UNITED STATES OF AMERICA

SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 573

RAIL SERVICE IN THE WESTERN UNITED STATES

WEDNESDAY

DECEMBER 3, 1997

The hearing was held in the 6th floor Hearing Room at the office of the Surface Transportation Board, 1925 K Street N.W., Washington, D.C., at 10:00 a.m., Linda Morgan, Board Chairman, presiding.

BEFORE:

LINDA MORGAN CHAIRMAN
GUS OWEN VICE CHAIRMAN
VERNON WILLIAMS SECRETARY

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(10:15 a.m.)

CHAIRMAN MORGAN: Good morning.

Five weeks ago, the Board convened a hearing to review the serious rail service problems in the West.

After hearing the testimony of over 60 witnesses, the Board found that a transportation emergency existed and, in an unprecedented action, it issued Service Order number 1518.

Service Order number 1518 sought to free up cars throughout the Union Pacific/Southern Pacific system, mainly by using the Texas-Mexican railway, Tex-Mex, and to a lesser extent, the Burlington Northern-Santa Fe Railway, BNSF, to carry some of UPSP’s traffic and to route traffic around Houston.

Service Order number 1518 also, among other things, required that UPSP to report in detail on the progress of the service recovery effort and it directed UPSP and the Burlington Northern-Santa Fe to report on their plans to meet increased shipping demands expected as a result of the imminent grain
harvest and seasonal traffic.

And finally, the Board stated that it would hold another hearing today to review the progress that has been made in improving service in the West, and to determine what further actions may be necessary.

I note that one of the participants has questioned the timing of this hearing, right after Thanksgiving.

I can assure all of you that I would rather be somewhere else today, too. But we really have no choice as the service order, by statute, could not be initially be in place for more than 30 days, and will expire tomorrow at midnight, unless we extend it.

So, our objective to day is to determine whether a transportation emergency continues to exist in the West, whether we should extend the service order and if so, for how long, and whether we should expand its scope.

As was the case five weeks ago, we have before us a great deal of information. Data from UPSP
and substantial written material from both participants in the oral hearing and other interested parties.

We appreciate the work that went into developing all of this information. I assume that we have examined it all carefully, and it has helped us understand exactly where all interested parties believe the recovery effort is today.

From the statements and pleadings submitted, there appears to be a sharp contrast between the way that UPSP views the situation and the way shippers view it.

According to UPSP, substantial improvement has been made and the system is nearly back to normal.

According to shippers, significant surface problems remain.

Today, we will be reviewing these differing positions and the data that UPSP has provided to determine just where we stand in the recovery process.

Our challenge in this regard, as it has been all along, is to balance the needs of all
involved.

We must be sure that, in any action that
the Board takes to help one area, we do not hurt
another.

That when it acts to help one group of
shippers we do not do it at the expense of another.

That when we act to assist one carrier, we
do not tax another carrier's resources.

And that in responding to the emergency,
we do not impose a governmental solution that is
overreaching or unduly interfered with private sector
recovery efforts.

In any event, notwithstanding the variety
of interests and their varying needs, the Board
remains committed to being involved in this matter
until we believe it has been resolved.

To ensure that the transportation
emergency in the West is resolved, private sector
assistance and cooperation, as well as Board
vigilance, are needed.

In this regard, very recently the
president and the chief executive officer of The
Association of American Railroads, M. B. Oglesby, issued a release recognizing that the service crisis in the West is an industry-wide issue and that industry-wide cooperation is necessary and forthcoming to solve it.

I am not sure if all the individual railroads in this room have read that release. It does not surprise me that UPSP and the shippers view the state of the recovery effort differently.

What does, however, surprise and concern me is the caustic commentary among the railroads that will be testifying today.

It appears to me that carriers continue to point fingers at one another, in certain instances, almost seeming to disavow responsibility for working to resolve what we face.

The Board has committee to being constructive in the face of an emergency, the railroad industry must do the same.

In addition to the handout entitled "Hearing Procedures", we have a few new procedures that I would like to outline for you now.

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You will notice that each microphone at the speakers table has a bar at the base. This is a mute bar and holding it done will cut off the microphone. So, if you need to have a private conversation, that is the way to do it. Lifting your hand will activate the microphone again.

We have also had our speaker timing lights put into working order, so that when the green light goes on you have one minute left. When your time is up you will see a red light and hear a double chime. You are not hearing things.

Please conclude your remarks when you hear the chime.

You will also see that we have silver toggle switches for each speaker light, which turns each individual light on and off. Please use whatever setting works best for you.

Finally, I note that at the last hearing the Board members did not interrupt witnesses with questions while they were presenting their testimony, but rather asked our questions after each oral presentation was concluded.
This time we may well interrupt you during your testimony so that we may get to the issues that concern us.

We have divided the witnesses today into panels. I will call each panel up, as appropriate, and repeat the time allocation at that time.

Some might wonder why we have put the witnesses in the order in which we have. The Board believes that, given the nature of the hearings, the private users and providers needed to be heard from first, and we will look forward to the testimony of the other parties, thereafter.

Finally, I want to point out that the statements that have been filed have been put on the Board's website. The Board's website address, for those of you who want access to the statements, is www.STB.DOT.gov. Yes, we have entered the 21st Century.

I will now recognize Vice Chairman Owen for any comments that he might wish to make.

VICE CHAIRMAN OWEN: Thank you. Finally, we have arrived.
I have some casual remarks this morning, that I would like to make. It is regarding the Thanksgiving morning that I went home to California.

When I go home, I always like to check out what is going on in the transportation corridors out there.

So, I set up some meetings with the Los Angeles port and also the Long Beach port. I toured the facilities and discussed the problems with them to see exactly where they were coming from.

The longshoremen there had recruited an awful lot of people in to unload the ships so there is no longer a ship backlog there.

There is somewhat of a container backlog. There are excess containers there that should be moving inland. Fifty per cent of those containers go into the southern California area, into our market place between Santa Barbara and the Mexican border.

The other fifty per cent go inland.

The thing that was brought to my attention that was very interesting to me was, in as much as we are stacking containers at the ports now, more so than
before, each time you off-load an container it is
$150.00. Each time you move that container each time
thereafter, it is $75.00.

So, it used to be that we would move the
containers maybe two or three times before they would
be on a train or a truck moving out to their
destination.

Currently, due to the backlog, they are
moving those containers anywhere between five and
seven times.

Who picks up the additional cost? No one
knew at those particular ports. But it is a cost that
has been incurred and will be passed on to the
consumer and the shippers.

So, I just wanted you to be aware of that.

The other the coal trains, they built coal
facilities there to move coal to Asia and help offset
our balance of payments. We used to have four to five
trains per week. Currently, we have one train per
week coming in with coal. Hopefully, that will
improve. Indications are that it is improving to some
degree.
Then I visited with Metrolane and chatted
with those people. They had had a number of stoppages
and delays, throughout southern California.

Currently, a week ago last Monday, there
were four to five trains parked on their routes or
their rails as they saw it, on the sidings and so
forth that hindered their schedule.

As of last night, I talked to them
yesterday evening, the tracks were clear.

So, there must be some improvement there.

On Friday after Thanksgiving I toured the
railyards in the San Bernadino and Colton area. Not
only the West Colton area but also the Santa Fe and
the Metrolane and Amtrack facilities.

There are still a number of trains on the
sidings out in that neck of the woods. The West
Colton yard looked as though it was pretty full; it is
operational.

But I was amazed at the number of cars
there and the inability to really sort and classify
cars to the extent that it needs to be.

The reason that I bring this up is I just
want to know that when I go throughout the country, when I go back and forth to the West Coast and go home, I try to make it a point to stop off and see some of the facilities and talk to the people who are actually doing the work.

I did talk to one of Broken Rail's presidents out there, spent quite a bit of time with him and checked with him again last night. So they do indicate that there is some improvement coming along.

One of the points that I wanted to make before we started this hearing today, in reading the briefs and digging into all of this and trying to sort things out, you know me as a small business man, and I really do not care for government to be involved in running the business that you are in.

But in going through the briefs, I see so much finger-pointing and I think it time that it ceases. I think that it is time that Mr. Oglesby and Mr. Chambers pulled together all of the rail industries and said, hey folks, we have got to work together, to cooperate to a greater degree. And not fight over the shippers we currently have and the
As I said before, in giving speeches around this country, there are an awful lot of customers out there waiting to work with the railroads, once you get your act together where you can deliver on time and perform. And I think it is more important that we focus on getting trucks off the freeway to a greater degree, and assisting them with their problems of delivery on time. And focus on that.

So today, during your testimony, I would not necessarily admonish you but I would tell you this, that I really want to hear solutions -- I said this at the last hearing. And I really want to hear them where you are going to work together, and participate as an industry in solving this problem.

That is all I have to say today. So, I think with that I will turn it back to the chairman and let’s get on with the hearing.

Thank you.

CHAIRMAN MORGAN: Thank you.

First of all, the last hearing we held was
twelve hours. I promise you this hearing will not be
twelve hours.

Let’s begin with Union Pacific, Southern
Pacific, Mr. Davidson, Mr. King and Mr. Martinez.

You have allocated a total of 45 minutes,
but I presume that you would like some time now and
some time later?

MR. DAVIDSON: That’s correct, Madam
Chairman. Perhaps more at the front.

CHAIRMAN MORGAN: Thirty minutes now and
15 at the end?

MR. DAVIDSON: I think five at the end
would be ample.

CHAIRMAN MORGAN: Forty minutes now and
five at the end.

MR. DAVIDSON: Once again, good morning,
Chairman Morgan and Vice Chairman Owen.

CHAIRMAN MORGAN: Good morning.

MR. DAVIDSON: I remember the day we were
here last quite well, and I would second what you
said. I hope it isn’t quite so drawn out this time.

However, in reporting back as we agreed to
do, on the 27th we said that we thought we could have our railroad back to a substantially fluid situation shortly after Thanksgiving. And I know that during the interim period you have been reading in the newspapers saying we can’t do it. It will never work.

Well, I am here to tell you that it did work, we are back to a substantially fluid condition as of today.

On October 27th our biggest challenge was to decongest the south end of our railroad where our congestion had started and was still heavily congested at the time of that hearing.

Today, the railroad on the south end of our property is flowing fluidly. The terminals are nearly back to normal and the main lines are flowing quite well.

Where we had dozens of blocked sidings, today they have returned to normal level.

Transit times are far better, not where they need to be yet, but far better, and will continue to get better.

Traffic flowing to and from the country of
Mexico in the month of November crossed at Laredo in record volumes.

The TFM did a great job of accepting traffic from the north and delivering traffic coming from Mexico back to the north.

We do still have some problems, obviously, in the Houston area, but they will be alleviated more quickly now because we are getting the tools in place to do so.

On December 1, as I mentioned at the hearing last time, we did install our transportation control system on the south end of the railroad. It basically included the states of Louisiana, Texas and New Mexico. That installation is going quite well. Probably the best installation that we have had yet. Not that there haven’t been a few challenges, but it has gone quite well.

Additionally, on December 16 we will begin the integration of various terminal facilities in Houston. We have two large rail complexes there, one form UP and one former SF.

That integration will start in the middle
of this month and will take about six weeks to get fully integrated. But service will continue to improve substantially as that happens.

Then, finally, towards the end of January, we will be in a position to start the directional service there that will really bring the benefits of this merger to fruition.

What we promised at the merger hearing over a year ago would happen will now take place. Our customers will really see the benefits of improved service.

Back on October 27, I said that the north end of the railroad was just about fixed. Well those were famous last words, almost.

You may remember the weekend before we had a record snowstorm that moved across Wyoming, Colorado and Nebraska, an early winter snow storm that shut us down for over 36 hours.

Then, just as we got cranked up again, we got an eight car derailment on a grain train that blocked both main lines across Nebraska where we run 125 to 130 trains a day.
So, you can get a substantial backup. That followed along with the cold snap that resulted in some broken rails and some pull-aparts and that just really clobbered our system.

VICE CHAIRMAN OWEN: Excuse me, Mr. Davidson, what was the cause of the derailment there?

MR. DAVIDSON: A broken rail.

Nonetheless, in the middle of November, our operating guys instituted a recovery plan across the central corridor that Brad will talk about a little bit more later.

And it has worked. It has flushed out the backlog and we are flowing fluidly now across the central corridor, as well.

By the numbers that we have been furnishing you I know that you can see substantial continuing improvement in the date, even with the negative effect of that winter snap across the northern tier of the property.

Our total car inventory has dropped from a high of over 257,000 cars when we were at our worst, down to just over 330,000 as of this morning.
So, clearly the progress is substantial. The blocked sidings are down by more than 80 per cent and are today at what could be considered normal levels.

Daily trains held for congestion which, at our worst point totalled more than 500, as of this morning had been reduced to 70. A phenomenal reduction and be considered normal levels.

Service to coal and grain customers is clearly improving.

The cycle time on trains moving out of the Powder River Basin and out of the Colorado and Utah coal fields are improving dramatically.

And the volume of trains moving out the Powder River Basin are back to the level they need to be to fulfill our contract commitments.

For grain, I would say in the last two to three weeks, we have been moving very high levels due to allocating additional power to our grain trains. But I will be quick to add that we will never have a grain car fleet, nor will the railroad industry ever have a grain car fleet that can meet the needs of our
grain shippers at their peak period. We don't have
the church that will hold the crowd on Easter Sunday.

But I will tell you that we will move the
grain harvest that has been produced in the Midwest
this year. It will be moved.

There are problem areas that remain, and
we should be the first to acknowledge that.

For example we have had a tough time
cleaning out the congestion in southern California as
noted by Vice Chairman Owen. He observed the
situation out there himself.

Traffic levels are very high in this area
and facilities are tight.

We have made huge progress but there is
still a lot more work to get done in southern
California. That is probably the area where we need
improvement the most at this point in time. Brad
will delve into that aspect of our operation.

Our recovery effort has though has truly
been an heroic undertaking by our 53,000 employees.
I would like to take this opportunity to thank each
and every one of them for the part they have played in
our recovery.

We have one of our employees here with us today, David Martinez, a locomotive engineer from Fort Worth, is going to speak with you himself about the part that he played and how his fellow employees have viewed the situation as they overcame the problem.

Based on the papers that were filed on Monday, you are going to hear from various parties today that service really isn’t better. As you said in the beginning there is quite a dichotomy of testimony here.

But I will tell you that is not true. Service is clearly better and getting better rapidly.

I want to be absolutely clear in saying to you that what was told to you about our service recovery is accurate. Every statement in that lengthy report, which I am sure you read, filed on Monday, is supported by factual, measurable data that we religiously keep and review.

Additionally, we go through all the details every morning of our operation, seven days a week, to quantify just how well we are doing.
I think that some of the rhetoric that you hear here is clearly spin that people put on the information for various reasons.

Some people clearly would like to see re-regulation of the industry.

Shippers like Formosa Plastics who want open access have filed papers playing down the extent of the improvement. Yet their own employees that we do business with have stated that they have seen significant improvement in the service.

The information provided to you by several of the associations, the Society of the Plastics Institute appear to be using information that is several weeks old and doesn't reflect the dramatic improvement that we have seen in the last few weeks.

In other areas, and Vice Chairman Owen, you will have to forgive me, you have been given misinformation or data that is absolutely inaccurate.

I am going to try to set that straight.

As an example, when you talk about the container business in southern California, the CPUC has filed a statement that the UP has backed container
traffic up and is still continuing to back container traffic up.

Well, as of today, we are absolutely current at our container facilities in southern California. In fact there was testimony at the CPUC hearing recently to that effect; that there was no backlog today caused by the Union Pacific.

And KCS is just plain not telling you the truth about the sidings that are blocked on their lines in Louisiana where we operate jointly with them.

KCS says in their papers which were filed on Monday, that those sidings are blocked with Tex-Mex cars that Union Pacific won't take.

The fact of the matter is that our people have repeatedly asked the Kansas City Southern operating people whether they have Tex-Mex trains that they would like to deliver to us and we have been told no, that the sidings that are blocked on the joint line have nothing to do with the UP; it is not our fault.

Similarly, we just can't agree with what BNSF has said about blocked sidings on the Houston to
Iowa Junction line, nor the Houston to Memphis line.

We count those box sidings every day and record that data. And that data isn't anything like what BNSF alleges. So, obviously they have a different system of counting. They must look at the sidings that are blocked for normal needs or something.

But I can assure you that those sidings have been substantially freed of trains for some time, with few exceptions.

Now, there are times that some of the sidings are blocked. But ever since the hearing on the 27th, our people have done a good job of keeping the sidings open.

We do know that, on occasion that we get sidings blocked there because BNSF is doing maintenance work between Iowa Junction and New Orleans and they have an eight hour window or something close to eight hours. While they are working on the track they won't permit our trains to move across so we have to hold them during that time.

There are also times that we know that BN
Santa Fe actually runs trains out of their initial
terminal without sufficient time left on their hours
to complete the run, and their own trains end up tying
up on this piece of track.

And there are times when they don't have
relief crews to go get them immediately.

So, I would be prepared to dispute their
numbers with data, should you like to get into the
details of that.

The improvements that we have achieved in
our main line and yard operations unfortunately are
not always noticed as quickly by our customers as it
is among us.

The reason is that most of our customers
look at improvement in terms of cycle time of their
freight car fleet. In fact, before they regain
confidence in us, I suspect there are many of our
customers who want to see repeated cycle time
improvements on a longer term basis before they will
buy the fact that things are truly improving.

None the less, while many of our customers
have said they haven’t seen the improvement, I can
tell you there are dozens of customers who have said
that they have seen the improvement. A number of
customers have spoken to me personally and said it was
great to see us coming back and getting our service
back in line. As late as yesterday I was told that by
one of our major customers.

We do know that things are improving and
we have great confidence that it will continue to
improve.

As I told you last time, when we put our
service recovery plan in place, we threw our budget
out the window. We said we are going to recover this
railroad, get it back in a fluid state, regardless of
the cost.

You have probably seen the press release
that we put out not long ago stating that we might
well lose considerable money in the fourth quarter as
a result of this effort. But we have committed to do
whatever it takes to fix it.

We also implemented the Board’s October
31st order in full, as soon as we received it. And
the service situation is well on the way to complete
resolution. We would say that there isn’t any need to
renew the order. We think that, that this point, the
order would be superfluous.

But we would be quick to add that if the
Board would decide to do that, we would certainly
comply as rapidly as we possibly could with the order,
but would ask that it not be extended certainly for
any more than another thirty days.

And if you did that, we would also ask for
two more things.

We would like, if you would do that, to
make any continuation of Tex-Mex trackage rights,
running from Placedo to Algoa contingent on their
agreeing to run directionally from Houston to Flatonia
down to Placedo, just like the UP is doing and the BN
Santa Fe has agreed to do.

What they are trying to do is run against
the flow of traffic down there and it makes the
operating situation very difficult.

Secondly, I would like to say that there
is zero justification for what is happening in Houston
where the Tex-Mex is trying to pick up what amounts to
about another half a dozen cars a day on a very busy piece of track.

In fact, in their statement, which I am sure you saw, they acknowledged that it creates a tough situation there for others as well as themselves. Their remedy for that is to ask for another four or five tracks out of a very busy yard that neither UP or BN Santa Fe, I would think, would be agreeable giving up. At least UP wouldn't; we need them ourselves.

I would suggest the right answer there is to terminate that Houston provision that you inserted.

Our dramatic process over the past month confirms that you were correct in what you did by not acceding to the wish lists of all the parties who came in here asking for pieces of our system. That would have been counter-productive and I think you recognized that.

You're focus on improving the situation was exactly right. We have the greatest motivation of anybody in this room to fix our problems. We have 53,000 employees whose livelihood depends on running
a good business.

So, we have everyone's commitment to the improvement.

I think you should also reject all the grab-bag requests that you have received for this hearing. They are over-reaching and inappropriate.

In fact it is almost like we were merging again and everybody has come in asking for a handout. It reminds me of what we went through several years ago. That is true of the KCS, the Tex-Mex, the BN Santa Fe, the Plastics Society and particularly the Railroad Commission of Texas.

It is mind-boggling, the proposals that have been presented.

The Texas Railroad Commission has come in with a proposal to make the whole Houston terminal an operation run by the PTRA and ILA. The rest of our railroad that the PTRA doesn't get, to the Tex-Mex, would clearly mess the system far worse than any good it could possibly do.

What they have done is just re-warmed their proposal that they put forward in the original
merger and served it up again.

You rejected it the first time and it should be rejected again.

So, in closing you could say what are the lessons that we have learned from this?

Well, I would tell you, with 20/20 hindsight, if we had to implement our merger over again, we would start in Houston, in Texas and Louisiana instead of Utah and Colorado like we did.

We had the most opportunities to make things better probably in that location.

We didn’t start there; we started where it was easiest. But if we had it to do over again, that is what we would do.

But I think, on a larger scale, I think that it is really clear that the transportation system, not only the railroad but trucking, the ports and everything else, is stretched in the western part of the United States.

What we need to do is run an efficient, cost effective, high quality operation that generates profits so that we can reinvest those profits in the
track structure and expand our capacity to handle
business and do the right things for our customers and
for the employees.

I would urge you not to take any action in
this case that would be a disincentive for us to
reinvest in the property and run a great business.

Thank you.

I will ask Brad, if you have no questions,
to --

CHAIRMAN MORGAN: -- Well, I will have
some questions. But Mr. King if you want to speak and
I also think that Mr. Martinez wants to speak, is that
right?

MR. DAVIDSON: Yes, that is right; after
Brad.

CHAIRMAN MORGAN: Mr. Davis, how are you?

MR. DAVIS: Good morning. I am not here
to speak, just to answer your questions, if you have
some.

MR. KING: Good morning.

Last time we went over the railroad we
separated into a southern tier and a northern tier and
that is the way that I will approach my remarks today.

I will start with the southern tier where we are back to the levels that we were at during the course of the summer.

Let's start in the Houston area.

Like I said, Houston is more fluid. Old cars are greatly reduced but still do exist.

Flows to and from the industrial areas are happening everyday, although they are not on time as we would like.

The man power issues, some still persist, primarily where we are training engineers because it takes longer. But we are supplementing our forces as well as the implementation of the Houston hub, the final parts and will help augment our man power.

So, an important key that we need to talk about as we come into December is that our management focus in this area is returning to normal. By that I mean starting to focus on the things that we would normally do day in and day out for our railroad.

That is due to the state of the railroad that we got it back into. That is focusing on
productivity of our yards, getting trains out on time, getting the right cars to the right trains on the right day, and getting customers switched every day.

Some customers are already experiencing difficulty with too many empties due to the improved cycles, and we are having to find storage locations for them.

The loaded outbound shipments are also better than we were achieving in April for some customers. And for some others, they are not where we want to be. But overall, I would have to say we are improved.

As normal for this time of year, sit tracks are full or near full.

I can say that the Tex-Mex, the BN Santa Fe and the Union Pacific all talked about having smoother operation of through routes. We need that also in the Houston area. The PTRA has recently been holding up and in fact we are holding two trains out for them this morning.

Buck Cord has been down in our Houston control center off and on and the day that he was
there he watched the BN Santa Fe get a train out that hasn’t been inspected, block both main tracks for eight hours.

So, as a result of those issues we asked for and the other railroads agreed and we met the Wednesday before Thanksgiving, in Houston. All were representatives of Union Pacific, Tex-Mex, the BN Santa Fe and the PTRA to discuss how we could work together to make the Houston operation more fluid.

There will be a follow-up meeting to that December 12, 1997.

Now, a result coming out of that, there are now two conference calls twice a day with the Houston control center for all the railroad participants to get into, to make sure that we try to communicate better what each railroad is trying to accomplish.

So, we are working on trying to get together in Houston to get a much more fluid operation.

VICE CHAIRMAN OWEN: Excuse me on that particular point.
Joint supervision of switching and dispatching, would that help resolve some of that?

MR. KING: Well, the BN Santa Fe has had someone in our center off and on. The joint switching really gets in the complexities of the customers, of where they are and that gets much more complicated as to the flow.

VICE CHAIRMAN OWEN: I guess the joint supervision or something along that line, it seems to be one of the major conflicts.

MR. DAVIDSON: Vice Chairman Owen, excuse me. We have had some very preliminary discussions with BN Santa Fe about some sort of a joint approach to the dispatching operation. It is not being actively discussed at this time, but there were, at least, some initial discussions about it and we would be hopeful that we could pursue that.

CHAIRMAN MORGAN: Well, that is one of the suggestions that the BN Santa Fe has made today in their testimony.

MR. DAVIDSON: Well, they went far beyond what we contemplated. We have got our new dispatching
center down there that encompasses a great deal of the Houston area that we operate.

But we would be willing to discuss that with BN Santa Fe if they would like to participate some how.

CHAIRMAN MORGAN: Go ahead.

MR. KING: Well, in our Houston control center the problems are getting better each day, and the last portion of that will be moved in there in late January, which is primarily from the UP side. We are doing software design now and getting that software moved in there in January.

Our TCS which Dick mentioned which is really how we manage the railroads with our transportation system which began on December 1 and it is going well. It is a great tool to help us in this area to manage this one property.

We have had some cut over problems but we are moving through those fairly quickly.

The directional running Houston East will be implemented December 16. Directional running to North Little Rock and Pine Bluff will begin in late

Now, to move over into Louisiana and talk about Livonia which is kind of a linchpin for our Louisiana operation. We are still pending but we will stay that way by design because it is the focal point of all the manifests moving in Louisiana and moving through the New Orleans gateway.

Volumes are much more current going through this yard.

At Fort Worth, as we talked this last time, this is the best news in Texas; it was the worst news in Texas before.

We can say now that Fort Worth is functioning to plan.

The San Antonio yard is fluid, local customers are being served. Dick mentioned the Mexico Laredo gateway are at record levels.

Eagle Pass has had some congestion from a BN Santa Fe derailment and what appears to be the start of the Mexican privatization which has caused some trouble on the Mexican side. We have some small congestion areas around Eagle Pass now.
We have also implemented since the last hearing, directional running between Fort Worth and San Antonio which is offering big benefits between Fort Worth and San Antonio.

The Brownsville hub, the directional running is really helping the flow. The box sidings are down by 90 per cent. We are handling more trains with the same capacity that existed before the merger.

Customers are being served every day. We still need improvement on our on-time departures, but we are improving.

El Paso, we really didn’t discuss much in the last hearing, but while Fort Worth was an issue, we used El Paso to assist Fort Worth out.

As a result, we did get into some service issues at El Paso. The traffic patterns have all been returned to their normal route and El Paso is much improved.

North Little Rock and Pine Bluff they are current, we are driving volumes effectively from them, the gateway to Memphis, St. Louis, Salem and St. Elmo.

Our job there is to work on getting the
connections from Houston into these yards more on time to make the connection.

Our directional running out of Houston to these two points which will be happening in the first quarter of 1998 will offer greater consistency and reliability in this quarter.

Moving on to the northern tier. The definition of the northern tier was basically from Chicago to the West Coast. The central corridor that is sometimes talked about is a piece of that northern tier.

I have to say that in the states of Iowa, Illinois, Missouri, Minnesota and Wisconsin, the manifest business is current. Chicago complex is current.

In Nebraska, this is what primarily comprises what we talk about as the central corridor. This corridor runs from Council Bluffs to North Platte to Cheyenne and down to Kansas City has no equal to the volume of trains required to operate each day.

Two weeks ago, we had not returned to normal, Dick talked about the winter storm and the
derailment service interruptions. Grain and coal shipments were not moving very effectively.

This is a very key thing. We began a 36 hour to 48 hour stand down of all traffic entering this area. We took a day to plan it, two days to execute and we focused on coal and grain.

The railroad by the fourth day was flowing improved volumes and working off backlogs.

For example, the Powder River Basin coal mines are now averaging 26 loads per day and in the last week in November improved up to 82 per cent on time.

Now these volumes will allow UP to impact favorably inventory at utilities.

For example, this morning San Antonio power plant has seven loaded trains moving toward their plant.

Grain, as of this morning, there were only 15 grain trains filled for shipment in Nebraska and power was en route to move five of those.

VICE CHAIRMAN OWEN: How many are on order in Nebraska? Is there a backlog of cars on order

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there?

MR. KING: Yes, the backlog was about 17,000, but then Tuesday we experienced 3,400 cancellation of cars. The indication that we are receiving is that we are seeing some of this market shift into the first quarter. Some of that grain may not move until as late as March.

VICE CHAIRMAN OWEN: Thank you.

MR. KING: The grain fleet, about two weeks ago when we began this was about 70 per cent and 7 per cent spottage, or 77 per cent of the covered hopper fleet.

I can say that that volume has dropped to 61 per cent and that 7 per cent spottage has grown to 9. And these are all indications that we are about to regain our velocity in the central corridor.

We are averaging moving 7 to 8 loaded grain trains a day out in Nebraska.

On grain, even though we are not caught up, I mentioned about the cancellations and the first quarter shift, the grain is still there to move. So, we will clean up what is left on the orders.
When the orders begin to reappear we will certainly be in shape to handle everything that comes at us.

In fact, in the last two weeks, locomotives in grain alone we have added 100 locomotives into that service in the last two weeks.

The North Platte terminal which is kind of the pin that holds this whole northern and central corridor together, we are back into handling 120 to 130 trains a day.

Yesterday, on the east end of North Platte we ran 133 trains. This consists of coal, grain and manifests, so we are back into handling our peak volumes.

Council Bluffs remains heavy but flows are very near normal there.

In Wyoming, the flows are normal for manifests.

Colorado Coal, where we were experiencing problems is vastly improved. We are not yet at the record volume that we were handling earlier in the year, but we hope to be there very soon.
Flows to the Pacific Northwest are improving. Grain and soda ash units are moving to the ports of Portland and Seattle.

In-roads that have been made in the demand for lumber and paper have been made, and I will talk about that more when I get to L.A. Basin because that is where a lot of the empties were being delayed, to where our back orders were within 300 to 400 cars, almost catching up.

Union Pacific certainly won’t be the reason that anyone won’t have a tree for Christmas.

We have already run one special train to the L.A. area.

VICE CHAIRMAN OWEN: Now, I saw some empty Christmas tree lots when I was home.

MR. KING: Well, they have already run one train on Saturday. They must be waiting on them and they won’t ship the others until tomorrow.

MR. DAVIDSON: They must not have unloaded the trailers on Saturday, Vice Chairman Owen.

MR. KING: We don’t want them to dry out too early.
But we will say that even the empties that we moved up there will exceed the demand.

Then we go into the L.A. Basin and I would say that this is probably our most sensitive service area at this time. The complexity of this absolutely huge market is pretty difficult for us to cure.

A week ago Tuesday, we decided that our progress just wasn’t improving fast enough, so we used Tuesday to plan, Wednesday we took a stand down to catch up. The plan worked.

