

SURFACE TRANSPORTATION BOARD 06/04/98 FD#33388 1-60

UNITED STATES OF AMERICA

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SURFACE TRANSPORTATION BOARD

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ORAL ARGUMENT

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CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING
LEASES/AGREEMENTS-CONRAIL INC.
AND CONSOLIDATED RAIL CORPORATION

STB FINANCE DOCKET NO. 33388

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THURSDAY

JUNE 4, 1998

+ + + + +

WASHINGTON, D.C.

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The Public Hearing convened at The Surface
Transportation Board, 1925 K Street, N.W., Room 760,
at 10:00 a.m.

BEFORE:

LINDA J. MORGAN, Chairman

GUS A. OWEN, Vice-Chairman

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

(10:03 a.m.)

SECRETARY WILLIAMS: Please come to order and be seated. The hearing will begin shortly. Please come to order and be seated. The hearing will begin shortly.

[Pause.]

SECRETARY WILLIAMS: Please come to order, the hearing will commence.

CHAIRMAN MORGAN: Good morning. It's nice to be back, I'm sure you all would agree. It seems like only yesterday we were here visiting about the Conrail transaction and it was actually a very productive day, I felt. We heard from about 50 participants and got a lot of good issues out on the table for discussion.

We have a full load again today. Yesterday we spent a lot of time with the applicants. They talked about the strength and the integrity of their deal. They told us about their commitment to make it work operationally if it's approved. About their commitment to work with employees. And about

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1 their commitment to improve the competitive alignment
2 in the East and to keep rates at reasonable levels.

3 We heard from several members of Congress
4 about the impact of the transaction on their
5 constituents and I am always interested in hearing
6 from members of Congress and I think we've had a lot
7 of involvement from them in this proceeding and we do
8 appreciate it.

9 We also heard from users and other
10 interested parties, including other railroads about
11 their view of the competitive implications of the
12 transaction before us.

13 Today we will again hear from a number of
14 members of Congress and I again appreciate their
15 continuing interest and we want to know their views.
16 We will also hear from other private parties and state
17 and local interests, again about a variety of
18 competitive environmental and safety issues.

19 And we will hear from various labor
20 interests, some of whom support the transaction and
21 some of whom don't about the effect of this
22 transaction on employees.

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1 And finally we will return to the
2 applicants and I expect them to respond to the
3 concerns that have been raised over the course of the
4 oral argument, and where appropriate to offer any
5 reasonable and available solutions.

6 I expect that this day will be as
7 productive as yesterday. I hope not as long. And
8 with that, I'd like us to now begin.

9 Let's start with members of Congress and
10 I understand we have Peter Visclosky, Congressman
11 Visclosky, is he here? And also Congresswoman Brown.
12 If you two want to come up and then Mr. Visclosky, if
13 you'd like to start.

14 REPRESENTATIVE VISCLOSKY: Does the Chair
15 have a preference as far as standing or --

16 CHAIRMAN MORGAN: You may sit or stand.
17 It is up to you.

18 REPRESENTATIVE VISCLOSKY: I'd like to
19 stand if that's all right.

20 CHAIRMAN MORGAN: That's perfectly fine.

21 REPRESENTATIVE VISCLOSKY: Madam Chair and
22 members, I want to thank you very much for the

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1 opportunity to appear before you today on an important
2 that I feel very, very strongly about this issue. I
3 am here to share my concerns regarding the proposed
4 acquisition of Conrail by CSX Corporation and Norfolk
5 Southern Corporation because of the negative impact it
6 would have on northwest Indiana.

7 In its current configuration, the merger
8 plan is totally unacceptable to me. It is
9 unacceptable to Senator Luger. It is unacceptable to
10 Senator Coates. It is unacceptable to Indiana
11 Governor Frank O'Bannon. It is unacceptable to the
12 mayor of the city of Gary, Indiana, Scott King. It is
13 unacceptable to the mayor of East Chicago, Indiana,
14 Mayor Bob Patrick. It is unacceptable to the mayor of
15 Hammond, Indiana, Duane Dedlow. And it is
16 unacceptable to the mayor of Whiting, Indiana, Robert
17 Bursick.

18 It is my hope that the several issues to
19 be addressed today, will be addressed before a final
20 decision is made on the merger.

21 Four cities in northwest Indiana, Gary,
22 Hammond, Whiting and East Chicago have joined together

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1 in an effort to develop an alternative routing plan
2 that would minimize the increase in rail traffic in
3 our region that will result in the Conrail
4 acquisition.

5 Specifically, the alternative routing plan
6 will shift some of the applicant's proposed rail
7 traffic from currently inactive lines, including lines
8 with numerous at grade crossings to lines which are
9 active and have fewer at grade crossings. I have
10 attached to my written statement a copy of the Four
11 Cities Consortium specific suggestion for mitigating
12 the impact of the merger on our region. I am in
13 absolute agreement with them and am here today to urge
14 your adoption of their recommendation.

15 The issues I bring before you today
16 concern safety as it relates to vehicle/train
17 collisions. These issues also concern protection of
18 our environment and the promotion of economic
19 development in a struggling region.

20 Rail operations in our region are already
21 at unparalleled levels because northwest Indiana
22 serves as the link for most of the rail transportation

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1 between Chicago, Illinois and the East Coast. Under
2 the plan submitted by CSX and Norfolk Southern, a
3 barely manageable congestion problem would quickly
4 become unmanageable.

5 Over 150 trains pass through these four
6 cities every day, over a total of 243 highway rail
7 grade crossings. The number of vehicle crossings
8 these rail lines at grade crossings exceed 450,000
9 cars and trucks a day.

10 In addition, Indiana ranks fourth in the
11 nation for the number of highway rail grade crossings
12 and Indiana is annually among the top five states
13 nationwide in terms of accidents and fatalities caused
14 by vehicle/train crashes. This is not an abstraction.

15 In March of this year a man was killed
16 when his vehicle was struck by a train at an unmarked
17 Conrail track in Lake Station, Indiana. In 1977, my
18 mother was hit by a train in Gary, Indiana and
19 fortunately survived the experience.

20 Recently, Hammond city council member Bob
21 Golik brought to my attention the fact that children
22 have been crawling under and over stopped Norfolk

1 Southern freight trains on their way home from school
2 in Hammond, Indiana. This is clearly a tragedy
3 waiting to happen.

4 Currently backups resulting from the four
5 cities numerous at grade crossings cause severe
6 vehicle congestion, impair the ability of emergency
7 vehicles to get to their destinations and exacerbate
8 the problem of vehicles driving through closed
9 crossing gates. The congestion also adds to the air
10 pollution caused by emissions in our region which is
11 already designated a nonattainment area by the
12 Environmental Protection Agency.

13 The increase in rail traffic under the
14 proposed merger will increase these problems and
15 hinder several promising economic development
16 initiatives in our region, including expansion of the
17 Gary/Chicago regional airport; construction of an
18 affordable housing complex in Gary, Indiana whose
19 unemployment, I might add, still is more than double
20 the national average; and waterfront development in
21 both the communities of Gary and East Chicago.

22 Under the acquisition plan, certain local

1 rail lines would experience incremental increases in
2 both the number and size of trains. The Baltimore and
3 Ohio Chicago terminal rail which crosses through the
4 business districts of Hammond and East Chicago would
5 experience an increase of 5.7 trains per day. This is
6 not acceptable.

7 In addition, this line has 20 at grade
8 crossings. The Four Cities proposed alternative would
9 shift the excess traffic to a parallel Indiana harbor
10 belt line which is currently in use and has only three
11 -- has only three at grade crossings, compared to 20
12 under the proposed line because of already significant
13 investment by federal, state and local authorities as
14 far as at grade crossing separations. This investment
15 in our communities' safety should not be ignored in
16 your decision.

17 The Conrail merger plan also calls for the
18 use of a major rail line that crosses through the
19 heart of Gary, Indiana. This line, a former
20 Pennsylvania Railroad line which has been inactive for
21 the past ten years, has 23 at grade crossings and it
22 would cost approximately \$13 million to rehabilitate

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1 for regular use. This also is not acceptable. The
2 Four Cities alternative would shift this traffic to
3 existing Norfolk Southern and CSX lines, avoiding the
4 reactivation of these crossings. We could avoid
5 reopening 23 grade crossings.

6 To highlight one specific problem of the
7 cost to be incurred by local communities because of
8 the merger, the city of Hobart, Indiana is being
9 forced to spend approximately \$2 million they
10 otherwise would not have to spend -- the city is being
11 forced to spend its money, to reconstruct a bridge
12 over the inactive line that the railroads now propose
13 to reopen.

14 Finally, I would point out that although
15 the Surface Transportation Board's recommended
16 environmental conditions acknowledge that there is an
17 unusually high volume of rail traffic in northwest
18 Indiana, I believe that they have not provided
19 sufficient solution to the specific concerns raised by
20 the Four Cities. And to be very frank, I think they
21 are wholly inadequate and will change nothing.

22 The STB's considerations require CSX and

1 Norfolk Southern to provide notification of increased
2 traffic and to attend meetings with the Four Cities,
3 but they do nothing to actually mitigate the increased
4 traffic or to ensure enforcement of conditions.

5 For example, in the Environmental Impact
6 Statement condition 24(a) states that CSX shall
7 upgrade crossing signal warning devices in Hammond and
8 East Chicago. However, the railroad officials have
9 already indicated that they don't believe these
10 upgrades are necessary and that they should not be
11 forced to install them.

12 Conditions 24(d), (e), (f), (g) and (h)
13 state that CSX shall make improvements in operations
14 to the extent practical. CSX shall install temporary
15 notification signs or message boards consistent before
16 increasing traffic. There is nothing to prohibit the
17 increase in traffic, that is subsection (d).

18 Subsection (e), CSX shall improve
19 coordination between Pine Junction and Barre Yard to
20 the extent practical. Subsection (f), as agreed to by
21 CSX as much as practical. Subsection (g), as agreed
22 to by CSX. Subsection (h), as agreed to by CSX, if

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1 practical.

2 One of the two mandatory nondiscretionary
3 conditions. One of two mandatory nondiscretionary
4 conditions require CSX to make operation life saver
5 programs available at schools. If they didn't cause
6 the problem, if they didn't stop the trains, if the
7 kids didn't go under them and over them, we wouldn't
8 need that requirement for CSX in this position.

9 And the other mandatory nondiscretionary
10 requirement for the railroads is they must meet with
11 the cities four times a year. That's going to be a
12 struggle for them. And I would almost suggest to the
13 Board that we save the cities the trouble of having to
14 go through the meeting with the railroads.

15 The Four Cities Consortium has spent an
16 enormous amount of time evaluating the impacts of the
17 applicant's proposed operations on our region because
18 of the fundamental problems that they will cause. It
19 has devised a reasonable alternative routing plan that
20 mitigates the significant environmental impacts while
21 accommodating the railroads' desire to expand
22 operations through northwest Indiana.

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1 I would reiterate for the Board that the
2 Four Cities have strong support from Senators Luger,
3 Senator Coates, from Governor O'Bannon and from the
4 Indiana Department of Transportation and many other
5 regional and local officials.

6 In closing, I would urge you to please
7 have CSX and Norfolk Southern take another look at
8 these Four Cities alternative routing proposals.
9 Thank you very much.

10 CHAIRMAN MORGAN: Well thank you
11 Congressman. I take it that your view of this
12 transaction is based on your concerns related to the
13 environmental impact that it could have on your area
14 and we are aware of these concerns and they are
15 serious certainly. We appreciate your being with us.

16 REPRESENTATIVE VISCLOSKY: I appreciate
17 it. They are very serious concerns, they are costly
18 to the community. They are a danger. And I do
19 believe if you simply allow the railroads to have
20 discretion as is practical as the conditions now
21 state, that that is for all practical purposes, once
22 we are all gone from today's hearings and a decision

1 is rendered, of no use to the communities I represent.

2 So I would implore you to consider the
3 Four Cities Consortium's alternative. It would not
4 impede the rail traffic. It would significantly
5 reduce the at grade crossings and would be less
6 expensive in the long term.

7 CHAIRMAN MORGAN: Thank you.

8 REPRESENTATIVE VISCLOSKY: Thank you very
9 much.

10 CHAIRMAN MORGAN: I notice that Senator
11 D'Amato and Senator Reed have joined us. If you want
12 to come up and sit at the table. Congresswoman Brown
13 if you want to proceed. And then we will -- I'm just
14 trying to take in order here.

15 REPRESENTATIVE BROWN: Thank you Chairman
16 Morgan and Vice Chairman Owens. I am pleased to be
17 here today to urge you to approve the CSX Norfolk
18 Southern application for purchase of Conrail. I
19 represent Jacksonville, Florida where CSX
20 Transportation is headquartered and as a member of the
21 House Committee on Transportation and Infrastructure
22 I fully support the efforts of these companies to

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1 bring better, faster and more competitive rail service
2 to the eastern half of the United States. And I just
3 want to mention that I've been an elected official for
4 over 16 years and all of those 16 years I've been on
5 Transportation. So I feel that I know a lot about
6 transportation, in particular rail.

7 I believe that this proposed transaction
8 serves the public interest in a strong, balanced,
9 efficient and competitive railroad network. For
10 example, CSX alone served more than 4,200 customers in
11 Florida who together have an annual payroll in excess
12 of \$330 million. Certainly for those shippers and
13 their employees, the creation of new business
14 opportunities in parts of the country that have not
15 been able to be reached by efficient and effective
16 rail is an exciting opportunity.

17 These benefits will not be limited to
18 Florida. Shippers in communities as far north as
19 Boston and Buffalo will also enjoy better service,
20 expanded economy development prospects and new job
21 opportunities.

22 I also know that CSX has been working very

1 closely with the federal government in addressing any
2 safety concerns that has arisen. I toured the yards
3 and know that CSX has a strong commitment to safety.

4 In addition to the positive transportation
5 benefits that would occur from this acquisition, I
6 want to share my thoughts with the Board about the
7 corporate culture of CSX. CSX is a social,
8 responsible company. I have worked with the railroad
9 effectively for many years in a variety of initiatives
10 to improve the communities.

11 In particular, CSX has demonstrated an
12 outstanding dedication to the education of minority
13 students. CSX President and CEO Pete Carpenter is a
14 recognized leader in Florida in the efforts to improve
15 public education. Mr. Carpenter and his team have
16 been particularly active in Jacksonville where the
17 company has adopted two urban schools and helped make
18 a major difference in the lives of African American
19 children.

20 In addition, through his support of
21 Edwaters College, an historical black college in
22 Jacksonville, CSX is providing new opportunities to

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1 minority students through significant financial
2 assistance and some very creative and innovative
3 programs to build student enrollment. The CSX
4 scholarship program is another innovative CSX program
5 designed to enhance the education and career
6 opportunities of promising students pursuing
7 environmental degrees at member institutions of the
8 College Fund and other historical black colleges and
9 universities.

10 In a partnership with the College Fund and
11 the Audobon Society under which students receive full
12 scholarship and paid summer internship at CSX and
13 Audobon, in my view these programs demonstrate CSX
14 commitments to both protecting the environment and
15 recruiting minority students for professional careers
16 in the transportation industry.

17 Between the scholarship program and
18 support of Edwaters College, CSX has dedicated
19 millions of dollars over several years to minority
20 higher education. This is an example of the kind of
21 commitment CSX has shown to the community in which it
22 operates.

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1 I would say to my friends from New Jersey,
2 New York, New England and other parts of the northeast
3 who haven't had the pleasure of working with CSX, I am
4 confident that if this transaction is approved you
5 will see for yourself this kind of good corporate
6 citizenship that I know personally.

7 However, both the social benefits and the
8 transportation benefits can only be achieved if you,
9 the members of the Surface Transportation Board,
10 approve the partners' application without restriction,
11 conditions and permit them to move forward as they
12 have planned. I urge you to do this promptly.

13 Once again, thank you for the opportunity
14 to speak in support of this application. And, once
15 again, I also want to stress that CSX is a wonderful
16 corporate company and any problems that have been
17 discussed in the area of transportation safety or
18 working with the community, I found them very open to
19 work with these communities. So I really support it.

20 CHAIRMAN MORGAN: Well thank you very much
21 Congresswoman. Your comments about the culture at CSX
22 are very important. Your perspective is important and

1 your work with transportation issues has also been
2 important and I appreciate it.

3 REPRESENTATIVE BROWN: Thank you.

4 CHAIRMAN MORGAN: Thank you. Senator
5 D'Amato, would you like to go next and then Senator
6 Reed, we will go to you next. And then we have two
7 others who have joined us and we are just running
8 through here.

9 SENATOR D'AMATO: Well Madam Chairwoman
10 and Vice Chairman Owen, let me thank you. I guess you
11 are going to have a long, long day and I don't want to
12 add to that burden. But I do have some observations
13 to make and a statement that I'd like to refer to.

14 In addition, let me say that I think the
15 shared views and testimony of the senior Senator from
16 New York, Senator Daniel Patrick Moynihan. I'd like
17 to take this opportunity, the Senator is chairing or
18 is at a hearing right now and I don't know whether or
19 not he will be able to get here. But I have a
20 statement, a prepared statement from the Senator and
21 I'd like to ask the Committee to accept it as if read
22 in its entirety.

1 It closely parallels and it shares the
2 views, my views. We have worked together, my staffs,
3 in relationship to this. And I would like to make my
4 statement and then make a few observations if the
5 Chairwoman would indulge me.

6 First of all, I appreciate the opportunity
7 to be before you today on an issue of tremendous
8 importance to our state. Because you see this
9 transaction is going to have a profound effect on the
10 movement of goods and materials into and out of our
11 state, the maintenance and creation of jobs in our
12 state, and the overall quality of life with the
13 citizens of New York. And therefore, we are
14 tremendously concerned. When I say we, Senator
15 Moynihan and myself, the Congressional delegation as
16 well as the Governor of New York, who I believe has
17 submitted testimony to the Committee. And if you have
18 not received it, you will. I have an outline of what
19 the Governor has submitted to the Committee.

20 The bankruptcies of Penn Central and the
21 other northeast railroads give rise to the creation of
22 Conrail in 1976 and since then New York has been a

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1 virtual captive to the vagaries of pricing and service
2 enjoyed by this near monopoly. The result of this has
3 been seen in increased prices to both shippers and
4 consumers, a decrease in the quality of service and a
5 departure from the New York ports and industrial areas
6 of shippers and businesses, most bound for areas where
7 services and prices are more competitive. That has
8 been the sorry legacy of what has taken place.

9 And indeed, it is that absence of
10 competition and competitive pricing that has left us
11 in this position. Stranded -- stranded.

12 Now without effective competition, New
13 York has not been able to utilize her great ports and
14 our industrial areas to their fullest potential and
15 add high quality paying jobs and provide relief to
16 shippers and consumers alike.

17 And this Board, the Surface Transportation
18 Board, has a unique opportunity to address this 22-
19 year long pattern of indifference and really make a
20 substantial contribution. And that's what I'm going
21 to ask you to look at. And we have two
22 recommendations and I will summarize with some

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1 specificity.

2 Norfolk Southern and CSX are poised to pay
3 a huge premium for Conrail. The small shippers should
4 not though be forced to pay an inequitable rates to
5 offset the price that these two railroads are willing
6 to spend. We have put up with enough and need to have
7 some more equity.

8 And so indeed, this really provides this
9 Board a unique opportunity to deal with injustices and
10 to see to it that those practices that really fall
11 within your jurisdiction and should be maintained, to
12 see that there is real competition comes about. You
13 have the ability to do that.

14 And so I am not saying that we should turn
15 down this merger, but I am saying that absent certain
16 conditions, as it relates to New York, we are
17 adamantly opposed. Now the state has been negotiating
18 for quite a while, but we haven't been able to get the
19 desires results. Results that unfortunately have been
20 seeded, given, or exist in other areas.

21 Now, let me tell you. I don't want to
22 take away from anyone else. But I don't know why New

1 York should be left in a secondary position to
2 Detroit, to Philadelphia. And the shippers in that
3 area and the manufacturers in that area are going to
4 have a decided advantage if we don't have the same
5 opportunity. And that's what this comes down to. And
6 you and your expertise and that of your staff
7 understand the details of what I am outlining broadly,
8 much better than this Senator.

9 Now for instance, under the proposed
10 acquisition, shippers will be denied service by two
11 competitive carriers operating in the Buffalo/Niagara
12 Falls area -- our port of entry from the west.
13 Important, tremendous. We have a right not to be
14 discriminated against. It's unconscionable, and it's
15 wrong. And we are prepared to do whatever is
16 necessary, and I tell you this on the part of the
17 State and the Governor as well as my colleague,
18 Senator Moynihan and the Congressional delegation.

19 The fact that both railroads, CSX and
20 Norfolk Southern will be operating in western New York
21 sounds positive. However, in reality this situation
22 is anything but positive. It is shocking that CSX and

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1 Norfolk Southern will be allowed to serve the same
2 area, but not allow shippers the opportunity to obtain
3 the least expensive service through an open and
4 competitive process. This is literally condemning
5 businesses in western New York to either pay whatever
6 rate that railroad wants or to find another
7 alternative. Unfortunately in some cases, that
8 alternative is to leave. Cease and desist. And that
9 shouldn't be.

10 And we have an opportunity here, Chairman
11 Morgan, to right a situation that will only get worse
12 and that shouldn't have been permitted in the first
13 place. But it took place.

14 Now also, while some shippers have
15 received negotiated switching rates of \$250 per car,
16 such rates don't apply to all businesses across
17 western New York. And further, there is no guarantee
18 that these rates won't escalate to Conrail's current
19 switching fee of \$450 per car a few years from now.
20 Open competition is the only way to see that these
21 rates are fair and are competitive. And by the way,
22 the normal rate is \$150 a car. And we can't even get

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1 them to agree to \$250.

2 What a way to start off. Talk about
3 putting us at a competitive disadvantage. Talking
4 about imperiling the people. We are talking about
5 people. We are talking about jobs. Because that's
6 what happens when places close down. And people
7 wonder how is it that our upstate regions and our
8 western tier of New York isn't making the kind of
9 rebound? Well we can't get people to expand their
10 businesses and indeed, it's all we can do to keep them
11 there.

12 So we are talking about whether or not we
13 are going to allow a deterioration of the economic
14 climate here. And this can be worked out. And
15 they've got to agree to do it.

16 Maybe they have got to understand that
17 there are other things that we can and will do. And
18 we will do them. And I believe in free market, but by
19 gosh, there has got to be some competition. And
20 that's not what's here.

21 What is even more aggravating to western
22 New York business is the fact, and again, I don't want

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1 to see us move in the same direction that they have in
2 New York. Supposing I were to say well let's do the
3 same thing that's going to be left in the
4 Buffalo/western New York area to other regions. Why?
5 I want to be improved. I want to have the same
6 competition that they have in Detroit and
7 Philadelphia, areas where declared shared assets
8 operate.

9 Buffalo and western New York should have
10 the same kind of ability to negotiate a lower price
11 for the shipments of their goods. Such treatment is
12 fair and equitable. That's what we are asking for.
13 Fairness, competition, shared assets here. Have it in
14 Detroit, have it in Philadelphia, but not in western
15 New York. Why? Why?

16 Is it because maybe we didn't make enough
17 noise? Is it because maybe we, you know, heretofore
18 there hasn't been that opportunity? Well now we have
19 that opportunity and now we are saying enough is
20 enough.

21 So Madam Chairman, we have seen this
22 situation before when Conrail was first introduced

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1 into western New York. It was the intent of the
2 Congress that Conrail compete head to head with the
3 predecessors of CSX, the Chessie system.
4 Unfortunately that competition never came to be
5 because a labor agreement couldn't be reached. A
6 Conrail monopoly ensued and the Buffalo area has not
7 been the same since.

8 Now the same mistake should not be
9 repeated. And this is a wonderful opportunity to
10 ensure fairness and economic competition and health,
11 real growth, real economic productivity. And the
12 Board must grant competitive railroad service to
13 western New York in order to fulfill the original
14 preference of the U.S. Railway Association in the wake
15 of the railroad bankruptcies of the 70s.

16 If competition is not restored, then I can
17 virtually guarantee that the first business to leave
18 Buffalo after the Board's decision will take place
19 because of the inability to obtain reasonable shipping
20 rates as one of the reasons that they are going to be
21 leaving. And that's what is going to take place.

22 One of the other areas of concern regards

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1 rail access to New York City and Long Island. And
2 according to the planned transaction, shippers on the
3 east side of the Hudson will have no competitive rail
4 alternatives to CSX. Now if a shipper does not want
5 to use CSX, he or she will have to transport their
6 goods by truck across into New Jersey's rail where
7 under the proposed acquisition there will be rail
8 competition.

9 So here we have again a situation where
10 there will be competition in New Jersey but not in New
11 York. So this sets up a terrible situation for
12 shippers on the east side of the Hudson as well as the
13 entire New York City region. And New Jersey gets the
14 benefits of head-to-head rail competition, New York
15 will experience more trucks and add it to our already
16 over crowded situation and again, this is just not a
17 palatable trade off.

18 So what we are saying is what you do for
19 one you have to do for the other. And it can be done.
20 But they don't want there to be competition. They are
21 afraid of what that competition might be. Now this is
22 the position of the City of New York, the State, as

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1 well as the majority of the delegation. And New York
2 City and Long Island need a direct competitive
3 alternative to a single shipper. It's that simple.

4 We cannot be held captive by CSX. And
5 again, they may have great corporate policy. I met
6 them. They are lovely people. But that doesn't give
7 us the competition that we need.

8 As increased competition leads to lower
9 prices, volumes will increase and rail transportation
10 becomes a very real alternative. All the while the
11 public interest is served. So competition is the
12 thing that we need.

13 And I request, very strongly, that the
14 Board place a condition on the pending acquisition
15 that rail competition must exist on the east side of
16 the Hudson River.

17 Conrail is a unique railroad. It was
18 created capital, I supported, subsidized by the
19 public. And it's the duty of the Board to guarantee
20 that this position of this asset is carried out in
21 that matter. And so, I think it goes well beyond --
22 and I think the Chairman knows that. And you really

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1 have a great opportunity here. And we need you. We
2 need you to see that these aspects are undertaken.

3 Let me surmise again, if I might. One,
4 grant the trackage rights requested by New York State
5 and the New York City Economic Development Corporation
6 east of the Hudson River. That will give us the
7 competition. And by the way, if it doesn't develop,
8 it doesn't develop. At least we have tried and this
9 Board will have met its obligation. But we shouldn't
10 be held captive in having CSX say oh no, we don't want
11 to go on head-to-head.

12 And secondly, grant the shared access
13 requested by the Erie/Niagara/Chataugua Steering
14 Committee, supported by the State and this will
15 provide competitive service to the shippers in the
16 Buffalo/Niagara area by allowing Norfolk Southern and
17 CSX to compete for the shippers in western New York.
18 This will lower prices, this will make us competitive.
19 And it's the same kind of situation that exists in
20 other areas.

21 So if I were representing Pennsylvania and
22 Philly and Detroit and Michigan, I'd say fine. We've

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1 seen to that, protected, our people are protected and
2 we have competition. But that's not the case here in
3 New York.

4 And I might say again, ask that the Board
5 receive the testimony of the distinguished senior
6 Senator from New York, Senator Moynihan as if read in
7 its entirety.

8 CHAIRMAN MORGAN: We will include it in
9 the record in its entirety.

10 SENATOR D'AMATO: Thank you.

11 CHAIRMAN MORGAN: And let me first of all
12 say that I listened very carefully when you said we
13 need you. That's -- since the Board is up for
14 reauthorization this year, I'm glad to hear that you
15 need us.

