'll let him
3 speak tomorrow if he's still available. So thank you
4 very much Panel 3, I much appreciate your patience.
5 And with that let's move on to Panel 4.

6 Panel 4 is five folks. Vince Paperiello
7 from the HUB group, Rich Spallone from Greater Boston
8 Transload, Dustin Ohlman from Swift Transportation,
9 Brian Law from Law Logistics, and Steven DiCarlo,
10 Javelin Global Commodities. So let's I'm looking to
11 see who is showing up on the screen and I'm not
12 seeing anybody, but is Mr. Paperiello there?

13 MR. PAPERIELLO: I'm here, can you hear
14 me?

15 CHAIRMAN OBERMAN: Yes I can't see you,
16 but I can hear you.

17 MR. PAPERIELLO: Yeah my video is not
18 loading. Let's try this again. Here we go.

19 CHAIRMAN OBERMAN: There you are, okay.

20 MR. PAPERIELLO: All right. Thank you Mr.
21 Chairman, ladies and gentlemen of the STB, thank you
22 for allowing me to speak at this hearing. I'm Vince

1 Paperiello, President of Intermodal and Chief
2 Solutions Officer for Hub Group. Hub Group is one of
3 the key domestic intermodal service providers in
4 North America.

5 We're a major carrier to and from Boston
6 in the New England market, and we primarily rely on
7 Norfolk Southern's direct intermodal rail services to
8 and from their Ayer, Massachusetts, intermodal ramp.
9 Our customer base includes some of the larger
10 retail, CPG and durable goods shippers in North
11 America.

12 The Norfolk Southern Services allow us to
13 offer these shippers competitive and economical
14 options for the shipping needs between New England
15 and the rest of North America. The current Norfolk
16 Southern service is challenged because it relies on
17 that route that transits through the Hoosac Tunnel.

18 The tunnel as we've heard does not have
19 the necessary clearance for double stack intermodal,
20 so it adds additional touches to the containers, and
21 time while eliminating the overall capacity in the
22 route. In 2021, the performances schedule was run

1 actually only around 20 percent, and the route has
2 been limited by volume metering 18 weeks of the year.

3 So according to the application submitted
4 by CSX, the proposed transaction will preserve
5 critical access for Norfolk Southern to New England.
6 My understanding is the agreement reached between CSX
7 and Norfolk Southern will preserve competitive rail
8 options, will increase fluidity of rail operations in
9 New England.

10 In particular, CSX and NS have stated
11 they'll invest capital to open the route to double
12 stack, and this investment will expand capacity to
13 reduce manual workflow, lower operating expense, and
14 lead to improved service and reliability. By having
15 these competitive options is a key benefit of this
16 transaction, and importantly for Hub Group, the
17 proposed transaction will significantly expand
18 intermodal rail transportation in New England by
19 facilitating that clear double stacked route on
20 Norfolk Southern and CSX.

21 So Hub Group is a major shipper on NS,
22 supports this proposed merger, and believes that our

1 business, along with our customers will benefit from
2 approval of the transaction. We also believe this
3 merger will increase competition in the region by
4 creating multiple high service and competing rail
5 options for the New England market, which in turn
6 could translate into shipments moving off of trucks
7 and onto the rail, reducing CO2 emissions, and
8 reducing traffic and congestion.

9 So we respectfully ask the Board to give
10 the proposed transaction, including the NS's trackage
11 rate, your full and fair consideration consistent
12 with applicable statutes and regulations, and I do
13 appreciate the time and your consideration, and take
14 any questions you might have.

15 CHAIRMAN OBERMAN: Thank you Mr.
16 Paperiello. Just one quick one. You do not ship on
17 CSX into New England, just NS?

18 MR. PAPERIELLO: We do not. We are
19 entirely on the Norfolk Southern Railroad.

20 CHAIRMAN OBERMAN: All right. I think
21 Patrick had a question.

22 BOARD MEMBER FUCHS: Thank you. I know

1 that Hub Group keeps a close eye on its metrics, and
2 I'm sort of wondering you mentioned the single stack
3 Hoosac Tunnel issue. What does that mean in
4 practical terms for delay for shippers?

5 MR. PAPERIELLO: Yeah, so you've heard
6 Norfolk Southern talk earlier. They have to run what
7 they call a filet toupee operation at their ramp in
8 the Albany market. So we ship you know from Chicago
9 through Albany. When the train hits Albany they have
10 to pull off the top layer, create a second single
11 stack train and run through the tunnel.

12 And the same thing from Ayer,
13 Massachusetts back. They have to get a single stack,
14 and then reformulate a double stack train. So that
15 double stack, it's going to reduce our costs, you
16 know they'll be able to be more competitive in price
17 because they're not running as long a train, they're
18 double stacked.

19 They're going to take out all those work
20 events in Albany, and yeah we've been constrained in
21 capacity in that corridor for years. There's a great
22 opportunity to take trucks off the road, and this

1 transaction and opening up to double stack for those
2 Norfolk Southern, and CSX, will create a much
3 stronger competitive environment, and create more
4 capacity in the corridor.

5 BOARD MEMBER FUCHS: And it's your view
6 both that the double stack enables better pricing,
7 but also that even more compensable in future
8 liability decreased transit times?

9 MR. PAPERIELLO: Absolutely.

10 BOARD MEMBER FUCHS: And do you have any
11 expectation for on that latter part of you know any
12 numbers that you could put around that? I know I
13 asked NS the same question, but I'm just wondering as
14 you project out your business.

15 MR. PAPERIELLO: Yeah, you know it's
16 really tough to say until they actually execute it,
17 but I would envision the transit is going to increase
18 by at least a day, and maybe two. And capacity you
19 know just by definition has to double.

20 BOARD MEMBER FUCHS: Thank you.

21 MR. PAPERIELLO: You're welcome, thank
22 you.

1 CHAIRMAN OBERMAN: Thank you. Any other
2 questions for Mr. Paperiello? All right. Thank you
3 very much.

4 MR. PAPERIELLO: All right thank you for
5 your time.

6 CHAIRMAN OBERMAN: Thank you. Mr. Rich
7 Spallone.

8 MR. SPALLONE: Good evening Mr. Chairman,
9 other members. I'm the President and owner of
10 Greater Boston Transload. We have an operation --
11 we've been fortunate enough to have an operation in
12 North Billerica at the headquarters for the Pan Am
13 Railways. We occupy probably about 10 acres of space
14 that was unused, and in 2014 they gave us the
15 opportunity to create a good business there.

16 And we've been very, very fortunate with
17 the executive team at the Pan Am, and everything
18 they've been able to do to assist us and help us with
19 our growth. We started with two employees, and we're
20 up to ten. And this merger, having the CSX come in
21 would be just very welcome to us. It opens up more
22 markets for us to be transloading.

1 We've been not able to be so competitive
2 on products and materials coming from the west coast
3 through the Chicago gateway, so that's really going
4 to enhance our product offering, and what we can do
5 for our existing customer base.

6 And we also transload some liquid chemical
7 that goes into the MWRA's treatment facilities,
8 namely Deer Island in Boston, which treats the water
9 there, and having that product readily available in a
10 much better flow will definitely help our business,
11 and our customer's business as well.

12 So we really welcome this transaction, and
13 look for favorable approval, so it would be very good
14 for us.

15 CHAIRMAN OBERMAN: All right. Thank you
16 very much. Any questions? All right. Thank you Mr.
17 Spallone, much appreciated.

18 MR. SPALLONE: Thank you for your time.

19 CHAIRMAN OBERMAN: Is Mr. Ohlman here?
20 There he is Dustin Ohlman you're up.

21 MR. OHLMAN: Good evening everyone.
22 Thanks for having me, and allowing me to address the

1 Board to you. Coming to you we believe that the
2 acquisition from the CSX is a great opportunity for
3 the American supply chain overall. We think with the
4 increased capacity that it will generate the strong
5 operational background that the CSX will bring into
6 the market, as well as allowing the NS to compete
7 throughout New England, you know Albany, and as well
8 into Ayer, is something that will bring a significant
9 amount of value to the overall supply chain of our
10 customer.

11 So we're confident in the B&E's ability to
12 operate, and we're excited about the potential
13 increase and competitiveness the B&E will have on the
14 ability for us, as well as other groups to compete
15 for customer share heading into New England on a
16 product that would be significantly improved over
17 what many customers experience today.

18 So we're fully supportive of this
19 acquisition, and hope you guys give it consideration,
20 and can take any questions or comments that you guys
21 may have.

22 CHAIRMAN OBERMAN: Thank you Mr. Ohlman.

1 Any questions? All right. Again much appreciate
2 your patience, and sticking out through the day, we
3 know it was a long day. Mr. Law I am told could not
4 stay, and hopefully will be able to testify tomorrow.
5 Is Steven DiCarlo still with us?

6 MR. DICARLO: Yes sir. Yes hi Mr.
7 Chairman. Thanks for the opportunity to speak. I'm
8 Steve DiCarlo, Vice President of Fuel Management for
9 Javelin Global Commodities. I'll give you a little
10 quick background on Javelin.

11 It's a global commodities marketing,
12 trading, logistics procurement. We're focused on
13 coal, steel, oil and gas, green carbon, renewable
14 fuels, and logistics overall. It's headquartered in
15 London, England, with approximately 85 employees.

16 Javelin currently manages over 70 million
17 tons of commodities in 2021, and has become the
18 largest user of bulk commodity transport in North
19 America, including 60 million tons of commodities on
20 the U.S. railways, so we deal with all the Class 1
21 railroads in the U.S., primarily moving coal.

22 Also move 25 million tons of commodities

1 through U.S. ports and over 1,000 barges and 250
2 ocean going vessels, so Javelin has a pretty large
3 footprint in logistics. Short and sweet we have
4 some current customers in the New England area, so we
5 certainly support you know CSX's plans to invest in
6 the Pan Am network, and the acquisition will support
7 our business initiatives, with current customers, and
8 hopefully future customers.

9 You know one of the things that CSX should
10 bring with this acquisition is some stability and
11 operational consistency, which is what we need if
12 we're going to grow our business in the New England
13 area, so I think in dealing with the CSX for many
14 years, you know, we truly understand how they
15 operate. They are a first-class operation, and they
16 do have the funds to invest in Pan Am, and bring it
17 up to what we think will be a very successful end.

18 So we wholeheartedly support CSX's
19 acquisition of Pan Am.

20 CHAIRMAN OBERMAN: All right. Thank you
21 Mr. DiCarlo.

22 MR. DICARLO: You're very welcome.

1 CHAIRMAN OBERMAN: Any questions? All
2 right. I see some tired faces out there. But not
3 Patrick, he's roaring to go. Should we call up three
4 more panelists tonight Patrick? So I think it's been
5 a long, a very, very productive day. We will recess
6 at this time until 9:30 Eastern tomorrow morning, and
7 we will begin promptly with Panel 5. I think every
8 knows there's three people just for people who aren't
9 looking, it's Amtrak, DOT from the State of
10 Massachusetts, and Canadian Pacific.

11 We'll begin promptly at 9:30 in the
12 morning. Thank you all. Thank you for all your
13 productive involvement and contributions. See you in
14 the morning. Bye-bye.

15 (Whereupon the meeting adjourned at 6:07
16 p.m.)

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Date: January 14, 2022

Case: Hearing on CSX/Pan Am Merger - Application Review



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SURFACE TRANSPORTATION BOARD

HEARING ON CSX/PAN AM MERGER

APPLICATION REVIEW

DOCKET NO. FD 36472 et al

PUBLIC HEARING

Friday, January 14, 2022 -- Day Two

9:30 a.m.

Via Zoom

The above-entitled matter came on, pursuant to notice, at 9:30 a.m., Chairman Martin Oberman presiding.

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

2 9:30 a.m.

3 CHAIRMAN OBERMAN: Good morning everyone.

4 I hope everybody is on. We are starting. It is 9:35
5 Eastern Time. And welcome to the second day of
6 hearings on the applications of CSXT and others to
7 acquire Pan Am Railways and the other various
8 requests we have received as a part of this whole
9 proceeding. I'm not going to take that I think
10 everybody knows what they are.

11 And before we begin, which we're going to
12 do promptly, we have the couple of reminders.
13 Remember to turn your cell phones off. Remember to
14 keep yourself muted and off camera except when your
15 panel is up for presentation. And I just want to
16 take a moment to give a shout out to the IT team that
17 has put this virtual hearing together, and
18 particularly to Matt Cross who I think is our
19 principal director and producer, or whatever the
20 title is.

21 But to me yesterday went remarkably
22 smoothly from the technical and virtual point of

1 view. I think we're all pleasantly not surprised,
2 but delighted that this is working so well, so great
3 work, keep it up. It will be another good day. We
4 were going to begin with Panel V this morning, but I
5 see we have been joined by Senator O'Connor from
6 Massachusetts, who was unable to stay as long as we
7 needed him to stay. I assume he had other important
8 obligations.

9 So I think with respect to Senator
10 O'Connor, I'm going to ask him to step up first and
11 make his remarks, and then we'll go into Panel V, so
12 we don't keep the Senator waiting another day or
13 however long this hearing is going to last. So with
14 everybody's permission I'm going to call on Senator
15 O'Connor. Hearing no objection you're on.

16 SENATOR O'CONNOR: Thank you so much, and
17 I appreciate the consideration of being taken out of
18 order. Good morning everybody, and thank you for
19 having me. I'm here to testify in support of the CSX
20 Transportation's application to the Surface
21 Transportation Board to acquire Pan Am Systems and
22 its subsidiaries.

1 As the Senator for portions of the
2 Plymouth and Norfolk Counties in Massachusetts, I
3 believe that in this acquisition the interest of my
4 constituents on the south shore will be met. Many
5 of my constituents, especially with the expansion of
6 the Greenbush Commuter Rail and other commuter rail
7 services in my district, really utilize this form of
8 transportation to get to and from Boston.

9 And this proposal, in my opinion, opens
10 doors to enhancing that commuter experience, as well
11 as the infrastructure itself. While Pan Am has
12 served Massachusetts well, an approved merger would
13 mean we can implement CSX's best practices to make
14 freight and passenger rail more efficient, safe, and
15 competitive.

16 CSX's strong record of efficiency and
17 compatibility with passenger rail services will
18 significantly benefit residents and businesses here
19 on the south shore. And over the next five years I
20 was encouraged by CSX's plan to inject a lot of
21 capital into Pan Am's existing network to upgrade and
22 modernize the infrastructure where I think that Pan

1 Am may lack the resources to do quite the investment
2 that CSX has laid out.

3 These investments will allow for increased
4 competitiveness, better quality of service, and much
5 needed maintenance on the rail network. CSX has
6 achieved the 93.6 contract on time performance level
7 in its interoperability with passenger rail, and they
8 plan to increase the track speeds from 25, excuse me
9 225 from 10 miles an hour, which I think will just
10 streamline the entire rail transportation process in
11 the region.

12 For the reasons that I've stated, I
13 respectfully request and appreciate your review of
14 this application, and I would hope that upon review
15 you would potentially see a favorable opportunity
16 for this to go through. Again, I thank you for the
17 opportunity to be able to be taken out of order, and
18 I wish everybody the best as you continue the second
19 day of this public hearing, and for everyone have a
20 great weekend as well.

21 CHAIRMAN OBERMAN: Thank you much Senator.
22 I appreciate your time and commitment to come and

1 speak to us. Does anybody have questions? Karen
2 Hedlund. Unmute your Karen.

3 BOARD MEMBER HEDLUND: I did. Senator,
4 thank you very much. I just wanted to note for the
5 rest of the panelists that Plymouth County is the
6 most historic part of the Commonwealth of
7 Massachusetts, which is where I lived -- not in
8 Plymouth County. I lived in Cambridge for five
9 years, but you might wonder what the colonists would
10 have thought about where we are today.

11 SENATOR O'CONNOR: I'm sure they would be
12 very surprised in many aspects, both good and bad.

13 BOARD MEMBER HEDLUND: Thank you.

14 CHAIRMAN OBERMAN: You may suggest that
15 Paul Revere could have taken the train to warn
16 everybody? Anyone else have questions for Senator
17 O'Connor? All right. Senator thank you very much,
18 much appreciate it. Let us then move right into
19 Panel V, so everybody knows who this is. It consists
20 of the National Rail Passenger Corporation which we
21 all know and love as Amtrak.

22 Dennis Newman, the Commonwealth of

1 Massachusetts DOT, and the MBTA represented by Robert
2 Wimbish, and CP, represented by James Clements and
3 David Meyer. So if you will all step up to the
4 plate we will begin with Dennis.

5 MR. NEWMAN: Thank you very much.

6 Chairman Oberman, Vice Chairman Primus, Board members
7 Fuchs, Hedlund and Schultz, good morning to all. My
8 name is Dennis Newman, and I am Amtrak's Executive
9 Vice President of Strategy and Planning. I
10 appreciate the opportunity to appear before you today
11 to talk about Amtrak's position on CSX's proposed
12 acquisition of Pan Am.

13 So in the comments and final brief Amtrak
14 submitted, we asked the Board to impose seven
15 conditions on the acquisition if it approved it.
16 Those conditions were intended to ensure that on time
17 performance of Amtrak trains on Pan Am and Pan Am
18 Southern lines, and on CSX's Albany to Worcester line
19 was not degraded as a result of the merger.

20 That the merger would not inhibit the
21 addition, expansion and improvement of Amtrak
22 services, and that CSX would fulfill its statutory

1 and contractual obligations to Amtrak, and adhere to
2 the representations about Amtrak's services that it
3 has made in this proceeding.

4 Now late Wednesday CSX submitted a letter
5 to the Board from its counsel. The letter requested
6 that the Board impose as conditions on its approval
7 of the Pan Am acquisition, six of the seven
8 conditions Amtrak has requested. Amtrak is gratified
9 by CSX's agreement to these conditions.

10 It sets the stage for advancing the long
11 held vision of Amtrak and its state partners to
12 expand and improve Amtrak's service in Northern New
13 England, and along the east/west corridor from Boston
14 to Albany. Thanks to the Biden Administration and
15 the funding Congress has recently provided for
16 investment in inner city passenger rail, that vision
17 is no longer just a dream.

18 Amtrak is committed to making it a
19 reality, and in doing so with the cooperation and
20 collaboration of CSX, which it has committed to in
21 this proceeding. Now the other condition Amtrak
22 requested, condition number six, was that Amtrak be

1 allowed to operate the Albany, New York to
2 Pittsfield, Massachusetts, Berkshire Flyer over a 40
3 mile segment of CSX's Albany to Worcester line, and
4 permitting these Amtrak trains to change hands at the
5 Pittsfield station on track one.

6 The Berkshire Flyer is proposed as a
7 seasonable two day a week extension of an existing
8 Amtrak train that would provide an alternative to
9 driving for weekend visitors to the Berkshires. CSX
10 did not agree to imposition of the Berkshire Flyer
11 condition, and rather it appended to its letter to
12 the Board a letter from Mr. Foote indicating that CSX
13 would allow operation of the Berkshire Flyer in 2022
14 on weekends between Memorial Day and Columbus Day,
15 but that CSX would require a commitment for a 1,000
16 foot station track at Pittsfield.

17 Now Amtrak welcomes CSX's proposal to
18 allow for operation of the Berkshire Flyer. As the
19 letter from Mr. Foote indicates, Amtrak and CSX would
20 need to agree upon terms for the initial operation of
21 the Berkshire Flyer in 2022 or 2023 as a special
22 train.

1 Amtrak will also need to evaluate,
2 together with the services sponsored, the
3 Massachusetts Department of Transportation, CSX's
4 request for a commitment to construction of an
5 additional track at Pittsfield for sustained
6 operation of the service, and the operating plan and
7 costs associated with CSX's proposal.

8 Now in particular, we will need CSX to
9 explain why it believes capital investment is
10 necessary for Amtrak to operate 80 passenger trains a
11 year over a 40 miles segment of CSX's Albany to
12 Worcester line, when CSX has agreed to allow Norfolk
13 Southern to operate 730 nearly two mile long trains a
14 year over the entire 160 mile line without any
15 capital investment or capacity stake.

16 But we already reached out to CSX's NRTC
17 officer, CSX's designated point of contact, to gather
18 additional information regarding CSX's proposal for
19 the Berkshire Flyer. Now we hope that it will be
20 possible for Amtrak and CSX to expeditiously reach an
21 agreement that will enable the operation of the
22 Berkshire Flyer, and make it unnecessary for the

1 Board to take further action to address Amtrak's
2 proposed condition.

3 We will advise the Board if an agreement
4 is reached. Now if Amtrak and CSX can reach such an
5 agreement promptly, Amtrak is prepared to withdraw
6 its opposition to CSX through this proposed
7 acquisition of Pan Am.

8 I would like to briefly address three
9 things CSX's representatives said during their
10 presentations. First, we were surprised to hear Mr.
11 Foote raise safety as a major concern in the Gulf
12 Coast matter, but we will address that contention in
13 more detail in the Gulf Coast proceeding.

14 Second, CSX's claim that it had achieved
15 over 90 percent on time performance on Amtrak routes
16 is based upon a provision in CSX's contract with
17 Amtrak that determines eligibility for incentive
18 payments.

19 It is not based on actual on time
20 performance, or the customer experience, and it has
21 no relationship to the on time performance metric FRA
22 adopted in its recent rulemaking under Section 207 of

1 the Passenger Rail Investment and Improvement Act.
2 That metric is customer on time performance -- the
3 percentage of customers who arrive at their
4 destination on schedule within an allowance.

5 Of the routes Amtrak operates over CSX,
6 the majority -- about 60 percent, did not meet the
7 statutory standard of 80 percent on time performance
8 under the Section 207 metric for the past two
9 consecutive quarters.

10 And then finally Mr. Boychuk's statement
11 that the planned installation of positive train
12 control on the route of Amtrak's downeaster would not
13 have happened "but for CSX's acquisition of Pan Am,"
14 is incorrect. Amtrak had been actively planning for
15 the installation of PTC on the Pan Am portion of the
16 downeaster route before CSX announced its intention
17 to acquire Pan Am.

18 And Amtrak, not CSX, will primarily be
19 funding the installation cost. I also wanted to
20 clarify one aspect of the letter CSX sent to the
21 Board on Wednesday. In CSX's letter it asked the
22 Board to impose the six Amtrak requested conditions,

1 "as the conditions relate to the PAR system and the
2 existing CSXT network."

3 The definition of PAR system in CSX's
4 amended and supplemented application does not include
5 Pan Am Southern. Pan Am Southern is the operator of
6 rail lines impacted by the acquisition over which
7 Amtrak operates, and a party to this proceeding. Pan
8 Am Southern and all of CSX, including any rail line
9 CSX might acquire in the future, should of course, be
10 subject to these conditions, and that is what Amtrak
11 requested, and CSX offered no reason for any
12 modification.

13 So let me close by saying that we are
14 grateful for President Biden's affirmation of
15 Amtrak's rights as expressed in his July executive
16 order, for the Board's recognition of the importance
17 of Amtrak's services, for the U.S. Department of
18 Transportation support as expressed in its filings,
19 and for CSX's commitment to ensuring that Amtrak's
20 existing and future services are not harmed by the
21 proposed acquisition.

22 I thank you for your time, and I'd be

1 happy to answer any questions you may have.

2 CHAIRMAN OBERMAN: Do the Board members
3 have any questions?

4 VICE CHAIRMAN PRIMUS: I just want to say
5 Dennis good morning, and thank you for clarifying the
6 on time performance about issue that CSX raised
7 yesterday. I was a little bit surprised as well in
8 that description. With respect to the Berkshire
9 Flyer and the additional track that's being
10 requested by CSX, what do you think is the
11 explanation behind it, or what do you think the
12 reasoning is behind that?

13 MR. NEWMAN: Well I mean we really need to
14 get into it and understand. I mean we think that we
15 really ought to be able to operate particularly,
16 we're only talking about two trips per week, and only
17 seasonally, that we should be able to operate without
18 causing any issues and problems. So we will discuss
19 that with CSX and really kind of understand from
20 their perspective why they think that's required.

21 VICE CHAIRMAN PRIMUS: How many trains
22 pass through its field on a normal day, Amtrak

1 trains?

2 MR. NEWMAN: Amtrak trains? We would
3 really just be our Lakeshore Limited, so one each
4 way.

5 VICE CHAIRMAN PRIMUS: And so they haven't
6 required them to have a 1,900 foot track for the
7 Lakeshore Limited?

8 MR. NEWMAN: We have not needed an extra
9 station track there.

10 VICE CHAIRMAN PRIMUS: Okay, all right.
11 Thank you.

12 MR. NEWMAN: Thank you.

13 VICE CHAIRMAN PRIMUS: Marty you're muted.

14 CHAIRMAN OBERMAN: Dennis do you
15 understand why -- what the logistical explanation is
16 from CSX why they want you to build another track?

17 MR. NEWMAN: We really -- we haven't had
18 that conversation with them to really get into the
19 details, so.

20 CHAIRMAN OBERMAN: Okay. Karen you have a
21 question, you're muted.

22 BOARD MEMBER HEDLUND: Yes. Mr. Newman

1 one of the conditions that CSX appears to have agreed
2 to is that they will commit to operate in good faith
3 with Amtrak and other parties for the addition,
4 expansion, and modification of existing inner city
5 passenger rail services.

6 Your Amtrak's vision for new service
7 across the country, which was announced last year,
8 includes new and additional service in Massachusetts,
9 along the line you currently operate from Albany to
10 Boston. And some additional service up to Concord,
11 and then up to New Hampshire. Could you talk a
12 little bit more about what specifically new services,
13 or additional services you were planning or
14 contemplating in addition to what you have
15 specifically discussed with respect to the Berkshire
16 Flyer with CSX?

17 MR. NEWMAN: Well thank you for the
18 question. And the routes that we outlined in the
19 Amtrak connect submission are the ones that we are
20 looking to be able to expand to in the near future,
21 so really all of those particular ones you just
22 cited. So we are interested in establishing service

1 between Boston and Concord for instance.

2 We're interested in expanding frequency on
3 the downeaster. We want to add service between
4 Boston and Albany as well as being able to add
5 service on the inland route that would connect
6 Worcester to New York, and Hartford to Boston for
7 instance. So each of those is one of the routes that
8 we would like to be able to institute.

9 BOARD MEMBER HEDLUND: And would those be
10 state supported service, or an extension of your
11 intercity passenger lines?

12 MR. NEWMAN: Those would largely be state
13 supported service in almost each, in probably pretty
14 much each case those would be.

15 BOARD MEMBER HEDLUND: And have you had
16 discussions with the Commonwealth about your plans?

17 MR. NEWMAN: We have been discussing with
18 the Commonwealth, and we will be, yeah we continue to
19 have those discussions as their plans develop, and
20 then we coordinate with them so that we are really
21 moving in sync.

22 BOARD MEMBER HEDLUND: And have you had

1 any discussions about those plans with CSX?

2 MR. NEWMAN: We have made requests to CSX,
3 but the detailed discussions we have really are to
4 come.

5 BOARD MEMBER HEDLUND: Thank you.

6 MR. NEWMAN: Thank you.

7 CHAIRMAN OBERMAN: Just -- do you have a
8 question Patrick?

9 BOARD MEMBER FUCHS: Yes Marty, but go
10 ahead.

11 CHAIRMAN OBERMAN: No, no, go ahead. I'll
12 wait until you finish.

13 BOARD MEMBER FUCHS: Thanks very much for
14 being here Dennis. Just a couple quick questions.
15 First is could you kind of sharpen your focus on what
16 is the exact causal element, what is caused by the
17 merger in terms of detriments, Amtrak? You document
18 in the record some of your past experiences with CSX
19 and their history in working with you. Are there
20 other elements of the transaction that you feel would
21 have a negative effect on passenger rail, and could
22 you describe those a bit more fully?

1 MR. NEWMAN: Yes, thank you for the
2 question. And to the extent that there is then more
3 you know, more traffic on the routes that we would be
4 operating passenger trains over, that is then you
5 know potential -- it could potentially have impact on
6 the performance, the on time performance of passenger
7 trains. And so that is one of the concerns, and
8 that's why one of the conditions that we had sought
9 was that we would -- that there would not be
10 detrimental impact on the performance of Amtrak
11 trains along these lines.

12 And then obviously you know we do have our
13 concern about our ability to obtain the access that
14 we need for expanding services on these lines as
15 well.

16 BOARD MEMBER FUCHS: Could you compare
17 your relations with CSX compared to what you
18 anticipate the outcomes to be in the absence of the
19 transaction from a relationship standpoint?

20 MR. NEWMAN: I mean we certainly are
21 hopeful that we will be able to work cooperatively
22 with CSX to make the kind of enhancements and

1 improvements that we need, so from that standpoint I
2 mean we look to work with them before the
3 transaction. We look to work with them after the
4 transaction as well.

5 BOARD MEMBER FUCHS: I guess what I'm
6 asking is you know in the absence of the transaction.
7 So if you were to compare you know what the
8 likelihood is of say expanding service, et cetera, if
9 CSX were not to step in. Is it your contention that
10 likelihood would be higher?

11 MR. NEWMAN: I would yeah, given our past
12 experience I would certainly have the concern that it
13 would be higher without the transaction than with.
14 However, the you know, the conditions that we have
15 asked include the requirement to work cooperatively
16 with us in good faith to you know to make those kinds
17 of improvements.

18 BOARD MEMBER FUCHS: You heard CSX
19 yesterday hold up the Virginia example as instructive
20 in terms of the possibilities of collaboration
21 between Amtrak and CSX. Should we factor that
22 example in evaluating kind of your history

1 contention?

2 MR. NEWMAN: That is an example where
3 there is going to be you know that will result in an
4 increase in passenger service. Much of that
5 transaction was between the Commonwealth and CSX.
6 Amtrak was a participant with the Commonwealth in a
7 transaction between us and them.

8 BOARD MEMBER FUCHS: And then so just kind
9 of switching to precedent. You know Amtrak in its
10 brief cites a few different cases, and I'm wondering
11 Dennis, can you provide any example in a minor
12 significant transaction, which are the transactions
13 subject to Subsection D-11 324, and can you provide
14 any examples where the agency has imposed a passenger
15 rail condition?

16 MR. NEWMAN: I could not cite that for
17 you, but I could get back to you on that as I check
18 with our team Member Fuchs.

19 BOARD MEMBER FUCHS: Okay. Has the Board
20 in the past indicated that the focus on Subsection D
21 might counsel against imposing a passenger rail
22 condition?

1 MR. NEWMAN: I do not know. I'm sorry.

2 BOARD MEMBER FUCHS: Counsel?

3 MR. NEWMAN: No.

4 BOARD MEMBER FUCHS: So you know one of
5 the things that stands out to me and some of our
6 precedent, is in the METRA DME case, which is also a
7 significant transaction, the Board indicated that the
8 focus of Subsection D, which is again what this
9 transaction is subject to, the focus is competition.
10 And use that as part of its rationale for denying the
11 passenger rail condition. And there are other
12 instances in these types of transactions where the
13 Board has declined to impose passenger rail
14 conditions.

15 And so I guess I'm sort of wondering the
16 weight that we should give that precedent, as well as
17 how we should evaluate the underlying reason.

18 MR. NEWMAN: Well I am not a lawyer, so
19 you know I don't know that I'm qualified to comment
20 on what weight the Board should apply. I think that
21 the conditions that we are asking for are in the
22 public interest, and that the public interest of

1 expanding passenger rail service, and being able to
2 bring the benefits of that passenger rail service and
3 continue the benefits, the performance of delivering
4 passengers on time, and making sure that that is not
5 harmed by the transaction.

6 And I think there is more detail in our
7 Amtrak filings with regard to our position.

8 BOARD MEMBER FUCHS: And Marty I have got
9 a couple quick follow-ups, I appreciate your
10 indulgence.

11 CHAIRMAN OBERMAN: No go ahead.

12 BOARD MEMBER FUCHS: To what extent could
13 some of these issues be resolved via Amtrak's
14 existing contracts with CSX, or contracts that would
15 emerge after the transaction?

16 MR. NEWMAN: You know we have contractual
17 rights, but we have, and you know they certainly have
18 some ability to get us the outcomes that we really
19 need and seek. But it certainly has been the case
20 that in the past our contractual rights have been
21 difficult to enforce, and you know so by themselves
22 they've not necessarily produced the improvements and

1 outcomes.

2 We always start with a -- from the premise
3 that we would want to work together and collaborate
4 to be able to obtain improvements and benefits, but
5 that has not always proven to be sufficient, and
6 that's part of the reason for the, for instance, the
7 FRA rulemaking on time performance metrics and
8 standards.

9 BOARD MEMBER FUCHS: Well I want to get to
10 that, but you know another part that I'm sort of
11 wondering about is the other aspect of the Board's
12 denial of the passenger rail conditions in DME and
13 METRA was that these issues could be worked out
14 through existing contracts, and the Board indicated
15 great reluctance via mergers to insert itself into
16 issues that were covered, or partially covered by
17 contracts.

18 And that's in the Subsection D context,
19 but even more broadly in a Subsection C, the major
20 merger context, the Board via its major merger
21 rules, as well as the 95 case indicated a great
22 reluctance to adjudicate contract issues, or things

1 that could be worked out in contract, in the context
2 of a merger. And I guess I'm wondering whether or
3 not you have any views on that precedent
4 specifically?

5 MR. NEWMAN: I do not have a view on the
6 precedent specifically. You know I do think we have
7 discussion in our filings with regard to our views on
8 the matter, but I do think that the need for the you
9 know, both the future performance and the ability to
10 expand passenger rail, is as you said in the public
11 interest, and is a matter that I think is pertinent.

12 BOARD MEMBER FUCHS: Last question from me
13 is you know I think Dennis you quite rightly
14 identified that the Board has other authorities in
15 24308, including you know governing Amtrak's access
16 rights, and the Board's ability to set reasonable
17 terms and compensation.

18 The Board has the authority to order
19 additional trains, which of course we are working on
20 adjudicating right now between you and the CSX and
21 NS, and the Board has authority to enforce on time
22 performance via the FRA standards, which is what you

1 specifically mentioned.

2 So I guess in thinking about how the Board
3 has not typically pursued passenger rail conditions
4 in these types of transactions, and against the
5 backdrop of the Board's very broad authority over
6 passenger rail across the country to make these
7 types of judgments, I'm wondering whether or not you
8 have any views as to whether or not these types of
9 complex access issues and additional train issues, on
10 time performance issues would be better resolved, and
11 the public interest would be better advanced if the
12 Board considered them more intensively with more
13 evidence through those authorities as we are today.

14 MR. NEWMAN: Well I mean I do think that
15 there is a benefit, and there is a need for the Board
16 to be involved in such issues. As we have had a
17 history of having less success and moving forward
18 with and obtaining the benefits, and the rights that
19 we have, and so --

20 BOARD MEMBER FUCHS: But Dennis, sorry to
21 jump in, but part of the issue there was that for a
22 brief period of time -- well not so brief, the

1 Board's ability to enforce on time performance was
2 seen as enforcing an unconstitutional provision.
3 That's no longer the case. You know the DC Circuit
4 fixed that in a way, and so now the Board, and the
5 FRA has you know finalized its rules you know, and so
6 now the Board does have the authority to address on
7 time performance issues.

8 And we've long had the authority to
9 address reasonable terms and compensation, and in
10 fact we have a case right now as you know between the
11 -- . So you know those cases involve a good bit of
12 evidence where we can you know evaluate things like
13 what are the infrastructure needs? What are the
14 effects on freight transportation?

15 You know what should be the schedules, et
16 cetera, and so I guess given that the Board now has
17 authority to address a number of the behaviors that
18 you are concerned about in the record, I guess I'm
19 wondering why it can't be properly addressed in those
20 more robust contacts?

21 MR. NEWMAN: Well I think those more
22 robust contacts are helpful and appropriate. And I

1 think to be able though to be able to not end up in a
2 situation where we must resort to that, I think can
3 you know, can be more expeditious and really achieve
4 the ends that are needed.

5 I mean the tools that you mentioned, the
6 ability to have the Board review and take action I
7 the case of on time performance is definitely
8 something that we appreciate, and we think that that
9 is a very great, very proper role for the Board, and
10 I would expect that that would something that we
11 would see the Board getting involved in.

12 BOARD MEMBER FUCHS: Dennis, do you think
13 the Board has enough evidence on the record to decide
14 what infrastructure is appropriate here for expansion
15 of service, what are the impacts on freight, et
16 cetera? Do you think the record provides that type
17 of evidence for the Board to make a good decision on
18 that from?

19 MR. NEWMAN: Well I think I would leave it
20 to the Board to decide whether it is sufficient.

21 BOARD MEMBER FUCHS: What evidence --
22 yeah.

1 MR. NEWMAN: I think that the you know
2 from our standpoint if we're talking about something
3 specific like the Berkshire Flyer, you know where the
4 condition for actually approving the Berkshire Flyer
5 seems that it is there should be some evidence that
6 that is problematic, that it could not be just
7 approved.

8 BOARD MEMBER FUCHS: Well sorry, and I
9 appreciate my colleague's indulgence here, and I'll
10 really will wrap up my questions, but isn't it true
11 though that the Board precedent is that the
12 proponents of a condition have the burden?

13 MR. NEWMAN: I believe that is --

14 BOARD MEMBER FUCHS: Isn't the burden on
15 you to advance that evidence as opposed to CSX to
16 prove the negative?

17 MR. NEWMAN: I think we do know that there
18 are going to be, I mean, CSX has agreed to allow
19 additional Norfolk Southern trains onto this route,
20 and so we know that there will be impacts there, and
21 so we are -- we certainly have some concern about
22 what those impacts would be on our performance.

1 BOARD MEMBER FUCHS: I appreciate it, and
2 thank you Dennis for bearing with me, and thank you
3 to my colleagues, and I just want to I guess close by
4 saying that you know I very much appreciate the
5 importance of passenger rail within our national
6 transportation system, so I really appreciate you
7 being here, and for your remarks.

8 MR. NEWMAN: Thank you member Fuchs.

9 CHAIRMAN OBERMAN: Karen, you're up.

10 BOARD MEMBER HEDLUND: Thank you. I've
11 got kind of a follow-up question, or point. The way
12 you describe what you were asking for in terms of
13 cooperating with Amtrak for expansion in intercity
14 passenger rail service, you also say, "including, but
15 not limited to service over the southern route," and
16 this is important, "and that CSX commits to sharing
17 data with Amtrak, and that CSX cannot use traffic
18 projections that differ from those provided in this
19 proceeding."

20 So I gather what this would imply is that
21 if you wanted to expand service, and CSX said well we
22 can do that, but only if you put in X amount of

1 infrastructure that those discussions have to be
2 based on the projections they're making today, not
3 what it looks like at the time that you may be having
4 these discussions, and if their traffic actually goes
5 up well above what they're projecting today, that the
6 import of this is that they couldn't make you pay for
7 anything more than what would otherwise have been
8 required to accommodate the projections that they are
9 making in this proceeding.

10 Do I have that correct? And do you
11 understand if CSX understands that?

12 MR. NEWMAN: Well thank you for the
13 question Member Hedlund, and I don't know what CSX
14 understands with regard to that. Our concern is that
15 the, you know the projections, first of all that
16 there be transparency about what we're looking at on
17 any given line, and appropriate sharing of data.

18 But we are looking for consistency with
19 what's being presented at this proceeding with the
20 kind of data that then we would be looking at in the
21 future so that there is some connection with the
22 views, or the forecasts that are being presented now,

1 being represented now with what the situation would
2 then be represented to be when it comes time to
3 hopefully add passenger trains.

4 BOARD MEMBER HEDLUND: All right. I'm a
5 graduate of all the service outcome agreements
6 negotiated in connection with the grants, so I have a
7 pretty high degree of sensitivity of what those
8 negotiations feel like.

9 MR. NEWMAN: Yes thank you.

10 CHAIRMAN OBERMAN: Were you done Karen?

11 BOARD MEMBER HEDLUND: Yeah I'm done.

12 CHAIRMAN OBERMAN: Robert.

13 VICE CHAIRMAN PRIMUS: So Dennis I want to
14 get back to some of the following up on what Patrick
15 said, the conditioning. Because there's some on the
16 Board that believe that precedent and what was set in
17 the past as it relates to Subsection D, and the
18 authority of the Board to set conditions is not
19 limited to what was done in the past, and the Courts
20 have indicated so in recent decisions.

21 And so I want to ask you, you know, you
22 put forward those conditions to this transaction.

1 You know state your reasoning as to why, and why it's
2 important to the transaction as to why these
3 conditions needed to move forward.

4 MR. NEWMAN: Thank you Vice Chairman
5 Primus. We believe that it's important that these
6 conditions exist you know because they do help to
7 ensure that the ability for passenger rail to be
8 operated on time, and with good performance, so that
9 we can deliver to the traveling public, and to our
10 passengers you know the promise of service that we
11 aim to make so that we can deliver them to their
12 destinations on time.

13 In addition, that we are able to make
14 expansions and enhancements to passenger rail
15 service, which provides mobility benefits and
16 provides the also environmental benefits in the way
17 of reduced emissions, but taking cars off the road.
18 And that we have seen you know both from the -- in
19 the past, our ability to be effective, or be
20 successful at being able to you know exercise and
21 have our rights enforced has been a challenge.

22 And also that you know we expect that

1 there would be effects in terms of the you know, the
2 volume of traffic on these routes that would have an
3 impact on our ability, and on the willingness of the
4 host to move forward and make the appropriate
5 improvements. So I think those are the reasons why
6 we think that these conditions really are needed to
7 be able to deliver those benefits.

8 In addition, you know there has been
9 significant public investment in you know, in
10 existing infrastructure, and we think that past
11 investment should be also protected.

12 VICE CHAIRMAN PRIMUS: And I think
13 actually you had mentioned also past relationships
14 like the one in Virginia should be considered. Are
15 there other relationships as well, maybe adverse,
16 that we need to take into account as to how the
17 relationship between freight and passenger rail
18 existence in the operations, and it's effect on the
19 public interest?

20 MR. NEWMAN: Well I mean certainly the
21 history of our attempts to add service and I mean as
22 others today raise, another proceeding where we are

1 looking to add service down the Gulf Coast, and that
2 has been you know a challenge that has led us to
3 actually you know need to resort to the STB. That's
4 one example.

5 Generally, our moves to try to increase
6 passenger rail service are met with resistance and
7 difficulty. And for on time performance the you
8 know, we certainly have had large challenges in
9 being able to have our trains you know always get the
10 appropriate preference that we have the rights to,
11 and to be able to deliver our customers on time, and
12 being able to make you know really kind of compel the
13 performance that's necessary in our long distance
14 trains, you know, our customer on time performance
15 hovers around 50 percent or less.

16 So half of our passengers are not able to
17 get to their destinations on time. So we certainly
18 had seen significant amount of adverse experience,
19 both with on time performance and with our ability to
20 obtain access under reasonable conditions.

21 VICE CHAIRMAN PRIMUS: So you're saying
22 that the conditions you put forward you proposed were

1 not just specific to Amtrak, but to the public
2 interest and the help of that rail network in that
3 effective region?

4 MR. NEWMAN: Yes.

5 VICE CHAIRMAN PRIMUS: And so do you think
6 that it is the job of the Board to address that
7 public interest region, that public interest concern,
8 through any act that they're able to including
9 conditions, to bring about a balance and fairness to
10 that transaction, and share that to the network?

11 MR. NEWMAN: I do. I think that it is an
12 appropriate consideration for the Board to take into
13 account.

14 VICE CHAIRMAN PRIMUS: Okay. Do you think
15 it's within our power to do so?

16 MR. NEWMAN: I will leave it to the Board
17 to decide that. Again, I'm not a lawyer, but I
18 believe so.

19 VICE CHAIRMAN PRIMUS: Well I believe so
20 too, and I believe that we've had cases in the past,
21 and former Boards have decided that. I think we
22 still have the flexibility, and we have the

1 discretion to do that moving forward, so you know I
2 appreciate you know you bringing those concerns up
3 because I think it is important to the success of
4 this proposed merger. Thank you.