At our worst through our service troubles we had 57 trains stopped at one time trying to get into the L.A. Basin; this morning there were nine. And they will be there for a much shorter duration than what we experienced when we had the heavy backlog. So, we are beginning to make good progress in the L.A. Basin.

We have established numerous positions to offer additional industrial support in the form of 19 additional industry support jobs being put on.

Trains, at times, out of L.A. are improving. We are making special trains out of
industrial support yards such as Montclair to try to speed up the return of empties back up to Eugene, Oregon and the Pacific Northwest.

Now, our transit times still need improvement in and out of L.A. Basin, though.

But I can say, for example, there are indications such as coal going to LAXT and Long Beach, that we already have coal on the ground, in storage, for ships that have not arrived yet and won’t be there for a week.

In fact, there is an 18 train ship coming into Long Beach, fifteen are already there and the other three are loaded and en route, and the ship won’t be there for another week.

This has been a huge effort, along with the trucking that everyone knows that we did out of L.A. to do the catch up, shifting traffic between our ramps in L.A. to be more effective, and a massive re-positioning of equipment to achieve the current status.

I might take just a second to re-cap some of the major things that I have talked about.
We have started directional running in several places: Houston to Fort Worth, Houston to Brownsville and Fort Worth to San Antonio.

Our central corridor stand down and increased coal and grain shipment. Doesn’t mean we have caught up on inventory; we have a lot of work ahead of us and we have to stay at high volume and we intend to do so.

The L.A. Basin I have just gone through. The stand down and the service improvement helped, but we still have a ways to go.

Our holiday plans, we let our people have Thanksgiving off, we came back, they came back, we had a very effective weekend following that and it has helped inventory reduction and helped us get much more current.

The other railroads have offered assistance. Some whose words and deeds match, some whose did not.

Now, we still have some big drivers to come. I talked about the TCS cutover that happened December 1 and it will prove to be a real driver
improvement in the Texas and Louisiana area as it gets
better and better and the people get used to it.

We can see our whole railroad as one down
there, for the first time.

December 16, the directional running
Houston East and the start of a changing road for
Inglewood will be good big drivers and will continue
through the first quarter.

Then the directional running between
Houston and North Little Rock, which is really the
cornerstone of the eastern half of the UP/SP merger.

The three keys to success we have talked
about before are capacity, locomotives and people and
we are beginning to make all these things happen.

We are beginning to see the improved
velocity and car cycles and we are beginning to
consider how we can offer more and more of our
services once again.

For example, what Dick talked about, only
65 sidings blocked this morning on the entire
railroad. Our trains held for power crews and
congestion was only 70. Then our inventory numbers
that Dick went through, just slightly over 330, and Texas and Louisiana dropped below 100,000 for the first time this morning.

So, I can say that we are coming back. Our service plan is working. Our current state really has Union Pacific right now positioned to focus on our transit time, our returning service level, because we have the backlogs behind us, our routes are in such a shape and our yards that we can really focus on getting our transit time and our service back to the level that Union Pacific customers are used to.

Thank you very much.

MR. DAVIDSON: Okay, thank you.

CHAIRMAN MORGAN: Mr. Martinez?

MR. MARTINEZ: Thank you.

My name is David Martinez. I am a locomotive engineer for Union Pacific.

I am married, my wife and I have five sons: Jesse, Joey, James, Johnson and Baby Jay.

I have been with Union Pacific going on 22 years now. The last two years I have worked the Fort Worth to Houston freight run.
This past summer has probably been one of the worst summers I have ever experienced throughout my 22 years with the railroad.

I go to work knowing that going from point A to point B knowing that I wasn't going to make it on time. And when I got to my final destination, I was exhausted.

There were trains at every side track. I notice the difference now. Now I go to work and it is between six and eight hours and when I go to the hotel and it is kind of strange; I am not exhausted like I was before.

It is kind of like a breath of fresh air. And I can tell you that my wife has noticed the difference. She has told me I am not as grouchy as I used to be.

Let me tell you about some of the quality people we have working for Union Pacific.

Back in the summer when things were bad, I worked with a gentleman named Virgil Smart.

We were called for a freight train out of Houston, we were going north, going home. If you have
ever been to Houston in the summer time, it is hot and
the humidity there is awful.

Our particular duties at this time were to
take this train and between Houston and Navasota it is
about a 60 mile stretch there, we were to set these
cars out in different side tracks and different spur
tracks in Navasota, put our engines away and go home.

It would have taken us anywhere between
four and five hours max.

Well, our first stop was Magnolia, Texas.
We make the cut, make the switch, and the customer
comes up to my conductor, Virgil Smart and he says
hey, is there any way that you can give me a spot for
some cars? I haven't had a spot for a long time; can
you help me?

Virgil could have easily told him that
wasn't our job but I will tell the dispatcher and let
him know about it.

But he didn't do that. He said hang on a
minute and then told me what we had. I said sure,
let's do it.

So, we called the dispatcher and told him
what we had and asked him if we could give the man a
spot. The dispatcher said sure, we had plenty of
time. Do it.

So, we did it.

With the cars that we had in our train and
the switching that we had to do to accommodate, we
worked an extra three and a half hours to accomplish
this.

What could have been a five hour day
turned into a 12 hour day for us.

These are the kinds of people we have
working for Union Pacific. The Virgil Smarts, the
Donnie Moores, the Bubba Mays, the Ronnie Bowers, the
Brad Thomases, the are the people who are willing to
go the extra mile to give quality service to the
customer. That is not a slogan; it is a way of life.
That is railroading.

I get paid to take my train from point A
to point B as safely and as efficiently as possible.
And if I don’t do that I feel like I failed.

Anybody have any questions?

CHAIRMAN MORGAN: Well, first of all, to
you Mr. Martinez, say thank you to you and all the
employees at Union Pacific for your commitment to make
sure that the company provides the kind of service
that you have been proud of in the past and will
continue to be proud of.

MR. MARTINEZ: Thank you, ma'am.

CHAIRMAN MORGAN: Obviously, as I said at
the last hearing to Mr. Davidson, I understand that
this has not been an easy time for anyone working at
the Union Pacific and I applaud all of you for your
commitment for sticking with it.

And I also want you and all the other
employees with whom you work, that whatever actions
the Board has taken or might take in the future on
this matter are with the intent of making sure that
the Union Pacific runs the way you want it to run and
that all the other people at the company want it to
run.

MR. MARTINEZ: Thank you.

CHAIRMAN MORGAN: So, I want you to take
that back, if you will to the people with whom you
work.
Let me also, to you Mr. Davidson, express my appreciation as I did at the last hearing for your continued commitment and sincerity in trying to resolve this difficult matter.

I know that it has taken a lot of commitment on your part as well as Mr. Martinez, Mr. King, Mr. Davis and everyone else at the company. It also has taken a lot of our attention and time.

What I think we are faced with here today, and I really have to begin with this question, you have indicated that you believe that, in essence, that the emergency is over and that the Board need not take further action.

Is that a summary of where you are?

MR. DAVIDSON: Madam Chairman, I think that summarizes it well. In fact, I would go so far as to say that you would be totally safe in rescinding at least a portion of the action you have already taken.

CHAIRMAN MORGAN: But as you have also indicated, we are hearing from users of the system that the situation is not resolved and the Board
cannot ignore those comments. We have an obligation
to listen to the users in this situation, as well as
to listen to you.

Are they all wrong?

MR. DAVIDSON: No, they are not.

I don’t want to restate what I said.

CHAIRMAN MORGAN: Excuse me, I didn’t plan
that darkness too well.

Where are the lights?

w Maybe there is a control panel.

CHAIRMAN MORGAN: Are the lights fixed
now?

It must have been something that I said.

MR. DAVIDSON: I was just glad it wasn’t
lightening.

Your question was while we are saying that
things are essentially back to a fluid operation
today, a number of our customers are saying that they
are not seeing it, and how would I reconcile the two
issues?

CHAIRMAN MORGAN: Yes.

MR. DAVIDSON: Just as candidly as I can
say this, the railroad is fluid. We have cleared the siding, our locomotives are being redeployed to move coal, grain, chemicals.

We are just restarting our mobile operations.

And numerous customers have told me personally, as well as told our marketing and operating people, that they have seen substantial improvement.

Now, are we where we need to be? Not by any stretch of the imagination.

We have a huge quality effort of focusing, customer by customer, making sure that we are meeting their requirements and we are not doing that in all cases.

That is our task in the weeks ahead, to get that service back to acceptable levels. We are absolute committed to it and we will do it. It is our livelihood. We are going to do it, that is all there is to it.

We have cleared the decks now of the backlogs and congestion.

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And I would commit to you that the benefits of the merge that we promised you a year and a half ago of being able to put the synergies of these two fine companies together and run directionally, using specialized yards, we will give something better than 1 + 1 = 2. We will give 1 + 1 = 3.

We are getting to the point where we are going to start realizing the benefits of putting the thing together.

CHAIRMAN MORGAN: And I appreciate what you say.

But the shippers who are indicating that service has improved, are they not communicating that to the shippers that we will hear from today?

MR. DAVIDSON: I don’t know.

CHAIRMAN MORGAN: I am trying to reconcile what I am hearing from you and the users who will be before us today.

MR. DAVIDSON: Chairman Morgan, I can’t answer for them, but I would suspect most of them would have to acknowledge that they are seeing some signs of improvement. But they would hasten to say
that it is not nearly what they want or what they
deserve or what they will get ultimately.

I don’t know what the average car cycle
is, it depends on the commodity, but let’s say it is
two to three weeks. But it takes a long time of
working through a repetitious series of cycles where
they do have confidence that service is returning to
acceptable levels.

I spoke with the National Industrial
Traffic League here a couple of weeks ago. We had six
or seven large chemical customers where we know the
cycle times had improved to the extent that we had
developed surplus empty cars and we were looking for
places to store those empty cars.

But what had happened is as our cycle
times lengthened, our service got worse, they added
more cars to the fleet which was totally
understandable because of the elongated transit time.

As we shrink that transit time more
towards normal, we are going to generate surplus cars.

Our customers aren’t telling you something
that they don’t feel deeply, because I talk to them

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all the time myself.

I would tell you that we have a few customers, just to be totally blunt about it, who will never say it is acceptable because they are trying to get open access again. They are relitigating the regulation issue. But I think that is by far the minority.

CHAIRMAN MORGAN: Certainly I understand individual interests.

But I hear you saying that there are still shippers who are not getting the kind of service that they should be getting.

MR. DAVIDSON: That all of think they should be getting.

CHAIRMAN MORGAN: But your position is that you don't need more assistance to ensure that they get the kind of service that you think they should be getting.

CHAIRMAN MORGAN: Madam Chairman, it is counterproductive, particularly in Houston where you have the Tex-Mex out there kind of wallowing around on busy main lines. It is hard for us and everybody
else.

Quite frankly on the Brownsville subdivision, the piece of railroad that runs from Houston down to Brownsville, Texas where we used to have one railroad running down there just a short time back, today we have three running on a railroad that wasn't built for anything like that.

So, it has been a real challenge. And Brad and the operating team should really be commended for coming up with this idea of directional running to try to accommodate all those different companies.

CHAIRMAN MORGAN: Let me just follow up now and ask a couple of questions.

Specifically relating to the data that you all have been submitting, again getting back to the position that you have taken, which is that there is some substantial improvement, and looking at the data, clearly there are some statistics that indicate improvement -- online car inventory, training both for power and crews which I think you raised -- improvement in certain of the yards.

But then I also look at some of the other
data that you have submitted -- the most recent data -- and I see for example, that the number of sidings blocked system-wide jumped 26 percent from one week to the next, and I look at the average time under load for grain cars, between the graph and the Pacific Northwest, and that’s increased 40.5 percent.

So let’s take those two statistics for example, Mr. King, and try to help me understand why those statistics are showing improvement.

MR. KING: Okay. The box sidings, for example, we shut the railroad down on Thanksgiving -- from 7 a.m. on Thanksgiving to 7 a.m. the day after. And the result, we stopped every train on the railroad, we stopped cold for 12 hours. We stopped all other traffic basically, for 24.

All those trains helped run those numbers. We started moving on late Thanksgiving night, and -- checking to see who’s coming up behind me.

CHAIRMAN MORGAN: Never --

(Laughter.)

I don’t know who’s in charge today. It’s certainly not me.
MR. KING: Well, we started -- by Saturday morning we had them all cranked up, but that did skew the numbers that we did that. The grain car cycles as I talked about, in the last two weeks we had really -- that was our focus.

When we decided to take the stand-down we were -- one of the commodities we were not moving effectively was the grain, particularly out of Nebraska, which was what our biggest volumes were. Iowa we were still moving pretty good. And that's when we took the stand-down.

A lot of that grain has just gotten out there and is back to loading. There's a lag time in those cycles. But I think you'll see those -- I'm confident you'll see those numbers improve drastically, because now we're getting back to what would be considered a normal level of trains being held, particularly grain trains. So you're going to see those cycles begin to really jump.

CHAIRMAN MORGAN: Well, clearly today, we're going to hear from some agricultural shippers who continue to be concerned that their commodities
are not moving, and painting a pretty serious picture of what is out there. Now, with respect to grain that's on the ground, or stored on the ground or elsewhere, have you established any kind of priority for moving that grain? How are you handling prioritizing the grain? Maybe you're not the right one to ask that --

MR. KING: Well, I know our grain marketing went to the various associations and asked them to help prioritize; they got no real response. So what we've done is, we go back to our customers and work through the priority.

Because sometimes you get into ship schedules, contract dates, and things like that. And we have, every morning we have a priority sheet for grain that we have worked through with all of our customers -- either our marketing group, our bulk grain group, and our Harlingen Center -- and we have, for all of our people how we supply crews and power to cars, our prioritization that we go through. And that's how we do that.

Now sometimes that is focused towards
those elevators which have emergency storage of grain on the ground but not always, because sometimes they're not into our -- chose at times not to get into our priority system because of the guarantees and such as that.

But we do go through those, quite a prioritization working through with the shippers. But just grain on the ground is not the only priority driver.

CHAIRMAN MORGAN: Now, getting back to data, looking at some of the yards. Now, you had mentioned the Southern California area. The statistics that you've provided us clearly indicate that the West Colten Yard continues to be -- at least from the way I view the statistics -- congesting.

The Englewood Yards may -- also continues to look congested. If you could walk through the status of both of these yards for me. Because those are obviously important yards in all of this.

CHAIRMAN MORGAN: Oh, yes. Yes. West Colten -- we'll go there first. I did talk about how many trains were backlogged before. One of the
measurements we look at is the fact of what we have trying to get into L.A. Basin. It is a huge, huge, market; very, very different market from Houston in that you have more smaller receivers and shippers than what you do in Houston, just by pure number.

And West Colten is staying very busy. We need to process 1500 cars a day there every day, which we do very well near that. So what we did do is start to begin to get yards like City of Industry, Dolores, Mount Claire, to help us with that. We’re doing some pre-blocking at Tucson going into there to bypass cars to Bakersfield.

Now, what you’ve seen us do is, where the cars at one time were stretched clear back to Arkansas -- what you’ve seen happen now is, now they’re pulled in right into, or right next to, the L.A. Basin. So the volume trying to get in there we’ve shrunk greatly.

The 19 jobs that I talked about we put on was put on weekend shifts and offers some shippers second switches where their volume and they were willing to staff to do that. And so we’ve done that. 
Now, to say that we’ve caught up, no way. Is our transit time in or out to where we need to be? No, but we’re making great progress in that and we will continue.

In the stand-down what we did was really, we’d gone from 57 trains to about 20, and we kind of plateaued there and that wasn’t satisfactory. That’s why we took that extra method and that’s how we got it down to nine.

And we will continue to work that down, we feel, and running the empties -- trying to get the empties as fast out of the industrial areas quicker -- we’re bypassing West Colten and going straight up to Eugene. It’s paying dividends, getting the lumber -- particularly lumber and paper cars, back up to the Pacific Northwest much quicker.

CHAIRMAN MORGAN: But given the congestion in the West Colten Yard that you’re working on, your position still is that you don’t need help to clean out that yard?

MR. KING: Not West Colten. I don’t know what help someone could really offer us because it
goes into the complex of the L.A. Basin, and the
customers are scattered all over. Now what -- the
intermodals, we’ve caught that up. What was backing
up part of were our routes with intermodal trains
waiting to get in and out of our ramps.

We don’t have that today. So our routes
are open. Now what we’ve got to do is get the cars
into all these industries, get them spotted up, let
them unload or load them up, and get them out, and
that’s an industry here and an industry here on the
various industrial areas that we’re working on.

It’s a tedious, day-by-day, we’ve got to
hit a lick every day, but we have been making progress
on that.

MR. DAVIDSON: Chairman Morgan, can I just
say something about that, too, and Jerry can elaborate
on this further. I’ve been told that historically,
you know, prior to our merger, that SP used to
periodically get backed up in the West Colten area.
That was one of the more delicate yard operations;
that on occasion volume would exceed capacity there.

And as a longer-term solution, as we
implemented our computer systems, get down to one
computer system on March 1st, 1998, and get our labor
forces modernized there, it would be a long ways
towards helping alleviating the problem there, and
then over a longer period of time we'd have capital
spending plans in the Southern California area to
expand capacity and be able to deal with the contract
levels on a -- term basis.

CHAIRMAN MORGAN: Vice Chairman, you had
something?

VICE CHAIRMAN OWEN: The diamonds there
created a problem for you, that if that was a neutral
dispatch or neutral control, or say trunk control for
that on the West Coast and basin there. I've heard
that there was some impediment there to trade traffic
there.

MR. KING: At times our trains are held
up, what we feel longer than need be. We are putting
a connection in there; begin the construction of a
connection there in the first quarter to help
facilitate movements through that.

VICE CHAIRMAN OWEN: But the connection
itself, that takes a little bit of time. What about
the diamonds themself, in the operation of that; I
think it’s currently being managed by Sante Fe, is
that true?

MR. KING: That’s correct.

VICE CHAIRMAN OWEN: And sometimes when
their trains are in the slot they may hold yours up
for a period of time until theirs gets there?

MR. KING: We have had that happen
sometimes. In fact, we have a meeting with Matt Rose
who’s in the area. My team and his team are meeting
on the 12th of December to work through joint service
at points like that and other points. That certainly
is the one that’s going to be on our agenda.

I mean, that’s our regularly scheduled
quarterly meeting that we have to be in Sante Fe to
work these service issues, and that’s going to be one
of our items.

VICE CHAIRMAN OWEN: And that goes back to
the joint issue point that I talked about earlier
there?

MR. KING: Yes.
VICE CHAIRMAN OWEN: There might be other areas in Southern California because that is a heavy traffic area there, not only with Metrolink and Amtrak, but also you've got BN Sante Fe and there's an awful lot of volume going through there. And as I see it, as the traffic builds up there from the elevated corridor, that we're going to need every bit of coordination we can handle to get through some of those communities there to facilitate that.

MR. KING: Yes sir. In fact, one thing we have done is, we do have our Los Angeles control center partially in place. We have two dispatchers around-the-clock that are in West Colten to put the control more with the local, and we still have pieces of it to move out which we'll be moving out in late first quarter as we develop the software to move it out, and which we think will help facilitate the movements with even closer coordination between the transportation people at West Colten and other areas there -- the dispatching and other things that need to happen there. We think that will be a big help.

MR. DAVIDSON: Vice Chairman, on the --
what Mr. King is talking about there is a system-wide
effort -- at one time that aggregated all of our
dispatching control into one center in Omaha,
Nebraska.

And with the growth of our system and the
growth of complexity of some of these large terminals
now, we're disaggregating again and putting control
centers right on the ground where these complex
operations are and we expect big improvements from
that.

VICE CHAIRMAN OWEN: I've heard also that
there was some difficulty in handing off trains as
they came through that area; the Omaha office would
not accept them and so consequently there was some
backup there, and evidently that's being alleviated
now.

MR. KING: Right. That sometimes is an
issue with that communication. That's why we're
moving that out there and that will help facilitate --
it's better right now, today, because the backlog
isn't there and the dispatchers are better able to
function on the train movements than working through
the backlog and not having places to meet trains. And when we move the rest of the dispatching of L.A. Basin out there next year that will help that even more.

So we do have the Roseville hump yard going; the project's underway now. It will be coming on fourth quarter, and it will pull some work out of West Colten as it goes back there and be blocked at West Colten for movement.

And when we get our merger implement agreement in the course of '98 for the West Coast, we'll then be able to shift some traffic flows to help run traffic by West Colten or avoid West Colten all together, which we're not able to do right now.

CHAIRMAN MORGAN: Now how about the Englewood Yard and Houston --

MR. KING: Oh, I'm sorry --

CHAIRMAN MORGAN: Yes, that was --

MR. KING: -- get so involved in L.A. here. In Englewood, Englewood I would have to say is improved. Englewood is one of those yards that SP continually had issues with. It is a fragile yard to handle the volumes that try to go through there right
now. That’s why it’s so key. What we’re starting to
do in the 16th is to shift some volumes between
Cedagast and Englewood.

And for example, Englewood will begin to
run cars for both the UP Bay count and the SP Dayton
branch out of there. One will become, over the course
or the next four or five months, an inbound yard, and
one will become an outbound yard. We will specialize
the yards and will be able to stretch the volumes
between the two yards so they can handle them more
effectively.

But Englewood is a yard that you have to
manage very closely every day, and the flows into it
because it is a fragile environment there with the
volumes we’re trying to handle through there. With
our TPS Federal, the directional flows that are
beginning this month, we will be able to put it on
more solid ground day-by-day.

And when we’re done with the shifts and
the directional running toward North Little Rock and
Pine Bluff, where Pine Bluff becomes a southbound
blocking yard for all of Houston and all of Texas,
we'll be able to make blocks that can actually bypass all the yards in Houston, go straight to the PTRA, straight to other industrial areas.

CHAIRMAN MORGAN: Well, how do you characterize the Englewood Yard right now? From your perspective, I would suggest that -- I mean looking at the statistics, I mean, it still is something like 68 percent of capacity.

MR. KING: It is still very heavy, it is not as current as we would like it. Still, cars are not making their scheduled transit into and out of Englewood Yard, is how I would classify it right now.

CHAIRMAN MORGAN: Now, you’ve mentioned the cutover, and a lot of the shippers are concerned about that, and the fact that given what’s going on here the last several months, that perhaps that’s going to again, create problems in the Pacific.

How do you respond to that?

MR. KING: Well, of the three cutovers that we’ve done so far, this was the largest. We did the DRGW, then we did the Cotton Belt, and now we’re doing it from New Orleans to all of New Mexico -- all
the way through New Mexico in this cutover.

It was our most successful inventory load. We came through with less no bills, meaning there was a data problem as we came through this cutover. From that regard it was our best. Now, we have had some software issues come up; for example, the first one was a hump computer talking to the mainframe at Englewood, and we got that fixed by the end of the first day.

But talking to all the folks, both on the ground and in our IT Department, they would consider the cutover has gone very well. We have had some issues show up and we’re dealing with them very quickly.

Because a lot of the issues that come up aren’t programs that drive whole lines of cars; it ends up as an individual car as a problem. And we’re tracking those with teams of people very close.

And we were talking about our vice president who runs our NCSC -- which is sometimes one of more critical judges and successful -- when he told us that he thought it had gone very well we certainly
took that as a barometer of how well it was going.

But we are staying very close to it and usually issues show up in our other cutovers two to three days after our first cutovers, and we're just not seeing those big issues pop up this time.

MR. DAVIDSON: We've also left a lot of the trainers on the ground there, and implementors.

MR. KING: We've moved a lot of peer trainers in, we've moved yard masters and trained yard masters who weren't using the system, conductors or training conductors, and from that aspect we have hundreds of people involved in this and we're going to stay with it very close because we certainly don't want anything like this to jeopardize our recovery, what we're focusing in this area. So we're staying very close.

CHAIRMAN MORGAN: Well, I think you can understand certainly, why the shippers are concerned about the transition period.

MR. KING: Absolutely. But it will offer us the benefits to finally see all that as one railroad, because we had cloves of cars that had grown

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between the UP and the SP, and we’ll be able to better manage those cloves and actually be able to reduce transit time. That’s a big, big tool and a big, big step for that area as far as how we can manage it.

VICE CHAIRMAN OWEN: I’ve been looking at solutions or partial solutions or recommended solutions to some of the problems here that you’re currently incurring.

NIT League has proposed that BNSF be allowed to handle any of the impacted shippers in the Texas/Louisiana area by converting BNSF’s overhead trackage rights to allow it access to any shippers on those tracks over which they already operate.

What is your response to proposals like that?

MR. DAVIDSON: Well, I think response would be just like the BNSF has said about the KCF; that the added complexity gets in the way. It hinders the recovery rather than helps it, and we don’t need anything that would hinder us in this situation.

CHAIRMAN MORGAN: Let me -- I have a couple of other questions. Coal, let’s talk about
coal for a minute. We’ve talked about grain, but we will be hearing from some coal shipper representatives today who are very concerned that their service is still not where they would like it -- or where you would like it, I’m sure -- and in fact, they feel that it has deteriorated in some instances.

And I would like -- I know you mentioned some of what the company is doing in terms of the coal backlog, but again, this is another area like grain, where I feel that some of the shippers are bringing to us a situation that, going into the winter as it relates to coal, is very disturbing.

MR. KING: Well, prior to the stand-down I talked about, they were right. As a result of the stand-down, and about three or four days after as we got the flow of cars -- we’re now averaging 26 trains a day. The best we’ve ever done is around 27.

Now, we’re hoping to work that up with the resources and the capacity we’ve put in to get up in the 28 trains a day. That’s 28 loads of trains loaded every day in the Powder River Basin. That means there’s 56 or 60 trains going up and down that North
Platte sub leading up the Power River Basin every day.

CHAIRMAN MORGAN: And that's -- timewise, what is that -- when did you begin to move that number of trains? Was that within the last week or two weeks or couple of days?

MR. KING: We have been doing that -- about 12 days now we have been cranking those numbers. And so we think -- and that's where I was as far as the flow back in -- some days we've had -- our best day so far in that 12 days is we've loaded 31 of those trains; our worst day is about 22.

There will some ebb and tide as to how the flows come back since you're spread out all over the system and even going offline as far as the use of these trains. But we're averaging 26 a day and we think we can maintain that and go up.

CHAIRMAN MORGAN: So when do you think that your coal shippers will feel the benefits of the improved number of trains that you're citing here?

MR. KING: Well, we think they should be seeing it now. What they have been telling us -- and you're absolutely right -- there will be a lag time in
building the inventories back up. We’ve got to be very dedicated -- and we are -- to maintain and improve the cycles.

We were down in the low 60s as far as cycle time; we’re up to 82. We need to be -- and we’re going to work to get up -- 90 and into the mid-90s. And when we’re seeing numbers like that, what we pump up to then generally is capacity of the mines or utilities protect the trains in a very fast method. But we’re going to work very hard to get that shield in someone else’s foot, and that’s the way we’re going to work toward it.

And we think that we’ll begin to see -- they should be seeing deliveries start to pick up right now, and they will see, we think, inventories begin to build as we continue with our present cycle and improve on it.

CHAIRMAN MORGAN: Assistance from other railroads. At the last hearing we had a conversation about that and we directed you all to respond to the assistance that had been offered by -- the railroad in particular, Illinois Central. They have come forward
again.

I know you've exchanged letters back and forth about what assistance you feel would be appropriate and helpful, and they have written back indicating that they still have available help with respect to coal and grain in particular, and with respect to assistance from other railroads, I want to make sure that that assistance is responded to, because obviously we all have an interest in getting through this period.

With particular respect to IC, how do you respond to their latest offer for assistance, particular as it relates to coal and grain movements?

MR. KING: We have worked with the IC; they're doing switching for us in New Orleans, they doing haulage cars out of Council Bluffs going up into Chicago, where they switch and deliver them for us. We think that will be diminishing in the very near future because your power is becoming more and more available.

We asked them, and they turned us down, to take coal trains from up at Council Bluffs, supply the
power and crews and haul that coal into Chicago because we wanted the power back. Because Council Bluffs to Chicago we don’t have a capacity issue or a crew issue.

They turned us down on that. Their vice president of Transportation and general manager both denied that. We have let them haul a couple of empty coal trains from us out of Chicago, back. We are currently honor grain hauling in Iowa.

We are very nearly caught up in Nebraska, and the primary Nebraska haulage that we have, a lot of them are going west for the West Coast. So that’s why we turned that down on them. And we sent them a letter to that effect, so I was a little surprised to see these come back. I mean, we went through explaining why we hadn’t used those options.

But we are using them through New Orleans and they’ve accomplished quite a bit there. We have used them in Chicago and they helped us there with hauling out of that. So we have used them. It’s just that these two items -- actually, the coal we were really surprised because we did ask them to take
trains from us at Council Bluffs and haul them, and
they turned us down because they said they had no
power.

CHAIRMAN MORGAN: But I think from our
perspective, as you can understand, when we are
looking at what we consider to be an emergency and we
see offers of assistance, we want to make sure that
those offers of assistance are utilized to the fullest
extent possible.

MR. DAVIDSON: Madam Chairman and Mr.
King, it was pointed out in his statement, we did
reach out to all the railroads that we felt that could
be helpful, and in a number of cases they were. A
number of cases they weren’t, but IC did provide us
some valuable help in the New Orleans area and
Chicago.

CHAIRMAN MORGAN: Let me ask about claims
for a minute, Mr. Davidson. Shippers have expressed
concern about damages and have indicated that because
of the unique nature of what we have faced in the last
several months, that perhaps another mechanism for
handling damages might be appropriate. You have
indicated, or one of your statements your company has indicated, that you're following the normal procedures for handling claims, following the Board's rules, dealing with the issues in court as appropriate.

But given the unique nature of what we have been faced with in the last couple of months, do you think that your company is doing enough to deal with the shippers on the subject of damages?

MR. DAVIDSON: Well, I would hope so. We set up a specialized team in Omaha to give these prompt review and diligent handling. I'm not a lawyer, I wouldn't pretend to be an authority on this subject -- I don't know if that's a disability --

CHAIRMAN MORGAN: It can be.

MR. DAVIDSON: -- or a benefit, you know. And we're aware contractually now, there's no question we're going to move promptly and with other extenuating circumstances in place, we'll try to work through the issues with the customer as rapidly as we can.

CHAIRMAN MORGAN: Let me ask Mr. Martinez just one question. Obviously you've heard a lot of
discussion today about some of the specifics regarding
the UP/SP system and what the Board feels we need to
deal with in terms of rail service on the system.

But from the perspective of an employee at
Union Pacific, is there anything you want the Board to
do as it relates to this rail service issue that is
before us? Or is there anything you do not want us to
do relative to the rail service issue before us?

MR. MARTINEZ: As far as not to do is to
take the Union Pacific apart from what it is; to give
us a chance to finish the programs and the things that
they have submitted to you. I've worked with Mr. Brad
King before on the safety program, and some of the
things we do and the records will show that in the
operation lifesaver program is turn some of those
programs -- I mean, the numbers down; brought them way
down.