16 Second of all, we have spent a lot of time
17 on the New York issues and you have run through
18 several of them in great detail. We understand the
19 seriousness of these issues to your state and the
20 implications and we appreciate your testimony and that
21 of your colleague, Senator Moynihan. And you can be
22 sure that we are looking at these issues very

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1 carefully.

2 SENATOR D'AMATO: Well Madam Chairwoman,
3 I want to thank you and again I think that this is an
4 area that we have to look to you with your expertise.
5 And I think this really does provide us with unique
6 opportunities to restore some balance that was lost,
7 maybe by the fault of no one as it related to Conrail
8 coming into being, as it related to the lack of
9 competition. But we just can't simply have these
10 businesses stranded out there and being held captive
11 and then have somebody say don't worry, trust us,
12 trust us. You know, I've heard that before. We've
13 all heard trust us.

14 And it may be that the corporate directors
15 and leadership at this point in time want to try to be
16 fair and will try to hold rates and made rates such
17 that people can be competitive, but that's not what
18 the statute says. And we should promote competition
19 because we understand what takes place when it's not
20 there.

21 So you have that opportunity and we would
22 be -- I'm sorry that CSX did not see fit to work out

1 an agreement with the state. I think what the state
2 has asked for has been reasonable. I think that to
3 deny that is unreasonable. I don't understand why you
4 can do it in on area and you won't do it in another.
5 And that's just wrong.

6 And I think they just think they have it
7 wired and I hope that maybe they will begin to
8 recognize. Now, I've tried to work with them in a
9 cooperative effort. I met with them. But I'm telling
10 you, they are wrong in not permitting competition here
11 and having rates that are staggeringly higher in one
12 area than they are in the other just because they are
13 going to make more corporate profits. They will make
14 more profits, those operations are going to move, they
15 are going to close down. Some of them are just
16 hanging on by their fingernails now.

17 Thank you very much.

18 CHAIRMAN MORGAN: Thank you. Senator
19 Reed, I'd like to hear from you next.

20 SENATOR REED: Madam Chairman and Vice
21 Chairman Owens, thank you for the opportunity to speak
22 with you today about the proposed acquisition of

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1 Conrail by CSX and the Norfolk Southern. I'm hopeful
2 that the Board will use its jurisdiction, its mission
3 to increase competition and its duty to act in the
4 public interest to carefully review this proposal and
5 render a decision that is in the best interest of all
6 parties.

7 I believe the Board should consider
8 conditioning any approval along the lines of the
9 formal comments made by the Rhode Island Department of
10 Transportation and also by my testimony today.

11 The Conrail acquisition has such national,
12 regional and local implications that it will
13 significantly affect Rhode Island, its businesses and
14 its ongoing economic development plans. My overriding
15 interest in this process is to protect the
16 competitiveness of Rhode Island and New England
17 businesses as well as the sizeable investment that
18 both Rhode Island and the federal government have made
19 already to improve the Rhode Island freight rail
20 system. And particularly to develop a modern port
21 facility at Quonsett Point, Davisville, Rhode Island.

22 If my state and region are not assured of

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1 comparable freight service in terms of quality,
2 scheduling and cost under an STB approved transaction,
3 or problems develop at a later time, then I cannot and
4 will not support the transaction and I will actively
5 seek to compel the parties to operate in the best
6 interests of my state and my region.

7 Freight rail service is an essential
8 component of our economy. My state recognizes this
9 fact and in partnership with the Federal Railroad
10 Administration is investing \$120 million to modernize
11 Rhode Island's freight rail system and to develop the
12 former Navy Base at Quonsett Point, Davisville as a
13 world class port facility. In an era of international
14 trade, states need excellent infrastructure to
15 transport products and Rhode Island recognizes this
16 reality.

17 However, the state's ability to capitalize
18 on this substantial investment and attract major
19 shippers to the port is contingent upon competitively
20 priced freight service. Price is particularly
21 important in the automobile distribution market, which
22 is an identified growth sector for Quonsett Point,

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1 Davisville.

2 Obviously the state and federal
3 government's investment qualify as the sort of
4 significant public investment that the STB must
5 consider and protect in your proceeding.

6 Since learning of the proposed purchase of
7 Conrail, I have met with the Chairmen of CSX and
8 Norfolk Southern to let them know of my serious
9 concerns regarding the future level and cost of
10 service provided on the Boston/Albany line.

11 But I also believe it is important for me
12 to formally record my concerns about this transaction.
13 Today the Providence and Worcester Railroad, a Class
14 III carrier, provides the only freight service in
15 Rhode Island and is our connection to Conrail and to
16 Class I railroads west of the Hudson River. Under the
17 proposed transaction, CSX would become the new
18 monopoly carrier for the New England region.

19 Now, some could argue that the proposal
20 does nothing to change Rhode Island or New England's
21 competitive situation. CSX is simply replacing
22 Conrail. However, they would overlook the dramatic

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1 changes that the Conrail acquisition would bring to
2 other markets and other ports.

3 Indeed, the major motivation of both CSX
4 and Norfolk Southern to purchase Conrail was Conrail's
5 monopoly in the New York/New Jersey market. And under
6 the proposal, they will compete head-to-head for this
7 huge market. Other areas on the East Coast will also
8 gain and become shared asset areas with strong
9 competition and hence lower prices. Yet New England
10 will not be a shared asset area.

11 While Conrail's monopoly was granted by
12 the federal government to stave off bankruptcy, there
13 is no similar justification for CSX's monopoly. It is
14 my concern, which I have shared with both CSX and
15 Norfolk Southern officials, that fierce competition
16 and shared asset areas like New York/New Jersey could
17 lead to higher prices in New England because the cost
18 of competition might need to be subsidized in other
19 areas.

20 I believe the Board, in the name of
21 competition, has the responsibility to review this
22 discrepancy closely and consider establishing a

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1 mechanism to ensure that the Boston/Albany line does
2 not subsidize competition in shared asset areas. And
3 that costs in New England are comparable and fair.

4 The two most obvious conditions are
5 competitive New England access for another Class I
6 railroad or an agreement on a reasonable guaranteed
7 rate for service. At a minimum, the Board must
8 maintain close oversight over prices in the New
9 England region so it can effectively address future
10 issues.

11 The price of rail service is only one
12 factor. Indeed, scheduling and the quality of rail
13 service are important issues that must not be
14 overlooked. One need look no further than the Midwest
15 and South where the Union Pacific/Southern Pacific
16 merger has lead to delays, a lack of service, safety
17 concerns and a host of other problems with significant
18 economic implications.

19 I am pleased that CSX officials have taken
20 notice and will not rush this merger. But this is yet
21 another reason for the STB to retain active, long-term
22 oversight as a condition of its approval as well as

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1 conditions to ensure that the New England region is
2 competitive and is not adversely affected by this
3 transaction.

4 Madam Chairman, the proposal before you
5 also involves national policy affecting thousands of
6 working men and women and I would like to briefly
7 address two of these issues. First, the Board should
8 weigh the findings of the FRA and the General
9 Accounting Office regarding the possibility that the
10 threat of disciplinary action may cause injured
11 railroad workers to avoid filing accident and injury
12 reports.

13 Second, numerous commentators have
14 expressed valid concerns that past STB decisions have
15 allowed railroad companies to abrogate current
16 collective bargaining agreements. These are serious
17 issues involving the lives and paychecks of
18 hardworking railroad employees. In that light the STB
19 should use its authority appropriately and judiciously
20 when it comes to safety and collective bargaining
21 issues.

22 Now, the proposal before you is the

1 largest of its kind. It will dramatically alter rail
2 transportation on the East Coast and more importantly
3 it could make or break Rhode Island's plans to develop
4 a port at Quonsett Point, Davisville. This is an
5 important decision.

6 And in closing, I would urge you to
7 closely review this proposal and consider my request
8 to ensure competitive rail pricing in New England and
9 maintain strong oversight over this transaction. And
10 I thank you for your gracious opportunity to speak
11 with you today.

12 CHAIRMAN MORGAN: Thank you Senator Reed
13 and I appreciate your being with us today and we are
14 aware of the interests of New England relative to this
15 transaction and we appreciate your contribution to
16 those issues. And also we will be talking later about
17 some of the labor issues that you have raised.

18 SENATOR REED: Well Madam Chairman, you
19 have thousands of issues to consider. Let me
20 reiterate, I only have one issue to worry about.

21 CHAIRMAN MORGAN: I know.

22 SENATOR REED: And that's Rhode Island

1 freight rail and I will be worried about it.

2 CHAIRMAN MORGAN: Well we understand that.

3 SENATOR REED: Thank you Madam Chairman,
4 than you Mr. Vice Chairman.

5 CHAIRMAN MORGAN: Thank you. We have
6 several members from the Ohio delegation. I would
7 just take them as they came, so I think Congressman
8 Regula and Congressman Gilmore, you were here. If
9 you'd like to come up and one of you may proceed.

10 REPRESENTATIVE REGULA: Chairman Morgan
11 and Vice Chairman Owen, I would like to make my entire
12 statement a part of the record and would ask --

13 CHAIRMAN MORGAN: It will so included.

14 REPRESENTATIVE REGULA: And just
15 summarize, because I know you have a long day and a
16 lot of witnesses. I have great confidence in the
17 fairness of this Board and that's really what we're
18 asking for, is that our area be treated fairly. I
19 really speak for people in the 16th District of Ohio.
20 The Wheeling and Lake Erie area is a significant
21 employer and a significant small railroad in our part
22 of the world. We want to avoid having the people

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1 there become captive shippers and we think it's
2 important that there be competition. We feel that the
3 Board will recognize this and will, in whatever order
4 is promulgated, make sure that the consumers that the
5 shippers are treated with equity and that they have a
6 competitive marketplace to ship their goods. So
7 that's one element.

8 The second element, of course, is that the
9 Wheeling and Lake Erie is an important employer in the
10 16th District and particularly my home area. It's
11 been there a long time. A lot of people have actually
12 -- families have worked for the Wheeling and Lake Erie
13 and it's a generational thing. And it's a very
14 important part of our community, important to the
15 shippers, important to the community in terms of the
16 economy of our area. We don't have a lot of big
17 businesses, so Wheeling is a significant element. The
18 jobs that it produces are extremely important to the
19 people of that area.

20 Also, recently with the support of CMAC
21 funds, taxpayer funds, we built a state of the art
22 intermodal. It's served by the Wheeling and Lake Erie

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1 and we would hope that the Board would recognize this.
2 This was done, of course, to relieve highway. That's
3 why it was highway transportation money and it is
4 designed to get trailer traffic on to the rails. It's
5 built to handle 150,000 loadings annually. It's been
6 growing. It's obviously only been in place for a
7 short time. Then Secretary of Transportation Pena
8 mañana came out to dedicate it. It's really an
9 excellent facility and we would hope that in whatever
10 order the Board determines to be in the best interest
11 of the public in dealing with this merger that the
12 importance of the intermodal being continued as a
13 point of service to the entire area, I think that
14 given all these circumstances, competition, jobs,
15 intermodal, that it's certainly very much in the
16 public interest that the Board recognize the
17 importance of the Wheeling and Lake Erie in
18 determining -- I'm not opposed to the merger if it's
19 done under the right circumstances and if the public
20 is protected and people that I've just outlined, their
21 interests are protected and that of the Wheeling,
22 which of course is the employer and the competitive

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1 shipper, that it could result in something that's
2 productive for the entire part of northern Ohio. But
3 I'm confident the Board will be fair and equitable and
4 whatever judgment is made in terms of the parameters
5 that a merger is agreed upon. So that summarizes what
6 would be in my testimony. The text of my testimony is
7 also a letter from my colleague Tom Sawyer who
8 represents the Akron Summitt County area, supporting
9 my testimony and supporting this position. Thank you.

10 CHAIRMAN MORGAN: You can include it in
11 the record.

12 REPRESENTATIVE REGULA: Okay, thank you
13 very much for your time.

14 CHAIRMAN MORGAN: Thank you.

15 VICE CHAIRMAN OWEN: Congressman, if you
16 could, where do you see the growth for the intermodal
17 yard?

18 REPRESENTATIVE REGULA: Yes, I think the
19 growth will come in new plants. For example, a
20 Stairlight, which is a competitor. Rubbermaid makes
21 this type of product. Just build a new plant there
22 and they are a major shipper. I think one of the

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1 things that -- one of the reasons they built this area
2 was because of the intermodal unit which will allow
3 them to ship product and receive product that through
4 this system. Also, it happens that the particular
5 piece of land or land area which is between Navarte
6 and Ashland is probably one of the finest industrial
7 sites in Ohio. It's a
8 -- it's at the foot of the glaciers. It's flat with
9 the gravel underneath which makes an excellent
10 drainage. It's the intersection of major highways.

11 The State of Ohio, as a matter of fact,
12 until this issue came up, had already had plans to go
13 ahead and build a four lane highway into the
14 intermodal, recognizing that there's going to be
15 enormous economic growth there, both because there's
16 a good labor force in the area, a good work ethic,
17 because of water, sewer, ideal building sites. It's
18 just one of those areas that's going to have
19 substantial growth.

20 Before the intermodal was built, the
21 Highway Department Of Transportation, the promoters,
22 they evaluated the area and said this was a logical

1 place for it. And even at that time and had the
2 support of the rail system because, of course, the
3 Wheeling connection with Conrail, CSX and Norfolk
4 Southern, and for all these reasons I think that the
5 area will definitely develop the carloadings. So as
6 long as the Wheeling has the connections it needs,
7 it's about 800 miles of rail now, and has the
8 connections that will allow shippers to go east or
9 west.

10 VICE CHAIRMAN OWEN: I appreciate that.

11 REPRESENTATIVE REGULA: I thank you for
12 your interest because it is a significant element in
13 our concern for what is done here, our way of a final
14 order.

15 CHAIRMAN MORGAN: Thank you very much.

16 REPRESENTATIVE GILMOR: Madam Chairman,
17 and Mr. Vice Chairman, I want to thank you for the
18 opportunity to appear on behalf of the people in my
19 district and the communities in my district. Also, I
20 want to express my appreciation for the cooperation of
21 Surface Transportation Board in sending
22 representatives to my district a few months ago, my

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1 request for two big meetings with local officials so
2 that they could present their views to you directly.

3 I will be brief and would like to enter my
4 testimony into the record along with a list of a
5 summary of the concerns that have been expressed by
6 the communities in my area.

7 My district is a large one. It runs about
8 150 miles long. Goes from west of Cleveland all the
9 way to the Michigan and the Indiana borders.
10 Obviously, it's a district with a lot of rail lines.
11 It has a lot of small cities in it, a lot of
12 manufacturing. We recognize the importance of a
13 healthy rail system to our economy, but we also
14 recognize the paramount importance of safety to our
15 citizens. And the major increase in rail traffic
16 proposed by this merger clearly will adversely affect
17 public safety in many of these communities. Also,
18 increased rail traffic by causing tie ups and
19 inconvenience can have negative consequences for other
20 economic activity. But the paramount concern that has
21 been expressed to me, in my district, is that of
22 safety. And I don't believe the merger should be

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1 approved until or unless those legitimate safety
2 concerns are addressed and the merger should not
3 damage economy. It also should not damage the quality
4 of life in the communities.

5 Rate separations are expensive. But I do
6 think serious consideration should be given to them
7 where they are appropriate.

8 But beyond rate separations for
9 consideration, there are a number of possible ways to
10 help these communities. Rail lines have been and they
11 are now a very important part of the development of
12 these Ohio towns. But there are also markers that
13 split the towns and the set of conditions that have
14 been recommended by the Surface Transportation Board
15 section of environmental analysis with respect to
16 community mitigation has established a standard, where
17 some communities are receiving assistance to deal with
18 the rail merger and others are not. That, of course,
19 is particularly frustrating to the towns that are
20 being left out.

21 I believe that considering the post merger
22 density involved, communities experiencing a

1 substantial increase in rail traffic should be
2 considered for real time train location monitoring
3 systems. Those systems are particularly important
4 because they allow a dispatcher to check on on-coming
5 train traffic that might tie up in emergency medical
6 response team or a fire department from responding to
7 a serious life threatening matter. In parts of my
8 district people reside a half hour or more from a
9 hospital. So time is of the essence when an emergency
10 occurs and being able to take the fastest, most direct
11 route is important. And without those location
12 systems, towns will be forced to endure delays for
13 services that in some cases could make the difference
14 between life and death.

15 Second, regarding transportation of
16 hazardous materials, consideration should be given to
17 Operation Respond Software, to notify local
18 communities when chemicals are being moved.

19 My district lies in a central corridor for
20 the movement of those materials and we believe that
21 safety ought not be compromised in a train accident
22 due to a lack of knowledge of what the train cars are

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1 carrying. In fact, we had a particular instance last
2 year in Ottawa County that brings home the point. A
3 train derailed. Some of the cars found themselves in
4 feeder streams into Lake Erie.

5 Now fortunately, the cars containing the
6 hazardous materials did not fall into the water, but
7 local officials were unaware of that fact until
8 lengthy testing had been done and many people had been
9 frightened.

10 Third, and the last of my points, I think
11 all the communities that are going to be affected by
12 the post-merger train activity ought to be able to
13 receive further Hazmat training at the National Center
14 in Pueblo, Colorado. Many of these communities are
15 completely unprepared on their meager budgets and
16 mostly volunteer staffs to handle the crises that
17 could present themselves.

18 On a side note, let me mention several of
19 my constituents are rail line workers, so I do want to
20 point out the importance of them to the collective
21 bargaining agreements that do currently exist between
22 the union and Conrail.

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1 We all care about making sure that we do
2 have a sound railroad system that exists for years to
3 come, but also safe and economically viable.
4 Communities are crucial to insuring both its railroad
5 customers as it coexists with other means of
6 transportation and I appreciate your consideration in
7 addressing those safety concerns.

8 Thank you.

9 CHAIRMAN MORGAN: Thank you. And thank
10 you for your kind words about the environmental staff.
11 Appreciate it. And certainly, we're aware of these
12 issue that you've raised. Thank you for being with us.

13 VICE CHAIRMAN OWEN: Congressman, if I
14 could just comment and maybe ask you to observe as we
15 go along, more and more traffic is being moved on the
16 rails nowadays throughout the nation and the Alameda
17 corridor is completed and we're asking the rails to do
18 more.

19 And yet, we continue to have the problems
20 of safety going through the communities. I think that
21 we should take back to our communities that maybe some
22 of the zoning that we have along the railroad tracks,

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1 maybe we should start taking a look at some of those
2 things because rail traffic, freight traffic will pick
3 up, hazardous traffic will pick up, automobile traffic
4 will continue to grow and truck traffic will continue
5 to grow in this nation of ours.

6 It's a major concern of mine and when I
7 see it hit communities like yours, I know how
8 important it is.

9 REPRESENTATIVE GILMOR: Yes. I appreciate
10 that, Vice Chairman Owen. We have to find ways to
11 accommodate this growth in an orderly and safe manner
12 and I appreciate your comment.

13 VICE CHAIRMAN OWEN: Thank you.

14 CHAIRMAN MORGAN: Thank you. Congressman
15 Stokes, I believe you have Mayor White with you. Is
16 that correct?

17 REPRESENTATIVE STOKES: I do have Mayor
18 White. I also have Mr. John Snow, the President of
19 CSX with me and we invite them up.

20 CHAIRMAN MORGAN: It's up to you. You're
21 in charge of this panel.

22 REPRESENTATIVE STOKES: Thank you. I

1 would like to invite them up.

2 CHAIRMAN MORGAN: I appreciate your
3 indulgence. We've had a lot of Members this morning
4 and I've been trying to accommodate all of them.

5 REPRESENTATIVE STOKES: Thank you. I
6 appreciate that very much.

7 CHAIRMAN MORGAN: You can sit or stand as
8 yo wish.

9 REPRESENTATIVE STOKES: Thank you very
10 much, Madam Chair, Mr. Vice Chair. I represent the
11 11th Congressional District of Ohio. The city of
12 Cleveland is a part of that congressional district.
13 I found objections with this Board to the Conrail
14 merger there, in order to protect the constituents of
15 the 11th congressional district. My objections were
16 based upon the objections which had previously been
17 filed with this Board by Mayor White as the Chief
18 Executive of the city of Cleveland.

19 During the period of time since their
20 objections were filed and I also filed my objections,
21 I've had an opportunity to work very closely both
22 Mayor of our city and with Mr. Snow as the present CEO

1 of CSX. To the credit of both of these gentlemen,
2 over a number of months and a number of days and
3 nights they have assiduously worked towards reaching
4 an agreement which could be submitted to this Board.

5 I'm pleased to announce to you that about
6 an hour ago in my congressional district these
7 gentlemen were able to reach a final agreement that in
8 effect settles all of the differences and objections
9 which the city of Cleveland had filed with your Board
10 and all the objections which I had filed on their
11 behalf. And as a result of it it is now the
12 intention of the city of Cleveland to withdraw its
13 objections to the merger as well as my own intention
14 to withdraw my objections and we would submit to this
15 Board an agreement, formal agreement that has been
16 reached between the parties and request that the Board
17 agree to the agreement which has been reached by the
18 parties here.

19 The city of Cleveland, of course, the
20 Mayor will be able to state to you, must formally
21 approve of the agreement through its city council, but
22 the parties here believe that the agreement that they

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1 have reached is one that is fair, and is equitable.
2 It best serves the interest of both the railroad and
3 the residents of the city of Cleveland and at this
4 time, with your permission, I would request the
5 authority to withdraw the objections which I have
6 filed with this Board and with your indulgence and
7 your permission I would at this time submit that both
8 Mayor White and Mr. Snow are present and available to
9 make any statement that they would like to make on
10 behalf of this arrangement.

11 I do want, once again, to say to you how
12 pleased I am to have had the opportunity to work with
13 both of these gentleman. They have both represented
14 the interests of their respective constituencies in a
15 very honorable way and it's been a very difficult
16 period of negotiation. To their credit, we've now
17 reached the type of agreement that I think I can
18 represent to you fully is one which I think is in the
19 best interests of all concerned.

20 CHAIRMAN MORGAN: Thank you very much.
21 Mayor White, would you like to say a few words?

22 MAYOR WHITE: Thank you very much,

1 Chairwoman Morgan to Vice Chairman Owen.

2 First of all, I want to thank you for the
3 opportunity to make a few remarks regarding this
4 matter. I'd like to first of all thank publicly
5 before your Board, the extreme efforts and the
6 assistance of Congressman Stokes.

7 We have been engaged for several months
8 now in these discussions between the city of Cleveland
9 the CSX. As you are aware, we have already reached
10 agreement with Norfolk Southern. I have been on more
11 planes to Washington probably in the last 60 days than
12 at any time in my eight and a half years as Mayor of
13 the city of Cleveland. But he has good offices, has
14 served, I think as a good point to discuss these
15 matters as to reach common ground.

16 Also, before remarking about the agreement
17 that we signed at 9:50 this morning, I want to
18 publicly thank you, Chairwoman Morgan, and you also
19 Vice Chairman Owen, because you have said to the two
20 of us over the last few months, keep talking, keep
21 talking, keep trying to reach middle ground. I kept
22 reading those decision memorandums and --

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1 CHAIRMAN MORGAN: They were hard to read,
2 right?

3 REPRESENTATIVE STOKES: I want you to know
4 I kept heeding what you were saying and we kept
5 heeding what you were saying and I think the result,
6 one of the results of those memorandums is what you
7 will now hear.

8 We are before as a community, the STB
9 today, to ask you to withdraw the objection of the
10 city of Cleveland to any remaining objections we might
11 have toward the CSX portion of the Conrail NS merger.
12 AS you know, we have already asked to withdraw our
13 objection for the Norfolk Southern portion. The
14 reason for this request today is because I do believe
15 first of all we have reached an agreement that is
16 fair, that is equitable and that understands that the
17 issues before us are not just trade issues, but they
18 are also people issues. And that at the end of the
19 discussion it is incumbent upon all of us to insure
20 that people and the trades can live in harmony, one
21 not impacting in a very negative way upon the other.
22 It is a multifaceted agreement which I will not

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1 belabor you with today. We believe it covers the
2 critical points that we were concerned about. We also
3 believe it is broad enough to assure the operations of
4 CSX in a manner that is fruitful economically in our
5 community.

6 We would ask that you would accept our
7 agreement and use that as an instruction to us to
8 proceed.

9 I want you to know that at the end of our
10 signing this morning, I looked John Snow in the eyes
11 and I said to him that it's not enough for us to sign
12 the paper, but we intend to be good partners. You
13 will be a corporate citizen in our community and we
14 through our advisory committee and my offices have
15 assured CSX and Norfolk Southern that we will work
16 together to insure that the area in the city of
17 Cleveland will be successful, if you approve this
18 merger and I want to just finally thank you for your
19 work in this activity.

20 CHAIRMAN MORGAN: Thank you. I don't know
21 if Mr. Snow has anything to say.

22 MR. SNOW: I think there's little that I

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1 can add except to say that this is one more example of
2 I guess you'd call it the wisdom of your admonitions
3 to us to seek private solutions to complex issues,
4 always recognizing that the Agency stands there ready
5 to mandate.

6 I think in this case we've tailored a
7 solution to real problems that will work and is
8 win-win for both of us and we look forward to being an
9 important part of the Cleveland community for a long
10 time to come and I have unbounded admiration for the
11 Mayor and for Congressman Stokes and I think we have
12 put our relationship on a firm and strong foundation
13 for the future.

14 MAYOR WHITE: Madam Morgan, maybe the best
15 that we can do is to show you this.

16 (Laughter.)

17 CHAIRMAN MORGAN: Lift it a little higher
18 so I can see if, will you?

19 (Laughter and applause.)

20 CHAIRMAN MORGAN: We can't shake anybody's
21 hands, just yet as you might imagine, so we're just
22 going to stay right here.

1 MAYOR WHITE: We understand.

2 CHAIRMAN MORGAN: Let me, a couple of
3 things, first of all, we do grant your withdrawal of
4 your objection. We always like to get rid of
5 objections.

6 MAYOR WHITE: Thank you.

7 CHAIRMAN MORGAN: Second of all, and I
8 have said this in other forums, but we at the Board
9 applaud private sector efforts and resolution. We
10 have been very clear about this on a number of fronts
11 because the Board believes that many times this is the
12 best way to get the right result for everybody
13 involved. So I applaud all of you for sticking with
14 it.

15 The third point, I guess, is the message
16 we've been sending in this entire proceeding which is
17 to keep talking. This can't stop here, so I think
18 this is an important beginning for that. And finally,
19 to thank all of you for sticking with this and
20 bringing it to resolution. It's critically important
21 to your city.

22 MAYOR WHITE: Yes.

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1 CHAIRMAN MORGAN: I know --

2 MAYOR WHITE: Yes.

3 CHAIRMAN MORGAN: And we have been very
4 cognizant of the importance of this to your city, as
5 you know, and have spent a lot of time with your
6 people on some very difficult issues, so we are
7 pleased that it has, for you, worked out in this way.

8 Of course, we still have to deal with the
9 final approval of this merger which has not yet
10 happened, but if it is approved, certainly this will
11 be part of it.

12 MAYOR WHITE: Thank you, Chairwoman
13 Morgan.

14 CHAIRMAN MORGAN: thank you.

15 VICE CHAIRMAN OWEN: I would just like to
16 add these are the positive steps I always love to see.
17 When you solve them out there and don't bring them to
18 the regulators, thank you again.