5 MR. NEWMAN: Thank you.

6 CHAIRMAN OBERMAN: Dennis I just want to
7 be clear on the record as to what's agreed and what's
8 not agreed. The filing we received on Wednesday says
9 that CSX agrees to conditions 1 through 5 and 7, as
10 they relate to PAR. So are you and CSX in agreement
11 at least as far as that goes?

12 MR. NEWMAN: Well --

13 CHAIRMAN OBERMAN: I'm trying to dissect
14 this. I want to know what's agreed to, and what
15 isn't agreed to.

16 MR. NEWMAN: Yes well the -- what, you
17 know really our knowledge of what's agreed to is the
18 letter that was sent to the Board, so.

19 CHAIRMAN OBERMAN: Do you mean this came
20 without a discussion with you before they sent it?

21 MR. NEWMAN: Yes.

22 CHAIRMAN OBERMAN: Well you read the

1 letter, so at least in terms of what Amtrak is
2 seeking as with regards to the PAR system, it sounds
3 like at least 1 through 5 and 7 you got what you
4 asked for. Is that as you understand it?

5 MR. NEWMAN: I think that yes, that is why
6 as I had said we were very gratified by CSX's more
7 letter.

8 CHAIRMAN OBERMAN: So there's agreement on
9 that. What you're saying is you asked for the
10 conditions to apply to PAS as well and they have not
11 committed to as far as you can tell.

12 MR. NEWMAN: Correct. And that is really
13 still a question for us is why there's a carve out.

14 CHAIRMAN OBERMAN: Okay. And as to
15 condition 6 relating to the Berkshire Flyer, but for
16 the condition of 1,000 there -- a precondition of
17 1,000 foot track, would that be acceptable to you
18 the one year experiment?

19 MR. NEWMAN: Yeah. That would be, I mean
20 that's why we hope to be able to work that out, but
21 yes, being able to move forward again in consultation
22 with Massachusetts Department of Transportation, but

1 that is our aim is, you know, we were very hopeful in
2 what we saw from CSX in that regard, so I think
3 there's some detail for us to work out, but we think
4 that there's you know there's a good forward movement
5 there.

6 CHAIRMAN OBERMAN: All right. So going
7 forward are you -- do you have any discussions, or
8 interactions planned with CSX to iron out what's not
9 agreed to at this point?

10 MR. NEWMAN: That is our intention.

11 CHAIRMAN OBERMAN: Well you know it's our
12 preference, there's been a lot of agreements made by
13 various parties to this proceeding to work out
14 differences, and to agree to conditions. A whole
15 slew of them have come in over the last two or three
16 weeks, including this one as far as it goes, so I am
17 going to encourage you, and I'm sure that our CSX
18 friends are listening in, and we're going to talk to
19 them later today to get in a room and work this out.

20 We would much prefer this all be done by
21 agreement. I think wherever Board members are coming
22 from, I think we all agree that it is better if

1 parties work these conditions out by agreement. So
2 I'm going to encourage, and I am sure that my friend
3 Jim Foote is listening, that as soon as possible, and
4 before this record closes, you iron these things out,
5 otherwise we'll have to act one way or the other.

6 MR. NEWMAN: Thank you yes.

7 CHAIRMAN OBERMAN: Are there any other
8 questions for Dennis? Dennis why don't you sit tight
9 because you're on the same panel with the next two
10 speakers, and so there may be some interaction there.
11 You're still on, although you can turn your mic off
12 if you want.

13 MR. NEWMAN: Thank you Chairman Oberman.
14 Thank you all the Board members.

15 CHAIRMAN OBERMAN: With that I'm going to
16 call -- thank you Dennis. And I call up Mr. Wimbish,
17 Robert Wimbish.

18 MR. WIMBISH: Good morning. Before I go
19 into my presentation, I want to make sure that I am
20 being seen and heard. I know there were some
21 technical issues that way yesterday.

22 CHAIRMAN OBERMAN: Yeah right now I can

1 see you fine.

2 MR. WIMBISH: Okay.

3 CHAIRMAN OBERMAN: I am going to absent
4 myself for about two minutes. I'm going to hand the
5 gavel over to Robert while you're speaking, but I
6 will be back momentarily, but in case something needs
7 to be done Robert you're in charge.

8 VICE CHAIRMAN PRIMUS: That sounds like
9 trouble.

10 CHAIRMAN OBERMAN: So your job is to avoid
11 trouble.

12 MR. WIMBISH: Well I don't aim to start
13 any. Good morning Chairman Oberman as you depart,
14 Vice Chairman Primus, Commissioners Fuchs, Schultz,
15 and also welcome to the Surface Transportation Board
16 Commissioner Hedlund. My name is Rob Wimbish. I'm
17 with the law firm of Fletcher and Sippel in Chicago.
18 Now I am participating in today's hearing on behalf
19 of the Commonwealth of Massachusetts Department of
20 Transportation, or Mass DOT, and Mass DOT's
21 concurrently supervised agency in Massachusetts Bay
22 Transportation Authority, which is also referred to

1 in this presentation as MBTA, it is also known simply
2 as the T.

3 For purposes of today's presentation I
4 will refer to Mass DOT and MBTA collectively as the
5 Commonwealth. Mass DOT oversees highways, rail and
6 transit, aeronautics and transportation licensing and
7 registration for the Commonwealth of Massachusetts.
8 It's mission is to deliver excellent customer service
9 to people traveling in and throughout Massachusetts
10 by providing safe, reliable, robust, and resilient
11 transportation infrastructure.

12 Mass DOT works to provide a transportation
13 system, which can strengthen the state's economy and
14 improve the quality of life for all. Mass DOT,
15 excuse me, owns various railroad lines in
16 Massachusetts which support passenger and freight
17 railroad service.

18 MBTA is one of the oldest public transit
19 systems in the United States. It is also the largest
20 transit system in Massachusetts. MBTA provides
21 subway, bus, commuter rail, ferry and paratransit
22 service to eastern Massachusetts and parts of Rhode

1 Island. As this record reflects, MBTA also owns
2 various railroad lines in Massachusetts over which
3 commuter rail service, and in many cases also
4 railroad freight service is provided.

5 Nearing the extent of the proposed
6 railroad transactions within the borders of
7 Massachusetts it is no surprise that the
8 Commonwealth would be very interested in the proposed
9 railroad consolidation, and it's impact on all
10 railroad transportation services.

11 It would be easy, but unwise, to focus
12 strictly upon the freight transportation elements of
13 the transactions, as those transactions respective
14 freight service impacts have been presented here by
15 CSX Transportation, Norfolk Southern Railway Company,
16 Pittsburg and Shawmut Railroad, also known as
17 Berkshire Eastern, and all other aligned with those
18 railroads.

19 Rather for reasons I will offer in this
20 presentation, the Commonwealth urges this Board also
21 to consider very carefully how the various
22 interrelated railroad transactions that are the

1 subject of these proceedings bear first upon the
2 Commonwealth's extensive railroad transportation
3 infrastructure holdings, also upon publicly provided
4 commuter rail service in the greater Boston area.

5 And finally, upon publicly supported
6 intercity railroad passenger service in
7 Massachusetts, and throughout New England. The
8 interrelated transactions presented for your
9 consideration, approval and conditioning authority
10 offer opportunities for private freight service, and
11 for public stakeholders interested in such freight
12 service to be sure.

13 But the Commonwealth respectfully submits
14 that the public interest is unlikely to be fully, or
15 adequately against, or protected for that matter as
16 its appropriate public, private measures. Or in the
17 absence of such voluntary measures the Board's
18 exercise of its conditioning authority as requested
19 by the Commonwealth in its past filings.

20 To be clear however, the Commonwealth has
21 not opposed the transactions that are encompassed by
22 the various filings in this docket, and it does not

1 oppose them now. Those transactions stand to deliver
2 important transportation benefits for certain
3 shippers and traffic flows, and they stand to benefit
4 the applicants and those carriers aligned with them
5 here.

6 But those same transactions warrant that
7 the applicants ensure, and not just generally assure
8 that the hundreds of miles of Commonwealth owned
9 railroad infrastructure, that the applicants and the
10 aligned carriers will operate, are currently in
11 proper physical condition, and that they will be
12 maintained accordingly going forward.

13 The applicants must also ensure that their
14 proposed transactions will not result in deteriorated
15 MBTA commuter rail service for the applicants and
16 aligned carriers will share track with MBTA commuter
17 trains, particularly in the face of future operating
18 uncertainties and anticipated freight and commuter
19 rail traffic growth.

20 And the applicants must ensure that the
21 proposed transaction is not merely sustaining
22 intercity railroad passenger service status quo, but

1 rather facilitate and promise Amtrak services in New
2 England. It appears from very recent developments
3 that at least some of our conditions targeting
4 intercity passenger rail service have been addressed,
5 and I will address that briefly in the discussion
6 following.

7 The conditions that the Commonwealth has
8 requested that this Board impose as part of its
9 approval of the transactions will ensure that the
10 public generally, and not just the freight shipping
11 public, will see the benefits of the stronger and
12 more engaged platform railroad presence in
13 Massachusetts and throughout the regions served today
14 by CSXT and Pan Am Railways.

15 Those conditions are carefully designed to
16 maintain the Commonwealth's extensive railroad
17 infrastructure holdings, protect MBTA's innovative
18 and growing commuter rail operations over the lines
19 that are the subject of these proceedings, and to the
20 extent that they may remain necessary, enhanced
21 intercity -- that is Amtrak, passenger rail service
22 options, while preserving the freight transportation

1 benefits that CSXT and others engaged in these
2 proposed transactions help to deliver.

3 The Commonwealth has been engaged in an
4 ongoing dialogue with the applicants, particularly
5 CSXT toward a written accord on the Commonwealth's
6 three general objectives. That dialogue has been
7 positive, and indeed we are seeing substantial
8 progress for key Commonwealth objectives,
9 particularly with respect to the applicant's
10 commitment to expanding Amtrak service, and keeping
11 with regional and Commonwealth plans.

12 For example, CSXT recently has advised the
13 Board, as the Board is aware, that it has reached an
14 accord with Amtrak, accommodating Amtrak's requested
15 conditions, including that it will agree
16 conditionally to host a new Amtrak pilot service, the
17 seasonal Berkshire Flyer between New York City and
18 Pittsfield, Massachusetts.

19 We are encouraged by such recent positive
20 developments. We acknowledge the recent CSX and
21 Amtrak agreement, and we are actively reviewing that
22 very agreement, and we are hopeful that this recently

1 announced agreement and corresponding CSXT filing
2 from late yesterday, adequately address our concerns
3 and interests in post transactions, intercity
4 passenger, third rail passenger service.

5 Discussions with respect to the condition
6 and upkeep of Commonwealth owned railroad
7 infrastructure currently maintained and operated over
8 per agreement by Pan Am Railways, and Pan Am
9 Southern, have also been constructive. But these
10 discussions have fallen short of the Commonwealth's
11 proactive objectives.

12 Specifically, the Commonwealth has urged a
13 post transactions assessment of Commonwealth owned
14 railroad infrastructure currently operated by Pan Am
15 Railways and Pan Am Southern. As a proactive joint
16 undertaking embodied in the Commonwealth's third
17 enumerated condition, would be a constructive and
18 beneficial first step in CSXT's expanded relationship
19 with the Commonwealth and its various stakeholders.

20 Indeed, the applicants have not impressed
21 upon the Commonwealth that its proposal is overly
22 burdensome or unfair, but rather that in the

1 applicant's view such an infrastructure review is
2 unnecessary given their promises and assurances on
3 the record. Because such an infrastructure review
4 would benefit all involved however, the Commonwealth
5 looks to this Board to facility such an exercise by
6 way of its conditioning power if needed.

7 Finally, but easily as important because
8 the infrastructure upkeep and intercity passenger
9 service issues addressed previously, not more so, the
10 Commonwealth urges this Board to consider appropriate
11 conditions to protect MBTA's extensive commuter rail
12 services where such services would share tracks with
13 freight trains operating in the future by CSXT,
14 Norfolk Southern, or Berkshire and Eastern, or all
15 three, as would be the case on the Willows to Ayer
16 track segment, also traversed by MBTA's Fitchburg
17 line service.

18 We are told that the proposed transactions
19 will benefit MBTA commuter service. That is a
20 welcome assurance, but we have seen no proof that
21 will be necessarily so, and we have been assured
22 that CSX's expanded freight operations, and those of

1 Norfolk Southern and Berkshire and Eastern, also will
2 not impair MBTA commuter rail operations.

3 But those assurances conflict with MBTA's
4 extensive knowledge of the railroad lines involved
5 and the challenges associated with balancing freight
6 and commuter rail service needs. And while we
7 recognize that CSXT has experience in operating in
8 commuter rail territory elsewhere, and on a more
9 limited scale presently in the MBTA service area.
10 CSXT has not yet learned the intricacies and
11 challenges of the railroad lines over which it will
12 operate following implementation of proposed
13 transactions.

14 The Commonwealth has proposed here again,
15 a proactive mechanism for dealing with potential
16 commuter rail service harm, both by shifting train
17 dispatching, and by developing contingent
18 infrastructure enhancement in the face of future
19 disruptions should it occur.

20 The applicants have thus far resisted
21 such proposals on assurances that no such harms will
22 be befall MBTA commuter rail service. On that topic

1 we do appreciate CSXT's particular efforts to
2 demonstrate to the Commonwealth why it believes MBTA
3 service will not suffer from freight train service
4 delays.

5 Those meetings have proven helpful, but
6 they have also revealed CSXT isn't in complete
7 understanding of the complexities of operations, for
8 example on the Willows to Ayer segment. And so,
9 while the Commonwealth appreciates the assurances
10 that the applicants have extended, those assurances
11 by themselves serve little purpose if and when post
12 transactions, freight train operations do begin to
13 interfere with MBTA commuter trains.

14 This Board and the Commonwealth know very
15 well that Class 1 optimism is no substitute for
16 well-conditioned contingency plans, particularly
17 where such contingency planning would include
18 expanded infrastructure.

19 In that regard, the Commonwealth's request
20 conditions to protect MBTA service, including
21 transferring the dispatching to MBTA, as set forth in
22 enumerated conditions one and two, are a far better

1 measure than would be a re-opening of this proceeding
2 under which this Board could be called upon to
3 ascertain what has gone wrong, what to do about it,
4 and how quickly appropriate corrective measures can
5 be implemented.

6 And here also the Commonwealth's requested
7 conditions, which undeniably protect the public
8 interest, are neither intrusive nor unduly
9 burdensome. They would not stand in the way of
10 further freight service benefits that the applicants
11 and the railroads aligned with them hope to deliver.

12 Rather, we believe that such conditions
13 would be the logical next step in the Commonwealth's
14 dialogue with CSXT in particular. To be clear once
15 again, the Commonwealth has not opposed the
16 application or the related transactions, but the
17 Commonwealth also recognizes that the proposed
18 transactions as currently structured, and without
19 appropriate protective measures, threaten distinct
20 elements of the public interest, particularly for
21 example elements of the public interest that's
22 spelled out in President Biden's Executive Order

1 Number 14036.

2 We appreciate in particular, CSXT's
3 engagement and ongoing dialogue to the Commonwealth,
4 although such an engagement is also to be expected,
5 given CSXT's anticipated, expanded regional
6 footprint.

7 But the Commonwealth respectfully submits
8 that this Board can and should use its conditioning
9 authority to assist in bridging current gaps in this
10 dialogue, as described previously, by directing CSXT
11 to work with the Commonwealth to engage in more
12 proactive measures, rather than falling back entirely
13 upon confident freight railroad assurances of future
14 events and circumstances.

15 The Commonwealth appreciates the Board's
16 time, and consideration of the Commonwealth's
17 comments, and request for conditions. Thank you.

18 VICE CHAIRMAN PRIMUS: Thanks Robert,
19 appreciate it. Marty's back so there you go.

20 CHAIRMAN OBERMAN: I am back, but Robert I
21 assume you have some questions so go ahead.

22 VICE CHAIRMAN PRIMUS: I'll wait.

1 CHAIRMAN OBERMAN: All right.

2 VICE CHAIRMAN PRIMUS: If someone else
3 has, happy to wait.

4 CHAIRMAN OBERMAN: Anybody else want to go
5 forward?

6 BOARD MEMBER FUCHS: Marty why don't you
7 go?

8 CHAIRMAN OBERMAN: All I would say Robert
9 is what I've said to Dennis, that you know we'd like
10 these conditions worked out. It sounds like progress
11 has been made from your point of view as well, but
12 you're not quite there yet. Is that a fair
13 statement?

14 MR. WIMBISH: I think it's a very fair
15 statement. I think we've remained engaged even to
16 this moment in a dialogue with CSX, and we continue
17 to make progress. We're hopeful that in the not too
18 distant future you will receive yet another filing
19 from CSX that indicates that we have resolved our
20 differences. We have not yet done that.

21 Obviously, one of the reasons is that on a
22 number of these issues, CSXT remains confident that

1 some sort of a definitive written agreement is not
2 needed, but I do think that there is still a pathway
3 to reaching the Court.

4 CHAIRMAN OBERMAN: Well I will just
5 reiterate that I always think the parties are better
6 off if they right things out themselves rather than
7 requiring us to right them for you because you may
8 not like it.

9 MR. WIMBISH: Right. And we're not asking
10 you to be clear in our conditions. We haven't asked
11 you to specifically right out what those agreements
12 contain, but some of them are simply asking for the
13 Board to facilitate working toward an agreement.

14 CHAIRMAN OBERMAN: I think that the --
15 listen there's obviously, and you can hear it in the
16 questioning here, some discussion and debate about
17 our -- the propriety of our entering conditions on
18 a transaction of this nature relating to passenger.
19 There are obviously public interest aspects to it as
20 have been discussed, there are other precedents as
21 raised by Patrick, and we're not afraid I think as an
22 institute to weigh into this area one way or the

1 other, but if things can be worked out by agreement
2 then we don't have to weigh in.

3 So I think we'd almost prefer that that
4 happen, but let me switch it to Patrick who had a
5 question.

6 BOARD MEMBER FUCHS: Thanks so much Marty.
7 Actually let's stay on this issue for a minute.
8 Could you summarize the evidence in the record that
9 would allow the Board to make an informed decision
10 about whether or not a shift in dispatching
11 responsibilities would lead to overall better
12 outcomes for the rail network, freight and passenger?

13 MR. WIMBISH: I think there's probably two
14 elements of that. The first one is the evidence that
15 you have on the record that CSX typically dispatches
16 its lines from Jacksonville, although it has
17 committed here for as I think the term was the
18 indefinite future, to continue to dispatch these
19 lines in Billerica. I think that's one piece of the
20 evidence there.

21 I think the other piece of evidence that
22 is implicit in this is that -- and there's another

1 piece of evidence here which is that MBTA is a
2 predominant user in terms of the number of trains
3 operated over a variety of these lines, even though
4 CSX in some limited instances expects to see some
5 freight traffic increases that potentially over time
6 could increase the amount of train activity on these
7 lines.

8 One of the issues that's implicit in the
9 record here is whether or not CSX or the Commonwealth
10 would be the better administrator of the overall
11 public interest in these, if you look at how both of
12 those entities would possibly make decisions with
13 respect to dispatching and accommodating each other's
14 trains.

15 BOARD MEMBER FUCHS: So one is the
16 geographic location of the dispatching, and the other
17 is sort of an intuitive assessment.

18 MR. WIMBISH: I think part of it is more
19 than intuitive, that is the that the record also
20 reflects as it has, and as we pointed out, and as
21 others have noted that MBTA is the predominant user
22 of most of these lines on the train count basis.

1 BOARD MEMBER FUCHS: Are there other
2 instances where dispatching in the general northeast
3 region is conducted by an entity that is not the
4 predominant user?

5 MR. WIMBISH: I'm sorry could you repeat
6 the question please?

7 BOARD MEMBER FUCHS: Are there other
8 instances, or to what extent is dispatching in the
9 region for passenger rail in particular, conducted by
10 entities that say don't have the highest train
11 counts? Thinking in particularly of Amtrak right?
12 Amtrak is it correct to say, and maybe Dennis you can
13 weigh in, that Amtrak has dispatching
14 responsibilities on some lines where it doesn't have
15 the highest train count?

16 MR. WIMBISH: I do not know --

17 MR. NEWMAN: That is true, we do have --
18 it's train lines that we own.

19 BOARD MEMBER FUCHS: So I guess I'm sort
20 of wondering whether or not it would have been
21 appropriate for MBTA to submit some sort of hard
22 evidence that train count share improves dispatching

1 performance for all users. You know you have the
2 Amtrak example where Amtrak is not the predominant
3 user, and has dispatching responsibilities, and you
4 could potentially compare that to commuter rail
5 performance with dispatching.

6 You could also you know provide evidence
7 of other freight railroads, CSX included, and their
8 dispatching performance is for all users versus
9 dispatching of the predominant user. And I guess
10 one of the things that I totally hear you on the
11 intuitive or implicit nature of the claim, but none
12 of the actual hard evidence about what's going on in
13 the rail network was presented in the record,
14 including on some lines that MBTA is using. Is that
15 a fair assessment?

16 So you didn't for example, look at any
17 other lines where you're the majority user and
18 someone else dispatches, and provide any evidence
19 about what's going on on those lines?

20 MR. WIMBISH: no we did not. And our
21 argument is largely predicated on the policy
22 considerations that I think again are pretty well

1 understood in this particular case that you can
2 compare the approach to CSX dispatching to the
3 approach for MBTA dispatching, and one of the things
4 that I suspect you know is that MBTA does dispatch
5 operations onto the lines. Whether or not those
6 contain freight operations on them, but one of the
7 distinction is of course is if you have CSX
8 dispatching those lines, and I don't mean that
9 there's any nefarious considerations here, just in
10 terms of the priority analysis on this one.

11 While we've had good experiences with CSX,
12 CSX is clearly its mandate is to maintain a fluid
13 freight transportation system first and foremost. It
14 doesn't have a specific mandate. It may have some
15 obligations under contract to accommodate MBTA
16 commuter rail service.

17 By comparison if you consider MBTA
18 dispatching, MBTA would be looking at all of the
19 stakeholders involved. That is the fluidity of
20 freight transportation and passenger transportation
21 on those lines. And so I think that there is a more
22 kind of holistic take on what MBTA would be looking

1 at, and how it could best balance those competing
2 interests here.

3 BOARD MEMBER FUCHS: I appreciate you know
4 kind of the implicit point for sure Robert, and I
5 appreciate you making it. Would you, you know, I
6 asked Dennis this earlier, but you would agree that
7 Board precedent sets out that parties requesting
8 conditions have the burden to show they're necessary?

9 MR. WIMBISH: I do agree with that.

10 BOARD MEMBER FUCHS: And you know in terms
11 of the policy considerations do you think that the
12 Board has -- do you think that the implicit or
13 intuitive argument is sufficient for the Board to
14 have confidence that you've met your burden, that
15 dispatching under MBTA would be better than under CSX
16 when you've provided no data about dispatching
17 performance?

18 MR. WIMBISH: I do.

19 BOARD MEMBER FUCHS: Well I can switch
20 gears then to the standard. Robert can you give your
21 assessment of how the DM&E Metra precedent should
22 factor into our decision making? The way I read that

1 case is that the Board denied the requested
2 conditions by Metro commuter railroad for two
3 reasons. One is the focus of D is competition, and
4 the other being that the issues could potentially be
5 worked out by contract.

6 And CSX contends in the record that it's
7 stepping into existing contractual relationships. So
8 is it appropriate for the Board to look to that
9 precedent to guide its decision making in this area?

10 MR. WIMBISH: I think it's appropriate for
11 the Board to look at all of its precedent, not just
12 the CP DM&E case. There's kind of a couple of
13 elements to your question here Commissioner Fuchs,
14 and I want to take them both on separately. Let me
15 start with the 11324D discussion, because I know it's
16 been one that's been a recurring issue for you, and I
17 understand and appreciate that.

18 And I want to point out that my
19 perspective on 11324D is that while it is the
20 standard for approval, it is not necessarily the only
21 basis for the Board's conditioning authority and
22 Surface Transportation Board proceedings in minor or

1 significant transactions, and the fact there's other
2 precedent, I'll point out just briefly, that supports
3 that proposition.

4 So let's start with D and then we can talk
5 about the precedent if you'd like with respect to CP
6 DM&E, what I think it stands for because I think they
7 kind of correlate to each other, and of course have a
8 connection.

9 The first one is -- and let's just take a
10 look at it this way. If as I think you may have
11 general posited, I don't want to put any words in
12 your mouth, but if as I understand it you're
13 suggesting that 11324D says the only thing that the
14 Surface Transportation Board can look at in a minor
15 or a significant transaction are competitive impacts.

16 And make a determination as to whether or
17 not the Board should approve a transaction based on
18 that competitive impacts analysis. I submit to you
19 that when you are looking at commuter rail or
20 passenger rail impacts, which obviously are not
21 central to, or even directly involved in those
22 competitions.

1 That competition analysis, excuse me, that
2 if you do that with the logical extension of that
3 here would be -- and I know these are not the facts,
4 but I think you have to think about what the logical
5 extension of that kind of a strict application of
6 this is the only thing that matters, if -- and I'm
7 not saying that you're suggesting that's the case
8 either, but if you were then it seems to me that
9 under the circumstances here if we were to change
10 the hypothetical a bit we'd be looking at a situation
11 under a hypothetical, or perhaps -- and thank
12 goodness they're not doing this, CSX would say here's
13 our transaction.

14 It's procompetitive, it yields a bunch of
15 public benefits, particularly in the transportation
16 world, and it is highly procompetitive. Now that
17 said, this same transaction will have definitive and
18 clear adverse impacts on passenger transportation
19 throughout the Commonwealth. Again, I know this is
20 the hypothetical.

21 And by the way there is nothing you can do
22 about it Board. Nothing you can do about it because

1 11324D is the only element of the standard, and it is
2 your only condition authority here. So it seems to
3 me there's a danger in that. Now that's just sort of
4 the logical element of that, but the other part of
5 it, it seems to me, is that the Congressional mandate
6 in 11324D is about focusing on the transportation --
7 I mean the competition issues in those transactions,
8 not to the exclusion of other STB conditioning
9 authority because we know, and this is where I'll
10 transition into your discussion of the CP DM&E.

11 And I have listened to you, and I agree
12 with you that that case number one, was determined on
13 its facts and circumstances, and I don't read that
14 case as being a categorical determination that
15 passenger train impacts are simply unavailable, I
16 mean cannot be mitigated under appropriate
17 circumstances. It was a reluctance to get into
18 those, and the fallback there of course was to resort
19 to contracts where those contracts existed.

20 And indeed those contracts do exist in
21 that particular case between Metras and the merger
22 applicants there, particularly CP. So that's one of

1 the things I'd point out. Finally, if you're going
2 to point to the CP DM&E case it seems to me you'll
3 also have to look at the CN EJ&E case.

4 And if you remember in that particular
5 case one of the issues that was litigated was the
6 Board's imposition of conditions on overpasses.
7 You're probably familiar with that. The argument in
8 that case on appeal was whether or not the Board had
9 the authority, again under the assertion that 11324D
10 controlled whether the Board had authority to impose
11 overpass conditions since they had nothing to do with
12 mitigating any competitive impacts.

13 And the Court upheld the Surface
14 Transportation Board's authority to impose those
15 conditions in that particular case to address
16 transportation issues that were not tied to freight
17 competition. So I'm hoping that I'm just giving you
18 my perspective for number one, the dangers of
19 focusing exclusively on 11324D under hypotheticals
20 where there would be clear and demonstrable adverse
21 impacts, and saying you can't do anything about it,
22 and the notion that the STB's precedent, and for that

1 matter, Court of Appeals precedent, supports the
2 proposition that the Board's reach of it's
3 mitigation conditions, or its conditioning power goes
4 beyond the limited scope of 11324D.

5 BOARD MEMBER FUCHS: Robert thank you very
6 much for that discussion. I think for the efficiency
7 of the hearing, it might make sense to revisit
8 standard issue after CP's testimony if you'll hang
9 on, and that was we can kind of because I think some
10 of the issues that we would discuss would apply to
11 both of you, and so we can maybe have a discussion in
12 that regard.

13 I will observe that I think that you've
14 described the countervailing precedent, and the
15 countervailing points accurately. I think that
16 Metras said that the primary focus is competition.
17 It did not make a clear categorical statement ruling
18 out passenger rail conditions. I think it could be
19 read to be a bit of a non-sequitur if it doesn't
20 suggest that you know.

21 MR. WIMBISH: Right.

22 BOARD MEMBER FUCHS: But it's not clear

1 and explicit, and I do agree that the built variance
2 in the context of the DC Circuit, and the context of
3 environmental conditions suggested the Board had
4 public interest authority that wasn't constrained by
5 the approvals standard. So I wanted to continue this
6 discussion, but I think you've accurately stated the
7 precedent.

8 MR. WIMBISH: I appreciate that.

9 CHAIRMAN OBERMAN: So do I Robert for what
10 it's worth. So I think it's very helpful. This is
11 the subject of what you know this Board considered in
12 recent times very intensely, and it's an ongoing
13 consideration. Any other questions for Mr. Wimbish?

14 VICE CHAIRMAN PRIMUS: I did, don't now.

15 CHAIRMAN OBERMAN: Okay.

16 VICE CHAIRMAN PRIMUS: He satisfied them,
17 and I appreciate his comments, and I actually join
18 you Marty in agreeing with his assessment, so thank
19 you.

20 CHAIRMAN OBERMAN: All right. Why don't
21 we move forward to CP and Mr. Clements and Mr. Meyer,
22 and the other two panelists as Patrick suggested stay

1 onboard with us.

2 MR. MEYER: Good morning Chairman Oberman.
3 Good morning fellow Commissioners. It's David Meyer.
4 I don't see James Clements yet. I don't know if he's
5 on. James could you?

6 MR. CLEMENTS: Yes I've joined Mr. Meyer.

7 MR. MEYER: Thank you. Okay excellent.
8 Well I'm going to attempt to share my screen for the
9 PowerPoint presentation that we have to accompany our
10 remarks. So bear with me for a moment.

11 Could everyone see that? Is the Canadian
12 Pacific presentation visible?

13 MR. CLEMENTS: Yes.

14 MR. MEYER: Excellent. James I'm going to
15 turn it over to you to get our presentation.

16 MR. CLEMENTS: Yes. Thank you David, and
17 thank you Mr. Chair, and fellow STB members for
18 giving us the opportunity to make a few brief remarks
19 this morning. I'm James Clements, the Senior Vice
20 President of Strategic Planning and Technology
21 Transformation at CP. I've been with CP for about 27
22 years in a variety of roles, including a car

1 management finance marketing sales and corporate
2 strategy type roles.

3 If I go to the next page here David, what
4 I thought I would mention at the start of the
5 presentation is that we see the Pan Am Southern as an
6 important link for CP to access the New England
7 markets in the Boston area, the Pan Am Railway, and
8 also other short line connections in New England,
9 like the Providence of Worcester, and the New England
10 Central. In that corridor we can haul several
11 thousand carloads a year in what I would describe as
12 a normalized non-COVID year.

13 We're certainly seeing a little bit of
14 decline as a result of changing traffic patterns in
15 the last couple years, and we use the Pan Am Southern
16 as a critical connection, and we see it as a
17 competitive alternative in the market versus the CSX
18 route into many of those same markets.

19 One comment I will make we have, and this
20 was in some of our evidence looked at alternatives in
21 terms of we could go as this map shows, over the top
22 to Bangor and North Maine Junction Interchange with

1 Pan Am Railway, and have that traffic move.

2 So that is a very circuitous route.

3 There's also a couple of options involving the
4 Vermont Railway, or potentially even other G&W lines
5 where we would connect in Sherbrooke, Quebec. And
6 again there's either weight limitations, or wrote
7 inefficiency concerns that we think would make those
8 very limited viability in terms of competitive
9 alternatives to the market.

10 So David if you move to the next slide,
11 this shows why we see this one as such a critical
12 connection, and it's directly parallel to the CSX.
13 It's called the southern route in our evidence.
14 Before I go into too much more detail on Pan Am
15 Southern, I just want to make the observation that
16 the Pan Am Railway portion of this transaction we
17 have not sought any conditions, we haven't raised any
18 concerns.

19 We certainly expect as Jamie Boychuk and
20 others observed yesterday, that you know in Maine and
21 into St. John and other areas, this end to end
22 combination with the CSX Route will certainly be a

1 competitor for us up in that area, and we believe
2 that with CSX when they invest and operate it they're
3 a good operator, and there will be some benefits
4 around the Pan Am Railway transaction.

5 So we have no concerns, comments, or
6 anything to put on the record relative to that. All
7 of our comments here are going to be around the Pan
8 Am Southern. And what we see as a potential to
9 change the competitive dynamic east/west between our
10 connection and New England Boston markets.

11 The Pan Am Southern today as you've heard
12 is a route that goes across into Boston. It connects
13 with CP and Norfolk Southern at Mechanicville, also
14 the CSX at Rotterdam Junction, and it's been
15 described as you know good grade and efficient
16 route.

17 The CSX themselves were described that
18 there are some operational advantages to that route
19 for traffic into the New England area. It also today
20 is a viable, and productive intermodal and automotive
21 route into Boston, and by Ayer, and has a service
22 level associated with that that meets the needs of

1 all the shippers in the market.

2 And certainly the owners today have the
3 incentive to invest. We can see that with you know
4 the effort that was made to repair the Hoosac Tunnel
5 after the partial collapse that occurred a couple
6 years ago. And so with all of this is what positions
7 it effectively as a competitive alternative to the
8 CSX in the market.

9 You know David next slide. When we look
10 at it, and I want to talk a little bit about history.
11 The reason that the joint venture was formed, and why
12 NS engaged with Pan Am Railway to create the Pan Am
13 Southern, was specifically to create and strengthen
14 the ability for the NS and other shippers to compete
15 against the CSX into the Boston market.

16 And in particular, and I think Mr. Mullins
17 yesterday acknowledged this, one of the focuses was
18 intermodal and automotive. As you can see in the
19 statements, the 87 and a half million dollars that
20 was flowing to both enhancements to the corridor
21 itself, as well as the creation of facilities at
22 Mechanicville and Ayer to handle automotive and

1 intermodal traffic that is being made by the joint
2 venture.

3 And so you know one of the concerns as you
4 look forward is that this traffic, the very traffic
5 that was designed to attract this capital investment
6 is being moved off of the line. I know that it's
7 been alleged that it's low margin, but it is the
8 traffic that has had incentive -- the
9 recapitalization of the line.

10 So I just wanted to go through that. Now
11 when you start to talk about the change, so that
12 we've got this big competitive line, and we start to
13 look at what the incentives are today, and where the
14 incentives are going. I think it's undeniable that
15 the incentives that the new ownership structure has
16 are different than the incentives that today Pan Am
17 Railways and Norfolk Southern have.

18 You know the first one is that, and most
19 importantly, the CSX is becoming kind of folder, you
20 almost have like a two to one and a half kind of
21 combination here, and CSX is going to have
22 considerable power in the boardroom now as a result

1 of that change.

2 And I want to comment a little bit. The
3 analogy was made around Conrail and that the CSX, and
4 the NS have been able to compete effectively as a
5 result of the Conrail shared asset areas that were
6 created in that carve out transaction. And I think
7 it's important to note that transaction was almost
8 the reverse of what we're contemplating here.
9 Conrail was a single carrier that had you know their
10 operations in many of these areas with very limited
11 competition.

12 And by creating the shared asset areas you
13 are actually introducing the competitive, alternative
14 that never existed prior to the transaction that was
15 being proposed. In this one what's happening is
16 there are two competitors, and in fact you're
17 reducing the competition.

18 And what's being said you know is we can
19 do it in Conrail, and by having the same structure
20 here it's going to help mitigate the impacts here,
21 and I just don't see necessarily the parallel to
22 Conrail when you're looking at the current situation

1 that we have today on the left-hand side of this
2 slide.

3 The other piece I didn't know already is
4 that Pan Am posed creating an intermodal and
5 automotive service today, and when you're maintaining
6 the line to have the speed, and you know lack of
7 small orders and efficiency across the line for the
8 intermodal service, you sort of by nature lift the
9 quality of the infrastructure so that you can provide
10 a better service on the manifest traffic, and
11 undoubtedly the traffic that we interchange with Pan
12 Am is entirely what I would call manifest carload
13 boxcar type traffic.

14 But you're now removing that traffic, so
15 the incentive to maintain it up to the highest
16 standards to serve the most service sensitive traffic
17 then is gone, which can have a longer term impact of
18 the level of investment to maintain the manifest
19 service in the area.

20 Again, what we have here we talked about
21 the Pan Am subsidiary is competing with CSX, and now
22 you're putting the CSX in, and they have come up with

1 this solution with the Berkshire and Eastern, and you
2 know what I would agree with everybody's
3 observation, Genesee and Wyoming is a quality
4 operator, it has done a great job across many of
5 their properties.

6 But I will observe that they are let's
7 call it the dominant alternative operator in the New
8 England area, with the New England Central Providence
9 and Worcester and many of their holdings.

10 And then today Pan Am Railway interlines
11 with both the CSX and PAS. We agree that the new
12 single line route will attract traffic, and in fact
13 the CSX has made a commitment that some of that
14 traffic they will route over Pan Am Southern in the
15 short term as one of their undertakings to compensate
16 for the change in traffic flows with the removal of
17 the intermodal. Again, that's a temporary flow.

18 We think the incentive is to use the
19 efficient single line route that CSX is creating for
20 much of that PAR traffic, and that as your commitment
21 expires, that may well change the traffic flows. We
22 provided some analysis on what we think the change in

1 gross miles are, both as a result of the intermodal,
2 and in the longer term with the expiring of the CSX
3 commitment. So again that is also another fact that
4 changes incentives in terms of how the Pan Am
5 Southern is also going to take.

6 Slide 6 please David. When we start
7 talking with competition, this isn't just anecdotes
8 from CP, and not supported. The participants
9 themselves, the CSX filed directly an
10 acknowledgement that in the absence of any conditions
11 that the impact of this transaction could have, or
12 could have harm on the competitive environment, and
13 that they created a series of agreements to try and
14 mitigate that risk of harm.

15 And really what is at issue, and we will
16 get into our commitments at the end of my remarks, is
17 whether those undertakings are sufficient to protect
18 from the competitive harm. And I want to
19 acknowledge that many of these undertakings are
20 short-term. I think it's a redacted, I don't know
21 the number of years in some of these commitments.

22 And I think it was Jamie Boychuk in the

1 discussion yesterday around the business case, and
2 the acknowledgement was this isn't about the first
3 five years, this is a fifth year or 100th year
4 transaction, and that there's going to be a long-term
5 view that is going to be taken by the acquirer.

6 And so when we look at the commitments one
7 of the concerns is the term as it affects the gate
8 that we interchange with in the context of a
9 transaction structure being proposed is contemplated
10 to be 50 or 100 years. In terms of the evidence
11 David, the next page, I'll skim through this one
12 fairly quickly.

13 The Department of Justice has also said
14 this arrangement is likely to diminish competition
15 between CSX and Pan Am Southern on these parallel
16 routes, so again we're not the only ones, we're not
17 making this up. On the DOJ I just want to be very
18 clear we are not supportive of the idea of
19 divestiture. We're not advocating for the idea of
20 divestiture.

21 When we look at the conditioning powers
22 that the Board has we believe that there are

1 appropriate conditions that can be put on this
2 transaction in order to allow the public benefits on
3 things like the double stack competitive service that
4 the NS will get into Boston, or the single line kind
5 of CSX route into Maine and other parts of New
6 England that are good as a result of this
7 transaction, and the replacement from what we've
8 heard of the parent Pan Am may also have some
9 benefits.

10 So what we're seeking is the Board to use
11 their conditioning powers to effectively protect the
12 competitive alternatives in the market for carriers
13 like CP and the shippers. David, I'm going to hand
14 over the next few slides to you to continue the
15 discussion on 11324, and other aspects of the Board's
16 mandate. You're muted.

17 MR. MEYER: Can you hear me now? Okay.
18 Thank you James. There's been a lot of discussion in
19 the past two days about the legal standard applicable
20 here to the Board's review of this transaction. I'll
21 be brief perhaps we'll have a discussion of this in
22 more detail.

1 We think that under 11324D, which is the
2 governing provision for the control transaction here,
3 that the Board does have authority to impose
4 conditions designed to avoid significant competitive
5 harm from the transaction. There are two parts, as
6 Commissioner Fuchs observed yesterday, there are two
7 parts to this.

8 One is the question of whether there is a
9 competitive harm to be avoided, we can talk about
10 that in more detail. James I think has addressed it
11 well. The second part is whether if there's
12 competitive harm can conditions be imposed,
13 notwithstanding that if one tallied up the aggregate
14 competitive benefits from the transaction, and
15 weighed them against the aggregate competitive harm
16 with an unconditioned transaction, would the balance
17 kick towards net harm?

18 And we think the Board has resolved that
19 question in its interpretation of the statute in the
20 Messina Line case. And we also think there's a
21 reasonable interpretation of the statute from the
22 Messina Line case that would allow for conditions

1 under those circumstances. Here you know there is
2 clearly an 11324D focus on avoiding, or on
3 competitive consequences of the transaction. Our
4 request for conditions and our examination of the
5 consequences of the transaction if unconditioned, is
6 very much in line with that focus on competition.

7 So we're operating within the target zone
8 of Section D, and if you look at the Board's powers
9 in a significant transaction, it's also clear from
10 the statute not in the D-2 language, but in the first
11 part of D, that the Board does have authority, just
12 as in any case to condition a transaction. It makes
13 imminent sense in a case like this one to find that
14 there's a harm, and to eliminate that harm if the
15 conditions that eliminate that harm do not also
16 eliminate the procompetitive benefits of the
17 transaction.

18 And here the conditions we're proposing do
19 no harm, do not diminish in any way the ability for
20 applicants to carry out the parts of the transaction
21 that they have pointed to that have public benefits
22 as James has outlined.

1 Now there was discussion about how the
2 language in 11324D tracks the Clayton Act yesterday,
3 and I think that's a very astute observation. I have
4 an anti-trust background in my career, including
5 service at the anti-trust division as the Chief Civil
6 Enforcement Official, and so I have a lot of
7 knowledge of how the Clayton Section 7 standard
8 works, and is intended to work in merger cases.

9 And I think the approach to examination of
10 competitive harm that I've just discussed is very
11 much in line with how the Clayton Act would be
12 applied in a merger outside of the railroad
13 industry. In that kind of contest were there a
14 transaction that was offered by the proponents to be
15 net procompetitive, you know, an example is say two
16 grocery store chains proposing to combine where
17 there are 100 stores being combined across some
18 region of the country.

19 You know there may be tremendous net
20 benefits to that transaction, but in a couple of
21 markets you know, two, three, four, five, you know it
22 may be that the stores overlap very directly, and

1 there are very few other competitors in that local
2 market. The way in which the Federal Trade
3 Commission, or the Department of Justice would
4 approach that transaction would be to seek either
5 divestitures, or other relief with respect to those
6 specific overlaps in specific markets.

7 In other words fix those harms, and let
8 the balance of the transaction go forward. That kind
9 of approach happens every year in numerous
10 transactions. It's how Section 7 would be applied,
11 and I think that's the appropriate lens for which to
12 examine the transaction such as this one where there
13 are harms, likely and substantial harms, and we can
14 talk about that if you wish, that can be eliminated
15 with conditions that do not prevent the benefits of
16 the transaction from being implemented.

17 There is in addition I think in this
18 transaction, an additional basis for conditions.
19 It's an issue that hasn't been discussed in the
20 papers or the briefing today, so it occurred to me
21 as I was reading the briefs of the applicants, and
22 thinking back to the Pan Am Southern formation case.

1 In that case the applicants sought not
2 just approval under 11324 or 11323, excuse me, but
3 also approval under the Pooling Statute. And the
4 reason they sought that approval was because by
5 putting Pan Am Railway, and Norfolk Southern into the
6 joint control relationship, and then appointing
7 Springfield Terminal to operate and earn the
8 revenues, and then split the revenues that were
9 earned from the traffic on the line between Norfolk
10 Southern and Pan Am, there was a question whether, or
11 a belief by the applicants, that that may be treated
12 as a pooling of some part of their earnings to which
13 the Pooling Statute applies.