And given the time and opportunity, I know
in my heart that good things are going to happen.

CHAIRMAN MORGAN: So whatever we decide,
we want to make sure that we do not undercut the
efforts that you all have made to bring the UP to
where it is today as a system. Is that a pretty fair summary?

MR. MARTINEZ: Yes, yes.

CHAIRMAN MORGAN: Vice Chairman, do you have any other questions?

VICE CHAIRMAN OWEN: No, I think I'm ready to move on to some of the other participants in the proceeding.

CHAIRMAN MORGAN: Well, I know we've spent a lot of time with all of you, but this is very important and we need to make sure that we understand one another in terms of where your recovery process is. So I appreciate your attentiveness and sticking with us.

MR. DAVIDSON: Madam Chairman, we will spend as much time as you'd like today, and also in the future to reassure you that we're on top of this.

CHAIRMAN MORGAN: Thank you. Next we will have a panel of railroads. First we will hear from the Burlington Northern and Sante Fe Railway Company, Matthew Rose, and you will have 15 minutes; the Kansas City Southern Railroad Company and the Texas Mexican
Railway Company, Larry Fields and Mike Haverty; and
lastly, the Brownsville and Rio Grande International
Railroad, Larry Cantu.

MR. ROSE: Good morning, Madam Chairman.

CHAIRMAN MORGAN: Good morning.

MR. ROSE: Vice Chairman Owen. Let me
start off by saying Rob Krebs as a colleague not able
to be here because he’s at a Board Meeting. And he
would have liked to have been here, and he asked me to
pass that along.

What I would like to talk about today are
really two different subjects all embedded in the
issue that is at hand. The first is really an update
on the grain situation within Burlington Northern
Sante Fe, and the second is an overview of how we
believe that BNSF is doing in the issues that are
listed in the service order.

First on the grain situation, as you all
are aware, we’ve seen a record corn and soy bean
harvest. Certainly our order fill or our ability to
deliver what our customers have asked us to deliver
has not been what we wanted it to be.
Thirty days ago when we were before you we were approximately six to eight weeks behind in our ability to fill those car orders. Today, we are currently about four to five weeks behind, so we are starting to see some significant improvement.

In terms of a couple of other stats that will give you an idea of how we’re doing in order of trains holding for -- grain trains holding for power -- 30 days ago we would be in the 30 to 35 to 40 trains per day. As of this morning I’m pleased to tell you that we have four grain trains holding for power.

We also have a little over ten percent of our entire fleet of 33,000 C6 hoppers that are currently on spot, which is a good indication that we’re starting to see a lot of C6s cycled back in to those grain elevators.

Within the next 45 to 60 days we feel confident that we will have this situation cleared up. I’d like to address why we think that we’re going to be in that position and going on the trim line that we’ve seen so far.
We've taken a couple of actions that have significantly improved our ability to service these customers. The first is that we put a partial embargo of grain to the Gulf region, into Mexico, and while we did not totally embargo the region what we did, we began an advanced order system that essentially regulated the flow of cars and trains that would go down there.

Our feeling was is that there was no sense in taking train after train after train down into the Gulf and simply letting those trains get delayed, thus chewing up power and valuable assets of locomotives. So what we started doing was began more of a pull system where we would look at how many slots we felt like we could work with the UP on to be able to maneuver through some of the congestion areas we saw.

And that was how many trains that we started out of the heartland area. And that issue quite frankly, has helped quite a bit and we've done that, not only for the Gulf but we've also done it for the Mexico destinations.

The second issue that has allowed us to
improve our situation since we last talked to you, is the receipt of approximately 55 new locomotives that we had in our plan and have now been delivered and will be delivered by the end of this December.

We have been fairly public about it, that we felt like that we were locomotive-short going into our merger, and we are just now getting to caught up to where, in areas where we think that we need to be.

The third area that we’ll continue our progress is really a natural phenomenon, which is a slowdown in the intermodal business as well as a slowdown in the general merchandise business that typically handled half of this time of year. It’s actually happened a little bit later because of some of the pent-up demand or the congestion issues that we faced.

Typically, we see about the middle of November where the volume really drops off for intermodal and for merchandise shippers. This year it was extremely strong up until the Thanksgiving holiday. We actually had a record intermodal day on Monday and on Wednesday of Thanksgiving week, which
was very unusual for us.

In response to that we too, feel very proud about what our employees did over the Thanksgiving holiday. We took -- we did not take a single outage at all; we actually worked the entire 4-day weekend. And it was truly a blessing for us to be able to get our system cleaned up.

When we came out of the Thanksgiving holiday we were at a low point of two and three trains being held for power. And so we can really see our system start to come back.

Finally, the last thing that has truly helped us begin a process to get the backlog of grain cleaned up is to increase the number of shuttle trains that we are currently seeing. The shuttle trains that we are now operating number nine on a given day, and we are starting to see more and more demand to the Pacific Northwest where that grain was expected to flow initially.

And as we see more of a market to the Pacific Northwest, we think that these shuttle trains will really work off an awful lot of backlog as well.
And so in summary again, while we know that we have not met our customer's expectations in regard to supply, we do believe that we will have this taken care of in the next 45 to 60 days. We don't think that this issue is -- we think this issue is an episodic issue not a system issue in terms of our inability to meet the short-term demand.

And it was a tremendous record problem, and I would have to point out that if you go back just as late as July, we had 5,000 grain cars actually in storage. So you can see the cyclical nature of this business, that when it finally releases it, it releases in very large volumes, and that's what we've got to figure out how to handle a little bit better.

Moving on to the Burlington Northern update on the service order, I'd like to briefly touch on the seven points that I submitted in my testimony. The first two have to do with joint dispatching of the lines that we operate over the UP/SP. The request that we have made is fairly self-explanatory and we believe that it would be helpful to have joint dispatching of those lines.
The second point that we listed in that testimony was an interchange of traffic at Strang instead of Englewood Yard, simply to avoid the congestion that we see at Englewood Yard and to be able to allow a more fluid movement out of Strang into our yard to allow an earlier departure of cars out of Houston.

The third issue that we mentioned in our request -- or actually, our fourth issue, my third point -- was trackage rights from Caldwell to Bloomington to truly fulfill our obligation to be able to serve the port of Brownsville and that area down there with the UP now going directional.

And as Mr. King mentioned, we agreed to do that; we have seen some improvements in going directional. We need to have trackage rights from Caldwell to Bloomington to be able to fulfill the obligation we have to serve the port of Brownsville. And we would hope that you would look at that.

The fourth issue, the fifth issue in my testimony, was the interchange with the ALM at Fortis as well as the Western Rail at New Bronfills, and four
individual customers: Dow, Amoco, Entergy, and Formosa. We have worked with these four customers as well as these two railroads; worked through various operating plans, and are willing to support their ability for access to BNSF.

Fifth, we would like to be able to operate on the former SP instead of the UP at Harlingen, to be able to service the Brownsville route; to be able to have access to that.

And then sixth, relief given to the TexMex on the contract reopener that you gave to them 30 days ago, we would like to see that that relief also be granted to BNSF. Because in a number of shipper’s cases, a number of shippers just don’t have access to TexMex in a number of different locations where they go, and we feel like that our network is much more capable to handle that type of volume.

In summary, we feel very good about the progress that our railroad’s made over the last 30 days. We’ve gone from a high of in the 75-type number of holding trains for power, down to a low of two, and 23 are starting to see tremendous validity come back
to our system. This was much different than 30/40
days ago when Rob Krebs stood before you and basically
said that we were not in a position to help out.

We do believe that we've helped out in a
lot of different areas. If you just look at the
volume on the railroads, much to I'm sure, UP's
dismay, our marketshare -- looking at how we count
marketshare -- is up almost four points. Our
intermodal business is up almost 20 percent year-over-
year; our merchandise is up almost eight percent.

So you can see that our system is handling
record volumes, and while many of the shippers may not
be happy with the speed of the cycle time, clearly we
are seeing our system to stay fluid; we're keeping our
terminals fluid; and we're not keeping our power in
its proper rotation.

The Gulf Coast continues to experience
difficulties. We are concerned about our ability,
long-term, to serve those customers unless those
difficulties go away.

Finally, this is a zero sum game in
regards to physical plant yards. One of the requests
was for the TexMex to take over a yard on the Burlington Northern Sante Fe, the old South Yard, and we would just tell you that we feel that we would suffer great harm in our ability to keep fluid in the city and in the area of the Gulf Coast if that were to happen.

VICE CHAIRMAN OWEN: You come in asking for an awful lot of things off of the Christmas tree here, to benefit BNSF. What are you willing to give up to UP in exchange for some of these goodies that you’re asking for? I see it as kind of a one-way street here. This is what I was talking about. Let’s come up with some solutions or recommendations that are real.

MR. ROSE: Yes, we think that there are solutions in terms of joint dispatching control, and we are under -- we have had some negotiations with the UP about that. We are, I think, making progress to having -- whether they be quarterly meetings, daily meetings, conference calls -- in being able to understand each other’s problems.

We come with solutions to be able to
continue. We've supported the UP through power hour agreements over this period of time. The issues that are before us, what I have proposed is not that all shippers be opened up. We have been asked by these shippers -- these specific shippers -- these four shippers in these two railroads have asked us directly to support this issue.

We went out right up front, Vice Chairman, we went out and asked all shippers, would you be interested in proposing testimony to do something like this? And these were the four shippers and the two short-lines that we heard back from. And what we're trying to do is to be able to constantly give the Board an update on what our capabilities are.

Thirty days ago we were in a little more tender situation, and through a lot of changes -- through more assets and better fluidity in our system -- that has changed and we want to be able to notify you of what those capabilities are now.

VICE CHAIRMAN OWEN: You've also stated in your statement here that you have not seen any improvements in the UP situation -- UP/SP situation.
MR. ROSE: I would not say that we haven't seen any improvement. We have seen improvements, specifically over the last ten days. And part of the issue here that I think you'll see all day long, is it's different when what day of the week this was written and when the holiday came -- when we came out of the holiday and the basis of time.

And so you know, over the last ten days we have seen improvement. It is still a difficult situation. I think you all have to decide what level of improvement, what the trimline is -- if it's a 10-day trimline or if it's a 10-week trimline. Certainly if it's a 10-day trimline then we think that improvements will continue and that we will be able to offer a service.

But certainly, the conditions of our ability to serve the customers, which you all directed us to do in the merger of the UP and the SP, we do not feel that unless the improvement continues to occur, that we'll be able to do that.

CHAIRMAN MORGAN: Getting back to grain transportation for a minute, you have laid out some
plans for how you're trying to catch up and handle the
grain movements, and that's certainly good. But we
continue to hear from agricultural shippers who can't
really make up the 100-car train. And obviously their
needs need to be attended to as well as other
shipper's needs.

How are you handling the needs of those
agricultural shippers in this period now?

MR. ROSE: You're really referring to "the
smaller shipper", and what we -- one thing that we
have done, we have what we call a Certificate of
Transportation, or what we refer to as a COT, which is
essentially an advanced order. And typically, larger
shippers have been the one to purchase those COTs, and
it's basically a reservation if you will -- a paid
reservation.

We have suspended that program through the
first quarter of 1998 until we get our backlog --
until we're sure that our backlog is cleaned up and
will stay cleaned up. We would expect that that will
have an impact for "the smaller shipper".

As well, about as I've mentioned that
we've got nine shuttle trains running today and we're moving that up. As those shuttle trains run, we will continue to move an awful lot of single car and multiple car, less than 26 cars, in our merchandise service, which as our railroad has improved, you will also see use speed up in the cycle time on those cars as well.

CHAIRMAN MORGAN: The West Colten Yard you heard me talking about a little earlier, and obviously that continues to be an issue for the Union Pacific as, obviously as well as for the Board. Where are you relative to the West Colten Yard? Is there any assistance that you could provide if the Board tells that that yard needed to be tended to more?

MR. ROSE: I would want to think through that. We have not thought through that. To take another railroad into a terminal yard, unless it's for a specific purpose, would be very intrusive into the operation at hand.

It is just not -- it just doesn't lend itself to throwing another railroad into someone else's terminal yard -- into that facility. But I
would like to get back to you on that.

CHAIRMAN MORGAN: And then with respect to your specific proposals, some might characterize those proposals as a form of open access in the Houston area -- which of course, your CEO indicated at the last hearing was not something that he was interested in pursuing.

How do you respond to that criticism?

MR. ROSE: Well again, what we have done throughout all of this is to deal with specific customers, listen to their needs, and where customers have said we want another railroad, we want another option, and where we believe that we have developed an operating plan to be able to handle that operation, we believe we have an obligation to that shipper to be able to tell them whether or not we can provide that service.

That again, is why we're not saying -- that is why we are very specific in the four shippers and the two short lines that have come to us and asked us to support them in this effort. And that's truly for somebody else to decide. What we are here saying
is that we've developed operating plans to be able to handle those shippers and we believe that we have the resources to be able to do that.

VICE CHAIRMAN OWEN: What impact has UP/SP operation had on your operation at Southern California there?

MR. ROSE: It has had some impact. In terms of a relative scale not as much impact as down in the Gulf though. We do operate a couple of routes jointly -- they operate over us, we operate over them -- but in terms of significance as far as the Gulf, it has not been near as great.

VICE CHAIRMAN OWEN: And so through that out of there then there's not a problem for you to take the trains out of there and send them on to the next --

MR. ROSE: The majority of the time we've been able to get out of there. Now, what we have seen is just additional business that had strained our system.

VICE CHAIRMAN OWEN: Then the particular diamond there at the Colten area is such that you will
work with your people there to ensure that they facilitate the movement of all trains?

MR. ROSE: Yes. As Brad King mentioned, we have right now, quarterly operating meetings and I know that that's scheduled for -- I think we have one next week -- and that is on the agenda. And we'll just need to work through what is going on there, but certainly as we've discussed many times before this Board, the UP and the Burlington Northern Sante Fe are very intertwined in our operations in a number of different locations. And if dispatching protocol is not followed then it would be very short-lived. So if we have a specific issue at Colten then we'll address that.

VICE CHAIRMAN OWEN: I visited your yard there and the employees were very nice and courteous and showed me around.

MR. ROSE: Good.

VICE CHAIRMAN OWEN: Tried to educate me on the ways of the yard. Thank you.

CHAIRMAN MORGAN: Just one last question.

At the last hearing we did hear concerns from shippers
on your lines about not unduly taxing your resources
to solve an issue on another system. You have
obviously offered yourself up here to serve shippers
in the Houston area.

I presume you feel very comfortable that
offering service to those shippers would not unduly
tax your resources elsewhere in your system?

MR. ROSE: Yes, and I would hope that,
reflecting on Rob Krebs' testimony last month, that we
are trying to be very responsible in what we can and
can't take, and our purpose is not to let our system
overtax itself. We handle record volumes and there
has been a number of shippers that we have not
accepted new business from specifically, because we
wanted to make sure that our network stayed fluid.

CHAIRMAN MORGAN: Thank you very much.
Mr. Cantu, would you like to be next?

MR. CANTU: Well, I can.

CHAIRMAN MORGAN: And you do have five
minutes and let me just say that one of the reasons
that I'm glad that you are here is because there has
been a lot of paper back and forth regarding your
particular issue, and I would like for us to make sure we understand one another on exactly what it is that you are seeking and what your problem is, particularly relative to the emergency that we have in front of us.

MR. CANTU: Thank you. Chairman Morgan, Vice Chairman Owen, as you know my name is Larry Cantu. I'm the president and chief operating officer of the Brownsville Rio Grande International Railroad based in of course, Brownsville, Texas. I wish first of all to express my thanks to the Board for permitting me to offer testimony here today.

As you requested, I am speaking not only in my capacity as the railroad representative, but I am speaking -- appear also to represent the Brownsville navigation district and the shippers in and about the port of Brownsville.

As you mentioned, you are aware of the railroad's concerns because we have filed numerous pleadings with the Board during the past several weeks. The problems we have outlined in those documents continue to plague our operation. We are working very hard to develop rail service solutions
that are mutually beneficial to our shippers, to our connecting rail carriers, and of course to us.

These solutions will work and we wish to point out that one of our primary connecting rail partners, BNSF, supports our operating proposal. I’d like to take a few moments to update you on the service conditions in the Brownsville area.

With respect to the interchange to and from Mexico, we are still experiencing UP-inflicted delays. BRG -- my railroad -- and the PFM, have implemented a blocking system for traffic moving to and from the port and Mexico. Although we have seen some improvement in UP’s bridging service there, the UP/BRG interchange still suffers as a result of UP’s congestion in their downtown Brownsville Yard.

As I endeavored to persuade to you in October, BRG has a proposal which would eliminate the need to utilize any interchange tracks at UP’s Brownsville Yard. In fact, BNSF’s proposal to have us serve as their agent for service south of Harlingen, Texas, would ensure far smoother operations in this gateway than UP may realize.
I note that Mr. Gary Normal of Union Pacific offered to you on November the 14th, a verified statement explaining part of the reason for the congestion of UP’s line to and from Mexico, a particular line known as the River Lead. Mr. Norman points out that UP must park their trains on this River Lead for extended period of time for U.S. Customs and USDA inspection.

This of course, limits UP’s ability to run more trains through this gateway. BRG would not have to park any of its trains on this River Lead as UP does today. You may have noted from our December 1st submission that U.S. Customers and USDA had arranged with us to conduct their inspections at BRG’s port facilities.

We would never have to occupy UP’s River Lead for any time longer than it would take to traverse that line -- the half-mile or so from UP’s trackage team from Mexico -- BRG’s port traffic. We are proposing something that would improve transit times for BNSF traffic as well.

As BNSF’s agents south of Harlingen, we
could route BNSF through our port facilities just as would be done with our own port traffic. When you consider that BNSF, at such time as it initiates its own service to and from PFM, would have to park its trains on the River Lead just like UP does.

You can say that our operating proposal makes everyone a winner. There is significant space at the port for Customs and USDA to inspect, not only BRG's traffic, but also BNSF's Brownsville Gateway traffic.

Naturally, we're no longer looking for limited trackage rights over UP's River Lead as was the case before. Instead, we are seeking with BNSF's support, to inherit BNSF trackage rights south of Harlingen, and we are also seeking the right to consolidate our TFM traffic with BNSF to limit the number of trains crossing at the border.

CHAIRMAN MORGAN: So then -- and there has been some confusion about where you were earlier and where you are now.

MR. CANTU: Right. I think --

CHAIRMAN MORGAN: You were somewhere
earlier and now you've decided that a different approach --

MR. CANTU: Right. Yes, well after discussing this with BNSF a little bit further I think we've come to a good solution that will help our situation down at the Brownsville Gateway.

CHAIRMAN MORGAN: And in order for you to be BNSF's agent you must have us to give you that authority?

MR. CANTU: That's correct. Let me -- if I can refer to the map here -- I apologize for the clarity of it. On the left there's a blue outline that shows the Union Pacific line going down into Brownsville. And then on the right you'll see outlined in purple, the former Southern Pacific main line that runs from Harlingen down to Brownsville.

Of course, prior to the UP/SP merger SP had trackage rights from Victoria down to Harlingen. What we propose to do is to take BSNF traffic from Harlingen over the former SP main line down into Brownsville, directly into Mexico, interchange with PFM, and bring that traffic back over to the port of
Brownsville where USDA and U.S. Customs can perform their inspections there. And then run that traffic up north.

We could also, with running our traffic north from the port over the former SP main line, we could move UP’s and BNSF’s originating traffic at the port up to Harlingen, allowing UP to eliminate a switch crew having to run from Harlingen down to Brownsville to perform that service.

Again, I thank you for giving me the opportunity to testify today. On behalf of BRG, its shippers, and the Brownsville Navigation District, I hope that you will act to give us the relief that we and the BNSF believe serves as an improvement to South Texas Service. The relief we request is also necessary to protect our shippers. I'd be happy to answer any more questions that you may have.

CHAIRMAN MORGAN: Thank you. I have no questions.

VICE CHAIRMAN OWEN: What would be the negative for UP on this, and what would be the loss of income for UP by you doing this?
MR. CANTU: As a negative, I don’t see a negative. As a loss of income, the only thing I see is they’re performing a bridge service from their downtown yard across the B&M Bridge over to PFM, perhaps losing that. That’s a $68 bridge service per car, and that’s only the traffic moving to and from the port of Brownsville.

VICE CHAIRMAN OWEN: How many cars on a daily or weekly basis would you anticipate you’d be moving?

MR. CANTU: Under this plan with BNSF traffic we’re looking at 40 cars per day.

VICE CHAIRMAN OWEN: Pardon?

MR. CANTU: Forty cars per day, plus our traffic which would be another 30 to 40 cars. So about 80 to 90 rail cars per day.

VICE CHAIRMAN OWEN: I have no other questions.

CHAIRMAN MORGAN: Thank you very much, Mr. Cantu.

MR. CANTU: All right. Thank you.

CHAIRMAN MORGAN: I appreciate your
clarifying where you were and where you are now.

MR. CANTU: Yes, we’ve done a lot of
taskwork in the meantime, and I think what has been key
here is the cooperation we’ve gotten from the U.S.
Customs and Department of Agriculture.

CHAIRMAN MORGAN: Thank you. Mr. Haverty
and Mr. Fields, do you want to begin?

MR. HAVERTY: Yes ma’am. We appreciate
the opportunity to be here today, and as a 49 percent
owner of TFM incidently, we do support Mr. Gantry’s
proposal inasmuch as the majority of the service order
helps with TexMex. Larry Fields will lead off this
discussion.

MR. FIELDS: Thank you. Just a couple of
things. I appreciate the Board’s admonishment that --
many ways to fix some of these problems and not all
the fingerpointing; we would have to be aliens with
ten fingers on each hand to point our fingers out.

The common interest TexMex was wallowing
around on the Union Pacific and being a rogue carrier,
that I totally and completely disagree with. TexMex
has been out on the circuit of Houston for a year and
two months, this Board is aware of. TexMex has tripled its UP new membership in a year for a safe railroad. We try to take care of our customers and once upon a time we were an efficient railroad.

TexMex currently, from what the October 31 changes that the STB has made, this Board granted an interchange at Flatonia. That is working. Is it working as well as we would like it? No. But so far -- and TexMex operated just like the BN did on Thanksgiving as well; we did not stand-down and that was the best operating day across the Union Pacific we've had this year. A fact.

But so far at Flatonia we've entertained 1500 loads; that's 1500 loads did not have to go into the Houston mix master. They don't have to get in there and delay other railroads and other carriers and things.

The comments that TexMex is refusing to operate directional, that is not exactly true. I personally made that decision; no one else. The STB gave the TexMex the right on October 31 to operate over the Algoa route. A few days later Union Pacific
came and said we want to run directional.

I personally did not want to go against what the STB had just awarded. I was not saying that the Union Pacific did this to make the Flatonia interchange with the BN onerous. It does make it more difficult, but TexMex is not objectionable to running directional if indeed, everyone's going to run directional.

If the Union Pacific is going to run five, six, seven southbound trains out of Houston on a northbound lane, I feel that the TexMex should have that right to run southbound. Since TexMex has had the right to run on the Algoa route we've been on the law, on the 12-hour law, one time with the train on the Algoa route. And that one train that was on the law was because of a broken rail, so every crew has been able to transverse that piece of railroad, even running against the flow of traffic.

On the other hand, going through Flatonia -- leaving Houston to Flatonia in southbound, we have had 19 crews that have not made it with a single crew, we have had 14 trains that have taken at least three

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A year ago, operating between Laredo and Beaumont -- which is about 512 miles via Houston -- it took three crews. TexMex trains work 40/50 cars; today they're a little larger. But it took three crews a year ago to transfer say, 500 miles. Today, the very best we do is six crews; that's the very best we do. We've had a number of trains that have taken nine crews to make that route.

That is not good for the customer, that is not good for the railroad, that is not good for anyone. I won't deny that the UP's numbers are better; we wouldn't deny that. I would tell you that Lewis and Clark could not get through Houston the last month.

There's no way they could have gotten through there. They would find all kinds of ways to point fingers and say things, but you simply couldn't get through there. We were 24 hours on three separate trains going from the east side of Houston to the west side.

Did the TexMex communicate every time with
the UP when we were picking up and setting out of Houston? There is a problem there. The PTRE does not block cars. In our filing you will find that if you pick up cars in Houston -- and it's easy for the UP to say, well they're not making a difference -- well, I think 1500 cars at Flatonia makes a difference.

And if you exclude Thanksgiving and Saturday/Sundays, right now we're billing 24 cars a day out of Houston. It may not sound like much but to those customers that bill those 24 cars it's very important to move those cars.

Is our service as good as we'd like? Of course not. Will we have, you know, the ability to grow this business? Yes. And the STB made a wise decision in keeping oversight and tweaking this. This is not a major change that's being done in Houston; it's providing a release valve and a way for some of these customers to move some products.

And that's what we're trying to do. We're willing to run directional; we've told the UP that. We do not want to go and oppose what the STB has ordered us. IF BNSF and UP/SP are willing to run
directional, so is the TexMex.

But we feel we should be able to have the same operating conditions and rights as the UP. If the UP makes a parking lot out of the Flatonia line -- which by the way is a 25-mile-an-hour railroad -- it is not a 40-mile-an-hour railroad. It's also a dark territory railroad. It has one siding on it at Thomason that will actually hold a train.

So for the UP to come out and say that this railroad is all fixed and ready to go for high speed 40 -- you know, 40-mile-an-hour is not a bad little railroad. But it's a congested railroad and so if a UP train stops on the main line out there -- with no crews, no power, whatever the reason -- it backs up everything that's out there because there's no way to get around it.

We're willing to take our lumps just like the BNSF and the UP. We do think that the service is starting to work -- we know it's starting to work. And 24 cars a day may not sound like a lot, to the UP I'm sure it's minuscule.

But a year ago TexMex wasn't handling very
much out of Houston on a weekly basis; today we're averaging over 300 cars a week southbound out of Houston. That's a pretty nice piece of business for anybody's railroad. That's customers that are able to move things today that they weren't moving a year ago -- and certainly weren't moving several months ago.

So if this opportunity continues for a while you will see that the customers find a way to go ahead and ship some of this stuff and move it, and it won't be 24 cars a day -- I'm sure it will go to 50 and maybe higher. Thank you.

CHAIRMAN MORGAN: So you feel that the service order that the Board issued has had a positive effect?

MR. FIELDS: Yes, Chairman; it has definitely had a positive effect. It takes a little more time than anyone would like. Thirty days is not -- it took ten days for most of the customers to really be able to look and for us to sit down with them and give them some things, and be able to put in place what has happened.

Of course, we have had a Thanksgiving
holiday as well, but if you exclude the weekends and Thanksgiving, it's averaging 24 cars a day, and the customers -- we're giving them rates every day and we're doing everything that we can to move the traffic forward. It takes a little more time than we'd like, but it is definitely working.

CHAIRMAN MORGAN: Mr. Haverty.

MR. HAVERTY: What I'd like to do Madam Chairman, is address the specific questions that the Board asked, the first being whether the Board's actions have helped to alleviate rail service problems in the West.

As you recall in the last hearing, Vice Chairman Owen asked the number of locomotives that we owned, the number of crews that we had available, and do we have capacity? And my number was positive that we did. And regardless of what some may say about that capacity and about the number of crews and locomotives that we have available, let me address what we have done since your order.

We have rerouted five, loaded grain trains over the Kansas City Southern; eight empty grain
trains; total of 13 trains, 1039 cars. We have also rerouted over the Kansas City Southern, between Meridian, Dallas, and Houston, 83 intermodal trains for United Pacific that came from Norfolk Southern or are going to Norfolk Southern, for a total of 2,499 cars.

Some of those cars are articulated 5-packs so this is a very conservative number by saying 2499. So we actually rerouted 3,538 cars since the first of the month, November through the end of the month, over our railroad. Those are UP reroute trains.

In addition to that, Kansas City Southern handled 10,260 more cars in November of 1997 than in 1996. That represents a 15 percent increase exclusive of the UP reroutes. This does not include the UP reroutes.

If you added in the UP reroutes as revenue cars, the number of cars that Kansas City Southern handled in the month of November would have been twenty-one-and-a-half percent higher than it was a year ago.

So in fact, we did have capacity, we did
handle additional cars, we did handle reroute trains for the Union Pacific. In addition to that, the Kansas City Southern delivered to the TexMex, 2000 loaded cars for subsequent movement to Mexico. And you must remember that that came about as a result of the Board’s order that TexMex be given the right to connect with the Kansas City Southern at Beaumont.

A year ago we handled virtually no cars; these 2000 cars are a record for us to handle to Mexico in one year. Also, October, the month before, was a record month for the number of revenues that the Kansas City Southern had in its history.

And there were 23 working days in November; there were only 18 and our revenues were nearly as big in November as they were in October, so on a working day basis we actually handled more traffic in November than in October. And incidently, in October we did handle 14 loaded UP grain trains, rerouted grain trains, and ten empties, for a total of 2,196 cars.

Did we experience any congestion? Yes, in the second week of November. We did in fact, have
congestion. I'm not here to argue block -- what siding or whatever -- but I do think that you heard from Larry, there was severe congestion, and I think you've also heard from the BNSF that there is congestion in Houston and it did back the trains up.

And we said we would not take any more reroute trains that were destined to Houston or Galveston in that area, because we would not put ourselves in the same situation that the UP was in and shut our service down.

So to answer the question, has the order been successful, we would say yes. There's been 96 UP trains rerouted over the Kansas City Southern in November alone; since the order, 3558 cars.

And in addition to that, there was a 15 percent increase in business, so I think the shippers are in fact, choosing the Kansas City Southern as an alternative to the Union Pacific; because while we showed 15 percent increases, Union Pacific showed decreases.

The second question, should the Board's activities be extended? We believe so. We don't
think that it is as fluid as we may believe that it is, or may be led to believe that it is. I think you’ll hear a lot of testimony to that effect; that it’s not as fluid. And I can tell you that I participate in almost every morning meeting, and I listen to these stories about the trains trying to get through Houston and taking 24 hours to move 90 miles.

So this is not something that’s happened months ago or weeks ago; this is something that’s continuing to happen as recently as yesterday. So I think it should be continued. Is more action required? I think that’s the Board’s decision.

We’ve said that TexMex needs some space in Houston and if there is to be any decision with respect to dispatching those lines down there, rather than it be just Union Pacific and Burlington Northern Santa Fe, we would like for the TexMex to participate in that as well.

We really believe that it is intolerable to leave trains on the main line. To give you an analogy, that’s almost like leaving an airplane out on a landing strip. It just virtually shuts down
everything. In all the years I’ve been in this business you just don’t leave trains dead on the law on a main line.