19 MAYOR WHITE: Thank you.

20 REPRESENTATIVE STOKES: Thank you.

21 CHAIRMAN MORGAN: And thank you,
22 Congressman Stokes for -- I think you were a

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1 go-between and a bringing together and a facilitator
2 and that was very important.

3 REPRESENTATIVE STOKES: I was pleased to
4 be able to do so.

5 CHAIRMAN MORGAN: Thank you for being
6 here.

7 REPRESENTATIVE STOKES: Thank you very
8 much.

9 CHAIRMAN MORGAN: Next we will hear from
10 Congressman Kucinich who I think has Mayor Stan Trupo
11 with him, is that correct?

12 REPRESENTATIVE KUCINICH: That's correct.

13 CHAIRMAN MORGAN: So Mayor, if you'd like
14 to come up.

15 REPRESENTATIVE KUCINICH: We also have the
16 Mayor of Bay Village here and I'd like him to come up.

17 CHAIRMAN MORGAN: Absolutely.

18 REPRESENTATIVE KUCINICH: I am -- I've
19 been asked by the Mayor of Bay Village to make a brief
20 presentation with the approval of the chair.

21 CHAIRMAN MORGAN: Absolutely.

22 REPRESENTATIVE KUCINICH: And we have

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1 Mayor Trupo who will be making a brief two minute
2 statement. I certainly want to congratulate His
3 Honor, the Mayor for coming to agreement with CSX and
4 I think that's an important moment and I think that
5 helps to move this process forward and certainly
6 Congressman Stokes who has always played a powerful
7 leadership role in the Ohio delegation ought to be
8 congratulated for the role that he played.

9 I come to you today with very good news.
10 Just two days ago a coalition of local mayors stood
11 with Mr. Snow of CSX and Mr. Goode of Norfolk
12 Southern, the Governor of Ohio and myself, to sign and
13 to present to the public two agreements which I have
14 copies of here and I will submit for the official
15 record of the Board.

16 These agreements resolve nearly every
17 issue that was raised over the past year with regard
18 to the adverse effects this merger would have on the
19 western and southern areas of Greater Cleveland.

20 We have come to this Board to present
21 these agreements. Now before outlining in brief these
22 two agreements this review is in order. Two months

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1 after the railroads filed their application wit the
2 STB, I learned that as a result of this acquisition
3 Norfolk Southern was going to triple the number of
4 freight trains on their nickel plate line which runs
5 through heavily populated, densely populated
6 residential areas: Lakewood, Rocky River, Westlake
7 and Bay Village, known as the West Shore area.
8 Despite the conclusions drawn by your section on
9 environmental analysis, the effect of a three-fold
10 increase in freight train traffic on these densely
11 populated areas would have been devastating. Safety
12 problems, creating a deterioration of quality of life
13 for people.

14 And it is true while this merger is about
15 trains, it's also about people. It's about their
16 communities. It's about their life. And there has to
17 be a peaceful coexistence.

18 Now when we learned that the southern
19 suburbs of Cleveland, Berea, and to some extent
20 Olmstead Falls and Olmdstead Township were also going
21 to be affected by an increase of both CSX and NSX
22 trains. We knew that we had to start organizing. I

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1 might say to the Board you might find it interesting
2 that right now there are 90 trains per day that roll
3 through Mayor Trupo's community. And post-merger, CSX
4 and NS expect there will be well over 100 trains per
5 day. And again, despite the conclusion of the SEA
6 that grade separations were not needed, we concluded
7 that this level of freight train activity would have
8 devastated Berea.

9 Now nine months of negotiations, Madam
10 Chair and Mr. Owen, nine months of negotiations have
11 culminated with the following solution to both Berea's
12 problem of increased traffic and the West Shore's
13 insistence on no increase freight trade traffic.

14 We were able to, in this agreement, come
15 up with the concept that building the Clarkesville
16 connection should be accomplished so that Norfolk
17 Southern could divert extra freight train traffic
18 south through Berea. And of course, that meant that
19 we had to protect Berea and in order to protect Berea,
20 two underpasses will be built now. One at Front
21 Street, under both CSX and NS tracks and another at
22 Baglee Road under CSX tracks.

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1 A third grade separation will be built at
2 Fitch Road between Olmstead Falls and Olmstead
3 Township. For the West Shore community, crossing
4 gates will be put in place on Lakewood and part of
5 Cleveland as well as hazardous material response
6 programs. Noise mitigation will be provided wherever
7 the STB rules it necessary.

8 These agreements, as you know, did not
9 come cheaply. Working with Congressman Steve
10 LaTourette, and also with the help of Chairman
11 Schuster and Mr. Oberstar, we were able to secure \$26
12 million in federal funding through BESTEA. And by the
13 way, you know, since there were tax dollars involved,
14 I'm hopeful that the Board will keep in mind the
15 working people who pay those taxes and make sure you
16 don't break collective bargaining agreements.

17 But anyhow, recognizing the importance of
18 solving these community issues for the good of the
19 entire Conrail acquisition, Chairman Goode of Norfolk
20 Southern and Chairman Snow of CSX have committed their
21 fair share to the projects, a combined \$44 million
22 between the two railroads and Governor Voinovich of

1 Ohio committed \$17 million in state funds and we're
2 very appreciative for the role that Mr. Goode, Mr.
3 Snow, and Mr. Voinivich have played in bringing this
4 about.

5 So in short we have the federal
6 government, the Governor of Ohio and the railroads
7 with the help and cooperation of local mayors, have
8 put together agreements worth \$87 million to deal with
9 the extra freight train traffic. These agreements,
10 one with the West Shore suburbs and Norfolk Southern
11 and the other with Berea and CSX and Norfolk Southern,
12 have paved the way for this merger to proceed.

13 So I would like to withdraw my objection
14 from today. I would also like to state my support for
15 this merger so long as these two agreements are
16 approved by the Board and made a condition of the
17 merger. I present them today on behalf of the
18 communities, Madam Chair and Mr. Owen.

19 The people deserve to be protected from
20 the adverse effects of the merger and as their
21 representative, it's my job to see the government
22 works for them.

1 I also want to -- before I would ask the
2 Board to give two minutes to Mr. Trupo which would
3 then conclude this presentation, I would also like to
4 say that the Board did the right thing in asking the
5 parties to get together, because what this did is to
6 have the communities participate in the solution and
7 have the railroads talk in the communities. Since we
8 have to work together anyhow for the next 100 years
9 and as long as there's trains running and so what the
10 Board did in taking that approach was very wise
11 because instead of a top down solution imposed on
12 communities and on the railroads, you've given us an
13 opportunity to find a way through nine months to work
14 out a solution and I think that speaks well of this
15 Board. It speaks well of your process and I applaud
16 you for that and again I urge you to go forward and
17 approve this merger. I would now ask Mayor Trupo, the
18 Mayor of the City of Berea which is the rail
19 crossroads of America right now in this merger, more
20 trains than anyplace else. Mayor, why don't you come
21 on up here. I know you have a couple of minutes you
22 want to address this issue. Mayor Stan Trupo.

1 MAYOR TRUPO: Thank you, Congressman.
2 Madam Chairwoman, Mr. Vice Chairman, as a small town
3 mayor, it's very difficult for me to stand here and
4 say anything that would be negative or impacting
5 anybody. But it's true that our Congressman has asked
6 me to share this time with him and I thank him very
7 much for that. Two minutes is difficult, but I'll do
8 my best.

9 CHAIRMAN MORGAN: You can have a few more.

10 MAYOR TRUPO: No, two minutes is more than
11 enough.

12 CHAIRMAN MORGAN: When there's good news,
13 I always want to hear more about it.

14 MAYOR TRUPO: If I get going too long,
15 Madam Chairman, I'll ask for more. Two minutes, okay.

16 (laughter.)

17 Let me thank you very much for all the
18 effort that you have put into this and I must
19 recognize my colleagues, the Mayors from the west
20 shore area and my governor for his efforts and
21 congratulate Mayor White on his conclusion and thank
22 him for his support. But I want to recognize my

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1 Congressman for the efforts that he did on behalf of
2 the entire part of Northeastern Ohio.

3 Congressman Kucinich dedicated his entire
4 time and efforts to this rail situation. Two days ago
5 I was honored to sit and sign an agreement with both
6 Norfolk Southern and the CSX and I'm very pleased and
7 very proud to be a member of the signing of that
8 because our community who would be terribly impacted
9 with over 100 trains, 110 trains approximately, every
10 day coming through there, we felt that we needed to
11 have protection and the protection to the highest
12 degree and still maintain our small town. That's at
13 the insistence of the underpasses so that we would be
14 able to keep the high bridges out of our downtown and
15 out of our business district. And the rail folks,
16 Conrail -- not Contrail, excuse me, CSX, Mr. Snow and
17 Norfolk Southern, Mr. Goode, I'm very pleased and
18 honored to be able to have signed with them.

19 All of the proposals that have been
20 submitted to you, the question came up as to why would
21 Berea be willing to sign off on this merger because of
22 the number of trains and I might add all of the

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1 proposals that were submitted, every proposal that was
2 discussed indicated trains were going to go through
3 Berea. I looked at that.

4 Secondly, I thought in this whole effort
5 of commerce and industrial growth and development
6 throughout the United States, I personally felt that
7 this merger was imminent and we needed to make the
8 best out of a bad -- what could have been a bad
9 situation and the underpass was the way to do it.

10 Also, we wanted to make sure that our
11 people, our Hazmat training people, along the
12 corridors there, got the best training that we
13 possibly could, hands on training for them and the
14 operations computers would be providing us with
15 additional information which would allow us to have
16 better protection.

17 Thirdly, I think the economic development
18 of the trains going through and the land that is there
19 that we've talked to railroads about are important to
20 us. The Board -- I also urge the Board to recognize
21 that part of this agreement between Berea and the two
22 railroads is to implement whatever noise mitigation

1 measure necessary, noise pollution caused by horn
2 blowing, train wheel interactions with others to
3 create serious problems for us.

4 There are people along the north side of
5 the tracks which you folks are familiar with, the
6 Abashire residents, who live within 45 feet of the
7 rail. That rail traffic will increase from 14 to 54
8 trains per day which is substantial. And the folks
9 along Abashire have been very understanding in working
10 with us, noting that the Congressmen and the two rail
11 -- or the CSX rail company in the city are working
12 towards mitigation and we urge you, we even beg you to
13 look at Abashire, North Rocky River Drive and
14 Butternut, areas that abut the rails where we need the
15 help, but especially in the Abashire area.

16 And I believe there's some reference to
17 that in your volume 7 of the addendum.

18 I want to thank the Board. I want to
19 thank my colleagues. I want to thank my Congressmen.
20 I've got a lot of people to thank because without
21 everybody's efforts, our little town could have been
22 turned into something very disastrous. So I wish the

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1 rails, CSX, Norfolk Southern great success and I wish
2 my congressman will accept the thanks on all our
3 residents.

4 Thank you.

5 REPRESENTATIVE KUCINICH: Thank you very
6 much, Mayor Trupo with consent of the chair, Mayor Tom
7 Gelepus of Bay Village could have about a minute.

8 CHAIRMAN MORGAN: Absolutely.

9 REPRESENTATIVE KUCINICH: That will be
10 okay?

11 CHAIRMAN MORGAN: Absolutely.

12 REPRESENTATIVE GELEPUS: Thank you, Madam
13 Chairwoman. I just want to say that Mayor Trupo said
14 as eloquently as I could ever say it and I want to
15 thank Congressman Kucinich who led this, who was a
16 tremendous team effort. I also want to thank the
17 railroads for acknowledging and committing their
18 efforts to address our concerns, because we had some
19 major concerns and over the nine month period they
20 were there, and again, it was a team effort and I
21 appreciate that.

22 Thank you.

1 CHAIRMAN MORGAN: Thank you.

2 REPRESENTATIVE KUCINICH: Thank you very
3 much and I wanted to thank the Mayors for being here,
4 of course. Mayor Gelepus is also representing the
5 communities, the coalition of Mayors from Rocky River
6 and Lakewood, Ohio, which were part of the filing of
7 objections that was made and it's now being withdrawn.

8 CHAIRMAN MORGAN: Right.

9 REPRESENTATIVE KUCINICH: And also let you
10 know I think that the American people should know that
11 they have some fine corporate citizens and leaders in
12 Mr. Goode and Mr. Snow. And it's very difficult to
13 come to this Board and this kind of an issue, as you
14 might well understand. I mean you've got rooms of
15 paper that tell you that, but these gentlemen really
16 care about making not only the merger work, but they
17 know it has to work for the communities. And I just
18 wanted to say that it's been a wonderful experience to
19 have the chance to sit down with them and their staffs
20 and to negotiate this. They're good people and I have
21 a lot of confidence that this will work because of
22 them and their staffs and because of you. Thank you.

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1 CHAIRMAN MORGAN: Well, let me just say
2 first of all that I appreciate your kind words about
3 the Board and we've visited about this and I've
4 appreciated those visits and I think I know more about
5 the State of Ohio than I ever thought I would know and
6 it's a pleasure to know as much as I do about the
7 State of Ohio and Berea and so forth. But again, I
8 think this is another example of the process working,
9 working to the benefit of people you represent and the
10 other parties and you're to be commended for pushing
11 that process to what I think is good fruition for you.

12 REPRESENTATIVE KUCINICH: And there will
13 be more work to do. It's called implementation, so
14 that's --

15 CHAIRMAN MORGAN: Well, we have to vote
16 first and then we'll --

17 REPRESENTATIVE KUCINICH: I'm hopeful that
18 you'll be voting approval and then if you do, assuming
19 that you do, we'll certainly be in touch with you.

20 CHAIRMAN MORGAN: We'll be touch, I'm
21 sure, yes.

22 REPRESENTATIVE KUCINICH: Thank you.

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1 CHAIRMAN MORGAN: Thank you. I think we
2 have Congressman Brown and I believe you have Mayor
3 Hill with you, is that correct?

4 REPRESENTATIVE BROWN: Thank you, Madam
5 Chair, and with your indulgence you may know a little
6 bit more about Ohio in the next ten minutes.

7 CHAIRMAN MORGAN: I'm ready to learn.

8 REPRESENTATIVE BROWN: Thank you Madam
9 Chair and Vice Chair Owen, distinguished members of
10 the Surface Transportation Board for holding this
11 public forum to allow citizens to express their views
12 in the multi-billion dollar CSX and Norfolk Southern
13 acquisition of Conrail. I'd like to welcome Deanna
14 Hill, Mayor of North Ridgeville who has done an
15 outstanding job on this issue and other issues as
16 she's been Mayor of North Ridgeville in her first
17 term.

18 I'm here today representing residents of
19 Northeast Ohio who are concerned that this proposed
20 acquisition will increase freight, rail freight train
21 traffic through their neighborhoods and does not
22 adequately continually longstanding public safety and

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1 environmental problems.

2 While CSX and Norfolk Southern will
3 clearly reap economic benefits, the quality of life
4 for the citizens I represent in North Ridgeville and
5 other towns will not improve and could deteriorate if
6 this multi-billion dollar merger is approved.

7 Members of this Board need to consider the
8 concerns of parents in North Ridgeville who are
9 worried because the bus that their son or daughter
10 takes to school is constantly delayed by trains which
11 split the city in half, making some students late for
12 school almost every single day of the school year.

13 Members of this Board need to consider
14 senior citizens who are concerned that the long line
15 of freight trains that routinely clog streets and
16 block traffic in North Ridgeville will delay the
17 arrival of local EMS squads if they need emergency
18 medical care.

19 I'm pleased that the concerns of
20 neighborhood communities have been addressed by CSX
21 and Norfolk Southern. I hope the Board recognizes the
22 needs of all communities, large and small, which are

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1 affected by this proposal.

2 Although there's no certainty that the
3 number of trains that will travel through the densely
4 populated areas of North Ridgeville if this deal is
5 approved, there's one certainty we should guarantee
6 the citizens, the residents of North Ridgeville, that
7 is public safety. If Norfolk Southern commits to
8 working with state and local transportation officials
9 to build grade crossings, we could insure that trains
10 do not bisect this city of 24,000 for long periods of
11 time. Police, fire and ambulance crews must be able
12 to respond to those emergencies as quickly as
13 possible.

14 The residents of North Ridgeville have
15 long endured near constant disruptions, safety
16 problems and environmental concerns caused by heavy
17 freight trains going through their neighborhoods. I
18 urge the Members of the Board to consider these
19 concerns when deciding whether and in what form to
20 approve this multi-billion dollar acquisition.

21 On a related matter, Madam Chair, Mr. Vice
22 Chair, the cities of Lorraine, Ohio have embarked on

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1 a major economic development initiative to revitalize
2 the downtown waterfront on Lake Erie and encourage job
3 creation. One of the key pieces of this project
4 involves the development of abandoned rail tracks
5 which would be used to establish commuter rail network
6 including Lorraine and the city of Cleveland.
7 Unfortunately, city officials have had difficulty in
8 securing these tracks necessary to support the
9 project. I would encourage the Board to consider the
10 importance of this project and help assist us in our
11 efforts to negotiate a fair agreement with CSX on
12 trackage rights.

13 Last, I'm concerned about the fate of many
14 Conrail employees who will be absorbed by CSX and
15 Norfolk Southern under this proposed acquisition.
16 1997, as you know, Madam Chair, the union representing
17 these workers negotiated an agreement with Conrail.
18 I hope the Board would respect this agreement and not
19 permit the federal government through its actions on
20 this proposal in any way to render it null and void.
21 These workers should be permitted to freely negotiate
22 with CSX and Norfolk Southern on this matter.

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1 Thank you again for the opportunity to
2 testify. I look forward to working with members of
3 the Board to continue to improve this agreement,
4 proposed agreement. I'd like to introduce Mayor Hill
5 to say a few words also.

6 MAYOR HILL: Thank you. Congressman
7 Brown, Chairman Morgan and Vice Chairman Owen, members
8 of the Board, I will be mercifully brief in my
9 presentation to consider the needs of the 24,000
10 people of North Ridgeville and to order the same
11 mitigations our bordering neighbors have already
12 received because we do have a problem in North
13 Ridgeville, Ohio. Well, actually no, we have five
14 problems. We have five at grade crossings and with 90
15 trains a day that literally bisect our city. For
16 years, the people, city council and administrations
17 have begged for help to insure the safety and well
18 being of the families, children and seniors in our
19 community and those who travel through our city.

20 We have been met with a deaf ear while we
21 did everything we could, including building and
22 manning a second fire station, citing the railroad to

1 court hundreds of times each year for blocked
2 crossings and for failure to maintain their property.
3 Our concerns, of course, include first safety. We
4 built that second fire station south of the tracks
5 because of the railroad crossings and yet during a
6 major oil fire, another department reached the
7 location before we could in our own city and you
8 guessed it, it was blocked crossings.

9 Our only police station for 24,000 people
10 is north of the those five tracks. We have over one
11 thousand children per day on school buses crossing
12 those tracks. All of our schools are north of the
13 tracks. There is not one day that classes at all
14 schools begin on time because of blocking and slowed
15 trains.

16 Major commercial housing and industrial
17 development is going in south of the tracks so the
18 current safety and travel conditions continue to
19 worsen. Our major employers have written letters
20 because they have experienced a refusal by trucks to
21 deliver and pick up because of the lost time due to
22 blocked tracks. Business and commerce in North

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1 Ridgeville has been seriously impacted.

2 In 1995, a study reported 10,000 vehicles
3 per day on that state route 83 that has one of the
4 crossings. Since 1995, as I've said, we've had major
5 growth in the southern portion of our 25 square miles
6 of land, again, with safety services and schools
7 located north of the tracks. The problem and the
8 traffic continue to escalate. The traveling public
9 from neighboring communities has increased
10 significantly as well because we now the link between
11 major new interstate highways, route 90 and 71 and 480
12 and the Ohio turnpike.

13 Our Congressman Sherrod Brown, this Mayor,
14 Conrail representatives, school superintendent, the
15 fire and police chiefs have met and talked several
16 times and yet there has been no consideration or
17 mitigation offered. Literally, nothing happened.

18 We've talked, we've written, we've called
19 everyone even remotely connected with the railroads
20 and the proposed merger and nothing happened.

21 We've read of agreements between the
22 railroads and every nearby community right over the

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1 county line in Cuyahoga County that will have exactly
2 the same trains traveling through their cities that we
3 have, including our neighbor, Olmstead Falls, that is
4 right next door, same tracks, same trains. And
5 nothing has been offered by Norfolk Southern and
6 nothing has happened.

7 We'll continue to request at least a grade
8 separation on the state route and improvements at
9 grade crossings and I now ask this esteemed Board to
10 order consistency in community relief and some of
11 those are outlined in Volume 5, Chapter 7, pages 742
12 and 743, to provide, install and maintain a real time
13 train location monitoring system at a location
14 specified by the city; to provide and install,
15 including any necessary computer hardware in training
16 operation respond software; to fund participation and
17 a training session at the National Training Center in
18 Pueblo, Colorado with the advice and consent of the
19 city to construct and maintain fencing and
20 landscaping, adequate to prevent, reduce or discourage
21 pedestrian access.

22 Finally, it is with humility and urgency

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1 that as Mayor of a city of 24,000 people I ask for
2 your help. Thank you.

3 CHAIRMAN MORGAN: Thank you. I think your
4 position, you made it very clear and you're doing your
5 people a good service by presenting this issue to us
6 and of course, we have been involved in reviewing
7 these issues and I appreciate your coming before us on
8 this matter.

9 MAYOR HILL: Thank you.

10 CHAIRMAN MORGAN: I think for the moment
11 that covers all of the Members of Congress who wanted
12 to be with us this morning, so now we will move to a
13 panel related to Indianapolis. First of all, we have
14 Michael Maxwell, representing the city of
15 Indianapolis; Carl Morell, representing the Indiana
16 Southern Railroad and Michael McBride, representing
17 the Indianapolis Power & Light Company.

18 MR. MAXWELL: Good morning, Madam Chair.

19 CHAIRMAN MORGAN: Good morning.

20 MR. MAXWELL: Good morning, Vice Chair.
21 The city of Indianapolis is pleased to tell you here
22 that on June 1 the city reached a settlement with CSX

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1 which has been approved by NS. By this settlement
2 agreement, the Mayor of Indianapolis, Steven
3 Goldsmith, has achieved a significant improvement in
4 rail competition for the city, generally, as compared
5 to the original proposal of the joint application.

6 Among other things, the settlement
7 agreement provides for \$250 cap on CSX's switching of
8 NS cars in Indianapolis. Furthermore, the city will
9 be allowed to participate in the cost study to
10 determine the switching charges in Indianapolis. It
11 provides that CSX will switch NS cars to a broader
12 range of industries than was originally contemplated
13 under the original proposal and it provides for
14 interconnectivity between short line railroads and NS
15 at a reduced intermediate switch fee.

16 Because of this settlement, the city has
17 requested this Board to allow it to withdrawn its
18 request for conditions filed previously and the city
19 supports the joint application subject to the terms of
20 the settlement agreement.

21 We are pleased that CSX has entered into
22 the settlement with the city and we thank them for

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1 taking the time and the effort to talk with the Mayor
2 and other officials of the city to reach the
3 settlement.

4 The support of the city is limited,
5 however, to competition issues for the city, in
6 general or as a whole. The support does not extend to
7 competition issues for other Indianapolis parties that
8 may not be resolved by this settlement agreement
9 because of these parties' particular circumstances.
10 The parties, of course, I'm referring to are here at
11 the table, Indianapolis Power & Light, Indiana
12 Southern Railroad. The settlement agreement itself
13 provides that the city and CSX stipulate that the
14 agreement is not intended to settle and shall not
15 prejudice the positions of these other Indianapolis
16 parties. That is in the settlement agreement, agreed
17 to both by the city and CSX.

18 In view of the settlement with CSX, the
19 city would ask the Board to do two things. First,
20 that the Board make approval of the transaction
21 subject to the terms of the settlement agreement.
22 Second, that the Board consider the requests of other

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1 Indianapolis parties on their merits. If the evidence
2 shows that further conditions are needed to maintain
3 competition for these parties because of their
4 particular circumstances, the city would ask that the
5 Board supplement its order with these further
6 conditions. The city of Indianapolis would again like
7 to thank CSX and thank the Board for its consideration
8 of this matter. Any remaining time that we might
9 have, we would ask the Board to give to the remaining
10 Indianapolis parties.

11 Thank you.

12 CHAIRMAN MORGAN: Thank you.

13 MR. McBRIDE: Madam Chairman, before the
14 Indiana Southern and IPL arguments begin, I have a
15 matter of privilege and I wonder if we could approach
16 the bench, along with counsel for CSX and NS. This
17 relates to the matter you ruled on yesterday. We need
18 clarification from the bench.

19 CHAIRMAN MORGAN: Please feel free. We'll
20 suspend the public hearing for a minute.

21 (Off the record.)

22 MR. MORELL: Thank you for your

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1 indulgence. Good morning, Madam Chairman.

2 CHAIRMAN MORGAN: We didn't approve the
3 merger back there, so nobody get worried.

4 (Laughter.)

5 MR. MORELL: They didn't approve any of
6 our conditions either.

7 CHAIRMAN MORGAN: No, we didn't approve
8 anything.

9 MR. MORELL: Good morning, Madam Chairman,
10 Vice Chairman Owen, Indianapolis and the surrounding
11 area, without question, have the most serious and
12 pervasive competitive issues in this proceeding. CSX
13 has acknowledged that Indianapolis is by far the
14 largest 2 to 1 point created by this transaction.
15 Nearly 88 percent of all the 2 to 1 shippers
16 identified by applicants are located in the
17 Indianapolis area.

18 Mr. Lyons yesterday stated that the carve
19 up of Conrail was structured so as to replicate the
20 existing rail competition in Indianapolis. One has to
21 ask, however, if the intent truly was to preserve the
22 status quo, why was the Conrail franchise in the

1 Indianapolis area not given to NS? If NS had stepped
2 into Conrail's shoes in the Indianapolis area, not a
3 single 2 to 1 shipper would have been created in that
4 area. Indianapolis currently enjoys rail competition
5 from two Class 1 railroads, Conrail and CSX. While
6 Conrail today is the dominant railroad in
7 Indianapolis, CSX is a substantial physical presence
8 in the area.

9 Mr. Lyons yesterday also stated that NS
10 was simply stepping into CSX's shoes in Indianapolis.
11 The fact of the matter is that if this transaction is
12 approved, CSX will own both pairs of shoes. CSX will
13 retain all of its current facilities and operations in
14 Indianapolis and it will require all of Conrail's
15 facilities and operations in Indianapolis.

16 NS's billing to compete will be limited to
17 overhead trackage rights at Hawthorne Yard. With its
18 limited trackage rights NS will not have the ability
19 to provide any meaningful competition in the
20 Indianapolis area. NS will own no rail lines, yards
21 or other physical assets in the area.

22 Simply to bring Indianapolis traffic on to

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1 its system, NS will have to make 110 mile round trip
2 from Muncie to Hawthorne Yard. Given the numerous
3 operational disadvantages NS will face, it's not
4 surprising that NS has been silent throughout this
5 proceeding as to how it intends to serve the
6 Indianapolis market.