14 The Pooling Statute says that that pooling
15 cannot occur without Board approval, and it says that
16 the Board should consider whether there's an
17 anti-competitive effect, and that the Board may
18 impose conditions on the pool, unlike 324D that's a
19 clearly unrestricted scope for potential conditions.

20 Now in the Pan Am Southern case as the
21 Board may remember, it rejected that the application
22 for pooling authority because essentially the Board

1 found that it wasn't required, that there was not a
2 relationship between Norfolk Southern and Pan Am,
3 that would otherwise have been a competitive
4 relationship. They were essentially end to end
5 partners, and under longstanding Board precedent, an
6 arrangement between end to end connecting carriers
7 that allows them to cooperate is not treated as
8 pooling because there's not you know, because the
9 competitive relationship is a necessary element.

10 Well that won't be the case anymore with
11 CSX brought into Pan Am. And so with respect you
12 know it appears that in order to go forward with this
13 transaction, it may be necessary for a pooling to be
14 approved. CP has no objection to that approval, but
15 we know that the statute makes clear that there's
16 unrestricted authority to impose conditions, and to
17 address the competitive consequences.

18 Now I'm happy to answer additional
19 questions now about the legal standard and the legal
20 issues in the case, but I'm also happy to hand it
21 over to James, and then we can come back to it at
22 the Board's discretion.

1 CHAIRMAN OBERMAN: David, Patrick has some
2 questions. This is an area he's focused on, so why
3 don't we do that now. I think that would be more
4 efficient, Patrick if you want to go ahead.

5 BOARD MEMBER FUCHS: Absolutely. Thanks
6 Marty very much. David, would you agree with the
7 proposition that the Board's authority to condition
8 is at least -- is constrained by at least part of the
9 approval authority in Subsection D?

10 MR. MEYER: Certainly its authority under
11 11324 is constrained by you know those statutory
12 requirements. We completely agree with the idea that
13 the Board needs to comport its review of the
14 transaction with the standards set forth in the
15 statute, its precedent is very important for the
16 guidance of parties, and you know adherence, or
17 reasonable expectations about how a transaction would
18 be reviewed, so I think we agree with that
19 proposition yes.

20 BOARD MEMBER FUCHS: So in other words you
21 believe that the Board cannot impose a condition at
22 least on a competition related matter unless it finds

1 likelihood and substantiality?

2 MR. MEYER: That's right. That is we think
3 that finding -- in order to impose a condition, and
4 this is true whether it's a minor, significant, or
5 major transaction, in order to impose a condition the
6 statute and the Board precedent I think would say
7 that you must find that there's actually a
8 competitive harm that needs to be addressed that's
9 transaction related, that's not pre-existing, it's
10 not a matter of you know a complaint about
11 contractual arrangement.

12 There's been discussion in prior panels
13 about certain issues, certain kinds of issues that
14 may not rise to the level of transaction related
15 harm, or competitive harm that warrants a condition.
16 So we completely agree.

17 BOARD MEMBER FUCHS: But then isn't it
18 true that in subsection D transactions the Board
19 specifically evaluates things for likely or
20 substantial, but in Subsection C transactions, the
21 Board doesn't use that language.

22 MR. MEYER: Well the statute doesn't use

1 that language, but I think if you look at the Board
2 precedent, essentially there is a similar, if not the
3 same concept and standard that is applied to examine
4 whether there is actually a competitive harm. The
5 Clayton Act analogy may be apt again here, you know
6 in Section 7 of the Clayton Act the language is you
7 know substantial lessening of competition.

8 And the Courts have interpreted that you
9 know to mean essentially what 11324D means, but by
10 the same token in major transactions when the Board
11 examines whether competition would be harmed, it
12 adopts a similar analysis to ask is this really a
13 competitive harm that's coming from the merger? Is
14 it likely? And is it significant enough for us to
15 remedy?

16 BOARD MEMBER FUCHS: It's your view that
17 let's say under the new rules for mergers. It's your
18 view that the new rules for the major merger adopted
19 a Clayton Act standard, the competition?

20 MR. MEYER: Well that's introducing I
21 think there may be two layers to that question Mr.
22 Fuchs. You know one is the question whether there's

1 a competitive harm that warrants imposing
2 conditions. Separately, you know there is a broader
3 conditioning authority under a major merger case than
4 just competitive issues right?

5 And so I think a way of looking at the new
6 rules is that they are tapping into that broader
7 authority of the Board to ensure that the transaction
8 will be in the public interest, and there are a host
9 of issues that the Board pointed to in its adoption
10 of the new rules that are public interest concerns,
11 and you know collectively they led the Board to
12 conclude for example, that there needs to be an
13 enhancement of competition.

14 That is a different standard than what we
15 are focused on here.

16 BOARD MEMBER FUCHS: So if the Board has a
17 broader conditioning standard under C than D, as you
18 described, what can't the Board condition under D
19 that it can under C, and why?

20 MR. MEYER: Well you know we don't have a
21 position on this issue in this case, but I think you
22 know for example, our position here in this case

1 would not require the Board to find that it has any
2 authority under D to condition the transaction to
3 protect passage of rail interests. Now again we
4 don't have a dog in that hunt so to speak on this
5 issue, but you know I think to find that the kinds of
6 conditions address the competition that we're urging
7 here are warranted under D, you would not need to
8 conclude that you have any authority to impose.

9 BOARD MEMBER FUCHS: I understand, but I
10 just want to make sure that I understand the point.
11 Can you maybe give a concrete example of something we
12 could condition under C, but we can't under D, and
13 why? Just so I understand your claim that C has
14 broader authority.

15 MR. MEYER: Well I think you could under C
16 impose conditions that are designed to guard against
17 transaction related harm to passenger rail service.

18 BOARD MEMBER FUCHS: But we can't under D?

19 MR. MEYER: Well I think what I'm saying
20 is I understand the interpretation of D that would
21 say you can't. We don't really have a position here
22 that you can't, but I understand that there's a

1 distinction between the issues that would allow you
2 to go one way and not the other.

3 BOARD MEMBER FUCHS: And so you kind of go
4 into that Clayton Act standard is apt, and that the
5 Board should basically adopt something like a Clayton
6 Act standard when it's both evaluated in the
7 transaction, and when it's deciding on conditions.
8 Is that right?

9 MR. MEYER: Yes.

10 BOARD MEMBER FUCHS: Okay. So why do you
11 think Congress added D to it?

12 CHAIRMAN OBERMAN: Patrick can I just
13 interject for a minute because I'm trying to follow
14 this. Could one of the two of you, David I suppose,
15 state what is when Patrick says should we apply
16 something like the Clayton Act standard, could you
17 articulate that?

18 MR. MEYER: I think actually the language
19 of D-2 does a pretty good job of approximating a
20 Clayton Act standard for review of the transaction.
21 The Clayton Act itself talks about substantial
22 lessening of competition, and if D-2 talks about you

1 know the action was substantial competitive harm.

2 And you know under the Clayton Act as well
3 as under D-2, you do view that whether it's the Board
4 or a Court, would evaluate a transaction by balancing
5 the harm to competition against potential
6 procompetitive benefits from the transaction. That's
7 how the Clayton Act has been applied for a generation
8 at least.

9 So I think that's a way of thinking about
10 what a Clayton Act standard is. Commissioner Fuchs
11 to your question --

12 CHAIRMAN OBERMAN: Thank you David, and
13 Patrick I'm sorry to have interrupted, but I just
14 wanted to.

15 BOARD MEMBER FUCHS: Well I think the
16 direct answer, and David please correct me if I'm
17 wrong, but the Clayton Act says that you know maybe
18 to substantially lessen competition, or create a
19 monopoly right? And any line of commerce in any area
20 of the United States, is that right?

21 MR. MEYER: Yes.

22 BOARD MEMBER FUCHS: All right. And so

1 D-1 also says, well it says a little different, it
2 says is likely to result. There is likely to result
3 in a substantial lessening of competition, creation
4 of monopoly or a restraint in trade. So you can see
5 how the language is almost -- is very similar, is I
6 guess that's why I keep on D-1 is a Clayton Act-like
7 standard.

8 And this David I'm really glad you're here
9 with your background. You know I am certainly I'm
10 not a lawyer, I'm certainly not an anti-trust lawyer,
11 so could you educate us on I thought that under case
12 law at the time like Philadelphia National Bank and
13 Proctor and Gamble that economies weren't a defeating
14 defense for substantial lessening of competition.

15 MR. MEYER: Well so Philadelphia National
16 Bank goes back quite a ways. And it is I would
17 submit it really is not the governing law on the
18 question of how to apply Section 7 of the Clayton
19 Act. The right line of authority to examine is a
20 Supreme Court Case called U.S. versus General
21 Dynamics. And then a subsequent DC Circuit Case,
22 U.S. versus Baker Hughes.

1 In both of those cases the Courts
2 emphasized the importance of examining competition
3 not just in terms of the structural you know impact
4 on concentration statistics, but on the dynamics, the
5 competitive dynamics of the market.

6 BOARD MEMBER FUCHS: Let me ask so what
7 problem do you think that Congress was trying to
8 solve when it added D-2?

9 MR. MEYER: Well so I'm not sure that
10 Congress was trying to solve a problem that wasn't --
11 a competitive problem that wasn't already addressed
12 in the statute. In my view adding D-2 you know
13 plainly places the focus of a minor or a significant
14 transaction on competition versus other public
15 interest concern.

16 It says if the transaction is net
17 procompetitive, then don't be concerned about other
18 public interest facts that may be raised against the
19 transaction. Congress wants procompetitive
20 transactions to go forward, whether or not there are
21 other public interest concerns that might in the
22 Board's view, get in the way of that transaction.

1 I think at least that's a way of reading
2 D-2, and I think it's a reasonable way. If you look
3 at when that was adopted in the statute, the way the
4 anti-trust laws, and the deregulatory thrust of
5 Congress in the rail area, was very much on allowing
6 for transactions that did not harm competition to not
7 be burdened and impeded by concern about you know
8 other claimed public interest issues.

9 So again, you know we don't have a
10 position on the other public interest considerations
11 of the CSX Pan Am transaction, and as James said even
12 in the competitive focus we think on if you were to
13 say if we had no authority to condition the
14 transaction, you know we would still -- we would not
15 suggest that the Board block the transaction.

16 But we think clearly the Board is not
17 hamstrung to say you know we have no power to fix
18 specific concerns that we can fix without doing
19 violence to the broad event.

20 BOARD MEMBER FUCHS: So I want to posit
21 theory, but I just want to quick make sure I kind of
22 concisely summarize that. It's your view that what

1 the Congress was intending for D was that if you
2 don't find likely and substantial competitive
3 effects, the Board should move along?

4 MR. MEYER: Yes.

5 BOARD MEMBER FUCHS: Okay. And regardless
6 of you know whatever other public interest factors it
7 could dream up?

8 MR. MEYER: I think that's a fair
9 interpretation yes.

10 BOARD MEMBER FUCHS: Okay. So let me get
11 your reaction, and let me posit a theory. I think
12 that captures a good bit of what was going on at the
13 time, but you know as you may be aware in '76, before
14 our Congress put forward an expedited merger
15 procedure that wasn't really implemented.

16 And then you know this is what I alluded
17 to yesterday, the Carter Administration out of the
18 prospectus for change, had a bill, the precursor to
19 the Stagger's Act, which is what added D, that
20 thought to put everybody under the Clayton Act, all
21 mergers under the Clayton Act. And then for
22 non-mergers, other cooperative agreements, or nation

1 agreements, it would be under like a standard that
2 looks a lot like D today.

3 And there was a series of Congressional
4 hearings at the time. Donald Flexner, representing
5 the DOJ, and Bob Gallamore for FRA, Sullivan and FRA,
6 Chairman O'Neill for ICC, and the railroads. And
7 there was an extensive discussion about whether or
8 not mergers should just be under the Clayton Act as
9 you're suggesting D is today.

10 And what the railroads contended at the
11 time was because of the language of any line of
12 commerce in any market, the Clayton Act would
13 essentially put an end to mergers. And there were a
14 lot of parallel lines where the shifting of routing
15 would lead to economies that would not be possible if
16 you adopted the Clayton Act standard because you
17 would find a likely substantial lessening of
18 competition in that area, or for that line of
19 commerce.

20 And you lose all those economies, or
21 economies that could exist elsewhere. And there was
22 active discussion and questioning by what I

1 understand to be one of the chief drafters, Florio,
2 Representative Florio, at the time to the railroads,
3 to DOJ, to DOT about whether or not if you apply the
4 Clayton standard you lose a focus on the economy.

5 And he actively suggests whether or not
6 you need D-2 in order to consider the broader public
7 benefits because Clayton would be too cramped for the
8 unique characteristics of the rail industry. I also
9 agree -- so I put that out there to say that I think
10 it's hard to look at that and say the intent was just
11 to apply something very similar to Clayton, when
12 Clayton was explicitly contemplated, and not adopted.

13 And so I would also -- so that's on the
14 Clayton point. So I think that I would like you
15 maybe to disabuse me of that. And then the other is
16 on the factors point. I completely agree with you.
17 The conference report suggests that D stands for
18 limiting factors. If you look at what was going on
19 at the time, in 1978 the ICC issued a policy
20 statement that had all of these factors.

21 And the prospectus for changing the
22 partners said there's so many conflicting factors,

1 public interest factors, we need to focus on
2 competition here. And it's very clear across
3 government and other agencies that that was a
4 concerned effort to focus mergers on competition, and
5 not other public interest factors, some of which
6 include fixed charges, some of which include,
7 actually environmental impacts, and other things that
8 were in that policy statement in 1978.

9 And so the Congress also wanted to limit
10 the factors, but it didn't want to only limit the
11 factors because they had this other concern that
12 Clayton would be too cramped. But in addition to the
13 expert agency claims and other things. So I guess I
14 certainly appreciate that the Congress wanted to
15 limit factors is I guess what I'm saying.

16 And I think the way you read the statute,
17 and to not get involved in all these other public
18 interest matters, is a very reasonable and defensible
19 one, and it's hard to imagine what D stands for
20 anything if it doesn't stand for that. But I only
21 put forward that there's a lot of discussion and sort
22 of when you look at the case law at the time, there's

1 a lot of reason to suggest that if Congress just
2 wanted the Board, or I should say the ICC, or the DOJ
3 to apply Clayton, as you're suggesting is our role
4 today, it would have just done that.

5 But it didn't. And I'm wondering whether
6 or not there's significance in that.

7 MR. MEYER: So Commissioner Fuchs, a
8 couple of reactions to that, and I'll try to focus on
9 responding to your points or questions. And perhaps
10 I'll -- get a field, but I think my first
11 observation is I don't know that I have a unified
12 field theory of how the Board you know considered, or
13 Congress considered potential alterations to the
14 statutory framework you know over the last half
15 century.

16 You know I did litigate side by side with
17 Don Flexner in an anti-trust case, so you know I kind
18 of can envision him as the Department of Justice
19 representative speaking in the competitive issues.
20 He'll offer some observations about those issues, but
21 I want to say I think some of the academic you know
22 question that you're raising is sort of interesting,

1 and maybe very important in a certain context, but I
2 don't think it is actually a necessary path to decide
3 that the particular conditions that you're
4 proposing, and the consequences that you're seeking
5 to address through our conditions, are within the
6 Board's authority in discretion to address.

7 So I think I have not perhaps because of
8 that --

9 BOARD MEMBER FUCHS: I hear you, except
10 you know the first we have Amtrak and MBTA right, and
11 they're asking us to impose passenger rail
12 conditions, something that we've basically never
13 done, and you know rejected at least by pointing to D
14 right, among other reasons.

15 So I think resolving how D limits factors
16 is extremely important for adjudicating that issue
17 right?

18 MR. MEYER: I'm certainly delighted to do
19 my best to be helpful to you.

20 BOARD MEMBER FUCHS: I totally agree, and
21 you don't have tell me that. I hear you. And then
22 the other thing though is, and this is why I think

1 it's a little bit more than academic, is because you
2 all have the burden to justify your conditions. It
3 sets a Board precedent on that. I think everybody
4 has agreed with that.

5 MR. MEYER: Agreed.

6 BOARD MEMBER FUCHS: And so is the burden
7 to what standard? And if it is true that you needed
8 to look at the effect on the benefits of the
9 transaction, say for example factoring in the
10 benefits of NS trackage rights. You haven't made any
11 showing on that.

12 MR. MEYER: I disagree. I disagree.

13 BOARD MEMBER FUCHS: You made a showing on
14 the relative merits of NS tracking rights, and the
15 potential ways the conditions could jeopardize those?

16 MR. MEYER: The conditions in no way
17 affect the NS trackage right. We are fully
18 supportive of NS exercising their trackage rights.

19 BOARD MEMBER FUCHS: Well if CSX granted
20 NS trackage rights under some conditions on the
21 northern route, they would -- the Board would be
22 unjustified in considering whether or not if those

1 circumstances changes that circumstances change the
2 trackage rights should no longer be granted?

3 Because that is a voluntary measure.

4 MR. MEYER: I don't believe that any of
5 the conditions that we are seeking would require the
6 applicants to go back and renegotiate any aspects of
7 their arrangements among the three participants here.
8 James will address the specifics of what we are
9 asking him in a few moments, but we're not saying
10 that they have to relinquish or alter their plans to
11 move the double stack trains to the southern route.

12 We're not saying that they need to avoid
13 taking advantage of the single line route that CSX
14 will have established with its Pan Am railway
15 acquisition, and force traffic over the Pan Am
16 Southern, even if it were inefficient to do so. We
17 are not saying that.

18 All we're saying is that to the extent
19 that those steps and/or the you know the fundamental
20 aspect of this transaction where the evidence I would
21 submit, of the substantial effect is unavoidable is
22 that you know where the Board found in the Pan Am

1 Southern formation case that it was in the public
2 interest to enhance competition, Pan Am Southern
3 against CSX in these markets, to then have CSX
4 invited into the boardroom where they have an
5 interest in that railroad, it's you know I would
6 submit that is proof enough of an anti-competitive
7 harm.

8 If we were in a Clayton Act case.

9 BOARD MEMBER FUCHS: Right, but I think we
10 established that we're not in a Clayton Act case
11 right because the Clayton Act referred, it's you know
12 similar to D-1. D-2 was you know if my contention is
13 right that D-2 was meant to contemplate maybe
14 something broader than Clayton Act. But I think you
15 know stepping back I just want to I mean you all have
16 -- it's fair to say though that you have not weighed
17 the overall public benefits of the transaction, and
18 your contention is that your conditions have no
19 effect on the benefits of the transaction.

20 MR. MEYER: That's correct. So what I
21 would say is whether the overall competitive benefits
22 are you know one million dollars, or one billion

1 dollars, right? You know I think we would be
2 inclined to say that they likely do exceed, and they
3 may exceed. It doesn't matter to the outcome, the
4 net harm, where you just cannot condition the
5 transaction at all.

6 BOARD MEMBER FUCHS: So the Board should
7 intervene when transactions add to competition, but
8 have one aspect of them that don't add to it enough,
9 or that take away from it.

10 MR. MEYER: Well where they have an aspect
11 that will cause harm, that can be remedied without
12 reducing the net benefits of the transaction.

13 BOARD MEMBER FUCHS: Okay. And I'll wrap
14 up by saying --

15 MR. MEYER: It has active increasing net
16 benefits, but the goal isn't to increase the net
17 benefits, it's to remove the harm. And that's how
18 the Clayton Act would be applied. And to your point,
19 and there's probably a very great degree to which I
20 agree with your perspective on D versus the Clayton
21 Act, and going back to Don Flexner and the history of
22 this, you know there certainly has been over the

1 years in the Clayton Act context debate in the
2 anti-trust community about whether if the anti-trust
3 division goes to litigate in a merger case, whether a
4 Court is allowed to consider efficiencies of the
5 transaction as a counter made to the competitive
6 harm.

7 The thrust of current law I would submit,
8 you know, very strongly in favor of allowing
9 Defendants in a merger case to bring forward
10 efficiencies, to show that in fact you know when the
11 efficiencies change the incentives of the parties,
12 and a they mean the transaction is not
13 anti-competitive, that's sort of neither here nor
14 there.

15 I think being clear in the context of the
16 Interstate Commerce Act, that efficiencies are
17 important. It goes back to the you know
18 Transportation Act of 1920, and the whole thrust of
19 why the Board has a role in allowing transactions
20 that are in the public interest to go forward.

21 I think I would take your point a step
22 farther if you're looking at a major merger

1 transaction. One of the reasons why the Board was
2 created by ICCTA that it retained the authority over
3 mergers was to allow for a transaction that some
4 might regard as anti-competitive to go forward
5 because it had substantial public benefits associated
6 with improving the strength of the transportation
7 that were providing significant benefits you know
8 for example, encouraging investment in what would
9 have otherwise been a less effective competitor.

10 And a good example of that is the UPSP
11 merger. you know if you look at the way the Board
12 reviewed that merger transaction, and saw benefits
13 associated with UP taking over the SP network, and
14 remedying competitive concerns with extensive
15 trackage rights, you know, the anti-trust division
16 and the Clayton Act probably would have come to a
17 different outcome and required either a block of
18 that transaction, or some other kind of relief.

19 The Board had more authority to tailor the
20 relief to the public interest in that case, so I
21 think there is this continuity between the
22 approaches. I'm not suggesting it's exactly the

1 same. However, I would submit that you know whether
2 it's a minor transaction, significant transaction, or
3 a major transaction, when you're asking is there a
4 harm that ought to be considered as a harm, or a
5 potential remedy, the basic approach is to examine it
6 like you would in an anti-trust case, and ask is
7 competition going to be reduced, is it likely, and is
8 it substantial.

9 And here kind of circling back to that
10 question you know, unless you're prepared to say that
11 the competition that Springfield terminal provides
12 against CSX is not substantial, allowing CSX to be on
13 the Board of Pan Am Southern is clearly a substantial
14 competitive harm.

15 BOARD MEMBER FUCHS: I want to quick wrap
16 up, and I want to thank you for the robust
17 discussion, as well as my colleagues for allowing me
18 to explore this issue. It's of importance to me,
19 and we discussed it at length in many other cases,
20 and one in particular.

21 So I really do appreciate it. I want to
22 extend my appreciation of my colleagues. I'll kind

1 of wrap it up by saying you know, and get your
2 reaction to it, do you agree with the proposition
3 that the Board should only impose a condition if it
4 could withhold approval on the transaction?

5 So the 7th Circuit -- so immediately after
6 D there was a case that the ICC had, that said we
7 should only impose conditions in a transaction if we
8 could withhold approval, and that decision was upheld
9 by the 7th Circuit. And then there's another case in
10 a major merger, where the D.C. Circuit said we reject
11 the notion that the Board has broader authority to
12 impose conditions than it has to deny approval,
13 basically is what it said. So I guess I'm asking
14 you does the Board have broader authority to impose
15 conditions than it does to deny a transaction?

16 MR. MEYER: Well two points. So if we're
17 focused just on 11324, so not looking at the Pooling
18 Statute, which is a separate point that may apply
19 here. I think I'm not sure that there is a
20 discontinuity between the point about withholding
21 approval, and imposing conditions.

22 In the sense that you know it really it

1 begs the question could the Board withhold approval
2 if there were a competitive harm that was not
3 necessary to go along with the benefits that are
4 included in the calculus of whether there are net
5 benefits.

6 You could end up with this circular debate
7 about.

8 BOARD MEMBER FUCHS: Right.

9 MR. MEYER: Do the benefits, you have to
10 take the harm with the benefits to get the benefits.
11 I think it goes back to the way in which the
12 anti-trust agency put a value on competitive harm.
13 You know if you could carve off the harm without
14 doing harm to the transaction, without doing harm to
15 the benefits from the transaction, then you do so.

16 If you would blow up the transaction as
17 part of doing that?

18 BOARD MEMBER FUCHS: So I mean to
19 summarize though you basically say yes, the Board can
20 impose conditions even if it could not deny the
21 transaction on that basis?

22 MR. MEYER: What I'm resisting is the hard

1 conclusion that the Board could not deny approval
2 under circumstances where there were harms that
3 weren't connected to the benefits.

4 BOARD MEMBER FUCHS: I guess I'm missing
5 the distinction. You know I guess so we look at D-1
6 and D-2 to decide whether or not we can deny the
7 transaction. If we conclude that just based on the
8 transaction as presented, non-condition, we can't
9 deny it. We can still impose conditions, and that is
10 true under both C and D.

11 So if we look at a subsection C
12 transaction, it's the same situation where we
13 conclude we can't disapprove it as it presented. In
14 both instances we can go beyond our authority to
15 deny in order to impose conditions.

16 MR. MEYER: So I think where I think we
17 may agree is that if you assume that the Board has
18 reached that conclusion, that it cannot deny the
19 transaction, then if there is a good argument that
20 you cannot condition it. However, where I think we
21 may be not 100 percent aligned is to conclude that
22 the Board cannot deny a transaction just because you

1 may look at the way in which the parties have chosen
2 to structure the transaction, and you know because of
3 the way they package certain assets together into a
4 transaction, they may have a very procompetitive, you
5 know, five elements of the transaction, but they've
6 chosen to add in something that's blatantly
7 anti-competitive in order to force the Board to
8 approve that under D.

9 I think that the Board probably has more
10 latitude than your question may be suggested to reach
11 out and say no, you can't include this blatantly
12 anti-competitive aspect just because you've chosen to
13 do those five elements of the transaction. Now if
14 that were the case that the only way to get the five
15 elements --

16 BOARD MEMBER FUCHS: So when the Congress
17 tells us that we shall approve the transaction if it
18 meets those criteria's it doesn't really mean you
19 shall approve the transaction. It means we should
20 approve the transaction as we design it?

21 MR. MEYER: I don't think I would
22 necessarily ascribe to that characterization of

1 Congress's statement in D-2. I think I would be
2 inclined to go back to you know where it appears to
3 me that Congress was coming from was the focus was to
4 put the you know, starting point with D-2 is we want
5 to make sure that you are not going off and denying
6 transactions on the basis of issues that aren't
7 competition issues.

8 And when you're examining a competition
9 issue we want to make sure that you're also
10 considering potential benefits associated,
11 competitive benefits associated with the transaction.
12 That's completely consistent with the focus on
13 competition, and it's also completely consistent with
14 our focus here in this transaction.

15 BOARD MEMBER FUCHS: I will only note, and
16 I'll wrap up here. I will only note that D-2 doesn't
17 include the word competitive benefits right, it says
18 public interest in meeting significant transportation
19 needs, so it's you know.

20 MR. MEYER: Fair, fair.

21 BOARD MEMBER FUCHS: All right. But I'll
22 leave it at that. There's also I'll actually just

1 leave it at that, but Dave I really do appreciate the
2 discussion very much, and again thanks for my
3 colleagues.

4 MR. MEYER: Sure thing.

5 CHAIRMAN OBERMAN: Thank Patrick and David
6 both, that was extraordinarily enlightening, and I
7 have a few questions. We have been going for a
8 little over two hours. I wonder if this would be an
9 appropriate place to take a short break. And then I
10 have, I'd like to follow-up David with tying down a
11 little bit of this discussion which was far ranging
12 as it might apply to this case.

13 I will say I don't have any sense of being
14 able to discuss this on the same playing field as you
15 and Patrick, in the terms of expertise in both
16 legislative history and anti-trust law. The last
17 time I looked at anti-trust law was when I borrowed a
18 classmate's notes to take the exam in 1969, and did
19 better than him.

20 But other than that I don't know anything
21 about anti-trust laws, other than what hit the Board.
22 So I have a few more questions. So let's break.

1 It's 11:50. I think what might be gone if it's okay
2 with the Board, we come back in 10 minutes, finish
3 this panel, and then break for lunch. Does that
4 sound like a plan for everybody?

5 MR. MEYER: Sounds good thank you.

6 CHAIRMAN OBERMAN: All right. We'll see
7 you at noon sharp.

8 (Break)

9 CHAIRMAN OBERMAN: All right everybody. I
10 think we are back in session, and I had a little bit
11 of a follow-up David, to this extremely important area of
12 discussion. A couple of points. You know as I was
13 listening to this, and staring at D-2, which I have
14 stared at off and on since I've been on the Board, I
15 thought it was interesting that whatever the intent
16 of Congress was to focus on competition, as Patrick
17 pointed out there at end, D-2 says that we're
18 supposed to weigh anti-competitive against the public
19 interest, and meeting significant transportation
20 needs.

21 It doesn't say in meeting the public
22 interest and procompetitive impacts. It doesn't say

1 significant freight transportation needs. It doesn't
2 distinguish between freight and passenger. So if
3 that if a proposed transaction is not meeting
4 significant transportation needs, including
5 passenger, then we're supposed to take that into
6 account in the weighing part of D-2. Is that not a
7 fair rating?

8 I know you're not here on the passenger
9 side David, but you are a resident expert, so I'm
10 going to take a --

11 MR. MEYER: And Robert Wimbish is here
12 right?

13 CHAIRMAN OBERMAN: Yeah. And he can weigh
14 in on that too.

15 MR. MEYER: Well I think that I'm not
16 sure. When I look at the language of D-2, and it
17 speaks to whether there are anti-competitive facts
18 that outweigh public interest benefits. It appears
19 to be suggesting that the nature of the harms that
20 may outweigh benefits is to be measured in terms of
21 competitive harms. At least that's --

22 CHAIRMAN OBERMAN: The harms are supposed

1 to be measured on the competitive side, but the
2 benefits aren't limited to competitive. The benefits
3 are talking about significant transportation needs,
4 which could be competition, could be passenger
5 service, could mean better freight service, could
6 mean -- they chose a broad term.

7 MR. MEYER: And I think apropos with my
8 observations about the preservation of the Board's
9 authority with the mergers, et al, in the mid-90's in
10 ICCTA, you know I do think Congress has long had the
11 view that you may be uniquely in the railroad
12 industry, of all industries in the country, but there
13 is a desire to make sure that anti-trust law doesn't
14 stand in the way.

15 And it can narrow mind an application in
16 anti-trust law, it doesn't stand in the way of
17 transactions that may be vital to improve the
18 railroad. And whether you view the Union Pacific,
19 Southern Pacific merger as an example, or not. I
20 worked on that case. I thought that was a very
21 procompetitive transaction. But certainly a case the
22 Department of Justice strongly disagreed with that

1 conclusion.

2 But the Board by reserving to get the
3 Congress by reserving to the STB the authority to say
4 you can approve that transaction if it's in the
5 public interest, notwithstanding some
6 anti-competitive facts that may or may not be found,
7 that they you know allowed for the Board to have
8 latitude to serve the interest, the public and
9 transportation needs without being hamstrung by the
10 potential for anti-competitive effects.

11 But I think none of that debate, whether
12 you can or can't weigh certain types of effects
13 against other types of effects, in my view limits the
14 Board's authority to excise anti-competitive harm
15 that's not inextricable to the beneficial aspects of
16 the transaction.

17 BOARD MEMBER FUCHS: Marty you're
18 suggesting you only reach that though if you first
19 find, and maybe you would first make an
20 anti-competitive fact finding.

21 MR. MEYER: I think you have to make an
22 anti-competitive fact finding relating to that which

1 you will excise yes.

2 CHAIRMAN OBERMAN: Yes.

3 MR. MEYER: But I don't think you need to
4 take, you don't need to take unnecessary
5 anti-competitive harms along with the benefits just
6 because they've been latched onto the transaction.

7 CHAIRMAN OBERMAN: You're saying as I take
8 it, that competition is the focus of the sole
9 discussion. If a transaction has anti-competitive
10 effects that can be excised by conditioning without
11 harming the transaction, we're supposed to do it.

12 MR. MEYER: That's our view.

13 CHAIRMAN OBERMAN: Yep, yep, so that's
14 what I want to get to. I want to see if I understand
15 this, and I don't know if maybe this is for James as
16 well if he was going to get to it, but let me ask you
17 David, and then if we should await further
18 exploration of this until James makes his further
19 comments, I'm happy to do that.

20 As I understand it right now CP, with no
21 transactions as of today, CP is comfortable with the
22 current situation. It's access to PAS, it's access

1 to New England and so forth, and you don't want that
2 diminished. Is that a fair summary of where CP is
3 in this deal?

4 MR. MEYER: I'll let James speak to that.

5 MR. CLEMENTS: Yes that's correct.

6 CHAIRMAN OBERMAN: Okay. So your concerns
7 are, that without some conditions or promises by CSX,
8 and I want to go into that, your current situation
9 could be diminished, and your ability to compete in
10 New England could be diminished, and therefore it
11 comes in under this whole discussion of
12 anti-competitive effects of the transaction. Is that
13 a fair understanding of why we're talking about this?

14 MR. CLEMENTS: Yes, that's exactly
15 correct.

16 CHAIRMAN OBERMAN: All right. So
17 yesterday I had a robust discussion with the CSX
18 team, which I assume you listened to about their
19 promises to keep all gateways open, to keep them open
20 on non- -- pricing, or equalized pricing. I cited as
21 an example, a current PAR PAS tariff, that relates to
22 Mechanicville, Hoosac Junction, and Rotterdam, and I

1 thought we had a very clear promise by Mr. Foote that
2 he was going to close no gateways, physically or
3 financially.

4 Did you -- first of all were you both on
5 listening to that interchange?

6 MR. MEYER: Yes I heard that interchange.

7 CHAIRMAN OBERMAN: All right. So and you
8 know CSX has said any promise they've made to us they
9 agreed can be a condition of this transaction. So
10 let's take it to there. Was that discussion, if it
11 was properly written out to cover PAR and PAS, did
12 that satisfy that, at least one of the conditions
13 you're asking for?

14 MR. CLEMENTS: Yes. So there's two
15 components. I would say that that condition, the way
16 I understood the conversation addresses what we would
17 call the neutral access over PAS and to PAR, and also
18 as you discussed over reverse flows that are coming
19 out. So that is --

20 CHAIRMAN OBERMAN: That's part of it. And
21 I realize you have some other concerns, but just on
22 the access part, and your ability to get in there and

1 compete by having access.

2 MR. CLEMENTS: Commercial access.

3 CHAIRMAN OBERMAN: Yeah. Because you know
4 I didn't ask Mr. Foote about this, but I thought that
5 I remembered this. I just didn't remember it
6 yesterday. The page that you put up on the screen I
7 thought covered this as broadly as possible because
8 the statement made by CSX that you had up there said
9 through a series of agreements with NSR GW CSXT has
10 structured the proposed transaction was the other
11 thing, to eliminate any risk of competitive harm
12 relating to these two parallel routes.

13 So he and I talked yesterday about
14 competitive access up and down the main, you know,
15 the line as it runs up to Bangor and so forth. This
16 language specifically covers any risk of competitive
17 harm to the two roughly parallel routes, and that's
18 where your focus is, your access to PAS right?

19 If we put into a condition specifically
20 keeping those gateways open at Mechanicville,
21 Rotterdam and Hoosac Junction, that part would
22 eliminate "any risk of potential harm," we're all on

1 the same page there?

2 MR. CLEMENTS: We're -- on the commercial
3 side we are, but we think that being competitive is
4 also a function of the service that you get into the
5 market. We are not satisfied that the service is
6 adequately addressed at this point in time.

7 CHAIRMAN OBERMAN: All right and I agree,
8 I was just focusing for the moment on access. And so
9 that is what I wanted to deal with. I want to hear
10 you are also concerned, I know you are concerned
11 about the condition of the CSX line, whether there's
12 enough incentive to keep it up from an investment
13 view. You talked about service, and I gather you
14 want to deal with that directly in further
15 presentations, so I think I'll hold my questions on
16 those aspects of what you're asking for until you've
17 been able to -- I think you want to explain it in
18 more detail right?

19 MR. CLEMENTS: Yeah. I'll maybe go
20 through it very quickly at this point.

21 CHAIRMAN OBERMAN: Okay. But I don't want
22 to cut you off. I didn't want to do it piecemeal I'd

1 rather let you make your presentation, then we can
2 come back. Before we do that, do any other Board
3 members want to weigh in? Patrick on David's
4 intellectual exchange? And I don't mean to say it's
5 not practical, it's practical as well as
6 intellectual. Do any of the Board members want to
7 weigh in on that, or shall we let Mr. Clements go
8 forward?

9 VICE CHAIRMAN PRIMUS: I just wondered
10 Marty, I just make it run through just the 11322, you
11 know, in terms of why they believe that to be
12 applicable here, and how it relates to their
13 assertion that you know that the harm it would cause,
14 well the remedy it would produce, you know over the
15 CSX taking over 50 percent of PAS.

16 So David if you could just go over that
17 just a little bit I'd appreciate that.

18 CHAIRMAN OBERMAN: I think that's a good
19 point Robert, in fact I'm glad you raised it, because
20 I'm not sure what pooling means in this context, and
21 maybe David could put some flesh on that.

22 MR. MEYER: Sure, and again yeah this

1 observation in our presentation today that builds
2 primarily on the original formation of the Pan Am
3 Southern and the applicant's view with Norfolk
4 Southern and Pan Am's view at the time that approval
5 under the Pooling Statute was in fact required to
6 allow for the two of them as joint owners of --
7 becoming joint owners of Pan Am Southern, therefore
8 sharing in the profits from the rail operations on
9 Pan Am Southern through you know to be operated by
10 Springfield Terminal, generating revenues that would
11 be allocated back to the owners.

12 They assessed the situation and thought we
13 need a pooling authority. And you know the Board
14 disagreed because they weren't otherwise competitors,
15 but perhaps let's go back to the beginning of the
16 analysis and understanding why they thought that they
17 may need pooling authority, and you'll understand I
18 think why pooling authority, Pooling Statute arguably
19 does apply here.

20 In fact I would suggest this may be a
21 textbook case of pooling in the rail industry. It's
22 a relatively little used authority in recent times

1 because major railroads avoid sharing revenues with
2 folks that they compete with. And the Board is very
3 clear that it really doesn't apply when there are end
4 to end vertical arrangements for example, or traffic
5 rights.

6 But if you're actually sharing, depending
7 how you read from the statute, if you are a rail
8 carrier within the jurisdiction of the Board, you may
9 not "pool or divide traffic or services for any part
10 of their earnings without the approval of the Board."
11 And you know the Board may approve pooling if it
12 would be in the interest of better service, if it
13 will not unreasonably restrain competition.

14 So the Board has the authority to approve
15 the kind of arrangement here between CSX and Norfolk
16 Southern if the arrangement will improve service, the
17 public, or the economy of operation, and not
18 unreasonably restrain competition.

19 CHAIRMAN OBERMAN: Let me translate that
20 to make sure. I think I understand what you're
21 saying, I just didn't understand the word pooling
22 before. So if the deal goes through, Norfolk

1 Southern and CSX will each own 50 percent of PAS, and
2 get 50 percent of the profits. That's pooling? Is
3 that what you're saying?

4 MR. MEYER: you know I have not analyzed
5 you know in depth exactly how the flow is to the
6 owner, but it certainly appears to me that as 50
7 percent owners in an enterprise, in the LLC that's
8 generating a certain amount of revenues from the rail
9 operations of the LLC, whether they're conducted by
10 B&E, or some other operator, you know if that's two
11 competitors with you know parallel lines coming
12 together to share in the revenues from the competing
13 line, I think that is a textbook case of what the
14 pooling statute was designed to address.

15 CHAIRMAN OBERMAN: All right. And then
16 you're saying that under that statute there's an even
17 broader conditioning authority, so if we just take
18 this situation we have been told that one of the
19 pluses of Pan Am is that at last the way, or PAS, the
20 way PAS has functioned, is that it's neutral to all
21 comers. So it has these tariffs that allow CSX, NS,
22 CP, anybody else to access the PAS line on exactly

1 the same terms, so that the shipper then or
2 receiver, has several competitive options.

3 And that's the way it's been run now. It
4 sounds to me like you're saying if we allow CSX to
5 come in and replace -- to come in as a 50 percent
6 holder replacing Pan Am, now there's pooling there
7 between CSX and NS, we can condition that by saying
8 you can't reduce all those competitive options that
9 have been in place prior to your coming in as a 50
10 percent owner. That's one kind of condition we could
11 impose by keeping these gateways open on equalized
12 pricing.

13 That's your point about the conditioning
14 authority under 322?

15 MR. MEYER: If the Board so chooses two
16 points to there I would suggest, and James may want
17 to chime in on the merits. But point one is I think
18 if the Board concludes that there is pooling here, I
19 think the statute is pretty clear that the Board's
20 ability to impose conditions is not limited in the
21 way -- in whatever way 11324 D-2 is limited.

22 CHAIRMAN OBERMAN: Yeah and that's under

1 B.

2 MR. MEYER: Yeah this is 11322-B correct.

3 CHAIRMAN OBERMAN: There's no limitation,
4 it just says they impose conditions governing the
5 pooling or division.

6 MR. MEYER: Correct.

7 CHAIRMAN OBERMAN: Okay.

8 MR. MEYER: The second -- and maybe I have
9 three observations, one of which goes back to
10 Commissioner Primus's question. But my second
11 observation is to the way in which you've described
12 the condition is probably different and broader than
13 what we suggest is warranted. We're not looking for
14 a condition that freezes rates, or requires
15 necessarily requires that Pan Am Southern treat every
16 condition and go on its way.

17 We're not trying to rigidify the way in
18 which Pan Am Southern operates in the market, and
19 approaches the market. We're just trying to preserve
20 the incentives that exist today for Pan Am Southern
21 to cooperate in an effective and interested way in
22 building traffic and interchange with Canadian

1 Pacific.

2 And we think, as James has said, that the
3 way in which we heard the commitment being expressed
4 yesterday, and there are various points in the papers
5 that the applicants have submitted about the gateway
6 condition, keeping gateways open on commercially
7 reasonable terms. And specifically now, be clear
8 that that doesn't apply only to the Pan Am railway
9 gateways, such as the connection with Pan Am Southern
10 at Ayer, but also applies to the transaction
11 participants as a whole, and to the Mechanicville
12 Gateway, the Pan Am Southern for traffic to Pan Am
13 Southern, and then across Pan Am Southern to Pan Am
14 Railway.

15 We think that's now clear on the record.
16 To the extent it is clear on the record we think that
17 commitment keeping the gateway open on commercial and
18 reasonable terms is an adequate reflection of what we
19 were seeking, without going so far as to say there's
20 necessarily the equalization, or other specific, you
21 know freezes of how Pan Am Southern approaches the
22 marketplace.

1 CHAIRMAN OBERMAN: I'm sorry Robert go
2 ahead.

3 VICE CHAIRMAN PRIMUS: I'm sorry Marty,
4 just staying on that David, so were you suggesting,
5 or saying that the potential there for you know a
6 joint venture between CSXT and Norfolk Southern you
7 know at Pan Am Southern would harm you in a sense it
8 would tend to direct more traffic.

9 You know the gateways would remain open,
10 but in terms of the direction of the traffic would be
11 more towards -- geared towards in essence CSXT
12 because they of course stand to benefit from that.

13 MR. MEYER: I don't think that's the
14 thrust of the argument we're making. I think the
15 thrust is not that there's an incentive to divert
16 traffic away from us. I think the concern that we
17 have is that because of you know, and I'll try and
18 connect to this to the Pooling Statute, but the same
19 analysis applies under 11224.

20 That is James indicated in his chart about
21 changing incentives. To us the centerpiece of what
22 causes the harm is has nothing to do with the Pan Am

1 Railway part of the transaction, it has to do with
2 CSX acquiring the Pan Am Southern interest that used
3 to be owned by Pan Am. The bringing CSX into the
4 ownership of the LLC and the boardroom.

5 Now I think under the analysis that the
6 applicants presented to the Board a stage where Pan
7 Am Southern was formed about pooling, I think that is
8 simultaneously a control issue, and I think and a
9 pooling issue in the 11322. So again, the question
10 is what about that causes competitive harm.

11 We're not saying it causes harm to us.
12 What we're saying is Pan Am Southern's incentive and
13 ability, and the investments and service levels there
14 they go along with the incentive, to compete against
15 CSX are reduced by the fact that CSX is there as a 50
16 percent owner in the Board room with no incentive to
17 compete against itself.