And that situation has got to be corrected and dispatching is very important. And until that is corrected many of these problems that you’ve heard from Larry and from Matt Rose and BNSF are really not going to be addressed. Thank you very much.

VICE CHAIRMAN OWEN: Is there any way that you can get together in a room and hammer out some of these things regarding dispatching without — so that you can have fluid movement over the first line? I know that you’ve talked about it, but is there an incentive for somebody to do that?

MR. HAVERY: Let me show you —

VICE CHAIRMAN OWEN: Rather than continue to do this dogfight?

MR. HAVERY: Let me show you that we’re willing to do that, and I’ve known Dick Davidson for 30 years and I’ve known Rob Krebs nearly as long. We’d be glad to sit down and do that.

I think that there is some natural
reluctance on the part of the landlord to give the
tenant the same operating efficiencies that they give
themselves. It's not an easy situation, but let me
say to you, Vice Chairman Owen, I'll be glad to do
that, along with Larry, and if that's what it takes
we'll be glad to do that.

VICE CHAIRMAN OWENS: I keep coming back
to the same point. There's so much business out there
for you to take up with the roads, but yet we see
fighting each other for business on a continuing
basis; whether it's California or Houston or New
Orleans.

MR. HAVERTY: Well, I can't speak about
California since we don't go there, but I certainly
would agree that sometimes it does appear that we are
so concerned about whether one other railroad is going
to get a carload of freight away from this railroad
that we become so engrossed in that, that we forget
that the real competition is out on the highway. I
would certainly agree with that statement.

And I think that's been a problem within
the industry for a long time, and again, I think that
there's plenty of business out there for everyone.
And I know that sometimes the other railroads would
just as soon see competition eliminated, just as I'm
sure that United and American would like to see
Southwest Airlines go away. But the fact is all of
the planes are full, and I agree with you; I think all
of the trains could be full.

VICE CHAIRMAN OWENS: Thank you.

CHAIRMAN MORGAN: Thank you very much. I
think you have painted a good picture of where you are
out there. I appreciate it. Thank you both.

MR. HAVERTY: Thank you.

CHAIRMAN MORGAN: Next we will move to the
shipper panels. The first panel will be Robert Evans,
representing the National Industrial Transportation
League. Next will be Michael Petrucelli, representing
the Chemical Manufacturers Association. Then Larry
Thomas who will be representing the Society of the
Plastics Industry, Inc., and Craig Robitaille
representing the Accu Chem Conversions, Inc. Company.

I have practiced the names so I think I
got them all right this time. Mr. Evans, if you'd
like to begin?

MR. EVANS: Okay. Thank you, Chairman Morgan and Vice Chairman Owen. I am Bob Evans, corporate manager of rail transportation for Occidental Chemical Corporation, and this year I do also serve as the chairman of the National Industrial Transportation League's Rail Committee. And with me today I do have Nick Eumichel, the general counsel of the NIT League in case a question that -- something he could work on easier than I.

On October the 27th I sat here on behalf of both the NIT League and my company and testified that the UP, Union Pacific Rail System problems were costing the nation's shippers many millions of dollars per month, and if the service problems were getting any better the majority of our shippers had not noticed.

In any event, the return to normal operations was much too slow. Mr. Davidson of the Union Pacific testified that the situation was already much better; he indicated that the northern tier was totally fluid except for Pocatello and the L.A. Basin.
The Louisiana backlog and the Fort Worth backlog were almost gone; Houston to New Orleans was almost clear. He said he would be disappointed if the solution was not pretty much cleared up by Thanksgiving.

Apparently the Board disagreed with the UP optimism and shortly thereafter took a bold step in issuing a variety of emergency orders for a 30-day period ending shortly. The issue today is, now what? Has the service orders allowed the TexMex Railroad to carry traffic routed to it by the HVT and the PTRA, giving the UP and its Houston area shippers sufficient relief?

Have the efforts of the UP, heroic as they no doubt are, returned the rail system of the West to normal? The answer to those questions is an unequivocal, no. The league has attempted to resurvey its rail user’s members to ascertain their own objective and subjective measures of UP progress in solving the problems.

Based on the comments of our members at our annual meeting in Anaheim, California on November the 19th, Mr. Davidson gave a slide presentation,
again showing optimism of clearing up the system. The
UP weekly reports of November the 24th and December
the 1st, and results of our survey, we have little
reason to share the optimism.

Again, as in October, the league sent out
175 questionnaires, this time an abbreviated version
centering mainly on the extent of which service has
improved since the last hearing and whether shippers
have used the service orders.

As of the close of business December 1st,
we had received 49, so our data is current; it did
come in last Monday. We also held a special meeting
in Washington yesterday where we shippers in
attendance.

As of the question on whether service has
improved during the past week compared to week-1 in
October 1997, 18 of those 49 respondents said it was
about the same; 16 said it was a little better; 10 a
little worse; 3 a lot better; and 2 respondents
reported a lot worse.

Compared to the results we reported at the
October 27th hearing, slightly more reported about the
same. The bad news is that the higher proportion reported a little worse. However, the good news is that the slightly higher portion reported a little better. Only two respondents in the survey reported the situation a lot worse, and three reported a lot better. As you can see, from the shipper's standpoint, it was all over the board.

For purposes of rating current UP service on a scale of one to ten, 40 respondents rated it as a four or lower. Shippers are still reporting since November 1st, delayed shipments -- by 46 of those 49; spoiled or lost products reported by nine; increased cost of transportation such as using other modes, 39; using other rail carriers, 10; and leasing additional railcars 26; and curtailed production and shutdown, 16.

The UP Report does show some improvements in sidings blocked, and trains held for power and crews, for example; however these measures are still sufficiently higher than the baseline of January 1997. Car inventory has continued to fall, but still at a rate of about 2000 to 2500 car loads per week.
However, average train speeds which have shown an increase at the time of the October 27th hearing, seems now to have simply gone into a cycle of small increases followed by similar-sized decreases with no sustainable trend toward improvements.

Trains held for congestion has fallen in the recent report, but the hours are still far from the January baseline. Loaded car hours from the Kansas to the Gulf has degraded and is still double the normal day’s of transit.

Also disturbing and perplexing is the UP statement of the November 24th that it continues to offer trains to both the TexMex and KCS, but both railroads have been generally unable to handle the traffic. TexMex has declined to cooperate on the directional flow as we’ve heard recently.

We had been told that the Board’s service orders would affect few of our members directly because most do not enjoy connections with the HBT and the PTRA, but we had high hopes that they would at least feel the efforts of the orders indirectly as TexMex helped to clear up the system.
In fact, only two respondents reported using transportation under the Board's service orders tendering a few car loads. We believe the Board should get to the bottom of the situation and find out from the rail witnesses exactly why the orders have not resulted in traffic for the TexMex and the intended help in decongesting the Houston area.

In the meantime, we believe that the orders announced on October 31st should be expanded in their time horizon and perhaps in their scope as well. Some of our members have pointed to the fact that changing carriers for only 30 days is frequently not practical, and in any event requires far more effort than such a temporary payback would warrant.

Seventeen survey respondents reported that they would use a service, or would use it more extensively if it was extended. Other members have stated that it is difficult to develop rates on traffic that might tender under the service orders.

The petition that NIT League filed jointly with the CMA and the SDI called for service orders that would extend for a maximum for 270 days -- the
maximum allowed by law -- with the stipulation that
the UP could request their termination at an earlier
date should conditions permit.

We believe that the Board should extend
the orders in this way. In order to make it more
worthwhile for shippers and carriers time to work it
out, at the least the Board should order an extension
of 90 days. In addition, we believe that the Board’s
orders should be extended in their scope.

We are sensitive to the Board’s intentions
to allow other carriers to assist in the problem areas
affecting figuring our own customers and without
causing the safety problems that might result if crews
unfamiliar with the territory were to operate over
UP/SP tracks.

Thus, we believe that a reasonable
extension of the order would be to allow the BNSF to
handle traffic from any of the impacted shippers in
the Texas/Louisiana area, by converting BNSF’s
overhead trackage rights to allow it access to any
shipper on those tracks over which they already
operate.

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Since BNSF already operates over the affected UP tracks there would appear to be little risk and much potential to be gained by permitted the BN access to all shippers over the UP track in Texas and Louisiana for which they operate.

Finally, we believe that the Board should attempt to find out why it is so difficult to put new rates in place for traffic under the service order. It is traffic under contract to the UP, and although the orders release the UP shippers from their contract obligation, shippers cannot unilaterally discuss the contract terms with the TexMex.

Rail rate making and service in an area of deregulation should not be so complex and time-consuming. It should be quickly responsive to the market conditions. We continue to have faith in the UP and believe it will once again be a great and efficient railroad, but in the short run, we still need the Board’s help.

And I thank you for this opportunity.

CHAIRMAN MORGAN: Thank you. Mr. Petruccelli.
MR. PETRUCELLI: Chairman Morgan, Vice Chairman Owen, my name is Mike Petrucelli. I'm director of Distribution and Transportation for PPG Industries, Inc., which is a member of the Chemical Manufacturers Association, CMA. I have with me this morning Mr. Tom Shift, who's counsel for CMA.

I'm submitting a statement on behalf of CMA whose member companies account for more than 90 percent of the productive capacity for basic industrial chemicals in the United States. Each year the chemical industry ships about 140 million tons of product by rail.

In 1996, the chemical industry paid almost $5 billion in freight charges to the railroads. Chemical manufacturers rely heavily on the U.S. rail system to provide safe and efficient transportation service. Railroads bring critical raw materials into chemical production facilities. Railroads also deliver a wide array of chemical products to customers in diverse industries at points throughout the country.

Underscoring the dependence of chemical
shippers on rail service is the fact that many CMA
member companies purchase or lease private tank car
fleets and other specialized equipment to facilitate
transportation for themselves and their customers.

Service by the Union Pacific/Southern
Pacific, UP/SP, is particularly important to CMA
member companies because so many chemical production
facilities are located in Texas and Louisiana. The
combined UP/SP system carries more chemical traffic
than any railroad in the nation.

The record in these proceedings have
documented that UP/SP's service problems began in the
Houston area. CMA commends the Board for its
continued efforts to address the service, the rail
service problems in the Western United States.

The Board has requested that participants
focus on four specific issues. Leaving the issues of
grain traffic and passenger service to others, CMA
will comment on the Board's first two issues.

Number one, parties should address whether
the actions of the Board have helped to alleviate rail
service problems in the West, whether these actions
should be extended, and whether more has to be done.

Second, the Board seeks information from shippers as to whether they are in fact, obtaining improved service.

To be blunt, CMA must report that the overall situation has not improved. Although some CMA member's companies have seen improvement in certain instances, conditions have worsened in other respects. Viewed from an industry-wide perspective, the strong consensus for chemical shippers is the UP/SP's service recovery plan has yet to restore the railroad to operations to anything approaching normal conditions.

CMA has carefully reviewed UP/SP's weekly reports to the Board. The railroad's own weekly service measurements show that the service problems have by no means been overcome. While some weekly service measurements have improved since September or October, that is far from adequate.

CMA calls the Board's attention to data for the January 1997 baseline period as shown in UP/SP's seventh weekly reported dated December 1, 1997. That data showed that UP/SP is far from
returning to pre-crises service levels.

For example, farm inventory remains almost 26,000 -- or eight percent above the baseline figure. System train speed, another key indicator according to UP/SP, was at 13.6 miles per hour for week ending November 30th. Although this represents some improvement over October velocities, it is still well below the baseline figure of 17.9 miles-per-hour.

Similar conclusions must be drawn from UP/SP's own weekly data on trains held, gross ton miles per horsepower a day, reroutes, and interchange refused. Unfortunately, these Board-ordered, UP/SP measurements confirm what shippers are finding: service has not improved.

On October 31, in issuing STB's servicing order number 1518, the Board found that an emergency exists and that it has had substantial adverse effects on shippers and on rail service in a broad region of the United States. The evidence is clear today that the emergency has not been alleviated. CMA therefore respectively recommends the following actions.

One, that the Board find that Western
railroad service emergency has continued since order 1518 was issued. As discussed above, CMA believes that the record in these proceedings clearly establishes service has not been restored to an acceptable level.

CMA members are especially concerned that the effects of the UP/SP December 1 and March 1 TCS cutovers are carefully evaluated before the Board make any final determination that the emergency has been alleviated.

Number two, that order 1518 now be extended beyond its original 30-day period. CMA supports a 240-day extension pursuant to 49 USC 111.123 with the provision that UP/SP may petition at any time during that period if it seeks to demonstrate to the Board that the emergency no longer exists and order 1518 should be lifted.

Shippers and other interested parties of course, should be allowed to respond to such a petition. The Board should be aware that many CMA member companies report difficulties obtaining alternate rail service under order 1518. A principal
factor appears to be the reluctance upon non-UP/SP carriers to make new service arrangements or commitments under circumstances that would be in place for only 30 days.

CMA therefore believes that a 240-day extension will give the greatest opportunity for order 1518 to have a beneficial effect.

Number three, that the Board become more directly involved in railroad-to-railroad talk. Review of the UP/SP November 14th report, as well as reports from member companies, confirm that many potential, alternative arrangements have not been put in place.

Closer involvement by the Board or its staff would tend to enhance cooperation to the benefit of the shipper community and the public at large.

Number four, that the Board revise order 1518 with regard to remedy number one. Order 1518 requires that the UP/SP suspend the transportation of service contract obligation of all shippers at Houston that wish to route shipments over the TexMex instead.

However, most chemical shippers have not
been able to take advantage of remedy number one. While part of the reason is the short duration of a 30-day order, another factor must be addressed. Unless rates and routes are in place, it is difficult if not impossible, for another Western railroad to arrange transportation with shippers and connecting carriers.

CMA therefore requests that the Board or the railroad to provide service immediately, either by using tariffs or by adopting provisions in existing UP/SP contracts.

And fifth, that the Board order UP/SP to report on how it will deal with shipper claims for damages incurred as a result of this emergency. The shipper community, which has suffered hundreds of millions of dollars in losses, expects to receive prompt and fair compensation from UP/SP. It is therefore appropriate for the railroad to explain to the public how it will deal with shipper claims.

The chemical industry is still hurting, its customer's industries are hurting, the U.S. economy is still feeling the effects of the emergency.
that led the Board to adopt order 1518.

CMA therefore respectfully asks the Board to consider these comments, extend order 1518 to 240 days, and to implement the other recommendations discussed in the statement.

I'd like to thank the Board on behalf of CMA for inviting us to participate in today's hearing.

CHAIRMAN MORGAN: Thank you. Before we get to you, Mr. Thomas, if we could suspend for one minute. I think we need to change the tapes.

Mr. Thomas.

MR. THOMAS: Thank you, Madam Chairman, Vice Chairman Owen. My name is Larry Thomas. I'm the president of the Society of the Plastics Industry. With me today is Maurine Healey who, along with our Transportation Committee, directs the transportation efforts of the plastics industry.

As I said to you the last time I was here, we represent an industry of employees over 1.3 million people nationwide; one that ships over 85 percent of its raw materials by rail. And that industry has, and very proudly has, thousands of small and little size
businesses across the United States.

I'm here representing an industry that is increasingly frustrated, we're very worried, and rightfully angry about the state of affairs regarding rail service in the Western United States.

When I appeared before you on October 27th I described the pervasive impact that this rail crisis was having on the plastics industry, particularly the small business segment of our industry. Since that time, service is no better; in many cases deteriorating further.

Both raw material suppliers and the downstream sector of our industry are seeing no meaningful improvement in service. Where there are some short-term improvements in one corridor, it is more than offset by deterioration in another.

Now, at that October hearing, the UP stated that if service was not back to normal shortly after Thanksgiving, they would be extremely disappointed. Well, we're now past Thanksgiving and Union Pacific seems to me this morning, to be declaring a victory of sorts over the rail crisis, and
they now appear to be somewhat pleased rather than disappointed.

I would suggest that the railroad executives should re-examine their criteria for success or failure. I believe that everyone recognizes that the real measure of success in any business is customer satisfaction, and I can tell you firsthand that our customers, our members who are many, many customers of the Union Pacific, remain extremely disappointed, and for very good reason.

And now with the UP unable to handle what is already on its plate, the Houston Belt terminal has been terminated, adding further to the traffic that the UP must move and making Houston operations even more complicated.

Additional concern was expressed by our members from their experiences over the Thanksgiving holiday weekend. Several shippers reported near shutdowns, further delay in delivery time, and no so-called holiday relief as originally anticipated.

Now, we surveyed industry members prior to today's hearing to see if service is improving, and
the message came across loud and clear. And let me
read to you some excerpts from letters I received
within the last week.

One producer told us that the rail service
problem is far from resolved. "Our shipments to and
through Houston continue to be severely delayed. We
have seen no evidence of improved service to-date. We
continue to have trouble servicing our customers. In
sum, no improvement overall."

From another producer in Houston: "We are
seeing the UP service problems spill over to the BNSF,
adding to the congestion in Houston. Overall, the
service level has deteriorated in the Houston area,
even though there's been slight -- slight but not
substantial -- improvement on the UP's nationwide
system."

It seems to be it's best summed up by
saying that our member's patience was worn out a long
time ago, and nothing in the last 30 days has happened
to change that. As stated, we do not believe the
service recovery plan is working.

Now, this could be analogous to owning a
car. Most of us, certainly don't know how to build a
car or even how to properly service one today, but we
definitely know when a car's not running right. And
if it doesn't run consistently, day-in and day-out,
and if continued attempts to fix it fail, then we
think we've bought a lemon.

And I will say that when it comes to the
UP rail service, our industry clearly has a lemon on
its hands. If we are to move forward and to begin to
address the real continuing crises situation, there
must be a frank acknowledgement that the ultimate
cause of this crisis is that virtually all of the rail
infrastructure in Houston is now under the ownership
and control of one railroad: the Union Pacific.

This has created an intolerable situation
for Texas and for Gulf Coast shippers. The emergency
service order of 30 days issued by the agency simply
does not provide enough time to remedy the problem.
The time has come in our opinion, for more decisive
action to cure this paralysis, and we're going to
offer the following observations and recommendations
which, Madam Chairman, you requested.
As we've indicated, service on the UP is not at a point we were led to believe it would be by the Thanksgiving timeframe; far from it. The service order must be extended to augment an effective relief program. Thirty days is simply not enough time to turn around a serious problem, nor to establish rates, routes, and service conditions or engage in any meaningful, contractual discussions.

The shipping community and the railroads need, as you've heard my colleagues here point out, the full 240 days allowed under the statute. The service order needs to be expended. By simply extending the service order we could in all likelihood, see a continuance of the same conditions, perhaps with some modest improvements.

The service order needs to be expanded and several options exist such as the Texas Rail Commission proposal. It seems to me that ought to be very carefully studied by this Board, as well as weighing the options that have been mentioned this morning by other railroads to execute the best remedy; the best remedy that serves the public interest.
Contractual relief must be given to customers. Flexibility must be provided for UP customers to seek other options for shipping resins, not just in the short term -- not just in the short term -- but until the UP is able to effectively serve its universe of customers.

The Board must become involved in an ombudsman role, and here Vice Chairman Owen, I commend your earlier comments in this regard and I also was pleased to hear your firsthand review of this situation. As you recall, I went to Houston five weeks ago and spent four days down there myself trying to get at least a firsthand view of what the situation was.

The Board should facilitate discussions between the class 1 railroad immediately. UP said it would engage in dialogues with the other railroads if service was not substantially back to normal by Thanksgiving. That dialogue must happen and the Board is the one to make it happen.

Now, let me conclude by taking you back to 1996 and reminding all of us just why SPI objected so
forcefully to the UP takeover of Southern Pacific Railroad.

We were concerned about the possible implications to our industry which has grown and thrived on competition. If we were to end up being served by a rail monopoly, and as it turns out we have every right to be concerned, we believed then and we believe now, there is nothing -- absolutely nothing -- that can substitute for the free marketplace system that applies in this case.

Now, we know where we come from. There’s no industry today with the possible exception of the computer industry, where innovation and the free marketplace system is working better than in the plastics industry. And we are being shackled by a rail monopoly.

You can understand then, why we have reacted so vocally when this imposed rail monopoly was forced upon us. Monopolies, as you well know, are counter to everything the free market system stands for, and it is counter to what our industry stands for.
You know that what you’re seeing today is
the hand of government being used to break up
monopolies in many key industries -- I’m talking about
communications, telecommunications, the airline
industry, and very soon, the electric utility
industry.

Not so apparently, the rail industry where
the anachronistic policies of the past, in my opinion,
still prevail. I believe we’re seeing here today a
textbook example of what can happen when a poorly
performing rail monopoly stifles the free market
system.

Unfortunately, and I’ll sum up, our
members are caught right in the middle. They are
losing orders, they are losing customers, they are
losing money, and as I mentioned, they have certainly
lost their patience and for good reason.

We were told a month ago that we could
expect to see some progress, and untangling this mess
and having it back to normal by Thanksgiving. We said
we didn’t believe the UP could deliver on that promise
and we were right. We’re now being told that progress
will be visible by the end of the year. We don’t happen to believe that either, unless some bold actions are taken by this Board.

Where does it leave us? We can’t turn back the clock. The merger is a done-deal; it’s history. We can’t rewrite the law of economics where service deteriorates and prices rise when a monopolistic enterprise is protected from the forces of the marketplace.

We believe and we recognize and would call to your attention, the growing support for the position that the only solution to the problems we face today is the injection of some healthy competition into the UP rail monopoly, beginning immediately. Thank you.

CHAIRMAN MORGAN: Thank you. Mr. Robitaille.

MR. ROBITAILLE: Thank you. Good afternoon. Chairman Morgan, Vice Chairman Owen, and distinguished visiting partners of the Union Pacific Railroad. My name is Craig G. Robitaille. I am president and CEO of Accu Chem Conversion,
Incorporated.

Accu Chem owns and operates two tank car loading terminals in Southern California: one in the City of Industry, 25 miles East of downtown Los Angeles; and the other in Calipatria, an equal distance of 100 miles East of the city of San Diego, and West of Yuma, Arizona.

I am speaking today in response to the Surface Transportation Board’s ongoing inquiry into the Union Pacific Railroad operations since the merger of the Union Pacific and Southern Pacific Railroads. Accu receives and subsequently transloads, approximately 150,000 tons of hazardous and non-hazardous materials annually at both our terminals, with these products originating from the Pacific Northwest, East Coast, and the Gulf Coast regions.

Virtually all of Accu Chem’s loaded cars must pass through the Union Pacific classification yard at West Colten, California, for detrainment and reassignment to local trains that supply our local service yards at the City of Industry, Union Pacific location 24,000, or El Centro, Union Pacific location.
Accu Chem is solely served by the Union Pacific at both our locations and we traditionally receive daily service at both facilities.

Accu Chem's customer base consists of many large, domestic chemical manufacturers or their distributors, including Unical, Sunoco, Jones Hamilton Company, Occidental Chemical, Coastal Chemical, Chemical American, Mobil Oil, Amoco Oil, and two food and beverage manufacturers -- Gordon Foods and International Distillers and Vinters, the largest importer of alcoholic beverages and spirits in the United States.

Prior to the UP/SP merger products destined for either of Accu Chem's facilities were arriving in transportation times measured in days, regardless of the origination point. Beginning in the second quarter of 1997, we saw these transportation times begin to dramatically increase -- especially in shipments originating from the Central United States or the Gulf Coast -- to transportation times averaging 30 days.
Beginning in the third quarter of 1997 we began to experience shipment times of 60 days from these same regions as well as 21 to 30 days transit times from the Pacific Northwest. During the third quarter of 1997 when these long transit times were being encountered, Accu Chem and our customers experienced great financial hardship and logistic nightmares due to product outages.

During these outage periods which lasted for protracted periods of time, Accu Chem’s customers and receivers, including government municipalities, aerospace manufacturers, and the largest geothermal, electric generating station in the Imperial Valley, encountered conditions ranging from outright shutdown of their processes to scaling back of production to lessen consumption, knowing that product now had to be trucked in from thousands of miles away to supply raw materials required for their processes.

At the time that the Union Pacific service recovery plan was announced and implemented in the last 60 days, we have seen some modest improvement in the hub-to-hub movements East of Yuma, Arizona, but at
this time Accu Chem still remains completely out of several products that originate from the Gulf Coast, Central United States, and the Pacific Northwest.

We have noticed that newly-established classification yards created in the service recovery plan -- such as Bakersfield and Yermo, California, designed to bypass West Colten -- functioned well initially but have quickly become congested and have shown no ability to get us our cars any sooner than going through the West Colten facility.

Accu Chem's inbound tank car shipments rarely move between hub points such as Houston to San Antonio and San Antonio to El Paso, Texas; El Paso, Texas to either Tucumcari, New Mexico or Tucson, Arizona; or Tucson to Yuma, Arizona, without being delayed after placement on sidings holding for power, holding for crews, or being held out at West Colten due to congestion there.

The incompatibility of the two company's computer systems has been exacerbated since the Southern Pacific customer service center was shut down November 1st, 1997, with the switching of any piece of

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equipment at any common interchange point, such as
West Colten or the two operational yards in the City
of Industry, a lengthy task that has taken up to five
days to complete.

Another key observation we have noticed
since the implementation of the service recovery plan
is that cars originating from the Pacific Northwest,
assigned for detrainment in the Union Pacific City of
Industry Yard for final delivery to Accu Chem on
trains that bypass West Colten, often end up in either
Long Beach or Los Angeles, both of which are West of
the City of Industry yard when the City of Industry is
too congested to take them; in turn, requiring great
effort to get these cars placed on eastbound trains in
order to get them back to the City of Industry yard
with delays measured in magnitude of days.

Union Pacific field operating personnel at
the local level that I speak with daily, are faced
with monumental challenges that directly relate to the
amount and type of equipment and personnel that may be
available on any given day.

These same field personnel are to be
commended for their individual dedication and hard
work, but they have not been provided the resources
they need to complete the task at hand.

In closing, I wish to state, while it is
obvious that the Union Pacific has identified several
problem areas within their system, there are still
many weeks, if not months, of work ahead to identify
the additional problems existing on the West Coast and
implementation of a thoughtful, effective plan to
return these operations back to normal.

Accu Chem considers the Union Pacific
Railroad to be a business partner in the safe,
efficient processing of hazardous materials through
our facilities, and we look forward to working
together to solve these issues.

Thank you for allowing me the opportunity
to speak. I’m prepared to answer any question you may
have at this time.

CHAIRMAN MORGAN: Thank you. Let me just
ask all of the panelists one question. Earlier we
heard that there are shippers out there who have seen
improvements. Each of your organizations, and you as
an individual shipper, obviously, have done some surveys and have talked to your membership.

To what extent does your position samples reflect the improvements that we understand some shippers are experiencing out there? Mr. Evans, would you like to go first?

MR. EVANS: Yes, well our survey showed that and it was -- the percentages were very similar to a month ago. I think the NIT League had asked earlier and you acknowledged the Monday morning reporting trend line, so I think trend lines probably have as much impact than, how do you feel today.

I called a few of my clients the other day. You know, a couple of them said, hey we’re looking real good. I called another plant, they said it was terrible over the holidays. I think the holidays, we’ve not seen that trend line yet because I think we’ll see it next week and they no doubt improved considerably over the holidays, which we’ll see.

I’d put more effort into looking at the trend line. I have looked at it back to September the
19th, which I believe is the first on your fax that you sent to us. And just looking at total cars -- and we heard today that the total car count was down to 331,000 -- that's like 57 percent of the way to their goal after 12 weeks.

So what does that mean? We have 11 more weeks to go. And if you just take that same scenario through some of the trend lines, almost all the trends are in the right direction: it's taking too long to get there. I think we're three months away yet.

CHAIRMAN MORGAN: So there is more -- what I'm hearing you say is that in the data you are seeing improvement?

MR. EVANS: Right, and --

CHAIRMAN MORGAN: But it's not enough and it's not quickly enough? Is that --

MR. EVANS: That's correct, and it's costing us a lot of money. We also had a meeting yesterday and some of the California input -- you've heard a lot about Colten today -- was still a problem area. The problem areas seem to move around a little bit. For a while it's Houston, then it's Louisiana,
and back.

I think the trend lines will give us the trends; I think the trends are in the right direction; but I don’t believe they’re there after the first 30 days; I don’t think we’ll be there by the end of the year. It’s going to be sometime in the first quarter or late first quarter.

CHAIRMAN MORGAN: Mr. Thomas?

MR. THOMAS: Let me preface my comments by saying that one of the key issues here is, what are you looking at in terms of measurement? Frankly, comments that the railroad is fluid, comments that the railroad is “on plan”, mean nothing to us.

The key measurement for a customer is whether or not our products are being delivered on time; whether the full cars are going out and being received by the customer while the empty cars are coming in the Petro Chemical operation so that they can be loaded up with resin pellets and moved downstream to the customer.

I’d like for you to look at this data having to do with loaded and empty transit times.
Notice the top line, the trend line is for empties.
If you'll look at that graph you will see, from
September, October, and November that line is going
up, not down, in terms of the number of days it takes
for those cars to be returned -- those empties.

If you look at the bottom chart you'll see
the very same thing -- trend lines for loaded cars.
You don't see from September to October to November
that trend line going down in terms of reduced days.
This is data from one of our large producers in terms
of what they're experiencing right now in the Houston
area.

And I'll be more than happy -- in fact we
planned to gather up some of this statistical data and
provide to the Board because we believe this is the
real measure of whether performance is improving or
not -- whether the product is being shipped -- and not
some of these measurement that have been cited by UP.

CHAIRMAN MORGAN: So would that chart
really be relevant in the context of transit times --

MR. THOMAS: That's correct.

CHAIRMAN MORGAN: -- which I heard the
Union Pacific representatives --

MR. THOMAS: That is what --

CHAIRMAN MORGAN: -- discussing.

MR. THOMAS: Exactly. This chart is a
loaded and empty transit times chart from one of our
key suppliers in the Houston area.

CHAIRMAN MORGAN: And I think earlier we
heard that they view that as --

MR. THOMAS: Unacceptable.

CHAIRMAN MORGAN: But the Union Pacific is
viewing transit times as an area that they are
committed to improving upon -- what I think I heard
them say earlier. Mr. Petrucelli.

MR. PETRUCELLI: I think from -- I haven't
seen all the data from the CMA members. If I could
I'll give you our own experience. From PPG's
perspective the situation is basically, we'd describe
it as stabilized. It hasn't gotten a lot better; it
hadn't gotten a lot worse. There are some pockets
where, within the last two weeks we've seen some
improvement. But I think we need to see if this can
stand long-term and will be a sustainable, consistent
improvement.

I have a little bit of a problem with the baseline. The baseline is January 1997. In February of 1997 we reported to the UP that we have been experiencing deteriorating service since October/November 1996. So a better benchmark for me would be mid-summer of 1996 or previous years.