7 IPL, an important customer of Indiana
8 Southern, operates two coal burning plants in
9 Indianapolis, the Perry K Plant which is located on a
10 Conrail line and the Stout Plant which is located on
11 the Indiana Railroad, a subsidiary of CSX. Indiana
12 Southern has transported coal to the Perry K Plant via
13 Conrail switch since it began operations in 1992.
14 Today, Indiana Southern and CSX's subsidiary
15 vigorously compete for rail movements at the Perry K
16 Plant. IPL has enjoyed the benefits of this vigorous
17 competition. Post-transaction, CSX will have the
18 ability and strong economic incentive to disadvantaged
19 movements of coal to Perry K from Indiana Southern
20 origins.

21 Indiana Southern has also participated in
22 coal movements to IPL Stout Plant. Post-transaction,

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1 CSX will have the same ability and strong economic
2 incentive to disadvantage movements of coal to Stout
3 from Indiana Southern origins. CSX has claimed that
4 Indiana Southern is not a competitor for coal
5 movements to Stout since Indiana Southern lost that
6 traffic last year. CSX, however, is at a loss to
7 explain how Indiana Southern could possibly have
8 handled this traffic in prior years if it is not a
9 competitor CSX initially took the position that IPL's
10 loss of competition will be resolved by NS trackage
11 rights to Hawthorne Yard. In order to compete for
12 coal movements to IPL's two plants in Indianapolis in
13 the nearby Indiana coal fields, NS would have to
14 traverse a nearly 500 mile route which is five times
15 greater than the distance for CSX's subsidiary.

16 The Department of Justice yesterday
17 correctly identified the loss of competition at IPL
18 Stout Plant. Its proposed solution, however, would be
19 totally ineffective. Simply giving NS direct access
20 to the Stout Plant is meaningless since NS has no
21 economical means of transporting coal to Indianapolis.
22 Although the Board yesterday struck from the record

1 CSX's settlement offer to IPL, Mr. Lyons nevertheless
2 suggested you impose that offer as a condition to the
3 transaction. That offer, however, falls woefully
4 short of resolving IPL's competitive problems.

5 Just two quick observations about the
6 offer. First, the CSX offer is good for only five
7 years for the Perry K Plant and 20 years for the Stout
8 Plant. Even if the offer were otherwise effective,
9 which it is not, it would be good for only a few
10 years. After that time, IPL would become total
11 captive to CSX. Second, CSX proposes to freeze the
12 current switch charges to Stout for five years and
13 then adjust those charges for the next 15 years by the
14 unadjusted index. If the Board adopted the offer,
15 Indiana Southern's ability to compete would erode year
16 after year.

17 As rail productivity increases and rail
18 rates trend downward, Indiana Southern would be
19 strapped with an ever increasing switch charge while
20 CSX's subsidiary would be able to benefit from CSX's
21 productivity gains. The Board has several
22 conditioning options before it. As already explained,

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1 granting NS access to the two plants will not maintain
2 the status quo. Temporarily freezing switch rates
3 provides no meaningful or lasting solutions.

4 Indiana Southern believes that the only
5 way to preserve head to head rail competition for IPL
6 is to grant Indiana Southern the ability to directly
7 serve the two IPL plants in Indianapolis.

8 Thank you.

9 CHAIRMAN MORGAN: Thank you, Mr. Morell.
10 Mr. McBride?

11 MR. McBRIDE: Thank you, Madam Chairman,
12 Mr. Vice Chairman, thank you for your indulgence
13 earlier in that matter of privilege. Early last year,
14 Mr. Snow and Mr. Goode, the two gentlemen I have
15 respect for, got together in a conversation that
16 effectively began this transaction. Here's about how
17 it went as the deposition testimony described it. Mr.
18 Goode told Mr. Snow that Mr. Snow could not get the
19 Pennsylvania Railroad and he, Mr. Goode, New York
20 Central, because that way there would be way too many
21 2 to 1 shippers in this proceeding. I commend him for
22 that. He is right.

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1 So what they did was they did it the other
2 way around. Mr. Snow got the Pennsylvania Railroad
3 effectively, -- Mr. Goode got the Pennsylvania
4 Railroad and Mr. Snow the New York Central. The
5 unfortunate victim, perhaps unintended of that
6 agreement from which virtually everything else in this
7 case fell out was that Indianapolis would go from two
8 owning Class 1 railroads to 1, by far the largest
9 metropolitan area in the proceeding so affected.

10 All we want, all IPL wants is to have the
11 same competition from two owning Class 1 railroads in
12 Indianapolis after this transaction, if it's approved,
13 as it has today.

14 The Department of Justice felt the need to
15 advocate yesterday for only two shippers and only one
16 of the two is even still before you seeking relief,
17 Indianapolis Power and Light Company. DOJ was joined
18 by DOT in its brief in agreeing that IPL needs relief.

19 You should have received by now, Madam
20 Chairman, Mr. Vice Chairman, letters from Senators
21 Luger and Coates, Chairman Burton, Congresswoman
22 Carson and I understand another letter from

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1 Congressman Hostetler of the Indiana delegation, all
2 of which were written on June 2, as I understand it
3 after the city settlement with CSX because they are
4 concerned that it does not solve my client's problem.

5 It explicitly carved us out as Mr. Maxwell
6 informed you, but IPL as Mr. Morell informed you
7 critically depends on Indiana Southern Railroad for
8 Indiana coal to its two Indianapolis plants. And yet,
9 and the Department of Agriculture, by the way,
10 supports Indiana Southern, so that Indiana Southern's
11 line to Indianapolis stays in service. Indiana
12 Southern's line into Indianapolis over which coal has
13 been hauled to IPL for over 60 years which is as far
14 back as our records go and perhaps 100, may be
15 abandoned by December if Indiana Southern is not
16 granted the relief it seeks, especially trackage
17 rights to IPL's plants to preserve our existing
18 competition.

19 Norfolk Southern cannot compete in
20 Indianapolis as Mr. Morell explained. Now at the last
21 minute CSX agreed with the city that NS should have
22 the right to build more tracks at Indianapolis

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1 Hawthorne Yard. Isn't that interesting since until
2 this week CSX was assuring that Hawthorne Yard had
3 adequate capacity for NS when we all along knew it
4 wouldn't. But there is still nothing that obliges NS
5 to make any investment in Indianapolis.

6 When I asked Mr. Goode at deposition how
7 he knew he could compete, he said look at all I have
8 invested in this transaction. I said I understand
9 that, but how much have you invested in Indianapolis?
10 And he said "I guess I'm not aware of any that's
11 planned in the transaction thus far." That's in our
12 brief.

13 That was candid since he still hasn't made
14 any investment there. Yet, NS's own principles of
15 balanced rail competition state explicitly that a
16 railroad needs to have made an investment ordinarily
17 to be able to compete and that it can't with trackage
18 rights over long distances. That fits Indianapolis to
19 a T. Indianapolis should be a shared asset area so
20 that we still have two owning Class 1 railroads there
21 as we do today. That's what we want, so we don't have
22 to have all kinds of regulatory solutions.

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1 In Ex Parte No. 575, the two of you will
2 recall just two months ago that Mr. Snow says it's the
3 shippers that want all this reregulation. Wrong.
4 It's CSX with its Rube Goldberg solutions for
5 Indianapolis that will require constant regulatory
6 involvement. A good example: CSX has apparently
7 agreed to cap switching charges of \$250 under some
8 instances, \$100 or some number in that neighborhood
9 for others and short lines interconnect and costs,
10 still other circumstances, whatever cost is, but IPL
11 because of competition and prior litigation today pays
12 a switching charge to get into the Stout Plant and to
13 Perry K much less than \$100. It's confidentially an
14 exact amount, but all through our pleadings.

15 So what CSX has offered the city may help
16 other shippers, but it hurts IPL. If you make
17 Indianapolis a shared asset area which is their own
18 elegant idea and give Indiana Southern trackage rights
19 to our plants so that CSX can't block its competition
20 we can solve our own problems like today in the
21 marketplace. We'll put up a diagram here that
22 indicates that CSX, if it gets what it's asked for in

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1 the transaction will be able to act as a bottleneck to
2 both of our plants.

3 If you note, as the lights are dimmed, the
4 line that goes essentially vertically at the bottom of
5 the graph which is red in our exhibits, we've
6 recolored a darker blue because that's Indiana
7 Railroad which CSX owns. If you realize that all of
8 the lines into those plants will be controlled by CSX
9 after this transaction when they're not today, they're
10 controlled in part by Conrail, either directly or via
11 switching, you see our problem.

12 We're 2 to 1 at both plants. Now IPL got
13 a 20 percent rate reduction and that's in the record.
14 It's public. It's Volume 2B of their rebuttal at
15 P506, from Indiana Railroad in 1996. It was because
16 they were using Indiana Southern and Conrail as our
17 competition for much of the coal to this Stout plant,
18 not trucks as they have claimed.

19 Conrail is neutral to whether Indiana
20 Southern or Indiana Railroad originate on coal since
21 it's not affiliated with either, but CSX controls
22 Indiana Railroad and will not be neutral toward

1 Indiana Southern. That's why we need trackage rights
2 for Indiana Southern.

3 Please don't abandon IPL and don't trust
4 CSX to act like a benign monopolist. Rather, as
5 Winston Churchill would say give us the tools and we
6 will finish the job.

7 We can, as IPL has for years, solve our
8 own problems in the marketplace with structural
9 relief. We can't if CSX's proposals are adopted. The
10 very existence of IPL's plants may depend on what you
11 do.

12 Let me just add, Madam Chairman and Mr.
13 Vice Chairman, if you looked in the records of this
14 Agency you wouldn't find a pleading from IPL for well
15 over 10 years. It doesn't come here seeking relief.
16 It came here in 575 for competition. It solves its
17 own problems or it has been able to up until now
18 because it had competition. We're going to lose it if
19 the transaction is not conditioned as we've asked.

20 Thank you very much.

21 CHAIRMAN MORGAN: Thank you. If we could
22 get the lights back on? First of all, Mr. Maxwell, I

1 presume that if you haven't already you will be
2 submitting, you and the parties will be submitting the
3 agreement that you've reached because you're
4 requesting that we --

5 MR. MAXWELL: Yes. In fact, both parties
6 have already submitted the agreement to the Board in
7 the last couple of days.

8 CHAIRMAN MORGAN: Now Mr. McBride and Mr.
9 Morell, let me start with you, Mr. McBride. I hear
10 you saying that you do not believe that the Justice
11 Department's handling of your issues was competitive
12 enough, is that a good way to summarize it?

13 MR. McBRIDE: That's correct. They're
14 great because they recognize we have a 2 to 1 problem
15 and that Norfolk Southern can and should be part of
16 the solution, but you see Norfolk Southern would have
17 to be our competitive solution if we use Western coal
18 as the plant may have to under the Clean Air Act, but
19 Norfolk Southern can't effectively deliver Indiana
20 coal for the company today.

21 Conrail can help us with what we do today
22 via the Indiana Southern line which used to be a

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1 Conrail line. Mr. Morell's client originates that
2 coal for us. Under the Clean Air Act we can still use
3 that coal, but one of these days very soon with Phase
4 II of the Clean Air Act taking effect in the Year
5 2000, we may have to switch to low sulphur coal. That
6 doesn't come from Indiana, unfortunately. It may have
7 to come from the west or the east. We have two
8 carrier competition for that today if we started
9 burning that low sulphur coal today, Conrail and CSX.
10 Once CSX takes those Conrail lines and not NS, unless
11 you provide for NS to have an ownership interest in
12 Indianapolis, we won't have the competition then that
13 the company enjoys today if it were to use that coal.
14 You're making permanent changes in the railroad map
15 here for all time and yet we have Phase II of the
16 Clean Air Act coming right around the corner. So
17 that's why we need Indiana Southern for Indiana coal.
18 We need Norfolk Southern for western coal.

19 CHAIRMAN MORGAN: And why do you feel that
20 the Justice Department didn't look at that issue in
21 the context of their evaluation?

22 MR. McBRIDE: Well, I talked to Mr.

1 Harmonis about that who did a terrific job yesterday.
2 And he thinks that it will all work out with Indiana
3 Southern being able to connect to Norfolk Southern if
4 Norfolk Southern has those rights that he was asking
5 for. But as Mr. Morell, I think, can amplify because
6 we've discussed this at length, what the Justice
7 Department ask you to provide and isn't provided by
8 anything that's on the table here is how and under
9 what circumstances NS would do that. For one thing,
10 CSX has been unwilling to Indiana Southern connect
11 directly with Norfolk Southern. Rather, our trains,
12 if Norfolk Southern were going to be involved would
13 have to go into this Hawthorne Yard which didn't have
14 the needed capacity and you don't switch unit trains
15 of coal. They don't go into that yard today so that
16 wouldn't work. And secondly, we would be at the mercy
17 of CSX dispatching. NS would be unless NS has an
18 ownership interest in the shared asset area so that
19 the kind of problems that I unfortunately have to
20 remind you of that Mr. Tobin for Illinois Central was
21 telling you about yesterday over those two miles in
22 Illinois that he was having with CSX, we could have

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1 with our trains, even though NS had the trackage
2 rights. Wouldn't have any leverage unless it's a
3 joint owner. So -- and we're powerless. We're just
4 the captive shipper. If Illinois Central can't solve
5 its problems with CSX as another railroad, I can't
6 come in here every hour and tell you well, they
7 haven't dispatched my train again fairly. You've got
8 too many things to do and you can't micromanage these
9 railroads.

10 I just want these two big guys to be able
11 to bang it out head to head like Conrail and CSX do
12 today and we're confident that we can work with them
13 and never bother you again if we have the tools to
14 compete. That's all I'm trying to do is make Mr.
15 Goode able to compete and make sure Mr. Morell's
16 clients stay in business to service.

17 CHAIRMAN MORGAN: Now Mr. Morell, the
18 Indianapolis agreement has provisions in it related to
19 short lines, smaller railroads, is that as a general
20 matter help you out? I don't mean necessarily
21 specifically related to what Mr. McBride is
22 discussing, but as a general matter?

1 MR. MORELL: Madam Chairman, I've had
2 simply a brief opportunity to review the agreement.
3 From what I know of it it provides a connection, as I
4 understand it, for short lines in the Indianapolis
5 area, but there's one limitation is that the traffic
6 has to originate on one short line and terminate on
7 another short line. So it's not as broad as it may
8 first appear.

9 Secondly, the agreement is very unclear as
10 to what the switching charge is. Quite frankly, the
11 short lines in Indianapolis in interchange today via
12 Conrail switch, the switch charge is just simply too
13 high. The traffic won't move. I don't know what the
14 switch charge will be in the agreement, the agreement
15 that was filed with the Board doesn't contain one. It
16 just says something to the effect of a lower or more
17 favorable switch charge.

18 So as a practical matter, if the switch
19 charge is low enough so that the traffic will move,
20 that part of the agreement with the city and CSX will
21 be beneficial to Indiana Southern and other short
22 lines in the area.

1. CHAIRMAN MORGAN: Thank you. Vice
2 Chairman?

3 VICE CHAIRMAN OWEN: Yes, Mr. Morell, how
4 low should the switch charge be?

5 MR. MORELL: Are you referring to the
6 switch charge between?

7 VICE CHAIRMAN OWEN: What you were just
8 talking about there, you were using that --

9 MR. MORELL: I'm not advocating that.
10 That was the city's position. I don't know.

11 VICE CHAIRMAN OWEN: You were saying
12 traffic does not move if the switching charge is too
13 high.

14 MR. MORELL: Well, I understand the switch
15 charge is in the neighborhood of \$300 and some in
16 Indianapolis today. Traffic, short line traffic
17 simply can't move through the city. For a lot of
18 movements, Vice Chairman Owen, the short line receives
19 much less than that for the line haul and gets to
20 Indianapolis, it's got to pay double that it's
21 receiving, just simply to get through the city.
22 What's a fair switch charge, I couldn't tell you.

1 Like I say, we're not party to that agreement.

2 VICE CHAIRMAN OWEN: I know. You just
3 made the statement. I'll ask Mr. McBride?

4 MR. McBRIDE: Yes, I just want to tell
5 you, Vice Chairman Owen that the number is highly
6 confidential. It's in our pleadings, so I'm not going
7 to state it, but I've written it on a piece of paper
8 here. Can you read it from that distance?

9 VICE CHAIRMAN OWEN: Thank you.

10 CHAIRMAN MORGAN: Put it down, put it
11 down.

12 (Laughter.)

13 CHAIRMAN MORGAN: Let's move on.

14 MR. McBRIDE: Do you want me to approach
15 the bench and tell you the number?

16 CHAIRMAN MORGAN: No.

17 MR. MAXWELL: Could I make a clarification
18 here? We're talking about switch charges now. Of
19 course the reciprocal switch charge is not
20 confidential. The existing reciprocal switch charge,
21 Indianapolis today under Conrail has been around \$390.
22 The agreement provides that the reciprocal switch will

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1 be either 250 or the results of the cost study,
2 whichever is less.

3 Now that's all with the agreement with
4 regard to the reciprocal switch. The only
5 confidential switch charge in it is the intermediate
6 switch for interconnectivity between short lines, but
7 it does, as the agreement states and I can represent
8 it does lower the existing as compared to the existing
9 intermediate switching in Indianapolis.

10 VICE CHAIRMAN OWEN: Thank you.

11 MR. McBRIDE: But it's much higher than
12 what we pay.

13 VICE CHAIRMAN OWEN: Thank you. No
14 further questions.

15 CHAIRMAN MORGAN: Thank you all.

16 ALL: Thank you.

17 CHAIRMAN MORGAN: Next, we will have a
18 panel representing Ohio interest. Keith O'Brien for
19 the Attorney General, State of Ohio, the Ohio Rail
20 Development Commission and the Public Utilities
21 Commission of Ohio. Now I don't -- also Keith O'Brien
22 representing the Wheeling and Lake Erie Railway

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1 Company. I don't know how many people we're going to
2 have at the table. That might fill us up for the
3 moment. I don't know.

4 Mr. O'Brien, how many do you have with
5 you? Are you speaking with -- are others speaking
6 with you or how is this --

7 MR. O'BRIEN: I am speaking -- I called
8 your office this morning.

9 CHAIRMAN MORGAN: Yes, I know you did and
10 I'm trying to --

11 MR. O'BRIEN: And with apologies. What
12 has happened is Tom O'Leary who is the chairman of the
13 Ohio Rail Development Commission was delayed in
14 getting here, unfortunately, the airlines.

15 CHAIRMAN MORGAN: Yes, I understand.

16 MR. O'BRIEN: He is on his way here now
17 and your office indicated we could put the
18 presentation on behalf of the State of Ohio on a
19 little later this afternoon.

20 CHAIRMAN MORGAN: If that's what you'd
21 like, because I was going to proceed ahead with it and
22 have him come up at a later time whenever he arrives,

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1 but if you would prefer that we put this panel off.

2 MR. O'BRIEN: No. In fairness to all
3 those who are here with me, I think that would be
4 unfair to them in their travels and commitments and
5 that sort of thing. So what I would recommend is that
6 we go forward and make the presentation on behalf of
7 the Wheeling and Lake Erie and the other members of
8 this panel go ahead and make their presentations and
9 then if you would be so kind to accommodate Mr.
10 O'Leary when he does come in, we'll come forward and
11 make the presentation on behalf of the State of Ohio.

12 CHAIRMAN MORGAN: So you will speak on
13 behalf of the Wheeling and Lake Erie, then I also have
14 Randall Hunt with the Stark Development Board. And
15 then I have Robert Wimbish for Wyandot Dolomite. And
16 then Clark Downs for National Lime & Stone Company.
17 So why don't you come on up. And then Keith, you will
18 then be back with us to represent all the interests,
19 other interests.

20 MR. O'BRIEN: If you don't want me coming
21 back to revisit --

22 CHAIRMAN MORGAN: No, we have many people

1 coming back during the course of these last two days.
2 There's money to be made out there.

3 (Laughter.)

4 MR. O'BRIEN: Well, with me this morning,
5 Larry Parsons, who was the Chairman and Chief
6 Executive Officer of the Wheeling and Lake Erie, and
7 William Callosen, who is the Vice President and
8 General Counsel of the Wheeling. We are here this
9 morning to talk about the situation of the Wheeling
10 and Lake Erie. It is here, the Wheeling is here
11 because its very survival is at stake as a direct
12 result of a primary transaction that is before this
13 Board. The Wheeling faces the prospect that near term
14 insolvency as a consequence of diversion by as much as
15 25 to 30 percent of its revenue directly is a result,
16 advantages the Norfolk Southern will acquire through
17 acquisition of Conrail lines within the regions served
18 by the Wheeling.

19 CSXT hasn't documented any sufficient
20 offset to these losses. The Wheeling is a regional
21 carrier as is shown on the map that's on the screen
22 now, serving over 200 on line customers through four

1 States. Those are Pennsylvania, Ohio, West Virginia
2 and Maryland. Over lines that were required as cast
3 off from the Norfolk Southern in 1990. Subsequently,
4 anxieties of the Akron area shippers were relieved
5 when a Wheeling affiliate stepped forward to acquire
6 Akron Barbertoville and portions of Conrail lines in
7 the area from the throes of abandonment which were
8 threatened.

9 There were other acquisitions from CSX in
10 the Canton area in between Martin's Ferry, Ohio and
11 Banwood Yard in the West Virginia area. These lines
12 were also threatened with the prospect of future
13 abandonment and rescued by the Wheeling.

14 Since 1992, the Wheeling has undergone a
15 change in this management. It has survived loss of a
16 significant amount of high sulphur coal traffic as a
17 result of strictures involved in the Clean Air Act
18 that's been mentioned this morning.

19 It has restructured its debt and equity
20 and put forth, put in substantial amounts of capital
21 into its equipment as well as into its physical plant
22 with the help of the State of Ohio in investing.

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1 For the past two years, the Wheeling has
2 been profitable and provides shippers and communities
3 throughout its territory with highly responsive
4 service. For Ohio aggregate shippers and others, it
5 provides cost effective on line service. For many
6 others, including integrated steel mills and many
7 mills, chemical, plastics, lumber, paper and shippers
8 of other commodities, Wheeling provides competitive
9 access to multiple Class 1 carriers. For many large
10 and small shippers Wheeling is important as the only
11 competitive alternative to a Class 1 carrier.

12 As a result of all of this, many large and
13 small shippers have chosen to locate on the Wheeling
14 in recent years to take advantage of the rate and
15 route options as to their competitive advantage.

16 Currently, most of Wheeling's interchange
17 traffic is derived from its partnership with Norfolk
18 Southern that has enabled NS and Wheeling together to
19 compete effectively with Conrail and CSX for traffic
20 moving in and from regions served by the Wheeling as
21 shown on the map that's now displayed.

22 However, as shown by the next map, Norfolk

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1 Southern will be transformed from Wheeling's most
2 important partner into a market dominant competitor if
3 NS requires the Conrail lines within the region served
4 by the Wheeling. The rationale for the original lines
5 sale and partnerships currently mutually productive
6 arrangement will be history, as NS will be able to
7 offer direct single line service in place of joint
8 line service that has been provided before the merger.

9 It is of course to be expected that NS
10 will seek to exploit to the fullest extent possible
11 the advantages which will be available through the
12 acquisition of Conrail lines regardless of the adverse
13 impact on the Wheeling, especially because the
14 Wheeling and Lake Erie will become a direct competitor
15 in the region.

16 The traffic gains from a new single line
17 service are key to NS CSX projections for the merger.
18 The magnitude and consequences of the dramatic change
19 is documented by traffic divergence studies that were
20 conducted by Wheeling's Vice President of Traffic,
21 Reginald Thompson and verified by Wheeling's expert,
22 Willard A. Pinkerton.

1 Wheeling submitted evidence on traffic and
2 revenue losses projections of its financial collapse
3 based on sound methodology in contrast to the flawed,
4 unsupported statements by the applicants. In plain
5 terms, the Wheeling faces insolvency in short order
6 unless it is afforded meaningful opportunities to
7 compete for replacement traffic to offset losses of
8 traffic and revenue directly attributable to the
9 proposed division of Conrail lines.

10 Under its current leadership the Wheeling
11 has demonstrated its resilience and its ability to
12 handle significant challenges and has been able to
13 turn the railroad around. However, for all that
14 resourcefulness and the recent successes, Wheeling
15 does not have the ability to withstand the monumental
16 diversion of traffic and revenue that will occur if
17 the significant remedial measures are not granted.

18 Those remedial measures include haulage
19 rights with underlying trackage rights to Chicago;
20 hauling rights and underlying trackage rights to
21 Toledo, assurances of continued access to Huron Dock
22 on the Lake Erie; trackage rights to Ohio stone

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1 quarries; haulage and local trackage rights from
2 Menwood to Brooklyn Junction, West Virginia; haulage
3 rights with underlying trackage rights to Wheeling
4 Pittsburgh Steel.

5 We have shown in our extensive evidence
6 that of supporting shippers and the public entities
7 that the proposed diversion of Conrail, division of
8 Conrail lines will result in diversion of traffic and
9 revenue of a magnitude sufficient that Wheeling may
10 become insolvent with grave ramifications for shippers
11 and communities that depend on its service.

12 We prove loss of competition in many cases
13 and also loss of essential service. If I may just
14 conclude, we feel strongly that Wheeling has not come
15 here with hat in hand. It's not looking for a
16 handout. It is asking for an opportunity to compete
17 for replacement traffic for traffic it will surely
18 lose because of the merger that's before you.

19 The public policy issues that are raised
20 by shippers and Ex Parte 575 indicate how important it
21 is to preserve regionals and short lines that provide
22 competitive access for multiple Class 1 and short line

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1 connections and multiple rate and route options.
2 These are among the serious issues that must now be
3 decided in the public interest. That is why we're
4 here.

5 Thank you.

6 CHAIRMAN MORGAN: Thank you. Mr. Hunt.
7 Let's get the lights.

8 MR. HUNT: Good afternoon, Chairman Morgan
9 and Vice Chairman Owen. I'm the vice chairman of the
10 Stark Development Board, and I'm pleased to be joined
11 today by Joe Stadelman, our intermodal consultant.

12 We're here and participating in today's
13 hearing as owner of the Neomodal Terminal, a
14 state-of-the-art intermodal, which was strategically
15 built on the Wheeling and Lake Erie railroad, with
16 \$11.2 billion of federal funds.

17 Our argument today will focus on the
18 change in the competitive balance of intermodal
19 service in our region, which has and will occur as a
20 result of the Conrail breakup, and its devastating
21 impact on our shippers and our regional economy.

22 Specifically, at the time of its

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1 construction, Neomodal had connections through the
2 Wheeling and Lake Erie railroads with three Class 1
3 carriers; Conrail, CSX, and Norfolk Southern.

4 Prior to the Conrail breakup, CSX and
5 Norfolk Southern did not have access to the
6 northeastern Ohio intermodal market, for Neomodal was
7 the only intermodal terminal in our multicounty
8 regions. Neomodal provided CSX and Norfolk Southern
9 with an intermodal terminal to compete with Conrail.
10 However, with the proposed breakup of Conrail, CSX and
11 Norfolk Southern have not developed strategic plans
12 which do not include our terminal.

13 In fact, CSX, through its announced
14 Collinwood yard, and NS, through its Bellevue and
15 Pittsburgh yards, will eventually service the markets
16 that Neomodal was designed and funded to serve. These
17 Class 1 railroads have already implemented operational
18 plans that have seriously impacted the reliability and
19 competitiveness of our services.

20 It's clear that our partners, prior to the
21 Conrail breakup, are now, and even more so in the
22 future, will become direct competitors of Neomodal.