18 Now you know we've heard CSX point out
19 that when we have a great interest in interchanging
20 traffic with Pan Am Southern with a number two
21 interchange partner. I would submit of course they
22 are. They're one of the two eastern railroads. Of

1 course they're going to have interchange traffic with
2 Pan Am Southern. We understand that.

3 But they don't have an incentive. They
4 have an incentive to terminate and originate traffic
5 that's local, and bring it over to the CSX system for
6 sure, and we're not suggesting that that goes away,
7 but when you look at Pan Am Southern's role as part
8 of a through line that competes against CSXT long
9 haul routes, that incentive goes away.

10 And that's where you know I think we heard
11 a number of colloquies with the applicants about
12 scenarios that it wouldn't be hard to come up with
13 scenarios where there were particular investments you
14 know needed at Pan Am Southern, and there would be a
15 very different view that CSX would have about whether
16 to invest to maintain service levels, or adjust the
17 service design on the railroad, or some other
18 decision where you know the motivation for the
19 investment for the change would be to either compete
20 better against CSX, or to maintain the ability to
21 compete effectively against CSX.

22 And you know Norfolk Southern may have a

1 view that it would want to make the investment. CSX
2 would not have incentive to make that investment. We
3 just want to make sure that the situation is
4 protected by enforceable positions in perpetuity.
5 Again this is a generational transaction, or a
6 multi-generational transaction as the applicants have
7 pointed out, and so that the service levels, the
8 investments, aren't as a result of introducing CSX as
9 an owner, and an influencer is not going to be to
10 diminish what would otherwise have been a competitive
11 service route that competes against CSX's service
12 route. It's really as simple as that.

13 VICE CHAIRMAN PRIMUS: Okay. I appreciate
14 it, and I'm going to have to untangle it because it
15 almost sounds similar to how I'm saying it. I know
16 you're saying it's not exactly, but if they're making
17 improvements, and doing things that are going to
18 advantage CSX to that, and like you said the long
19 haul traffic as its results on your side is not
20 benefitting from that.

21 You know it sounds not necessarily that
22 they're drawing away, but what you're saying you're

1 not going to gain from those improvements and
2 enhancements.

3 MR. MEYER: I think maybe I'm trying to
4 suggest to differentiate a future between the way you
5 framed it and the way I framed it is to think of it
6 this way. Today if you're a shipper moving you know
7 traffic from the Midwest to Boston. There are two
8 through routes. There may be a number of ways to get
9 to the west end of New England.

10 VICE CHAIRMAN PRIMUS: Right, right.

11 MR. MEYER: Either Albany or
12 Mechanicville. You might choose NS. You might
13 choose CSX. You might choose CP. Today in order to
14 get to Boston there are two routes. There's the Pan
15 Am Southern and there's the CSX. The competition
16 between Pan Am Southern and CSX disciplines the
17 competitive outcomes for the overall right of
18 competition.

19 So shippers not CP, but the shippers
20 benefit from more competition for service levels,
21 more competition in rate levels, terms, everything
22 else, and that's why we like competition.

1 Competition is good. After the transaction CSX is in
2 the driver's -- not necessarily in the driver's seat,
3 but can influence how good an option that Pan Am
4 Southern route is. And the less good the Pan Am
5 Southern route is, the less competition there is
6 between the two, and the less discipline there is for
7 rates and service levels.

8 VICE CHAIRMAN PRIMUS: Right.

9 MR. MEYER: The traffic moving to Boston.
10 We and our shippers benefit from there being
11 competition between those two routes so that there
12 are two competitive routes. We understand that we're
13 not going to win all the traffic west of
14 Mechanicville, and we in fact interchange traffic
15 with CSX as well on these routes.

16 But overall the marketplace has benefited
17 a lot, and we get carried along with that by there
18 being these two competitive alternatives, and we're
19 concerned that the transaction diminishes the quality
20 of one of those two, or could diminish it, or likely
21 would if unconditioned, diminish the quality of one
22 of those two routes, making competition not function

1 as it does today.

2 VICE CHAIRMAN PRIMUS: Thank you.

3 CHAIRMAN OBERMAN: David, I wanted to
4 follow-up. Thank you Robert, I think that discussion
5 was also helpful and enlightening us here. I want to
6 get back to this question of the access points
7 because that really is a concern of mine.

8 I wasn't asking, and I don't think anybody
9 was suggesting that the absolute amount of an
10 interchange fee be frozen in perpetuity. Nobody
11 suggests that. The commitment that I understood they
12 were making is that whatever levels those were they
13 would be equalized for all, so they wouldn't charge
14 you a different interchange fee than they'd charge NS
15 coming in, or somebody else. It's the same under the
16 PAS route, so that the competitive options would
17 remain what they are today as I understand it under
18 PAS's operation.

19 Now you've referred to their commitment to
20 charge commercially reasonable access rates. Is that
21 a term of ours in your view? How is that defined
22 commercially? How do we know what's commercially

1 reasonable?

2 MR. MEYER: Well I'll speak briefly on the
3 use of that phrase in Board precedent, and maybe
4 James can address what it means to him from a
5 commercial perspective. You know in merger
6 transactions for some decades now the Board has
7 imposed conditions for maybe another way to put it is
8 required that applicants honor representations for
9 commitments relating to keeping gateways open on
10 commercially reasonable terms.

11 And you know when I think there's been not
12 very much debate about what precisely those terms
13 mean, but there has been a great deal of debate,
14 which I think led several decades ago to a very
15 strong conclusion, and I think really binding
16 precedent in the Board, that in the context of end to
17 end transactions.

18 We're not in an end to end transaction
19 here. This Pan Am Southern issue that we're talking
20 about is a horizontal competitive issue, so it's a
21 different kind of fish. But in end to end
22 transactions where the issue has been preserving

1 gateway access, you know preserving the viability of
2 existing intra-lying routes between merging partners,
3 or between a merging partner and a non-merging
4 partner where there's a new single line route that
5 may be available that you know it's been very I
6 think, clearly established that what it means to keep
7 a gateway open is first of all that they do not --
8 and we've heard Mr. Foote say this yesterday.

9 We do not close it physically, so you
10 still continue to go to the gateway. You continue to
11 interchange traffic there, and in order to keep it
12 open physically I think you know you don't degrade
13 the service level so much that it becomes you know,
14 not a viable point of interchange for whatever was
15 the pre-existing connection.

16 Of course that has to be dependent on
17 traffic levels, whether there's a demand for it, you
18 know, nothing should be frozen. But then on the
19 rates side of the economic terms you know also, as
20 Mr. Foote said yesterday, and I think he said he was
21 the inventor of this approach in the CNWC case, and
22 that may be thinking back I can't think of a case

1 that used this terminology before then, so I take him
2 at his word there.

3 The aspect that involves commercial and
4 reasonable terms is you know that you could keep a
5 gateway open physically, but if you raise the rate
6 factor between the interchange point and the
7 destination, or the origin and the interchange point
8 so much that it becomes economically non-viable for
9 someone to construct a through route using that
10 interchange, well then you've made it -- you've
11 respectively closed it. That's the idea.

12 But defining where that what it means to
13 have a rate level that's too high, commercially
14 unreasonable, is impossible to do in the abstract in
15 my opinion. The Board has considered and talked at
16 great length about how important it is not to impose
17 conditions of the kind that once upon a time were
18 mandatory merger cases. You may have heard of the
19 DP&I conditions which imposed great equalization, and
20 other rigid protections of connecting carriers that
21 prevented merging parties from taking advantage of
22 single line efficiencies, and pricing to the market.

1 It eliminated the possibility of
2 differential pricing and so forth. Those were in the
3 1980's found by the Board of the ICC correctly to be
4 anti-competitive, and counterproductive to allowing
5 for a transportation network that was characterized
6 by market based pricing, and flexible competition by
7 railroads against trucks, against the rail
8 competitors, against other modes, you know,
9 considering market factors across the board.

10 So I think the Board has clearly said that
11 commercially reasonable terms does not mean freezing
12 rates, does not mean equalizing rates across
13 gateways, or across all destinations. It preserves
14 the ability to price to the market. It just it says
15 that there is an outer limit on what can be done that
16 would prevent a connecting carrier from providing an
17 economically viable offer using the interlining route
18 that previously had handled traffic over that
19 gateway.

20 CHAIRMAN OBERMAN: So well let me see if I
21 can understand it in this situation. As you
22 understand it if we look at other parts of PAR, we

1 are looking at those charts and bringing propane in
2 from Sarnia up through Bangor. After this
3 transaction CSX will be able to offer a single line
4 rate that it couldn't offer before.

5 And single line rates tend to be more
6 advantageous to the shipper than an interchange rate
7 right?

8 MR. MEYER: Yes.

9 CHAIRMAN OBERMAN: And you're saying that
10 neither you, nor prior Boards are suggesting that
11 somehow we don't allow CSX to get the benefit of its
12 acquisition by offering a lower single line rate
13 where it can.

14 MR. MEYER: Absolutely correct.

15 CHAIRMAN OBERMAN: Okay. So I understand
16 that enough, and I don't know that anybody was
17 asking, but it sounded like it in my questioning that
18 that is not what I was focused on. I was focused on
19 exactly what you're talking about here, and I'm still
20 focused on it.

21 On PAS is it your understanding that if
22 CSX wants to ship traffic on PAS it's not a single

1 line rate because PAS is a separate entity. So they
2 would still be interchanging with it as they do now?

3 MR. MEYER: Well you know I think that
4 that's right. I think that there may be ways in
5 which the parties could structure their relationship
6 such that you know they may conceivably grant CSX
7 haulage rights in which case it may be more
8 equivalent to a single line rate. And I'm not close
9 enough to the specifics of this transaction you know
10 as to that aspect of the commercial relationship to
11 be able to say one way or the other whether perhaps
12 there may even be an aspect of that already present
13 in their intentions, I don't know.

14 CHAIRMAN OBERMAN: Well aren't they
15 telling us, and maybe we can clear this up when we
16 talk to them again today. I thought it was clear,
17 that B&E is going to operate this railroad
18 independently. It's going to be in charge of
19 pricing, so when either CP or CSX approached B&E and
20 they want to interchange some place as they do now,
21 rather down in Mechanicville, they're like dealing
22 with an independent railroad.

1 It's not going to be CSX dealing with
2 itself. Is that what they're trying to tell us?

3 MR. MEYER: Well I think they've told us
4 that as to CP that is correct. As to CSX, I think
5 what I heard yesterday was that the B&E pricing
6 authority has exceptions for arrangements that
7 already exist between NS and Pan Am Southern for
8 haulage rights, and I believe they were also
9 referring to arrangements as part of this transaction
10 involving CSX's commitment, temporary commitment, to
11 route certain traffic over Pan Am Southern.

12 But I'm not sure. I don't have the
13 recollection as to precisely what the financial
14 arrangements were with that CSX traffic with the PAS.
15 As a general proposition I think our view would be
16 given the long run you know after this short-term
17 arrangement, we have if you look at the traffic data,
18 and you also look at the investment CSX has made in
19 its own line, the southern route, how it connects to
20 its yard at Selkirk, you know Albany. You
21 know I think, and James can speak to this, that our
22 expectation would be that CSX wouldn't be interlining

1 traffic over Pan Am Southern, it would running
2 traffic on its service route, the southern corridor,
3 and so there probably won't be a long-term CSX Pan Am
4 Southern interline rate to think about as a
5 benchmark to what is a commercially useable rate if
6 that was your proffer.

7 CHAIRMAN OBERMAN: So I understand two
8 things David from what we heard yesterday. One is
9 there is some local traffic on Pan Am Southern that
10 CSX serves now, which would go on indefinitely as
11 long as those local customers are there, so.

12 MR. MEYER: That's right. I was thinking
13 of traffic, I was thinking of other traffic that was
14 going to be overhead traffic.

15 CHAIRMAN OBERMAN: All right. So you have
16 that traffic. That's going to stay, and that is
17 traffic -- let's just take them one at a time because
18 I think now if we're going to get into this, and
19 we're going to talk about conditioning, we better be
20 very specific, that's all, so we don't run into a
21 situation that we don't know what we -- we all have a
22 different view of what we missed.

1 So as I understand it if we start with the
2 local traffic that is there now, which CSX says will
3 always be there as long as there's local customers
4 there, it's the only way they can get there. Today
5 that traffic is interchanged I think at Rotterdam, if
6 it's coming from the west by CSX, and they pay a
7 tariff, interchange tariff, and based on the tariff I
8 looked at the charge to CSX is the same as the charge
9 would be if CP were bringing that same traffic in at
10 Mechanicville, tariff rates, even though they are --

11 MR. CLEMENTS: Mr. Chair.

12 CHAIRMAN OBERMAN: Yes.

13 MR. CLEMENTS: One comment. My only thing
14 is the vast majority of the traffic that we
15 interchange today is not interchanged onto the tariff
16 rate. It's on the basis of a negotiated division of
17 revenue that we would put together in conjunction
18 with the PAS. So I don't know how much traffic moves
19 on that tariff.

20 And then I agree the local traffic will
21 always be there. The question is in the longer term
22 will they optimize the operation to serve the local

1 traffic, rather than potentially maintain through
2 option all the way over the PAR, in terms of how you
3 organize it.

4 And so I'm not saying that people are
5 going to do that tomorrow morning after the approval,
6 but as you think of those incentives, and look at it
7 over time the question is will the nature of that
8 operation follow that infrastructure, be much more
9 oriented towards providing adequate service through
10 the local rather than the right service for the
11 longer.

12 CHAIRMAN OBERMAN: And I appreciate that.
13 NS service is obviously important. But let's just
14 stick with the access costs for the moment just so we
15 can fully understand that. Would it be accurate if
16 either of you on the so-called equalized tariffs that
17 they at least set the terms for sort of a base for
18 you to then negotiate your own contract rate for your
19 access, so you have some bargaining power that you
20 either could go with the tariff, or you can get a
21 better deal on a contract rate.

22 Either way you have equal chance to get on

1 the PAS with the other carriers coming into the
2 system like CSX and NS.

3 MR. CLEMENTS: Yeah and again what we've
4 heard from as you described, the tariffs and the
5 other commitments, we do think the representations
6 that are made as conditions of the transaction, all
7 of them, both what was represented yesterday as well
8 as their recent submission does put us on a
9 commercial footing that would allow the PAS to
10 provide a competitive alternate.

11 CHAIRMAN OBERMAN: Well I guess one
12 question, getting back to this definition of
13 commercially reasonable, they could raise everybody's
14 rates other than their own, to a level that's not
15 commercially reasonable, and foreclose anybody from
16 using PAS, other than themselves, in theory if it
17 weren't constrained in some way. Other than a
18 regular rate cases thing right?

19 MR. CLEMENTS: Correct.

20 CHAIRMAN OBERMAN: So would it be accurate
21 I guess is more of a question for David, or either of
22 you, when you say commercially reasonable rates that

1 could be imposed as a condition of a merger is that a
2 different rate measurement that how you might
3 measure a rate in a rate case challenge?

4 MR. MEYER: Yes. I think it is. It's not
5 -- I think I can state pretty categorically that I've
6 never thought of what a commercially usable rate
7 ceiling might be as determined by what would the
8 application of the Board's, you know,
9 unreasonableness standards dictate.

10 Among other things you know you wouldn't
11 ask the question as a predicate to examining a rate
12 level whether there was market power. They wouldn't
13 ask the question whether you know, what would a SAC
14 rate constraint be, or you know what is you know 180
15 RVC as a threshold.

16 None of those questions really are germane
17 to the question of what is a commercial reasonable
18 rate. The commercial reasonable rate you know that
19 standard may be higher or lower. You know it's a
20 different inquiry as to whether it allows for that
21 route to remain competitively viable.

22 You know the one thing I'd say though is

1 it's important in this case to think you know when we
2 say that the commitment to a commercially reasonable
3 rate is one that is valuable and important in this
4 case, you know, you have to remember in this case,
5 this is not an end to end case, this is a horizontal
6 case.

7 And so what we're trying to protect
8 against is the different incentive that exists at Pan
9 Am Southern with respect to maintaining Pan Am
10 Southern as a competitive viable long-term
11 alternative for all shippers and all connected
12 railroads. And so --

13 BOARD MEMBER SCHULTZ: Could I just ask a
14 quick question?

15 MR. MEYER: Certainly.

16 BOARD MEMBER SCHULTZ: I'm sorry to
17 interrupt the line of questioning, but you know I
18 believe that CSX has actually characterized the
19 transaction as end to end, although I'm not 100
20 percent sure on that right now. And you were
21 describing it as horizontal, and I wondered if you
22 could just perhaps go over with a little bit of

1 specificity as to why you believe it's horizontal.

2 MR. MEYER: Sure. Maybe I'll use this
3 map, which is built on a map that the applicants have
4 used to describe the transaction, and I think the way
5 would answer it is to say the overall transaction
6 that's being proposed here has both end to end
7 features, and horizontal features. The part that
8 involves combining the blue route, which is CSX's
9 system that ends near Worcester, Mass with the red,
10 which is the Pan Am Railway that starts near
11 Worcester, Mass and heads up to Ayer across track and
12 drives into New Hampshire and into Maine.

13 You know that's an end to end transaction.
14 That will create new single line routes for traffic
15 from Maine onto the CSX Network. CSX has described
16 the benefits of doing that. We agree with that.
17 That's the end to end part of this transaction. The
18 part of this transaction that's not end to end is
19 combining the green, which is Pan Am Southern, with
20 the blue.

21 Now it's not being combined outright, it's
22 not a merger between the two, but that's where CSX,

1 today CSX has no relationship to the Pan Am Southern
2 other than as a competitor, and the second map we
3 show the blue again, and the green again. The green
4 is the Pan Am Southern, this is what we call the
5 Hoosac Tunnel Route between the Albany area, so
6 Rotterdam Junction is near where Mechanicville is
7 shown on the map, so the route goes across northern
8 Massachusetts to Ayer, Mass near Boston, and connects
9 with the Pan Am Railway, but also serves the Boston
10 and Metropolitan area, and eastern Massachusetts,
11 southern New England.

12 CSX's southern route does exactly the same
13 thing in direct competition with that route, and that
14 is a horizontal competitive issue, so those two are
15 competitors today, and with no ownership
16 relationship, or overlapping directors, or any
17 entanglement of that sort, with the transaction that
18 will no longer be the case, CSX will be the half
19 owner -- it will be the 100 percent owner of the blue
20 line, and a 50 percent owner of the green line, and
21 that's what reduces horizontal competition.

22 Competition that's head to head today will

1 be diminished.

2 BOARD MEMBER SCHULTZ: Thank you.

3 CHAIRMAN OBERMAN: Patrick do you want to
4 --

5 BOARD MEMBER FUCHS: Following up on
6 Michelle's very good question. Is it fair to say
7 that CP is focused very much on a specific definition
8 of intermodal competition, and does not provide
9 evidence on product competition, geographic
10 competition, or intermodal competition?

11 MR. MEYER: We're certainly focused on
12 preserving the rail to rail competition that exists.
13 I think to answer your question there's no doubt that
14 for you know any given carload or container load of
15 traffic that runs on one of these two rail routes,
16 that if you were doing an analysis in a rate case for
17 example, of whether there were other competitive
18 influences on that particular flow of traffic, you
19 know you would need to consider things like --

20 BOARD MEMBER FUCHS: I appreciate that,
21 but you've mentioned horizontal merger. Isn't the
22 case under horizontal mergers that you have to define

1 a product market and a geographic market, and also
2 under our DMIR precedent you look at the broader
3 transportation market, so that includes intermodal.
4 And I guess whether or not it's CP's view that
5 parties can carry the burden, and requesting a
6 condition without addressing product competition,
7 geographic competition or truck competition.

8 MR. MEYER: Well I think the answer is you
9 know again the question is you know are there circumstances
10 where you can carry your burden without a thorough
11 investigation of all of those potential forms of
12 competition? I think yes there are. And this may be
13 one of those cases.

14 Now there are also I'm sure, other would
15 be hypotheticals.

16 BOARD MEMBER FUCHS: Real quick on that
17 point though. Under a traditional horizontal merger
18 guideline type analysis, you have to address product
19 and geographic competition.

20 MR. MEYER: But so this may be somewhat
21 metaphysical, but I would think yes, in a merger
22 analysis under the Clayton Act for example, you would

1 typically although there is a trend in the
2 anti-trust world away from this towards direct
3 examination of competitive facts. But typically yes,
4 you could find a market, and you ask the question you
5 know in a case of a multi-products firm, so both of
6 these rail lines carry a lot of different traffic.

7 Some of that traffic may be highly truck
8 competitive where if you shut down the rail line
9 tomorrow there would be no effect on competition
10 because trucks are a perfect substitute, and so
11 there's no competitive effect from either getting rid
12 of the rail lines all together, or combining them.
13 None of that matters to competition for maybe some of
14 the traffic on those lines.

15 For other traffic on the line you know
16 rail may clearly be a better transportation solution
17 that trucks or a barge, or geographic competition and
18 so forth.

19 BOARD MEMBER FUCHS: But CP hasn't
20 provided any information or data to help the Board
21 identify that.

22 MR. MEYER: I think that that's correct in

1 this case. We have not done a movement by movement
2 competitive analysis, or provided economic expert
3 testimony. However, I would submit that in a case
4 where we're examining you know significantly parallel
5 rail routes that are recognized by the applicants as
6 effectively the only two rail routes serving flows of
7 traffic in a corridor, and diverse flows of traffic
8 in a corridor.

9 The Board can take notice of the fact that
10 there's going to be traffic, significant volumes of
11 traffic in those kinds of corridors where having rail
12 to rail competition is in fact improving the
13 competitive equilibrium relative to a world where
14 there's no rail to rail competition. It just isn't
15 -- we know enough to know.

16 I think the Board certainly knows enough
17 to know that getting rid of rail competition serving
18 New England would deteriorate the competitive
19 options, but also the results of you know it would
20 result in higher rates, worse economic terms, and
21 reduced incentives to provide good service for a lot
22 of that traffic. Not all of it, you know, in a lot

1 of cases the driver will be truck competition,
2 absolutely.

3 BOARD MEMBER FUCHS: You haven't told us
4 how much of it has truck competition. Yeah based on
5 the record you presented you couldn't say whether or
6 not it's 100 percent, 90 percent, 80 percent.

7 MR. MEYER: I think that that -- James may
8 have an informed view based on his knowledge of the
9 types of traffic that CP participates in, so I'll
10 suggest perhaps if he answers that question.

11 MR. CLEMENTS: Unfortunately David, I
12 don't have a deeply informed view of the competitive
13 dynamics.

14 CHAIRMAN OBERMAN: Let me jump in here for
15 a minute if I could Patrick if you don't mind. In
16 this case, and I realized that these are important
17 policy considerations as a general proposition. But
18 I think David what you're saying, I'm going to say it
19 differently. In this case where the applicant has
20 come in and told us at the very outset in their own
21 application to see the competitive problems of our
22 buying in half of PAS.

1 And we're going to tell you before anybody
2 has even asked us for relief, we're going to twist
3 ourselves into a pretzel to avoid anti-competitive
4 impacts. We're going to have B&E come in, we're
5 going to have them control pricing. We're going to
6 subject ourselves to arbitration on capital
7 investments. We're even willing to put a fiduciary
8 who controls the decisions rather than us. They came
9 in and told us that this whole thing was
10 anti-competitive if something isn't done to restrain
11 it.

12 And they made all these promises about
13 open access and so forth. So I'm not sure on the
14 state of this record we're powerless to act unless
15 CP, or somebody comes in with an economic analysis of
16 how much of this is truck competitive and so forth.
17 It could if you had an applicant coming in saying
18 there's no anti-competitive effects, and somebody
19 like CP wants to say oh yes there is.

20 They have some obligation to make a
21 factual record. But here you have a concession from
22 the applicant that there's an anti-competitive

1 effect, and the only thing we're trying to figure
2 out is how to make sure their promises are carried
3 out. I don't see the need in this case unless I'm
4 missing something to inform the factual record as a
5 basis for us to figure out how to make sure if we're
6 going to approve this transaction, there are
7 competitive protections here.

8 Which David, I'm not trying to argue your
9 case for you, but I am trying to articulate this so
10 we can move ahead. Is that a fair way to think about
11 it?

12 MR. MEYER: I think that is a fair way to
13 think about it in this case, and I also think in
14 addition to the applicant on recognition of the
15 competition between these two lines, and you know we
16 could also look back to one of the transaction
17 participants, or excuse me, two out of three of them,
18 pointing out exactly the same competitive
19 relationship when Pan Am Southern was formed.

20 I also think beyond that I think it is you
21 know absolutely within the Board's authority here on
22 the record that we have about the competitive

1 relationship between these lines, and knowing what
2 the applicants have said, which is the truth, that
3 this is a transaction forever. You know, the
4 ownership of these lines, the competitive
5 relationship between these lines is
6 multi-generational.

7 And so if there's you know regardless of
8 whether you know 10 percent of the carloads, or 50
9 percent of the carloads, or 80 percent of the
10 carloads on these two routes, you know, a benefit
11 from rail to rail competition rather than other
12 potential constraints, like geographic competition
13 and truck competition, over the next hundred years if
14 there isn't going to be competition between the two
15 routes, we know I think with a certainty, that the
16 environment -- transportation environment will be
17 less competitive, and that is part of the competition
18 that the Board has authority to remedy.

19 CHAIRMAN OBERMAN: Aren't you also saying
20 David, and I was thinking about this when Patrick was
21 focused on the current state of competition, which is
22 -- and I don't mean it's just as important, but just

1 for the reason you said I was thinking that neither
2 CP, NS, or anybody else can tell us today how you
3 might use these lines if you have access to them over
4 the next 100 years.

5 The nature of freight may change. Traffic
6 which doesn't exist today may come in tomorrow that
7 there are customers there that want to use your
8 service. And so we're trying to talk about
9 preserving a rail line for the long-term and not just
10 talk about a current anti-trust case I guess. So I
11 think that's what you were saying that this could be
12 a permanent diminution of competition if it isn't
13 protected.

14 MR. MEYER: Absolutely, and you know again
15 in this case where we have horizontal competitive
16 alternatives that have been active, they've been
17 invested in for exactly that purpose, the Board has
18 approved transactions for exactly that reason, for
19 the applicant to recognize the need to preserve
20 competition.

21 In this case we don't need to you know
22 over generalize. In this case I think there's just

1 no doubt that preserving the competitive world with
2 this route is well within the Board's authority on
3 this route here to preserve.

4 CHAIRMAN OBERMAN: Patrick were you
5 finished? All right. I wanted to go back to the
6 commercially reasonable question David, and if this
7 isn't fair to challenge you at this setting, and if
8 you're not prepared tell me so. But I have been
9 trying to think through in the future. Let's assume
10 we give those transactions, and we say what Mr. Foote
11 and I were talking about yesterday, our conditions
12 here with you agreed to that access will remain open
13 at every access point.

14 And as we were talking about, equalize
15 rates which have to -- and I guess to me that's part
16 of the same thing commercially, which has to be
17 commercially reasonable. And the day comes when you
18 get a rate to interchange at Mechanicville which you
19 think is not commercially reasonable. What happens?
20 You come into the Board, and ask us, tell us that it
21 could be ten years from now, they're violating a
22 condition.

1 And the violation is that here is a rate,
2 and it's not commercially reasonable. How would you
3 prove that to us?

4 MR. MEYER: Well I think I again, I would
5 echo what others have said at this hearing because I
6 think the first thing that would happen is if a
7 condition were imposed requiring that rates be such
8 to preserve the commercial reasonableness and keep
9 the gate wide open, the first conversation would be
10 with transaction participants. And to try to
11 understand how they thought that a particular rate,
12 or approach to ratemaking was consistent with this
13 obligation that they have, and there would be a
14 negotiation.

15 And that negotiation may not involve us.
16 It may involve our shippers directly, the applicants
17 or the transaction participants. And I would
18 actually expect that that would be an important part,
19 maybe the dominant part of implementing a condition.
20 Disputes might avoid the Board all together.

21 CHAIRMAN OBERMAN: Well I don't disagree.
22 I mean have said repeatedly, I said it yesterday,

1 I've said it since I've been on the Board, we much
2 prefer people to resolve these things themselves, and
3 hopefully set the right terms, incentives will be to
4 do that. I guess I was implicit in my question.

5 I'm assuming that private negotiations
6 have failed, then when?

7 MR. MEYER: Right. Well then I think you
8 know it's probably quite impossible to be too
9 specific in a hypothetical future scenario, but I
10 think the basic idea could be you know here are the
11 commercial terms being offered by the transaction
12 participants that in our judgment they are not
13 commercially reasonable. Why? Because they don't
14 allow for an interchange between CP and
15 Mechanicville, or traffic going across the Pan Am
16 Southern to be competitive in the market.

17 And in this particular case probably it
18 would be an examination of what are the factors there
19 on whether that rate, you know, is justified by you
20 know market conditions, marketplace changes, rather
21 than being explained by the diminution and the
22 incentives to preserve the competitiveness of that

1 route arising from CSX's role in this transaction,
2 and NS's diminished change incentives because of its
3 new access to the southern routes.

4 We have no illusions about that kind of
5 inquiry being a simple one, or a mechanical one
6 because there isn't a way in our view, there is not a
7 way to you know impose a condition that it's a simple
8 formula. But we do think that having the condition
9 imposed that allows for the kind of inquiry that
10 we're talking about, is whether then the competitive
11 viability of this region then is affected by the
12 transaction in a negative way, it will create the
13 counterweight to the kinds of you know stats that
14 might otherwise cause the harm of diminishing its
15 effectiveness.

16 You know I don't think I can be complete
17 in saying that without saying obviously there needs
18 to be protection on the actual physical capabilities
19 of the route not being degraded in the transaction,
20 and the changes beginning to allude to that.

21 CHAIRMAN OBERMAN: I know we're going to
22 get to that. So just to finish this point, and then

1 maybe we should let James move on, or we'll never get
2 done. It sounds to be David like you are saying
3 whether commercially reasonable is an actual fine
4 term of art, it is a concept that is well understood
5 in the railroad industry that can be proved by custom
6 and practice, by railroad economists one way or the
7 other on a very case specific basis. Is that a fair
8 way to think about it?

9 MR. MEYER: I think so yes.

10 CHAIRMAN OBERMAN: You know I think if we
11 move in this direction I would hope we never have to
12 decide such a case, but we have to have some idea of
13 what the case would look like if we're going to take
14 up CSX on its offer to say it will agree to
15 commercially reasonable rates, which they offered, so
16 they must have an idea what they're offering as well.

17 It would be hard for them to say they
18 can't understand what it means since they are the
19 ones that introduced the term into this proceeding.
20 But they'll have a chance to talk to us about it
21 later today. So why don't we, unless our Board
22 members want to jump in, why don't we let James get

1 to where he's been trying to get for the last hour,
2 and then we will finish this presentation.

3 MR. CLEMENTS: I think we're here.

4 CHAIRMAN OBERMAN: Okay.

5 MR. CLEMENTS: No problem, and I think
6 it's been a good discussion. I'm not going to
7 belabor the first bullet on here. I think that's
8 been the focus of the discussion, but given that we
9 feel that there is competitive harm, what do we need
10 to protect it.

11 And at a high level it's maintaining the
12 competitive viability of the route. This is, as we
13 discussed, both a competitive basis, and then also
14 the physical infrastructure and the service that runs
15 on the infrastructure. We think that you can
16 preserve this environment and do so without having
17 any impact on the benefits of this transaction, and
18 what the applicants are trying to achieve.

19 As we discussed you know, the single line
20 haul, the other benefits that NS gets, we're not
21 asking for any changes to any of that. It is just a
22 condition, a set of conditions that allow the

1 competitiveness of the Pan Am Southern route in
2 parallel to the CSX route to be maintained as we go
3 forward. So David I'll move to the next page, to
4 specifically talk to our ask.

5 And you know the very first one you've
6 observed that there's a number of representations Mr.
7 Chair, and there's been a number of commitments made,
8 both verbally and in the submission around
9 maintaining that we would ask that those conditions
10 are, or those recommendations are you know upheld
11 through condition on the transaction.

12 CHAIRMAN OBERMAN: Let me just say that I
13 believe it's clear on CSX's papers that they have
14 volunteered before we asked them one question. That
15 they consent to every representation being made a
16 condition.

17 MR. CLEMENTS: Yep.

18 CHAIRMAN OBERMAN: That's one of the
19 things we're engaged in here is making sure we know
20 what those representations are, but that's very
21 important. So I think there's no disagreement on the
22 concept in your bullet point one.

1 MR. CLEMENTS: Yes. And in bullet point
2 two we would agree that based on everything that
3 we've heard that these commercially reasonable terms
4 have been agreed to with CSX in the public record.
5 So number two I think is well talked about.

6 The next two, one is around maintaining
7 the physical condition of the route at a standard
8 that's consistent with what it is the maintain that
9 today. We think that the pre-transaction railroad is
10 maintained the way it is so that it's a competitive
11 tool as we've described, by removing things like the
12 premium intermodal traffic with a highly service
13 sensitive intermodal traffic. We do change the
14 incentives, even for the other half owners, and we
15 want because of that change, the physical condition
16 maintained.

17 And then finally you could have a very
18 nice railroad if you don't run any traffic over it,
19 it's easy to maintain it, or don't provide any
20 service on it. And so we're looking for through
21 traffic service levels that are consistent with what
22 we're seeing today. And I looked at this one and we

1 see you know the B&E made representations that
2 they're there to compete, and they have every
3 incentive to look after service.

4 We heard the Norfolk Southern talk about
5 them having every incentive to move traffic on this
6 line. And so we look at this, and partly why they
7 brought that over, they have those incentives, then I
8 would call the sleeves under their vest. If they
9 consented to do it then it's easy enough, and it's
10 not onerous, and not a burden on the transaction to
11 let us have the understanding that over the long-term
12 we're going to have the service we need.

13 I'd also acknowledge, and we understand
14 you know the rail business, but if traffic changes,
15 that this isn't an absolute commitment. You've got
16 to look at what's commercially reasonable around the
17 service levels, and if there's a change in the
18 overall service volumes, then they need to be able to
19 maintain an efficient operation, but they also need
20 to do it in a way that addresses the needs of the
21 shippers on the line in a way that they would have
22 under those same volume levels if the effects and the

1 relationship in this merger hadn't happened.

2 If they continued to be Pan Am independent
3 of CSX. And so that's the last condition that we're
4 looking for.

5 CHAIRMAN OBERMAN: All right. James, let
6 me ask you a couple of questions because maybe it's a
7 Canadian phrase. This is the first time in this case
8 I've ever heard the phrase sleeves out of the vest.
9 I'm not entirely sure what it means. It sounds like
10 it means no problem, but here's what I'd like to get
11 out here.

12 In terms of insurance the maintenance of a
13 condition of the track, of the infrastructure, that's
14 what you're talking about. It almost leaves a tunnel
15 itself aside, we heard yesterday that was 300 million
16 dollars. But how would you -- maybe this is a
17 question for David as well. How would you phrase it?

18 As I understand it, and I'm not on top of
19 these. I'm sure Karen is an expert in this, there
20 are different classes of track that the FRA sets
21 forth, and that this PAS line meets certain
22 standards as to freight, speeds and so forth. And I

1 don't know what those are, but you're talking about
2 the present condition is at least minimally
3 acceptable if that were to stay that way forever. Is
4 that a way?

5 I'm trying to figure out how you would
6 write a condition? It strikes me as problematic to
7 say you've got to spend enough money. Who knows what
8 enough money is. Would it be more suitable, and
9 would it accomplish what you are trying to
10 accomplish? I'm not saying we would do it, but just
11 to understand what you're asking.

12 If we wrote a condition that said you must
13 maintain the entire route, to at least the standards,
14 the FRA standards that satisfies today. Would that
15 solve bullet point three for you?

16 MR. CLEMENTS: Yeah. We're not seeking
17 the prescription on a capital program. You know
18 capital can be lumpy. The description of an FRA
19 class of track, and you know all track has some slow
20 orders. I would say you know the slow order
21 condition that you have today, however many minutes
22 of you know delay or you know, or experience due to a

1 slow order.

2 A slow order is where due to an emergent
3 maintenance situation, let's say you have a couple of
4 ties, or you know some ballasts that you need to go
5 in and you know run the tamper, and then you can
6 speed up again. That happens on every railroad all
7 the time.

8 So we acknowledge that you know they're
9 going to have a few delays out there, and what we
10 just go on is if you have 20 minutes of delay today
11 it degrades, and you have an hour of like five years
12 from now.

13 CHAIRMAN OBERMAN: All right so let me go
14 to bullet point four. How do we make that concrete?
15 I'm not 100 percent sure how you would define what
16 you're asking. I understand the concept, but I don't
17 know.

18 MR. CLEMENTS: You know I would define it
19 in two specific ways. If traffic levels are
20 maintained, the level of the frequency of service is
21 the same, and the transit time is the same
22 consistency. If you have the quality of

1 infrastructure, but then it would come from that.

2 The then second part I would look at is if
3 you have a change in traffic level, there's been many
4 even a consolidated, where you're running four days a
5 week you run three days a week. I would look at a
6 test on something like the average transit time in
7 those lower volumes are consistent with the average
8 transit time that was experienced let's say
9 pre-COVID, 2018, 2019.

10 And on average you're still delivering a
11 service, even if you have you know spikes because you
12 have less frequent train service.

13 CHAIRMAN OBERMAN: Well let me, I want to
14 reduce this to its simplest form and make sure my
15 simple brain can understand it. Right now you
16 interchange traffic at Mechanicville, so after the
17 transaction you're going to drop off cars at
18 Mechanicville, and a B&E locomotive is going to take
19 those cars over to Ayer, right?

20 MR. CLEMENTS: Yep.

21 CHAIRMAN OBERMAN: And what you want to
22 make sure is that B&E has enough locomotives and

1 crews to take them there on at least the same
2 frequency that they do now.

3 MR. CLEMENTS: Yeah so if that takes --

4 CHAIRMAN OBERMAN: Is that what we're
5 talking about here?

6 MR. CLEMENTS: Yes. That's exactly. So
7 if it takes on average 36 hours to get to Ayer now,
8 it would take 36 hours in the future. We don't --
9 and that's how we would phrase it. We're not
10 looking to say you have to run this train service.
11 You have to run you know this schedule, or anything
12 like that. We get that there's some variability and
13 some operational flexibility they need to run an
14 efficient railroad.

15 They can run an efficient railroad just
16 keep the transit consistent with where it is now.

17 CHAIRMAN OBERMAN: Has anybody at CP been
18 in touch with the CSX or B&E folks, G&W folks to try
19 to negotiate these conditions, and have we talked
20 about them, do they find them acceptable? You know
21 they made a number of representations that they have
22 ever interest of running a line as least as well as

1 it's being run now.

2 So if that's what sleeves out of the vest
3 means, then they shouldn't have any resistance to
4 this. Have you asked them?

5 MR. CLEMENTS: We have. We have had
6 discussions. And I would expect that we're going to
7 continue to try and resolve this, you know we've
8 heard your sort of urging on that front. The
9 service side has been one that is more let's say
10 complicated than the commercial side.

11 CHAIRMAN OBERMAN: Well one of the things
12 I was going to ask, it would be much better if it
13 were done jointly than unilaterally, is that your
14 very excellent counsel come up with more specific
15 language of the kind that might be appropriate in a
16 Board conditioning order, not to do our work for us.

17 We have had those lawyers too, but so we
18 know with more precision what you're asking for, then
19 we can judge it. Whether we have the power to do it,
20 and whether if we have the wisdom. Whether it's
21 wise. But the concepts you're stating here are quite
22 clear, but as lawyers know translating those into

1 legal reinforceable language can sometimes be a
2 challenge.

3 It would be better if you did it by
4 agreement. And I'm sure CSX would prefer to do it by
5 agreement rather than have us ultimately order them
6 to do something that they don't find practical, so I
7 would encourage that effort to be done, and to be
8 done quickly, so we can move ahead.

9 We have a statutory schedule as you know.

10 MR. CLEMENTS: We will both, you know,
11 work to reach agreement with the applicants, and we
12 will draft some post kind of structure for your
13 consideration.

14 CHAIRMAN OBERMAN: Yeah I have -- let me
15 ask this. I know Patrick wanted to make some
16 remarks. Before we get to that. Yeah before we even
17 get to that I just wanted to find out from a timing
18 point of view, other than questions, or remarks that
19 we may have, David are you and James finished? What
20 are the other things you were going to direct your
21 attention to?

22 MR. MEYER: I think we're finished.

1 CHAIRMAN OBERMAN: Okay. So let's try, we
2 were going to try to break for lunch, so see if we
3 can finish up with this panel, and then break for
4 lunch. Michelle you had -- you had some questions.

5 BOARD MEMBER SCHULTZ: Yeah thank you.
6 You mentioned earlier that you're requesting
7 conditions to help both CP and the shippers. Have
8 any shippers stated in this record that they want
9 such conditions, or have otherwise opposed this
10 transaction?

11 MR. MEYER: I think there has been the
12 comments from ACC that were referenced yesterday that
13 had expressed concerns about this aspect, the aspect
14 of the transaction that we've been describing, the
15 Pan Am Southern CSX relationship. So I think the
16 answer is yes there have been concerns.

17 CHAIRMAN OBERMAN: Michelle was -- did you
18 have more?

19 BOARD MEMBER SCHULTZ: I think that ACC
20 just asked for adherence to representation, is that
21 correct?

22 MR. MEYER: You know I'd have to go back

1 and look at their specific submission it's not just
2 front of mind. But you know as I recall the thrust
3 of what they were worried about was that you know
4 essentially the CSX's role with respect to Pan Am
5 Southern.

6 BOARD MEMBER SCHULTZ: Thank you.

7 CHAIRMAN OBERMAN: Were you done Michelle?

8 BOARD MEMBER SCHULTZ: I am. I think
9 Patrick has a couple questions.

10 CHAIRMAN OBERMAN: Yeah okay. I didn't
11 want to interrupt is all. All right Patrick. I have
12 some more questions Patrick did you want to go last
13 or?

14 BOARD MEMBER FUCHS: I just only have
15 concluding remarks, but Robert please.

16 VICE CHAIRMAN PRIMUS: I just had a
17 follow-up if you don't mind. And just on the line,
18 so with these bullet points that you have up now
19 talking about you know preserving the competition
20 conditions, you didn't mention you know what we were
21 talking about earlier. We spend a lot of time
22 talking the pooling, and you know PAS and CSXT owning

1 50 percent of PAS going forward should this
2 transaction be consummated.

3 I mean do you have a recommendation, or
4 any sort of language pertaining to that particular
5 portion of the transaction? A recommendation?

6 MR. CLEMENTS: We're not recommending any
7 change for that proposed ownership. We're saying
8 that these competition preserving conditions are
9 required because of it. So and I guess I'm not the
10 lawyer, but David I'll do this anyway. Why we
11 pointed at pooling was more to say that given that
12 there is the potential that there's a pooling
13 relationship here, it allows you to be able to impose
14 these conditions even if you felt under you know
15 11324 D-1 and 2, that that may have restricted your
16 ability.

17 The pooling provision would still continue
18 to preserve your ability to put these competition
19 preserving conditions on the transaction.

20 VICE CHAIRMAN PRIMUS: Okay. I was a
21 little confused. I thought the fact of also bringing
22 up pooling would suggest that the idea itself of CSXT

1 taking over Pan Am Southern warranted that condition
2 to sort of be tripped, and for us to act in that
3 manner too. But you're saying that's not the case.

4 MR. CLEMENTS: I'm trying to be clear.
5 Two things, on pooling itself we would not have any
6 objections to you know an approval of a pooling
7 arrangement in the event that the transactions
8 proposed are approved, but then where we were going
9 with pooling is that even if you felt you were
10 limited in terms of your powers under the 11324
11 conditions, that the pooling provision 11322 would
12 give you the authority to impose these conditions on
13 the transactions.

14 So again we do want these conditions as
15 part of the transaction, whichever way is appropriate
16 to come to the determination and application that
17 there's two different routes that you can still get
18 to the same place.