So using '96 as the baseline, and if we get back there, it's still far below where we have to be. It's sort of the analogy of, if I can't swim and jump in a pool that's 20 feet deep, I will drown. You can drop the water to ten feet and I will still drown. It may be getting better. I agree with my peers that I would hope it would get better quickly. I doubt it; I think it's going to take time to work itself out.

CHAIRMAN MORGAN: Are there any further comments on that question?

MR. ROBITAILLE: I'd like to answer that two ways. Prior to the merger I had had no experience with Union Pacific Railroad, being solely served by just Southern Pacific over my entire career. And I can tell you from 12 years being on Southern Pacific,
the type of delays and the type of timeframes we were
incurring going through West Colten or going through
different classification yards in the area.

And I can say right now that we are still
nowhere near those timeframes that we were
experiencing. A typical interchange through West
Colten prior to the UP/SP merger was perhaps -- 24 to
72 hours would be considered normal.

We are not at a point here we’re seeing
really, any cars go through in 24 to 72 hours, but I
can also say that we’re not at a point where we’re
seeing seven days, which is what we were seeing 30 to
45 days ago.

CHAIRMAN MORGAN: So in other words, it’s
improving but not to where you would --

MR. ROBITAILLE: No, it is not improving
to where I’m sure the railroad wants it, or definitely
where we want it. But I would definitely state that
I feel as though cars are moving West Colten better
now than they were 30 to 45 days ago. There was
literally no movement through West Colten.

In regards to, are things getting better
systemically, our facility happens to be impacted by
-- Vice Chairman Owen, you mentioned Metrolink. And
we are impacted by Metrolink and its window to service
our facility as well as Amtrak.

And when I travel from one plant to the
other I go past West Colten and I go through what
would be the main line cutoff at Niland, California.
And I can also say that in my last trip up to
Calipatria perhaps ten days ago, there was still many
trains sided out between West Colten and Niland, but
not as many as there were 30 to 45 days ago.

The other trend that I noticed, in the
trains that I do see sided out in my last trip, the
majority appeared to be empties as opposed to 30 to 45
days ago where there was an even mix of trains that
were sitting without power -- both empty and full.

MR. THOMAS: Can I make one more comment
on this question, Madam Chairman?

CHAIRMAN MORGAN: Sure.

MR. THOMAS: I call your attention to the
Dow Chemical Company’s statements. Since the October
27 hearing, Dow and UP have continued their weekly
service conference calls. Unfortunately, all this attention has not led to any measurable improvement in service on Dow traffic.

Dow’s jeopardized car counts on the UP/SP system remain above 300, even though total shipments are reduced due to diversion of traffic to truck. Monthly UP/SP data for Dow’s traffic continues to show service levels at 25 to 35 percent of on-time delivery compared to the pre-crisis level of 80 to 85 percent.

Now, that’s the kind of measurement that is extremely relevant to a shipper.

MR. PETRUCELLI: Madam Chairman, if I could? Maybe to put this in perspective, the railroad -- and I think rightfully so -- look at this on a macro basis: as a system, as car flows, and these things. PPG and other shippers really look at it in a micro system. We look at car by car, shipment by shipment, customer by customer -- and that’s the difference.

Hopefully, if the system gets better the individual performance will get better, but maybe there’s a discrepancy on the perception of where they
are, because I'm still looking at one customer for one
car and he doesn't really care if the yard is flowing
better or not.

CHAIRMAN MORGAN: Well, I think that's a
good point, but as I think I indicated at the
beginning of the hearing, our challenge is to balance
the micro and the macro as well. So we're all
struggling with the same dynamic in coming to the
right answer here.

VICE CHAIRMAN OWENS: This country does
not function unless you deliver one car at a time.
Small business make up this country, and so I think we
should remember that at all times.

One of the things I wanted to ask if I
could, Mr. Thomas -- or any one of you might answer
this one -- how many plants have closed per week or
shut down a second shift, and how many employees have
been impacted by this?

One of the reasons I bring it up, it
always comes home to me that it's Christmas time and a
lot of people working in these plants are a little bit
above minimum wage. And a week or two weeks out of
their paycheck means lack of Christmas, lack of paying
the rent or house payment. And I was just wondering
what type of an economic impact it's had in those
particular areas there when --

MR. THOMAS: I don't have the actual
number with me, but we will supply you with some
numbers. I cited last time, Mr. Vice Chairman, a
middle-sized to small packaging company and the impact
it was having. If they were not getting their
shipments on time one day, they would have to send
their employees home with half a day's pay.

The next day, because of the total
inconsistency of this system, they would end up with
more cars than they could handle and they would have
to try to get extra people in or work these people
long hours to make up for it.

Overall, if I recall, this small company
was losing about $3,000 to $4,000 a day because of
this inconsistency and lack of dependability on
deliveries. And there are many, many other companies
across the country in our industry that have had
similar situations, and I'll try to document for you
what kind of numbers they are.

VICE CHAIRMAN OWENS: It's interesting
because you know, you hear these rumors, you see it in
the newspaper, and I say, well is there a truth to it
or not?

Mr. Robitaille, I believe it is, in your
conversations with the employees up in that neck of
the woods up there in Southern California, was there
anything that came out of that that more personnel
they suggested from the field level --

MR. ROBITAILLE: I can say from our own
facilities that we were -- for three weeks in October
we were essentially shut down in Calipatria causing us
to temporarily suspend pay to five people.

VICE CHAIRMAN OWENS: But in your
conversations with the UP employees or the SP
employees -- I know that's not always the best source,
but I know I get feedback, say well yes, we could use
some more engineers, we could use more dispatchers, or
we could use more of this, that. Sometimes that's
interesting feedback.

MR. ROBITAILLE: The personnel that I deal
with are essentially train masters, yard masters, and switch masters, and their greatest challenge was always power or crews. They always felt that if they had the power or crews to be able to do the work that was at hand, they would be able to service all the customers on a given branch line.

VICE CHAIRMAN OWENS: Bakersfield and Yermo now are impacted also, similar to West Colten -- that was the statement that you made.

MR. ROBITAILLE: Yes.

VICE CHAIRMAN OWENS: Then there must be something -- lack of power, lack of crews, lack of space?

MR. ROBITAILLE: Primarily congestion of the West Colten. A lot of our cars going from Yermo go over to -- there’s two operational yards in the City of Industry. There is the old SP yard that is now of course another UP yard -- and Yermo does not directly link up with the SP yard that we are servicing.

We have to go to UP City of Industry yard which is about four miles away from our yard, and it
will require special logistics to move the cars from
the UP City of Industry yard to the old SP City of
Industry yard. And those were all power and crew
issues that -- we had a batch of cars that got delayed
-- it took five days to move them from one City of
Industry yard to the next City of Industry yard.

VICE CHAIRMAN OWENS: Thank you.

MR. EVANS: Vice Chairman, on your
question you asked, part of our survey did ask for the
shutdowns and we asked those respondents -- it was
between November 1st and November 30th we had 49
respondents back to our league, and 18 of them said
they had either curtailed production or shut down
during that month.

MR. PETRUCELLI: CMA had a similar study,
and of the 45 chemical companies that responded, they
have a combined fleet of over 104,000 cars and rail
line of about 46 million tons a year. The survey
indicated about 239 major production facilities were
affected by disruption of service, placing a number of
jobs at risk. They did not quantify any layoffs, but
at those facilities, employment was over 100,000
people -- almost 100,500.

VICE CHAIRMAN OWENS: Thank you.

CHAIRMAN MORGAN: Just one additional question. Several of you raised this issue of obtaining rates from the option carrier in the Houston carrier in particular -- the difficulty associated with that. I'm a little puzzled as to exactly why the difficulty? Is it the period of time during which the order has been in effect?

I find it hard -- I'm having trouble understanding why a shipper and a carrier are unable to negotiate a new rate for a particular movement. So I think you raised that and -- a couple of you did.

MR. EVANS: Rates take a little while to negotiate and work out, and with the 30-day window, TexMex is the one that got -- us. We look at, from our Occidental standpoint we looked at the number of cars that we could move over there, and you know, we have over 30,000 cars on the UP and I had a total of less than 300 that I could even look at.

And we talked with the KCS people and we tried to get down the transit times because without
their yard in Houston they had to move over to Beaumont before they do their blocking and switching. So we're interested in rate as well as transit. There's no reason for us to put it over there and take longer to get to our end product.

So it takes a little bit back and forth. They are also busy trying to gather up their other customers to take other tonnage, and a week goes by in a hurry. It just -- by the time we could put anything over there -- we moved a couple. We moved a couple last July. But it takes a little while to negotiate the rate.

I don't want to pay them a whole lot more money than I'm paying the UP. I've got to weigh that against my transit time.

CHAIRMAN MORGAN: Any other comments on that question?

MS. HEALEY: Just to add to that, Madam Chair, I think in establishing the routes, trying to find out the number of cars that will be needed to haul the commodity, and then also I think the railroads sometimes are, rightfully so, reluctant to
pick up traffic for such a short time once the routes are established. You have virtually just days left, say in a 30-day emergency service order. So there’s some reluctance and as our colleagues have said, the time does go by very, very quickly.

CHAIRMAN MORGAN: Anyone else on that?

MR. SHIFT: I’m Tom Shift from CMA. Our members are reporting to us, I think, three factors. One is the short period of time, the portion of the 30 days as people have mentioned. The second element is the difficulty of working something out with the Western carrier -- you alter the originating carrier for a short period of time and getting all the details, as Bob just mentioned for Occidental.

And then the third element is that they’re not always rates and routes that the other associated people can place. For example, if the new originating carrier doesn’t have interchange at the same point with the Eastern carrier that’s terminating traffic, say under carat one of the contract, or if there need to be negotiations between the Western carrier and the Eastern carrier over transit times or over rates or
over divisions, that adds a whole other complexity.

So what we’ve asked for in our comments is, that where the track is being picked up under this emergency service order, it be carried under the same terms. In other words, to cut through this bureaucratic and paperwork mess and say that if it’s going to end up in Virginia, let it end up in Virginia and not have all these interfaces and negotiations over things that don’t even involve the origin point -- say Houston, where the problem is to slow things down.

CHAIRMAN MORGAN: Thank you all very much.

I think what we’re going to do -- I was just going to keep going here but I think we’ll take a 10-minute break and then we’ll come back with the next panel of shippers so that we can keep moving.

(Whereupon, the foregoing matter went off the record at 1:26 p.m. and went back on the record at 1:36 p.m.)

CHAIRMAN MORGAN: Okay. Let’s begin with the next panel. We have Joe Lema from the National Mining Association; we have Dan Kuehn with Western...
Coal Traffic League -- I got it right this time; Michael McBride, Edison Electric Institute; and then we have William Hudson with the International Association of Refrigerated Warehouses.

And then we were supposed to have someone from North American Wholesale Lumber Association, but I don’t believe they’ve been able to make it. So let’s begin. Mr. Lema.

MR. LEMA: Thank you. Madam Chairman and Mr. Vice Chairman, I am Joe Lema, vice president, the Manufacturers and Service Division of the National Mining Association, and our main interest in this proceeding as an industry association whose member company is operating mines and minerals processing facilities which produce coal, metallic ores, and other non-metallic minerals, are documented in a previous filing with the STB in this matter.

In particular, massive tonnages of coal produced in the Western United States must rely on timely, coal unit train movements to power plants in the United States and Mexico, and support terminals from which coal is trans-shipped to other countries.
In our nation today we produce annually, 1,030,000,000 tons of coal; 47 percent of that production occurs in the Western states, amounting to some 484 million tons per year, and more than two-thirds of that Western coal production is originated on Burlington Northern Sante Fe and Union Pacific/Southern Pacific.

Through contacts with member companies which produce coal in the Western United States made during the week of November 24, 1997, NMA has determined that the recovery effort has not resulted in an improvement of rail service in the Western United States needed to furnish adequate, timely, coal unit trains to satisfy existing commitments for coal shipments to power plants in the United States and Mexico, and to coal terminals in California positioned to load coal in dry bulk carriers operating on the high seas on routes to the Far East.

In fact, overall in regard to coal shipments, coal unit train service has deteriorated in the month of November of 1997, placing stockpiles at utility power plants in a precarious position with
respect to meeting consumer requirements for electricity in retail, commercial, and industrial sectors of the economy in many states.

Switching from low-cost coal fuel to natural gas at a particular power plant is not always possible, and when it is feasible, all the power can be obtained from a grid connecting with other power plants, rates for electricity rise substantially causing significant losses to the power consumers located in an array of service areas in many states.

Coal mining companies operating in the Powder River Basin of Wyoming and in Montana, Colorado, Utah, and New Mexico, are finding that coal unit train service on Union Pacific/Southern Pacific and the Burlington Northern Sante Fe systems continues to be severely inadequate in terms of the number of trains furnished by the carriers against the committed number of trains. And also inadequate in cycle times between mines and power plants.

Coal unit train service deficiencies are onerous in regard to the vast tonnages of coal produced for shipments out of the Powder River Basin. 
of Wyoming, where a single mine, for instance -- one
mine out of a large number of mines in operation --
may require 40 or more trains per week, with each
train carrying 12- to 14,000 tons of coal.

Inadequate coal unit train service
likewise, is a gross problem in states like Colorado,
Montana, Utah, and New Mexico, where a single mine
often requires 15 to 20 or more, coal unit trains per
week.

Madam Chairman and Mr. Vice Chairman, the
problem of UP/SP and the BN Santa Fe failure to
furnish adequate, timely, coal unit train service
through November 1997, is shown by several key
statistics that are presented in my testimony -- and
I'll reflect on them now -- which represent the
typical situation faced today by coal producers in the
Western United States.

Looking at coal unit train cycle times in
days, reported by the Union Pacific/Southern Pacific
in their weekly reports, looking at a baseline of
January 1997, the report was 6.1 days. Looking at the
week ending October 24 of this year, or the vicinity
of the previous hearing on this matter, the cycle time
was 6.5 days. And yet the week ending November 21st,
the cycle time was 7.6 days. That’s a tremendous
expansion in cycle time which means there’s a lot more
coal on the rails and not in the stockpiles and the
utility plants.

Coal unit train cycle times on the other
hand, again in days, reported by coal companies
canvassed by National Mining Association for the week
ending November 21 -- whereas the carrier reported an
average cycle time of 7.6 days, our companies reported
an average of nine days. Certainly there’s a big
discrepancy there.

Looking now at the percent of coal unit
trains -- furnished Powder River Basin coal producers
against commitments for train service -- how many
trains were provided against the commitment for
providing train service -- the week ending October
24th, 80 percent of the commitments were actually
responded to or met, and the week ending November
21st, a recent week one month prior to the earlier
time, it was 70 to 85 percent.

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So the provision of unit trains against the commitment is not good. That’s Powder River Basin. Let’s turn to other Western States. The percentage of coal unit trains furnished Western coal producers outside of Wyoming’s Powder River Basin -- for example Colorado, Utah, New Mexico -- against commitments for service, in the week ending October 24th only 40 to 70 percent of the commitments were met, and the week ending November 21, only 40 to 60 percent of those commitments were met.

And certainly coal producers dig coal based on coal supply contracts that they have been obligated to perform against, and they produce coal commensurate with that volume, expecting to have the transportation available as committed. It causes a very serious disruption of the Coal Production Delivery System when we don’t have the unit trains in place, on time, for loading.

The key statistics gleaned from reports received from coal producers in the Western United States present a gloomy venue in regard to our capacity for delivering enough coal from the nation’s
abundant reserves of efficiently mined Western coal to satisfy existing coal supply contracts with power producers and with buyers of U.S. export coal, due entirely to an inability of Western line hold railroad systems to provide sufficient coal unit trains at this time, measured against existing commitments.

Several comments received from veteran staff members of coal companies whose responsibilities are focused on transportation, are furnished in my testimony for the purpose of indicating conditions which should be given immediate attention by UP/SP and BNSF, to alleviate the difficulties being experienced.

These include for example, excuses for lack of trains are always power and crews. I think that that’s rather self-evident in previous testimony heard today, but the lack of sufficient power and crews in position for loading in a timely manner, certainly is an overriding problem.

Coal unit trains take relatively little time on the main line because they are dedicated units for the most part, but suffer because of the BN Sante Fe’s extra traffic from Chicago to Los Angeles since

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their merger.

UP/SP and BNSF remove power from coal unit trains and can't get the power back to move an empty train back to the mine. UP/SP has not restored full service for coal shipments to Mexico. To-date, only one of the train sets out of service has been reactivated, with no timeframe given when UP/SP will place the remaining three train sets into service.

Export coal shipment to the Pacific rim countries through Los Angeles/Long Beach has been severely curtailed because UP/SP has drastically cut the number of train sets in that service causing cancellation and/or deferral of dry ball motion carriers at Pacific Coast coal terminals.

UP/SP plans to bring the SP East segment of its system into the UP/SP's transportation control system on December 1st, and the SP West segment in March 1998. While an upgraded TCS is called for to assure effective utilization of UP/SP's locomotives and crews in the long run, concern is expressed that for the moment, this activity may exacerbate catastrophic failures now experienced in Texas and
California.

Possible continuation of poor railroad coal traffic service in the Western United States and to 1998 would carry severely adverse consequences, a specter which demands intense efforts for service recovery in 1997.

Simply stated, without immediate correction of the problem serious losses will be felt in higher consumer prices for electricity, less benefits of U.S. coal experts as a factor in reducing our trade deficit, and a negative impact on the wages paid employees of the nation's mining and minerals processing industry.

NMA remains hopeful that the BNSF and the UP/SP, acting in concert with other railroads including but not limited to the KCS and the IC, will quickly add locomotive powers and crews, enhance train command control and dispatching facilities to optimize train operations, and secure off-system assistance that may be required to perform equipment repairs and maintenance functions enabling full utilization of locomotives and rail cars on hand for revenue traffic.

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service.

Toward that end, NMA urges the STB to stimulate and monitor the efforts of the railroads, and we further urge that early consideration be given to the establishing of a coal transportation service standard which is time-based for meeting acceptable unit train coal deliveries.

I’ll summarize by saying, in closing, NMA supports a proposal made by the Edison Electric Institute filed by EEI in this proceeding on December 1st. The proposal would request the secretary of transportation, in collaboration with the chairman of the STB, to convene a meeting of BNSF and UP/SP officials and officials of other railroad which may be in a position to provide assistance in eliminating the deficit rail service incurred in the Western U.S. That authority is provided in 49 USC 333.

And in sum, I think perhaps the most important point that I wish to bring to this board today is the point that recovery -- and that's what it's all about -- recovery should not be measured only by the number of coal unit trains and revenue freight

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service at a point in time.

Rather, what counts is the number of trains provided against the number of trains committed, and the cycle times experienced in their operation. Thank you for hearing us today.

CHAIRMAN MORGAN: Thank you, Mr. Kuehn.

MR. KUEHN: Chair Morgan, Vice Chair Owen.

I am Dan Kuehn and I'm manager of fuels for the Lower Colorado River Authority of Austin, Texas. I'll refer to my organization by its acronym of LCRA. I'm here to testify today on behalf of the Western Coal Traffic League, of which LCRA is a member. I also serve on the executive board of the Coal League.

The Western Coal Traffic League, as you know, is an association of Electric Utilities that purchase and ship by rail, approximately 95 million tons of coal annually from Western coal mines. WCTL's formal, written statement submitted to the board on December 1st in this proceeding, sets forth in detail the problems that utilities continue to have with unit train coal service as a result of UP's continuing rail service difficulties.

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In short, coal league members facing severe service problems at the time of the Board's October 27th public hearing, including LCRA, are seeing only slight improvement. That limited improvement is far from the progress promised by UP by this time.

A review of UP's service being provided to the Fayette Power Project -- which is our plant that's co-owned by LCRA and the city of Austin -- is indicative of the problems being experienced by Coal League members.

For the month of October, deliveries to the Fayette Power Project averaged just under one train per day. For the month of November, deliveries increased slightly to an average of just over one train per day. And 1.8 trains per day are necessary for the facility to operate at full burn rate.

UP's December 1st report says at page 18, that our deliveries significantly improved during November to 7.25 trains per week from five-and-a-half trains per week in September. I just mentioned that we did have a slight improvement in deliveries in
November, but the UP report exaggerates the extent of that improvement.

Our deliveries in September actually averaged 6.25 trains per week, not the 5.5 stated in their report. And I can assure you that we monitor our deliveries right closely and that is based on factual, measurable data.

To put the current performance in context, our total deliveries in November were 32 train loads of coal. Compliance with our service commitments in our contract would require delivery of between 44 and 48 trans per month. At the rate of this recent improvement it will take four to six months for our deliveries to return to normal. And this projection does not include any consideration for deficit tonnage makeup.

UP’s 3,000 mile round-trip from Wyoming’s Powder River Basin to our plant normally takes about one week; transit times at the time of the Board’s October 27th hearing were approximately two weeks, or 14 days. For the month of November they were at approximately 11 days. However, that’s still more
than 50 percent over our contractual cycle time commitments.

As I reported at the last hearing, our coal transportation deficit was in excess of 750,000 tons; today that deficit volume has ballooned to over one million tons. The Fayette Power Project normally maintains a 50- to 60-day supply of coal. At the time of the Board’s last hearing our stockpile contained a 2-week supply of coal.

Today our stockpile is at approximately 25 days; not because of increased deliveries but because we have idled approximately two-thirds of our coal-fired generation capacity during the month of November. Such radical and expensive action was necessary to reduce the risk of power shortages this winter and ensure that integrity of the electricity’s grid in Texas.

At the time of the Board’s last hearing, LCRA and the city of Austin reported that we had incurred $8 million in additional expenses as a result of UP’s service failures. Today, that amount has over tripled in size to approximately $27 million. That
total continues to increase on a daily basis.

Each train load of coal that we must offset with non-coal fired generation or power of purchases, increases our cost by approximately $400,000. Besides LCRA, several other Coal League members have reported that Union Pacific's performance continued to lag: cycle times are too high, the number of trains delivered per day remain too low, and coal deliveries too infrequent.

Coal stockpiles remain too low and are far below levels necessary to ensure adequate, electrical generation capacity and system reliability during critical winter months. Before describing WCTL's proposed solution to Union Pacific's service problems, let me first briefly remark on our dismay about UP's formal statement submitted to the Board in this proceeding last Monday.

UP has "declared victory", and in particular, has described its coal service as virtually back to normal. UP described its remaining service difficulties as no worse than what is experienced by railroad "year after year in the
ordinary, not always smooth course of railroading. Furthermore, because of these self-proclaimed improvements, UP requested that the Board lift its emergency service order. UP's glorified statement grossly exaggerates the reality being experienced by LCRA and other Coal League members.

Granted, UP has made some improvement since the last meeting on October 27th, however, there is no indication that adequate service improvements can or will be made by UP in the short term to enable WCTL members to curtail expenses of coal conservation strategies.

As far as proposed solutions to UP's continuing crises, the Western Coal Traffic League continues to believe that the time for significant, government actions has not yet come, and that such dramatic action may only prolong UP's recovery. With that said, there are a couple of meaningful steps that the Board should take to improve the situation.

First, the Board should take action to ensure that UP responds favorably to alternate routing arrangements sought by other carriers and by its
customers that would improve service and not interfere with UP's recovery efforts.

For example, the Illinois Central Railroad reported to the Board on November 26th that it can handle one to two trains daily at Council Bluffs for coal movements to electric utilities on its lines.

To our understanding, UP has not acted on this offer of assistance, and this contradicts basically, what we heard earlier today in their response to the Chair's inquiry on this matter. This was confirmed by IC as recently as yesterday.

The Board should take action to ensure that where there are additional resources available from other railroads, to serve UP customers experiencing depths of service, the burden should be on UP to demonstrate why it should not be required to accept those offers of assistance that can improve that service.

Second, the Board should require UP to bolster its weekly reporting on unit train coal movements as requested by the Western Coal Traffic League in its October 7th letter to the Board. UP's...
statement submitted to the Board in this proceeding on Monday of this week criticizes the negative performance status submitted by others to the Board, as lacking on concreteness.

Meanwhile, UP is professing victory based largely on internal, anecdotal performance data. It also has declined to release to the Board, objective and specific weekly coal data by origin coal producing regions to destination states as requested by the Coal League.

Such information is necessary to allow for an objective assessment of UP’s recovery efforts and would provide the public and the Board with a much more reliable indicator of service performance. We believe such data would demonstrate that UP clearly has not achieved the level of improvement that it has claimed.

On behalf of the Western Coal Traffic League this concludes my remarks. Thank you for the opportunity to address the Board.

CHAIRMAN MORGAN: Mr. McBride.

MR. McBRIDE: Madam Chairman, Mr. Vice
Chairman, thank you very much for the opportunity. I'm going to try not to be redundant and I'm going to be positive, as I was when I was here five weeks ago.

You've heard the problem. I just want to emphasize, we've presented the data to you as specifically as we could in our comments filed on Monday, as supplemented by our letter of yesterday.

The problem very simply is, whether the railroad is fluid again or not, there is not enough coal on the ground on the very time of the year when there ought to be the most coal on the ground at the power plants.

We have presented the data for both UP and BN service. We're not trying to point fingers at either or both railroads; we simply don't have enough coal. So we've come before you with three suggestions for solutions.

Number one, we had understood that Union Pacific had taken some locomotives and crews out of Powder River Basin coal service. I heard a suggestion this morning from Mr. King that perhaps they've restored that.
If so, great; but I understood just yesterday from the Tennessee Valley Authority that it’s now experiencing a shortage of power and crews on the Colorado coal service that it’s getting. We need the normal complement of locomotives and crews on Western coal service. That’s number one.

Number two, as Mr. Lema suggested under 49 USC 333, I would ask you to ask the secretary of transportation if need be, to designate you, Madam Chairman, to preside over a meeting as soon as it can be arranged, of railroad executives, behind closed doors with antitrust immunity, to hash out all of these charges and counter-charges you’re hearing, disputes of fact, with specific solutions on the table, listening to the proposals, the responses, and you decide what needs to be done.

We don’t have to be there; we don’t want to be there. We want the railroad industry to solve this with your supervision or the secretary’s.

Thirdly, we would suggest to you that the most critical bit of data is not being reported. The average cycle time for trains is meaningless if it is

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not accompanied by the total amount of tonnage that is being moved. We don’t know how many trains are being moved.

Just yesterday I checked with another one of the major utilities. They believed that there was as few as 12 trains a day being loaded in the Powder River Basin. Union Pacific said today -- and I have no reason to dispute this -- that at least as of today it’s up to 26 or 27. Mr. King says as low as 22 and as high as 31.

We don’t know how many are being loaded in Colorado and Utah. But they have these numbers per day. We would like them to report to you every day, until this crisis is over, how many coal trains are being loaded. They have the data, it won’t require any more work, and if we get the coal power back to normal we won’t have to ask you for any further relief.

Thank you.

CHAIRMAN MORGAN: Thank you. Mr. Hudson.

MR. HUDSON: Yes, Chairman Morgan, Vice Chairman Owen, my name is Bill Hudson and I’m
president of the International Association of Refrigerated Warehouses, the principal trade association for the refrigerated warehousing, logistics and distribution industry to the food industry.

I’m here today representing approximately 250 U.S. companies which own and operate almost 500 large, refrigerator warehouse and distribution facilities in the United States. During my time I wish to call the attention to the alarming difficulty faced by the refrigerated food distribution industry as they endeavor to obtain refrigerated rail cars that are necessary to move product safely to the customer.

As if the substantial reduction in the availability of refrigerated equipment were not enough -- approximately 52 percent in the last 15 years -- this is but the first in a series of related problems. The railroads are simply not able to consistently deliver these rail cars in safe, operable condition.

One refrigerated food distributor in the West recently monitored refrigerated rail car status for a 30-day period and reported receiving 16 cars
within that period with insufficient fuel or insufficient refrigeration.

Products which must be maintained at zero degrees for reasons of quality and food safety simply cannot be loaded into refrigerator rail cars with temperatures of +16, +22, or +26 Fahrenheit, which he was finding. In ten of the 16 cars the refrigeration was not even running.

Another refrigerator warehouse facility ordered and was prepared to load, 42 refrigerator rail cars during a 6-week period. Of the 42 cars, 33 were delivered. Out of the 33, 18 required mechanical attention. Of the 18 requiring attention, only 15 of that could be repaired. Even with repairs to the 15 cars, the number of usable cars represented barely 60 percent of the equipment requested.

This is not uncommon. There are fewer and fewer occasions when the railroad is able to deliver equipment as agreed. Compounding this, once the equipment has been delivered and loaded, the rail cars are rarely able to pick up the loaded rail car on a timely basis.
In an all-too-typical situation experienced by one food distributor for example, the company reported that a refrigerated boxcar is delivered seven days after the date agreed, and then has to load the boxcar immediately so that it could be picked up that same day.

After waiting a full week to receive the boxcar and working furiously to get the car loaded in accordance with the railroad’s request, the car then is left sitting at the warehouse for another ten days before it is picked up.

This is a monumental transportation problem that this industry is facing. The problem goes far beyond our industry in food processors and food distributors that rely on railroads for shipments of refrigerated perishables.

Let me close by saying that we deeply appreciate the Board’s active effort to resolve the gridlock issue facing so many shippers in the Western United States, and we hope that in the course of your deliberations you will not overlook the refrigerated rail car problem which affects the food distribution...
chain in the Western United States, many other parts
of the country, and our exports and imports as well.

We strongly urge you to require the
railroads do first implement systems that will better
enable them to manage refrigerated equipments, provide
necessary condition and maintenance reports, and
establish realistic policies on which shippers and
customers can rely.

Thank you.

CHAIRMAN MORGAN: Thank you. Let me ask
a couple of questions. First of all, Mr. Lema, from
what I understand from your testimony, the concerns
that you’ve raised about coal transportation in the
West apply to both the Union Pacific and the
Burlington Northern Sante Fe?

MR. LEMA: Madam Chairman, that’s exactly
right.

CHAIRMAN MORGAN: And are you seeing, with
respect to BN Sante Fe service, are you seeing
improvements in that area? We’ve heard from Union
Pacific earlier that they have focused their attention
on that matter and hopefully the shippers will begin
to see some relief. I was wondering if you had some
information with respect to the BN Sante Fe.

MR. LEMA: To the best of my knowledge,
Madam Chairman, the problem is similar in both carrier
instances. The problem of cycle times that are
inadequate, and particularly the problem of not having
the committed number of coal trains at the mine ready
for loading. They're both suffering under that.

CHAIRMAN MORGAN: Mr. Kuehn, you have made
some requests relative to data that you feel would be
important for all of us to have. UP has responded to
your request by indicating that you should be able to
get that data from your member companies. Is that
right? What is the issue here?