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1 As a result strategic location without protective
2 conditions, our former partners, and now competitors,
3 will control our service destiny and the competitive
4 balance of intermodal service in our region.

5 The Development Board has attempted to
6 initiate discussions and negotiations with CSX and
7 Norfolk Southern to preserve Neomodal and to protect
8 the over 250 shippers currently utilizing the Wheeling
9 and Lake Erie railroad.

10 These discussions, although amicable, were
11 fruitless, for both Class 1 railroads offered no
12 written, long-term service solutions, and made it
13 perfectly clear that Neomodal was not in their
14 respective intermodal plans. What was even more
15 disturbing was that neither CSX, or Norfolk Southern
16 were responsive to the limited protective conditions,
17 which would provide service to our shippers, that
18 would offer a competitive balance in our region.

19 It is now clear that without protective
20 conditions the competitive balance that existed prior
21 to the Conrail breakup will be gone, and our shippers
22 will be captive to predatory pricing and predatory

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1 business practices.

2 Our shippers' dilemma is the same dilemma
3 that was so clearly demonstrated to the Board during
4 its March hearings. It's imperative that the Board
5 intervene and implement protective conditions sought
6 by our board, as outlined in my prepared remarks
7 distributed to you today. Furthermore, the Board
8 should grant the protective condition sought by our
9 service partner, the Wheeling and Lake Erie,
10 particularly the issuance of trackage rights to Toledo
11 and to Chicago, to give direct service access to our
12 shippers so they may fairly compete.

13 These conditions are not being requested
14 to give the Development Board a competitive advantage
15 or service position that it did not enjoy prior to the
16 Conrail breakup. No, in fact these conditions merely
17 put our terminal in the same competitive position that
18 existed prior to this proposed breakup. We thank you
19 for your consideration.

20 CHAIRMAN MORGAN: Thank you. Mr. Wimbish.

21 MR. WIMBISH: Chairman Morgan, Vice
22 Chairman Owen, members of the Surface Transportation

1 Board staff, my name is Rob Wimbish, and I'm counsel
2 for Wyandot Dolomite. With me today is Tim Wolf, who
3 is the executive vice president of Wyandot Dolomite.

4 Wyandot Dolomite is a small family-owned
5 company. It produces aggregate and limestone, and as
6 our briefs and other filings have shown, it is
7 predominantly a rail-dependent shipper.

8 We are here today to ensure that
9 post-transaction, Wyandot enjoys the direct service
10 from Norfolk Southern to preserve Wyandot's
11 traditional single carrier access to markets in
12 eastern Ohio and western Pennsylvania.

13 We are here because the applicants,
14 although they acknowledge that their proposed
15 transaction will harm Wyandot, have turned their backs
16 on us. Ultimately, Wyandot is here over the issue of
17 10 miles of trackage rights, trackage rights that by
18 all accounts can and really should be conveyed to
19 Norfolk Souther post-transaction.

20 As the maps I offer will demonstrate,
21 there is no question that Wyandot will be harmed
22 without the relief that is requested.

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1 The first map that I'm presenting, rail
2 service to Carey, Ohio today, represents the three
3 carriers that serve Wyandot directly in single line
4 service. In red, Conrail, in the lighter brown color,
5 which doesn't really show up very well on that screen,
6 is Wheeling and Lake Erie, and the blue is CSX
7 transportation.

8 You can see the network of lines,
9 especially in eastern Ohio, western Pennsylvania, and
10 northern West Virginia, to which Wyandot Dolomite
11 enjoys single carrier service. This is the relevant
12 market area for Wyandot Dolomite.

13 The second map I am presenting is a rail
14 service to Carey as proposed by the applicants'
15 post-transaction. You will see from this line the
16 light color green representing the Norfolk Southern
17 system as proposed. You will see that Norfolk
18 Southern will not enjoy the trackage rights that is
19 enjoyed today currently by Conrail between the point
20 Upper Sandusky and Carey, where Wyandot Dolomite is
21 located.

22 You will see, however, that Norfolk

1 Southern will inherit a variety of lines in eastern
2 Ohio and Western Pennsylvania, which represent a large
3 portion of Wyandot's traditional market area.

4 Finally, Map 3 shows in graphic detail the
5 post-transaction, single carrier service options which
6 will be available to Wyandot. I point out to you in
7 particular the area around Alliance, Ohio, where
8 markets will be completely eliminated from single
9 carrier service.

10 There can be no doubt and there's no
11 dispute among the parties that Wyandot will suffer
12 competitive harm as a result of the proposed
13 transaction, unless the Board imposes the conditions
14 that Wyandot requests.

15 For aggregate and related products, two
16 carrier services an inefficient cost-prohibitive
17 alternative. In short, for aggregate producers such
18 as Wyandot, two carrier service is no carrier service.

19 The Board can and must take action to
20 protect small shippers like Wyandot, who stand to be
21 swept up in the course of this transaction. The Board
22 is mandated by law to preserve adequate rail service

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1 to the shipping public. It is entrusted to promote
2 efficient rail system. It is directed to impose
3 protective conditions where proposed transactions
4 threaten essential services. Finally, it is guided by
5 its current policies to address the unique concerns of
6 smaller shippers, and use its regulatory power to
7 ensure a level playing field.

8 The Board clearly possesses the authority,
9 and the ability to impose the relief that Wyandot
10 seeks. The protective conditions we request pose no
11 appreciable problems of their own.

12 Ten miles of trackage rights are an issue
13 here, and that is all that we are focusing our
14 attention on at this time. These are trackage rights
15 specifically between Upper Sandusky and Carey, Ohio.

16 I want to point out momentarily, and
17 invite your questions, regarding an arrangement that
18 we thought might have protected us, involving an
19 agreement to protect and preserve in many instances
20 between the applicants' trackage rights that Conrail
21 currently enjoys.

22 For some reason -- and I do invite your

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1 questions on this, because it's complicated -- and
2 your indulgence for a few more seconds of your time.
3 But I do invite your questions on that one.

4 As it would appear from some of their own
5 agreements, that the applicants would have intended
6 and plan to provide these trackage rights. Applicants
7 offer no facts to dispute that trackage rights would
8 harm their respective operations. They show no
9 hardship on the applicants, and they argue no threat
10 to the proposed transaction.

11 This is obviously a balancing test between
12 the harms that this particular party, Wyandot
13 Dolomite, would suffer, and the harms that the
14 imposition of these -- that the requested relief would
15 impose upon the transaction.

16 For the foregoing reasons, the Board can,
17 and must protect the interest of Wyandot Dolomite.
18 The Board must grant the relief that Wyandot has
19 outlined in the filings that it's previously
20 submitted. Thank you very much.

21 CHAIRMAN MORGAN: Thank you.

22 Mr. Downs.

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1 MR. DOWNS: Thank you, Madam Chair,
2 Mr. Owen. My name is Clark Downs. I appear here
3 today on behalf of the National Lime & Stone Company.
4 National Lime produces limestone products, and ships
5 them east from Carey, that you've just heard about,
6 and Busyrus, Ohio to markets in eastern Ohio,
7 Pennsylvania, and West Virginia. Today such shipments
8 are made using single line Conrail service.

9 Conrail service from Busyrus is all on
10 Conrail track, as the next map that you will see
11 shows. Actually, the national installation is at
12 Spore, Ohio, that connects to Busyrus, and heads east
13 through Crestline.

14 Because the applicants would divide
15 Conrail track at Crestline, the single line service
16 that National Lime now uses would become two line
17 service, unless CSX grants Norfolk Southern trackage
18 rights from Carey and Spore, Ohio to Crestline.
19 Norfolk Southern already has trackage rights over most
20 of this track for long hauls to and from Chicago.

21 Two line service will cause National a
22 loss of about \$12 million spent to upgrade facilities,

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1 on the assumption that single-line service would
2 continue to be available. Two-line service would
3 increase the delivered cost of National's products to
4 the markets in question by 60 to 100 percent.

5 Now, counsel for applicants told you
6 yesterday that the Board should approve the
7 transaction because it would increase the availability
8 of more efficient single-line service, and thereby
9 reduce trucking, and the safety hazards associated
10 with trucking.

11 Of course, what the applicants propose for
12 National will have the opposite effects, except that
13 trucking is not a viable alternative because of the
14 volume of trucks that would be required. Two-line
15 service is also inadequate for all the reasons that
16 applicants have so vividly described in their verified
17 statement.

18 National has provided verified record
19 evidence that the one to two effects of the
20 transaction will rob it of adequate transportation
21 service. The applicants have offered no substantial
22 evidence that the trackage rights remedies that

1 National proposes would impede the realization of the
2 public benefits of the transaction that the applicants
3 so loudly tout, or otherwise interfere unreasonably
4 with their operating plan.

5 National only ask that the status quo be
6 maintained. We plead that the Board order the
7 applicants to negotiate with National the arrangements
8 needed to assure the continuation of the single-line
9 service that is the lifeblood of National's business,
10 and required by National's customers to obtain
11 necessary industrial minerals at reasonable costs.

12 We've heard a parade this morning of folks
13 that have been able to reach agreement with the
14 applicants. We urge that you order them to sit down
15 with us, and to speak seriously to National Lime, and
16 to similarly situated shippers, so that we can have
17 the benefit of a privately negotiated, reasonable
18 remedy. But so far we haven't heard too much from
19 them, and I think they need a little incentive, and I
20 think the Board can give that to them. I thank you
21 for attention.

22 CHAIRMAN MORGAN: Thank you. That was

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1 perfect.

2 Mr. O'Brien, let me start with you, first,
3 regarding Wheeling and Lake Erie.

4 Wheeling and Lake Erie of course has made
5 many requests on the record here for conditions, and
6 they relate to the estimate of traffic conversions
7 that would result from this proposed transaction,
8 which would then mean a loss of essential services.
9 That's essentially the package that you've presented.

10 MR. O'BRIEN: Yes.

11 CHAIRMAN MORGAN: Now, of those
12 requests -- I mean, I know the key is traffic
13 diversion, but structurally what is the key?

14 MR. O'BRIEN: Structurally -- thank you,
15 Madam Chairman. Structurally, the key is the massive
16 diversion of interline traffic that's going to occur
17 without a doubt when Norfolk Southern takes over the
18 Conrail lines that are in the territory that
19 currently -- that Wheeling serves.

20 Wheeling and Norfolk Southern have
21 together in partnership handled a tremendous amount of
22 interline traffic into that territory in competition

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1 with Conrail. That amounts for as much as 25 percent
2 of the Wheeling's income, its revenues, and its
3 carloadings right now.

4 When Norfolk Southern steps in to the
5 shoes of Conrail, they no longer need the Wheeling to
6 compete into that territory. That traffic will
7 disappear from Wheeling, and it will be a devastating
8 loss to it, in terms of revenue and traffic.

9 CHAIRMAN MORGAN: Now, one of the things
10 that you suggested in your statement, I believe, is
11 that a connection at Toledo would be of some
12 assistance, and that has been raised in the State of
13 Ohio's testimony as well.

14 MR. O'BRIEN: It has.

15 CHAIRMAN MORGAN: Now, how will that help
16 you specifically?

17 MR. O'BRIEN: Well, it would help
18 specifically, because they could connect their in
19 Toledo with the connecting lines of the Indiana-Ohio,
20 with the Ann Arbor, which is also seeking some relief
21 from this board in connection with diversion of
22 traffic, and with the CN.

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1 And so that Wheeling could reach beyond
2 this territory, and again for replacement traffic.
3 Again, it's asking only to compete for. It doesn't
4 want any gifts. It's just has competed for in the
5 past, and all it wants to do is have an opportunity to
6 compete for traffic that will allow it to remain
7 viable.

8 CHAIRMAN MORGAN: Mr. Stark, I presume
9 that if the Wheeling and Lake Erie is viable,
10 continues to be viable, that that response to
11 your -- and I called you Mr. Stark, and it's really
12 Mr. Hunt for Stark Development.

13 (Laughter)

14 It didn't sound right, but it's been a
15 long --

16 MR. HUNT: Just as long as you're calling
17 me, that's fine.

18 CHAIRMAN MORGAN: That's right.
19 Mr. Hunt --

20 MR. HUNT: That's correct.

21 CHAIRMAN MORGAN: -- regarding the Stark
22 Development Board, I presume that if the Wheeling and

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1 Lake Erie is viable, remains viable, that that in
2 essence takes care of the Neomodal facility and its
3 survival, is that right?

4 MR. HUNT: That's certainly a tremendous
5 start for the process. We also, for our shippers,
6 need to also have reasonable access to the Class 1
7 carriers that we'll be servicing through the Wheeling
8 and Lake Erie. But certainly, that's a great part of
9 the foundation from which we can grow, that's true.

10 CHAIRMAN MORGAN: Let me ask both you,
11 Mr. Wimbish, you, Mr. Downs. I presume that the NIT
12 League agreement that addresses this one to two issue,
13 you don't consider that adequate to take care of your
14 concerns in this regard?

15 MR. DOWNS: No, ma'am. It's basically a
16 three-year stay of execution on rates, and doesn't
17 really address in any meaningful way the quality of
18 service that's provided.

19 CHAIRMAN MORGAN: Now, you have offered
20 clearly some ways that you think will improve your
21 service, and I certainly understand that.

22 MR. DOWNS: If I may interrupt, ma'am --

1 CHAIRMAN MORGAN: Yes.

2 MR. DOWNS: -- maintain the service that
3 we have. Not improve it, but maintain the service
4 that we have.

5 CHAIRMAN MORGAN: Are there other
6 operational issues that you haven't raised with us,
7 that also could be run through trains, or preblocking,
8 or something along those lines that might also be of
9 assistance to you, with respect to service?

10 MR. HUNT: Just to respond for Wyandot on
11 that one, I know that most of the operations we're
12 talking about we'd outlined rather extensively in our
13 brief. One of the particular affected routes to
14 Alliance, Ohio; that most of that commodity already
15 moves in unit train service, and we also stipulated in
16 some of our earlier filings that we would explore
17 other ways to make this particular traffic move
18 fluidly.

19 There had been an objection by the
20 applicants that the requested trackage rights,
21 although they are currently viable, would pose some
22 sort of hardship. And we've said that in the event

1 that there was any -- breachable -- hardship, which
2 they haven't been able to outline, that we would work
3 with them to see what we could do to accommodate those
4 possible operational difficulties or hardships, but we
5 haven't reached a point in negotiations where that
6 issue has even come to the forefront.

7 MR. DOWNS: And for National the situation
8 is similar. We do move these commodities and unit
9 trains, and we are willing to sit down with the
10 railroads, and try to work these things out as best we
11 can.

12 For example, on the map I showed you, you
13 may not recall, is a short stretch of track from Spore
14 to Busyrus. We're the only ones served from that
15 stretch of track. We'd be willing to entertain buying
16 it or leasing it, so that that doesn't become a
17 problem. And the NS already has trackage rights on
18 the line to Crestline, and it would just be a matter
19 of expanding those rights to take our freight.

20 In the BN/SF transaction, the ICC ordered
21 the applicants there to sit down with the shippers
22 that had similar problems, and try to work something

1 out. And that's what I alluded to in the close of my
2 remarks, that that's what needs to be done here.

3 These railroads said early on in this
4 transaction that they would consider the needs of each
5 impacted customer by the loss of single system
6 service. Now, they've done a lot to work with the
7 people with clout, the City of Cleveland, big
8 shippers, but they haven't done much to work with us.
9 And they need a little incentive, and you can give it
10 to them.

11 MR. WIMBISH: If I can just elaborate on
12 that point for one moment -- and I want to make this
13 clear with respect to any negotiations or discussions
14 along the lines of which Mr. Downs is suggesting.

15 As the map clearly shows, we're talking
16 about an entire market area, not just a specific
17 market where we may be affected immediately, but our
18 ability to compete within the region, where our
19 products are currently competitive. And any proposed
20 solution will only focus for a limited duration of
21 time; that focuses on a specific existing piece of
22 business, as opposed to our ability to reach other

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1 markets, which today we can reach in single-line
2 service. That's a critical factor.

3 If that's not addressed, I don't really
4 know that there's anything more that we can do, except
5 to turn to the Board to protect the status quo that
6 we're asking for.

7 MR. DOWNS: Ditto.

8 CHAIRMAN MORGAN: But in terms of
9 discussions, I hear there have been some, but --

10 MR. WIMBISH: There have been some, but
11 they have not reached that level.

12 CHAIRMAN MORGAN: Now, with respect to the
13 Wheeling and Lake Eries, obviously there's been some
14 suggestion that they could play a role in service to
15 you all. How do you respond to that?

16 MR. DOWNS: Well, at Carey, Wheeling and
17 Lake Erie does carry products for National Lime, but
18 to different markets than those that are served from
19 the single-line service that we now get from Conrail.
20 If Wheeling and Lake Erie is gone, there's a
21 constraint on pricing and service that is removed,
22 simply by its existence there. And if it's gone,

1 we're going to have to find other ways and other
2 markets that are now served by the Wheeling and Lake
3 Erie, so we very much support their call for remedy.
4 But it has nothing to do with the single-line service
5 on Conrail, it goes to different markets.

6 MR. HUNT: Just to respond to that, our
7 focus has been on the resolution of the lack trackage
8 rights between Upper Sandusky and Carey, Ohio. We
9 acknowledge that we are a shipper of the Wheeling and
10 Lake Erie, and we pointed out in our briefs as much as
11 65 percent of our rail borne product moves on the
12 Wheeling and Lake Erie.

13 We do not wish to become -- and the reason
14 we want to have access to Norfolk Southern is because
15 we do not wish to become simply captive to a regional
16 carrier, which would be able to serve only the
17 remaining markets that are left.

18 I don't know if you'd recall from the map,
19 but basically our market area would become, without
20 access to the Norfolk Southern post-transaction
21 system, Wheeling and Lake Erie points, almost
22 exclusively.

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1 MR. DOWNS: Once again, ditto.

2 CHAIRMAN MORGAN: Thank you.

3 Vice chairman.

4 MR. HUNT: If I could just -- one other
5 thing I had pointed out as far as the trackage rights,
6 there is an agreement between the applicants, between
7 CSX and Norfolk Southern, and Conrail, that provides
8 for -- and it's Exhibit PP in the operating agreements
9 in the original application.

10 It figures on having Conrail sign to
11 Norfolk -- having Conrail to sign various trackage
12 rights it currently enjoys to Norfolk Southern and CSX
13 respectively, depending on where it was that Norfolk
14 Southern or CSX had granted Conrail trackage rights.

15 This would seem to be one of those
16 instances, where this agreement -- which you can go
17 back, it's a very simple agreement -- would seem to
18 contemplate. There were exceptions in that agreement,
19 but the Carey to Upper Sandusky is not enumerated in
20 that.

21 What I mean, is that in this case that
22 agreement would seem to contemplate that Norfolk

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1 Southern would enjoy trackage rights access from Upper
2 Sandusky to Carey, Ohio, because that was what was
3 intended by this agreement. However, we have not been
4 able to understand why in this particular case we are
5 told that that assignment will not take place. It
6 mystifies us. And we encourage you to ask that
7 question to them as well.

8 CHAIRMAN MORGAN: Thank you. Thank you
9 all very much.

10 MR. WIMBISH: Thank you.

11 CHAIRMAN MORGAN: And that I know,
12 Mr. O'Brien, we will back with you, with the other
13 State of Ohio interests.

14 We have two individuals representing other
15 state governments, Frederick Schranck, representing
16 the Delaware Department of Transportation, and Karen
17 Songhurst, representing the State of Vermont.

18 MR. SCHRANCK: Good morning, Madam
19 Chairman.

20 CHAIRMAN MORGAN: Mr. Schranck. Did I get
21 that right?

22 MR. SCHRANCK: Yes. Yes, you did, ma'am,

1 and I understand and appreciate the difficulty in
2 spelling a name like that. I tell people when I spell
3 it to them, it's just like it sounds, and there's
4 usually a stunned silence on the other line at that
5 time.

6 CHAIRMAN MORGAN: Well, and since I've
7 tried to pronounce about 70 names correctly --

8 MR. SCHRANCK: I understand.

9 Good morning as well, Vice Chairman Owen.

10 My name is Frederick H. Schranck. I am a
11 deputy attorney general in the Delaware Department of
12 Justice. With me today is Adam McBride, the executive
13 director of the Diamond State Port Corporation, which
14 is a wholly state-owned corporation. It is the port
15 of Wilmington.

16 Thank you, again, for the opportunity to
17 participate in these proceedings. The state as a
18 whole is gravely concerned about the economic
19 well-being of the state and its Port of Wilmington, as
20 a direct result of the proposed Conrail acquisition
21 scheme developed by the two applicants.

22 We believe the state and the port are

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1 being placed at a substantial disadvantage, however,
2 and is in serious jeopardy as a result of the pending
3 application.

4 We offer it for your consideration, and we
5 restate our request for conditions, that the shared
6 access area be expanded from the Pennsylvania and
7 Delaware state line a few more miles, down to the Port
8 of Wilmington.

9 The shared access area should include the
10 rail access needs and services to the businesses
11 located at the port, and I can tell you that our
12 position is joined by Senator Roth, Senator Biden, and
13 our sole congressional representative, Congressman
14 Castle.

15 You may recall that the Port of Wilmington
16 was served by three railroads as recently as the
17 1970s. However, with the advent of Conrail in 1976,
18 the port's railroad service was reduced to one direct
19 carrier, with nominal switching rights provided to a
20 second.

21 Receiving Class 1 service from only one
22 railroad, though economically unhealthy for the port

1 and its shippers, was basically a last attempt to
2 maintain rail service and create an economic
3 foundation for the railroad. So in this time, of
4 course, similar railroad service reductions and line
5 abandonments were occurring at or near the other ports
6 of Philadelphia, New Jersey, New York, along the
7 eastern seaboard. With the favored economic
8 environment and government support, Conrail grew and
9 prospered.

10 The current merchant proposal makes it
11 abundantly clear that railroads have progressed in the
12 northeast from a publicly-sponsored industry on life
13 support, to one that provides valuable freight service
14 to the areas and facilities it serves.

15 Our concern is the proposed new
16 arrangement of rail services following this
17 transaction does not restore the competitive
18 environment to the Port of Wilmington that existed
19 historically, prior to the creation of Conrail. As a
20 matter of fact, the proposal makes things worse.

21 The proposal maintains, restores, and
22 enhances multiple railroad service to every other

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1 major seaport along the eastern seaboard, except the
2 Port of Wilmington. This places the state and the
3 port at a severe disadvantage. Our request, again, is
4 that we receive the same access rights several of our
5 neighboring states and ports will receive to inclusion
6 in the Philadelphia area, declared shared access area.

7 This issue is not merely hypothetical. We
8 have at least one significant port shipper,
9 approximately 6,000 cars per year, located along
10 Conrail lines that are proposed to become CSX lines.
11 They will be orphaned, as they will no longer have
12 economic access to the port. The interswitching fee
13 as of this point is predicted to be around \$350 for
14 railcar, which doesn't work.

15 We've raised this issues with the parties
16 to a merger, and they have indicated no willingness to
17 grant the state's request. Perhaps they fail to
18 recognize the value of protecting competitive market
19 for transportation at our port, and the value of the
20 port to the state's economy.

21 Let me tell you why it's important for the
22 state. The Port Corporation was created in August of

1 1995, and this acquisition occurred because the City
2 of Wilmington was having trouble keeping the port
3 going, and the state recognized the vitality of the
4 port and its related facilities benefits the entire
5 state.

6 The state's invested over \$30 million in
7 on port investments since the acquisition. It's
8 currently considering another \$45 million of expansion
9 improvements, several of which relate to rail service.

10 Our port warehouse cargo has grown in
11 Fiscal '97. It handles 4.5 million tons of cargo,
12 3 percent more than the prior year. This increase in
13 investment will be jeopardized if we can't keep on
14 equal and competitive footing as our neighboring local
15 ports nearby.

16 We currently handle several
17 railroad-friendly commodities, including automobiles,
18 minerals, and steel. We're well positioned to handle
19 intermodal containers in larger numbers than we do
20 already. Given the state's significant investment, we
21 seek your support to maintain a level playing field
22 with our other ports along the eastern seaboard.

1 It's only through this port we feel we can
2 bring the railroad together and create an environment
3 in the best interest of all. Thank you very much for
4 your time.

5 CHAIRMAN MORGAN: Thank you.

6 Ms. Songhurst, do you want to go now?

7 MS. SONGHURST: Yes, I'm going --

8 CHAIRMAN MORGAN: Excuse me. Did you want
9 to make any comments?

10 MR. ADAM: I have nothing further to add.
11 Thank you, Ms. Chairman.

12 CHAIRMAN MORGAN: Okay. Excuse me.

13 MS. SONGHURST: I'm actually going to
14 choose to speak from here. Thank you.

15 CHAIRMAN MORGAN: That's no problem.

16 MS. SONGHURST: Thank you for the
17 opportunity to speak before you, Chairman Morgan, Vice
18 Chairman Owen.

19 My name is Karen Songhurst. I'm the rail
20 program administrator for the State of Vermont's
21 Agency of Transportation. I speak today to stress the
22 State of Vermont's concerns about the impact of the

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1 primary applicants' proposed transaction on railroad
2 freight and passenger service to the State of Vermont.
3 In particular, it's impact to the New England Central
4 Railroad, a regional shortline railroad, owned by
5 Railtex, that operates service from the North-South
6 mainline of the -- central Vermont, between New
7 London, Connecticut, and east Alberg, Vermont, on the
8 Canadian border.

9 The segment of New England Central between
10 Palmer, Mass and Saint Albans, Vermont is the route of
11 Amtrak's Vermonter passenger train, which is one of
12 two state-supported passenger services to Vermont
13 points.

14 The heart of Vermont's concern is
15 projected revenue loss to the New England Central, and
16 the effect of that revenue loss on their continued
17 viability. In their own application to control
18 Conrail, CSX and Norfolk Southern admit that New
19 England Central would suffer approximately
20 \$1.6 million annual revenue losses from traffic
21 diversions, mainly to CSX, which will acquire
22 Conrail's former Boston and Albany line.

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1 In his verified statement, New England
2 Central's general manager estimates the annual revenue
3 losses would be as much as \$8 million, but even if the
4 more conservative estimate of the primary applicants
5 is accurate, the consequences for the New England
6 Central are still dire, when measured against their
7 1997 estimated gross revenues of \$16.8 million.

8 To mitigate these adverse impacts, New
9 England Central in its responsive application has
10 proposed that it be awarded trackage rights over
11 certain former Conrail lines between Palmer,
12 Massachusetts, and points of New York State. The
13 State of Vermont supports New England Central's
14 responsive application.

15 As the State of Vermont's representative
16 here today, I wish to stress to the Board that the
17 issues raised by the New England responsive
18 application transcend the immediate interest of Union
19 Central and its owner's employees.

20 Briefly, the broader public interest
21 concerns are these, and there are four.

22 First, that the erosion of New England

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1 Central's revenue base will compromise its ability to
2 make available to Amtrak at reasonable costs, the
3 60-mile per hour track between Palmer, Mass and Saint
4 Albans, Vermont; that it's necessary to continue the
5 operation of Amtrak's Vermonter passenger train
6 service.

7 Second, that the demise of New England
8 Central or significant deterioration of its service
9 would deprive Vermont's other shortline railroads of
10 interchange access at Bellis Falls, Montpelier
11 junction, and Burlington, Vermont.

12 Third, that the demise of New England
13 Central or significant deterioration of its service
14 would increase highway maintenance costs to the State
15 of Vermont, should more traffic freight move over to
16 the interstates, between Canada and southern New
17 England, along the aging Vermont highways of
18 Interstate 89 and 91, that parallel much of their
19 route.