19 VICE CHAIRMAN PRIMUS: Thank you.

20 CHAIRMAN OBERMAN: I do have another area
21 that I wanted to get into.

22 BOARD MEMBER FUCHS: Was Karen, Karen?

1 BOARD MEMBER HEDLUND: Yeah. I just have
2 a quick question.

3 CHAIRMAN OBERMAN: Oh I'm sorry Karen, I
4 didn't see you.

5 BOARD MEMBER HEDLUND: That's all right.

6 CHAIRMAN OBERMAN: Go ahead.

7 BOARD MEMBER HEDLUND: With respect to the
8 physical condition of the track and other
9 infrastructure, are you aware of any places where the
10 track might be out of compliance with FRA standards?

11 MR. CLEMENTS: No. We're not aware of the
12 current specific condition of any location on the
13 track. Overall this route has been maintained a
14 level that it has been effective in providing
15 competition into the new railroad.

16 BOARD MEMBER HEDLUND: Okay. You know we
17 would just want to when you negotiate you know the
18 wording of that provision about maintenance that
19 you're not freezing the maintenance at some level
20 that does not meet FRA standards.

21 MR. CLEMENTS: Appreciate it thank you.

22 CHAIRMAN OBERMAN: Were you done Karen?

1 BOARD MEMBER HEDLUND: I'm finished.

2 CHAIRMAN OBERMAN: Yeah okay. There's
3 another area at the risk of prolonging this a little
4 bit before we break for lunch, but I feel constrained
5 to at least inquire about it. And that has to do
6 with the divestiture argument for the conditions in
7 lieu of divestiture. First, I'm wondering, and I
8 guess this is really probably for David, maybe it's
9 for James.

10 The proposals that have been made for how
11 PAS will function with B&E as the operator in this
12 management committee and so forth and so on, do you
13 have any comments pro or con, or any at all about A,
14 the idea that if they can't agree on capital
15 investments they'll submit to an arbitrator.

16 And if we don't like that they will agree
17 to hire a fiduciary to come in and make other capital
18 investment decisions. Do you have any comments on
19 the wisdom of those ideas?

20 MR. MEYER: James, do you want to comment?
21 My perspective is that that dialogue of yesterday,
22 and the potential role of CSX in that decision

1 making, you know, we don't think much of the
2 fiduciary arguments. I think it's fair to say. But
3 it illustrates exactly what we're concerned about,
4 that there could be situations where Pan Am Southern
5 ends up in a different place in terms of the kinds of
6 investments that get made, the kinds of service that
7 gets structured.

8 The delays in addressing market
9 opportunities what have you, then it would have been
10 had there not been this transaction. And if -- we
11 recognize that the transaction is a whole, and that
12 it's not, we agree with the applicants that it
13 probably is not in the world of possibility to divest
14 CSX from Pan Am Southern while having the good
15 aspects of the transaction go forward, and so that's
16 why.

17 CHAIRMAN OBERMAN: Say that again David.
18 You're not --

19 MR. MEYER: We agree with CSX and the
20 other transaction participants that ordering a
21 fundamental change in the transaction risks all of
22 the good aspects of the transaction along with the

1 bad aspects of the transaction. That's why we are
2 focused on trying to solve for the bad aspects only.

3 CHAIRMAN OBERMAN: So are you saying that
4 if we could craft conditions in accordance with the
5 bullet points that James has here, and particularly
6 if everybody agreed on them, which I actually think
7 we -- everybody is, at least the concept, that that
8 would offset the need to have this fiduciary come in
9 and decide whether to spend money on the track?

10 MR. MEYER: I think we think yes because
11 it would mean that decision making at Pan Am Southern
12 would have to be adhering to the principles that
13 preserve, effectively preserve the incentive
14 structure that exists today.

15 CHAIRMAN OBERMAN: And what about the 300
16 million dollars to improve the depth or the height,
17 or whatever you want to call it of the Hoosac Tunnel.
18 Do you have any thoughts about whether that will ever
19 get done, and whether it's less likely to get done if
20 this transaction goes through?

21 MR. CLEMENTS: You know would the
22 applicants be held to have to do that you know based

1 on the competitiveness that this provides in the
2 market today. You think the line does its job? Do
3 I have an opinion? I think two things. The movement
4 of an intermodal train pair, or the intermodal
5 business, the one train pair to the CSX certainly
6 suggests that there's no immediate reason why anybody
7 would want to spend that money.

8 You then speculate as you outgrow the
9 capacity of the 9,000 foot train whenever that may
10 be, that they would then return the incentive.
11 Obviously if you had more traffic, it would be more
12 likely to happen. So I think this transaction does
13 extend further into the future the possibility of the
14 tunnel seeing a double stack investment.

15 CHAIRMAN OBERMAN: Well I take it CP is
16 not proposing that we try to deal with that capital
17 investment in an order on this decision.

18 MR. CLEMENTS: We are not proposing that
19 at all.

20 CHAIRMAN OBERMAN: Yeah.

21 MR. CLEMENTS: We're not looking for
22 anything new, or anything that increases

1 competitiveness. We want to be left in the position
2 we are currently in the absence of this transaction.

3 CHAIRMAN OBERMAN: You don't want
4 competition diminished?

5 MR. CLEMENTS: Correct.

6 CHAIRMAN OBERMAN: Just a final, I'm just
7 curious about it if you don't want to comment on it
8 because you're not arguing for divestiture, but we
9 were told about the history that 15 years ago, or 12
10 years ago you were invited in by NS, and chose not to
11 join. You had different management at the time, so
12 it may have something to do with it.

13 And you have this very intriguing footnote
14 which many of us at the Board have read more than
15 once. I assume you wrote it David. Footnote six in
16 your last brief saying well you're not arguing for
17 divestiture, you'd be interested in buying a line.
18 Is that what we're supposed to? Do you want to sort
19 of comment on the overall interest, or lack thereof
20 in CP buying 50 percent of this line?

21 MR. CLEMENTS: Yeah. So I can comment on
22 that, and you know as the CSX mentioned there's a

1 difference between the interest in preserving the
2 route versus the interest in owning the route on
3 that basis. Our concern today from what we
4 understand of the structures that the NS, and I think
5 it was referenced in discussions yesterday, the
6 Norfolk Southern is part of the joint venture, does
7 have certain rights.

8 The parties have indicated that they've
9 agreed that the NS wouldn't exercise those rights in
10 relation to the CSX acquisition of 50 percent. You
11 know certainly the NS rights would be a concern, and
12 you know we'd have to understand where we stood
13 relative to those engaging the interest as to whether
14 there was you know a business case that was
15 justified.

16 We're also as you are well aware, very
17 busy, and involved and making significant investments
18 elsewhere on the network.

19 CHAIRMAN OBERMAN: I noticed that James.

20 MR. CLEMENTS: So as a priority, and as a
21 focus at this point in time you know we're probably
22 busy elsewhere.

1 CHAIRMAN OBERMAN: But can you comment on
2 the dynamic of 12 years ago, or is it not worth
3 taking up time since its ancient history. Because
4 several of us are puzzled about what this line is
5 worth, and what 50 percent of it. We can't figure
6 out why you didn't join in initially with NS.

7 MR. CLEMENTS: Do you know I have no
8 specific knowledge of the situation 12 or 15 years
9 ago, so unfortunately I can't comment.

10 CHAIRMAN OBERMAN: All right. Yeah and
11 it's probably not worth us to waste the time on it.
12 I will and I think Patrick wants to make some final
13 remarks here, but before he does I just wanted to
14 make one observation in response to the question
15 Michelle raised which caused me to think about this.

16 We are going to hear from shipper panels
17 later today so we can ask them directly. I think
18 most of them are supporting the transaction. It does
19 occur to me when you read everything that was filed
20 by CSX, and what it volunteered, it could well be
21 that the shipping community looked at all the
22 promises that CSX has made, the ones that we're

1 talking about here today included, and concluded that
2 overall if the promises were kept, shippers would be
3 fine, and there was no need for them to go out and
4 spend their own money and hire counsel to join in
5 because CSX's promises were protecting shippers.

6 That may be why we haven't heard any
7 negatives because they think they're getting their
8 competition protected. That's assume these get
9 translated into conditions. You know it's always
10 speculative about why a witness shows up, or doesn't
11 show up, but that might be an explanation it just
12 occurred to me. That was all I had.

13 Patrick do you want to take us to lunch
14 hour?

15 BOARD MEMBER FUCHS: Thank you, and I'll
16 try and be quick. I really do appreciate the
17 questions of my colleagues. I think it was a really
18 useful discussion. I have to say I am troubled by a
19 few things I've heard today, and I just want to run
20 through them. The first is you know I think this
21 notion that the applicants conceded likely and
22 substantial, is not quite in the record.

1 They conceded that they were doing things
2 to address the possibility of competitive concerns,
3 and Mr. Chairman as you rightly pointed out, we are
4 going to consider the transaction including
5 settlements and volunteering mitigation, so I think
6 to evaluate that D-1 standard likely and substantial
7 should be after those agreements.

8 And so I don't think the mere fact that
9 they came to the table should be held against them as
10 conceding D-1, and I think that that has the
11 potential to have a chilling effect on the overall
12 thrust that we've been emphasizing, or the thrust of
13 the Board to encourage parties to come together.

14 If parties felt that coming to the table
15 meant they conceded important legal standards, we
16 should perhaps think about what the ramifications of
17 that would be. The second is that Norfolk Southern
18 is the beneficiary of the trackage rights. And they
19 seem to evince concern that their trackage rights are
20 in jeopardy if CSX is meant to do additional things
21 on the northern route.

22 In fact, you know I'm sure that Norfolk

1 Southern in some ways would like CSX to do things on
2 the northern route, and so you know CP claims that
3 there will be no effect on NS trackage rights, or any
4 affect whatsoever from CSX if we impose these
5 conditions that might compromise the benefits of the
6 transaction. I just wanted to point out that we
7 heard testimony yesterday from Hub Group and others
8 about the benefits of those NS trackage rights, and
9 the beneficiary of those trackage rights is concerns.

10 So in some ways in order to believe CP's claim
11 about NS trackage rights you have to not believe NS
12 itself, the beneficiary. Third is Mr. Meyer seemed
13 to suggest that under D the Board could impose
14 conditions, even if it couldn't withhold approval,
15 and you know I think that you know the 7th Circuit
16 has confirmed, has upheld a decision which the Board
17 said they shouldn't do that, the D.C. Circuit in a
18 major merger said that withholding approval and
19 conditioning is basically the equivalent.

20 And I think it's worthwhile to look at the
21 text of D, which says the Board shall approve the
22 application -- the application, unless the two

1 criteria of D are met, and not only likely
2 substantial, but also that those anti-competitive
3 effects outweigh the benefits. It doesn't say a
4 transaction with conditions for example, so I think
5 you can look to a precedent and the text, the Board
6 shall approve, if not for those two conditions.

7 And then lastly, looking across the panel
8 we heard testimony from Mr. Newman and Mr. Wimbish
9 about how the Board's conditioning authority is
10 totally unconstrained, it's public interest. Public
11 interest just like in major mergers. That's what
12 you know Barrington suggested. That is what you know
13 the case is, you know, often times major merger cases
14 that are cited in those briefs put forward that D
15 conditioning authority and C conditioning authority
16 are equivalent.

17 CP's contention is that they're not
18 equivalent. Mr. Meyers said that the C authority is
19 broader than the conditioning authority under D, and
20 suggested that the focus should be competitive
21 effects, limiting the focus on other things that
22 suggest that perhaps we shouldn't wade into areas

1 such as passenger rail.

2 And I think of course that is a reasonable
3 reading of the statute, and I think there's a
4 tension. I don't think those views sit side by side.
5 And the Board has not yet resolved that tension.

6 And I don't think because I think we're at risk of
7 basically applying a double standard. You know, a
8 conditioning authority, that is a public interest
9 because we may not be limited by the approval
10 authority, and a commissioning standard that borrows
11 part of the approval authority.

12 And I don't think we can have it both
13 ways, or at least we need to think about doing a
14 better job resolving that tension explicitly, and I
15 think the differences in opinion on the Board's
16 conditioning authority presented today call on the
17 Board to resolve that tension. So I just wanted to
18 make those concluding observations because I think
19 that there are some real concerns raised in the
20 testimony.

21 CHAIRMAN OBERMAN: Well let me Patrick,
22 I'm going to take my prerogative to respond to a

1 little bit before we break for lunch. I have not
2 meant to suggest by anything I said, nor do I hear it
3 from any of the participants on either side, or
4 coming from any direction, whether it's the applicant
5 or others, that CSX has conceded a D-1 or D-2
6 standard.

7 I think it's quite clear that as a factual
8 matter, they ought to do their papers, they have
9 conceded competitive concerns if they don't make the
10 promises they've made, whether they got to the point
11 of getting to a D-1 standard or not, they haven't
12 said. My view is that if all of this is done by
13 agreement we don't have to resolve that tension in
14 this case.

15 And you know my penchant in deciding
16 cases, which I learned in law school is we can only
17 decide what we have to decide, and save the tough
18 decisions for the case where people are at odds and
19 forced to decide, because that's a better factual way
20 to do it.

21 So the tension you point to is astute, and
22 still may be, there still may be among Board members

1 if we ever get to a case where we have to decide it.
2 But this whole proceeding has struck me as one that
3 is heading towards working these things out by
4 agreement. And we've made quite a bit of progress.
5 There's some remaining parts that we may have to
6 resolve, but if the parties can keep us from
7 resolving it I think we'll all be better off, and
8 move ahead with a transaction, which you know, would
9 appear to have many, many benefits, and the negatives
10 either eliminated, or minimized, and that seems to be
11 the goal.

12 So but I wanted to comment specifically on
13 your observation. We don't want to disincentivize
14 applicants coming in and trying to ameliorate the
15 problems. I don't think we're doing that because we
16 haven't yet, we may have to, but we haven't said, or
17 even observed that CSX has conceded some statutory
18 standards has been breached.

19 So I wanted to make that point on the
20 record.

21 BOARD MEMBER FUCHS: I appreciate that
22 very much.

1 CHAIRMAN OBERMAN: Yeah. I would like to
2 break for lunch, and I would like to finish this
3 panel. Has everybody on the panel said everything
4 they need to say? And have all the Board members
5 done everything they need to do with this panel so we
6 can finish with it? Okay. Good. It's been a really
7 robust discussion from all fronts. I think we've
8 learned a lot yesterday, we've learned even more this
9 morning.

10 It is 1:42. Let's break for 30 minutes
11 which brings us back at 2:12. And we're going to
12 finish this today I hope. So we may be, well
13 hopefully we'll go through this afternoon's panels
14 pretty quickly, and then get back to the applicants.
15 So we will see you at 2:12, thank you all.

16 (Lunch Break)

17 CHAIRMAN OBERMAN: Everybody we are back.
18 We are one minute late which I don't like to be
19 because we have a lot to do. I'm going to
20 immediately call on our next -- the Maine Department
21 of Transportation, Nathan Mouton, the New Hampshire
22 Department of Transportation, Patrick Herlihy, and

1 Islington Creek Neighborhood in Portsmouth, Thomas
2 Hiney.

3 Are they here?

4 MR. HERLIHY: Yes sir Mr. Chairman.

5 CHAIRMAN OBERMAN: All right. So I called
6 on Mr. Moulton first because that's the order they're
7 listed for me, but if he's not present.

8 MR. MOULTON: I am sir.

9 CHAIRMAN OBERMAN: There you are. All
10 right you're first, go for it.

11 MR. MOULTON: Very good. Good afternoon
12 Chairman Oberman, Members of the Board, my name is
13 Nate Moulton. I'm the Director of the Office of
14 Freight and Passenger Services, the State of Maine
15 Department of Transportation. In my role here I
16 oversee transportation policy and operations across
17 multiple modes, including rail, to the benefit of
18 Maine citizens and Maine businesses.

19 Additionally, I am the Department's
20 liaison to the Northern New England Passenger Rail
21 Authority who is on a later panel, who provides
22 oversight of the Amtrak Downeaster passenger rail

1 service between Brunswick, Maine and Boston,
2 Massachusetts, and runs over some of the PAR in
3 question.

4 The NNEPRA's Executive Director, Patricia
5 Quinn, again will be speaking a little later this
6 afternoon, and let me start by thanking the Board to
7 have this brief opportunity, and I will be brief, to
8 help move this along. I do want to note the State of
9 Maine has a long history of working closely with our
10 railroad partners and operators within the state.

11 We also by default sometimes become
12 railroad owners of lines that are up for abandonment
13 that we feel are key to Maine businesses, and working
14 through and with the Surface Transportation Board,
15 have been able to purchase and then lease back to
16 private sector entities that operate on our behalf.

17 Generally after putting some capital in
18 that to put them in a state of good repair, and back
19 in a fairly good operating condition. Additionally,
20 we work closely with the railroad and customers of
21 the railroads on our industrial rail access program,
22 which provides funding up to 50 percent to provide

1 access to the railroads, where someone abutting the
2 railroad might not have current access or has access,
3 but it needs to be expanded or improved. So we work
4 in that way both with the railroads and shippers
5 within the state.

6 We have also participated with both state
7 and federal discretionary funds with railroad
8 partners in regards to improvements in yards, in
9 interchanges, as well as main line improvements. We
10 believe the dollars invested in partnering with the
11 private railroads, and even on private infrastructure
12 is good for the state, and good for our
13 transportation system.

14 So I'm here today to once again reiterate
15 the strong support the state of Maine has for this
16 proposed transaction. Following on the letter from
17 Maine Governor Janet Mills, back in July of 2021,
18 which the Board has on file. We are fully behind
19 this, we think on PAR the benefits, especially for
20 the State of Maine outweigh any of the smaller issues
21 that have been brought up, and I understand why for
22 certain states, or certain entities they may have

1 issues that they want to see looked at as part of
2 this.

3 But again, overall PAR for the State of
4 Maine, we are in significant support for this
5 transaction. We think it will bring substantial
6 benefits to the state, and the Maine businesses who
7 rely on rail currently to deliver freight also
8 attract new rail freight users within Maine. I think
9 it's extremely important to once again highlight -- a
10 lot of people have talked about it, but particularly
11 here in Maine.

12 We are not aware of any shippers within
13 the state who oppose this transaction, and most have
14 expressed a great deal of optimism and excitement
15 around this transaction. This is foundational to the
16 state support to this transaction, it's listening to
17 those shippers and noting their strong support for
18 this. And I see several of them have submitted
19 letters of support as part of the record.

20 Additionally, I think at least one Cold
21 Spring testified yesterday and a couple more who do
22 business in Maine I think are testifying on an

1 upcoming panel. So I think that's very important.
2 When we talk to businesses in Maine, transportation
3 generally is one of the top two concerns as far as
4 doing business, and challenges of doing business in
5 Maine.

6 In particular rail, and rail freight are
7 brought up as challenges, and we get a lot of
8 feedback that the rail system needs to be more
9 competitive, and it's been talked about a great deal
10 by all parties here, and it's nice to see everybody
11 kind of agrees. Here in Maine this transaction is
12 going to provide more competition, a stronger lane,
13 the current PAR lane will be improved. It will be
14 safer, and we'll have better technology, we'll have
15 better service, more efficient locomotives, all those
16 types of things that folks have talked about, and we
17 think that has great potential to help the State of
18 Maine and Maine shippers.

19 Additionally, you know the improvements
20 that's been talked about in relation to the
21 Downeaster passenger rail service is very important
22 as well. Again I won't dive too deep into that at

1 this point.

2 We want to note when the proposed
3 transaction was announced DOT was very quick to reach
4 out to CSX, and as well as our shippers and other
5 railroad partners and begin a dialogue, initial
6 questions, concerns that we had, or others had around
7 the transaction. For the State of Maine we found CSX
8 to be very responsive, a willing partner, and started
9 conversations early and often with us with ongoing
10 cooperation between the parties.

11 And we were able to negotiate a settlement
12 agreement that again the Board has. I believe it's
13 dated June 16 of 2021. That's been filed, and with
14 the agreement between both CSX and Maine DOT, that
15 that be made part of a condition of approval, this
16 transaction, along with CSX's stated some of the
17 other guarantees, and things that they negotiated and
18 brought to the table in regard to you know the
19 existing gateway and other things along those lines.

20 I don't want to overlook those. Those are
21 important, but again we think with what's been
22 negotiated, and what's been asked, or to be made part

1 of the record we are comfortable from our
2 perspective that again the positives far outweigh any
3 negatives in this transaction.

4 The PAR line is very important to the
5 State of Maine. It is our biggest gateway for rail
6 freight. It is the one that's closest to the east
7 coast and a great deal of freight from Maine already
8 goes down this corridor, along with a lot of freight
9 is trucked out of Maine and reloaded at locations
10 like Ayer and Barbers and things like that and put on
11 trains of the Class 1's.

12 We believe strong as you, Mr. Chairman of
13 the Board pointed out during this transaction along
14 with the other Board members, we echo your comments,
15 the importance of competition. We believe the strong
16 competition between our railroad operators, as well
17 as creating more competition for trucking is good for
18 Maine business, good for the environment, and we look
19 forward to CSX keeping their commitments on existing
20 gateways, and keeping them open on reasonable terms,
21 along with the infrastructure and service
22 improvements that have been promised.

1 If and when they follow through on will
2 have a significant impact on Maine for the long-term.
3 I want to just again talk a little bit having watched
4 some of the discussion yesterday. On the propane
5 discussion, something like that is very important to
6 us. We do get a lot of inbound propane here to
7 Maine, and it's competition is great on that because
8 we have several good lanes, both from the Canadian
9 railways, as well as across the PAR line, and so
10 having another stronger lane that only helps.

11 When it gets cold like it's going to the
12 next few days up here in Maine, parts of Maine won't
13 get above zero, things get tight, and then we have a
14 big snowstorm coming right behind it. So it's
15 important to have multiple lanes, multiple sources of
16 that in case one of the lanes becomes jammed, or
17 there's a strike, or there is something else that may
18 happen.

19 So their redundancy in that competition is
20 very important. Likewise, outbound forest products,
21 which is king for the State of Maine as far as
22 outbound products, is very important to have multiple

1 lanes, the ability to move that product on rail long
2 distances to keep our Maine producers competitive.

3 We can do it on trucks for truck dominant,
4 and if we're going to grow business and continue to
5 have kind of some have a little bit of renaissance in
6 some of our paper making, in regard to box boards,
7 and some of those other types of products as the
8 companies pivot, as well as some of our saw mills and
9 wood forest products.

10 So we look forward to this transaction,
11 hoping to continue to grow those, and encouraging
12 those companies to continue to invest in Maine. And
13 with that I'll close, and again thank you for the
14 opportunity, and happy to take any questions.

15 CHAIRMAN OBERMAN: Mr. Moulton thank you
16 much for taking the time to talk to use. At the risk
17 of handing you a softball, it's fair to say that from
18 the State of Maine's point of view, and by the way
19 you should know, I'm sure you do, that the phrase
20 State of Maine gets thrown around inside the STB on a
21 regular basis because of the famous precedent.

22 You see CSX's acquisition of Pan Am with

1 CSX's resources as a plus for your state, but it
2 seems to me that as good as it may be for CSX to be
3 operating up there, it is in the state's public
4 interest to make sure that all the other carriers
5 that currently have access to the gateways continue
6 to have that access. That's equally important to you
7 would you say?

8 MR. MOULTON: Yes absolutely.

9 CHAIRMAN OBERMAN: And it would be a loss
10 to the state's economy if those access points were
11 somehow limited or closed off.

12 MR. MOULTON: If that was not there we
13 would you know, we would be less supportive, or not
14 nearly supportive, or against this. And I'll use a
15 quick example, and I know we're short on time, and it
16 goes back to the STB, the statements involved in
17 purchasing some lines in the northern part of Maine
18 which became in around 2010, became the Maine
19 Northern Railway. We leased it back to the New
20 Brunswick and Maine Railway.

21 It had 23 shippers, very low volume at the
22 time. It's grown four times since that period of

1 time, mainly due to good service by that short line.

2 At that time we had no Class 1's in the state, we had
3 poor connections, poor relations in the Class 1.

4 Today we have a very good connection with the CN at
5 the border in northern Maine.

6 We now have the CP operating through the
7 state in a very good connection. We have the CP up
8 the Maine Northern, and once, and if this transaction
9 is completed we will have a direct connection to the
10 same short line, who acts as a haulage carrier to
11 CSX, so what a turn of events for those lines that
12 had no Class 1 connections around their last leg.

13 Now turned around we're seeing significant
14 growth, and we'll have access to three Class 1's
15 through their short line. We would not want to see
16 that change.

17 CHAIRMAN OBERMAN: Good. Thank you. Much
18 appreciated. Any questions by any Board members?
19 Okay. We'll move ahead. Patrick Herlihy from New
20 Hampshire DOT.

21 MR. HERLIHY: Thank you Mr. Chairman and
22 members of the Board. For the record my name is

1 Patrick Herlihy, and I'm the Director of Aeronautics,
2 Rail and Transit for the New Hampshire Department of
3 Transportation. I'd like to thank you for the
4 opportunity to come before you today in support of
5 the acquisition of Pan Am Railways by CSX.

6 The State of New Hampshire, similar to
7 Maine, we own six active rail lines hosting four
8 freight lines and two tourist excursion lines, and we
9 are very excited by the opportunity to have a Class 1
10 railroad operating in the state. And not just the
11 Department, but the Governor, and team members of the
12 legislature, of our legislature, are also excited by
13 this opportunity.

14 This transaction would be beneficial to
15 New Hampshire because it would provide a continuous
16 single line rail service as we've heard on numerous
17 occasions over the last two days, and provide
18 additional resources to improve and market the line,
19 with the potential to bring additional freight
20 service to New England markets.

21 The ability to create more opportunity for
22 freight service in New Hampshire would take

1 additional trucks off the road which would be
2 beneficial for both the economy and the environment.
3 The Department has had numerous discussions with
4 representatives from CSX during this process, and we
5 anticipate that as a result of the acquisition CSX
6 will bring the necessary financial resources to the
7 table for much needed infrastructure improvements
8 throughout Pan Am's rail network, operating in New
9 Hampshire.

10 You saw an example of that yesterday with
11 the Hillsboro Branch, the picture that CSX put up of
12 the Hillsboro Branch Line and the condition that that
13 was in, and we are looking forward to having some
14 improvements done on that line in the future. We are
15 also encouraged by CSX's commitment to honor all
16 agreements currently in place with various shippers
17 and interchange partners, as well as the trackage
18 rights agreement already in place between the MBTA
19 and Pan Am for passenger rail service on the New
20 England Maine line in New Hampshire.

21 One of those interchange partners, New
22 Hampshire North Coast Railroad, has submitted a

1 letter of support for this acquisition, and the
2 Milford Bennington Railroad which partially operates
3 on the host railroad, has also submitted a letter of
4 support. And as Mr. Moulton said in Maine there have
5 been no shippers in New Hampshire that have come out
6 in opposition of this acquisition.

7 The Department also looks forward to
8 working with CSX on our road, bridge, and railroad
9 crossing projects where we need that timely railroad
10 coordination, and they have committed to working
11 with us on those projects in a timely manner. And
12 with that that's the end of my testimony, thank you.
13 You're muted sir.

14 CHAIRMAN OBERMAN: Thank you Mr. Herlihy.
15 Short and sweet, appreciate it. Any questions by
16 Board members? All right. Finally Thomas Hiney,
17 Islington Creek neighborhood.

18 MR. HINEY: Thank you. Can you hear me
19 all right.

20 CHAIRMAN OBERMAN: Yes.

21 MR. HINEY: Excellent. Okay. I just want
22 to thank you Chairman Oberman, Vice Chairman Primus,

1 and the distinguished Board members for taking the
2 time to allow us to speak today. Before I get going
3 a couple of things that I just wanted to go back to
4 yesterday that I thought were pertinent to what we're
5 doing. We're going to shift gears a little bit here
6 in the discussions, but coming at you from a local
7 community group. Some of the impacts that we see as
8 being neighbors to the railroad.

9 But what I thought was interesting, and I
10 think we need to keep in mind as we go through this
11 process is some of the comments made by Mass State
12 Rep. John Barrett yesterday afternoon, and his
13 comments in trying to deal with the current operator,
14 and obviously the passion and the frustration that he
15 expressed during his comments.

16 We could echo that. We're not going to
17 get into our issues that we're having, we're more
18 interested in talking to you about the process, but
19 that is the playbook that we are -- have seen here
20 when dealing with the operator, the current operator
21 which would be Pan Am, and as we're looking to
22 possible solutions as neighbors, we get that kind of

1 throwback, and it really goes to pre-emption.

2 We have pre-emption therefore we can do
3 what we need to do to move forward, move our
4 interests forward without taking into effect concerns
5 from the neighborhood. I also want to point out the
6 comments from CSX Chairman Foote in his opening
7 statement where he recognizes Islington Creek. We
8 appreciate that, and just want to let you know and
9 confirm they have reached out to us as a group, and
10 we look forward to speaking to them further. And
11 really, this is why we're here today, is to make sure
12 we're able to move forward in these areas.

13 Okay. So Islington Creek, just to give
14 you a little bit of background who we are. We're a
15 neighborhood in Portsmouth, New Hampshire.
16 Portsmouth, New Hampshire is a port city. We're very
17 proud of the port, the work that's done, and
18 certainly the manufacturers and such that are in this
19 area, and certainly some of those being serviced by
20 the railroad.

21 We're a quiet neighborhood, we're attached
22 right to downtown, and you know so highly residential

1 and high density. We recognize that hey, the train
2 activities go back here into the mid-1800's, and
3 certainly this switching yard that we have here.
4 And we feel that's very important, that anything we
5 ask of the railroad that we take into consideration
6 that we have customers that need to be serviced.

7 We have interstate commerce that needs to
8 take place, and we've spent a lot of time from our
9 perspective as we move forward and try to have
10 discussions with the railroad about these issues.
11 We recognize the strategic importance of the
12 railroad, and the freight system and how important
13 that is to the economy, not just nationally, but
14 certainly here locally on the sea coast, and
15 certainly to their customer base up on the Piscataqua
16 River.

17 Again our concern is how do we talk? And
18 this is where I think it's important for the Board as
19 a community group, how do we have discussions on a
20 consistent basis with a railroad in issues that are
21 impacting us when we're dealing with pre-emption, and
22 how do we balance that scale?

1 And so that's why we're really here today.
2 As you know pre-emption removes the jurisdiction from
3 local control for state municipalities, and our
4 concern here is how do we build up, what do we have
5 within the organization of the STB to level that
6 field, to give us an outlet to be able to voice our
7 concerns, and work in a proactive way with our
8 neighbors, the railroad.

9 Typical tools aren't relevant in regards
10 to us as a neighborhood group where we can go to our
11 city managers and to work through the process. So we
12 lose that touchpoint. And what fills that void? And
13 so what happens to us as a group is we lose
14 confidence, lack of confidence in being heard and
15 understood as to why certain disruptions are taking
16 place.

17 You know we can see this consistently you
18 know across different communities where issues come
19 up in discussions. How can these discussions
20 consistently be had okay. When we look at your
21 website for instance, we look at your charge, and the
22 agency has jurisdiction over rail rate, practice,

1 service issues, rail reconstruction transactions,
2 including mergers, line sales construction, line
3 abandonment period.

4 Now community is not mentioned in this
5 charge at all. Perhaps it's tied in under practice,
6 but again as we look through and try to find a
7 department to work with we get into the public
8 assistance, office of the public assistance, and then
9 a group that has informal advisory where we finally
10 get some community you know touchpoints, some focus
11 on community efforts, or dealing with concerns.

12 So you know we talk about competition. We
13 talk about interstate, the importance of interstate
14 commerce, this is all to drive business, drive the
15 economy for the citizens. Our concern is hey, the
16 citizens and the municipalities need a place at the
17 table when we have issues. We don't need to go, we
18 don't want to see ourselves or others go through the
19 process we have had to in this particular case, to
20 get to this point where we're having discussions, or
21 having input into what could be done to work
22 together to try to mitigate some of the issues okay.

1 And that's what we're really concerned
2 about. In our case, and just let me go through the
3 process of we had issues, we contacted the operator
4 for possible relief, had some possible solutions that
5 we pushed forward, that we felt knowing the
6 operation, knowing the customer base, knowing what
7 they had for assets on the ground that we felt could
8 help the situation. We were never able to get to the
9 next step of having a discussion with the operator.

10 In fact, when we laid this information out
11 to them they responded basically with pre-emption and
12 a case saying hey, this is what -- we don't need to
13 go further down this road, this is not a
14 jurisdiction. We're not going to have this
15 discussion. And I think it's important that we go
16 ahead and have some robust procedures in place so
17 that other communities don't have to go through the
18 work that we've had to do just to get to this point.

19 And the key here too, and it's very
20 important from our standpoint. We're not looking for
21 litigation. We are looking for solutions, working
22 outside in a non-litigious manner with an operator to

1 go ahead and talk about issues that are occurring as
2 the business grows. Hopefully, I know there's been a
3 lot of talk about that, and what we can do to work
4 together to perhaps mitigate some of the impacts.
5 Okay.

6 What we're asking today is to the STB is a
7 number of things, and to be totally honest with you
8 I'm not even sure that this is an area that can be
9 considered based on your jurisdiction, but a
10 condition of the merger to protect us, to make sure
11 that we can have -- we're not looking for decisions
12 to be made. All that we want to make sure happens is
13 that we can have a good faith discussion with the
14 operator, regardless of who it is, whether it's Pan
15 Am or CSX in this particular case.

16 And that's really what we're looking for
17 is how do we go ahead and do that, and how do we
18 protect it? And that's why we ask you as a condition
19 because we don't feel that the current structure
20 supports continued discussion here that we put this
21 into the merger as a condition to protect us as we
22 move forward.

1 And as we do that, that it works through
2 the RCPA as an arbiter or what have you, to help us
3 if we do need to get to that point to go ahead and do
4 that.

5 In closing, this has been a journey for
6 us. We started with specific complaints I guess you
7 would call them, or areas that we were looking at
8 mitigation. That never took place. Those
9 discussions didn't get very far because we came up
10 against the pre-emption and the toolbox that the
11 particular operator uses in these cases to push us
12 aside.

13 So the effort has been significant to get
14 to this point, and I think it's critical as we move
15 forward that not only to the Islington Creek, but for
16 future municipalities and municipality groups that
17 there is a place, or some structure in place where we
18 can quickly voice these opinions, and/or have these
19 discussions.

20 And that's really where I wanted to close.
21 If you have questions I'm more than happy to take
22 them.

1 CHAIRMAN OBERMAN: Well Mr. Hiney thank
2 you, and I think we all appreciate your taking the
3 time to talk to us, and what appears to be a fair
4 amount of frustration on the part of your
5 neighborhood association organization, which I am
6 intimately familiar, at least in my bailiwick in
7 Chicago.

8 I'm going to make a few observations.
9 One, I would hope that our Overdeck office is
10 responsive and able to help. It sounds like they
11 have been, they always are, and provide whatever
12 assistance they can. It would be difficult for me to
13 comment on the substance of whatever claims of
14 pre-emption have been thrown at you because I don't
15 know precisely what issues you were raising, and I
16 wouldn't comment on the substance of them anyway
17 because it might be a matter that comes in front of
18 us.

19 I will make a couple of observations, and
20 this is not to cast any negative comment towards CSX,
21 but all of the railroads rely on the pre-emption
22 doctrine when they can. I'm not sure that will

1 change much here although I don't know what the
2 issues are. And I can tell you that while there are
3 some very strong pre-emption statutes that govern us,
4 and govern the railroad industry which we have to
5 follow, questions of pre-emption are often
6 extraordinarily complex and subtle.

7 The Board has a number of pre-emption
8 cases, have since I've been on the Board. We have
9 some pending now which generate a great deal of
10 debate. So it is not obvious at the beginning of any
11 discussion that something is subject to pre-emption,
12 even though the local railroad person may throw the
13 term around to try to make it go away, or at least
14 spend money you don't have to hire a lawyer to fight
15 it.

16 It's frustrating, and I hope you will
17 bring those issues to our attention. The doctrine of
18 pre-emption should not be used as a heavy hand on a
19 neighbor organization's legitimate concerns to at
20 least talk to the railroad. And all I would say on
21 this at this hearing, not knowing precisely what your
22 issues are, is that I always encourage discussion,

1 and I would very much encourage the CSX folks to sit
2 down with you.

3 You know our experience with CSX when
4 problems do come up, mostly from the shippers, not
5 from neighboring groups, is that they do try to
6 respond and sit down and work things out. I think
7 they have a good attitude in that respect. I am sure
8 they're listening, so I'm going to invite somebody
9 from CSX to send you a proper contact information so
10 that the two of you can sit down.

11 Doesn't that sound like it's the kind of
12 thing that would be a condition in a Board, and I
13 don't want to pre-judge it, but I sure want to
14 encourage the two of you to meet and get together and
15 work out your problems. I am a strong believer in
16 that.

17 If I were an alderman, and the alderman in
18 your neighborhood I'd make sure it happens, but I'm
19 past that part. But I've done it many, many times,
20 including with railroads by the way in my own -- we
21 had a railroad that ran through my ward 40 years
22 ago, so I had some experience with that.

1 So I don't know if that gives you any
2 comfort, but I can hear the frustration in you voice
3 of trying to deal with a large organization.

4 MR. HINEY: Yeah and just to be fair to
5 CSX they have reached out. I wanted to make sure
6 that that was clear. That's a little bit of a breath
7 of fresh air. We want that to continue, and look
8 forward to that. And again, we're just a local
9 neighborhood trying to work our way through this
10 process. Your group, the RCPA, once I realized that
11 they were there, have been very responsive in
12 regards to phone calls, those types of things. Not
13 most people know that it exists, outside of the
14 industry. I can tell you that based on discussions
15 we've had with the municipality, keeping them up to
16 speed.

17 CHAIRMAN OBERMAN: Yeah. Our whole agency
18 as we all know to hear some people say it, Railway Age
19 Magazine called us that sleepy little agency last
20 summer, and I have yet to find anybody at the Board
21 who's gotten a decent night's sleep since I became
22 Chairman. So we're not a sleepy agency, but we aren't

1 well-known.

2 I just did hear by the way from Janie
3 Sheng who is the director of OPAGAC and she said
4 she well remembers your contacting the office, and
5 that Pan Am didn't accept the invitation to try to
6 sit down, but I am sure Jim Foote will accept that
7 invitation because he's listening right now, and I
8 know Jim well. So let's see.

9 MR. HINEY: They've already proactively
10 got into that, so thank you very much Mr. Chairman.

11 CHAIRMAN OBERMAN: Well that's great. And
12 we stand ready and hopefully to help make sure that
13 conversation continues. Any questions by any Board
14 members for Mr. Hiney? Okay. Thank you.

15 MR. HINEY: Thank you.

16 CHAIRMAN OBERMAN: Much appreciate your
17 taking the time to be here with us.

18 MR. HINEY: Thank you much.

19 CHAIRMAN OBERMAN: All right. So let us
20 move on to Panel Number VII. These are shippers. So
21 let me call out the names in order. I think
22 everybody is here. Hopefully if they're not they'll

1 be here soon. Bob Lefebvre of Eastern Propane Gas;
2 Hillel Weisel from Fabian Oil; Marjorie Shansky on
3 behalf of Frost Bridge Associates; Charles Giroux,
4 Mid States Packaging, and two people who I hope are
5 here today who were not able to stick around
6 yesterday, Seth Hankowski from All States Asphalt,
7 and Sarah Cohen from Blue Triton Brands, Poland
8 Springs.

9 So if those folks are with us let us start
10 with Mr. Lefebvre.

11 MR. LEFEBVRE: Good afternoon. Thank you
12 Mr. Chairman. Thank you Board members for allowing
13 me to speak today in favor of CSX purchase of Pan Am.
14 A quick bio, my name is Bob Lefebvre, Vice President
15 here at Eastern Propane and Oil, located in
16 Rochester, New Hampshire.

17 I've been employed with Eastern for 35
18 years. Eastern is family owned and operated, and has
19 been since 1932. Currently we serve 93,000 customers
20 within five New England states. As part of Eastern
21 Supply infrastructure it owns and operates one of New
22 England's biggest rail facilities which services 24

1 locations scattered throughout New England to service
2 those customers.

3 We work closely with our short line NH,
4 and also with Pan Am, and have done so well over 35
5 years. In my opinion, and again this is in my
6 opinion. If things don't change we will see, we will
7 continue to see diminished service and ability to
8 utilize rail as a viable transportation source.

9 If service by rail diminishes, that would
10 leave Eastern, and companies like Eastern, with less
11 options to fill their supply hubs. If we understand
12 the infrastructure of how energy is brought into New
13 England, there are three possible areas in which that
14 can happen.

15 We can do it in New York by the pipeline.
16 We can import it through two import terminals, one
17 located in Providence, Rhode Island, and another one
18 is located in Newington, New Hampshire. Again let me
19 reiterate that. Import terminals. And the last, but
20 not least is domestic rail product. It's imperative
21 in my opinion again that we allow this to go through.
22 This has to happen.

1 Again my history with Pan Am goes back to
2 the B&M days if people can remember those days. We
3 were excited then when Pan Am took over that line.
4 They increased service. And we expect the same will
5 happen with the purchase -- CSX purchase of Pan Am.
6 We will see the increase service consistent, ratable
7 delivery that we need on a continuous basis daily in
8 order to keep the trucks filled, in order to make the
9 deliveries to the consumers, to the hospitals, to the
10 manufacturers and everybody in between.

11 Propane, as you know, is a green product.
12 It's only going to continue to grow in its volume,
13 and we need a strong infrastructure here in New
14 England to be able to handle that additional growth.
15 I'm standing here today, or sitting here today in
16 front of you throwing my support 100 percent, and so
17 is the company's position, that we need this to move
18 forward.

19 There was a question posed yesterday by
20 one of the members to a member of the CSX team that
21 said what keeps you up at night? Well as a shipper
22 and a consumer, I'll tell you what keeps me up at

1 night, wondering if I'm going to receive my rail the
2 next day. And it's vital that we do receive that
3 steady service. If not, we can't fill the trucks.

4 Those trucks need to roll every day to
5 make those deliveries. We do not have the capacity
6 to wait on the rail. We need those cars. So what
7 happens? So we got our supply needs based on what we
8 project the rail can handle. And in this case we
9 are being hamstrung. We are not utilizing our
10 facility to its 100 percent potential.

11 We feel CSX will allow us to continue to
12 bring in domestic product which will only benefit our
13 consumers with cheaper product. Again let me
14 reiterate. We operate in Rochester, New Hampshire.
15 It's about 100 miles from Selkirk, give or take. The
16 import terminals -- we pay a premium for that. We're
17 bringing that from overseas.

18 Again the best option for consumers is a
19 strong rail system to bring this product into the New
20 England market. And with that being said Eastern
21 Propane, myself wholeheartedly are behind CSX
22 purchasing Pan Am. And with that I'll answer any

1 questions you have. Thank you.

2 CHAIRMAN OBERMAN: Yes. I take it you
3 were listening in. I think I mispronounced your name
4 Bob how do you pronounce it?

5 MR. LEFEBVRE: Lefebvre, very French,
6 Quebec.

7 CHAIRMAN OBERMAN: Yeah I read all the
8 letters that were there, so I apologize.

9 MR. LEFEBVRE: Yes.

10 CHAIRMAN OBERMAN: You heard the
11 discussion yesterday that I was having with the
12 representatives of CSX as we talked about the propane
13 supply coming in from various rail sources?

14 MR. LEFEBVRE: That's correct.

15 CHAIRMAN OBERMAN: Yeah. So does your
16 company rely on those competitive options today about
17 various ways you can obtain your propane, either up
18 through Bangor, or through Selkirk or Mechanicville
19 or however it gets to you.

20 MR. LEFEBVRE: So we try our best to
21 utilize other lines to come in, but I will be upfront
22 and honest with you. A lot of our product is coming

1 in from the shale area of Pennsylvania, Ohio. We
2 also get it in from Sarnia. We bring product in from
3 Calgary. Calgary we use CP down through New York and
4 Selkirk, so yes to answer your question Mr. Chairman,
5 yes we do use other avenues.