MR. KUEHN: I think the issue is really
that you should have that more detailed information to
have a better measure for what is really going on.
Two things -- I mean, I've heard claims of
confidentiality concern about competitive nature.
Well, these cycle times, I don't think they're very
competitive with the antiquated modes of
transportation, so I don't think that's an issue.
I think it's really embarrassing is what it is, you know, that they would have to present this detailed information that shows that they're well off their service marks and contractual commitments.

The other part of that is that when you stop and really look at it, the bulk of the Western coal comes out of the Powder River Basin which is jointly operated with BNSF. Well, they have access to each other's information of when trains show up. They know cycle times. It's more a matter of, I think, of public disclosure, what's really going on in more detail, so that you can better assess the situation.

CHAIRMAN MORGAN: So to you, Mr. Kuehn, and also Mr. McBride, in terms of the data that you feel is important for us to have in order to assess whether the coal service is improving to where it should be, what specifically do we need? Tonnage, I think I heard you say.

MR. McBRIDE: We need the number of trains moving, which is a survey of tonnage. And I think you heard Mr. King this morning report to you on their improvement in that number of trains, so I don’t think
that data could be a competitive issue since they
willingly produced that data to you this morning.

And I would think that if they’re back to
normal in the Powder River Basin we ought to know that
and we ought to be able to know that every day. We
need to know that in Colorado, Utah, and New Mexico as
well. And that leads to the second issue.

The only data you’re getting right now is
that average coal cycle time in days for the whole
system. That doesn’t tell you where the problems are
if there are any problems.

CHAIRMAN MORGAN: So you want more
regionalized --

MR. McBRIDE: We want regions --

CHAIRMAN MORGAN: You would suggest more
regionalized data similar to what we’re collecting on
the grain area?

MR. McBRIDE: That’s correct. And may I
also supplement the answer Mr. Lema gave to your
question to him. I did inquire as late as yesterday,
of two major coal burning utilities, what the service
was on each of those two carriers. This is not to
point fingers; just to report facts as to where we were as of yesterday.

Tennessee Valley Authority -- on whose behalf I'm not here today but they gave me this information -- said that their service from BNSF is okay. Their service from UP is down 25 to 50 percent of what they need, and 80 percent of their Western coal comes from the UP/SP.

And the problem for them is, as it is for many Eastern utilities, the use of Western low sulfur coal blend with the higher sulfur Eastern sulfur coal to comply with EPA's requirements. If they don't have the low sulfur Western coal they may have to shut a plant down or not make off-system sales, even though they have coal on the ground, because they'll violate the Clean Air Act if they keep running.

So what they've done is curtail off-system sales at some of the plants using Western coal. Another major utility, they reported on a one to ten scale that service from BN was at four-and-a-half or five, and from UP at about a three. They're way down on the coal from UP; somewhat less down from BN.
This is not to denigrate either carrier. My understanding is both carriers are trying very hard and in fact, the cycle times have improved on UP since we were last before you. But you can’t sell cycle times; you’ve got to sell power generated from fuel on the ground. And their stockpiles are still going down since we were last before you, because we’re not back to normal.

And these contracted amounts, if you would look at the survey that I gave you, those are the amounts the utilities need to generate the power that they’re required to generate. Sometimes they demand more and they have the right under their contracts to take even more. These are the minimums they’re required to take if the railroad can deliver them.

And in no case do you see a utility on here that got more trains that it contracted for, and in many cases, far fewer. That just can’t continue. We’re heading into the winter. And one utility executive asked me to pass along this thought to you. This is as of yesterday afternoon.

"The STB needs to understand that this
problem is putting at risk the reliability of the nation’s electric system should we get severe weather or experience continued logistical problems." That’s a quote.

CHAIRMAN MORGAN: Just one question for you, Mr. Hudson. The problem that you have highlighted in your testimony, is this a new issue, an ongoing issue? It seems to me refrigerated cars -- new cars have not been made in a couple of years, am I right about that from your testimony?

MR. HUDSON: That’s right. That’s right, they haven’t.

CHAIRMAN MORGAN: So is this a new issue that you’re dealing with or an ongoing --

MR. HUDSON: No, it’s an issue that’s been with us for a number of years. We had to get 3,000 rail cars in 1982, mechanically refrigerated rail cars and now we have 7,500 mechanically refrigerated rail cars, and there’s certainly more product being shipped.

And most of our warehouses actually have the sidings at their facility and they’re relying on
this service. And they’re losing it; they’re losing
the rail cars.

CHAIRMAN MORGAN: Thank you. Vice
Chairman.

VICE CHAIRMAN OWEN: Back to Mr. Lema over
here. On the coal movement to the ports, how many
trains do you think are going to Long Beach/Los
Angeles port now?

MR. LEMA: My understanding, there is one.

VICE CHAIRMAN OWEN: One per week?

MR. LEMA: And I do believe that the total
requirement was significantly higher. I can get you
the commitment --

VICE CHAIRMAN OWEN: No, that confirms
what they told me there. They were expecting four to
five and the ships -- they diverted the ships to other
ports --

MR. LEMA: Absolutely.

VICE CHAIRMAN OWEN: -- due to the fact
that coal wasn’t there, until such --

MR. LEMA: They’ve lost --

VICE CHAIRMAN OWEN: And they anticipate,
yes, that that market will pick up when the rails can
move the coal there, probably in February/March.

MR. LEMA: Well, we certainly anticipate
that, but the longer the delay the less we're able to
penetrate those overseas markets.

VICE CHAIRMAN OWEN: So you currently lost
that because Australian coal is going to those markets
now?

MR. LEMA: Quite likely.

VICE CHAIRMAN OWEN: That's what I
understand. What is the typical rate increase of
electricity when you opt to use natural gas or bring
it in from the grid system or some other source? What
type of an increase do you --

MR. KUEHN: Well, that's dependent on the
price of natural gas --

(Noise interruption.)

CHAIRMAN MORGAN: This is definitely a
rough day.

VICE CHAIRMAN OWEN: We're going to have
another test run.

MR. LEMA: I think that occurred when you
mentioned natural gas.

CHAIRMAN MORGAN: Well, obviously we're saying things here today that are setting certain bells and whistles off. Excuse us.

MR. KUEHN: That's really a function on the price of the substitute fuel -- natural gas in this case -- and that's very volatile. As recent as two weeks ago it was around $3.50.

VICE CHAIRMAN OWEN: I just heard maybe 17 percent increase -- a little over a kilowatt per hour, something like that.

MR. KUEHN: It's roughly about three times, at current price levels, the cost to generate electricity with coal -- the incremental cost.

VICE CHAIRMAN OWEN: The impact of cycle time here has quite a significant impact upon you, does it not, then?

MR. KUEHN: Certainly.

VICE CHAIRMAN OWEN: And then when commitments are not kept -- and you showed the percentages of commitments not kept -- where those commitments are not kept you run down to a 2-week or
3-week supply, and then do you start bringing in other power?

MR. KUEHN: Yes, and that’s essentially what we did this entire month of November where we shut down two of our three generating units at the Fayette Power Project because we didn’t feel we were going to have adequate coal to make it through the winter season, and we basically had a manufacturer increase our inventory level by curtailing our consumption.

VICE CHAIRMAN OWEN: So right now if we had bad weather over the next two or three weeks, some major snowstorms and the El Nino hits Northern California and we have some flooding or wherever the reach might be, then that could impact the rail traffic there. So you might be in dire straights then?

MR. KUEHN: Very possibly, yes. We built this up -- our inventory specifically, up to 25 days. We’re only getting a train a day; we need just under two trains a day. So you can see you’ve got a deficit situation and you’re just eroding what inventory we
have, until things get back to normal.

MR. LEMA: Vice Chairman, may I just supplement that by telling you that what you need to understand -- you probably do already, but just for the record -- the utilities are oftentimes among the first, if not the first customers of the gas company to be cut off during a severe cold snap when the gas may have to be conserved.

And that's why they may shut down coal for our plant now even though they haven't gotten to the bottom of the stockpile, because they're going to need that coal when that severe weather comes and they don't have gas to generate the electricity.

So the MEA station -- the Mid-American Energy which I referred to in my comments -- was shut down. They weren't down to the bottom -- they were down to a few days, perhaps 12 days -- I've heard various reports -- but they shut it down so they'd have that plant to operate, hopefully, as the weather gets worse.

MR. McBRIDE: Mr. Vice Chairman, may I just add one thing? You used the word commitment and
that's a word I also use and I'm glad you're using it, because I think the true measure of performance is the actual performance against the committed performance. And right now they're not meeting commitments, and that's a very bad situation for the coal miners.

VICE CHAIRMAN OWEN: I have no other questions.

CHAIRMAN MORGAN: Thank you all very much. Our next panel will consist of agricultural representatives. We will first hear from the National Corn Growers Association, Ryland Utlaut; North Dakota Grain Dealers Association, Jarvis Haugeberg; Nebraska Grain and Feed Association, Patrick J. Ptacek; and then finally, Robert Zalanka with the Farmer Elevator Association of Minnesota.

MR. UTLAUT: Thank you, Chairman Morgan and Vice Chairman Owen. My name is Ryland Utlaut and I'm a farmer in Grand Pass, Missouri and currently serve as president of the National Corn Growers; we're an association of 30,000 members.

We commend the STB in providing service orders and trying to alleviate the problems that we're
facing in transportation. We would encourage you to stay involved. We regret that government action may be necessary, but the lack of service deems it probably is necessary.

We feel that the STB decision did not adequately address the implication of severely strained rail service on agriculture. The various states across the Western corn belt have seen recent movement of trains; however both the UP/SP and Burlington Northern and Sante Fe are still behind in providing trains to elevators.

We would encourage the STB as I said, to stay actively involved in the resolution of the rail crises facing the Midwest. And we would urge the STB to require the UP/SP and Burlington Northern and Sante Fe to prioritize agriculture shipments due to potential spoilage of these commodities.

We also believe the economic strain on farmers due to the rail situation warrants further involvement by the STB.

Specifically relating to the UP/SP’s recovery plan dated October 1, we are concerned about
the approach that UP has been taking on achieving a functioning rail system. Now is not the time to reduce rail service to agriculture. We need plans or assurances that guarantee agriculture shipments are not delayed for the movement of other freight.

Agriculture cannot withstand economic disparity; U.S. agriculture is a vital part of our economy. And to maintain production capacity and the viability of U.S. farmers, we must have viable transportation.

The experience of shipping grain by rail is very much the same each year. Fall harvests result in reduced availability of grain cars and strained rail service. This year the rail service problems have intensified. Corn has piled up on the ground in several states and storing corn on the ground increases costs because additional labor is required to move the corn, and there are drying costs.

I visited with a farmer friend of mine yesterday from Nebraska and he told me, within a 10-mile area of his farm, four million bushels of corn are piled on the ground. And I asked him of the
condition of the crop and he said, well it's going south.

And I thought, well does that mean we're moving the corn out? He says no, we're talking about the condition of the crop. It's not improving, it is going south; it is going out of condition quickly.

Many elevators do rely on temporary ground storage; however, this method of storage is by no means long-term, and the grain must be moved off the ground in a timely manner. Snow, rain, and the cold weather in the Northern corn belt are causing spoilage of the corn, or freeze the piles and make them impossible to move.

The quality of the corn diminishes during this time and no longer meets the quality level at which it is sold.

In South Dakota rail shipments are running two to four weeks behind schedule. Last month, at the National Corn Growers' testimony before the House Agriculture Committee, a fellow farmer of mine who co-chairs the NCGA Transportation Task Force, detailed the situation near his farm in Dell Rapids, South
Dakota.

His local elevator can load 54 car trains and last month the elevator was five trains behind, one had been cancelled, and four were late. Since that time, one train has been loaded, but the elevator is now four trains behind -- and that is for the month of October -- and has ordered four trains for the month of November.

Every day of delay in transporting these commodities to market, or storing corn on the ground, has a direct economic effect on the farmer. These are also negative economic effects on the rural communities -- on jobs and the overall livelihood of U.S. farmers. When transportation problems arise farmers must pay the price to increase transportation costs or decrease value for a product of lesser quality.

Rural communities will see less growth, less spending, and a loss of jobs. These negative economic effects continued over several seasons, do not allow for a viable livelihood in farming and result in decreased production figures.
In some rural areas, the communities and the small elevators are no longer allowed to pool shipments. Pooling means allowing several elevators off the mainlines to separate unit cars, load them, and then reconnect them into a unit train. These requirements will force elevators to consolidate along rail lines to enable them to load 100 car units.

The elevator I mentioned in South Dakota is equipped to handle only 54 car unit trains. It would cost them between a million-and-a-quarter and a million-and-a-half to be able to handle 108 car trains. The lack of rail service to elevators, the consolidation of elevators, and the closing of elevators, has a significant ripple effect on local commodities.

While today we are unable to offer a logistic solution to our specific rail lines that should be handled to other carriers to alleviate the stress on the UP/SP system, we can make the recommendations.

NCGA will accommodate any request for information from the STB. We are more than willing as
farmers to provide any information that we can. In the November 14th filing with the STB regarding grain shipments, the UP/SP indicated that improvement in velocity and car utilization would improve grain shipments. The BNSF also indicated use of 110 car shuttle trains in its November filing.

In regard to the utilization of cars and the need for unit grain trains, many elevators do not have the capacity to load 100 cars. Improvements for these elevators come at a great cost, as I mentioned. All of these changes, compiled with unreliable rail service, make the elevator improvements even more costly. It is the farmers and the elevators that feel the financial strain of rail service during harvest.

The liability that an elevator carries because its grain is on the ground, is much greater than a penalty the railroad pays for not delivering cars to the elevator. The inability to pool cars also has significant economic impact, and on being able to increase the movement of grain. This solution to use grain trains to service agriculture shipments is not always the viable option.
We believe that a successful relationship between the growers and the railroads is based on accountability, availability, and reliability. Farmers and elevators can predict when cars and service will be needed. However, if trains are cancelled without notice -- which has been done -- or if the service is several weeks late -- which it currently is -- the resulting effects on farmers can be costly.

We understand that the operation of the railroads is a business that should be allowed to operate as a business, but with that comes the responsibility to their customers. In addition, railroads do have a monopoly on service in certain areas and therefore have a responsibility to not only provide service but be accountable for the availability of their service to encourage the open communication between the growers, the elevators, and the railroads.

Other understanding of railroad problems - the logistics and fluctuations -- can assist elevators in planning their transportation needs.

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Corn growers support a competitive, infrastructure of rail, waterways, and trucks that provide service to shippers. Investments need to be made in facilitating the competitive growth of our nation's infrastructure.

A viable, competitive river system must be available to carry grain shipments on a regular basis and during peak times when other transportation modes are unable to fill their transportation obligations. Investments in waterway infrastructure must continue to ensure that water-borne transportation remains a viable option for agriculture.

Chairman Morgan and Vice Chairman Owen, thank you for the opportunity to testify. Our highest concern is that, as railroads set priorities for the next several months, we ensure that service to agriculture is one of those priorities.

We believe that the Surface Transportation Board should require the UP/SP and the Burlington Northern and Sante Fe to prioritize these shipments, these vital, perishable, agricultural shipments.

Thank you.

CHAIRMAN MORGAN: Thank you. Mr.
Haugeberg, do you want to go next? And welcome.

MR. HAUGEBERG: Okay. My name is Jarvis Haugeberg. I'm the general manager of the PTR Farmers Co-op in Churchs Ferry, North Dakota. I also currently am president of the North Dakota Grain Dealers Association and will be speaking on its behalf today.

The North Dakota Grain Dealers is an 86-year-old organization, which almost all the elevators in our state do hold membership. We appreciate the Surface Transportation Board holding this follow-up hearing today to monitor the rail situation in the West.

Most of our members, including the business I manage, are extremely dependent on rail transportation in our business. Steve Stragy, our executive vice president, delivered a message here on your hearing on the 27th, and a lot of what I'm saying today will ride upon that statement.

The questions being asked today are to determine whether service conditions have improved, and what further actions if any, are needed. The
answer to the first question is about service, and in our state I don't believe it has improved on the BNSF. I'll be talking primarily about the BN because that's the railroad that does serve North Dakota.

The BNSF scorecard which shows up on a Web site, indicates from October 21, 1997, they had 47,864 outstanding grain car orders; roughly one month later, the November 25th scorecard showed that through November 30th, they have 48,085 outstanding grain cars on order, indicating not very much improvement.

There are times when we in the real world, question the numbers on the scorecard, but in this case I see nothing that would challenge it. I have not experienced any increase in service nor have any of our other members.

As we pointed out, on the 27th, the BNSF does use three different car ordering systems. Tariff car orders are still not being filled. In the operation that I manage we did receive a unit train order on their lottery system. In fact, it was the first one they held for the season.

At the time we got our order confirmed we
had very little hope that we'd ever actually see the train. Since that time we cancelled the train because we saw the order as having no value and no credibility at all as to when we were going to get it. We were disappointed by that because it forced us to use other car ordering systems by which we have to pay a premium.

The idea originally of the lottery was that they would only allow so many orders to be placed, so being that it was a limited number, the lottery system was drummed up that those orders would have credibility. Unfortunately, there’s very little credibility in that system.

Then there’s the guaranteed grade system, for leased cars and swap cars as they sometimes called. This system also has lost its credibility with the BN paying penalties for cancelled trains routinely. If you look at what’s happened to the value of guaranteed freight cars, on October 13th this same train was selling for about $200 over tariff.

By the time of the last hearing the value of those trains had fallen to $75 to $100 and
recording on Friday, November 26th, of $35 to $50 for
a car over tariff.

We’re not advocating high premiums over
tariff rates. We only call attention to this decline
because the decline in value is the result of
unreliable service on this program.

On the cost program, which is the most
reliable service, the BNSF has also paid penalties for
late placement of cost. Now on November 17th, the
BNSF announced it would not be offering costs for the
month of January and February.

Though we do understand this may help them
catch up and give their existing orders some
credibility overall, non-operating contracts have been
the only credible order system, leaving shippers
wondering what to do next. It’s very difficult to
manage your business when the rules continue to change
in the middle of the stream.

We suggested in our last statement the STB
look into whether this allocation of rail resources
serves the common carrier obligation which still
exists as confirmed by the 8th Circuit Court of
Appeals decision in the Cobb case. We would ask that question again now.

In our statement on the 27th, Mr. Stragy talked about communication with shippers. I would note that the communication has improved slightly. That if BNSF sends out a fax prior to the cars being placed -- and those are coming more timely and giving us some good information -- however, the fax does not include ETA information.

For shippers that have access to the Internet, the BNSF Web site can be used to get an indication of when the cars are coming; however, not all country elevators have access to the Internet. If you don’t have access to the Internet that leaves you leaving messages on voice mail and oftentimes not getting return phone calls.

At least the fax notification part of the process seems to be improving. Hopefully they will continue to work to improve in this area of communication.

Our association is concerned that the BNSF is using some of its resources to help unclog the
UP/SP. UP/SP has reported to the STB that the BNSF is operating nine coal trains on the UP/SP. While we do not want to appear unsympathetic to the situation on the UP/SP, we do feel the situation on the BNSF is serious enough that it should be allocating its resources to its own customers.

I’d really like to speak directly to footnote number 5 found on page 5 of the decision and I’ll quote: "Like the UP/SP, BNSF suggests that it too, can better serve the agricultural community through unit train or shuttle train service, which would maximize equipment utilization, improve cycle times at this critical period. BNSF notes that it is presently about four weeks behind in filling its car orders".

We would point out that only a minority of agriculture feels that large trains and shuttle train service are the best way for us to be served. After all, if you want to know if the food is any good in the restaurant, you don’t go ask the cook.

This may be the most efficient way for the railroad to haul agricultural commodities, but it may
not be the practical or the preferred method for elevator operators or producers.

Recently, USDA has held listening sessions in Kansas, Minnesota, North Dakota, Montana, and Iowa. At these sessions they heard from elevator operators, farmers, and other local leaders -- none of them begging for better service derived from shuttle trains.

To provide service to only those who have capacity to load large trains and shuttle trains is to exclude most of the shipping public, and is the most blatant departure from the common carrier obligation we have seen.

We would also like to respond specifically to the last sentence of page 9 of the decision. I quote: "Shippers for the most part should address how service to grain shippers, particularly those who do not use contracts, guaranteed car delivery programs, or certificate of transportation certificates, can be improved without slowing the overall recovery".

Well frankly, shippers not using these programs are not receiving any service at all right
now. So I suppose to that extent, any capacity that
went to serve them would take capacity away from some
other place on the railroad.

This thought also begs once again to ask
the STB to look into whether the railroads are
delivering any common carrier cars at all. One option
to solve these problems is the railroad should go into
the market and buy back enough of its already sold
capacity to provide reliable service to their
customers.

If there were enough incentive offered,
shippers would either delay shipments, or perhaps use
the money to ship the commodity by a more costly means
if possible. The railroad should look at their
situation, see that they're not going to be able to
fill their demand, and simply offer to buy out of some
business by a system of bids. They could continue to
buy back orders until they reached the point of being
current.

We thank you for the opportunity to
participate in this proceeding.

CHAIRMAN MORGAN: Thank you, Mr. Ptacek.
MR. PTACEK: Yes, that's fine.

CHAIRMAN MORGAN: I get determined, you know, on these names.

MR. PTACEK: Chairman Morgan, Vice Chairman Owen, my name is Patrick Ptacek. I'm the executive vice president of the Nebraska Grain and Feed Association. It's a trade association representing private and co-operatively owned grain elevators, feed mills, and grain processors in the state of Nebraska, and we appreciate the opportunity to express our views as the current rail transportation crisis continues to impact our members and both directly and indirectly impacts traffic flows of all kinds across our state.

As we stated in our written remarks covered before this board on October 27th, our members have been experiencing a definite reduction in the dependability, reliability, and overall performance of the Union Pacific and Burlington Northern Santa Fe Railroads for some years now.

Please believe me when I say that nothing would give our association greater satisfaction than
to be able to appear today and commend the railroads
for vastly improved performance. However, as the
recently NEGFA survey will point out, with the
exception of one area, rail service problems increased
over the last several weeks.

This decline in rail service is due to
many reasons, including an increase in the overall
tonnage hold by the railroads, more competition from
freight transported by the railroads, the difficulty
of merging smaller carriers with major carriers, and
the lack of locomotive power to move trains, and the
declining political clout of farm state industries.

We sympathize with the railroad’s
difficulties as they attempt to meet the needs of all
of their customers; however, the Nebraska grain
industry has been very cooperative and responsive in
restructuring the way we do business to accommodate
the railroad’s request for additional efficiency.

Examples include spending huge amounts of
money on higher capacity track sidings including
larger, newer facilities with faster loading and
unloading equipment. We’ve reorganized our work load,
often calling employees to work on the spur of the moment to load a train to reduce the merge costs.

Unfortunately, lack of railroad performance and continuing unilateral changes in railroad policy stunt our progress and limit our return on investment. Major rail transportation issues facing the Nebraska grain industry include the long-term future of facilities that are not in a strategic position to justify the kinds of capital improvements mentioned above.

Mergers and consolidations of the grain industry continue to take place and economical transportation alternatives have been a major player in these situations. Number two, the lack of power, authority anyone has over the control of their own destinies when it comes to dealing with the railroads.

Number three, the UP and BNSF’s lack of consistent, good quality service to grain, feed, and other industry shippers and receivers captive to the railroad, and for Burlington Northern Sante Fe’s recent demurrage policy.

These issues have collided at a time when
three large crops of corn, grain sorghum and soybeans were harvested, and following a large wheat harvest. When rail service slips it has a ripple effect throughout our industry, all the way back to the producer.

Already tens of millions of bushels are sitting on the ground in Nebraska exposed to the elements. This in turn, obviously affects prices paid to the producers.

In an effort to gain a better perspective on the current state of rail service from our members that ship by rail, our association conducted an informal survey over the last ten days. Twenty-one percent of the Nebraska rail shippers responded and the shippers responding to the survey offer a representative mix of small, medium, and large facilities.

The following results are offered now for the Surface Transportation Board's consideration. When asked if the shipper had been unable to order rail cars from either class 1 carrier for any time periods during the past year, 30 percent said yes and
70 percent said no.

When asked if they were now experiencing grain car delivery delays, 67 percent responded yes and 31 percent responded no. The average grain car delivery delay among all shippers averaged five weeks.

Asked if they were now experiencing loaded grain car removal delays, 45 percent responded yes and 55 percent responded no. The average delay of a pick-up of loaded cars awaiting locomotive power among all shippers was just over two weeks.

And I have to put a little asterisk in there and say that as we went back through the surveys that we had received back, this is a slight improvement in the pick-up time. We were hearing a couple of months ago that that delay was up to two to four weeks in some cases, of getting the unit train picked up and hauled out from the track siding -- a loaded unit train.

A lot of the folks in our survey indicated that they did not have any delays with loaded rail cars because they cancelled the cars because they were tired of waiting five and six weeks at a time to get
those cars delivered in the first place.

When asked if rail or other transportation problems caused them to temporarily pile grain on the ground, 55 percent said yes and 45 percent said no. The average date for utilizing outside storage was October 15th.

Total bushels of grain respondents are currently storing outside was 28,020,000 bushels. Now, this is with only 21 percent of our shippers responding. The average estimate in additional handling expenses was nine cents a bushel. Total estimate, additional handling costs were $2,521,800.

And 79 percent of the respondents identified other negative price effects due to rail problems such as missed sales and demurrage. Eleven respondents identified specific, negative price effects totaling $882,600.

When asked if their rail service had improved, declined, or remained the same compared to a month ago, two months ago, six percent said it improved, 59 percent it declined, and 35 percent said it remained the same.

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Shippers and receivers are charged demurrage if the cars are not loaded or unloaded within an allotted time, but the railroad is not penalized if these cars sit for days or weeks before being moved. The same applies to a unit train loader who does not complete loading or unloading within the allotted time. They lose their per car incentive on that unit train.

The penalties, I might ask, need to be a 2-way street. For instance, the Burlington Northern Sante Fe’s recent demurrage announcement included the tightening up of loading and unloading times and the elimination of weekends is non-chargeable base for purposes of demurrage. Again, there are no premiums for complying with the new policies; only penalties for non-compliance.

Examples of poor service by the railroads abound. Lack of locomotion needed to move and deliver unit trains destined for export markets not only question our reliability as a quality provider, it also carries the price of demurrage, often charged to the elevator on the ship detained in port because the
train is late.

Our association realizes that recent sluggish export demand for U.S. commodities in the Pacific Rim has had an effect on recent grain movement. However, we should also not forget that the current rail prices start at well before harvest, while world markets were still fairly robust.

Pacific Northwest discharging facilities have been widely critical of the railroad service with particular emphasis being directed at the carrier's less than timely delivery of grain shipment when and where they are needed.

Port terminals can quickly become congested when inbound train rail shipments do not match up with the outbound requirements of ocean-going vessels. The association also reported that several major Northwest grain exporting companies have protested the new Burlington Northern unloading requirements which slashes in half the time that these facilities are allowed to unload trains, by leveling market discounts on BNSF origin rail shipments; i.e., the elevator.
The exporters say these discounts are needed to offset the inevitable demurrage charges which will be assessed once the cars reach the coast. Once again, elevators and producers are paying for the railroad’s own inefficiencies.

When discussing rail issues there have been at least three issues that we do not believe have been getting enough attention. First, the issue of safety needs to be addressed. Most grain handling facilities are not able to support more than one shift of workers.

When the railroads either have not notified the loading facilities when to expect a train or worse yet, notified the facility and not provided cars as expected, elevator crews are quite often expected to load trains after already working a full day. Loading rail cars obviously carries with it a certain degree of risk. Let’s not wait until the grain handling industry experiences a rash of serious or fatal accidents before we solve this dilemma.

Second, some facilities are spending huge amounts of money to accommodate the latest policy
changes from the railroads. Most of these changes are dictated by the railroad with little or no input by the shipper.

We all know who writes the check: the shipper. However, we also know who really pays: the producer. And we must ask how much more we can expect our nation's farmers and ranchers to pay to get a fair price for their products.

Third, it’s no secret that only those facilities strategically located with good financial resources will have the ability to upgrade to remain competitive. We understand that not all facilities are able to justify the financial resources necessary to upgrade the unit trains.

What is alarming however, is when less than state-of-the-art facilities willing to pay the going freight rate are pushed down the priority list and receive inferior service. This also means that many elevators will have to rely on more extensive truck transportation of grain to get their inventory shipped.

As taxpayers, our members are also
concerned about the cost the state will bear in soaring highway maintenance expenses, including the cost of closing additional rail crossings. It also intensifies public safety concerns that road officials recognize will inevitably increase with more grain truck traffic.

Solutions to these problems are complex, and for the grain shippers, few short-term solutions currently exist. There are no easy answers but we do feel that open dialogue between the carriers, shippers, and producers is a must in order to preserve our state’s rural economy.

An earlier comment made by one of UP’s representatives in answering a question on prioritizing grain shipments, stated that UP personnel had contacted shipper associations seeking input on prioritizing grain.

As one of the more vocal grain associations in our state, I can tell you that no one from either railroad has contacted our office. If they had, I would have guaranteed a roomful of shippers offering many suggestive solutions.
We offer a few positive suggestions today in developing long-term strategies that we hope take all viewpoints and issues into consideration. First, return on investment incentives should be available to facilities who upgrade but not at the expense of service to everyone else in the trade.

It makes sense that facilities that can load 100 cars deserve a better freight rate than facilities that can load 25 or 50 cars. But let's not slam the door on those facilities that cannot afford to upgrade. All facilities, regardless of size, deserve reliable rail service.

Develop an advance notice policy in rail car delivery times such as the one suggested by the National Grain and Feed Association. Carriers need to be reasonable in their expectations, and if shippers do not have a system on which they can rely and depend upon with a great deal of certainty, it isn't fair to present demurrage proposals that are solely in the best interest of the carrier.

The concerns of shippers and producers must be considered before potentially devastating
policies are adopted by the railroads. This should not imply that our association is in any way calling for re-regulating the rail industry. However, with deregulation comes a certain degree of public trust and responsibility that essential transportation services' needs will be met.

The industries and communities that are dependent upon the railroads want to be a part of a process. Although we sincerely appreciate this opportunity to provide comment before you, shippers and producers are not being heard. The STB needs to develop an outreach program, perhaps a Board of Mediation, a referee if you will, making public hearings common, available, and accessible to the general public.

Railroads right now, before they implement new demurrage or penalty changes, do not and don't have, to consult with grain shippers. Critical shipping periods of the grain industry must be addressed and an adequate supply of cars and locomotives must be allocated to the grain industry in peak times. Just expanding to load 100 cars at a time.
will not alleviate carrier delays. No one likes to pile grain on the ground. It obviously cannot be good for international trade.

Thank you very much for allowing me to present testimony before you today.

CHAIRMAN MORGAN: Thank you. Mr. Zalanka.