20 And fourth, that the competitive position
21 of Vermont businesses would erode, should they lose
22 access to the quality rail freight service presently

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1 available directly from New England Service, or
2 through shortline connections to interchange points on
3 the New England Central.

4 In conclusion, also Conrail tracks do not
5 directly enter the State of Vermont. The fate of
6 Conrail nonetheless of great concern to Vermont's
7 usage of rail freight and passenger services.

8 On behalf of the people of the State of
9 Vermont, I urge the members of the Board to carefully
10 scrutinize the impact of the primary applicants'
11 proposed transaction on New England Central, including
12 the broader public interest that are intertwined with
13 the state of the railroad.

14 To mitigate the negative consequences of
15 the primary applicants' proposed transaction on these
16 important public interests, the State of Vermont
17 submits that the Board should grant the conditions
18 requested in New England Central's responsive
19 application, and we would also request that continued
20 oversight of the Amtrak situation also be considered
21 as part of this proceeding. Thank you.

22 CHAIRMAN MORGAN: Let me ask you,

1 Ms. Songhurst, you've endorsed certain conditions that
2 would presumably ensure the viability of the New
3 England Central. But the key to the State of
4 Vermont's position is that whatever happens, we need
5 to make sure, from where you are, that we ensure the
6 viability of that --

7 MS. SONGHURST: Absolutely.

8 CHAIRMAN MORGAN: -- however it's done.

9 MS. SONGHURST: Absolutely. Thank you.

10 CHAIRMAN MORGAN: Because clearly, the
11 railroad has various connections, and there are
12 various other --

13 MS. SONGHURST: Yes, they have.

14 CHAIRMAN MORGAN: -- agreements floating
15 around. And I presume that your bottom line is
16 whatever works is where you want to be.

17 MS. SONGHURST: Pretty much, yes. As I'm
18 sure the Board is aware, in a previous situation some
19 years ago before your predecessor, the State of
20 Vermont and Amtrack had to file condemnation
21 proceeding, in order to maintain service at that time,
22 both for freight and passenger service. We would not

1 like to have to do that again. Thank you.

2 CHAIRMAN MORGAN: Thank you.

3 Mr. Schranck, you have requested that the
4 Port of Wilmington be included in the shared assets
5 area, south New Jersey shared assets area.

6 If the Board were not inclined to do that,
7 is there any other alternative that you would care to
8 suggest to us that would provide the kind of
9 competitive alternative that you feel the port needs?

10 MR. SCHRANCK: If we could get the
11 interswitching fee that was shown on the screen
12 earlier, that might make things better. There is an
13 interswitching opportunity there, but the rate is so
14 far beyond reason, that we can't go that route.

15 It is a bit daunting for the state to
16 recognize that this is a port that once had three
17 railroads serving it. Our government monopoly came
18 in, created one, and is now -- unless something else
19 happens -- we'll have a private monopoly serving that
20 port, and that's what's not acceptable to the state.

21 CHAIRMAN MORGAN: So that switching
22 certainly is a core issue for you.

1 MR. SCHRANCK: Yes, it is.

2 CHAIRMAN MORGAN: Question?

3 VICE CHAIRMAN OWEN: What is the draft of
4 your port there? What is the depth of the port?

5 MR. SCHRANCK: Currently?

6 VICE CHAIRMAN OWEN: Yes.

7 MR. SCHRANCK: Thirty-eight feet, Vice
8 Chairman Owen. The Delaware River at that point is a
9 channel depth of 40 feet. So, with the exception of
10 ships that don't go to our port, the tankers, that are
11 lightered off Bigstone Beach, and then brought up to
12 the refineries north of the Port of Wilmington, and
13 the refineries south, just about every other ship that
14 comes up the Delaware Bay and River can come to the
15 Port of Wilmington.

16 There has also been a longstanding plan
17 for the Port of Wilmington to change the port's
18 primary facilities from the Christina River, at the
19 mouth of the Delaware, to the Delaware River itself,
20 which will then make the port have the same depth
21 abilities for handling any ship as any other port on
22 the Delaware River and Bay.

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1 MR. ADAM: If I might add to that, the
2 Corps of Engineers currently has plans to dredge the
3 main channel to 45 feet, and the private sponsor share
4 of that is being provided by the States of
5 Pennsylvania and New Jersey. And Delaware is
6 currently considering its share as well. So there is
7 a substantial advance looming -- or improvement in the
8 infrastructure and water depths available at our port
9 facilities.

10 VICE CHAIRMAN OWEN: I notice some of the
11 ports are losing market share, due to the depth. And
12 so, I was just wondering what type impact that would
13 have upon your port there. And I wasn't aware of --

14 MR. ADAM: That has not been the case to
15 the ports in the Delaware River, volumes and ship
16 calls in the Delaware River, and in particular at the
17 Port of Wilmington. They have been increasing in
18 recent years.

19 VICE CHAIRMAN OWEN: Thank you. No other
20 questions.

21 CHAIRMAN MORGAN: Thank you all very much.

22 ALL: Thank you very much.

1 CHAIRMAN MORGAN: I think what I'd like to
2 do now is take a break to about 1:20 p.m., and then
3 we'll get back and go for some time. And then maybe
4 we'll take another quick break this afternoon. So
5 back at 1:20.

6 (Whereupon, the foregoing matter went off
7 the record at 12:51 p.m until 1:35 p.m.)

8 CHAIRMAN MORGAN: Okay. Let's get back to
9 it here. The next panel is environmental and safety
10 issues. Michael Loftus, you are representing the Four
11 City Consortium. We also should have Fred Ausbaugh,
12 representing Wellington Ohio Village Council, William
13 Yates. You are William Yates, okay? Then I guess I
14 am missing Fred Ausbaugh. Is he around? Then Kenneth
15 Siegel representing the American Trucking
16 Associations.

17 What we'll do then is we'll get started
18 with you, Mr. Loftus. Then when Mr. Ausbaugh comes,
19 he can join the panel and we'll go from there. Mr.
20 Loftus?

21 MR. LOFTUS: Good afternoon, Chairman
22 Morgan, Vice Chairman Owen. I am Michael Loftus. I

1 am being assisted by Peter Foal of my office. I would
2 also like to mention that Michael Survey, the director
3 of planning and development of the City of Gary and
4 Justin Murphy, the chief of staff of the Four City
5 Consortium are here in the hearing room.

6 The cities of East Chicago, Hammon, Gary,
7 and Whiting, Indiana are located just east of Chicago
8 at the southern tip of Lake Michigan. We are here
9 today because of substantial adverse impacts that the
10 proposed transaction would have on the Four Cities
11 region and because efforts to negotiate with the
12 applicants were unsuccessful.

13 Although the final EIS recommends some
14 steps to mitigate impacts on the Four Cities, those
15 steps are inadequate to address the principal harms.
16 As a result, we ask the Board to go beyond the
17 recommendations in the final EIS.

18 The Four Cities are criss-crossed by
19 numerous rail lines in a very heavily developed area.
20 Combined, the Four Cities have a total of 243 at grade
21 rail highway crossings. CSX, NS and Conrail alone run
22 more than 150 trains per day through the area. Total

1 daily vehicle crossings of the applicants rail lines
2 exceed 450,000 a day.

3 The effect on the Four Cities of all this
4 rail traffic is tremendous. Indiana has the fifth
5 highest incidence in the nation of fatalities from
6 railroad crossing accidents. Just since this case was
7 filed, there have been three fatalities in the Four
8 Cities due to crossing accidents.

9 Major delays of rail crossings are so
10 constant and severe that thousands of vehicles every
11 day ignore and run around gates at area crossings.
12 School children have been observed on repeated
13 occasions crawling through stopped trains. Train
14 delays are a constant problem for the Four Cities in
15 terms of their ability to provide adequate fire,
16 police, and emergency services.

17 In short, the impacts of existing railroad
18 operations in the Four Cities are already extremely
19 serious. As a result, any incremental impacts from
20 the proposed transaction are critical.

21 The Four Cities filings describe
22 significant adverse incremental impacts in several

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1 areas, including safety, vehicle delays, environmental
2 justice, air emissions, and socio-economic quality of
3 life. Because of time constraints, we will focus in
4 this argument only on the most critical concerns.

5 This slide shows the principal rail lines
6 running through the central portions of the Four
7 Cities. There are two areas of primary concern. The
8 first is the Baltimore and Ohio Chicago Terminal or
9 BOCT line running between Pine Junction and Calumet
10 Park. This line runs through the heart of the
11 downtown areas of East Chicago and Hammond. It has 20
12 at grade highway crossings in those downtown areas.

13 The second area is the former Pennsylvania
14 Railroad line from Hobart to Clarke Junction. That
15 has been out of service for 10 years. The applicants
16 propose to reinstate this line and reactivate 23 at
17 grade crossings. The Four Cities have calculated that
18 vehicle crossing delay time would increase by
19 approximately 150,000 hours on an annual basis,
20 causing a variety of significant adverse impacts.

21 To address these adverse impacts while
22 still allowing projected traffic to move through the

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1 area, the Four Cities developed and submitted a
2 detailed alternate routing plan containing two parts.
3 This plan has been supported by the Indiana Department
4 of Transportation, Senators Lugar and Coates,
5 Congressman Visclosky, who appeared here earlier
6 today, and numerous other state and local elected
7 officials.

8 This slide shows part one of the plan. It
9 would address increased rail traffic on the BOCT line
10 by shifting traffic onto a parallel route consisting
11 of the Conrail Porter branch combined with an elevated
12 IHB line that has only three at grade crossings.

13 The final EIS rejected this part of the
14 Four Cities proposal for several reasons, each of
15 which we believe is flawed. First, SEA accepted and
16 repeatedly relied upon new traffic data shown in red
17 that CSX submitted within the last few weeks. Up to
18 that point, all analyses were based on an increase of
19 5.7 trains from 27.6 to 33.3 trains per day.

20 Although the Board denied a motion to
21 strike these data in part on the grounds that they
22 were not significant to SEA's analysis, the final EIS

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1 repeatedly relies on these new numbers. Accordingly,
2 the Four Cities renews its objections to these traffic
3 figures.

4 Second, SEA accepts claims by CSX that
5 train speeds on the BOCT line will be significantly
6 increased. However, in this type of congested locale
7 with numerous rail lines crossing each other,
8 significant improvement to train speeds is highly
9 improbable.

10 Although SEA estimates around the gates
11 incidents on the BOCT line at 10,000 a day, and
12 acknowledges concerns about children climbing through
13 trains, it dismisses these safety concerns as pre-
14 existing problems. On the other hand, SEA does
15 acknowledge the potential for more delays. Where
16 human lives are at stake, as they clearly are here,
17 the Board should err on the side of reducing risks
18 rather than increasing them.

19 Although both SEA and CSX view using the
20 elevated IHB line as an alternative to the BOCT line
21 as a good idea, this option is rejected because it
22 would require funding and would take time to complete.

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1 The cost of track rehabilitation and connection is
2 approximately \$4.3 million according to CSX, is not
3 large.

4 By comparison, you heard earlier today CSX
5 and Norfolk Southern will be spending \$44 million for
6 construction work to reroute trains in the Cleveland
7 area. As far as timing is concerned, the Four Cities
8 is not suggesting it needs to be implemented day one
9 of the merger.

10 This slide illustrates part two of the
11 Four Cities alternative routing plan. As it reflects,
12 this inactive line is immediately adjacent to
13 Roosevelt Manor, a low income housing project
14 currently being developed by the City of Gary.
15 Restoring this line to service would also make more
16 difficult runway expansion at the Gary Chicago
17 Airport. The Four Cities has estimated the cost of
18 rehabilitating this line which could be avoided at
19 more than \$13 million. That's for just five trains a
20 day.

21 The Four Cities plan would avoid
22 reinstatement of this line by routing the five trains

1 over existing lines. These trains could move over NS
2 from Hobart to either Van Loon and then over the EJ&E
3 to Pine Junction or to Osborn and then north over the
4 IHB.

5 In the final EIS, SEA gave several reasons
6 for rejecting this part of the Four Cities plan.
7 First, they suggest the routing trains over the NS and
8 EJ&E might add to transit times. The Four Cities is
9 not aware of any data to support this conclusion.
10 Adding three to four miles to an 800 mile haul from
11 the east coast to Chicago would not even be noticed.

12 Second, SEA suggests that routing the five
13 trains a day over the NS line from Hobart to Van Loon
14 would not relieve congestion because that is a single
15 track line. This line however is scheduled for a
16 reduction from 26 trains to 11. The alternative
17 routing plan would still allow a 10 train per day
18 reduction.

19 SEA suggests that using the EJ connection
20 to the CSX lake front would involve unacceptable
21 safety risks because of the need for stopping and
22 backing of trains. In fact, these types of maneuvers

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1 are frequently undertaken by railroads and can be
2 accomplished safely. NS plans to serve the Indiana
3 Sugar Works in Gary in exactly this fashion.

4 SEA also concludes that the Pennsylvania
5 Railroad line segment did not meet the environmental
6 justice thresholds. This is simply wrong. As the
7 draft EIS shows, this line segment goes through an
8 area that has a 98.7 percent minority population.
9 This failure to consider the significant environmental
10 justice impacts alone is enough to question the
11 conclusions made on that line.

12 In short, the principal reasons given in
13 the final EIS for rejecting an alternative routing
14 plan are not sound. The final EIS uncritically
15 accepts virtually every argument and representation
16 the applicants have made concerning the Four Cities
17 situation.

18 Unfortunately, it does so without imposing
19 any accountability on CSX if those representations are
20 not fulfilled. If the experience with the UP/SP
21 merger teaches anything, it is that applicant
22 statements to the effect of "trust us, everything will

1 be all right" can not be accepted without very careful
2 scrutiny.

3 The final EIS does recognize that the Four
4 Cities have unique concerns and does recommend several
5 mitigation measures. However, as Congressman
6 Visclosky pointed out, these measures are not specific
7 enough to assure any practical effects.

8 A moment further, if you would.

9 CHAIRMAN MORGAN: That's no problem.

10 MR. LOFTUS: The Four Cities submits that
11 the alternative routing plan is reasonable, practical,
12 and well-justified on the basis of demonstrated
13 incremental adverse impacts and should be adopted by
14 the Board.

15 The Four Cities suggests that if the Board
16 is unwilling to adopt the alternative routing plan, it
17 should at a minimum in addition to the measures
18 recommended in the final EIS, hold CSX to its last
19 minute projections of rail traffic over the BOCT line.
20 Namely, no more than 31.7 trains a day. It should
21 prohibit reactivation of the Pennsylvania Railroad
22 line. Thank you very much.

1 CHAIRMAN MORGAN: Thank you, Mr. Loftus.
2 Mr. Yates?

3 MR. YATES: Madam Chairman, Mr. Vice
4 Chairman, good afternoon. The Tri-State
5 Transportation Campaign represents a coalition of 13
6 transit, environmental, and planning groups. There
7 are tens of thousands of members. Tri-State seeks to
8 improve freight movement efficiency by advocating for
9 more shipping options for firms located in the heavily
10 truck-dependent New York City region.

11 The most serious shortcoming of the
12 proposed Conrail acquisition plan is that the
13 preservation of one carrier service east of the Hudson
14 River will create a competitive imbalance between down
15 state New York and the Northern New Jersey shared
16 assets area. Tri-State has proposed a series of
17 conditions that would correct this imbalance through
18 the restoration of efficient car float service across
19 the harbor and the establishment of overhead trackage
20 rates for Norfolk Southern east of the Hudson River.

21 Twenty four members of the Congress have
22 petitioned the Surface Transportation Board to require

1 similar conditions. Their request has been endorsed
2 by both the state of New York and the city of New
3 York.

4 Our request for conditions is not a matter
5 of simply trying to gain for New York the benefits
6 that other regions stand to receive under the
7 acquisition proposal. Rather, it is recognition that
8 unless balanced competition is established for the
9 entire New York-New Jersey region, the price that
10 downstate New York has paid during several decades of
11 rail monopoly only stands to worsen.

12 There are numerous compelling reasons why
13 downstate New York needs and can support increased
14 rail freight service. The area in question is home to
15 12.5 million people and a freight market of at least
16 140 million tons per year. Only 3 percent of this
17 freight moves by rail, far less than the 40 percent
18 average for cities nationwide.

19 The highway congestion caused by this over
20 reliance on trucking has driven up shipping costs and
21 sent businesses packing. Air quality has suffered to
22 the point that the region is now a severe to non-

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1 attainment area for ozone and is about to fall out of
2 compliance for particulate matter as well. Asthma
3 rates are among the highest in the nation in New York
4 City.

5 Meanwhile, a huge freight market lies
6 waiting. Mercer Management conducted a study for the
7 city of New York in 1997 which identified 97 million
8 tons of cargo that can be diverted from our highways
9 to rail. The same study found that a renovated car
10 float service would prevent as many as 550,000 truck
11 trips a year. The city even as we speak is moving to
12 make serious rail freight investments.

13 The cost of not correcting the competitive
14 imbalance that the acquisition will impose are
15 staggering. The environmental impact statement for
16 the current proposal found that an additional 1,800
17 trucks a day will serve Northern New Jersey
18 distribution facilities as a result of increased
19 intramodal activity by the shared assets operator.
20 Most of these trucks will end up on New York highways
21 exacerbating existing conditions.

22 Requiring two carrier service for both

1 sides of the Hudson is the only way to ensure balanced
2 competition and avoid the harmful impacts that the
3 current proposal would cost.

4 We encourage the Board to grant the
5 conditions that Tri-State has requested. Should the
6 Board be disinclined to require two carrier service,
7 we request that it take measures to prevent any
8 increase in Trans-Hudson River truck traffic that may
9 result from the merger. At a minimum, Norfolk
10 Southern and CSX should be required -- if I may finish
11 this sentence, should be required to file annually
12 during a five-year oversight period a truck impact
13 report.

14 Should there be a significant growth in
15 truck traffic at the crossings, this growth would
16 serve as grounds to reconsider the terms of the
17 acquisition agreement and alter it as needed. Thank
18 you.

19 CHAIRMAN MORGAN: Thank you. I think we
20 now have Mr. Ausbaugh, who has joined us. Ausbaugh?

21 MR. AUSBAUGH: Ausbaugh. That's quite all
22 right. It's been a lifetime like that.

1 CHAIRMAN MORGAN: Representing the
2 Wellington, Ohio Village Council.

3 MR. AUSBAUGH: Thank you, Madam Chairman.
4 I would ask to enter into the record these brochures
5 that emphasize the statement that we are making today,
6 if I may.

7 Madam Chairman, Surface Transportation
8 Board members, my name is Fred Ausbaugh. I am a
9 second term councilman to the Village of Wellington,
10 Ohio. I am also a 34-year resident of the Village of
11 Wellington. With me are Fire Chief Robert Walker,
12 Ambulance Director Barb Livey, Mayor Barb O'Keefe, and
13 Bill Brumfield, business owner, all lifelong residents
14 of Wellington.

15 We rise today before the Surface
16 Transportation Board to speak in opposition of the
17 proposed CSX-Norfolk Southern acquisition of Conrail
18 line number CO61, also known as the Berea-Willard line
19 through Southern Lorraine County and Village of
20 Wellington.

21 This line not only bisects the village on
22 a diagonal, but also the surrounding five townships to

1 make up the 125 square mile Wellington fire district
2 and South Lorraine County ambulance district,
3 rendering both emergency systems helpless at times
4 when all the railroad crossings within the village are
5 blocked. Wellington has two state routes crossing the
6 Conrail line at a perpendicular angle within 1,500
7 feet of each other.

8 A total of just under 17,000 vehicles per
9 day cross the Conrail line within the village. These
10 numbers include dozens of school buses as Wellington's
11 exemptive school district buildings are located on
12 both sides of the railroad tracks.

13 In addition, rail car switching occurs on
14 a regular basis, which severely adds to the delay time
15 of vehicle flow over the crossing. It is being
16 suggested by the STB section of environmental analysis
17 that an increase in train speed would reduce the time
18 of delay at the crossings. However, just 1,000 feet
19 west of the western-most road crossing lies what is
20 called a frog, located where Conrail crosses the
21 Wheeling and Lake Erie. The speed here is limited and
22 this is the site of a past derailment.

1 The concerns of the South Lorraine County
2 ambulance district are that in the world of emergency
3 medical service, time is an essential quality to the
4 treatment and survival of the ill and injured. Time
5 makes a difference in life or death. We are a rural
6 area, already have to deal with long transport times.
7 Areas of our district are at least 30 minutes from the
8 nearest hospital.

9 The philosophy of on-scene treatment has
10 changed. Patients are moved as quickly as possible by
11 the ambulance squad and most procedures are performed
12 en route to the hospital. With 19 railroad crossings
13 in our service area and a predicted 400 percent
14 increase in train traffic, 400 percent, we are
15 concerned as to a rise in the number of train versus
16 vehicle or train versus pedestrian accidents. We may
17 not even be able to get to the injured due to multiple
18 crossings being blocked simultaneously.

19 When all railroad crossings within the
20 village limits are blocked, the downtown area is
21 virtually gridlocked. Our squad headquarters are
22 located downtown. The concerns of the Wellington fire

1 district are that the proposed increase of rail
2 traffic through the district service area will further
3 delay our volunteer personnel who are responding to
4 their assigned stations. This in turn will delay
5 response of apparatus to a fire or emergency incident.

6 With the added delay, this will increase
7 our response time to our taxpayers and those injured
8 while traveling through our district. Currently there
9 are no provisions for our personnel to select an
10 alternative route to any incident when the railroad
11 crossings are blocked. It is absolutely imperative
12 that emergency response vehicles and personnel are not
13 delayed in their efforts to save lives and property
14 within the Wellington fire district.

15 Hazardous materials are a concern. The
16 rise in numbers from 16,000 to 51,000 cars per year
17 will inherently increase the risk of hazardous
18 material incidents. It is important to note that our
19 local industries are required to report and make our
20 communities aware of hazardous materials that they
21 have on-site. However, the railroad does not make a
22 report to the local emergency responders.

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1 Therefore, it is important, foremost for
2 safety reasons and for unrealistic traffic problems,
3 that we beseech the Surface Transportation Board
4 members to require that the Conrail and CSX Norfolk
5 Southern Corporations commit their time and resources
6 to affect the following requests which are paramount
7 to the quality of life for the people of Wellington
8 and the surrounding area, as well as the thousands of
9 people who travel through Wellington.

10 Number one, create a highway railroad
11 grade separation where feasible within the municipal
12 boundaries of the Village of Wellington and at no cost
13 to the village. Number two, address and fund those
14 solutions deemed necessary to alleviate the concerns
15 of the safety forces of Wellington and the surrounding
16 five townships.

17 Madam Chairman, we are speaking on safety
18 and environmental issues. The fire chief is here if
19 anybody would have any questions. Thank you very
20 much.

21 CHAIRMAN MORGAN: Thank you.

22 MR. BRUMFIELD: Would you request 30

1 seconds for me?

2 MR. AUSBAUGH: This is Mr. Brumfield.
3 He's associated with our plight here. He is
4 requesting 30 minutes if it's --

5 MR. BRUMFIELD: Seconds.

6 MR. AUSBAUGH: Well, we had to have a
7 laugh somewhere along the line.

8 CHAIRMAN MORGAN: We have had a lot of
9 them around here. That's quite all right. Thirty
10 seconds.

11 MR. BRUMFIELD: I can be very brief,
12 rhetorical but brief. More rail traffic on fewer
13 tracks certainly means more profits to a railroad.
14 That's good. Just as certainly it will take a toll on
15 downtown Wellington commerce and profoundly change the
16 character of an 180 year old American small town.

17 Grade separations are clearly needed, yet
18 CSX studies show all Wellington crossings as no
19 problem. My question is simply this: Does no problem
20 signify cynicism, indifference, or concern for who
21 pays for the separations. Thank you.

22 CHAIRMAN MORGAN: Thank you. That was

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1 pretty good in 30 seconds.

2 Mr. Siegel?

3 MR. SIEGEL: Good afternoon. I want to
4 thank the Board and Madam Chairman, Mr. Vice Chairman,
5 for giving us an opportunity to present what we
6 consider to be very important issues, two very
7 important safety issues, one which has been addressed
8 by several of the parties here already today. That is
9 the issue of highway grade crossings. Another which
10 I think that some of the parties who were addressing
11 the safety issues have not realized.

12 The applicants have stated that one of the
13 primary benefits that the public will receive from the
14 granting of their request is that one million trucks
15 will be diverted from the highways to rail traffic.
16 Just taking a quick calculation on what Tri-State has
17 estimated will be the increase in the New Jersey-New
18 York traffic of 1,800 vehicles a day. That is over a
19 million vehicles already being just added to that
20 million highway vehicles being added to just that
21 small segment, that one area, a very congested area.

22 What our concern is basically is the fact

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1 that these trucks will not be diverted, assuming for
2 purposes of the argument, that that proposed diversion
3 will actually occur, that these trucks will not be
4 diverted from highways. They will be diverted from
5 interstate highways to local congested highways
6 because the goods, the trailers, the chassis, still
7 have to get from the shippers from the receivers to
8 the intermodal yards before they can be put on the
9 railroads.

10 Something which I believe most of these
11 parties haven't realized yet, including the
12 congressmen that addressed some of these safety issues
13 this morning, is the fact that the railroads and the
14 equipment that they use, that they give to the motor
15 carriers, is not subject to the Federal Highway
16 Administration's safety rules until it is actually on
17 the highway.

18 To use a simile here, it is like when you
19 go to rent a motor car, the certain situation is when
20 you go to rent a car from Avis and Avis made you
21 certify that that car met all the safety requirements
22 of the state, all the NTSA requirements, and that you

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1 were responsible for any defects in that car once you
2 left that lot. That is what motor carriers currently
3 face. Why we think this concern is great now, I mean
4 this is historic. This is the way it is now. There
5 is no question about that.

6 Why we are concerned about this more is
7 you are now talking about taking a million trucks
8 which are examined by motor carriers before they are
9 put out on the highway because they are motor carrier
10 vehicles. Changing those million motor carrier trucks
11 vehicles over to a million railroad controlled
12 vehicles, chassis, trailers, giving them the control
13 of entities who are not subject to the current Federal
14 Highway Administration rules, who do not give motor
15 carriers opportunities or facilities to inspect or
16 repair these vehicles when the motor carrier goes to
17 pick them up at an intermodal yard.

18 I don't know about anyone else, but I know
19 if you are talking about 1,800 trucks just going from
20 New York to New Jersey, which will now not be subject
21 to inspection prior to going out on the highways, that
22 alone that million trucks a year would raise concern

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1 with me. The condition we would request is simply
2 what we consider a common sense condition. That is,
3 that the railroads be required to ensure that to
4 guarantee that these vehicles that they are putting on
5 the highways, that they are tending to motor carriers,
6 meet all the safety requirements before they are put
7 on the highway.

8 CHAIRMAN MORGAN: Thank you.

9 Why don't I start with you, Mr. Siegel.
10 You don't have to stand up again. Let me make sure I
11 understand. You are concerned about the safety of
12 intermodal equipment before it gets on the highway.
13 Is that?