6 But I will say this, that we use CSX for
7 three-quarters of what we bring into ours. Why?
8 It's a direct route. It's the quickest shipping
9 route for us to use CSX. CSX has provided
10 outstanding service. We track our cars every day
11 from origin every switching yard, we know exactly
12 where they are every day, and we watch these cars
13 move, and they move consistently across the CSX
14 line. I will be remiss if I said to you it's perfect
15 service. It is not. There are times where there are
16 hold-ups, and we understand that, but they're not
17 consistent on a basis where we would object.

18 But once they come into New England the
19 transit times don't. This is what we're up against,
20 and again because of the terms of those cars, the
21 suppliers of the midstream companies that we deal
22 with have to charge a greater amount to turn those

1 cars. So let me just give you a for instance.

2 If we can turn the car in two weeks, the
3 cost is this. If it takes us 30 days the cost is
4 this, and that's what's happening to us right now.
5 It's happening and it's taking 30 days to turn a car
6 which typically should turn, they should arrive to us
7 within seven to ten days. We unload it and it should
8 go back to them in seven to ten days.

9 We know that's achievable, and with CSX's
10 help it will be achievable.

11 CHAIRMAN OBERMAN: Well and is the reason
12 for the slow turns now the service you're getting
13 from Pan Am?

14 MR. LEFEBVRE: It's the congestion. And I
15 know I've heard a lot of discussions with passenger
16 trains. I've been at this a long time. Pan Am, they
17 provide outstanding service to us. I mean to the
18 point in the early days that they would actually take
19 a train and a crew, and go get some cars for us if we
20 so needed it. They would do that.

21 They can't do that any longer. I feel
22 like our service started to diminish when the

1 Downeaster came onboard, and the corridor in which we
2 are located. Why? That Downeaster needs to run up
3 and down that track a couple times a day. So that
4 doesn't leave Pan Am the ability to run up and down
5 that track during the course of the day. So what do
6 they do? They run trains. They run full trains from
7 Massachusetts, Provence Station, Deerfield, up to
8 Portland, to Rigby Yard.

9 They stage it and they put them there.
10 And sometimes our cars will sit there in Rigby in
11 Portland for an additional three, four, five days.
12 And if something happens from the Portland Yard to
13 where we make the hand-off to NHN, it becomes
14 congested.

15 We ship cars ratably, almost daily, three,
16 four, five, six cars a day. This time of year it
17 might be ten to twelve. There are times that there
18 are 60 plus cars sitting in Rigby waiting to come to
19 our facility. Do the math. 30,000 gallons in each
20 one of those railcars. That's a lot of gallons that
21 are sitting, that we need turned. Again, I'm not
22 laying blame on Pan Am, they're doing what they can.

1 Again, I felt like service started to diminish when
2 that Downeaster started to use NA line.

3 CHAIRMAN OBERMAN: Well it sounds like I
4 don't hear the Downeaster going away.

5 MR. LEFEBVRE: No I don't either, but our
6 hope is that some infrastructure money will be put in
7 so they can put side tracks in, so they can bypass
8 each other. That's our hope. I mean again, and I
9 guess I can't say this enough. And if I get animated
10 and excited it's because this opportunity that's
11 presenting itself here today is going to allow a
12 company like ourselves to utilize our facility in a
13 manner in which we built it.

14 It's going to allow our consumers to enjoy
15 pricing that is favorable without us having to go to
16 the overseas market and bring in that premium
17 product. So yes, yes Mr. Chairman. You're
18 absolutely right. The Downeaster is not going away,
19 but our hope is that they can have at least a bypass
20 rail that they can pull aside to let the train go by,
21 and continue to service their customers during the
22 course of the day instead of having to do it at night

1 because that's what's happening now.

2 CHAIRMAN OBERMAN: So it's your hope that
3 CSX will invest in a siding that will allow this to
4 happen? Or I mean I'm trying to relate to why you
5 think CSX coming in will avoid the problem if it's an
6 infrastructure problem?

7 MR. LEFEBVRE: Based on conversations they
8 understand the challenges, being a Class 1 railroad.
9 I think they understand those challenges, and they
10 probably have work arounds and the capital to create
11 those work arounds. Maybe they increase the tonnage
12 on the track so you can move when they're coming back
13 south after they stage them in Rigby, to come back
14 south maybe they can pull more cars back instead of
15 using just one engine and one crew, maybe they can
16 put three engines and a few more crews to pull those
17 cars down in a greater capacity than what's happening
18 now.

19 So there would be other options that we
20 don't have now.

21 CHAIRMAN OBERMAN: All right. Has CSX
22 made any commitments along those lines to you?

1 MR. LEFEBVRE: They have not. They have
2 not no.

3 CHAIRMAN OBERMAN: I want to get back to
4 the competitive options aspect of this. You say that
5 most of your purchases come through CSX, but do you
6 see it as important to your ability to negotiate for
7 the best prices to be able to have those other
8 options, bargaining tools?

9 MR. LEFEBVRE: Oh absolutely. It's
10 imperative, it's imperative because again year to
11 year the infrastructure in the propane world changes,
12 and I can go back many, many, many years. Sarnia was
13 a main hub. Western Canada product was a main hub.
14 Most of the product coming into New England in those
15 days would come in from CN and CP.

16 They'd come down and SLR would pick them
17 up, and then Pan Am would pick them up from there.
18 But yes, I do feel that we need that to keep New
19 England open, those other avenues open to allow that
20 competitive advantage, absolutely. It's got to be
21 those checks and balances, so yes, I'm fully
22 supportive.

1 CHAIRMAN OBERMAN: You're talking about to
2 summarize as much as you love CSX you love that
3 competition too.

4 MR. LEFEBVRE: I think that's in all of us
5 isn't it.

6 CHAIRMAN OBERMAN: You know what after
7 I've been at the Board for two years I don't know.

8 MR. LEFEBVRE: I understand.

9 CHAIRMAN OBERMAN: No but I very much
10 appreciate it. I don't want to dominate it, do any
11 other Board members have any questions? All right.
12 Well thank you very much for your patience.

13 MR. LEFEBVRE: Well thank you.

14 CHAIRMAN OBERMAN: You know it's really
15 helpful always to put these broad concepts in the
16 statute we've been talking about and so forth into
17 the hands of a real world person.

18 MR. LEFEBVRE: Exactly.

19 CHAIRMAN OBERMAN: Who needs to function
20 under those statutes, so thank you.

21 MR. LEFEBVRE: And then so is the
22 consumer, so we need to think of that aspect as well,

1 so the stronger that we can build the infrastructure
2 the better off everyone.

3 CHAIRMAN OBERMAN: Yes.

4 MR. LEFEBVRE: So thank you again to all
5 of you and you have a wonderful weekend. Thank you
6 so much.

7 CHAIRMAN OBERMAN: Thank you so much. All
8 right. Mr. Weisel.

9 MR. WEISEL: Weisel, good afternoon.

10 CHAIRMAN OBERMAN: Weisel, thank you sir.

11 MR. WEISEL: Mr. Chairman, members of the
12 Board, thank you very much for letting me speak. I
13 don't know if I can say much more than Bob, he really
14 he wrapped up the best possible picture for support
15 of this transaction that the propane industry could
16 report. You know as far as Mr. Moulton from Maine DOT
17 is concerned, you know Fabian Oil is working closely
18 with DOT on our current project here in Waterville,
19 and we do mirror his support for this transaction.

20 And I can probably just say that my
21 comments are going to seem trivial to the last couple
22 days of the testimony, you know the anti-trust and

1 competitive nature of this transaction, but I think
2 they're no less important. I want to speak to just
3 briefly you know the boots on the ground, and what we
4 feel the benefits of this transaction will mean both
5 to consumers, suppliers, and the jobs created and
6 maintained in Maine.

7 Fabian made a commitment to bring propane
8 to central Maine. You know we support trucking, we
9 operate a large fleet, but we really can't depend on
10 trucking growing demands here in Maine to grow in
11 population. And you know the prior testimony spoke
12 to trucking as an alternative, but it's no longer a
13 viable alternative, and I think rail is the absolute
14 necessity to keep up with what we need.

15 If you look at the current landscape in
16 trucking there is quite a bit of a crisis in
17 trucking, you know, all over the country. We'd be in
18 trouble without rail. Without investment and
19 improvement and increasing rail in Maine we won't
20 meet the demand inclusive of trucking. The equipment
21 and the driver's operating, they're just getting
22 harder and harder to find.

1 With that said, the rail is a far safer
2 means of transporting the volume of product we're
3 looking to transport over the distances we're trying
4 to transport it. It's more economical and efficient,
5 and we need to increase and improve our rail system.
6 Fabian has a decades long commitment and investment
7 to improve central Maine's rail infrastructure.

8 What we're doing is not something we can
9 decide one day to roll up and move it down the road.
10 What we're building will remain for future
11 generations as long as rail operations continue, and
12 here in Maine I'd like to just add that propane is
13 not a discretionary product. It is cold up here.
14 It's a necessity of life so to speak up in Maine to
15 keep people warm.

16 We don't see currently commercially viable
17 alternative to propane and fuel oil at this time.
18 And what we want to accomplish with this project, and
19 what this project will help us do is improve
20 security of supply, ability to meet growing demands,
21 protect the residents of Maine and those who work
22 here.

1 What CSX we feel, and maybe the optimism
2 in me is getting the best of it, but you know the
3 capital investment that we think and feel that CSX
4 will put into the system, they'll add stability,
5 streamline logistics, more direct and efficient
6 communications, and most importantly safety. Our
7 product has you know people look at it in one way and
8 it is a very safe product, but we want to improve
9 the rail system and add greater savings, and CSX is
10 going to do that for us.

11 And I don't really have a lot more to say.
12 I think that Bob summed up the industry opinion of
13 this in the northeast, but I think it's critical that
14 we support this transaction, for improving the rail
15 system of the northeast, especially up in Maine.
16 Thank you for your time. I appreciate it. If
17 there's any questions I'm more than happy to help
18 you.

19 CHAIRMAN OBERMAN: Just a couple Mr.
20 Weisel. You're located where in Maine?

21 MR. WEISEL: So our company is located in
22 central Maine in Oakland, Maine. The rail terminal

1 that we are currently constructing is in Watertown.

2 CHAIRMAN OBERMAN: All right. And the
3 company is Fabian Oil, but it sounds like your
4 product, or one of your main products is propane?

5 MR. WEISEL: So Fabian is a multi-product
6 company, but our retail or energy division is propane
7 and oil. That would be the main focus of our
8 business. We do have a gasoline and C store
9 business as well.

10 CHAIRMAN OBERMAN: Would you echo Mr.
11 Lefebvre's opinion that keeping these options for
12 getting propane to different carriers through the
13 exchange is imperative for you to be able to
14 negotiate your best prices?

15 MR. WEISEL: I think options are always
16 important you know, regardless of what products means
17 of transportation we're talking about. I would also
18 add that stability and security supply and logistics
19 is critical for continued and improved means of
20 transportation.

21 So yeah, it's important to have the
22 competitive nature, but it's also important to have

1 somebody to rely on who is going to get the product
2 to us to deliver to people in critical times of
3 need. I mean you know right now we're barely going
4 to push zero degrees tomorrow at the high, and the
5 product needs to be there.

6 CHAIRMAN OBERMAN: Yes. But do you rely
7 on the fact that those gateways have been open to
8 allow you to negotiate better with whoever is
9 supplying it?

10 MR. WEISEL: I think -- well first of all
11 let me just add, we don't have, currently have an
12 operating rail terminal here. This is the first.
13 This will be the first one here in the Waterville, or
14 the mid Maine section, central Maine, so I can't
15 really comment on it. My experience in Connecticut
16 I've been dealing with Pan Am Southern for eight or
17 ten years before I moved up to Maine.

18 It was always important to yes, to have
19 channels and negotiate how you brought it into the
20 short line, but I think it's also important to rely
21 on service as well. They're equally important.

22 CHAIRMAN OBERMAN: Yeah, okay. It's

1 warmer in Connecticut. I went to school there.

2 MR. WEISEL: I'm getting used to it up
3 here in Maine. It's as they say up here in Maine
4 it's chilly.

5 CHAIRMAN OBERMAN: Come to Chicago. All
6 right. Thank you very much for your observations.

7 MR. WEISEL: My pleasure. Thank you very
8 much.

9 CHAIRMAN OBERMAN: Do any of the other
10 Board members have any questions? Okay. Moving
11 along.

12 BOARD MEMBER HEDLUND: I do Mr. Chairman.

13 CHAIRMAN OBERMAN: Oh I'm sorry Karen.

14 BOARD MEMBER HEDLUND: Just one question.

15 CHAIRMAN OBERMAN: Go right ahead.

16 BOARD MEMBER HEDLUND: I just read that
17 there was a train that derailed in Biddeford, Maine a
18 couple days ago, overturned in two propane tanks, but
19 it looks like it was quickly contained. How often do
20 propane trains derail up there in Maine? Is that a
21 frequent occurrence or?

22 MR. WEISEL: So I will tell you I have

1 been here -- I've only been here since March, and
2 those are the first -- that is the first occurrence
3 and the only two cars I know of that have derailed.
4 In Connecticut we did have some derailments from time
5 to time. We never had while I was there for the time
6 that I was operating a terminal, overturned cars.

7 Most of the time it was you know a wheel
8 skips a track and you have to put it back on. This
9 one you know, and luckily these were two cars that
10 overturned. There were minor leaks, it was
11 contained, and I think it was an hour and a half that
12 the incident was contained.

13 BOARD MEMBER HEDLUND: That's good to
14 know. Thank you.

15 CHAIRMAN OBERMAN: Thank you. Any other
16 questions? Okay. We will move along to Marjorie
17 Shansky.

18 MS. SHANSKY: Thank you. Good afternoon
19 Mr. Chairman and ladies and gentlemen of the Board.
20 I'm Attorney Marjorie Shansky here in Connecticut
21 where it's warmer than Maine, but not this weekend.
22 And we appreciate the opportunity to participate in

1 this public hearing. I'm here on behalf of Todd
2 Perry who is facilities manager at Frost Bridge.

3 Frost Bridge has a place of business in
4 Watertown, Connecticut, and for a number of years
5 Frost Bridge has operated pursuant to a permit issued
6 by the State of Connecticut for solid waste volume
7 reduction facility. The facility is a critical
8 resource and an important participant, pardon me, in
9 implementing the state's solid waste management plan.

10 In its operation the facility relies both
11 on truck and rail service, with rail service
12 accounting for approximately two-thirds of the
13 material transported, which is in excess of 100,000
14 tons of solid waste annually. Currently, Frost
15 Bridge is served by the Naugatuck Railroad Company
16 from the facility to Waterbury.

17 Pan Am Southern continues to transport
18 from Waterbury to Hartford, and Springfield over
19 Amtrak rail around the north of Albany, New York to
20 Rotterdam Junction, New York at which point CSX
21 takes over to the remaining route to the final
22 destination in Lordstown, Ohio.

1 There are inefficiencies associated with
2 this itinerary from an operational perspective.
3 Frost Bridge is supportive of the proposed merger
4 resulting in CSX having control of the routing and
5 transport from Waterbury forward for the operation
6 for a number of reasons. The upgrade of track to
7 Class 1 will result in significant improvements in
8 efficiency moving material, including a reduction in
9 travel time between the facility and its Ohio
10 destination.

11 This efficiency will in turn result in
12 Frost Bridge's ability to sort and transfer
13 additional material at the facility which benefits
14 not only Frost Bridge, but the State of Connecticut
15 in its significant efforts to manage solid waste.

16 Millions of dollars of private money will
17 be used to perform the system upgrades, and that
18 represents a significant public benefit.
19 Modernization as others have said, of the rail
20 system will enhance service consistency, reliability,
21 and safety. And finally on average railroads are
22 three to four times more fuel efficient than trucks.

1 That means that moving material by rail
2 instead of trucks lowers greenhouse gas emissions by
3 up to 75 percent on average. With the increased
4 efficiency associated with CSX's operation of Frost
5 Bridge's rail transport from Waterbury forward, Frost
6 Bridge can increase its reliance on rail, and
7 eliminate an additional 1,000 to 1,500 truck trips to
8 Ohio from the facility annually, with the resulting
9 reduction in greenhouse gas emissions.

10 In summary, Frost Bridge recognizes and
11 supports enthusiastically the proposed merger as a
12 means of improving our local, state and national
13 response management and control of solid waste and
14 increased recycling, and we appreciate very much the
15 opportunity to have participated this afternoon.
16 Thank you.

17 CHAIRMAN OBERMAN: Thank you very much for
18 coming to talk to us. I'm just a little curious
19 where -- what is it that going to facilitate your
20 moving more freight on rail once CSX takes over this
21 transaction goes ahead? I'm not quite clear. Is it
22 because you can ship more carloads because the track

1 will be of a higher caliber, or?

2 MS. SHANSKY: Correct.

3 CHAIRMAN OBERMAN: Is that the reason?

4 MS. SHANSKY: That is a very significant
5 reason.

6 CHAIRMAN OBERMAN: Yes okay. And you're
7 counting on that. And where is the track that you're
8 talking about that needs to be upgraded? Is it on
9 the north/south route?

10 MS. SHANSKY: It is well, it happens to be
11 in part from Waterbury to Hartford, but and more
12 particular than that I'm afraid I can't be. I am
13 speaking for Mr. Perry, but I'm not Mr. Perry. But
14 if you like I can find that out and add it to your
15 record which I know is remaining open.

16 CHAIRMAN OBERMAN: Yeah. Well it might be
17 helpful. I'm just trying to picture the map. You go
18 directly north/south up to the Pan Am Southern and
19 then over to Rotterdam right?

20 MS. SHANSKY: Correct.

21 CHAIRMAN OBERMAN: So it's the north/south
22 part which is problematic as you understand it.

1 MS. SHANSKY: As I understand it, but
2 again I would be very happy to verify that.

3 CHAIRMAN OBERMAN: All right. And I take
4 it that for your purposes the only way you can get to
5 your destination in Ohio is on CSX. Once you've got
6 to PAS you don't have any other options to get to
7 Ohio.

8 MS. SHANSKY: As I understand it that is
9 correct.

10 CHAIRMAN OBERMAN: Yep okay. All right.
11 Thank you. Thank you very much. Does anyone else
12 have questions? All right. Much appreciate it.

13 MS. SHANSKY: Thank you.

14 CHAIRMAN OBERMAN: Tell Mr. Perry you did
15 an admirable job.

16 MS. SHANSKY: I appreciate it.

17 CHAIRMAN OBERMAN: Okay. Next up Charles
18 Giroux. So I'm not sure Mr. Giroux is --

19 MR. GIROUX: Hi.

20 CHAIRMAN OBERMAN: Is he here?

21 MR. GIROUX: Can you hear me?

22 CHAIRMAN OBERMAN: Yes I can hear.

1 MR. GIROUX: I'm here.

2 CHAIRMAN OBERMAN: There you are. Go for
3 it.

4 MR. GIROUX: All right. Thank you
5 everybody for listening. I own Mid-States Packaging
6 and Distribution. We have locations in Portland, in
7 Ayer, in Leominster, in Fitchburg, and on the G&W we
8 have location in Worcester, Mass as well as Auburn,
9 Mass.

10 We run distribution and transload services
11 for the plastic and chemical industry as well as
12 paper in our distribution center in Ayer. We are in
13 full support of the CSX taking over the operation.
14 We think that the investment that they'll bring in
15 will be significant and add to a reduction in the
16 amount of inventory that needs to be kept on the rail
17 to the service. A lot of the materials that we
18 handle are quite expensive where cars can run
19 upwards of \$200,000.00 per railcar. So every day we
20 can reduce that transit time means that less
21 inventory needs to be carried.

22 As I said you know we do the trucking, and

1 on the last mile, and we want to try to get the goods
2 and materials that go to the manufacturing sector to
3 them as efficiently as possible. And as I said we're
4 in support of this, and any questions?

5 CHAIRMAN OBERMAN: Yes. So I'm as you can
6 tell I am curious about the network aspects of each
7 person who's speaking to us. So what carriers are
8 you using now in your business operation?

9 MR. GIROUX: We use both NS and CSX, as
10 well as G&W in Worcester in our Auburn locations. So
11 we touch all of them.

12 CHAIRMAN OBERMAN: And the G&W, do they
13 then interconnect with other Class 1's, or where do
14 they go to?

15 MR. GIROUX: They connect up in Gardner
16 with the NS, and they connect in Worcester with CSX.
17 So right now today our location in Auburn and
18 Worcester can get serviced by both and avoid the
19 entire Pan Am system, and then our locations in Maine
20 as well as Ayer and Fitchburg and Leominster are
21 serviced by Pan Am Southern, and ST.

22 CHAIRMAN OBERMAN: And so for your business

1 I take it if this deal goes through, some -- a
2 meaningful amount of your business is going to
3 continue to need Pan Am Southern.

4 MR. GIROUX: Yes. I don't see any way it
5 really can't. I don't think that there's enough
6 facilities to handle not using the Pan Am system,
7 especially up in Maine.

8 CHAIRMAN OBERMAN: Up in Maine, but what
9 about it sounds like you use Pan Am Southern, the
10 Patriot route as well for some of your travel.

11 MR. GIROUX: We use Pan Am Southern for
12 our warehouse in Ayer, as well as our Leominster and
13 Fitchburg locations, and then we use the G&W for our
14 Auburn and Worcester locations.

15 CHAIRMAN OBERMAN: Where is that Pan Am
16 Southern traffic going?

17 MR. GIROUX: It's coming in from the Gulf
18 Coast of Texas.

19 CHAIRMAN OBERMAN: Oh. You use it mostly
20 for incoming, is that what you're saying?

21 MR. GIROUX: Yeah. We don't do any
22 outbound shipments. We just deliver it to the local

1 manufacturers nearby.

2 CHAIRMAN OBERMAN: So the traffic that
3 comes in from the Gulf Coast, is it coming from
4 places that are sole served by CSX, or do you have
5 options?

6 MR. GIROUX: No. Most of them are on the
7 western part of the United States so that they can go
8 through either gateway, either an NS gateway, or a
9 CSX gateway, so they do have the option. The
10 general, it's UP or BN is generally the origin
11 railroad, so they can come through the gates.

12 CHAIRMAN OBERMAN: So, because I was
13 trying to understand if you receive materials both
14 through the Rotterdam interchange and the
15 Mechanicville interchange or?

16 MR. GIROUX: Yes we do. Selkirk and from
17 Mechanicville. So we do get both. We get them from
18 NS as well as we get them from CSX.

19 CHAIRMAN OBERMAN: All right. So both of
20 those interchanges are important to you.

21 MR. GIROUX: Correct.

22 CHAIRMAN OBERMAN: Yeah okay. All right.

1 Thank you very much. Anybody else have any
2 questions? Much appreciated. Thank you sir.

3 MR. GIROUX: Thank you, thank you.

4 CHAIRMAN OBERMAN: All right. Next up is
5 Seth Hankowski who I hope was able to join us. He
6 wasn't able to stick around yesterday. Is he here?
7 Oh well apparently he's not. If he comes in later
8 we'll try to get him in. And I had previously said I
9 thought Sarah Cohen who couldn't stay yesterday was
10 also going to speak today, but I understand she is
11 not here today.

12 So if that is the case that ends Panel
13 VII. Does anybody feel like we need a break, or
14 should we try to go right into Panel VIII and see if
15 we could get through that before we break, it's a
16 short panel. Hearing no objection that's what we're
17 going to do.

18 The next panel is Northern New England
19 Passenger Rail Authority, Patricia Quinn; New
20 Hampshire Central Railroad Edward Jeffrey, and
21 Lewiston-Auburn Railroad, Jonathan LaBonte. Okay.
22 Is Patricia Quinn here?

1 MS. QUINN: Yes I am. Good afternoon.

2 CHAIRMAN OBERMAN: Oh there you are, okay.
3 Go for it.

4 MS. QUINN: All right. Well thank you
5 very much for this opportunity Chairman Oberman, and
6 members of the Committee. My name is Patricia Quinn,
7 and I am the Executive Director of the Northern New
8 England Passenger Rail Authority, referred to as
9 NEPRA. NEPRA was created by the Maine state
10 legislature in 1995, and is the state sponsor of the
11 Amtrak Downeaster interstate passenger rail service.
12 The Downeaster makes five round trips every day along
13 the 143 mile corridor between Brunswick, Maine and
14 Boston, Massachusetts, serving 12 station communities
15 in three states.

16 Since its launch in December of 2001, the
17 Downeaster has transported more than 8.2 million
18 riders, the equivalent of 674 million passenger
19 miles. In Maine and New Hampshire, the Downeaster
20 operates over rail lines owned and operated by Pan Am
21 Railways, and then the track we operate on in
22 Massachusetts is owned by the MBTA.

1 For more than two decades NNEPRA's
2 negotiated and collaborated with Pan Am Railways to
3 plan and manage over 130 million dollars of public
4 and railroad infrastructure, safety and maintenance
5 projects in Maine and New Hampshire, and these have
6 been funded by state and federal funding partners.

7 The capital we have invested in have
8 rehabilitated 106 miles of track and signals and
9 replacing stick rail with continuously -- rail.
10 We've restored or replaced more than 10 miles of
11 double track. We've replaced over 150,000 ties, and
12 refurbished more than 50 grade crossings.

13 We have an annual maintenance program that
14 supplements Pan Am's limited resources to address
15 more routine repairs and deficiencies that impact the
16 reliability of all trains, like degraded track
17 components, surfacing and crossing panels,
18 vegetation management, and drainage issues that but
19 for our involvement would probably not be addressed.

20 This public private partnership has
21 resulted in both public and private benefits. These
22 projects have been necessary to initiate, sustain and

1 improve and grow Downeaster service. We have been
2 able to reduce our travel time, increase frequency,
3 expand the service reach of the service, and we
4 reached and exceeded our ridership goals
5 pre-pandemic.

6 And this has all been accomplished while
7 improving safety, supporting private development in
8 and around our station communities. But these
9 projects have not had any impact, negative impact on
10 freight, but have actually contributed positively to
11 the efficient movement of freight.

12 And in fact, because of these investments,
13 much of the maximum authorized speed for freight has
14 increased from 10 to 25 miles an hour up to 40 miles
15 an hour on the segment on which we operate. Over the
16 past year CSX has worked collaboratively with us to
17 learn more about the Downeaster service, about our
18 business relations, and our goals and priorities.
19 And they've committed to support the success and
20 growth of the Downeaster service.

21 They're going to do this by fulfilling
22 their obligations to Amtrak to reliably accommodate

1 and dispatch Downeaster trains and collaborate on the
2 installation of a positive control system on the
3 corridor of Maine and New Hampshire which will be
4 funded by Amtrak, as well as the operation and
5 maintenance of that system.

6 CSX is committed to abide by our agreement
7 with Pan Am to extend six more miles of double track
8 at a frequency, and build a second passenger platform
9 in Wells, Maine. This project is funded primarily
10 through the Christy grant that was just awarded to us
11 not too long ago.

12 And CSX is committed to cooperate with us
13 on future Downeaster enhancement projects, including
14 those to relocate Portland station, to add a new
15 Maine station, increase frequency and reduce travel
16 time. The pledge that CSX has made to adequately
17 maintain the railroad, and invest in infrastructure
18 improvements that improve the efficiency of freight
19 operations really creates new and exciting
20 opportunities for both freight and passenger
21 customers.

22 NNEPRA supports this proposed transaction

1 subject to the letter agreement that we have with CSX
2 dated August 3, which I believe you have a copy, and
3 looks forward to a robust and productive partnership
4 with CSX that's focused on preserving and protecting
5 the public interest and the public investments that
6 have been made in this corridor to sustain and expand
7 a thriving and quality passenger rail service.

8 We also hope to leverage resources to
9 achieve strategic and mutually benefit objectives,
10 and partner to develop a strong and modern railroad
11 network that supports the safe, efficient and
12 reliable movement of people and goods throughout our
13 region, protects our environment, and strengthens our
14 economy. Thank you very much, and I'm happy to
15 answer any questions.

16 CHAIRMAN OBERMAN: Karen had a question.

17 BOARD MEMBER HEDLUND: Ms. Quinn it's
18 great to see you again, and I first of all just want
19 to congratulate you on the terrific work that you
20 have done with NNEPRA. I do recall from my time at
21 FRA working on one of the early grants from the
22 Recovery Act that we had some frustrations with your

1 host railroad, and certainly you've done a great job
2 since then and I wish you the best in working with
3 CSX.

4 MS. QUINN: Thank you very much.
5 Appreciate that.

6 BOARD MEMBER FUCHS: I'd like to briefly
7 echo Karen in commending Patricia for everything.

8 CHAIRMAN OBERMAN: Thank you. Robert did
9 you want to?

10 VICE CHAIRMAN PRIMUS: I'll jump on that
11 bandwagon and comment Patricia as well, but I also
12 have a question. So one of your predecessors who
13 spoke on a panel previously up from Maine and that
14 shipper had voiced some concern by saying -- I don't
15 know if you heard that or not, that since the
16 Downeaster started you know there's been a slowdown
17 of freight traffic.

18 He seemed to attribute that to the
19 Downeaster. And one of the things I'd like to hear
20 is you know this transaction, a lot of it is talking
21 about from the freight side, and there's also that
22 concern about you know how it's going to impact

1 passenger rail. I know you've been talking to CSX
2 about you know working together.

3 You know how do you see going forward you
4 know the Downeaster playing a role, continuing to
5 play a vital role in passenger rail while also
6 partnering with CSX as they seek to grow on the
7 freight side?

8 MS. QUINN: Well again I think that you
9 know the investments that we've made because of
10 passenger rail it really has had a positive impact on
11 the movement of freight, so I was a little bit -- I
12 was disappointed to hear those comments, but anyway
13 we have worked with CSX, and you know double track is
14 something that we obviously support.

15 I mean this section of railroad there's a
16 lot of signal track out there, which is why we just
17 finished a four mile siding extension. We have a six
18 mile siding extension that we're doing to improve the
19 reliability so we can all get around each other. And
20 again we've invested a lot of resources, a lot of it
21 has been in kind of maintaining some of that status
22 quo which I've heard others talk about.

1 And what I'm really hopeful for is that
2 with CSX's resources, that we can really focus our
3 efforts on leveraging you know the resources that are
4 available to do some bigger things that really
5 benefit the railroad in a bigger way, like more
6 double track. Like the installation of the positive
7 train control that Amtrak has gotten funding for.

8 So I think that there are really some
9 important and key investments that are really on the
10 horizon that can really be a game changer and help us
11 grow, and also support freight. You know we're an
12 agency that was formed by the Maine State
13 Legislature, so the economy of our region and our
14 state is as important to us, not just passenger rail,
15 and so the movement of all of the freight and the
16 passenger is something that we've supported all
17 along. That's why we've been able to have such a
18 robust relationship with Pan Am because it was never
19 you know a benefit but for passenger rail, or just
20 for freight.

21 These are benefits that -- these are
22 improvements that benefit the system, and you know I

1 know it's an old cliché , but all ships rise.

2 Sometimes go up with the rising tide.

3 VICE CHAIRMAN PRIMUS: I agree. I agree.

4 Last question. Do you foresee continued growth on
5 your line in terms of potential more trains, or are
6 you sort of set in where you are right now in terms
7 of the number of trains that you run up and down the
8 line?

9 MS. QUINN: Well right now they operate
10 the five, and then once this Wells project is done,
11 and positive train controls installed we'll go to the
12 sixth, which will be an inbound commute into
13 Portland, or another run.

14 We are I think looking forward. I mean
15 obviously as we get through this pandemic, but you
16 know the service really reaches such a wide variety
17 of riders, and people travel for such a wide variety
18 of reasons in connecting the rural communities of
19 Maine to the economic center of New England and
20 beyond is critically important. So I think that our
21 hope is to grow in the future, and that's why we have
22 CSX through our agreement to leave that door open,

1 and they've agreed to do so.

2 VICE CHAIRMAN PRIMUS: Thank you.

3 CHAIRMAN OBERMAN: Any other questions?

4 Thank you much Patricia. I will say that it does
5 sound to me like it's not really the Downeaster, but
6 it's the need for more infrastructure that may
7 alleviate whatever Mr. Lefebvre's concerns were about
8 getting the propane when he needs it.

9 I have experienced over the last eight
10 years many complaints from passengers about freight
11 delays, but I have never had a freight shipper
12 complain to me about passenger delays, so that's a
13 new one, but it sounds to me that between you and him
14 and CSX this is going to get improved, at least
15 that's the hope. I much appreciate your time.

16 MS. QUINN: Thank you.

17 CHAIRMAN OBERMAN: Particularly since it's
18 1 degree up there and we need the propane. Mr.
19 Jeffrey, Edward Jeffrey. Is he here? New Hampshire
20 Central Railroad. Have we lost Mr. Jeffrey? Okay.
21 Apparently he was not able to join us today. If he
22 does we'll call on him when he gets here. Jonathan

1 LaBonte, Lewiston-Auburn Railroad.

2 MR. LABONTE: Good afternoon.

3 VICE CHAIRMAN PRIMUS: We can hear you.

4 MR. LABONTE: All right, all right, that
5 long silence. Thank you very much. Members of the
6 Board on behalf of the Board of Directors and
7 shareholders of the Lewiston-Auburn Railroad Company
8 I want to thank you for the opportunity to offer
9 testimony today in support of the proposed
10 acquisition of Pan Am and associated companies by
11 CSX.

12 My name is Jonathan Labonte. I serve as
13 the President of LARC. I previously served for six
14 years as the Mayor of Auburn, Maine. For context,
15 let me introduce you to LARC and the scope of our
16 work in Maine. We were chartered by the Maine
17 Legislature in 1872. LARC is a private railroad
18 company whose shares are owned entirely by the cities
19 of Lewiston and Auburn.

20 Our primary charge 150 years ago this year
21 was to construct a 5.5 mile rail corridor from the
22 textile mill district on the Androscoggin River in

1 Lewiston, to an interchange with the Grand Trunk
2 Railway which ran from Portland, Maine to Montreal,
3 Quebec.

4 Upon completion of construction our line
5 was leased to the Grand Trunk, and later the Canadian
6 National. At present the lease is held by the Saint
7 Lawrence Atlantic Railroad, the SLAR. A Genesee and
8 Wyoming short line that's worked very well with us on
9 business development, and we maintain a strong
10 relationship with their management team.

11 As industrial and distribution activity
12 shifted over time the sections of LARC saw a shift in
13 their demand. Today the active corridor is 3 and 1/2
14 miles of the original, with a termination at U.S.
15 Route 202 on the eastern end, and Lewiston Junction
16 on the SLAR to the west.

17 While no direct connection exists between
18 LARC and Pan-Am's rail system in Maine, we've been
19 active supporters of investments in Danville Junction
20 in Auburn, which is an interchange between the SLAR
21 and Pan Am. Even with those shifts in economic
22 activity we have remained focus on industrial and

1 distribution growth strategies in our region.

2 In 1994 in a partnership with SLAR, Maine
3 DOT, and the Federal Highway Administration, one of
4 the first investments of congestion mitigation, air
5 quality funds in rail infrastructure occurred and led
6 to the construction of the intermodal facility which
7 currently exists in Auburn.

8 That total investment at the time was a
9 little over 5 million dollars, and the location grew
10 from no intermodal traffic before the early 1990's to
11 a peak of about 15,000 containers a year. The goal
12 which was achieved was to reduce long haul trucking
13 and it did lead to growth in multiple trucking
14 employment.

15 20 years later in 2014 we completed the
16 nearly one mile addition to our LARC owned network
17 with a total investment of over 3 millions dollars,
18 and a project known as the Rangely Branch we built a
19 new line that connected to our main line, and out of
20 the SLAR.

21 That project alone opened up hundreds of
22 additional acres for industrial and commercial

1 development to be served by rail. LARC and our
2 shareholders, the cities of Lewiston and Auburn, have
3 maintained the steadfast commitment to secure
4 industrial, commercial and distribution investment.
5 For a state that is known by the moniker Vacation
6 Land, and certainly Patricia who just spoke, a number
7 of her riders are those who are coming to vacation
8 and enjoy time along the coast.

9 A number of regions of Maine still retain
10 strategic policies to support growth that relies on
11 access to quality, efficient and reliable freight
12 rail service to be competitive in a global economy.
13 Lewis and Auburn is definitely one of those regions.
14 In the City of Auburn approximately 800 acres of land
15 zoned to benefit from access to freight rail services
16 exists along the LARC active rail corridor, along the
17 Pan Am corridor proposed for acquisition by CSX,
18 another nearly 500 acres is zoned for industrial and
19 commercial use that would directly benefit from
20 improved freight rail access.

21 Through our recent planning process
22 concluded in 2019, a partnership between LARC and

1 Maine DOT, we looked at freight business development
2 opportunities that could be proactively pursued going
3 forward. We're working with our city owners to look
4 at strategies to advance that.

5 With the proposed acquisition of Pan Am's
6 asset by CSX, LARC sees a partner committed to
7 growing freight rail opportunities for existing
8 businesses, and collaboratively cultivating emerging
9 opportunities along with us. We recognize that our
10 region is positioned to benefit significantly from
11 having connections to two competing Class 1
12 railroads.

13 In addition to the SLAR connecting to the
14 Canadian National Railway, they of course would also
15 connect to CSX, and that access to key markets
16 throughout the eastern United States we see as
17 creating a competitive advantage for our region to
18 secure further private investing.

19 LARC and our shareholders have sustained
20 our commitment to the role our assets and communities
21 can play in supporting the distribution of raw
22 materials and finished products to serve our region,

1 our state, and the northeastern U.S. As we
2 collectively seek to reduce carbon emissions in the
3 battle against climate change, rail and intermodal
4 opportunities must be a priority.

5 We urge the Surface Transportation Board
6 to support our economic development's future through
7 its approval of the acquisition pending here. And I
8 thank you for your time.

9 CHAIRMAN OBERMAN: Thank you very much.
10 Does anybody have any questions? Okay. I take it
11 that you -- well I think you've spoken very well I'm
12 not going to extend it further because we've got a
13 lot more territory to cover, but I much appreciate
14 your coming in Mr. LaBonte thank you much.

15 All right. Should we take it's quarter to
16 four, should we go to the next panel and then take a
17 break? Sound good? Okay. Everybody agrees. Okay.
18 The next panel are the following: Worcester Regional
19 Chamber of Commerce, Timothy Murray; Western
20 Massachusetts Economic Development, Richard Sullivan;
21 Around the Corner Capital, Dr. M.K. Dorsey; Capital
22 Policy Analytics Group Ike Brannon, and GFI Partners

1 Steven Goodman.

2 So if those folks are here, I'm not sure
3 they're all present but lets begin with Mr. Murray.

4 MR. MURRAY: Mr. Chairman I apologize, I
5 just literally got out of my suit that I've been in
6 the last couple of days in preparation for my
7 testimony, so I'm in the car with my wife and kids
8 and I'm headed north, hope we get a little skiing in
9 this weekend.

10 CHAIRMAN OBERMAN: Let me say this, I'm
11 very impressed, and I think it's awesome that you're
12 able to do your job and head towards skiing at the
13 same time, so it's great, go for it.

14 MR. MURRAY: Yeah. Well first off that
15 was 25 years ago this month that I got sworn in as
16 Worcester City Council, and one of the main focuses
17 of my campaign and my time as City Council and then
18 five years later as Mayor of Worcester was focusing
19 on the expansion of commuter rail between Worcester
20 and Boston.

21 You know if you grow up in Worcester, part
22 of our landscape and the sounds and the rhythms of

1 the city are very much a part -- rail is very much a
2 part of that, both freight rail and commuter rail.
3 But you know over the years commuter rail atrophied,
4 and one of the focuses that I had was to try to
5 expand the number of commuter rail trains between
6 Worcester and Boston from what was then six to a more
7 robust number.

8 And you know through that process and
9 effort, both as City Counselor, as Mayor and then
10 later as Lieutenant Governor, to realize that goal we
11 had to create a level of communication and
12 collaboration you know with CSX. And you know in my
13 current role as President and CEO of the Worcester
14 Regional Chamber of Commerce, we represent 2,000
15 businesses, it's the largest chamber in New England,
16 35 cities and towns, and in that geographic area
17 we've got a number of railroads of different sizes
18 and scopes in terms of what their role is.

19 So in terms of our regional economy
20 freight rail is extremely important. And so you know
21 I mention that because I've had experience in a
22 number of different roles in working with CSX and

1 with Pan Am and other railroads. In 2012, the
2 Surface Transportation Board signed off on a historic
3 acquisition here in the Commonwealth, and I would
4 probably say in New England, when we acquired track
5 from CSX in all different parts of Massachusetts.

6 And one of the individuals who was going
7 to testify Rick Sullivan, was a member of the Patrick
8 Murray administration, and I think he was part of
9 that process and understands the size and scope of
10 that acquisition. It was a long negotiation, at
11 times a hard negotiation, but the CSX team was always
12 seated at the table, always showed good faith, always
13 were willing to engage in that back and forth that is
14 so critical if you're going to move complicated,
15 difficult issues forward.

16 And that acquisition of track also
17 involved some very detailed operational agreements
18 and financial commitments of significant amounts of
19 money, both from the Commonwealth and from CSX, in
20 terms of the modernization of infrastructure, as well
21 as significantly upgrading operational functions on
22 some of the issues that we talked about dispatching,

1 signalization, et cetera.

2 And so you know working with CSX you know
3 you find a committed partner, and that has been my
4 experience throughout my time in government, and
5 throughout the chamber. And you know I think the
6 last figure I heard, and it's maybe a few years old,
7 so I'm not sure exactly how accurate it is, but
8 nearly 30 percent of all freight rail you know, and
9 it goes passes in and out of New England, and it goes
10 through Worcester and/or central Mass.

11 And on CSX that historic agreement, and we
12 acquired the tracks, one of the major things that
13 took place as a result of that was a significant, I
14 think 25 acre expansion to the CSX intermodal hub in
15 the City of Worcester. They spent over 125 million
16 dollars in modernizing, upgrading the intermodal hub,
17 with a lot of interaction with neighbors, business
18 groups, municipal and state officials, and you know
19 I'm not going to say everything went perfect, but it
20 went extremely well all things considered, and again
21 they were responsive to issues large and small.

22 In Worcester right now we've been able to

1 as a result of that acquisition, as a result of the
2 operational agreements, we've gone from six commuter
3 rail trains to 20 plus between Worcester and Boston.
4 We have seen an expansion in freight rail activity in
5 the region, and that has created jobs.

6 And I don't you know say with this
7 hyperbole, but it's no coincidence that with the
8 expansion of both commuter and freight rain in our
9 region, the City of Worcester is I think the fastest
10 growing large size city in New England. We are
11 having an economic resurgence like you know we have
12 not seen in a long time.

13 And I would dare suggest that it's because
14 of this -- a major factor in this was the
15 collaborative agreement that took place that allowed
16 both the more efficient use of the rail in the way
17 that complemented CSX and freight rail and commuter
18 rail. And I can tell you from my experience with Pan
19 Am, and I'm not going to necessarily expound upon it
20 to the extent that Representative Barrett, you know a
21 former colleague of mine, as a Mayor, or the
22 gentlemen from Portsmouth.

1 But CSX I can tell you first-hand their
2 infrastructure in Worcester and throughout central
3 Massachusetts is crumbling. I would argue that parts
4 of it are unsafe. I mean when you talk about some of
5 their track over the Wachusett Reservoir which serves
6 the MRWA and communities all in Eastern Mass as a
7 water source.

8 So I think it's extremely important that
9 we see a company that's capitalized and has a record
10 of collaboration with the Commonwealth and others
11 that to take ownership of that. I've had a chance to
12 read the Commonwealth's brief, you know, and hear the
13 testimony from their counsel, Bob Wimbish, and I'd
14 just say that you know having reading that brief I
15 understand and respect a lot of the concerns that the
16 Commonwealth has.

17 But even since that brief was submitted on
18 January 8, we know that CSX has continued to try to
19 work and has reached agreement on a number of the
20 things that the MBTA and the Mass DOT expressed
21 concerns about. So I you know, based upon a 25 year
22 track record, really believed that almost every one

1 of those items that they listed can and will be
2 worked through in good faith by the CSX team.