MR. ZALANKA: I agree. I'll try not to be too redundant. My name is Bob Zalanka, executive director of the Farmers Elevator Association of Minnesota. Thank you for the invitation to return after the October 27th hearing. We're a voluntary, non-profit trade association representing grain elevators in the state of Minnesota.

We also did a survey of both our Union Pacific/Southern Pacific members and BNSF shippers on Tuesday this last week to determine the current impact of adequate service. In Minnesota we are dealing with just an above-average crop, not a tremendous crop, and a below-average crop in our wheat producing area, which is the Northwestern part of the state.

On the BNSF which is over 1500 miles of trackage in Minnesota, we contacted 20 elevators,
which together generally ship about 20,000 cars per year. We found that close to 2,000 cars ordered or ten percent of the annual usage, has already been cancelled.

Actual losses -- that's so far, and a lot of losses are yet to be determined based on the number of bushels that we also have on the ground -- has been, just for those 20 facilities, over $2 million -- again, with only those 20 facilities with close to five million bushels of grain still on the ground.

The UP/SP shippers surveyed are over 30 days behind in receiving their cars, and they have over two million bushels in those facilities still on the ground.

Our survey respondents also indicated that it takes an average of three to five days for both railroads to pick up loaded trains, which is an improvement over what it was a month ago, and rate of communication responsiveness by both as poor.

Again, we would also like to see priorities established for grain. No, we weren't contacted by the UP/SP either, about establishing
priorities. I would like to know also, where those 100 locomotives are. Obviously they haven't made their way North.

UP/SP operates about 500 miles of track in Minnesota and we have witnessed a significant decline in service provided to our shippers on those lines. Unfortunately, 1997 saw a return to the horrendous service problems that we experienced in 1995 when they picked up the Chicago Northwestern -- or as Yogi Berra would say, it's deja vu all over again.

Has service improved on the UP/SP in the last month? At best, we have seen no change to a significant decline. Ag shippers seem to be bearing the brunt of this whole recovery process. From the USDA -- which is information from the American Association of American Railroads -- for the month ending November 15, UP/SP grain shipments were down 38 percent while other car load shipment was down only 16 percent.

In fact, intermodal traffic on the Western railroads was up, while shipments of grain declined 26 percent. Millions of bushels of grain remain in non-
desirable ground storage as our financial losses continue to mount.

I'd like to challenge UP/SP's assertion, both in the November 14th filing to you, as well as in some public information going out through the media, that ground storage is a viable, long-term storage option if the ground piles are properly prepared.

No one likes to put grain on the ground, whether it's temporary storage or emergency storage. Emergency storage, that's right on the ground-ground; temporary storage, you're at least on the hard surface but neither of those are acceptable.

You've got double-graining problem, interest on the grain that you sold that you haven't been able to move and thus you are incurring interest costs on that grain, as well as in some cases we are paying farmers to store grain on their own farm site until we can actually get transportation to move that grain.

Even elevators that have gone along with the railroads big push to load 100 plus cars in one spot in a short period of time, and which have the
most to lose by not moving grain, have seen no change
recently in the level of service.

The return on investment for a grain
elevator in this highly questionable push to get 100
plus car shipping, could take 10 to 15 years in some
cases. Hanging in the balance, are the elevator
manager and employees jobs and the livelihood of
hundreds of rural businesses and communities. All the
risk, the entire risk of those investments, $2 to $3
million investments are on the side of the elevator.

The BNSF seem to blame the elevator
shippers recently for the delays and trying to impose
a new demurrage policy which was mentioned earlier,
met with vehement opposition from our industry. BNSF
eventually relented on part of the demurrage proposal
by returning to 48 hours to load a train, but stayed
with their reduction to demurrage three days in the
contrary position of 48 hours of some key onload
destination.

BNSF should consider positive incentives
to load trains more efficiently instead of the
negative penalty assessment approach that they have
always taken.

And, I won't get into safety and fatigue, but it certainly is a real issue. Pat touched on it. We have one crew, a crew, we don't have crews. So when you are talking about taking away time demurrage free time, we are talking about crews working days, some nights and we only have three weekends that are allowed to demurrage free now. Sundays are also not demurrage free anymore.

In the hearing notice, you wanted to determine if service conditions have improved which they have not. But you questioned what further actions, if any, are needed. I'd like to offer you just a few suggestions.

We'd like to ask the STB to suspend the right to service in which the BNSF power is being diverted from meeting needs in the upper midwest. The BNSF has picked up a lot of the intermodal traffic formerly held by UPSP. Again, according to USDA and AAR information grain shipments have fallen substantially. BNSF intermodal traffic is up 16 percent over the last month, while its grain movements...
have declined by 17 percent.

The, again, going to USDA information, I think again one of the things we'd like to, I guess, look at is encourage you to think about the BNSF requirement to have a BNSF -- I'm getting tongue tied here -- provide comparable regional weekly data on its movement of grain, just like the UPSP is required to do. And we'd like to see that done regionally so we can get an idea of where the power and where the cars actually are located.

U.S.P and the BNSF appear to have poor internal management structure. I'm sure there is nothing the STB can do, but certainly something needs to be done. The two railroads grossly oversold their car supply and over committed their ability to place these cars. And as was mentioned earlier, we also have members that routinely have inquiries that go into voice mail and are never returned.

Communication, I won't go into any more on that. We need better communication between rail crews so we can anticipate when we can schedule our crews for loading trains.
STB inquired about service to grain shippers who don’t use contract programs? An idea would be for the STB to re-examine the BNSF COT program as one thing. The COT program currently takes cars out of the 60 percent that are supposedly set aside for general tariff trains. Common carrier obligation question does come in here.

It seems to us that the COT program does quack like a duck or quacks like a contract program, yet is not used as a contract program. We’d like that to be reconsidered.

We’d like to encourage better cycle times as was mentioned earlier. Perhaps there should be some financial liability for nonperformance to pick up loaded trains.

One thing that has gotten worse and that will continue to get worse is grain elevators who are located on leased property. You could call them captive lessees and can’t just pick up an elevator and move. I think the robber baron, the railroad robber barons of the 20th century is called the real estate department. We think that lease increases need to be
controlled in some way and a process to establish fair
market value of the property needs to be established
and implemented. Not fair market value established by
the real estate department which has turned out to be
sometimes ten to twelve percent the value of that real
property.

Intimidation is something I'd just like to
touch on. As we brought it up at the last hearing, we
will continue to bring it up. Intimidation, whether
real or perceived is a practical, is something that
exists out there. Shippers who have concerns are
afraid to come forward and speak their mind. They are
still unwilling to. Fortunately, they are working
through associations like ours. But there shouldn't
be that fear of retaliation.

STB does have jurisdiction over practices
related to service, so this is one I think you'd want
to keep an eye on. I did see a response to
Congressman Mengi by Jerry Davis from the UPSP is
going down is similar to their employees. It says in
recent weeks in a number of different public forums it
has been reported the customers fear retaliation if
they voice their concerns about Union Pacific's service. Then it goes on to say I know these concerns are completely unfounded since the conduct of this company and its employees is always professional serving each and every customer to the best of our ability.

I look and read this and it tells me that Mr. Davis doesn't feel that strongly that that even exists and is just doing it because somebody told him to do so. I may be reading that wrong, but that's my impression.

I also go along with the suggestion by the other people who testified at this panel about an indepth independent cost benefit analysis that needs to be conducted on this push to load 108 plus cars, or 100 cars, or 108 cars, 104 cars if its wheat. Pooling is something that used to be done. There is no reason why it still can't be done. I haven't been convinced that the move to 100 plus cars is saving that much in terms of efficiency.

I have noted that UPSP in their response, again to Congressman Mengi, said they issued a white
paper this year that contained their commitments to policies that fully justify the $2-4 million investment the elevators are forced to make to go into 100 car loading. I'd like to encourage the STB to maybe take a look at that white paper. We have not seen the white paper. I'd be surprised if any grain elevators were involved in the development of that white paper and I question whether they even considered things -- in Minnesota, for example, we have 11 methanol plants that are currently on line in Minnesota taking millions of bushels of corn away from elevators that normally handle that corn. Maybe that's reflected in that white paper.

Does the BNSF have a white paper or a brown paper or any kind of paper where they have looked at this issue? I think it needs to be looked at.

Last but not least, I think an integrated multimodal national transportation plan needs to be developed to address the multimodal needs related specifically to agri-business. We would hope that the STB, maybe working with the USDA could look at
facilitating development of that plan.

Thank you very much for your time.

CHAIRMAN MORGAN: All of you certainly have raised serious concerns about the ongoing service problems that your community seems to be experiencing. And I have -- for myself am sensitive to your concerns, recently having testified before the House Agricultural Committee. I would likely be testifying before Senate Commerce Committee today in Montana and tomorrow in North Dakota but for the fact that I am here at this hearing.

But let's talk a little bit about how we can address some of the specific issues that you have raised. Some of you have suggested that we establish some sort of prioritization whereby the agricultural movements would be given some first preference. I presume we would have to base that on some sort of emergency determination. Your commodity must move now, it is an emergency situation.

If we were to do something like that, how would you suggest that we enforce that type of system? It's one thing to establish a priority and to indicate
that the priority should be there, how would you
suggest it be implemented and enforced? Anybody want
to take that on?

MR. ZALANKA: Does the STB, do you have
the ability to track the distribution of power and
cars or cars are taken out of service? I guess maybe
tracking of where that, the rolling stock is located
is -- I'm talking about how fluid it is in the
southern tier. I guess there isn't anything fluid in
the northern tier. I guess maybe a distribution of
rolling stock would help explain why that is. Or more
regional -- those weekly reports you are getting,
maybe a more regional breakdown, more detail would
help to see if they are meeting the needs in relation
to the number of millions of bushels.

I know we have on the ground in Minnesota,
I suspect in Kansas, Nebraska and North Dakota is
seeing the same problem.

CHAIRMAN MORGAN: What would the timing be
associated with this type of prioritization program?
Are we talking from your perspective a month? I'm
trying to get a handle on the emergency nature of what
you are talking about here.

MR. PTACEK: Well I think that you are
dealing with the current piles of corn on the ground
and I know that this is -- there has been exemptions
or temporary storage permits issued in Nebraska for up
to 73 million bushels to be piled on the ground. Now,
I am certain that we don't have 73 million bushels on
the ground. It's closer to 45 million mark, I assume.

But I think to take care of some of those
situations where we are having a perishable commodity,
and just this last week in Nebraska, in all eastern
parts of Nebraska there was a very soaking two inch
rain coming on the heels of a very pleasant, warm
Thanksgiving holiday. That is going to make those
piles extremely susceptible to decay, to fermentation
and to quality problems where the elevators are going
to have to deal with that one way or the other.

The quicker that we can get those piles
taken care of and moved to permanent or at least
storage, covered storage would be a tremendous asset
for those folks, especially some of the smaller
elevators that are unable to get cars or unable to
load out units at this point in time.

So perhaps maybe a freight premium might want to be considered by the railroad to bring that grain from the smaller elevators into the larger elevators that do have unit loading capability and to try to get at least that bottleneck taken care of a little bit. It's just something that maybe the railroads would like to engage in some conversation on.

MR. UTLAUT: Just to re-emphasize their short term answer quicker without -- as I visited with a farmer yesterday, he talked about the four million bushels of corn that he had within ten miles of his home. He said this has got to the state now that he can smell the deterioration of corn. It's souring, fermenting, the mold will set in.

It's hard to say, how soon does it have to happen? The weather is a variability and we as farmers we face that on the production end when we are producing our crops. And here we are being held hostage to weather concerns again just because this train is not moving.
Quick answer is the quicker the better and as to what procedure you can use to do that, maybe that premium is something that needs to be considered. But the longer it stays out there, the less value we have.

MR. HAU Geb E R G: I would just say that I'm not sure any of us answered your question very specifically. The question was what do you do? How do you enforce it? Where do we go from here? And I don't have that answer either. Because, well I don't have a terrific amount of legal or transportation expertise.

I would just point out though that that's where the frustration comes from. There doesn't seem to be any regulatory mechanism. I mean, the two of you could write a letter to the respective railroads and say now get cars over there and get that grain off the ground. But I don't know where the enforcement would be. I don't know where the legal push would be.

You can encourage, you can design certain things that you have some authority for. At the same time, there is no other competitor in the market place
that's challenging the railroad that they will provide transportation to get that grain up off the ground before they do. Like there is any urgency where they have to be there, or they are going to miss the business.

I don't have the answer. But I would point out that when you are in the country feeling the frustration of a huge risk on the ground and the neighbors are starting to talk about its aroma and there is no sensation that there is anyway that there is going to be an immediate short-term regulatory relief. There is no competitive relief. The frustration is enormous.

Perhaps there isn't a -- and maybe somebody will come up with one. But if there is no short-term answer to take care of us in the next say 90 days until this grain all gets off the ground, we need to perhaps come up with some sort of system in the future that there is either regulatory or competitive relief to avoid this from being an annual phenomenon.

VICE CHAIRMAN OWEN: Excuse me, but the
reason the Grain Car Council was founded a few years ago and Commissioner Simmons was the principal in that in setting it up, and we had a meeting not too long ago in Kansas City, if I'm not mistaken. And I raised the questions there and a number of the people in the room from the grain associations never said a thing. There was one person that spoke out about the problem. And that is the forum that I really think that for long range solution to the problem.

The other one would be I would recommend to you that some of you leaders of these associations meet with the leadership of the AAR and talk about tracking cars and so forth. Those people have the capability of doing that and the locomotives and power. But see if we can come to a market solution.

On the short term, I do not know if we as a governmental agency, I'd have to defer to the Chairman here. She has written most of the laws pertaining to all of these things, in spite of it all.

--

CHAIRMAN MORGAN: That's why we are in the mess we are in.
VICE CHAIRMAN OWEN: But I do not know if an agency like ours really has the power to order trains up there. Conceivably maybe we could, but I'm not an engineer and I don't see me jumping in one of Dick Davidson's locomotives and grabbing 100 grain car hoppers, if I could find them, and running up there.

I don't know what the short term solution is. It's an ongoing problem. I come from a farming background. I talked to my sister and brother-in-law back in Oklahoma and they raise cain with me all the time about we are always taking it on the chin, you know? And yet you come into those bumper crops every year and this time we have a rail problem that was brought about through a different set of circumstances and I just don't know what your solution is to it right now. I wish I had a ready made solution to it.

If Dick Davidson and Rob Crebs and Haverty and some of the other guys and Hunter Harris and all of them could run some locomotives up there and follow it out I'd be eternally grateful. But I don't know.

MR. ZALANKA: I'd just like to mention the licensing authorities give you until the end of
January to pick up emergency storage. You’ve got until May 15th to pick up grain out of temporary storage. That’s USDA as well as state licensing authority.

There might be some way to work through USDA to track and maybe try to encourage the railroads as best you can to at least deal with the needs the elevators that have emergency storage. Because that’s the first thing that has to get picked up. That’s also the stuff that is starting to smell because it’s right on the ground. And that bottom layer of that grain is damaged. Once you get to that, you just take a front end loader and take it to the landfill, it’s all right to take it there. There might be some coordination between agencies that could be done.

VICE CHAIRMAN OWEN: I think that was something that I would like to see us try to do a little bit more of, coordination between the governmental agencies, and see if there is a solution to some of these problems.

MR. HAUGEBERG: Perhaps one of the things, just one more point if I could. In the end of my
remarks I talked about a system where the railroad would perhaps pay or offer to buy back some of their already sold service. Now, there are some folks who have grain on the ground that would probably, if there was an open set of bids as opposed to just well, we are not going to deliver the trains so we are going to give you a penalty and cancel, which is currently in existence on the BN on the guaranteed freight. Or pay a penalty in the case of COTS and get a train as soon as we can get it to you.

If it was a system of open bids whereby shippers decided at what level they were willing to give that order back, the shippers who have grain on the ground and are watching their grain deteriorate, they wouldn't be very likely to sell that order back unless it was quite a large amount of money.

An elevator who does want cars, but has his grain under roof and proper storage may be willing to sell that train back to the railroad at a more reasonable number.

Therefore in a secondary way, allocating what resources are moving to the place that needs it
the most. A system of cancellations like the BN uses
doesn't do that. They may cancel a train with
somebody who has a large amount of grain on the
ground, a guaranteed train, and he really wants the
freight, well there is somebody else who has all his
grain in the elevator and maybe in a position in the
market -- because again, you know we have to make
commitments on when we are going to take -- buy these
trains significantly in advance before oftentimes we
know what the size of the crop is going to be, and
certainly what the market is going to be.

So there may be others out there who are
willing to give up the use of that train, perhaps even
for less than the railroad is currently offering in
the form of a self-imposed penalty for nonperformance.

Perhaps that idea is something that they
could get some encouragement from you folks to
implement and reallocate their allocated resources
maybe a way to put it.

CHAIRMAN MORGAN: Well, in following up on
that, we heard from BN Santa Fe earlier that they have
suspended their COT program so as to serve some of the
shippers that need service now. I presume that that
is particularly to assist smaller shippers who have
not been in these programs to date. Do you think that
that is going to alleviate some of the issues that you
have raised in your testimony?

MR. HAVENBERG: Well, as they don't offer
the COTs for that period, certainly that's going to
free up some capacity because COTs do have the highest
priority in their system. In the meantime, the people
who have purchased COT cars are still going to have
the highest priority.

The BN has an incentive to provide them
the cars first because under their own program if they
do not supply with the cars within an allotted time,
they pay a penalty and they still have to deliver the
cars. So the people who are holding COT certificates
are still going to get the service first. The
guarantees will be second because there is also a
penalty involved there.

The people who just have a tariff order
are still going to be at the bottom of the list. And
if I was in that position and truly very few are any
more, if they really plan on using rail history has taught them not to rely on tariff cars during this time slot. They are buying COTS and guarantees.

But if somebody is in a position where they didn’t buy the use of freight and depending on tariff cars, whether they offer COTs for Jan/Feb or not. I wouldn’t be holding my breath to get cars anytime soon. It’s going to be a while in my judgement.

But by canceling the COTs, as I pointed out in my statement, creates other problems. That’s the only system that’s really had credibility. Now for shipments that we want to plan on making for January and February, I’m not quite sure what we ought to do. The rules have changed in the middle of the stream. I’m not going to order tariff cars for that time period to move grain because I have no confidence whatsoever I’ll get tariff cars in January and February, unless of course it was something I’d ordered in October, or perhaps September.

So it leaves us with a guarantee system and the credibility of that program, as I pointed out
in my statement, has been greatly diminished lately.

From -- I think a lot of folks are -- now I guess I'm speaking from the perspective of the local elevator manager, but a lot of folks such as myself are really frustrated, not quite sure what to do during that time period.

CHAIRMAN MORGAN: But following up on that as well, to the extent that we -- the Board takes any further action relative to the service problems in the West, you all - I continue to hear you all saying do not tax BN Santa Fe such that they might serve other customers and not serve the agriculture community that you would like them to. Is that -- does that continue to be your position?

MR. HAUGEBERG: That’s definitely not going to be our position. We feel that the situation is serious enough on the BN itself that they should be taking care of their own, as opposed to somebody else’s customers.

CHAIRMAN MORGAN: Thank you.

VICE CHAIRMAN OWEN: No more questions.

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

MR. HAUßEBERG: Thank you.

CHAIRMAN MORGAN: You are welcome. Next we will hear from a panel of labor representatives, James Brunkenhoefer with the United Transportation Union, Leroy Jones with the Brotherhood of Locomotive Engineers, and Bartlett Naylor with the International Brotherhood of Teamsters. So who will yield to whom?

Everyone is yielding to Mr. Naylor.

MR. NAYLOR: Oh no I --

CHAIRMAN MORGAN: Do you yield?

MR. NAYLOR: I'm counting on it. I've got to prepare my testimony.

CHAIRMAN MORGAN: All right. Well, who is next? See, I've experienced this once before. You are it.

MR. JONES: Good afternoon, Madam Chairman and Vice Chairman. It's a pleasure to be here. It seems like I've been before committees on the Hill with Madam Chairman when she was on the Hill and we always found good dialogue there and we appreciate to have this opportunity.

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I am Leroy Jones. I’m the International Vice President of the National Legislative Representative to the Brotherhood of Locomotive Engineers. And we are here today to support the UP service recovery efforts. My International President Clarence Monin thought enough of this program to assign two international vice presidents to what is known as the Safety Assurance Compliance Program, or in the industry it’s called SACP. It’s where labor and management gets together with the Federal Railroad Administration to iron out any problems we have. And it has turned out to be a very good process.

Also I wish to thank Jolene Molitoris, the FRA Administrator for her activity in this process. It has enabled us to sit down and look at fundamental issues that are out there.

Now, you’ve got realize the Brotherhood of Locomotive Engineers took action and called a strike, a safety strike last June on Union Pacific. So for us to come here and testify today about the partnership is doing about a 180 from where we were last summer.

We are not sitting down in groups and
teams to work through the process. Whatever affects us on a line of road getting trains over the road, also affects shippers. And that’s where we are starting to see some improvement in this area.

As I stated to your staff earlier last week and the week before last, I have made some visits on the property actually, like the Vice Chairman does. When I go home, go out in the field, I always go out to the rail yards and talk to the folks and also I took the opportunity to take some vacation time to drive down to Fort Worth to talk to some folks. And I talked with Dave’s engineer that testified earlier. As a matter of fact I met with a lot of his people and some of Brunkenhoefer’s people to hear what was going on in that area.

We do have some problem areas still out there. But by and large, our people are getting move on the road much better.

I met with the local chairman on the Houston/Lafayette run which was a terrible run. Brukenrail used to run there so he knows how bad it is. Monday, actually, I talked to him and they
cutting over some new service there. And he was very supportive of what was happening. To the point that one of the things we are doing, we are learning here how to deal with these large rail mergers. We are now, because I guess sometimes bad things happen and good things come out of, some good things have come out of this partnership we are having with the government and with the railroads. We are actually having our people go into Omaha and help with the dispatching, help with these cut overs, help with the Crew Management Systems.

We also have the major problem we had out there with the vans not getting out to pick up dead crews. Any of you have that, keep continuing. We had crews out there that was out there five or six hours after the hours of service. That means they were 17, 18 hours out there which is atrocious. It should never happen.

But what we are doing now, we have a team in there where we are trying to get them off the trains. That means that’s time that they are waiting there to get home to get the rest, which means they
could have already been home getting rest and getting back out and we wouldn't have the demand for manpower that shortage that we are having right now.

Along that line, we are -- I just -- I meet with the SACP team. I just came back from Omaha. We have a couple of groups on fatigue maintenance problems so we can have things maintained prior to getting out on the road before they break down. Those are positive kind of things.

Now, I was one of those engineers that ran those grain trains on the old Missouri Pacific, brought a Union Pacific down to South Koffeerville, which is in Oklahoma. And we found out that when we got a great amount of business, especially during the harvest time, that we ran into some real problems because we had a single track railroad with signs.

Then when the Katey merger came along, we found out we could have a directional flow of traffic and it turned a nightmare of a situation -- we were very clogged going into Kansas City. All the stories you hear about now is what happened to us a number of years ago. I worked on a short tool turn and anybody

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that was ever up through the Missouri Pacific or
through the system that’s high up now, even Dick Davis
and those people who were in charge of that area know
the problems we had back then. By getting this double
track or directional flow of traffic, which I
understand UP is going to cut in in certain areas,
this is really done away with congestion on the
traffic. I mean, it’s night and day.

It made a lot of difference. We had train
crews take three crews go 56 miles. We heard these
horror stories before. Now you don’t have that
because we are running in traffic flows. So that’s a
very positive thing UP is going to have with this.

That’s why we are concerned about right
now going in and changing a bunch of things. Our
employees, our members -- their employees, our
members, have been through a lot before these mergers.
I don’t care which merger it is, our families are
disrupted and everything else.

It appears to us that these major mergers,
whether it is east coast/west coast, sometimes when
they go in it’s like a big aircraft carrier. You
start going in this direction, you go -- you get to go in another direction, you have to take time to get -- it starts very slow turning around. But once it starts to turn around things really start to happen and things start happening good.

So I view the Union Pacific like this aircraft carrier. It's had really a tremendously slow time getting turned around, but it is now starting to turn the corner.

Now, right before I came up I was able to talk a little bit with Jolene Molitoris, the RFA Administrator. She has done a very good job in getting some very key people in key locations with Union Pacific to help foster labor and management. I mean, here is an organization, both broken rails and my organization, have fights over the years with Union Pacific. That's why I said we have now started to turn that corner, because we all know there is trouble out there. And by all working together and quit, as you said earlier, pointing fingers at everybody, we are trying to get these things done. So it does take time.
I met with the manpower people up there. They are in the process of training 400-450 engineers this next year. The training is sometimes -- it's like that aircraft carrier. It takes a little while.

In order to get engineers to be trained and you come from the ranks and train them, you have to go out and train -- hire trainmen off the street, get to train them and when they get qualified, then you have to take the trainmen and put them in the engineer training. And it takes an additional period of time until you get through the process. And we want to make sure everybody is trained properly.

That's one of the problems we are having in our industry is that the proper safety training. And we don't want to put these people out in these safety sensitive positions until they are properly trained. So we are urging the FRA and UP not to hurry up in this instance where you can have these wrecks or derailments or people hurt by not being competent in what they are doing until they are properly trained.

I think we are understanding each other. I think that's occurring. They are listening to us.
I want to paint a rosy picture here, but like I said, we still have problems and we know that. But we are working on them. That’s something we haven’t done as an industry for a long time. It’s like a military, they were in charge and we were foot soldiers and by the way, we were the ones getting killed out there.

Like I said, last June we tried to have a strike and we got an injunction against it. So, we in hopes that this will set a pattern for the industry to get these things going in the right direction. As I said, our trains start moving, our people work less hours, that means the trains themselves will be out there for the shippers and get to their destinations that much faster.

As I’ve gone through the system, there are still some pockets of problems and manpower problems, as Senator or Congressman DeFazio said, there are problems with manpower up in the northwest and there are some pockets where people are having a hard time getting picked up by carry alls or vans or whatever to get them off the trains. So we have pockets of that.
But we are working on it.

And as long as the railroad is willing to let labor work with them to solve this problem which has always been successful. We even went on Capital Hill and worked on legislation. Once we worked on something together, it worked very well. And that should be a -- that track record there -- these things do happen properly.

But if for instance that for some reason, I don’t think this is going to happen with the Union Pacific, but if they, for some reason, would not listen to labor any longer or quit listening to us, then we are going to be back here talking with you. And we will be talking with the FRA. But I don’t think that’s going to happen.

But we had enough deaths out there, we had one up in my areas in Kansas City, we had one out west, we’ve had some in Texas, and there has been a number of problems. Like I said, we worked through some of the mechanical problems, we talked Monday about engine inspections, two-way into train devices, a number of things that need to be working properly so
when they get on the road they won't stall the train.

You get those all fixed before you leave, and then the
track will flow better.

So those are the kind of things we are doing. I appreciate your time. I'll stand for any
questions. Once again, my President, Clarence Monin,
is very supportive of this and we can't stand any more
accidents. And we are happy with the process we see so far. Thank you.

CHAIRMAN MORGAN: Thank you.

MR. BRUNKENHOEFER: Mr. Jones' member that
was here, Ken Marcanes, I think may have not been
understood. He was going to be paid that day for 12
hours work. He was only going to have to work five
hours to collect it, but he stayed the full 12 hours
in order to give the customer service. And that's the
type of dedication that you find.

Leroy is correct, I'm from the Houston
area. I've seen this happen before. It happened in
1979. And I could tell you what is needed here. I
have the answer. But unfortunately it's not in this
room.
I did not see anybody carrying in their briefcases trainloads of welded ribbon rail, cross ties, cooper slag, so we could start building the capacity in Houston we need. It is just like an airport. You can do a few -- tweak a few things around the edges, but if you don’t build some runways and don’t add some gates, you can’t put any more passengers through there. Changing the amount of airlines that fly in and out of the airport is not going to deliver you the capacity -- relieve the capacity constraints of West Felton or Houston.

What is needed is an airport expansion and what we have here is we have some people coming in saying, oh, if you will just let my airline in and out of a slotted airport of where traffic is in the Houston area is a train every 12 minutes. When the nice people from Kansas City or the nice people from Fort Worth, BN or RKCS, say I need to get over there to be able to make -- to provide service. If there is an extra train that stops, that train stops is there longer than 12 minutes, then the train behind it stops and the train behind that stops and the train behind
that stops and you add to the congestion.

Although the first train who gets there has been given priority possibly by your service order, get through there and he is able to tell the customer, see how good my service is. When actually all he has done is by imposing himself in an already congested airport, is delay every flight behind it and every other person waiting at the gate is mad, but the airline given the preference, all their customers are smiling and happy and their numbers will go up and they will be able to come and testify how wonderful the service is of the new airline.

This is exactly the same problem we have a LaGuardia/National/O'Hare situation where we have a slotted terminals. And until someone goes down and adds capital and capacity to that -- particularly West Felton and the Houston areas.

But there is another area of solution. These people are going to coordinate their airports. They are not yet coordinating Setigus and Englewood Yards because of the merger. They are now suffering the problem of being on capacity beyond -- for all.
Just as we have in the Washington market, our international flights in and out of Dulles, our local flights fly in and out of National. In New York it’s Kennedy and LaGuardia. We have a coordination.

Unfortunately what we have is that all the flights are having to take on and off Setigus and Englewood, National and Dulles. We will be able to after the merger takes place the amount of flights having to stop at both airports will be reduced. The type of service will change.

By changing that service you are not going to have essentially planes going to National, stopping, taking off, stopping at Dulles and vice versa. We have got the same thing in L.A. between Ontario, John Wayne and LAX. I went to New Zealand went to LAX. I want to fly to Las Vegas, I got out to John Wayne. I can’t get a New Zealand flight at John Wayne.

And so what we don’t have yet in the Houston area, in the Texas Gulf Coast, is we have not yet sorted out completely the operation of how we are going to make the system work better. Once the system
is on line, once the merger takes place, we will see, I believe, some significant improvements in the capacities of both Setigus yards and Englewood yards. Also as we start the directional service. A railroad is a single track. It is a one way street between sides. Then we reverse the street. And we can’t reverse the street as long as there is any cars on it coming at you.

But by having the parallel tracks or the tracks that they have where you are doing to be able to have directional service, the capacity of the system is not double. The capacity of the system is almost squared.

Now, those wonderful people that came down that came down, the farmers from grain, the grain people, I served on a task force in Houston where we had a good Republican Senator by the name of Robert Jefferson from Iowa who got together all of the people who were involved in the problem. Here is what I learned on this issue --

VICE CHAIRMAN OWEN: This is a nonpartisan Board.
MR. BRUNKENHOEFER: I understand that --

VICE CHAIRMAN OWEN: I just like you do that --

MR. BRUNKENHOEFER: What we found -- what we found out is that maybe, and I'm being an apologist here for my employer, is that rushing grain off of the ground into the Port of Houston, what I heard here today is they would love to have the business. But if you put 20, 30, 40, 50,000 more cars into the Port of Houston, Beaumont, Lake Charles, Corpus Christie, what are they going to do with it? They are completely flooded now. They have no holding capacity. They have no sorting capacity. They have no room.