14 MR. SIEGEL: Well, we're concerned about
15 it when it's on the highway. We like it to be safe,
16 yes.

17 CHAIRMAN MORGAN: When it's on the highway
18 it's being regulated by someone.

19 MR. SIEGEL: Right. The problem is the
20 fact that as I said I'm a driver, owner-operator, I go
21 to pick up this chassis with a container on it or a
22 trailer that is owned by the railroads or by railroad

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1 affiliate. That I have never had the opportunity to
2 inspect that vehicle, to repair that vehicle. I mean
3 you do a walkaround like you do at Avis. I mean you
4 walk around, oh, there's no dents on the side, okay.
5 But I don't get the opportunity to check the brakes.
6 I don't get an opportunity to check the integrity of
7 the vehicle itself.

8 CHAIRMAN MORGAN: But someone is checking
9 that. It's just not you, right?

10 MR. SIEGEL: No. No one is checking that.

11 CHAIRMAN MORGAN: No one is checking it.

12 MR. SIEGEL: At least no one is required
13 by law to check that. I am not going to say that no
14 railroads ever check that. Some railyards are very
15 good with their equipment, especially where depending
16 upon the subcontractor they have. Other railyards,
17 no, the tires come off bald and 10 miles or 15 miles
18 down the road that tire explodes because it was a bad
19 retread. Chassis have no brakes on them. Chassis
20 have defects in their structure, which the driver has
21 no ability to detect. That is what our concern is.

22 We would like the railroads to have a

1 requirement that they must inspect that equipment and
2 they must ensure, they must state on their interchange
3 agreement. I believe we attached copies of the
4 interchange agreement to our initial comments and
5 actually on the interchange agreement the motor
6 carrier driver is required to guarantee that he has
7 inspected the vehicle and it meets all the safety
8 requirements, even though he is not actually given the
9 opportunity, the equipment or the facilities to make
10 such an inspection.

11 We are not asking not to be responsible
12 for that equipment once it's on the highway, but we
13 would like to know as when you rent a car, you would
14 like to know that those brakes have been checked by
15 Avis and that those brakes are good. That that tire
16 tread is not about to fly off. That someone has
17 inspected that tire tread and that it is a line
18 vehicle and it's not going to be bouncing all over the
19 highway. That is even more important when you are
20 talking about an 80,000 pound truck.

21 CHAIRMAN MORGAN: Well have you brought
22 this to the attention of DOT in the context of safety?

1 MR. SIEGEL: Yes.

2 CHAIRMAN MORGAN: Has the issue been
3 raised with Federal Highway or someone else?

4 MR. SIEGEL: Yes.

5 CHAIRMAN MORGAN: What did they do about
6 it?

7 MR. SIEGEL: Last August they sent a
8 letter back saying that they would -- last August,
9 yes, last August, that they would initiate a rule
10 making. That has not happened. However, as you have
11 indicated in recently instituting your own rule making
12 into whether or not you should consider safety when
13 considering a transaction before you, we believe this
14 is an issue the same as the highway grade crossing
15 issues and other rail safety issues that you should
16 also consider in approving a transaction such as this.

17 If a major proponent, excuse, whatever you
18 want to call it, of their transaction is these million
19 trucks, then I think that those million trucks become
20 your responsibility if you are approving the
21 transaction that's going to turn them from highway
22 trucks to rail trucks.

1 CHAIRMAN MORGAN: So you want us to take
2 action in this matter with respect to this particular
3 transaction. Then you are pursuing this as a general
4 matter before DOT. Is that accurate?

5 MR. SIEGEL: Right. We would like you to
6 take this and any future rail acquisitions or mergers
7 also, of course. But this is the one that's before
8 you now.

9 CHAIRMAN MORGAN: Okay. Thank you.

10 VICE CHAIRMAN OWEN: Have you discussed
11 this with the AAR, brought it up with the applicants
12 at all?

13 MR. SIEGEL: We served them with our
14 original petition. No, we have not.

15 VICE CHAIRMAN OWEN: I mean discussed it
16 with them.

17 MR. SIEGEL: No. Well, I won't say that.
18 Yes. At our intermodal conference, they have been
19 subject. We have also been working with them on
20 commercial responses to this issue through IANA, the
21 Intermodal Association of North America, which is an
22 intermodal. We are all members of it. All of our

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1 members are members of it. We have been working
2 there. But frankly, the commercial response to it,
3 and we would love to have a commercial answer to this,
4 we don't want any more regulation than anybody else
5 does except in the safety area.

6 If there is no enforcement, the commercial
7 ones mean that the good guy who is already doing it
8 will continue to do it. The bad guy who is not doing
9 it won't do it.

10 VICE CHAIRMAN OWEN: Don't your truck
11 drivers take the trucks to the railroad to the
12 intermodal yards?

13 MR. SIEGEL: Well we're not talking about
14 the tractors here. The tractors are --

15 VICE CHAIRMAN OWEN: I understand. But
16 they are hauling the --

17 MR. SIEGEL: No. It's the railroad's
18 chassis. It's the railroad's trailers. I mean yes,
19 we take them back and forth. But we take them from
20 the railyard to a shipper to them. Only UPS would be
21 doing that.

22 VICE CHAIRMAN OWEN: If I saw them taking

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1 the UPS or the Schneider or the Hunt trucks off of the
2 freeway would be --

3 MR. SIEGEL: UPS uses their own trucks.
4 Those are UPS trucks when it's on intermodal. I don't
5 believe with J.B. Hunt or Schneider. There's a mix of
6 trucks there. The motor carrier ones, the UPS ones
7 are inspected by UPS before they are turned over to
8 the intermodal yard.

9 When they come off the intermodal yard,
10 UPS takes them to their terminal and will do their
11 regular inspection. The average intermodal carrier
12 drayage company does not have that opportunity. He
13 takes it from the intermodal yard to a shipper and
14 then back to the intermodal yard.

15 VICE CHAIRMAN OWEN: In between those
16 points, sometimes there's truck stops and truck checks
17 and stuff like that.

18 MR. SIEGEL: That means you have got to
19 take it off the intermodal yard. If it has no brakes,
20 get it at least 30 miles down the road or 20 miles
21 down the road to a truck stop where then the motor
22 carrier would have to pay for the inspection of this

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1 vehicle and the repairs of that vehicle after it's
2 already been through a very congested highway area.

3 What we would like is before it gets on
4 that highway that it's already been inspected by the
5 person who owns the vehicle, who has control of the
6 vehicle, who is getting most of the monetary benefit
7 out of the service.

8 VICE CHAIRMAN OWEN: I would recommend
9 again to sit down with the parties involved rather
10 than getting regulation involved. But if that's the
11 last resort, you would have to go to DOT.

12 MR. SIEGEL: We would be happy to sit with
13 them. The problem is, as I said, you have some
14 railroads, and I will say that some of the yards of
15 the three railroads involved do a wonderful job of
16 this. Some of them do a terrible job. I think we
17 discussed the survey in our comments. It's not a
18 system, but where it's a bad job, it's a bad job and
19 it's a highly dangerous job for all of us who are
20 driving on the highways.

21 CHAIRMAN MORGAN: Thank you. We'll go to
22 you next, Mr. Ausbaugh. Did I get it right?

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1 MR. AUSBAUGH: Close enough.

2 CHAIRMAN MORGAN: Talking about
3 Wellington, clearly your concern is delay at the
4 cross. Is that?

5 MR. AUSBAUGH: That's correct.

6 CHAIRMAN MORGAN: And the impact that that
7 has on emergency response. You are aware that as part
8 of the environmental impact statement, we did impose
9 some mitigation on the line on which Wellington lies
10 where there will be increased traffic as a result of
11 this transaction. We did provide for mitigation along
12 that line relative to hazardous materials and some
13 other things. Do you have any comment on any of that
14 particularly as it relates to your area?

15 MR. AUSBAUGH: Due to the fact that
16 Wellington specifically was termed as we understand
17 it, CSX found that we do not have a full-time fire
18 department, however, we do have a full-time fire chief
19 and we have a county-wide 911 response capability and
20 a county HazMat team, which our fire chief is part of.

21 We just are requesting that additional
22 mitigation take place with that, and Wellington be

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1 explicitly included. They are not at that time, as
2 you mentioned, it's mitigation along that CO61 line.
3 However, Wellington is not currently involved in it.

4 CHAIRMAN MORGAN: Have you had any
5 discussions with the railroads about this grade
6 separation issue, for example?

7 MR. AUSBAUGH: Madam Chairman, there was
8 one public hearing in the Village of Wellington where
9 the railroad was represented. It was simply stated by
10 the CSX representatives that they would not commit and
11 a grade separation was talked about at that time, but
12 they would not commit or could not commit to any of
13 these issues. However, their statement was that they
14 were financially prepared to do whatever the Surface
15 Transportation Board required of them, assuming that
16 the acquisition were okayed by the Surface
17 Transportation Board.

18 So we felt at that time that we really
19 were not going to get any answers from the rail
20 representatives. We felt that the Surface
21 Transportation Board oral hearings were the place we
22 had to be to bring our plight before the STB Board.

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1 CHAIRMAN MORGAN: Thank you.

2 Mr. Yates, your focus of course is on
3 environmental issues associated with the New York City
4 area and focused on getting trucks off the road.

5 MR. YATES: Correct.

6 CHAIRMAN MORGAN: Now I presume, well, I
7 won't presume anything. Let me ask. The proposal
8 before us then, does it take trucks off the road in
9 its current form? I understand you want to get more
10 trucks off the road and that's why you are proposing
11 an east of the Hudson type of remedy. But do you see
12 this proposal as taking trucks off the road as it's
13 currently structured?

14 MR. YATES: Not in the New York region.

15 CHAIRMAN MORGAN: So in order to address
16 your environmental issue, then you feel that some sort
17 of solution for the east of the Hudson is the way to
18 address that. But I also heard you say that at a
19 minimum we should do some sort of I guess I would call
20 monitoring of growth in truck traffic so that you
21 would have an idea of what the impact on the area was,
22 if we approved this merger.

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1 MR. YATES: We are convinced that the key
2 to reducing that truck traffic obviously is getting
3 more rail freight crossing the region. In particular,
4 crossing the harbor, whether it's by a float surface
5 or a tunnel.

6 There is just going to be no other way to
7 do it. So that is why we want the two carrier service
8 on the east side and a rehabilitation of the car float
9 service, so that they will have an incentive to get
10 more freight going through there, and businesses will
11 have the option. That is certainly what we would like
12 to see. That is going to have the biggest effect.

13 Barring that, I think without a doubt what
14 should be done is just efforts need to be put into
15 place to make sure that the current proposal is not
16 going to make things worse, which we fear that it
17 will. Okay? If we do see that sizeable increase in
18 intermodal activity in Northern New Jersey, it's
19 undoubtedly going to bring more truck traffic to the
20 city.

21 So it's not just a question of addressing
22 an existing condition, but a question of not letting

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1 this proposal actually do more harm than we're
2 currently seeing.

3 CHAIRMAN MORGAN: Thank you.

4 MR. YATES: You're welcome.

5 CHAIRMAN MORGAN: Mr. Loftus, you
6 mentioned in your oral presentation the latest
7 offerings in terms of operations by CSX, the number of
8 trains and without getting into the back and forth
9 about what was stricken and so forth, let me just ask
10 as a general matter if the plan is to only increase
11 over that line by two trains, I presume that's not
12 something you oppose.

13 MR. LOFTUS: Well, I would not agree with
14 that, Chairman Morgan. In fact, the situation in
15 these Four Cities is as described already terrible.

16 CHAIRMAN MORGAN: So it is a pre-existing
17 condition that we are dealing with?

18 MR. LOFTUS: Well, it's incremental
19 impacts, but the incremental impacts it seems to me of
20 two trains and what you just posited, those two trains
21 are different when you are dealing with the situation
22 that currently exists in this area.

1 CHAIRMAN MORGAN: But see our struggle,
2 and that's why I am asking this question, is that we
3 in doing our environmental analysis of a pending
4 matter, we are doing it in the context of the impacts
5 from that transaction. I am trying to separate out
6 what the impacts from the proposed transaction are
7 relative to the problem that you have. I am not
8 demeaning the problem that you have. There is a
9 problem there. But the question is what is our
10 authority to address a pre-existing problem. That is
11 why I'm having this conversation.

12 MR. LOFTUS: I think we recognize that
13 your precedence say, and you have always maintained
14 that you are not here to deal with pre-existing
15 problems. You are here to deal with incremental
16 impacts from the transaction. That is what we have
17 focused on.

18 But in examining what is appropriate with
19 regard to the incremental impacts, we think you must
20 recognize the seriousness of the pre-existing
21 situation. So we're not asking you to reduce the
22 number of trains below what they are today. But what

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1 we are saying is where you have a very serious but
2 barely manageable situation, and you add a little bit
3 on top, you can turn it into an unmanageable crisis
4 situation. That's different from a situation where
5 you might have a relatively mild base level of traffic
6 before the transaction.

7 The incremental impact on the facts you
8 describe are two trains. We are skeptical about that.
9 We are aware of the fact that these operating plans
10 have not been held to be binding. In the absence of
11 a condition from the Board we have no assurance that
12 it's going to be two trains as opposed to 10 trains
13 when the facts actually play out down the line, which
14 is why we feel very strongly that they must at a
15 minimum be held to what they are now representing it
16 would be, namely, 32 trains a day.

17 CHAIRMAN MORGAN: And that's your
18 accountability suggestion?

19 MR. LOFTUS: That is, absolutely.

20 CHAIRMAN MORGAN: That you made earlier.

21 Now the alternatives that you have
22 proposed, it has been represented that those

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1 alternatives do involve some more complicated
2 operational configurations. You are talking about
3 some more railroads involved, some interchanges and so
4 forth. Have you had discussions with the railroads
5 about those particular problems?

6 MR. LOFTUS: Yes. I would like to
7 distinguish between the two parts of the plan.

8 CHAIRMAN MORGAN: Right. Because you have
9 one that's -- a line that's being reactivated and then
10 a line over which additional traffic will be going.

11 MR. LOFTUS: Part one of the plan involves
12 this BOCT line. We are saying you should shift
13 traffic off that line. There is no dispute with that
14 as a general proposition.

15 In order to provide additional capacity to
16 handle those trains, we suggested that they be run
17 over the Conrail Porter branch and a section of an IHB
18 line which is elevated.

19 Now the only operational difficulty there
20 is the construction, the rehabilitation that are
21 stated of that elevated line. The applicants say, CSX
22 says that's \$4.3 million. CSX also says it's a good

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1 idea, we'd like to explore it with you long-term. SEA
2 says it's a good idea. But it can't be done quickly
3 and it requires funding, \$4.3 million. That is about
4 two days interest on what these applicants are paying
5 for these railroads. These folks think they are worth
6 two days interest.

7 As the other line, the Pennsylvania
8 Railroad line --

9 CHAIRMAN MORGAN: The line that's being
10 reactivated.

11 MR. LOFTUS: Yes. That, they are spending
12 \$13 million by our estimate for five trains a day.
13 Those five trains can be accommodated over other
14 routes. It would involve the EJ&E. We have spoken to
15 the EJ&E. They think it's workable based upon the
16 discussions we have had with them. The operation over
17 the NS line, NS naturally objects to. But that line
18 is being reduced from 26 trains a day currently down
19 to 11. We are talking about putting five back on it
20 and making it a total of 16. So that's still a net
21 benefit.

22 So we believe that this plan which was

1 worked out with some care is a workable plan, and that
2 naturally the carriers don't like it. In a perfect
3 world, they would like total flexibility to run it
4 anyway they would want. But you have to accommodate
5 to the situation that exists in these communities.

6 CHAIRMAN MORGAN: Thank you. Questions?

7 VICE CHAIRMAN OWEN: No questions.

8 CHAIRMAN MORGAN: Okay. Thank you all
9 very much.

10 Our next group we have several labor
11 representatives. Let's go first with Richard Edelman,
12 Allied Rail Unions, Mitch Kraus, Transportation
13 Communications International Union, and Debra Willen,
14 International Association of Machinists and Aerospace
15 Workers. Then we will do the next group after you
16 all.

17 Just if you'd wait one minute. Mr.
18 O'Leary, I have not forgotten you. I momentarily
19 forgot you, but I'll be with you. Excuse me.

20 Mr. Edelman, go ahead.

21 MR. EDELMAN: Thank you. Chairman Morgan,
22 Vice Chairman Owen, I am Richard Edelman. I am

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1 counsel for the Allied Rail Unions in this proceeding.

2 There is a runaway train that needs to be
3 stopped. No, it's not the latest disaster on Union
4 Pacific. Rather, it's a figurative runaway train, and
5 it's this agency in its pattern of routine
6 authorization of virtually everything the class I
7 railroads applicants ask for in these types of
8 transactions.

9 A key element of the consist of that
10 runaway train is the government grant of virtually
11 unrestrained license for applicants to eliminate
12 collective bargaining agreements and particular
13 collective bargaining agreement rights. This has
14 gotten completely out of hand.

15 To the extent that the applicant is here,
16 so they will take advantage of an approval to
17 eliminate collective bargaining agreements. Their
18 only justification is mere convenience. This has got
19 to stop.

20 The Allied Rail Unions oppose this
21 transaction on public interest grounds. That the
22 projected benefits do not outweigh the certain adverse

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1 effects. The adverse consequences we see are as
2 follows: First, the elimination of thousands of jobs
3 and transfers of thousands more. It is probable that
4 there will be additional job losses which will occur
5 in the years to come. Applicants may say that
6 additional job losses are unlikely. But our
7 experience is to the contrary.

8 Second, we have serious safety concerns.
9 We have expressed serious safety concerns in our
10 comments and in our environmental filings. CSX and NS
11 have dismissed them. They say we're not like UP. But
12 CSX was criticized for the same sort of problems as
13 UP. Applicants, primarily NS, plan to eliminate close
14 to 600 maintenance of way jobs and a number of
15 signalmen jobs.

16 ANS can not run more longer heavier trains
17 more frequently over the same trackage with
18 substantially fewer maintenance of way employees and
19 fewer signal employees. They blithely assure you that
20 they can, but common sense says they can't. The
21 people in the crafts know they can't. If there is a
22 genuine concern about safety on those lines, you know

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1 they can't.

2 Third, applicants state up front that they
3 will eliminate the Conrail collective bargaining
4 agreements except for the operating crafts in the CSX
5 Northeast and a relatively few employees in the shared
6 asset areas, and that they will do so on the most
7 slender of reasons. For the most part, administrative
8 convenience. It's easier for them.

9 This type of action is at odds with our
10 fundamental respect for contract rights in this
11 country. It is also contrary to the positive command
12 of the statute and the New York Dock conditions that
13 rates of pay, rules and working conditions must be
14 preserved.

15 But it is also important to recognize that
16 the Supreme Court's decisions that we cited in McLean
17 Trucking, Burlington Truck, and Denver and Rio Grande
18 v. U.S., say that in considering the public interest,
19 in your public interest consideration of this
20 transaction, not just in the labor impact element of
21 it, the Board is required to consider the policies of
22 other statutes. It is required to avoid and minimize

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1 the impingement on commands of other statutes.

2 However, if this transaction is approved
3 as presented, such approval as presented would
4 eviscerate the Railway Labor Act rights of the Conrail
5 employees and would be contrary to the public interest
6 as set forth in the Supreme Court decisions we cited.

7 We submit that the speculative benefits,
8 and they are speculative, you know, when I had to
9 answer an interrogatory for them and say what basis,
10 what do you rely on in saying the speculative. Well,
11 I would rely on a dictionary definition. They are
12 projections on their part. I read the same kind of
13 stuff on UP.

14 So I would say that the speculative
15 benefits are out weighed by the public interest
16 factors that I have cited.

17 Now if the Board nonetheless grants the
18 application, it should issue the several declarations
19 regarding collective bargaining agreements that the
20 ARU requested.

21 We submit that the Board should declare
22 one, that rates of pay, rules and working conditions

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1 under existing collective bargaining agreements must
2 be preserved except, a limited except, to the extent
3 that New York Dock arbitrators are permitted variances
4 solely in the area of seniority and scope rules in
5 connection with the rearrangement of forces, selection
6 of forces, assignment of employees, period. Not every
7 other rule in the contract.

8 Two, that actions contrary to collective
9 bargaining agreements will be permitted only upon a
10 showing of real necessity. Necessity as having its
11 usual meaning to every other person in the country
12 other than the railroads, who seem to think necessity
13 is whatever they like. It certainly doesn't mean just
14 when it's good for them to reduce their labor costs.

15 Three, that there has been no showing of
16 necessity for collective bargaining agreement
17 modification here except for some extent with respect
18 to seniority modification for integration of forces
19 under New York Dock.

20 Four, that approval of the transaction
21 would not constitute explicit or implicit approval of
22 the collective bargaining agreement changes described

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1 by the applicants in their operating plans and their
2 attachments.

3 These declarations are required because
4 applicants operating plans show an arrogant disregard
5 for the employee rights under voluntarily entered
6 contracts.

7 We have addressed the rationale for these
8 declarations in detail in our briefs and our comments.
9 Today I will make several general observations with
10 regard to the declarations we request.

11 This agency and its predecessor have
12 sanctioned wholesale eliminations of employee rights
13 under collective bargaining agreements. Arbitrators
14 acting under agency auspices have authorized
15 collective bargaining agreement abrogations on the
16 basis that the agency approved the transactions that
17 came along with the operating plans. So the
18 arbitrators had to follow along.

19 The agency then defers to the arbitrator,
20 who merely acted in accordance with the agency said.
21 So often times this agency said we don't have to deal
22 with what you are talking about now because there's

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1 going to be this New York Dock arbitration down the
2 line.

3 Well what happens is the applicants turn
4 around and say here's the operating plan. The agency
5 approved it. You, Mr. Arbitrator, are bound by it.
6 You are working for them. The arbitrator says gee,
7 you are right. I'll stamp that. That's okay. It
8 goes up to the agency and the agency says we defer to
9 the arbitrator. So it is important that you address
10 these issues here.

11 What has happened has been worse than
12 unilateral implementation of changes. It has involved
13 changes initiated by the carriers over objections of
14 the union but with the force of the Government behind
15 it. Essentially there has been a reordering of
16 private labor management relations in the railroad
17 industry through the instrument of this agency.

18 While the rest of the industry has been
19 deregulated, while that has been the trend, while the
20 railroads have reveled in it or the agency has reveled
21 in it, labor management relations has been
22 increasingly regulated in this industry. It is

1 probably the most heavily regulated labor management
2 relations scheme in the private sector.

3 How did this happen? Perhaps it was out
4 of a misguided and improper but deeply felt policy
5 determination to help return the railroad industry to
6 profitability through government intervention in the
7 labor relations. Perhaps that's how we started in
8 1983. If that were so, the rationale is now gone.
9 The railroads were profitable. It is time to take the
10 agency thumb off the scale in the balance between
11 labor and management.

12 Applicants have said, and they will surely
13 say, that abrogation of the private contracts is okay
14 because it's part of the quid pro quo for employee
15 protection payments, and that use of implementing
16 arrangement arbitration to eliminate collective
17 bargaining agreements is all part of the deal.

18 But as is shown in our brief and is shown
19 in detail in Mr. William Mahoney's article that I
20 quoted in our brief, in the Transportation Law Journal
21 that we cited in our brief, this is bad history, it is
22 bad legal analysis, and it's incorrect as a matter of

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1 economic fact. I need to address this because I know
2 this has been what's going on in this agency for a
3 long time. It is something that the carriers have
4 said, and it's not true.

5 In the Loudon, the Loudon case which first
6 addressed the rationale for employee protection, the
7 court said that employee protection is an appropriate
8 quid pro quo for government approval of transactions
9 that will cause economic harm to individual employees
10 through loss of jobs, reductions of pay transfers.
11 The exchange was benefits for the individuals who lose
12 their jobs or compensation in return for Government
13 authorization of transactions that cause those losses.
14 That is why the benefits are paid to those employees.
15 The changes in agreements were never discussed. They
16 were not complicated. It was not part of the deal for
17 employee protection.

18 In the Southern Central case, and there
19 was an exchange about that in our briefs. I invite
20 you to read our discussion and read their discussion.
21 They accuse us of mis-stating Southern Central. I
22 urge you to read Southern Central. They are the ones

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1 with the excerpts and the ellipses. We are the ones
2 who quoted long passages from it.

3 In Southern Central the ICC specifically
4 said that the Railway Labor Act and Railway Labor Act
5 agreements must be protected. It was in that case for
6 the first time that they put an implementing
7 arrangement arbitration that was added to the ICC
8 conditions. It clearly was in response to unfair
9 assignment of forces and selection of employees by
10 Southern. In fact, the Southern Central condition
11 decision recognized the sanctity of the labor
12 agreements. There was nothing in there about using
13 that process to change agreements.

14 Moreover, as we have shown, it is not even
15 reasonable in economic terms to say the CBA
16 modification is part of a quid pro quo. The cost of
17 employee protection in this case is well over balanced
18 by the savings from job reductions flowing from
19 approval of the transaction. By their estimation, by
20 the end of year three, the savings from elimination of
21 jobs will exceed the total employee protection
22 obligation forever.

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1 Applicants will then save \$74 million per
2 year for job elimination out into the indefinite
3 future. In short, the carriers don't need any more
4 quid for their pro quo of employee protection.

5 Several additional observations. We
6 submit the Board must address the err you requested
7 for declaratory orders because the carriers have
8 clearly said they plan to largely eliminate the
9 Conrail agreements.

10 Again, they will turn around and they will
11 tell you that -- they will tell the arbitrators that
12 this is what the Board said and you must follow along.
13 At a minimum we urge the Board to declare that
14 approval of the transaction does not constitute
15 explicit or implicit approval of the plan collective
16 bargaining agreement changes, and that the applicants
17 must show genuine necessity, not mere convenience.

18 In this regard, that is one of the reasons
19 why we went ahead and we showed specific losses of
20 collective bargaining agreement rights. In prior
21 cases, this agency or courts have said well, the
22 unions have made general allegations that agreements

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1 are going to be changed, but we don't know what it is.
2 Well, we put 50 pages of it in. The applicants have
3 not refuted our showing that there will be losses in
4 rates of pay rules and working conditions if the
5 Conrail agreements are taken away.

6 At best they have said most employees will
7 be under collective bargaining agreements that are
8 generally similar or ones that will be net
9 equivalently beneficial. But that's not what the New
10 York Dock conditions require or Burlington Truck,
11 McLean Trucking.

12 Simply put, the record is clear that
13 applicants plans involve losses of rates of pay,
14 rules, and working conditions. Therefore, the Board
15 must address our arguments in the context of the
16 undisputed facts that that's what they plan to do.

17 A few words about necessity. Applicants
18 have made no showing of necessity, necessity in its
19 real use of the word, to eliminate collective
20 bargaining agreements rights for the members of unions
21 I represent or Mr. Kraus or Ms. Willen. At best, as
22 to necessity, they have cited a handful of obscure and

1 limited rules pertinent to a few crafts, primarily the
2 operating crafts, which is not us. Ultimately all
3 they have to fall back on is that they prefer fewer
4 agreements for ease of administration. That's about
5 it. When we asked in repeated interrogatories,
6 deposition questions, we provided them to you.

7 With respect to the public transportation
8 benefits alleged of more competition, more single line
9 service, better routings, better blocking, et cetera,
10 the things that they repeatedly told you of the public
11 benefits of this transaction, they certainly have not
12 shown how collective bargaining agreement
13 modifications that they have proposed for these crafts
14 are necessary to the achievement of those benefits
15 that they claim.

16 Perhaps the height of arrogance in all of
17 this is the idea that they will put their own
18 agreements in place in the shops in Altoona,
19 Indianapolis and Buffalo, and that NS will put its own
20 agreements in place at the dispatching offices for the
21 former Conrail territories.