3 And you know I had a chance over the last
4 couple of days to read the bio's of the Board, and
5 appreciate you know your work Chairman as a member of
6 the Alder Board in Chicago, and I'm out of elective
7 office, but I still get calls you know on issues
8 large and small from former constituents, and
9 sometimes on occasion relating to CSX, and they're
10 every bit as responsive now as they were back then.

11 And as I mentioned you know I think all of
12 the members of the Board can appreciate you know
13 policy is only as good as your personnel. And the
14 personnel that CSX has on the ground in New England,
15 whether it be Maurice O'Connell the regional Vice
16 President, you know whether it be their business
17 development people, Curt Miles, and others. I always
18 have found them to be extremely responsive, not only
19 to the calls from us, but when you put them in touch
20 with an end user, or a neighborhood group, or a
21 business.

22 You know they always correspond and get

1 back, and usually you can find a way to satisfy those
2 needs. You know no one bats 1,000, but they have a
3 great track record. And so I just want to say you
4 know this has been a great interesting couple of days
5 for me, it reminds me of a lot of the work that I
6 have been involved with over 25 years on rail issues.

7 Having gone to law school I also as you
8 mentioned Chairman Oberman, it reminded me of the
9 elements of law school, and some of the conversations
10 that have been taking place. But you know I think it
11 was one of the Board members mentioned you know at
12 the end of the day what's the public interest you
13 know I would argue that you know the relationship
14 that we see, and the track record that we've seen
15 with CSX has been in the public interest, both from a
16 transportation usage and efficiency point of view,
17 certainly from an economic development point of view,
18 and I would argue from an environmental point of view
19 as well.

20 And I have great confident you know that
21 the work they can do in acquiring the Pan Am assets
22 and rail is going to benefit the Commonwealth. And

1 I'll just end on two pieces. The Vice Chair you know
2 mentioned you know in the first day, yesterday about
3 some of the concerns in eastern Mass, and eastern
4 Mass is the economic engine, but the growth and
5 expansion of rail, both from a freight and commuter
6 rail, has the opportunity to really be an economic
7 engine for parts of western Mass and northern
8 Worcester County.

9 And Senator Hinds talked about some of
10 the population loss in western Mass, and I know Rick
11 Sullivan can speak with expertise on some of that.
12 But by having more utilization of the rail from a
13 freight and commuter rail passage, along that route
14 to Patriot corridor, that utilization in Springfield,
15 that will use Barber's Crossing north up to Ayer is
16 going to create economic opportunities that are going
17 to be helpful to those communities, you know and help
18 them to maintain and grow population.

19 So you know I was happy to do this, and
20 look forward to hopefully a positive outcome here
21 because we think it will be good for not only central
22 Massachusetts and the City of Worcester, but for the

1 entire Commonwealth.

2 VICE CHAIRMAN PRIMUS: Marty, just real
3 quick.

4 CHAIRMAN OBERMAN: Go ahead.

5 VICE CHAIRMAN PRIMUS: Tim I don't know if
6 you remember or not, but you know I've had that
7 meeting for eastern Mass having spent 20 years with
8 Mike Capuano or so, I hope you won't hold that against
9 me, but you know I recognize and I want to say that
10 you know I was there working you know with Mike you
11 know when you were working you know in the Lieutenant
12 Governor's you know, as Lieutenant Governor, working
13 on these things.

14 And we recognize, and I still recognize
15 here now on the Board, the importance of growth out
16 to the west you know. My concern yesterday and even
17 still today is just to make sure that there's that
18 balance between the two because I recognize the
19 growth that's happening, and not in just Worcester,
20 but beyond, the need for that growth, and the
21 importance for economic development to be strong, and
22 to be strong in both strong as well, freight as well

1 as passenger rail.

2 MR. MURRAY: Thank you for that. I
3 appreciate your work and your previous role with
4 Capuano. Really the whole Mass delegation was
5 part of that process in our negotiations with CSX.
6 I joke with people that you know former U.S. Senator
7 John Kerry helped facilitate and mediate some of
8 those negotiations between the Commonwealth and CSX.

9 And I said it was probably his best
10 training before he became Secretary of State, and
11 some good faith negotiations that have gotten us to a
12 good place, and so thank you, and I know the
13 subcommittee that Congressman Capuano chaired at the
14 time also a leverage point as we've had those
15 negotiations.

16 VICE CHAIRMAN PRIMUS: Thanks Tim. Enjoy
17 the skiing. Marty you're muted.

18 CHAIRMAN OBERMAN: Thank you Tim. I think
19 Tim at one point you mentioned something about
20 crumbling rail. I assume you meant to refer to part
21 of the Pan Am line.

22 MR. MURRAY: Yeah you know, we saw the

1 pictures you know, and the comparison of the Pan Am
2 infrastructure with the CSX infrastructure. I can
3 point to, you know if anyone is in Worcester at some
4 point, happy to point out the drive along from
5 Barber's Crossing north. And the rail in Clinton,
6 Mass.

7 I mean Pan Am's infrastructure I think is
8 concerning, and it should be concerning in terms of
9 where it's current state is, and it's in desperate
10 need of reinvestment. And we've had, and I have seen
11 and witnessed first-hand when CSX makes its
12 investments in infrastructure they're first rate and
13 done well.

14 We have one of the most efficient
15 intermodal rail yards in the country here, and as I
16 said it was 25 acre expansion in the middle of the
17 City of Worcester, as well as a complete redo of the
18 facility, and it is first-class, efficient, quieter,
19 but it was done in a way that really tried to address
20 the infrastructure issues of the city and the
21 neighborhoods, and again there's sometimes issues
22 that come up from time to time, but it was done

1 right.

2 And to me that is what communities and
3 neighbors want, and they've got a track record of
4 trying to do it the right way. And from a safety
5 point of view I know it was a previous question by
6 one of the Board members about the propane you know
7 turn over falling up to Maine, you know the railcar
8 with a couple propane tanks. You know again I'm
9 concerned about Pan Am's existing infrastructure
10 right now.

11 CHAIRMAN OBERMAN: All right. Thank you
12 very much. Any other questions for Tim? Tim be
13 safe, don't fall down.

14 MR. MURRAY: Thank you for your time and
15 through process.

16 CHAIRMAN OBERMAN: No thank you. Much
17 appreciate your taking all this time out of the
18 family, say hello to the rest of the family and enjoy
19 yourselves.

20 MR. MURRAY: Will do.

21 CHAIRMAN OBERMAN: Okay. Take care. Is
22 Richard Sullivan here from Western Mass Economic

1 Development? Okay. We don't see him on the screen.
2 Let's go to Dr. M.K. Dorsey from Around the Corner
3 Capital.

4 DR. DORSEY: Good afternoon Chairman
5 Oberman, Vice Chairman Primus, distinguished members
6 of the Board, ladies and gentlemen. Thank you for
7 the opportunity this afternoon to offer testimony for
8 today's proceedings regarding the proposed merger
9 between CSXT and Pan Am Railways.

10 This acquisition will have a significant
11 impact on a multitude of interest and parties across
12 the New England region. Accordingly it's critical
13 that the Board carefully consider the testimony of
14 the stakeholders partaking in this hearing as you
15 have been over the past day and a half now.

16 Our firm invests in many ESG,
17 environmental, social, good governments, commodities
18 and assets. I'm a 16 year New Hampshire resident and
19 a former White River Junction resident. And thus,
20 all too familiar with some of the shortfalls and
21 limits of regional rail. Many that were just
22 mentioned by Tim, from consideration personal use and

1 too much engagement.

2 I will say that many of my comments today
3 can also be found in an op-ed that I wrote in the
4 Vermont newspaper that was published last November
5 titled, "Railroad Merger Charts a Clear Track to the
6 Environmental Gains and Carbon Neutrality." With
7 that offered, I'll continue.

8 Protecting our environment and reducing
9 climate change inducing emissions is a complex, yet
10 urgent issue. Like most complex problems there will
11 rarely be a silver bullet, or a one size fits all
12 solution. We can seek incremental changes in the
13 short-run that produce major breakthroughs over
14 longer periods.

15 Sometimes incremental environmental
16 victories are hiding from us in plain sight. Every
17 year trucks, ships, planes and trains move over a
18 billion tons of cargo around the world, while
19 freight transportation keeps the global economy
20 moving. It's essential and unavoidable. It's also a
21 heavy driver of polluting emissions according to
22 several of my colleagues down at MIT freight

1 transportation accounts for about 8 percent of global
2 carbon emissions.

3 However, curtailing freight transportation
4 isn't an option for an increasingly interconnected
5 world. Nevertheless, we can do much more to ensure
6 our transportation infrastructure is as modern,
7 reliable and ecologically efficient as possible. Now
8 for example we should encourage more goods to ship by
9 rail instead of by truck. This will drastically help
10 reduce emissions, and the data is in on this.

11 I think you all are aware. According to
12 the EPA in particular, while freight railroads
13 account for about 40 percent of U.S. freight being
14 shipped across our country, U.S. freight railroads
15 account for only about just under 2 percent, 1.9
16 percent of U.S. transport related greenhouse gas
17 emissions, and only account for less than a percent,
18 0.5 percent of the total U.S. greenhouse gas
19 emissions because of their higher fuel economy.

20 Today as we consider the situation in New
21 England, the proposed merger of CSXT and Pan Am is an
22 important opportunity that can bring about big

1 positive environmental and economic changes quickly,
2 without breaking the bank or disrupting supply
3 chains. Trains are the most fuel efficient land-base
4 mode of transportation, three to four more times
5 efficient than trucks on average.

6 Moving freight by rail instead of by
7 trucks actually lowers greenhouse gas emissions, up
8 to 75 percent on average according to folks, some of
9 my friends out at the Texas Transportation Institute
10 on a recent study they did on urban mobility. U.S.
11 freight railroads on average move one ton in freight
12 more than 400 miles per gallon of fuel.

13 However, some publicly available CSXT data
14 indicates that the firm is doing about one ton of
15 freight more than 500 miles on a single gallon of
16 fuel. Now that was discussed actually yesterday if
17 you all recall.

18 Further one it's remarkable and notable
19 that CSXT invest in emission reducing technologies
20 including idle mitigation energy management software,
21 some which we saw yesterday. CSXT's trains are able
22 to reduce emissions by using advanced software to

1 shut down diesel engines when possible, and
2 automatically restart them when necessary.

3 These ecological and social bona fides
4 stands in stark contrast to many of the locomotives
5 being used by Pan Am today. Pan Am's locomotives
6 average age is more than 40 years old. Replacing Pan
7 Am's aging fleet with newer, high horsepower, more
8 efficient locomotives from CSXT will able us to
9 operate the fuel locomotives that are currently being
10 used while simultaneously improving fuel economy.

11 These are all compelling reasons that give
12 me hope that the Board will approve this merger as a
13 way to improve and upgrade the rail network in the
14 region, and more broadly help address the important
15 issue of rising greenhouse gas emissions that imperil
16 our climate and threaten the environment. Thank you
17 for our consideration, much appreciated.

18 CHAIRMAN OBERMAN: Thank you Dr. Dorsey.
19 Are there any questions?

20 BOARD MEMBER FUCHS: Question for Dr.
21 Dorsey. From an environmental standpoint you
22 mentioned the benefits in terms of greenhouse gases.

1 Would you also put forward that the environmental
2 benefits extend to things like particular matter and
3 nitrogen oxide and other pollutants?

4 DR. DORSEY: Absolutely. And I would say
5 they not only extend abstractly to the environment,
6 but there are a whole host of sort of co-benefits
7 socially as well beyond ecosystems per se. So
8 checking greenhouse gas emissions, or inducing
9 greenhouse gas emissions also has upside implications
10 for reducing other forms of pollution, air pollution,
11 and other forms of pollution, water pollution and
12 many others, so indeed.

13 BOARD MEMBER FUCHS: Thank you.

14 DR. DORSEY: Thank you.

15 CHAIRMAN OBERMAN: Okay thank you. Any
16 other questions for Dr. Dorsey? All right. Thank
17 you very much Dr. Dorsey. Appreciate you making the
18 effort.

19 DR. DORSEY: Thank you.

20 CHAIRMAN OBERMAN: And not only
21 testifying, but writing your op-eds, and being out
22 there to affect public opinion. Much appreciated.

1 DR. DORSEY: Thank you Chairman. Thank
2 you.

3 CHAIRMAN OBERMAN: Ike Brannon? Mr.
4 Brannon here? I don't hear from him. Steven
5 Goodman, namesake of the late great Chicago.

6 MR. GOODMAN: The musician, yes.

7 CHAIRMAN OBERMAN: Musician.

8 MR. GOODMAN: Appropriate song too given
9 the -- yes.

10 CHAIRMAN OBERMAN: The Disappearing
11 Railroad Blues huh?

12 MR. GOODMAN: Yes.

13 CHAIRMAN OBERMAN: All right Mr. Goodman
14 you're on.

15 MR. GOODMAN: Thank you Mr. Chairman,
16 members of the Board. Good afternoon. My name is
17 Steve Goodman. I am the Manager of GFI Partners.
18 We're a New England based industrial developer.
19 Since 2010 GFI has developed over 2 million square
20 feet of rail service facilities in the New England
21 market.

22 As warehouse and distribution strategies

1 are changing, rail served facilities are playing an
2 increasingly and important role in maximizing
3 delivery, efficiencies in minimizing impacts of over
4 the road trucking. Currently we are seeing increased
5 demand from freight users looking for modern
6 warehouses with access to well-served rail.

7 So I'm here to strongly support the CSX
8 acquisition of the Pan Am Network. A couple of the
9 many reasons are the creation of a single line
10 service which we've heard so much about, which is a
11 big plus for our tenants. It will allow better
12 access to national markets, improve service, both
13 consistency and reliability, and as Tim had talked
14 about you know there's a needed investment in
15 infrastructure which we think CSX will be well suited
16 to do. We think this will provide -- open up new
17 parcels for development which in turn can create
18 significant tax revenues, job creation for local
19 communities, and allow us to create additional you
20 know rail serve facilities which I started with which
21 are so needed in this market.

22 Really that's really all I have to say.

1 You know as a developer on these lines we think that
2 the investment by CSX into some of this older
3 infrastructure will help us create you know the
4 modern distribution facilities that the market is
5 craving right now.

6 CHAIRMAN OBERMAN: Mr. Goodman just a
7 couple of questions. You are a developer of
8 industrial parks as I understand it?

9 MR. GOODMAN: That's correct sir.

10 CHAIRMAN OBERMAN: Yeah, and so are your
11 tenants now rail users in any of your parks?

12 MR. GOODMAN: Yes, yeah, yes.

13 CHAIRMAN OBERMAN: Can you tell us where
14 that is?

15 MR. GOODMAN: So we have facilities on
16 both the Pan Am or in Devens in their Devens, Mass on
17 the Pan Am Track. We have land in Ayer, Mass on the
18 Pan Am Southern. We have facilities in Worcester,
19 Mass that are on the G&W to name a few.

20 CHAIRMAN OBERMAN: And what type of
21 shippers or receivers? What kind of commodities are
22 we talking about?

1 MR. GOODMAN: Yeah so you know we kind of
2 have a little bit of a lot, for example Chuck Giroux
3 from Mid-State is in one of our buildings who spoke
4 earlier. We have paper, big paper product coming out
5 of Maine, which is located in Devens. We have a rail
6 serve facility in Worcester which is on G&W track
7 that brings wine from the Gallo wine from California.

8 We have their warehouse. Hood McQuesten,
9 which is a large lumber supplier. Their northeast
10 facility is in one of our buildings on Pan Am
11 Southern track.

12 CHAIRMAN OBERMAN: Let me ask this. To
13 your knowledge do these shippers and receivers rely
14 on different carriers to interchange with Pan Am now?

15 MR. GOODMAN: Absolutely yes. So you know
16 the ability to have you know both the tier one to
17 negotiate rate you know having access to both the NS
18 and the CSX is you know in our experience, has been
19 important to our tenants to make sure that their
20 costs are competitively bid.

21 CHAIRMAN OBERMAN: So keeping these
22 interchange points and access points open that we've

1 been talking about as you see it is important to your
2 tenants being able to continue to get competitive
3 rates.

4 MR. GOODMAN: From our point of view very
5 important yes.

6 CHAIRMAN OBERMAN: Is it one of the
7 selling points when you do industrial develop to say
8 look we have rail access to various carriers that
9 interconnect with the national network?

10 MR. GOODMAN: Yes. It's always been
11 important and even now it's so hard to find good you
12 know land that you know one of the things we see as
13 really important here is the investment in
14 infrastructure. There's a lot of land that we think
15 will be accessible if we could convince our tenants
16 that you know the service would be predictable.

17 CHAIRMAN OBERMAN: All right. Any other
18 -- appreciate that, any other questions for Mr.
19 Goodman? All right. Well we will do our best to
20 keep the railroads from disappearing Mr. Goodman,
21 that's part of our assignment.

22 MR. GOODMAN: Thank you so much.

1 CHAIRMAN OBERMAN: And Patrick and I by
2 the way on our first field trip took the City of New
3 Orleans for a ways so.

4 MR. GOODMAN: Oh nice.

5 CHAIRMAN OBERMAN: Yeah, and it almost did
6 disappear on us. All right. Thank you very much. I
7 much appreciate you taking the time. I understand
8 Mr. Brannon has been able to join us, so if he's --

9 MR. BRANNON: I'm here.

10 CHAIRMAN OBERMAN: Okay good for you.

11 MR. BRANNON: Great, thanks. Thanks for
12 the opportunity to attend and participate. And
13 Chairman Oberman is a Fellow Central Illinoian, and
14 it's good to see one of our own running the STB, so
15 way to go.

16 So my name is Ike Brannon. I'm a Ph.D.
17 economist who's published articles in academic and
18 public policy publications related to logistics
19 freight rail, and various other transportation
20 issues. I'm currently a Senior Fellow at the Jack
21 Kemp Foundation in Washington, D.C. and I also serve
22 as an officer of a non-profit dedicated to reducing

1 road congestion called Parking Reform.

2 Before my current positions I was an
3 economist at the Office of Management and Budget, the
4 U.S. Treasury, and the House Energy and Commerce
5 Committee. I believe that the proposed merger
6 between CSX and Pan Am Railways would bring benefits
7 to both the U.S. economy, and especially to the
8 environment. Consolidation would certainly improve
9 rail service in the northeast, and increase the
10 quality of goods shipped by rail which will in turn
11 reduce road congestion, particularly emissions and
12 greenhouse gases.

13 There's no reason to think that this
14 merger will result in materially higher market
15 concentration where the prices will increase for
16 northeast shippers. Opposition to the merger appears
17 to be motivated by a colloquial interest, and the
18 costs procuring them would vastly outweigh the public
19 benefits.

20 First I'd want to point out that a merger
21 between the two rails would not change the
22 competitive balance in the rail industry in the

1 northeast in any discernable way. CSX does not
2 currently have tracks in places like where Pan Am
3 operates, so it's merely expanding its network, not
4 eliminating it.

5 By being a part of a larger network
6 northeast shippers will be able to get better
7 service, there will be more customers they can ship
8 to directly which tends to be quicker and less
9 expensive, and more efficient to do as well. This
10 transaction will allow CSX to take advantage of
11 economies of scale and operating the network, and by
12 extending the northeast it will acquire more
13 customers that can benefit from their network and
14 resources.

15 The merger would increase the capacity of
16 the current Pan Am Rail Network which would have a
17 positive effect for New England, being integrated
18 with the largest CSX Rail Network, and allow it to
19 expand how much trains can operate in carrying the
20 region, and being part of a larger, better company
21 will undoubtedly boost investment in maintaining
22 tracks and expanding capacity.

1 Besides benefitting shippers, New England
2 residents will benefit from expanded training
3 capacity because it will reduce the number of trucks
4 operating in New England as Dr. Dorsey pointed out
5 in his testimony. Fewer trucks means that there
6 should be less congestion on the area's road, which
7 would mean less smog, less particulate pollution, and
8 fewer emissions of greenhouse gas.

9 By reducing transportation costs, it's a
10 benefit for society and helps firms reach customers
11 faster and less expensively, saving them and their
12 customers money. That's why to me it's puzzling that
13 several governmental bodies -- by no means all of
14 them, oppose the merger. And one objection I know
15 has to deal with the Pan Am dispatch office it would
16 like to see its functions fold into and integrated
17 into CSX's broader dispatching operation.

18 Holding up such a merger benefits an
19 entire region over such colloquial interest could
20 effectively force New England shippers to pay more
21 and accept an inferior service for the sake of
22 relatively small number of jobs and a more efficient

1 and robust train transport system, one that will
2 surely create more jobs and boost wages in the region
3 while at the same time providing additional benefits
4 to shippers and residents across New England.

5 The objection of Amtrak and its supporters
6 want guarantees that passenger rail access would be
7 unaffected by the merger are also misplaced. It's
8 unclear how blocking the merger would help Amtrak,
9 but doing so will result in more goods being
10 transported by truck, as would their demands for
11 passenger rail, priority and the combined rail network.

12 Shifting goods from rail to truck could
13 accommodate the passenger rail route makes no
14 economic or environmental sense. Amtrak's opposition
15 is even more puzzling when we see that other
16 passenger rail focused entities in the region have
17 been publicly supportive of the transaction because
18 of the expected upgrades to the rail network will
19 singularly lead to improved passenger rail
20 performance for everyone of the status quo.

21 I just want to observe that the Biden
22 Administration is opposed, will delay a wide number

1 of mergers in the last year for reasons that
2 economics and I submit etiology, but I fail to see
3 how either precept can explain its apparently
4 opposition to this merger in a competitive landscape
5 in the northeast rail would remain unaffected.

6 The benefits of the transaction and the
7 jobs created will be a positive impact to the
8 environment, and the benefits that will accrue to
9 shippers in the region who stand to gain from an
10 improved and expanded network should be obvious.
11 Objecting to this merger would amount to the
12 government rejecting its explicit economic agenda
13 combating climate change, expanding economic
14 opportunities for slower growing regions in the
15 country for narrow short-term interests. Thank you.

16 CHAIRMAN OBERMAN: Thank you Mr. Brannon.
17 I just have a couple of questions. You're -- what is
18 your business? I can see the name of it.

19 MR. BRANNON: So I'm a scholar. That's
20 what I am, so researcher at the Jack Kemp Foundation
21 who does research, and a lot of it has to do with
22 economic development and pollution yeah.

1 CHAIRMAN OBERMAN: Do you have any
2 background in consulting in the railroad industry, or
3 are you coming here with the general economic
4 expertise? I'm trying to?

5 MR. BRANNON: Yeah that's right. So I've
6 written a bunch on rail as part of my job as a
7 scholar, but I don't have any yeah, I don't have any
8 consultancies going on with this.

9 CHAIRMAN OBERMAN: Yeah. But you've done
10 work on the rail industry before?

11 MR. BRANNON: We publish yeah. So I write
12 with a former colleague of mine Michael Gorman, we've
13 written a lot on rail. And in general we've written
14 a lot about congestion issues in the country, and as
15 you know rail has a lot to do with road congestion.

16 CHAIRMAN OBERMAN: Yes. Oh no I much
17 appreciate that. I'm just wondering in talking about
18 the competitive landscape, you didn't comment on the
19 issue that we've been talking about a lot today, and
20 I wonder from your point of view if you put any
21 importance on not diminishing the existing
22 competitive options for various short lines and

1 shippers in New England, by virtue of this merger in
2 terms of keeping these gateways open and that whole
3 discussion we've been having the last couple days.
4 Do you put any value on keeping those options from
5 going way?

6 MR. BRANNON: I realize there is a cost to
7 some of these options going away, but I think they
8 are more than outweighed by the ability of more firms
9 in New England being able to have easy access, and be
10 integrators of part of a Class 1 railway.

11 CHAIRMAN OBERMAN: But you understand that
12 CSX seems to be telling us they aren't going to have
13 these open gateways go away. They want to maintain
14 them. Do you think that's an important part of the
15 overall transaction because it does preserve
16 existing competitive options from other carriers.

17 MR. BRANNON: You know I'm working, Mike
18 Gorman and I are working on another paper looking at
19 reciprocal shipping options, so I'm going to reserve
20 my comment on that until we finish that paper. We
21 will submit that paper when we submit it to an
22 academic journal. We'll share it with the STB.

1 CHAIRMAN OBERMAN: Well let me tell you
2 this, you know, we have a hearing on reciprocal
3 switching in two months, so we can use all the
4 expertise and advice we can get.

5 MR. BRANNON: We're hoping, we're actually
6 hoping to have a draft of that ready for that.

7 CHAIRMAN OBERMAN: That'd be great. But I
8 was sort of focused more on just the existing gateway
9 issue that we have now up and down the Pan Am system
10 and the PAS system, and all the discussion we've had
11 about keeping those gateways that already exist open
12 so that other carriers can -- so that shippers have
13 competitive options.

14 MR. BRANNON: You know I just think that
15 comes at a very high cost if it means that it makes
16 it more difficult for CSX to do scheduling and
17 reduced their capacity. It comes with a cost, and I
18 think that that's something that has to be
19 acknowledged.

20 CHAIRMAN OBERMAN: Yeah. They don't seem
21 to be suggesting that it's a cost. That's why I ask
22 so. It doesn't seem to be a problem, but let me end

1 it there. I know that Patrick has some questions
2 too.

3 BOARD MEMBER FUCHS: Very quick you
4 mentioned I think you were referring to the DOJ when
5 you referred to opposition to the transaction. Is it
6 more fair to characterize the DOJ as proposing
7 remedies to competitive concerns rather than taking a
8 stand on the overall merits of the transaction?

9 In other words do you read the DOJ filing
10 as saying that the added benefits are greater than
11 the benefits, or more just a particular view on
12 anti-competitive events.

13 MR. BRANNON: So I was speaking more
14 broadly right, I think in the last 12 months you know
15 I can't remember a time where it's been so difficult
16 for any kind of merger to happen.

17 BOARD MEMBER FUCHS: But to be clear the
18 DOJ does not say in its filing that the Board should
19 deny this merger.

20 MR. BRANNON: Right.

21 BOARD MEMBER FUCHS: I just wanted to get
22 clarify on that point.

1 MR. BRANNON: Right.

2 BOARD MEMBER FUCHS: Thank you.

3 CHAIRMAN OBERMAN: All right. Any other
4 questions for Mr. Brannon? Okay. Thank you very
5 much Mr. Brannon.

6 MR. BRANNON: Thank you so much.

7 CHAIRMAN OBERMAN: I think we all look
8 forward to your reciprocal switching paper. Well I
9 do, I don't know if anybody else does, but I do.

10 MR. BRANNON: Thank you. I'll make it
11 scintillating for you.

12 CHAIRMAN OBERMAN: Yeah. Everything I
13 read here is scintillating, thank you. So with that
14 it is 4:24. I'm sorry before we end this panel just
15 to be thorough did Richard Sullivan, was he able to
16 join us? Okay. So I think we are going to end this
17 panel.

18 It is now 4:25, and we have to get to the
19 applicants, but because it's been a long day we're
20 going to take a ten minute break sharp. We'll be
21 back at 4:35, and we're going to try to finish this
22 up as quickly as possible, but there are some I'm

1 sure there are issues that need to be closed, and
2 there are I'm sure further comments from the
3 applicants. We will see you all in ten minutes,
4 thank you.

5 (Break)

6 CHAIRMAN OBERMAN: Folks we're reconvening
7 for the final lap. We're going to finish this today.
8 And I understand there are some travel commitments,
9 but the people are going to stay with us while
10 they're in transit. Tim Murray led the way. It can
11 be done. So let us reconvene, and get our applicants
12 back up here for rebuttal, and then I think there
13 will undoubtedly be some further questioning.

14 Are the CSX, B&E and NS teams onboard?

15 MR. FOOTE: Yes sir Mr. Chairman, CSX is
16 ready to roll.

17 CHAIRMAN OBERMAN: All right Jim, you're
18 on.

19 MR. FOOTE: Okay great. Well thank you
20 Mr. Chairman and Board members for the opportunity to
21 summarize why this proposed merger between CSX and
22 Pan Am is good for rail shippers, passenger rail

1 customers, the environment, the national
2 transportation network, and the public at large.

3 I hope that we have been able to show you
4 our enthusiasm and optimism about this transaction,
5 and how it will transform the New England Rail
6 Network for the better. You heard from our
7 customers, our short line partners, local
8 communities, elected representatives, and state
9 agencies that are excited to see a modernized Pan Am.

10 They recognize that an upgrade to the Pan
11 Am Network is sorely needed. Becoming a part of CSX
12 and the Class 1 Railroad Network is going to bring
13 them tremendous benefits, and they have told you they
14 want this transaction to go forward.

15 We explained that CSX will upgrade and
16 modernize the Pan Am operations, elevating the
17 networks potential, and maximizing its efficiency.
18 We have already identified a number of capital
19 projects totaling more than 100 million dollars.
20 We've provided you a map showing the numerous
21 projects that have already been identified that will
22 bring the Pan Am Network up to Class 1 railroad

1 standards.

2 These upgrades will benefit all rail user,
3 freight and passenger alike. We have broad
4 experience working with passenger services and how to
5 coordinate freight and passenger operations to
6 ensure safe and consistent service. We have partners
7 with several local and regional passenger agencies
8 across our network.

9 Nothing about this transaction will have a
10 negative effect on existing passenger service, and
11 the operating and safety improvements that we will
12 make will only result in improvements to existing
13 passenger rail service. We have also pledged to work
14 with passenger agencies to explore future
15 opportunities.

16 Pan Am's shippers will benefit from CSX's
17 customer service, greater schedule reliability and
18 greater transparency about their shipments. New
19 seamless single line service will provide shippers
20 with low-cost, environmental friendly rail service
21 with truck like reliability, so they can reach a
22 wider customer base over an expanded territory.

1 You heard directly how excited shippers
2 are to be part of a larger network that will give
3 them access to new market opportunities. You heard
4 from Genesee and Wyoming. After their presentation I
5 think the Board knows why CSX and NS chose them as
6 the operators of PAS. They have enormous operational
7 expertise and will make PAS a better rail carrier,
8 and will ensure the continued viability of PAS as an
9 independent rail route into New England.

10 You heard from NS. The party that would
11 be the most natural source of opposition, and they
12 vigorously support this transaction as it is
13 currently structured. You heard how we have
14 negotiated with interested stakeholders, and these
15 agreements along with the transaction overall will
16 lead to a restructured rail network in New England to
17 make it stronger, more resilient, and more reliable.

18 This is the result of numerous
19 negotiations and settlement agreements, and we know
20 that the Board values the ability of stakeholders to
21 work things out through negotiations, so do we. We
22 also heard some concerns by a handful of interests.

1 And I'd like to respond to the few parties who
2 continue to have concerns regarding the transaction.

3 First, Canadian Pacific. We share the
4 Board's preference to have these concerns worked out
5 between the parties so that the Board doesn't need to
6 impose conditions and we've attempted to do that
7 here. CSX and NS are in agreement on nearly all the
8 conditions outlined by CP today and CP knows that,
9 yet CP won't come to an agreement with us. It seems
10 to me that there is something else that is driving
11 their position in this case.

12 Second, we appreciate the working
13 relationships we've established with the Commonwealth
14 of Massachusetts. And as they have acknowledged in
15 their hearing testimony, we have made a number of
16 commitments that include strengthening the reservoir
17 and supporting the Berkshire Flyer.

18 My letter on the Berkshire Flyer was
19 clear. Amtrak can begin the special train in 2022.
20 Without the 1,000 foot station track, but we need a
21 commitment on that track long-term. We're also
22 committed to continuing meaningful discussions on

1 additional proposals for commuter routes.

2 Third, with respect to Amtrak in addition
3 to supporting the Berkshire Flyer, CSX has agreed to
4 Amtrak's remaining conditions. Finally, the legal
5 standard is focused on competitive effects, and we
6 have demonstrated to the Board that the structure of
7 this transaction ensures there will be no adverse
8 competitive effects.

9 We've shown how competition actually will
10 be enhanced by this transaction, and even if you
11 found there to be anti-competitive effects, the legal
12 standard requires approval if the public benefits
13 outweigh those effects. This hearing showed you the
14 extent and strength of the abundant public benefits.
15 I hope that this two day hearing has served to inform
16 you about why this transaction as structured, which
17 clearly meets the legal standard for approval, will
18 revitalize rail service in New England.

19 Thank you Mr. Chairman, Vice Chairman, and
20 Board members for your strong interest in this
21 important transaction. Upon your approval we can get
22 to work revitalizing the New England Rail Network.

1 CHAIRMAN OBERMAN: Jim thank you very
2 much. Let me say at the outset I think this two days
3 of hearings beginning with you and your team's
4 presentations have been exceptionally productive and
5 enlightening, and have moved the ball forward towards
6 our responsively figuring out what to do with your
7 application.

8 So I really congratulate you and everyone
9 who has participated in this hearing. I think there
10 are a few matters that need some clarification from
11 my point of view, and perhaps from other Board
12 members that they can weigh in.

13 So I'd like to deal with those. I
14 actually think that the record is already pretty
15 solid on the issues that I have raised as a concern,
16 but in going over the proceedings from yesterday I
17 think -- and some of the things that have been said
18 by Amtrak and CP, I think there's some things that
19 need to be clarified which I'd like to do.

20 So first of all you indicated in your
21 comments just now that it was your goal to try to
22 reach agreements with as many people as possible,

1 many interests, to avoid the Board imposing
2 conditions.

3 As a general matter you know that is my
4 view to encourage private agreement, but just so the
5 record is clear it's my understanding that it's CSX's
6 position from the papers you first filed, that once
7 you work out agreements, then you expect and
8 actually want the Board to impose those as
9 conditions, but based on the agreements. That's
10 really what you're talking about right, so we're on
11 the same page.

12 MR. FOOTE: Yes.

13 CHAIRMAN OBERMAN: Yeah okay. Because you
14 said instead of conditions, but the conditions we've
15 been working hard.

16 MR. FOOTE: Yeah the negotiated
17 conditions.

18 CHAIRMAN OBERMAN: Yes right, that's I
19 think we all agree that's better, but they're still
20 going to end up being conditions because you may not
21 be there some day and neither will I when the
22 conditions may need to be reformed.

1 So with that in mind I wanted to cover, I
2 don't think we need to spend as much time on it as we
3 did yesterday, but you and I had a very vigorous
4 discussion, a very productive one in which you were
5 very affirmative about maintaining all existing
6 avenues of competition in terms of open gateways and
7 equalized rates and so forth.

8 And I realize that it may have been my own
9 phraseology that I am not clear. I think the intent
10 was clear, but I'd like to put it on the record that
11 the commitment to keep all gateways open to have
12 commercially reasonable interchange rates, to have
13 equalized rates for all carriers, so one isn't
14 disadvantaged versus the other, applies to all of the
15 interchange places on the Pan Am system, but also on
16 the PAS system.

17 And I think sometimes that discussion got
18 morphed together. Is that a fair way to state it?

19 MR. FOOTE: Well I think what we were
20 talking about yesterday, and I think what you were
21 talking about with CP today related to the PAR, let's
22 just call one PAR one PAS to keep it easy.

1 CHAIRMAN OBERMAN: Okay. I think
2 yesterday we were talking about both, but that's what
3 I wanted to be clear on.

4 MR. FOOTE: Well yeah there was two things
5 yesterday that kind of got intermixed together. I
6 think you pulled out a PAS tariff and then we were
7 talking about a PAS tariff that had equalized,
8 basically pull at the same rate whether it's going to
9 the CP interchange, or the CSX interchange.

10 CHAIRMAN OBERMAN: Right.

11 MR. FOOTE: They used to have a blanket
12 tariff.

13 CHAIRMAN OBERMAN: But let's be clear.
14 Let's clarify that today.

15 MR. FOOTE: Yes. And so and then that
16 kind of morphed into the conversation about propane
17 moving from Sarnia into New England versus you know
18 the Appalachian region into New England, and then we
19 started talking about gateways.

20 And yes, our commitment, which we said
21 yesterday, our commitment is to the extent -- I guess
22 to the extent that we can commit, like I said it's

1 the best way to say it, to the extent that we can
2 commit because PAS you've got CSX, you've got NS,
3 we've kind of ceded pricing responsibility to Genesee
4 and Wyoming.

5 So you have to kind of deal with them
6 separately. To the extent that we can commit, and
7 that would obviously be the case on PAR, I think it's
8 been kind of a standard for the last 20 years since
9 the Central transaction as a started to guarantee
10 gateways open, which mean physically open, and
11 economically open.

12 And those guarantees really don't go to
13 the railroads, those are guarantees to the shippers.
14 So when the shipper's out shopping for rates and he
15 wants to use different alternative carriers to find
16 out what's going to be the most economic rate from
17 what source, he has all of his options that he had
18 available before.

19 So if there were a rate
20 existing today to a gateway that PAR has quoted to a
21 customer, it's our commitment that we will be -- we
22 will continue to quote a competitive reasonable rate

1 that doesn't economically close that gateway.

2 CHAIRMAN OBERMAN: Okay. And I thought
3 that was clear on the record and in your papers
4 yesterday for PAR.

5 MR. FOOTE: And I think you had the exact
6 -- a very similar conversation today with the
7 representative from the Canadian Pacific where yes, I
8 think you came out exactly in the same place with the
9 crystal clarity on that.

10 CHAIRMAN OBERMAN: Yeah.

11 MR. FOOTE: The question as it relates to
12 the PAS, and then we were talking yesterday about the
13 tariff, and the fact that PAS had a tariff, and when
14 they raised the tariff they seemed to raise it
15 uniformly up and down. It doesn't make any
16 difference to the railroad gateway, they have kind of
17 parity between the east, the west, and whatever it
18 is.

19 I think in that circumstance, and counsel
20 can correct me if I'm wrong, I think we have a
21 relationship there where we and NS had ceded to, we
22 had given the B&E the commercial responsibility for

1 quoting rates in that area, and first of all whether
2 it's PAR or PAS, if there's a rate that's in effect
3 today that's in a contract for whatever and moving
4 freight, we're going to honor those rates.

5 That's a binding commitment on our part.
6 So we would bind the -- we would honor those rates
7 that are in existence, then in the future would not
8 do something unreasonable or detrimental to the
9 customer that would economically close that rate. On
10 the PAS --

11 CHAIRMAN OBERMAN: Jim, just to use the
12 phraseology we've been using it would not be
13 commercially unreasonable right?

14 MR. FOOTE: That's correct.

15 CHAIRMAN OBERMAN: Yeah, sorry. That's
16 okay go ahead.

17 MR. FOOTE: And then on the PAS because we
18 have given the B&E, because we have stepped back out
19 of the commercial arrangements, the pricing for the
20 service, B&E would set that rate, and they would set
21 that rate. They're incentivized to make sure they
22 don't do something stupid that would close the

1 gateway to PAS, and so they would grow the business.

2 So I guess there's a slight nuance with
3 PAS only because I can't make that same level of
4 commitment.

5 CHAIRMAN OBERMAN: Yeah, but maybe we can
6 solve that problem right now because B&E and NS are
7 there.

8 MR. LARocca: And Mr. Chairman let me
9 point out one other aspect of PAS. One of the very
10 important elements of the settlement agreement and
11 the term sheet was to ensure that pricing would be
12 done on a non-discriminatory basis. That is one of
13 the fundamental -- that is I should say the
14 foundation of the pricing responsibility and
15 requirement that B&E is obligated by contract to
16 follow.

17 Non-discrimination is very similar to what
18 you're talking about here. That means that if a
19 product is coming in to PAS from one carrier, a
20 non-discrimination rate setting requirement means
21 that other carriers bringing that in to use PAS for
22 the same movement cannot be discriminated against.

1 So they can't, so there would be no way under the
2 contract for PAS to favor either of its owners, or
3 any other individual carrier. They've got to be
4 non-discriminatory.

5 CHAIRMAN OBERMAN: Well I understand that,
6 but the settlement agreement between NS and CSX, so
7 there are other carriers that come in there primarily
8 CP, and I think what we wanted to make sure, and I
9 thought it was in your papers, and I guess I wouldn't
10 say very similar. I would say identical to an open
11 gateways on commercially reasonable rates in
12 perpetuity for all carriers, and that would include
13 CP.

14 MR. LAROCCA: Absolutely.

15 CHAIRMAN OBERMAN: But now I think for our
16 record because I think Jim is right they're dealing
17 with different corporate entities can we hear an amen
18 from B&E and NS that are sitting right there that
19 they are committed? That PAS is going to operate in
20 perpetuity, you know, of course B&E might not be
21 there in perpetuity, they have a term limit of
22 contract to this non-discriminatory policy.

1 MR. WALSH: Absolutely. On behalf of B&E
2 it is embedded in our contract that we cannot favor
3 any carrier over another, so that means that we can
4 treat you know CP no different than CSX nor NS. You
5 know any different from there are existing agreements
6 in place, but from going --

7 CHAIRMAN OBERMAN: That's a permanent
8 commitment going forward.

9 MR. WALSH: That is embedded in our
10 agreement as operator yes.

11 CHAIRMAN OBERMAN: All right.

12 MR. WALSH: If we do not adhere to that we
13 can be terminated.

14 CHAIRMAN OBERMAN: Yeah. But you know it
15 could also end up being a condition by agreement that
16 can be enforced by us, that's what I'm.

17 MR. WALSH: Oh absolutely sorry, and I
18 would just ask to make sure with outside counsel that
19 I stated that correctly.

20 CHAIRMAN OBERMAN: Sounds good to me.
21 Bill Mullins are you onboard?

22 MR. MULLINS: Yes sir.

1 CHAIRMAN OBERMAN: Pardon?

2 MR. MULLINS: On behalf of Norfolk
3 Southern I would say that we don't believe that an
4 actual Board imposed condition is necessary because
5 of all the reasons that have been expressed,
6 especially the fact that B&E already has a
7 contractual obligation to be neutral.

8 That in effect is an open gateway
9 commitment, so you don't need to impose that, and it
10 does require three parties to agree to that
11 commitment -- B&E, Norfolk Southern, and CSX, and
12 actually there's a fourth party, CP. And I think
13 what concerns us, and Norfolk Southern is always
14 willing to sit down and discuss these issues with CP.

15 We couldn't agree with you more Mr.
16 Chairman, that it's best to resolve these things in
17 negotiations, and not have them be Board imposed
18 conditions. And in that sense, we've actually made
19 a proposal to CP. We being NS and PAS, we've not
20 heard back on that, and we would like to sit down
21 with CP, want to have fruitful negotiations with CP.

22 But you know talking about your issue with

1 it's great to have negotiations, well if one side
2 feels like what they're going to get is being imposed
3 by the Board, then they don't have to give anything
4 because they're going to get it for free from the
5 Board, they have no incentive to negotiate.

6 So like for example in the CP interest,
7 they're not offering to give any rate commitments of
8 their own. They're not offering to keep their
9 gateway and interchange open. They're not offering
10 to seek to give us Pan Am Southern service standards.
11 They're not offering to give us volume commitments.

12 They're not offering to give us maintain
13 their lines in a shape, and yet we depend on that
14 traffic just as much as they depend on theirs. So
15 it's a two way street, and if one side feels like
16 they get all the leverage because they're going to
17 get it from the Board, they have no incentive to
18 negotiate.

19 CHAIRMAN OBERMAN: Well Bill let me just
20 say a couple of things. Number one, I was going off
21 of the promise that the principal applicant here, CSX
22 made that whatever representations it made, or

1 whatever agreement it worked out, it asked the Board
2 to pose those as conditions of any approval we might
3 give.

4 And I'm not here to mediate between you
5 and CP, at least in this public hearing. But there
6 is a difference. You and B&E and CSX are all asking
7 us to approve something. CP's not asking us for
8 anything other than to be protected. So they're in
9 somewhat of a different position.

10 But as a matter of philosophy do you know
11 I have been saying, at least since I showed up in
12 this business, that everything that promotes more
13 openness, and more competition is good for the
14 public, is good for the industry, so you won't get
15 any fundamental disagreement with me.

16 But on this specific point it is important
17 going forward to articulate for PAS what Jim has just
18 articulated for the rest of the PAR system, what Tony
19 LaRocca has reiterated, and what B&E has reiterated,
20 NS -- can I just get you to say from NS's point of
21 view you want PAS to do that?

22 MR. MULLINS: I will commit to you Mr.

1 Chairman on behalf of NS that we will sit down with
2 CP and discuss this in good faith negotiations.

3 CHAIRMAN OBERMAN: Are you going to stand
4 -- you know that really leaves it open. We're trying
5 to close the record here. Is NS going to object to
6 the Board imposing a condition that all the gateways
7 on PAS are open at equalized rates and so forth,
8 commercially reasonable terms going forward?

9 MR. MULLINS: At this stage I couldn't say
10 that. You know I haven't spoken to the client about
11 that, but I would say that that is a subject that we
12 should negotiate. That is a subject that you know
13 hopefully we can reach agreement. As you said, we
14 support your goal to reach agreement.

15 As you said you're not here to mediate or
16 negotiate in the context of this record, and I would
17 also add that CP is asking for something to be
18 imposed on Norfolk Southern. They're asking it to be
19 imposed on Norfolk Southern, and they're asking for
20 something that is more than what they have now.

21 CHAIRMAN OBERMAN: I don't know that
22 that's true. As I understood it at least in terms of

1 the open gateways, as I understand it PAS has been
2 operated that way from the beginning. It has tariffs
3 that are open and of equalized rates, so the one
4 thing I hear CP asking for, more importantly I think
5 you hear me asking for it, is that the current level
6 of competitive options available not be diminished,
7 and if that isn't done by agreement goes right to
8 11324-D.

9 MR. MULLINS: And I think Mr. Chairman
10 that we exactly share that goal, which is why -- and
11 again remember, we're the party that actually shares
12 your entire goal of keeping the Pan Am Southern
13 system competitive to the CSX system. You know your
14 comments, all the shippers, you're questioning the
15 shipper about the importance of choice. It is
16 important to have that choice.

17 And the railroad that wants that choice
18 the most is Norfolk Southern, and it's because of
19 that that we negotiated very careful agreements, very
20 complex agreements, and as part of that agreement to
21 share, to go precisely to your point, as part of that
22 agreement made B&E commit to neutral,

1 non-discriminatory pricing. That is contractually
2 put in there.

3 The Board can put that in as a condition
4 you know because they're adopting that agreement. So
5 I don't know what more is needed because B&E is
6 already agreeing to be a neutral non-discriminatory
7 price maker.

8 CHAIRMAN OBERMAN: The only thing that's
9 needed is that Jim Foote just said he could only
10 speak for CSX, and you're 50 percent owner, so I just
11 wanted to hear it from you. But you just said, so I
12 think we're on the same page.

13 MR. LAROCCA: Yes. And let me reiterate
14 that we're all on the same page. We have asked you
15 to impose as a condition of approval the NS
16 settlement agreement. We specifically asked that
17 that be established as a condition. An element of
18 the NS settlement agreement is the non-discriminatory
19 pricing requirement for B&E as the operator.

20 So by imposing that settlement you are in
21 fact establishing that as a requirement.

22 MR. DENTON: And Mr. Chairman if I might

1 add here.

2 CHAIRMAN OBERMAN: Go ahead Peter.

3 MR. DENTON: Yeah the tradition of these
4 open gateways commitments are related to mergers
5 right, of rail networks, and eliminating any
6 potential vertical competition issues as maybe Dr.
7 Reishus can talk about. But they're really about
8 railroad mergers.

9 And in the past context this is not a
10 merger. CSX is not merging with PAS. There aren't
11 any gateways that could even potentially be closed as
12 a result of the transaction. And what we've done as
13 Tony and others have mentioned, is in trying these
14 non-discriminatory principals in the settlement
15 agreement which we're asking you to impose as a
16 condition.

17 I just think that the gateways concept is
18 not necessarily apropos to the PAS network, whereas
19 it absolutely is for the PAR.

20 CHAIRMAN OBERMAN: Well I think it appears
21 to me to be that it is apropos because at least three
22 gateways that are used right now in PAS at

1 Mechanicville, Hoosac Junction and Rotterdam, and I
2 thought the whole -- one of the bases of this
3 transaction is that those gateways would remain as
4 open in going forward as they have been in the past.

5 MR. FOOTE: And I think the essence of our
6 agreement with B&E was to ensure that that was the
7 case.

8 CHAIRMAN OBERMAN: Well I just hear Bill
9 having some kind of a reservation here, and then --

10 MR. FOOTE: All he said was we ensured
11 that there would be equal treatment at the gateways,
12 and forget about this is designed to protect the
13 shippers, so that the shippers get equal treatment
14 when they want to use different carriers, so that a
15 shipper going to any gateway using a different
16 railroad would be treated equally.

17 CHAIRMAN OBERMAN: Yeah.

18 MR. FOOTE: And B&E is contractually bound
19 by the agreement to do that, and we're asking you to
20 impose the agreement.

21 CHAIRMAN OBERMAN: In perpetuity right?

22 MR. FOOTE: Well unless -- the NS

1 settlement, the agreement yes.

2 MR. DENTON: From which the G&W operating
3 agreement and the whole issue derives from, so yes.
4 That's absolutely right.

5 CHAIRMAN OBERMAN: Yeah. But G&W may not
6 be there in perpetuity, but the commitment has to be
7 there in perpetuity.

8 MR. DENTON: The commitment is with
9 respect to how PAS will be operated.

10 CHAIRMAN OBERMAN: Yes. Whether it's G&W
11 or somebody else in the future.

12 MR. LAROCCA: Well a change in operator
13 would have to be approved Mr. Chairman, so you don't
14 really have to worry about that. If there's an issue
15 down the road and you'll have another shot at it.

16 CHAIRMAN OBERMAN: Well I may, but I'd
17 like to get solid now so we can -- if all we're doing
18 is replacing G&W someday, we don't have to relitigate
19 this issue on where the Board would stand. So I
20 think as I understand it the commitment is I think as
21 Peter just said, is to how PAS will be operated
22 regardless of who the operator is. Is that a fair

1 statement Tony?

2 MR. LAROCCA: Well that certainly is the
3 intention of the NS settlement agreement that this
4 was not a link to B&E necessarily. It was linked to
5 the purpose of establishing a neutral operator for
6 PAS. So yes, this was intended to be part of the
7 restructuring arrangement.

8 CHAIRMAN OBERMAN: Well you know since
9 I've gotten to the Board, and Patrick and I joined in
10 talking to the rail law transportation group, it's
11 been our obligation that over the 140 years there
12 have been times when orders of the Board have been
13 drafted with some ambiguity.

14 And it's a mission that Patrick and I
15 started, and I'm pretty sure our other three members
16 will join with us, of having as much clarity in our
17 orders as possible. And if I seem to be pushing the
18 specifics of this it's because I want to have an
19 order, assuming we're going to approve this, and
20 that's still up in the air. That leaves nothing, as
21 little of a doubt as a human language, as the English
22 language will allow us in terms of precision. So

1 that is the reason I'm pushing this. It's a
2 penchant of mine, and I'm pretty sure I speak for
3 Patrick.

4 But I think we have resolved this issue in
5 terms of the openness that Jim and I had a very
6 productive discussion on yesterday, really applying
7 not only to PAR, but to PAS. And if anybody thinks
8 that those aren't going to be open in the same way I
9 want them to tell me right now, and if not I'd like
10 to move on to a couple of other matters that need
11 clarification.

12 Hearing none I want to go to other matters
13 that were raised by CP this morning, and this goes
14 beyond the pricing and the open access part. You
15 heard them talk about having some assurance that the
16 level of maintenance of the PAS infrastructure and
17 the service availability not be diminished as a
18 result of the acquisition.

19 What I heard consistently yesterday from
20 everybody on this team that's here now, CSX, NS and
21 B&E, is a very strong statement to the Board that
22 that's the plan to keep PAS at least as viable as it

1 is today if not in fact planning to have improvements
2 on it, and to make sure, and as B&E has emphasized
3 they want to grow the business, so it's hard to see
4 B&E saying we're going to reduce the frequency of our
5 service, that would not be consistent with growing
6 the business.

7 So I'd like to explore whether the
8 reaction to the idea of writing into conditions some
9 agreement that PAS will be maintained at least at its
10 current level or better, and that service frequency
11 will not be diminished. Does somebody want to
12 respond to that what CP was talking about this
13 morning?

14 MR. FOOTE: Well I'm not sure what CP's
15 talking about, so you know maybe you can help me on
16 occasion. You know as NS just articulated you know,
17 we've tried to have a conversation with them about
18 exactly what they want, and it's been a difficult
19 thing to do. So you heard the Hub Group talk about
20 the service on the line, so you know I guess that's
21 what they want.

22 CHAIRMAN OBERMAN: Let's take it apart a

1 little bit Jim. In response to one of my questions I
2 asked are they talking about some commitment by your
3 team, I'm just going to say your team because it's a
4 three part group here to at least keep the PAS line
5 up to its current FRA standards or better.

6 I hear you say that's your plan anyway.
7 So if a condition were made that specifically would
8 you have any objection to it?

9 MR. FOOTE: Well again you know it's not
10 for me, CSX unilaterally, to commit to three parties.

11 CHAIRMAN OBERMAN: Well let's say you
12 wanted it, I've got a hold of three people here, and
13 that's why we're here. So from CSX's point of view
14 is there any reason from your 50 percent of the cost
15 of maintaining that line ultimately, is that a
16 condition that you would find acceptable?

17 MR. LARocca: Mr. Chairman let me point
18 out that Mr. Clemens provided quite a bit of clarity
19 and qualification as to what he was interested in. I
20 wrote down the words not looking for rigid or
21 inflexible requirements, and I think that's critical.
22 That is critical.

1 Our intention is to provide better
2 service. That's what we intend. An inflexible
3 requirement, all that does is it imposes costs. It
4 imposes costs on PAS that are going to have to be
5 borne by PAS shippers. That's not something that's
6 going to improve the viability of PAS. It might
7 improve other competitive scenarios, but it does not
8 improve the competitiveness of PAS if it's done
9 without flexibility.

10 And I heard Mr. Clements talk about
11 flexibility.

12 CHAIRMAN OBERMAN: What's inflexible about
13 maintaining the quality of the track then up to
14 whatever its current standards are? What's
15 inflexible about that? You've got you would be hard
16 pressed to say you have a plan to come in here and
17 let the PAS right-of-way deteriorate.

18 MR. LAROCCA: Two years ago Mr. Oberman I
19 did not see anything. I did not expect to be in my
20 house for two full years behind this computer screen.
21 I did not expect that. But things happen, and the
22 network is very fluid. And there needs to be

1 flexibility.

2 You cannot establish absolute rules. You
3 have to approach them with flexibility, and indeed a
4 whole history of the rail network and common careage
5 is a principle of reasonableness. There has to be
6 some flexibility.

7 VICE CHAIRMAN PRIMUS: But Tony --

8 CHAIRMAN OBERMAN: One at a time. Robert?

9 VICE CHAIRMAN PRIMUS: I mean I don't
10 understand you know where you're coming from Tony in
11 that respect. I mean they're not asking to be rigid
12 at all. They're just saying that the request is
13 that you maintain what's already there. I take
14 that's the same thing with Marty. No one is asking
15 that it need be better, or improvements, or that
16 thereof.

17 My question to you guys yesterday was you
18 know do you look in the future to continue to utilize
19 the entire network? I questioned that north/south
20 east/west thing. You said well we are going to
21 continue doing that. And to do that at the very
22 least in my estimation you have to maintain you know

1 what you already have.

2 No one is saying you do anything better.

3 No one said to fix the tunnel, no one said to do
4 those things. You know we're saying to FRA standards
5 continue to operate, you know past the way you've
6 been operating it. I don't think that's inflexible.
7 Not at all.

8 I don't think there's anything to that
9 suggests that we're telling you to do something any
10 different than you're already doing.

11 MR. FOOTE: Well again I go back to this
12 in Norfolk Southern they very strongly yesterday
13 talked about the importance of that line. The need
14 for their main line into Boston to be viable, how
15 important it was to them. We have talked about how
16 as the second largest user of that line, how
17 important it was to us, and the critical nature of
18 that line.

19 You heard the customers telling you how
20 important that line was, that there's no way that CSX
21 can run around, and you know whatever conspiracy
22 theory seems to be in vogue and how we're going to do

1 this. They're on the line, they need the service,
2 they get the traffic from the west coast. You know
3 they want optionality. Do you think that it's you
4 know CP gets treated differently?

5 Does CP run their own? Is CP thinking
6 when they run their own train over to their
7 customers? There are few cars that they move on this
8 line go on the same train where the CSX freight
9 and the Norfolk Southern freight, intermixed into the
10 same train.

11 They get the same level of service. They
12 get the same transit times. They get the same
13 everything. They're --

14 VICE CHAIRMAN PRIMUS: Actually Jim I
15 think you're making Marty and I's point is that
16 you're saying that hey, I don't know why you've been
17 bringing this up because you're running on the same
18 track and doing the exact same thing. I guess what
19 I'm saying is it sounds like almost like this
20 condition is a throw away for them because it's like
21 you are going to maintain, it is maintained.

22 MR. FOOTE: We the largest users of the

1 track will -- all we're saying is yes, we're
2 maintaining the track, and we'll make sure that the
3 service is there, but it shouldn't be artificially
4 imposed at some arbitrary standard because for the
5 one or two cars that CP wants to move on the track.
6 Where did that come from?

7 CHAIRMAN OBERMAN: Jim you know there's
8 more than CP involved here. I think we forget this.
9 If CP never showed up we have an obligation to the
10 public's interest to preserve competitive options in
11 the rail network, and the only reason that we are
12 here talking about conditions is because we acquire
13 of half of the railroads as a competing line.

14 And so that is presented issues, some
15 raised by DOJ, some raised by others, some urging
16 what was described by somebody as a radical remedy of
17 requiring divestiture. And I think what we've been
18 engaged in for the last two days is a very detailed
19 effort to see if we can accomplish everything that
20 would need to be accomplished in terms of competitive
21 options without going to divestiture.

22 So that's why we're talking about it, but

1 I sort of share what Robert just said you know it's
2 like you know it's like people saying the only reason
3 I'm not getting the vaccine is that you made me do
4 it, otherwise I would have gotten it, you know, it's
5 kind of strange approach to not be willing to commit
6 legally.

7 But one you say you're totally committed
8 to doing anyway. But let me go to Karen because she
9 wanted to speak up here a minute a go before we you
10 know.

11 BOARD MEMBER HEDLUND: Yeah it goes to this
12 point that the concern is that, and you may call this
13 a conspiracy theory, but at some point in the future
14 CSX decides it doesn't need the PAS route, and maybe
15 Norfolk Southern doesn't need it either, and you
16 could close down the route and the availability of it
17 just by withdrawing funds for maintenance.

18 So I think that both CP and various
19 members of the Board are concerned that that does not
20 happen. That this alternative route isn't made
21 unavailable basically by agreement between CSX and
22 Norfolk Southern to simply withdraw funds, because

1 it's not in their individual interest to keep it
2 open.

3 MR. MULLINS: Member Hedlund can I address
4 that please?

5 BOARD MEMBER HEDLUND: Yes.

6 MR. MULLINS: I think as I testified to
7 yesterday we've invested 400 million dollars into
8 this line and into this area. I cannot imagine a
9 scenario where NS would say we're walking away from
10 that because we're happy we have two trains over on
11 the CSX line.

12 It's just not going to happen. This is
13 why we carefully negotiated a complex set of
14 agreements that protect our interests, that we are
15 not the party that is coming in to ask for approval.
16 It's CSX coming in to ask for 50 percent approval to
17 buy Pan Am Southern.

18 For us there's no change except for who
19 our partner is going to be. We shared the concern as
20 to who that partner was going to be, so we negotiated
21 these exact protections that you've articulated, and
22 the Chairman has articulated, and others have

1 articulated that you don't want to see that Pan Am
2 Southern line go away.

3 In contrast to this negotiation where we
4 put skin in the game, we've had 400 million dollars.
5 CP's done nothing, no commitments, they're not saying
6 how important that line is. They have their own
7 lines up into the northeast market. It is not to
8 CP's interest. It's to CP's interest to impose costs
9 on us, so that their own lines could be benefitted.
10 That's number one.

11 Number two, CP hasn't made a case. They
12 haven't made a case that the conditions that they
13 wanted are backed by the record. They haven't put in
14 any statements, no verified statements, no rate
15 studies, no diversion studies, no economist study.
16 There is no record on which the Board would legally
17 be able to impose these conditions because they have
18 not shown that this transaction as presented to you
19 is likely and substantially going to lessen
20 competition.

21 BOARD MEMBER FUCHS: I'm sorry Karen.

22 CHAIRMAN OBERMAN: Go ahead Patrick.

1 BOARD MEMBER FUCHS: I do want to make an
2 observation which is in my view the Board does not
3 have a responsibility. It does not have the
4 obligation to maintain all rail lines open, all
5 options open at all times. I think the whole reason
6 why we are under the Stagger's Act structure is
7 because the ICC prevented railroads from adjusting to
8 economic circumstances, including when lines become
9 uneconomical.

10 And what I'm hearing from applicants is
11 you cannot predict in perpetuity every possible twist
12 and turn of the economy, some of which can be quite
13 severe. We have seen commodities come and go. We've
14 seen a spike in frac sand in Wisconsin only to come back
15 down.

16 We see secular trends in coal. All of
17 these things change the economic proposition of lines.
18 And I think to obligate applicants to maintain a line
19 forever with all the economic changes that could
20 happen over time is something that is exactly the
21 type of thing that the Stagger's Act was designed to
22 avoid.

1 And so I just want to make a point that it
2 is important that the Board keep opening competitive
3 options. It is not the Board's job to keep open
4 uneconomical competitive options, and we don't know
5 whether or not this could become uneconomical.

6 I would also add that for unforeseen
7 scenarios in the distant future, unlike the DOJ, well
8 in a different way than the DOJ, the Board has tools
9 at its disposal to protect shippers. Parties will
10 have a common carrier obligation. Parties will have
11 a statutory obligation for reasonable rates and
12 reasonable practices.

13 It is not as though if unforeseen
14 scenarios happen in the distant future, or if future
15 agreements are not as strong as we might hope today,
16 it is not as though the Board under current law is
17 powerless to address those circumstances. So I think
18 it is important to note that what we may be
19 discussing here is a perpetual obligation to commit
20 railroads to potentially money losing lines.

21 CHAIRMAN OBERMAN: Go ahead Karen.

22 BOARD MEMBER HEDLUND: So we should look

1 at this on the assumption that sometime in the future
2 the PAS line may go away because economic
3 circumstances change.

4 BOARD MEMBER FUCHS: I am saying that no,
5 I'm not saying that. I'm saying that the requirement
6 that is being discussed is that the railroads would
7 have to continue to maintain a line to a certain
8 standard even if economic circumstances change. So
9 if all the traffic on this line went away, say there
10 was massive advancement in automation, in dynamic
11 block, in energy usage that completely changed rail
12 routing in this country -- there was complete changes
13 in commodity markets.

14 There's economic shifts 25 years from now.
15 What we are discussing is a requirement that these
16 companies continue to pour money into a line that is
17 not used potentially, and in the unlikely event that,
18 so that's the first thing.

19 The second thing is we are ignoring the
20 economic incentive, and I think that the parties are
21 telling us that the economic incentive they have to
22 maintain the line. CSX is going to use this line for

1 economic reasons. In addition to the costs that
2 Bill mentioned, NS is going to use the line for
3 economic reasons.

4 Their trackage rights over the CSX are not
5 unlimited. And so in fact a good portion of their
6 traffic is going to continue to use the lines. So I
7 say that even as economic circumstances change there
8 will still be that economic incentive that they will
9 have in addition.

10 So I don't think it's necessarily that we
11 should analyze as though it's going away. I think
12 that we should think about the possibility of what
13 would happen if it did.

14 BOARD MEMBER HEDLUND: You know if they
15 wanted to abandon the line they just come to the STB
16 and ask for abandonment.

17 BOARD MEMBER FUCHS: That's exactly one of
18 the protections that would be in place. Exactly.
19 That parties wanted to come in for there would be
20 potentially first of all there would be processes in
21 place. If something were economic parties would be
22 required to continue service at reasonable rates and

1 reasonable practices, and in some circumstances the
2 Board has authorities for people to step in for
3 economic lines that parties for whatever reason are
4 not fulfilling their obligations on.

5 So again the Board has statutory
6 protections for the types of scenarios in the distant
7 future.

8 CHAIRMAN OBERMAN: Well that would be true
9 wouldn't it Patrick, even if we impose the condition
10 that they shouldn't let the quality of the line
11 deteriorate from present day. They could always come
12 in and ask for abandonment.

13 BOARD MEMBER HEDLUND: That's my point.

14 MR. FOOTE: Mr. Chairman again trying to I
15 guess move along the CP mediation here. We've
16 already guaranteed them a rate. We guaranteed them
17 that we won't discriminate against them. We
18 guaranteed them this, that and the other thing.
19 They're guaranteed a right to run on, to get on our
20 train as I said earlier.

21 This is not like it's a CP train, an NS
22 train, a CSX train, this is a mixed train where it

1 would be moving for multiple accounts.

2 CHAIRMAN OBERMAN: We're talking about PAS
3 Jim right?

4 MR. FOOTE: Yes, well that's any railroad.
5 Any railroad. When a car shows up for interchange if
6 the customer wants to move that route we interchange,
7 so if CP shows up they've got a guaranteed rate, and
8 they show up with a car for interchange that's going
9 through a local PAS destination, or it's bridging
10 across, it just gets switched like everybody else's
11 cars onto the train and it goes.

12 They're not discriminated against in any
13 way shape or form. And if we upgrade it to FRA
14 standards so it's three, so that it's upgraded
15 significantly because we have worked our butts off to
16 grow the business on the line, and it justifies the
17 capital investment, then so be it. They get to go on
18 the faster railroad.

19 If the traffic for some reason diminishes,
20 then we would make the appropriate level of
21 investment, probably close to what's there today, and
22 the train would move at a different speed. Their

1 cars move in the same train with ours. They are in
2 no way shape or form discriminated against by moving
3 their freight over that line.

4 VICE CHAIRMAN PRIMUS: Well I guess Jim
5 from my perspective I agree with you wholeheartedly
6 on that. I guess from my perspective I just want to
7 say that you know this condition probably is probably
8 in my mind doesn't make sense. I mean so to add it
9 on because hey, it's still going to be on the same
10 train.

11 It's still going to move the same speed as
12 you're saying and get to the same destination no
13 different than any other car. So they're not --

14 MR. FOOTE: We can't refuse to accept the
15 car at interchange.

16 VICE CHAIRMAN PRIMUS: Yeah that's what
17 I'm saying. I mean they didn't ask you to improve it
18 to FRA like level 3. All they said was you know just
19 keep it the same way, keep it going, and that's good
20 enough. You know like I said I think we're going
21 around in circles on it.

22 MR. FOOTE: Again the big thing here

1 maintain an open gateway was a protection for
2 shippers so that they did not lose competitive
3 options being able to route traffic on an interline
4 basis. Today they have an option to go CP PAS and
5 CSX PAS, and that we would somehow raise the rate for
6 the interchange for CP and economically close the
7 gateway.

8 And so to protect the shipper, not CP, to
9 protect the shipper so they always have their
10 shipping options, we said we won't do that. And
11 that's been the norm for 20 years. So.

12 VICE CHAIRMAN PRIMUS: I don't think
13 anybody disagrees.

14 MR. FOOTE: Right. So and they're not
15 discriminated against in any way, shape or form by
16 saying that we have to have some magical FRA standard
17 to maintain the railroad, or they're dissatisfied.
18 This is just craziness.

19 VICE CHAIRMAN PRIMUS: I would say this
20 and then I'm done because I think we do need to move
21 on. I don't want you guys any longer than we have
22 to. I think I agree with you as I said before, and I

1 don't think they're setting any higher standard, and
2 you've got to jump through more hoops.

3 They're just saying hey if you just keep
4 status quo we're just good. And I don't have a
5 problem with that because you're not asking for it .
6 Just keep status quo. So however you're doing it
7 keep doing it, that's all they're saying. And I
8 don't see how you know that to me is a problem
9 because you can come back and say hey, we've got to
10 stop that.

11 And that's fine too. They didn't say you
12 couldn't come back and say hey we have to do this we
13 have to do that. They just said hey going forward
14 you know we'd like you to keep where it is for right
15 now. And you guys could come back, and you're free
16 to come back and say we're going to change.

17 They didn't say you can't change. Now
18 other people said in perpetuity. I didn't hear that.

19 MR. FOOTE: I think we're talking about
20 imposing a condition to the transaction that's going
21 to maintain, that's going to require us, and I guess
22 the question, the way it's been presented to me today

1 will I agree to an artificial level of capital
2 investment in a line in perpetuity to satisfy CP when
3 CP doesn't want to negotiate anyway.

4 VICE CHAIRMAN PRIMUS: I didn't hear them
5 say in perpetuity. And I didn't hear them say that
6 there's got to be a set amount. All that I heard
7 them say was what I read was they want to continue at
8 the same pace that you guys are going now. They
9 didn't say that you had to raise it. They didn't say
10 you had to spend the same, didn't say you had to go
11 on forever.

12 What they're saying is with this deal
13 there it's not like okay we signed the deal and then
14 all of a sudden we start cutting back. Correct me if
15 I'm wrong, but I didn't hear a limit.

16 CHAIRMAN OBERMAN: Bill hold on a minute
17 Patrick.

18 BOARD MEMBER FUCHS: I do want applicants
19 to -- the applicants have an answer to that question
20 whether or not.

21 I don't think CP set a limit one way or the other did
22 they?

1 MR. MULLINS. No. I would argue this
2 purely as a pure legal matter that if you're putting
3 on a condition that says maintain status quo, I guess
4 it's the definition of what's the word status quo.

5 The status quo allows the current partners
6 of PAS to either increase investment or decrease
7 investment, to increase maintenance, decrease
8 maintenance. If the status quo means that we have
9 the complete flexibility to change the FRA
10 classification of the line to make it better, to make
11 it worse, if that's what the definition of status quo
12 is, which is the status quo today. We have that
13 flexibility. I guess then that's not a problem.

14 BOARD MEMBER FUCHS: I want to come back
15 Marty if I could, if I want to come back because
16 you'll help me understand the point that Karen made,
17 and I just want to clarify, or put forward what I
18 think about it. Just the whole notion that the party
19 could come back for an abandonment.

20 There is a gap between where the line is
21 today and where traffic would need to be for it to be
22 abandoned. And so if traffic gets to a point in that

1 gap, and it's got to be here we would be forcing the
2 parties to operate uneconomically even if they could
3 by reducing capital investment, make it an economical
4 line so it didn't have to be abandoned.

5 So an uneconomical line, it's not a
6 binary, uncomfortable concept. And railroads can
7 demand and scale down investment when it doesn't, and
8 I hate to see that if that the choice is between
9 maintaining something uneconomical up until the point
10 that it has to go away. There's an ocean between
11 where it is and abandonment. That's the only point I
12 wanted to make.

13 MR. MULLINS: Yeah and can I make two more
14 legal points. One, such a condition is not narrowly
15 tailored, that's number one. Precisely for the
16 reasons that Member Fuchs just said. Number two is
17 you would be imposing a condition on Norfolk
18 Southern. We are a non-applicant party.

19 You do not have the legal authority to
20 impose a condition on a non-applicant party such as
21 Norfolk Southern. And so I would caution you as a
22 legal matter if you try to impose a condition that

1 would require that you are imposing a condition on a
2 50 percent owner who is not an applicant in this
3 proceeding.

4 That you do not have the legal authority
5 to do.

6 DR. REISHUS: And I'd like to make an
7 economic point to Mr. Fuchs, that the imposition of
8 some arbitrary level, specific the current level in
9 perpetuity can readily be anti-competitive, can raise
10 costs, does not allow the railroad to adjust the
11 service quality to the traffic. If you report the
12 railroad to basically maintain the railroad to a
13 level greater than the service calls for, that
14 actually is anti-competitive, it's harmful for
15 shippers.

16 Things have changed a lot in the railroad
17 industry over the years I've looked at it, and you
18 know there's been a revival, but you could imagine
19 that the LPG and you know a world with carbon
20 limitations, LPG disappears as an important
21 commodity.

22 Limestone you know for paper making can

1 disappear as an important commodity. You can see
2 shifts in traffic on this line that would cause
3 either more investment or less investment for it to
4 be economically efficient, and imposing artificial
5 conditions over long periods of time you know can be
6 both anti-competitive and economically inefficient.
7 And that was the lessons of the Stagger's Act.

8 CHAIRMAN OBERMAN: I appreciate what
9 you're saying. I do think we need to move on. Let
10 me just make this observation. This discussion, I
11 know it began by CP this morning, but it really is
12 and CP just focused our attention on it. It is not
13 unique to CP. If CP wasn't here I think we'd be
14 having the same discussion.

15 The applicant came in and said we
16 recognize that by taking a 50 percent ownership in a
17 competing line there are concerns about incentives
18 relating to competition. And in response to the DOJ
19 has come in and said if you're concerned about PAS
20 having the same incentive to keep this line up then
21 we suggest A, that we will go into arbitration about
22 the level of investment.

1 Nobody likes that. And the applicant said
2 and if you don't like that we'll appoint a fiduciary
3 to make all the investment decisions on PAS. People
4 like that even less. So I am interested in this
5 discussion, although I think we beat it to death. In
6 the context of how do we substitute independence for
7 this concern about a change in the incentive because
8 of a change in the ownership?

9 So it could be, and we have to deliberate
10 on this, and I do not know where even I would be,
11 much less where the other four members would be, but
12 you have given us PAS to deal with this concern about
13 how to keep the viability up of PAS over the long
14 run.

15 So if you appointed a fiduciary, I find
16 that somewhat awkward, presumably that fiduciary
17 would take into account the concerns that I think
18 Patrick has very reasonably raised about how the
19 markets may change in terms of what to do with this
20 line, but at least there would be a self-interested
21 decision versus a competing line. So maybe that is
22 the way to go if we can't get agreement on some kind

1 of conditions.

2 So I would invite everybody who's at the
3 table and CP, and everybody else to try to come to
4 grips with how we ensure that there isn't this kind
5 of conflict of interest going forward, and what's the
6 best path forward.

7 As I said I would much rather it be
8 something that everybody could agree to, and I'm sure
9 CP is still listening, and Bill I don't -- I'm not
10 going to as I said, negotiate an agreement, but if CP
11 wants to accomplish something maybe they'll be
12 motivated to come to the table.

13 Whether we will impose a condition that's
14 not by agreement I can't tell you today. There's
15 obviously some sentiment for at least coping with
16 this problem. But I think we ought to keep the
17 context in, and while I appreciate very much what Jim
18 said, I for one, and I don't think anybody else on
19 the Board is raising these issues as some kind of a
20 sock to CP.

21 What I am raising these issues in terms of
22 the public interest of having that line stay viable

1 and competitive. I heard a lot from a lot of
2 speakers today, including the two potential owners of
3 the line about the importance of this line. So we're
4 not talking about the STB trying to keep a line open
5 that's more abundant, it's the opposite.

6 But the incentive are changing if this
7 deal goes through. So I think we should move on.
8 There are a couple of other fine points on this that
9 I wanted to cover. Jim in particular I'm very
10 impressed by what you said about the Berkshire Flyer.

11 MR. FOOTE: Yes sir.

12 CHAIRMAN OBERMAN: I'm looking at your
13 letter of January 10, and I just want to be clear if
14 you're willing to engage in this one year limited
15 experiment putting that train on there this year for
16 this limited time period, even without the 1,000 foot
17 track being built.

18 But what I thought I heard you say is you
19 want a commitment from Amtrak to build the 1,000 foot
20 track in the future, or you only want a commitment
21 from them to being at least willing to consider.
22 What are the preconditions to your putting the

1 Berkshire Flyer into operation solely this year for
2 Memorial Day to Columbus Day as you said?

3 MR. FOOTE: Well first of all let's make
4 sure we understand why we need a 1,000 foot track.

5 CHAIRMAN OBERMAN: I'm not debating
6 whether you need it. I just want to get your
7 position.

8 MR. FOOTE: Otherwise they have to park
9 their train on the main line.

10 CHAIRMAN OBERMAN: Yeah I understand.

11 MR. FOOTE: So and then they still don't
12 have any of the arrangements made in New York and all
13 this to actually do this. So what we have said was
14 if you want to do it we do it without deciding for
15 now, park your train on the main line, we'll figure
16 out a way around it.

17 And if you decide then to go forward
18 because this is a test case on their part.

19 CHAIRMAN OBERMAN: Got it.

20 MR. FOOTE: This is not our kind of
21 limiting what they can do. This is a test case on
22 their part. And if they decide to make this a

1 permanent service then they'll have to put the 1,000
2 foot siding in to park the train on when they take
3 people on, take people off, and switch ends of the
4 train and do all that, so.

5 CHAIRMAN OBERMAN: unless as a result of
6 this experiment both of you come to the conclusion
7 that maybe it doesn't need it. Is that a fair
8 statement?

9 MR. FOOTE: We'll we don't decide whether
10 it's needed or not. This is the work of the
11 ingenious marketing strategy of who knows who.

12 CHAIRMAN OBERMAN: I just want to, I
13 understand, and I'm not questioning the validity of
14 your concern about the 1,000 foot track. I just want
15 to make clear because it sounds like you and Amtrak
16 are not apart on this, but I don't want any
17 uncertainty going forward.

18 So if tomorrow Amtrak says as to the 1,000
19 foot track we aren't committing one way or another.
20 We want this year's experiment you'll do the
21 experiment for one year.

22 MR. FOOTE: Yes, yes, sir.

1 CHAIRMAN OBERMAN: Okay. And as to
2 whether to go forward in any future years that's open
3 to this whether Amtrak and you can work out the 1,000
4 foot track, or any other alternative.

5 MR. FOOTE: Yes, and I assume it's became
6 they want to make sure you know from a marketing
7 standpoint that this is a viable service or not, and
8 at the end of the year I guess they will know, or at
9 the end of the season. We've already decided where
10 the track goes, and you know how we're going to put
11 it in, and it's going to need a crossover, and you
12 know, we're all ready to go.

13 I assume it's because they don't want to
14 lay out the money for siding if they don't know
15 whether or not the service is going to be permanent
16 or not.

17 CHAIRMAN OBERMAN: Makes sense. I wanted
18 to get this clear as you just clarified. The second
19 thing that I thought I was clear on, but I've gone
20 back and reread the letter and Amtrak raised that
21 question of uncertainty. The letter that was filed
22 on the 12th by Tony says that CSX agrees to the

1 request that we impose this condition as conditions
2 one through five and seven as requested by Amtrak, as
3 they relate to the PAR system, and the existing CSXT
4 network.

5 I guess I read system to include PAS. I
6 don't know if that's true or not. Amtrak has asked
7 that it in fact these conditions include PAS and PAR,
8 the lingo gets confusing, so can we have some
9 clarification on that.

10 MR. DENTON: Absolutely. Mr. Chairman
11 this is Peter Denton. So the issue here is that
12 we've agreed on behalf of CSX with respect to the PAR
13 system which CSX will own and integrate into our CSX
14 system, and CSX's.

15 At this time we simply can't obligate at
16 Norfolk Southern in order to make a similar
17 commitment to the Pan Am Southern Network. We're
18 certainly willing to have those conversations, but
19 given the kind of late breaking nature of these
20 commitments we wanted to make sure that we were able
21 to do so with respect to CSX with the PAR system.

22 CHAIRMAN OBERMAN: Will you commit to

1 supporting, implementing those conditions on the PAS
2 system to the extent you have anything to say about
3 it i.e. CSX has anything to say about it?

4 MR. DENTON: Right, that's right. We
5 would commit to taking that same commitment and
6 working within PAS to effectuate those. And frankly
7 we're going to have a conversation with Norfolk
8 Southern about this when we have an opportunity.

9 CHAIRMAN OBERMAN: Can you have that
10 conversation before the record closes?

11 MR. DENTON: Sure, yes.

12 CHAIRMAN OBERMAN: I mean I think if we're
13 going to try to make progress in the passenger rail
14 area and not invoke a lengthy legal debate about our
15 conditioning authority, you can work it out that
16 would be good. They have the letter apply to PAS as
17 well as to PAR system, that's really what we're
18 focused on, and I don't think Amtrak asked for
19 anything more than what you said in your letter, they
20 just wanted it to apply to everything.

21 MR. DENTON: Agreed.

22 CHAIRMAN OBERMAN: So --

1 VICE CHAIRMAN PRIMUS: And Marty I would
2 second that. Also hope is that again the party,
3 Norfolk Southern too would agree to sit down and make
4 sure of that since they're a part of PAS to hammer
5 that out.

6 MR. MULLINS: Mr. Vice Chairman I can
7 absolutely commit to you that we are more than
8 willing to sit down and have good faith negotiations
9 and discussions on this.

10 VICE CHAIRMAN PRIMUS: Thanks Bill.

11 MR. MULLINS: Um-hmm.

12 CHAIRMAN OBERMAN: All right. Is there,
13 so first of all Jim, Matt, Bill, do you have anything
14 more to say to us by means of rebuttal?

15 MR. MULLINS: The only thing I'd have to
16 say is I owe Member Fuchs an explanation on transit
17 times, and I would say that the Hub representative,
18 Mr. Paperiello I believe, he knows his business
19 extremely well so the filet toupee operation adds a
20 day or two each way to the train, so by moving these
21 trains that's the types of savings that you are going
22 to have, and that was entirely consistent with what

1 he said. So that's the only thing I think I owed on
2 this record.

3 And I have just appreciated the
4 opportunity and we will definitely sit down Mr.
5 Chairman, Vice Chairman and the members, commit to
6 that on behalf of NS. And I thank you for the
7 opportunity to appear.

8 CHAIRMAN OBERMAN: The only thing I would
9 say Bill is that I hope some day somebody comes up
10 with a 300 million dollars that I never have to hear
11 filet and toupee again, because I find it a very
12 disturbing phrase.

13 MR. MULLINS: Yes agreed.

14 CHAIRMAN OBERMAN: So is there anybody
15 else on your team, and of the three of you that need
16 to say anything? And is there anybody else on the
17 Board who wants to say anything at this moment?

18 VICE CHAIRMAN PRIMUS: I just want to
19 thank you know all three groups. I think everyone
20 made a great presentation. I appreciated the back
21 and forth. I think as Marty said we did learn a lot.
22 I learned a lot certainly. It's my maiden voyage

1 with these hearings, and so I appreciate everybody's
2 time and indulgence with the questions, thank you.

3 CHAIRMAN OBERMAN: All right. I'm going
4 to if I could indulge people here, and I know Bill's
5 trying to get out of here, but there's so many
6 things, and my desk is so filled with notes. I would
7 like to take a 10 minute recess just to make sure
8 that tomorrow morning I don't say oh my goodness, I
9 forgot to ask one more question.

10 Can I invite everybody else to do the same
11 thing. We'll come back into session and probably
12 close this hearing with the understand I think, I
13 can't remember the date we said the record was going
14 to stay open until the 21st I believe, which gives
15 people time to get some of these agreements done if
16 nothing else.

17 So let's do that. If that's comfortable I
18 see people nodding, it is 5:49. We will come back at
19 5:59 and hopefully close this hearing. Thank you
20 very much.

21 (Break)

22 CHAIRMAN OBERMAN: All right we are back

1 on the record. I for one have no further questions,
2 and if no other Board member has any further
3 questions, or no member of the team of Foote,
4 Mullins and Walsh, new law firm, has anything to say
5 I think we can wrap this up.

6 MR. MULLINS: We would just thank the
7 Board for all our time today.

8 CHAIRMAN OBERMAN: Well let me say this.
9 I'll take the lead on this, but I'm sure each Board
10 member will want to say a few things. I want to
11 thank everybody for their participation. This has
12 been a very intense two days. I hate to say it, but
13 I think you can all anticipate that this is the way
14 this Board operates. We are through, intense, we
15 want to get to the bottom of every issue, and you
16 have all been very responsible, and thorough in
17 responding to us.

18 So I for one appreciate it. I
19 congratulate everybody who has participated in this
20 hearing, and once I think other Board members have
21 their final say here we'll close this hearing. And I
22 am right that we will keep the record open until

1 January 21. If anybody discovers something that they
2 feel needs really just needs to be corrected, or to
3 respond to something new that you hadn't heard
4 before, but really we don't want anymore new
5 arguments.

6 With that Michelle it looks like you are
7 seeking to be recognized. And I didn't want to cut
8 you off if you had another question.

9 BOARD MEMBER SCHULTZ: It's not a question
10 Marty. I'm sorry to have jumped in.

11 CHAIRMAN OBERMAN: No, no that's okay.

12 BOARD MEMBER SCHULTZ: I just wanted to
13 echo your comments on this of the presentations of
14 all the parties, and thank you for all the hard work
15 that's gone into this. But I did want to take the
16 opportunity to underscore what I believe Chairman
17 Oberman said, and so has Member Fuchs, which is that
18 I too agree that the best outcome for the network
19 will be if the parties themselves can actually hammer
20 out the terms of an agreement in this instance.

21 CHAIRMAN OBERMAN: Thank you Michelle. Do
22 other Board members have any closing remarks? Karen?

1 BOARD MEMBER HEDLUND: I want to thank you
2 all for the extraordinary level of discussion today.
3 It was enormously enlightening and intellectually
4 stimulating. You know this is the reason I wanted to
5 join this Board, and so I just want to thank you for
6 everybody's efforts today, the Chairman and my fellow
7 Board members, but also all the participants. It was
8 just a real extraordinary experience, so thank you.

9 CHAIRMAN OBERMAN: Karen I'm glad to hear
10 you say that because I was afraid you were going to
11 come on and say you were going to ask the Senate for
12 a recount. All right.

13 VICE CHAIRMAN PRIMUS: Hey Marty I do want
14 to come back and say I know I thanked the
15 participants for their time and attention, and it was
16 a great and intense two days, but I think none of it
17 would be possible without the team, you know at the
18 STB.

19 Matt, I want to thank you for doing that.
20 You know we share all the IT people for making I mean
21 we didn't have one glitch. I'm really happy, you
22 know proud of that, you know. Our teams attorney

1 adviser Elizabeth you know on my team and others who
2 helped prep us and get us ready.

3 You know all the people who are on camera,
4 I mean even folks on the other side, you know, all
5 their teams as well. It was a well oiled machine on
6 both sides. I think it went well, and you know and
7 especially I'll leave the best for last. Marty I
8 think you did a fantastic job of moderating and
9 keeping us you know in line and keeping us from going
10 off the rails, and yes I used a pun.

11 But it's been an honor to be able to be a
12 part of this hearing and I want to thank you for your
13 leadership you know and chairing and bring it
14 forward, so thank you.

15 CHAIRMAN OBERMAN: Thank you. Much
16 appreciated. Patrick you're going to get the last
17 word.

18 BOARD MEMBER FUCHS: No I'll leave that to
19 you Marty. But my colleagues said it extremely well,
20 so I'll just say excellent testimony. I want to
21 especially recognize the witnesses that had to adjust
22 their schedules as a result of the inquiries, much

1 appreciated, and value everybody's input.

2 And I do want to thank my colleagues for
3 the wonderful questions. Staff and IT were
4 phenomenal for throughout the two days, my attorney
5 advisor Lisa Novins was excellent as always, and Mr.
6 Chairman you've pledged transparency, openness and
7 rigorous debate when you took the gavel, and I think
8 you've fulfilled that the last two days, so great job
9 to everybody.

10 CHAIRMAN OBERMAN: Thank you much, and I
11 will close by saying there are too, it's like the
12 Academy Awards, there are too many staff people and
13 support people to thank and naming them all we'd be
14 here for another hour. But I'm going to single out
15 Adam Kress.

16 If you think I'm a tough questioner it's
17 only because Adam told me what to ask, not entirely,
18 we worked on it together, but he has worked vitally,
19 and I'd like to single him out. But really
20 everybody, you have no idea all of you out there in
21 Zoom land the amount of work that our staff has put
22 in leading up to the hearing and over the last two

1 days, and we couldn't function without you. They're
2 fantastic.

3 So thank you all. This hearing is closed,
4 have a good weekend.

5 (Whereupon the hearing adjourned at 6:06
6 p.m.)

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