22 Even though the work forces in those

1 locations will be virtually entirely former Conrail
2 employees, there will be no interchange between those
3 offices and shops and the NS and CSX offices and
4 shops. They will have no common supervision. These
5 are stand-alone places. There is no rational reason
6 for this other than that's what they want. There is
7 certainly no advancement of the public transportation
8 benefits we described with this transaction.

9 Now with respect to the shops, because I
10 want to deal with this. One of the things they did
11 say is NS, we have this plan that we want all the GE
12 locomotives done in one place and the GM locomotives
13 in another, and that your agreements would interfere
14 with that. We don't agree that that's a problem for
15 them and that the abrogation of the entire agreements
16 for this purpose is like hitting a fly with a sledge
17 hammer.

18 But we have eliminated any possible
19 problem by saying the unions would waive any contract
20 prohibition on the GE/GM assignment plan so long as
21 when the music stops and we know which locomotives or
22 which place when we're done the collective bargaining

1 agreements were there, we'll stay.

2 So the fly has left the house, but NS is
3 still swinging the sledge hammer. Is that the end of
4 my time?

5 CHAIRMAN MORGAN: You can finish.

6 MR. EDELMAN: With respect to the public
7 benefit question, we submit there is no benefit and it
8 changes from mere reduction in labor costs.

9 Finally, I note that Member Owen spoke of
10 the need for the dedicated work force. Mr. Snow spoke
11 of a new day, new culture in labor relations. Those
12 things don't happen freely when freely negotiated
13 agreements are removed and new terms are imposed by
14 unilateral action backed by Government approval.

15 Applicants say they are talking to labor.
16 But they are doing so with both parties knowledge of
17 what this agency has done to labor in recent years.
18 They open every meeting with labor on this with
19 reference to this agency's 1995 decision in the
20 O'Brien matter involving the coordination of CSX in
21 the Mid-Atlantic region. They said this is what's
22 going to happen. This will happen. We will go to the

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1 arbitration, we will do it. Now let's talk.

2 So we can hear talk. It's nice for people
3 to say there's a new day. It's good to hope that you
4 can have a dedicated work force. But if you talk to
5 the employees, I did, I'm sorry I'm digressing a
6 little here, the people affected by the O'Brien.

7 I sat there, I talked to the engineers out
8 there, who said how did this happen to us. Big
9 engineers, burly men standing there saying I'm
10 anguished, I don't see my family any more, I'm
11 deadheading all over the place. Not only that, I'm
12 scared because I am operating a train on a line that
13 I'm technically qualified to operate, but I am not
14 familiar with because they have me moving all over the
15 place.

16 So if you ask about, if you are concerned
17 about those things, that happens through genuine
18 negotiations, not negotiations at the point of a gun.
19 Thank you. I'm sorry I ran over.

20 CHAIRMAN MORGAN: Thank you very much, Mr.
21 Edelman.

22 Mr. Kraus?

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1 MR. KRAUS: Thank you, Chairman Morgan,
2 Vice Chairman Owen. My name is Mitchell Kraus. I am
3 the general counsel for the Transportation
4 Communications Union. Our union represents primarily
5 the clerical work force and the carmen work force.

6 We are here today, I would like to focus
7 on two aspects of our written comments. First, we
8 have requested enhanced New York Dock protections.
9 Our craft by the carriers own admissions, and if you
10 examine the labor impact statement, our crafts, that
11 is the clerical craft and the carmen craft, as well as
12 the maintenance away, which Mr. Edelman represents, is
13 bearing the brunt of job abolishments.

14 While it is true for the other crafts job
15 abolishments will be limited or non-existent,
16 unfortunately that is not the case for the people that
17 we represent. Indeed, there will be 834, based on the
18 labor impact statement, jobs abolished. Among
19 clerical forces -- 320 among carmen. For the clerical
20 forces, the labor impact statement indicates 685 being
21 transferred, for the carmen, two. So these
22 transactions will have a dramatic impact on the

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1 employees that our union represents.

2 We have requested that the Board consider
3 two additional factors to add to the New York Dock
4 conditions. One is attrition protection. Two is
5 provision of separation pay to employees required to
6 relocate to follow their work.

7 As to the attrition protection, I would
8 point out that many of the employees who are not on
9 Conrail, particularly in the clerical craft, enjoy
10 those protections as a result of a collective
11 bargaining agreement commonly referred to as the Fed
12 7th Agreement. Conrail employees do not enjoy that
13 type of protection.

14 As far as the separation pay, and we're
15 talking about separation pay to employees that are
16 being required to relocate to accept positions over
17 great distances which would not otherwise be available
18 under New York Dock.

19 That type of protection in fact is
20 provided for in the master implementing agreements
21 that were negotiated on both the SP/UP merger and the
22 BN/SF merger.

1 The separation pay part of the proposal
2 that we seeking is supported by the Department of
3 Transportation, who spoke to you at some point. It's
4 been a long day. I will just briefly reiterate their
5 position. They indicated that the basis of their
6 support was that the over the 20 years or so that New
7 York Dock has been in existence, employees because of
8 each merger building on the prior merger, are required
9 and being asked to move increasingly great distances.
10 Indeed, that is true here.

11 Certainly for the clerical forces, most of
12 the jobs being abolished, virtually all of the jobs
13 being abolished are on the Conrail system in
14 Philadelphia, Pittsburgh, and in Dearborn, Michigan.
15 They are all being virtually all being transferred
16 either to Jacksonville on CSX or Atlanta, Georgia on
17 the Norfolk Southern.

18 We would request that employees in those
19 circumstances consistent with the DOT's
20 recommendation, be afforded an option to attain
21 separation pay rather than having to be faced with
22 moving thousands of miles or giving up any protection

1 at all.

2 We justify this request on the basis of
3 how, Chairman Morgan, you began this proceeding in
4 part. You noted that this transaction is
5 unprecedented. I believe you said it's unprecedented
6 in range and size. We believe that this is a unique
7 transaction. We recognize that the Board has indeed
8 rejected prior requests from labor for such
9 enhancements. We think it is deserving of a second
10 look in this proceeding.

11 We have two very profitable railroads
12 acquiring a third profitable railroad. We have the
13 fact that the employees who are going to be making
14 these sacrifices on Conrail, at least they or their
15 predecessors have made sacrifices to permit Conrail to
16 be restored and to enjoy profitable status.

17 We point out in our brief that the current
18 work force is 39 percent beneath what it was in 1980.
19 That in the period from merely '80 to '83, almost
20 40,000 jobs were reduced, were eliminated on the
21 Conrail system, and that the labor sacrifices were
22 real. You don't have to take my word for that. We

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1 quote Conrail's 1988 annual report in which they say
2 that real labor's position and sacrifices were
3 "critical to the company's survival and financial
4 turnaround."

5 Now the applicants pooh pooh this. They
6 essentially say well, you know, the current employees,
7 they didn't lose their jobs so why are the unions here
8 crying on your shoulder. Our position is that those
9 were sacrifices made by labor as a group. They helped
10 to restore and were critical in the restoration of
11 Conrail to profitable status.

12 Those sacrifices led to the railroad's
13 ability to provide very generous, exceedingly generous
14 separation pay to the CEO, to some 70 officers who are
15 currently under contract, and to middle managers. And
16 that those sacrifices were not made solely to be
17 enjoyed by the management employees. Indeed, as we
18 indicate in our brief, there are approximately 1,200
19 middle managers who will be getting average 400 grand
20 each in separation pay, an additional 1,600 getting
21 relocation amounts of \$300,000 each.

22 We think under these circumstances, you

1 have the authority, clearly have the authority to
2 issue the enhancement that New York Dock conditions
3 were the minimum, not the maximum, as the railroads
4 suggest. We think the circumstances are appropriate
5 for your consideration to do just that.

6 I would like to briefly touch on one of
7 the issues that Mr. Edelman addressed, which is the
8 carriers proposals to override and essentially
9 substitute one agreement for another. We have a very
10 mixed bag. We have the Norfolk Southern saying
11 essentially that as the acquiring carrier, they get to
12 replace all existing Conrail agreements on the NS
13 allocated portion with NS agreements. CSX is not
14 doing that, although they are in a field district,
15 seniority district. They are proposing to replace the
16 CSX agreement with the Conrail agreement.

17 We certainly agree with everything that
18 Mr. Edelman said. There is absolutely no showing of
19 necessity here. Indeed, these railroads currently, NS
20 has three collective bargaining agreements for the
21 clerical crafts, two for the carmen. CSX has four for
22 the clerical, seven for the carmen. They have been

1 able to operate and operate successfully with those
2 agreements. UP/SP continues in effect the agreements
3 on those properties as does BN/SF. There has been no
4 wholesale replacement of one agreement with the other
5 in any of these mergers. There is simply no evidence
6 for an override.

7 The railroad has suggested efficiency of
8 labor relations, a variety of other things which we
9 submit are nothing more than convenience. They have
10 indeed not focused on any specific agreement. We
11 certainly join in everything that Mr. Edelman said
12 regarding necessity. I thank you very much.

13 CHAIRMAN MORGAN: Thank you, Mr. Kraus.

14 Ms. Willen?

15 MS. WILLEN: Good afternoon, Chairman
16 Morgan, Vice Chairman Owen. I am Debra Willen. I
17 represent the International Association of Machinists
18 and Aerospace Workers, known as the IAM. The IAM
19 represents approximately 950 machinists on Conrail,
20 700 employees on the NS system, and 1,150 employees on
21 CSX.

22 The IAM also opposes the proposed

1 transaction because of the significantly adverse
2 effect it would have on the employees we represent.
3 It is also the IAM's position that this Board should
4 make clear that it does not endorse the applicant's
5 proposal to totally abrogate Conrail's collective
6 bargaining agreements with the IAM, and instead should
7 make clear that any issues regarding modification of
8 those agreements should be left to the processes set
9 forth in article 1, section 4 of the New York Dock
10 conditions.

11 The applicants in the appendices to their
12 operating plans have indicated that as I said, they
13 are going to totally abrogate the IAM's agreements
14 with Conrail. NS currently administers five different
15 IAM collective bargaining agreements. They have
16 without a single negotiating session with the IAM
17 determined that they will apply a rather archaic 1949
18 Norfolk and Western agreement to the machinists on the
19 Conrail facilities and routes that they acquire. CSX
20 has one system-wide collective bargaining agreement
21 with the IAM. They will apply that in place of the
22 Conrail agreement.

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1 We note that the record shows that these
2 proposals were developed without anything more than a
3 very cursory review of the IAM's contracts with
4 Conrail, if any, and without any sort of studies being
5 conducted to determine the costs of the alleged
6 inefficiencies that would result from continued
7 application of the Conrail agreements.

8 Article 1, section 4 of the New York Dock
9 conditions provides an expedited schedule for
10 negotiations in binding arbitration subject to review
11 by this Board and ultimately by the courts. This
12 provision furthers the public policy of promoting
13 orderly resolution of management/labor disputes
14 through collective bargaining. At the same time, it
15 accommodates the applicants interests in prompt
16 implementation.

17 The applicants have acknowledged that the
18 New York conditions must be imposed. There is
19 absolutely no reason why article 1, section 4
20 shouldn't be exhausted before this Board makes any
21 pronouncements on whether or not the Conrail
22 collective bargaining agreement should be overridden.

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1 The IAM would request that this Board make that clear.

2 Finally, in agreement with Mr. Edelman and
3 Mr. Kraus for the reasons they stated, the IAM agrees
4 that on this record the applicants have not come near
5 to making the showing that wholesale abrogation of the
6 Conrail agreements is necessary to effectuate the
7 public benefits of this transaction. Again, all they
8 have argued is administrative convenience of applying
9 one set of work rules versus two. They have also
10 argued that they should be the ones to decide which
11 work rules they will adopt.

12 CHAIRMAN MORGAN: Thank you very much.
13 Let me just, I am going to ask each of you a couple of
14 questions. I'll start with you, Ms. Willen.

15 I take it that your position is that any
16 override of any collective bargaining agreement should
17 go through the process of negotiation in arbitration
18 under the New York Dock provisions?

19 MS. WILLEN: Yes. It is.

20 CHAIRMAN MORGAN: That's essentially your
21 testimony, is that right?

22 MS. WILLEN: Yes.

1 CHAIRMAN MORGAN: Mr. Edelman, you have
2 three suggestions really, or three proposals. You
3 have several proposals in your testimony but three key
4 ones that you talked about. One is that you want the
5 Board to declare what can never be overridden under
6 any circumstance.

7 Two, you want the Board to not, if it
8 approves the transaction to not in one way or the
9 other imply necessity as it relates to collective
10 bargaining agreements. Let me just finish. Then if
11 any issue of necessity as it relates to collective
12 bargaining agreements should go through the process of
13 arbitration and negotiation.

14 MR. EDELMAN: No, no. First, I would --
15 let's see. I forget what your second point was, but
16 the problem is this. The article 1, section 4 process
17 looks nice on paper. If it had been applied,
18 interpreted over the years as was intended, then I
19 wouldn't have any problem. Ms. Willen and I are at a
20 bit of a difference over this perhaps, and maybe that
21 reflects the way the thing looks on paper.

22 The fact of the process, what it's become,

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1 is just a vehicle for the carriers to do what they
2 want. What they do, as I said, is they take your
3 decision. They say here's the decision. Here's the
4 application. Here was the operating plan. We said
5 this is what we're going to do. You, Mr. or Madam
6 Arbitrator, are the agent of the Board, as has now
7 been held in these cases, you have to recognize that
8 that is what is going on.

9 We have cited this in our brief. I give
10 you one example at volume III of the attachment to our
11 comments, is a decision by Edwin Ben, who starts off
12 with a discussion of what the Board's decision, the
13 discussion of the public benefits as efficiency gains
14 and cost reductions, cost savings, and service
15 improvements. Then he goes on to say the bottom line
16 is therefore more efficient operations.

17 So what with that decision by the Board as
18 well as the operating plan that they gave where they
19 said they were going to change their agreements and
20 that would make them more efficient, what am I
21 supposed to do?

22 I mean these arbitrators, there's is a

1 conception yes, these arbitrators, many of them in
2 their regular lives are labor arbitrators. So again,
3 the carriers say well what are you complaining about,
4 these are labor arbitrators. But in this forum, they
5 are acting as ALJs for this agency. This is the way
6 they perceived it.

7 Those of them that have gone otherwise
8 have been reversed. They have been reversed. What do
9 you do when you are an arbitrator when you are faced
10 with a decision like the O'Brien decision that says
11 that is in the public interest to reduce labor costs
12 to the carriers. What kind of notion is that?

13 I mean even if it is assumed, even if it
14 is assumed that that will actually happen, something
15 that we doubt because that assumes that the railroads
16 take the cost savings, they pass it onto the shippers,
17 and then the shippers then pass it onto the consuming
18 public. That's the assumption in Economics 101. You
19 know how much I learned in Economics 101 doesn't make
20 any sense any more? So that is part of the underlying
21 assumption.

22 Even if you assume that's the case, in

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1 this country we don't use the Government to take
2 rights from people, given them to other private
3 parties on the assumptions that cost savings to those
4 private parties will then be passed onto the public by
5 the fortunate recipient.

6 So the problem is that when you go to the
7 article 1, section 4 procedure, that is the process
8 you have got. So if article 1, section 4 had been
9 applied as is written, as was historically the case,
10 and that it was limited to selection of forces and
11 assignment of employees as in the Southern Central
12 case, again, when the Carmen II case was argued, Mr.
13 Mahoney sat here and he argued this. A parade of
14 railroad lawyers stood up and talked about the
15 Southern and Central case. Then Mr. Mahoney got up
16 and said when I put on the Southern and Central case
17 30 years ago or 25 years ago, as it was at the time,
18 he talked about what happened and what it was about.

19 What it was about was the selection of
20 forces, assignment of employees, because the Southern
21 just took a whole bunch of people, hired them,
22 everybody out the door. So no, in my mind, that is

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1 not sufficient. In my mind, we need the declarations
2 that we asked for, which are one, not just that the --
3 I remember the second question.

4 It's not just the question that the Board
5 should say nothing because the problem is if the Board
6 says nothing, then the carriers take it to the
7 arbitrators and the arbitrators have no basis
8 otherwise than to assume that the Board has in fact
9 ratified it.

10 We are asking the Board to affirmatively
11 state we do not explicitly or implicitly endorse,
12 compel, do anything with the carriers proposed changes
13 to collective bargaining agreements. This is not a
14 ratification, a sanctioning, anything period. That is
15 part of what we ask for.

16 CHAIRMAN MORGAN: But I think I was
17 actually in my number two was referring to --

18 MR. EDELMAN: All right. I'm sorry.

19 CHAIRMAN MORGAN: That's all right. Was
20 referring to the DOT suggestion, which I believe is to
21 essentially if we approve the merger, be silent.

22 Did you discuss that, Mr. Kraus, in your -

1 - I think you did.

2 MR. KRAUS: I referred to another DOT
3 proposal in my remarks, but --

4 CHAIRMAN MORGAN: You referred to the
5 separation.

6 MR. KRAUS: I understood what the DOT to
7 be saying to be somewhat similar to what Mr. Edelman
8 is saying in that I think they were suggesting more
9 than their silence. I think the problem is, and they
10 note it, and maybe a misperception by arbitrators, a
11 misunderstanding, but I think there is this concern
12 that we never, if you are going to refer these issues
13 to the article 1, section 4 process, that it's
14 important that arbitrators understand if that's the
15 position of the Board, that in improving the
16 transaction you are not necessarily endorsing the
17 operating plan as it pertains to override of
18 collective bargaining agreements.

19 Unfortunately, whether specifically stated
20 as indicated in the decision that Mr. Edelman quoted
21 or whether unstated, but certainly an assumption of
22 the decision, there is a strong perception among

1 arbitrators that approval by this agency of the
2 transaction does in fact represent the endorsements
3 contained in the operating plan, including the
4 override.

5 We believe that you can and should do
6 more. We don't think they came close to making a
7 necessity argument. We think it ought to be rejected.
8 But having said that, if you are going to simply say
9 okay, that's for another time and place, you guys try
10 to work out agreements, and if you can't, go to
11 arbitration. At a minimum, we believe and I think I
12 am accurate, that is what DOT suggested, that in so
13 stating, you should be more than simply silent and
14 state that you are not endorsing the carriers position
15 on overriding. You are leaving that for the
16 arbitrators to decide under the applicable standards.

17 We think that's very important. My
18 understanding of really what Ms. Willen has said on
19 behalf of the machinists, and what DOT has said, is
20 consistent with that view.

21 MS. WILLEN: I think that's right. I
22 think what the machinists are suggesting also is that

1 you make clear that you are not prejudging those
2 issues and you are not endorsing that aspect of the
3 operating plan and that those issues should go through
4 the process.

5 CHAIRMAN MORGAN: Okay. I appreciate
6 that. I think that's been helpful in clarifying your
7 positions and how you view this issue.

8 Now let me, Mr. Kraus, let me ask you a
9 couple of other things because you talked about some
10 other issues as well.

11 You mentioned I guess what I would
12 characterize as a disproportionate impact on your
13 membership, the membership that you represent, which
14 then is sort of the foundation for doing more than
15 what perhaps has been done in the past relative to New
16 York Dock. Is that a fair characterization of your
17 argument?

18 MR. KRAUS: I think the basis, one, I
19 wanted to express the impact on the crafts certainly.
20 It is significant. But the basis of justification is
21 not simply the impact on the craft, but that we feel
22 we are dealing with a unique transaction where this

1 Board based on the standards, we do recognize that
2 this agency has rejected these kinds of requests in
3 the past. The carriers cited each and every one of
4 those decisions to you. We know that's the case.

5 We think this is a unique transaction and
6 that where you have this kind of impact, where you
7 have this transaction which you yourself have
8 characterized as unique, where the Conrail certainly
9 has benefitted and been returned to profitability in
10 large measure certainly as a result of sacrifice of
11 its employees, where there is this much money involved
12 before management, both top and middle management,
13 including \$22 million for the CEO alone, putting all
14 of that together, we believe that there is a basis for
15 this agency to re-look at the New York Dock conditions
16 and that we should be entitled to enhancements. The
17 DOT reiterated that, at least as it pertains to
18 separation allowance.

19 I would add that while it's not as a
20 result of this agency's imposition, in fact the master
21 implementing agreements for clerical crafts, because
22 of the nature of these transactions on both SP/UP and

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1 BN/Santa Fe, their labor impact statements also
2 indicated were going to take significant reductions,
3 do provide for the kind of separation pay where people
4 are being asked to relocate long distances, that we
5 are requesting here.

6 So it is not totally unheard of. It is not
7 asking to burden this transaction any more than what
8 ultimately came out of the master implementing
9 agreements on the most recent two major mergers that
10 this Board has considered.

11 CHAIRMAN MORGAN: Those implementing
12 agreements covered many of the crafts or your crafts
13 specifically?

14 MR. KRAUS: The ones I am referring to
15 were specific to the clerical crafts which again,
16 because of the nature of these transactions, unlike
17 the operating employees, I think it is fair to say the
18 clerical crafts do take a number of job abolishments
19 because of the consolidation of general offices and
20 other clerical functions. Yes.

21 CHAIRMAN MORGAN: Now the other thing you
22 mentioned, well you mentioned several things in your

1 comments and also in your brief, but one of the things
2 that you discussed in your written statement I believe
3 was this issue relating to CSX proposing to transfer
4 seniority of Conrail clerical employees to the
5 Jacksonville facility without actually offering
6 affected employees jobs.

7 MR. KRAUS: Right.

8 CHAIRMAN MORGAN: You are obviously, as I
9 understand it, feel that that is not the way it should
10 be. Could you just explain that a little bit more,
11 how you perceive that in the context of the legal
12 requirements and New York Dock?

13 MR. KRAUS: Yes. I think it's quite clear
14 and there have been two arbitration decisions
15 involving this issue on CSX, both of which have been
16 upheld by this Board. If an employee's -- if there is
17 a work transfer and as a result of the transfer the
18 employee is offered a position, then there is an
19 obligation to follow the work. We recognize that.

20 If there is no position being offered and
21 the job is abolished, as a result of a transfer of
22 work, that employee under New York Dock is a dismissed

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1 employee and is entitled to a dismissal allowance.

2 He has certain obligations to return to
3 work if a position is offered. Those obligations are
4 to return to work in a seniority district or to return
5 to work at the location he is employed if a position
6 is available, even if it is in another craft. The
7 language is a substantially equivalent position. I
8 won't get into that.

9 But clearly there is no obligation for an
10 employee who is in a dismissed status to report and
11 accept a position anywhere on the system. That is
12 essentially what CSX is saying. They don't have jobs
13 for these people. They want to abolish their jobs.
14 They are going to be dismissed employees.
15 Notwithstanding, they want to move their seniority
16 down to Jacksonville so that the people again, just so
17 they can get the geographic locations in this
18 situation.

19 We're essentially talking about clerical
20 people that are employed in Philadelphia, Pittsburgh
21 and Dearborn, Michigan.

22 Not that they want to -- People will be

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1 dismissed. They acknowledge that, as they must. But
2 they're going to transfer their seniority. Even
3 though there's no job for them, they're going to
4 transfer their seniority to Jacksonville so that, at
5 some future date, they could require the employee to
6 go to Jacksonville.

7 That's simply contrary to New York Dock
8 provisions. The employee is only required to accept
9 a position in his seniority district or outside his
10 craft and class, but that's limited to essentially --
11 it's not precisely defined.

12 I think it's typically 30 miles, but
13 essentially where he works. It has never happened the
14 way they've suggested. We questioned Mr. Peifer,
15 who's the vice president in charge of labor relations.
16 He could not cite us a single instance in his
17 deposition in response to our claims that it's never
18 happened.

19 The carrier, after engaging in some
20 rhetoric, pointed out one instance. And the one
21 instance they pointed to was a transaction which work
22 was transferred and seniority districts were put

1 together in one city, in Cincinnati in the Queensgate
2 Yard.

3 So the people, they have had their
4 seniority moved, but they would have had to accepted
5 a position there anyway because they're required in
6 their home location to accept the position. So
7 they're taking what happened in one city, in
8 Cincinnati, saying that's the precedent.

9 Based on that, you should be able to
10 require people to move from Dearborn, Michigan to
11 Jacksonville, Florida. Obviously it's not and the
12 same. And we think it's quite clear what New York
13 Dock requires in that regard.

14 And, indeed, this is not a new issue.
15 It's happened twice before on CSX. We went to
16 arbitration with them. We prevailed. The carrier
17 appealed those decisions to this Board. And, in both
18 instances, the arbitrator's decision was affirmed by
19 the Board.

20 Those are relatively recent cases.

21 CHAIRMAN MORGAN: So your concern in that
22 respect is that that is not consistent with New York

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1 Dock?

2 MR. KRAUS: Yes.

3 CHAIRMAN MORGAN: This approach is not
4 consistent with New York Dock?

5 MR. KRAUS: Yes.

6 CHAIRMAN MORGAN: And then the only other
7 question, you talked about attrition protection in
8 your --

9 MR. KRAUS: Yes.

10 CHAIRMAN MORGAN: -- statement.

11 Could you walk through that a little bit
12 with me?

13 MR. KRAUS: Well, we are requesting that
14 any employee who would be affected by the transaction
15 and to lose a position would be entitled to not just
16 the six years of protection, but a lifetime
17 protection.

18 CHAIRMAN MORGAN: And that's for -- I
19 mean, is that in place with respect to any of these
20 affected employees today? In any of the collective
21 bargaining agreements, do we have --

22 MR. KRAUS: We have --

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1 CHAIRMAN MORGAN: Like over time, you
2 know, there have been --

3 MR. KRAUS: There are -- yes, if I
4 understand your question. I didn't mean to interrupt,
5 Chairman Morgan.

6 CHAIRMAN MORGAN: That's okay.

7 MR. KRAUS: There is what I would call
8 effectively attrition protection agreements not --
9 that have been negotiated as part of the collective
10 bargaining process for the clerical classes, and those
11 are commonly referred in the industry as the Feb. 7th
12 Agreement.

13 Those were negotiated effective -- I
14 believe it's either -- I think it's the effective
15 date, February 7th, or the date they signed it, but
16 it's, I believe, February 7th of 1965.

17 Those Feb. 7th agreements, which are in
18 place on every Class I railroad except for Conrail,
19 including the Applicants, do provide attrition
20 protection for affected employees.

21 CHAIRMAN MORGAN: So you're talking about
22 they exist with respect to certain employees under

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1 collective bargaining agreements?

2 MR. KRAUS: Yes.

3 CHAIRMAN MORGAN: They do not apply to
4 Conrail employees?

5 MR. KRAUS: They do not apply to --

6 CHAIRMAN MORGAN: That's not part of their
7 collective bargaining agreement?

8 MR. KRAUS: Yes, because of the Conrail,
9 --

10 CHAIRMAN MORGAN: Right.

11 MR. KRAUS: -- without going through all
12 the history of how that corporation was created, there
13 was a certain statutory protections that was then --
14 the monies were exhausted, they were substantially
15 reduced, and they have not been replaced with anything
16 akin to the Feb. 7.

17 Conrail has some other protective
18 agreement on its property commonly referred to as a
19 sub agreement which is far less than that.

20 CHAIRMAN MORGAN: And then lastly, with
21 respect to ongoing labor negotiations, obviously there
22 have been some discussions between unions and the

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