Putting more planes in the air headed for the airport that is already congested, what do you do with it? Possibly the railroad may have made a decision that using their car supply moving grain to an unclogged port, allowing those cars to flow to that port then flow back from that port, moving grain to an area where it's not going to be congested. Getting the grain off the ground and getting it to a rail car and having it sit in the siding someplace outside of
Houston or Pacadul or Corpus Christie, it helps the farmer get his grain off the ground, but it helps zero, it is a negative on the congestion problem.

And so until we can solve the congestion problem at the port end, putting more into that congestion is not going to help any. Putting more cars in there or putting more railroads into there is only going to add to the congestion until we can get that relief.

The issue here of how many railroads come in and out of Houston, they are all my children. Leroy and I, we represent all the unions and all the railroads. I don’t want to see five percent of the UP employees get laid off so that five percent of the Burlington Northern people can get hired. That’s vacating one apartment complex to fill up another. It doesn’t work very well. You want them both full.

So, we want an even handed operation here about how this is administered. Bringing other railroads in and requiring other trains, additional trains to be stopped in the congestion area only adds to the congestion. Yes, that one train and that one
set of customers may be happy, but it’s not going to help the overall congestion problem.

What is being proposed here also today, I’m a little bit mystified because of my political nature. I thought I would see a state agency, the Texas Railroad Commission, who is populated by three Republicans, suggesting that the federal government exercise its Constitutional right and seize the assets of an owner and to give them to someone else. I thought that was called socialism. And if we are going to get into that, I’ve got a whole long list of things I’d like to talk about here today.

But I am completely mystified that the Republican Railroad Commission of Texas. And I’m a little disappointed in some of the other railroads that also want to appeal to the federal government and say I want you to seize someone’s assets, take it away from them and give it to me because I have a customer that says he likes it better that way. If what we get into that game, it ain’t going to stop on the UPSP and BN/Santa Fe. You are going to have a lot of problems.

If I’ve got an agency I can go and apply to seize
somebody else's problems. Look, I don't like it when you stop on my labor agreements, but I don't want you stepping on anybody else's contracts either.

Now, this nice guy down here at Brownsville, he is another one. He always wants to be the ambulance. You let me get through, I'll get there faster and everything will be okay. And if the other guy has to sit at the gate and I miss my plane, that's his problem, it's not mine. Well if you give Mr. Cantu what he wants, you are going to take away the work of one of our employees on the Union Pacific. He is going to get laid off. He is going to miss his house and his kids are not going to have any benefits. But guess what, Mr. Cantu and his railroad is going to be a better operation and his customers are going to be happy.

So you are going to take away from this guy and give to that guy and he is going to be happy. But I'm going to be real unhappy and some of the engineers that work in the Rio Grande Valley are not going to be very happy and the conductors, etc., because they are going to lose jobs. So when we get
to this division of do we help the farmers? Well you
may help the farmer and add to the congestion. You
may help a select group of customers at the expense of
all other customers.

I would suggest that you be most cautious
and most careful before you move into some of the
suggested fixes here. I think as someone told me, we
are kind of like describing an elephant. Everybody
has seen a little piece of it, recognizes and can
describe just exactly what they see or what they feel.
But they have not looked at the whole picture.

If we start taking this thing apart and
try to rebalance and readjust it, if it’s so simple we
ought to take a look at who is on the other side and
who it takes away from and who it hurts. And I’ll
answer any questions. And one of the things Mr.
Naylor has in his testimony about divestiture, with
all due respect to the International Brotherhood of
Teamsters, that causes me some pain too. And we will
talk about that later.

MR. NAYLOR: I think we will probably talk
about that outside.
It seems to me the STB has two tests to consider. When you approved the merger, you had to weigh would this be good for shippers? Would it be good for the rail industry? I think the result so far is that it has not been good for shippers, it's not been good for the rail industry. Union Pacific stock has declined roughly 20 percent since the problems from the merger have become manifest.

And then you've had a short term test, one that Chairman Davidson himself laid down and he said a month ago that things would be better. And if you read his testimony, you might think that and you have to weigh what other people are saying. When half the nation's crops, 100 million bushels continue to rot on the ground, product continues to pile up on the docks at Los Angeles, San Antonio has found it more efficient to ship coal from Columbia than the United States.

Stockholders are not particularly happy. Milbrook Weiss has sued for deceit in misrepresenting material information. Some people are even claiming retaliation. We've heard some of this testimony.
So in the last month, has the problem been solved? Nobody says it has. The most you are hearing is that perhaps things have gotten a little less worse, which I don’t think is a standard that the STB wants to hold. So the two basic tests that I assume you are weighing, I think they fail on both of them.

This is the corporate merger from hell and it must be a terrible embarrassment for you as the agency that basically certified it. These times require a strong medicine. While I appreciate that this is extraordinary, because this merger has not served either the industry or shippers, I think it’s time for you to consider the most extraordinary measures possible. Unwinding the merger in any reasonable way.

I think Mr. Brunkenhoefer and my other labor colleague’s comments should be taken obviously very seriously as people on the front lines. I think there is a management culture problem that has been pointed out not only by us but by the California Public Utilities Commission and you have a really serious problem here because UP is telling you things...
are fine and everyone else basically is telling you things are not fine. Somebody is in error here and you've got to sort through that.

So I think that if we are to look back a year from now and see what should be done and we have not taken the most extraordinary steps, the steps that will solve it, and we will have failed farmers, shippers, labor and basically the nation's transportation sector generally. Thank you.

CHAIRMAN MORGAN: Thank you. First of all, let me say to you, Mr. Brunkenhoefer and you, Mr. Jones, that clearly the efforts of the employees associated with your organizations on UP have done a great deal to move this process along. And I think, as I indicated earlier to Mr. Martinez, I think we all --

MR. BRUNKENHOEFER: -- Ms. Molitoris is part also troublemaker.

CHAIRMAN MORGAN: Okay, well, she is back there so I'll get to her in a minute. But I do think, you know, I do want to recognize the spirit of cooperation and assistance from your organizations and
the employees of those organizations in working with
the Board and the railroads in working through this
issue.

As I indicated in my opening statement, this is the kind of situation that requires
cooperation and assistance from all parties, and
certainly your employees are right there on the line
and I just wanted to express my appreciation for that
spirit of cooperation.

I take it that listening to both of you
that neither of you supports some of the proposals
that have been made here today or will be made later
on with respect to additional service options as a
response to the rail service problems that we have
seen. Is that --

MR. BRUNKENHOEFER: Based on my
experience, they may be well intentioned, maybe I was
a little too light with them. But, based on my
experience it could very easily make things not
resource but my force.

CHAIRMAN MORGAN: Is that your --

MR. BRUNKENHOEFER: I only supported it --
I think it would be poor, it would not be just neutral, it would be --

MR. JONES: I agree with my colleague --

As I said before, use of the aircraft carrier scenario, things such as the flow of traffic plans that are being put it, the maintenance problem that every railroad has now that we are looking at it if you get those things prepared before they go on the road, the coordination of activities are just starting to turn around the corner.

If you happen to now make a ruling and start biting off the trunk of the elephant or the foot of the elephant or whatever it is, that it is going to all start to fall apart and nobody is going to be happy.

We’ve certainly not been happy about the way the employees have been left on the trains, although we see we have a process set up now to get employees off the train or out in the process of finishing some of those things, and some of the other problems we’ve had with the railroad. And I said it’s not all been bad. Sometimes when you get lemons you
make lemonade, you look at the best things that come out of bad problems, things you learn from your past history.

I totally agree that we don’t want to see any changes right now. I think we have to give the railroads the opportunity to turn the corner the rest of the way and make their plan go into effect. If this does not happen, I’m sure my colleague will be back here with me saying that we’ve got to have some relief.

Right now, we don’t want any changes.

CHAIRMAN MORGAN: And I presume that if the Board were to take additional action, felt it necessary to take additional action, the more modest the better from what I hear you saying. Is that right?

MR. BRUNKENHOEFER: Yes ma’am. And we would be happy with that. I would call myself and Mr. Jones honest brokers because we represent the employees of almost all the railroads. We would be happy to play the role of honest broker. Maybe management may not believe we are that honest of a broker, but I believe

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that because we have an equal interest, we don't want
to see the people moved off of one to move -- one move
down and the other move up at each other's expense.

We do want to see the problem go away. We
do offer experience in the industry. One of the
exciting things that came out of the task force I
served on is we got everybody in the room together.
We got the Iowa farmers, we got the grain export
elevator operators, we got the railroad folks, we got
car people and we got out and amazing, when we all got
in the same room and then we had the senator and
people from various governments in the room and said
okay, we listen, you talk. And it was exciting to
watch just how cooperative we could all be with each
other because we were looking at the person who had
the club.

And it's like you all work it out and if
you don't come across as being sincere, and that's one
of the things that I'm proud of both Leroy's union and
mine is that we recognize there is a problem out there
and we have -- maybe Mr. Davidson and Mr. Krebs and
other wouldn't agree, but we feel like we bent over
backwards. We’ve tried to make agreements. We’ve tried to work the problem and we’ve got a constituency out there that’s got lynch ropes out for the officers and union. They don’t want to hear cooperation. They want to hear being combative. They feel like they have been abused and want us to join the attack mob.

What we are saying is is that we need to slow down here and we need to preserve these carriers and we need to keep them viable and strong and attacking them now under these conditions could result in our own losses. We have -- many of the people in the room have stocks that is diversified, Mr. Jones’ members. Now we are 100 percent invested in this program and we want to see that these railroads are very successful and make lots of money. So I can take a lot of it away from them.

CHAIRMAN MORGAN: So I guess that following up on that, you all are out there on the system, you are seeing improvements. Obviously we have heard from shippers today who do not feel that there have been improvements out there. But you are out on the system and you do see improvements. There
is room for more improvement, I presume, as well.

MR. JONES: I think that actually the railroad itself should take this very serious, about this situation. They understand without our help we can’t get through this problem.

We had a problem in Cheyenne, Wyoming and Jerry Davis got on a plane and went out there on the Wednesday before Thanksgiving and walked around and talked to the people. Not having a Town Hall meeting, but just talked to the people on the ground to see what’s going on there.

We had some problems. They brought some problems to his attention. I think that Dick Davidson and Mike Wise has been in San Antonio and some other places there.

The communication is much better. We have a cultural problem in our entire industry that Jolene Molitoris has really been trying to change by getting to set these roundtables and people on both sides been kicking and screaming and hopefully by, like I said, we can learn from what we are doing here and the problems, so we won’t have problems because I’m sure
there are some other ones coming up here in the future
in some of these mega-mergers.

We have to deal with these problems and
the employees are the ones who can tell them what’s
going on. Also, the employees are the ones that, you
know, these people have shipments to make, but the
most important cargo out there on those trains as far
as we are concerned on those freight trains are the
employees. We are the ones, because of fatigue and
everything else and traffic flows and everything, have
been getting killed out there and we now feel like we
have a partnership.

There is a lot of mistrust on our side,
though. We are kind of out on a limb, like
Brunkenhoefer already said a lot of people want to
hang us for coming here and trying to do something
like this. But we think it’s the only reasonable
thing to do with the situation to give them
opportunity. I live next door to, when I grew up,
next to the Missouri Show Me State. And I wanted to
Show Me that they are going to make this advancement.

MR. BRUNKENHOEFER: We haven’t seen any
improvements we'd like to. We are just like the customers. There are a lot of areas that we are expecting improvement in. But based on the experience, just as Leroy related about what happened after the merger between the Katey and the Missouri Pacific where you could run directional, the positive impact that had on that yard in Kansas City.

We are expecting those same type of service improvements. If we expect that gee, this is all it is, I would be out there on the shipper's side saying we've got to do something. But I think left alone that the pieces are in place. It's like before the guy scores the touchdown you have to put the blocks in place so the person could run through the hole to score the touchdown. The touchdown actually starts in the backfield. It doesn't start when the guy crosses the goal line.

Well in this case this is what we have seen in our experience, both Leroy and I, is the blocks are now being put in place. No, the points are not on the board yet. We see that there is probably going to be a break through here. And they are going

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to have to score lots of touchdowns to get caught up.
They are a number of points behind.

MR. NAYLOR: Madam chair, let me offer an
opposing or differing viewpoint, if I may. You have
said repeatedly that you want to avoid inferior
government interference with free market solutions
that have served our nation so well should apply.

Well, there is no free market here. UP
enjoys monopoly and as such doesn't have to employ
sales people and doesn't have to employ competitive
efforts. And that's I think why we see DeBruce Grain
raising a problem and then alleging they have been
retaliated against for raising that problem. That's
why we see, I think, in UP's testimony today a rather
emphatic disregard for the Texas Railroad Commission.
That's why I think when the citizens of Reno raise
questions, UP's response is well move your city, we
were here -- we, the railroad, was here first.

These are the, these are the expressions
of the company for which its customers and other
constituents have no other place to go. That's why I
think shippers and others need you as the regulator to
go in and apply as much a cure as you can.

I appreciate the comments of my labor brothers and I know we have a serious disagreement. We don’t enjoy such a partnership. We suffer the types of problems that DeBruce Grain does in our labor relationship with UP. As a stockholder, we’ve suffered other types of problems. Thank you.

MR. BRUNKENHOEFER: I have some comments to you, but I’ll make them outside.

CHAIRMAN MORGAN: Take it outside.

MR. NAYLOR: We will take it in the parking lot and settle it like children.

VICE CHAIRMAN OWEN: I appreciate the comments from Mr. Jones and Mr. Brunkenhoefer there and also Mr. Naylor, on behalf of the first two gentlemen though, I have been out and met a lot of your people, made the mistake, I thought all engineers were UTU and they jumped all over me --

MR. JONES: Actually, you may want to know about that.

VICE CHAIRMAN OWEN: I was up in Washington on that trip and I tell you. But I try to
get out and I try to meet with working people on the railroads as such, and we do have some serious problems. But your people are very supportive of you out there and I think that you've got to communicate more with the working men and women and try to get them to bring them together and make them understand that the transportation issue is their problem as much as it is ours. I know they understand that, but they don't understand it how important it is to the country as a whole that we move the grain, we move the automobiles, we move the chemicals. We move all those things. But we have to do it in a safe and orderly fashion. They have to be compensated properly and be able to get home to see their families.

That's what I think that's what we are all about here and I'm not saying what we are going to do or not going to do. We've had an awful lot of suggestions today. But I really appreciate your testimony today and I know you are stepping out there a little ways to do what you are doing. Thank you.

Thank you, Mr. Naylor.

CHAIRMAN MORGAN: Thank you all. Next we
will hear from a group of government entities. Jolene Molitoris, Administrator, Federal Railroad Administration; Michael Dunn, United States Department of Agriculture; Charles Matthew, Chairman of the Railroad Commission of Texas; and Kenneth Koss, the California Public Utilities Commission. If we just suspend for one minute, I think we need to change the tape.

VICE CHAIRMAN OWEN: Off the record, this has been one of those nice short meetings that was going to last three to four hours. So that can be off the tape.

CHAIRMAN HORGAN: Well it's not going to be 12. I said it wouldn't be 12. I kept my promise. Are we ready? Madam Administrator, would you like to go first?

MS. MOLITORIS: Thank you, Madam Chairwoman and Vice Chair -- Mr. Vice Chair. It's a woman's world, what can I say?

I am pleased to be here to represent the Department of Transportation and present their comments, and I want to commend the Board for having
this second hearing and really providing an important forum to discuss a very serious transportation issue.

I was here at the last hearing and talked to you with the theme of the clear and direct link between safety and service. And I think that the indicators since the last hearing underscore the validity of that statement.

The indicators since the last hearing are encouraging. On the safety side, Union Pacific has not had a collision or a serious train incident since October 29th. That is something we think is extremely important. I know it's important to them and I must say that I was heartened by the comments of Mr. Jones and Mr. Brunkenhoefer because they gave testimony about the kind of work that is going on at the Union Pacific.

Safety doesn't happen by chance. Safety happens because people focus on it, make a commitment to it. And I believe that what you heard from those two gentlemen really was a clear statement of the kind of dialogue and commitment that is being invested in safety development, both by management and by labor.
Mr. Jones mentioned the SACP which is the common term for the Safety Assurance and Compliance Program which is the Program that FRA instituted a little over two years ago to begin to address the safety culture issues which affect both safety and service.

Our people are very involved with both management and labor, and management has made a commitment to fundamentally revamp their entire safety program to enhance the kind of working partnership that you heard from Mr. Jones and Mr. Brunkenhoefer. I believe that the long term investment, and I must say that it demands a long term investment of resources to really get the change in culture that will get us to zero safety hazards and will consistently address service issues.

I also want to commend this Board for your response to our recommendation that a safety integration plan be made part of the Conrail situation that you are evaluating now. I believe that if we had made that recommendation before this merger, there would be a different story today.

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We have learned a lot. They have been very, very painful lessons. But I do think the corner is being turned. There are some indicators that you know yourself, 28 percent improvement in the block sitings. Many things that we had in our report on the Union Pacific from two very comprehensive and intense audits. They are addressing with their labor partners and with us supervision needed upgrading. They have hired 134 additional supervisors and have identified more hires. With regard to training engine crews, they have hired 500 and commit to 500 more before the end of the year.

I am not ready to say that’s exactly the right number. I think the results will tell us that. And the process of working together on all the crucial issues, like fatigue which is a tremendously impactful issue on every part of Union Pacific, the results will tell what are the right numbers.

I must comment on the fatigue issue. I think Union Pacific has stepped out with their employees. They have made a commitment to Alertness Solutions who have been the advisors to NASA. They
are going for expertise to really help them address this issue.

I have much empathy for the small shipper. I want to mention that. I know that in terms of utilization of unit trains, there have been in the agricultural area improvements and the major grain shippers are less negatively impacted than they were before.

I would hope that Union Pacific continues to focus on the small shipper and works diligently to improve the use of the voucher system in a way that really works.

Mr. Jones and Mr. Brunkenhoefer talked a lot about communication. I believe that that process which is much more complex than most people give it credit for being, is crucial to improvement in the service in reducing the blockages and the congestion and I would encourage the Union Pacific to use every tool at their discretion to assure small shippers that they do get service that meets their needs.

The voucher system, of course, is slower than the unit train concept, but I think that with
more attention and with more focus that Union Pacific can increase the service to small shippers. I think in this country the small shipper is a very, very important part of our economy. Coming from the State of Ohio before coming here to Washington, I'm very sensitive to the importance of the small shipper in the whole aggregate economic vitality of our country.

I want to just mention a couple of other indicators that appear positive to us. Our regional staff, for example, mentioned the Green River Subdivision. That's a heavily traveled coal route from Green River, Wyoming to Kansas City, through Omaha. And they indicate, and their assessment is based on the daily updates of status of power utilization trains held and crew availability, that it probably is in the best shape than it's been all year. There was congestion there, this is one point that on the system that is being improved.

Congestion overall is not fixed. There have been improvements. We would like to see much more, as the shippers do. And we think that the indicators are such that through the rest of this
year, especially since some of the demand will be reduced over the next couple of months, that we will see opportunities for Union Pacific to work out the final elements of their plan to get to a fluid system which is crucial for everyone. And not only fluid, but safe.

I do hope that you have another hearing, Madam Chairwoman and Vice Chair.

CHAIRMAN MORGAN: We are getting very good at it.

MS. MOLITORIS: Very good. In addition, I think the opportunity to present weekly reports to you is a good thing. I'm sure that paperwork to some extent is not something that any company likes. But I think the awareness of this Board, and of us, and we have been also using the reports that the company sends to you, is a way of keeping our focus, keeping our intensity until this issue is resolved.

And I would say to you that the Department, and I'm certain this Board, never wants to see this situation happen again. And, from all of this pain and difficulty and problems that have
occurred, I would like to commit our work with you to
assure that we identify every opportunity to avoid any
repetition of this in the future.

We think that the safety integration plans
on any merger are really crucial. As I said I think
it would have made a difference here. Because I think
just culturally speaking there is always a sense that
with the sort of gutsy character of the railroad
industry anything can be handled. We have found out
painfully that anything cannot be handled if you are
not aware of what all the issues are.

Finally, I believe this new commitment of
management and labor to work together and to work with
us and to work with you bodes well for our opportunity
for the future. Because as we are 760 days from the
year 2000, we have an opportunity to create a future
in which our rail transportation is second to none.

So, in terms of recommendations, I hope
that you will have another hearing and I hope that the
indicators will be stellar at that point and that all
the customers and all the testimony will be about
resolution of problems.

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I would also encourage the continuation of the weekly reports and we are prepared to work with you in any other way that you deem helpful to you and to this problem to help resolution. Thank you very much.

CHAIRMAN MORGAN: Well I certainly appreciate your willingness to cooperate and be of assistance. As I said a lot today, that is critical to getting a handle on the situation that faces us.

In terms of your recommendations, are you suggesting that we terminate the order that is in place, that part of your recommendation? In other words, we have this order in place which expires Midnight tomorrow night and our challenge, of course, is to determine how we will act with respect to that order. Is part of your recommendation that we discontinue that order?

MS. MOLITORIS: Madam Chairwoman, I believe that the order was a factor in helping focus everybody on a real intense effort. And I think it also gave some shippers some confidence in a difficult time.
I would recommend that you keep the status quo for another 45 to 60 days, give an opportunity for Union Pacific to continue its improvement. I think that although the movement of trains by the other carriers has really been small, as far as I can tell, at least directly on the properties that you identified there has been some positive changes with other carriers. And I think all of that together has had some elements of improvement. I'm not sure how much, how many trains you thought would have moved by these other carriers. I think the number directly moved on that property has been quite small.

But I believe we are heading in the right direction and I think when something is working we ought to continue to support that. I do believe that by the end of the year with the continued pressure of the company and the employees committed together to solve all of the issues they can solve, that we will see many more positive indicators at the next hearing.

CHAIRMAN MORGAN: And also you did submit, I appreciate, answers to three questions I asked with us last time relating to fatigue and the UPSP merger...
and safety and the status of the UP safety report. So that will be included in the record of these hearings. Thank you. Questions?

VICE CHAIRMAN OWEN: I would just like to compliment you on all the work you have done with the railroad and with the unions in implementing the safety program. I think it’s been very helpful and very beneficial for the nation as a whole.

MS. MOLITORIS: Thank you very much.

VICE CHAIRMAN OWEN: And one of the other things, I might sign up for your Alertness program and your alertness management.

CHAIRMAN MORGAN: Needing it about now, right?

VICE CHAIRMAN OWEN: Thank you very much.

CHAIRMAN MORGAN: Mr. Dunn, would you like to proceed?

MR. DUNN: Thank you Madam Chair, Commissioner Owen. I’ll try not to put you to sleep. I want to thank you for the opportunity to participate in this forum, to examine the rail service problems in the western part of the United States.
Secretary Glickman supported the STB’s use of emergency power on October 31st service order, and we believe it should stay in effect. We are gratified that the Surface Transportation Board accepted our recommendations to require that UPSP submit data that would indicate whether service to agricultural shippers was actually improving.

We have been busy analyzing the data submitted by the UPSP in its weekly reports, as well as other sources of information. And while there has been improvement in some measure of the UP’s operations, this has yet to be translated to meaningful service improvements for grain shippers and receivers.

When comparing the average grain car velocity of the five weeks ending October 17th with the five weeks in the November 21st, the Nebraska Pacific Northwest movement slowed from 13.1 to 14.6 days. Last week things got even worse. Pacific Northwest moved slow from 12.5 days to 21.0 days. The normal time for this movement is reported to be about 10.1 days.
By contrast, the Kansas to Gulf time has improved from 15.8 days down to 13.8 days and data released on Monday indicated even more improvement down that week to 10.7 days. Of course, this is still more than double the typical 5.1 days that this trip normally takes.

In terms of velocity of grain cars, the picture is mixed with no clear sign of improvement. And this is discounting when the trains were ordered and when they were actually spotted.

By other measures, service to agriculture shippers have worsened in recent weeks, and not just on the UPSP but on the BNSF as well. Take a look at this chart on the right hand side. For the five weeks ending November 15, 1997, weekly car load data from the Association of American Railroads showed UPSP’s intermodal traffic and non-grain car load traffics down 16 percent. But USPS’s grain shipments were down a whopping 38 percent.

Now look at the BNSF’s on the left side. They have picked up nearly all of UP’s loss and intermodal traffic. They are up 16 percent. Their
non-grain car load traffic is up six percent. But their grain car loads were down 17 percent. We heard from shippers and railroad representatives that the BNSF is taking locomotives out of agricultural service and shifting them to intermodal.

It would seem that both major railroads are letting agriculture shippers bear the brunt of service recovery. The Secretary of Agriculture finds this unacceptable.

There has been a great deal of attention placed on the problems of grain storage. There is a substantial amount of grain on the ground that should have been handled and taken to the market long ago. According to the UPSP’s information, there are more than 12,000 unfilled car orders from grain customers asking for more equipment to move newly harvested crops.

In their latest submission, UPSP has backed off from its assertions that ground storage is a viable long-term storage option if the ground piles are properly prepared. In fact, USDA categorizes non-permanent storage as either temporary or emergency
storage. UPSP's statement on the viability of long-term storage can refer only to temporary storage which must meet strict requirements for the way the grains are piled and prepared.

It is the problem of emergency storage that concerns USDA. Emergency storage is not a viable long-term storage option. As of November 26th, federally-licensed warehousemen have requested permits for emergency storage totalling 93,000,681 bushels of grain, 92 percent of which are located in states served by the UPSP.

In the latest period of widespread car shortage, the 1995-96 crop year, USDA approved only 12 million bushels of emergency storage requests. We can see from the second chart that had the UPSP simply moved as many carloads in the same five week period ending November 1997 as they have in 1996, an additional 64 million bushels of grain would have been moved.

BNSF's shortfall during that period amounts to another 30 million bushels of grain that should have been moved. The storage problem that
exists is almost entirely relayed into the inability of the western roads to provide an adequate level of service to the agriculture producers. The total amount stored on the ground is doubtless higher than the emergency storage request indicated, because those figures do not include state inspected warehouses.

It is estimated that it costs an extra five to 20 cents a bushel to store on the ground. Grain piled on the ground in that many county elevators, local cash prices to farmers has fallen significantly.

We wish that all shippers were beginning to see improvements to quality of service as I think provided by the UPSP. But by any standards, service to the agriculture producer is still inadequate. We have made a number of suggestions which include asking the STB should extend the current directed service order, asking the STB should consider granting access from the Kansas City, Missouri through Harrington, Kansas to Scott City, Kansas and also to Salina, Kansas to railroad capable of interchanging with a grain gathering network on short lines in Kansas.
The STB should ensure that any railroad that holds trackage rights on the UPSP should also have the right to accept interchange traffic from third parties so long as the current service crises continues.

The STB should direct that all trains located in loading facilities served by two or more railers should be moved immediately enabling other carriers to provide services.

Many agriculture shippers located on UPSP branch lines. We ask that the STB direct service along these branch lines wherever shippers have identified rail service providers who are able to serve them and need not traffic upon UPSP mainlines in order to do so.

That on grain car loading the UPSP provides its weekly status report should include similar information from the previous two years so that we have a benchmark to go from. We would also ask the BNSF should be required to provide compatible weekly data on its movement of grains so we can have similar baselines of comparison.
I want to say that I truly appreciate the difficult tasks that confronts this particular Board. In the past the staff of USDA has worked very, very closely with the Surface Transportation Board staff. I would offer you all the assistance that we have at USDA to help you analyze the data of the agricultural sector for meaningful information. Thank you very much.

CHAIRMAN MORGAN: Well first of all, I certainly again appreciate the assistance and cooperation. Obviously I think we all need to work together on this matter. So I appreciate that.

Let me just ask you two questions. One more of a philosophical question and the other more specifically addressing the proposals that you put forth.

The first is we now have the Freedom to Farm Act which is in place and, of course, your Department is I’m sure very active in implementing that and working with constituencies. Is there anything in that Act which would suggest that the terms of grain transportation in general that the
entire community needs to start focusing on planning more as a result of the changes that that Act certainly has brought about in the agricultural community?

MR. DUNN: I think the Chair has identified a problem that concerns a great deal at USDA. The 1996 Farm Bill was a major watershed and agriculture producers in the future will not have grain support programs. Freedom to farm means that people are free to plant different variety of crops in different areas.

Whether or not we have the infrastructure to provide the overall movement of transportation of those crops is really a moot point. As the Chair remembers, you were on the other side of the dias as we testified in front of the House Ag Committee. At that time I indicated that the Secretary of Agriculture has asked that we begin preparing for a comprehensive plan for the shipment of agriculture in the next year for the next century.

CHAIRMAN MORGAN: Because certainly we are faced right now with an emergency, that we have
determined emergency in terms of rail service in the
West. It obviously affects agriculture, but going
into next year, obviously the more planning,
particularly with respect to changes that are going on
in the agriculture sector are very important right
now.

MR. DUNN: Absolutely.

CHAIRMAN MORGAN: The other question is
more specifically related to the suggestions that you
have made for providing options to shippers during
this period. And at the beginning of your statement
you indicated that you felt that agriculture was
bearing the uneven brunt of the service problems in
the West. You have suggested what some might term an
open access type proposal to bring other carriers in
to provide options to shippers. And of course, we
heard earlier from the agricultural community their
concern that anything that we would do would not in
some way unduly tax Burlington Northern Santa Fe’s
ability to serve the agricultural community.

So how would you suggest the Board view
your proposal in that context?

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MR. DUNN: In that context what I would ask for agriculture is simply parity. If you will remember the charts that I had put on the board which indicated that the Burlington Northern, while it had gone up six percent on non-grain and 16 percent on intermodal, that's in the plus category, they were at a negative 17 percent for grain.

Certainly if there could be some parity there, at least keep grain even. That would be a tremendous help to us.

VICE CHAIRMAN OWEN: Yes. I've always questioned, and that bothers me about the agricultural end of it is just to the extent that all the crops come into at the right time, three weeks, six weeks, something like that. Wouldn't it be feasible for the associations or the Department of Agriculture to build more storage facilities to hold the grain for a longer period of time then possibly the rails then could haul it to the ports?

As was pointed out earlier by one of the union representatives here and this is probably true, that the ports may already be clogged with too much
grain and a number of the people like to hold it back
because the price is not right. Then when the price
is right, they want a 100 car train there tomorrow.

I think storage capacity for the farm belt
states is something that maybe we should be discussing
as we go along. That’s not my territory. But I’m
trying to think of how we avoid this problem of
continuing to dump crops on the ground every year and
then we hear the story about the spoilage and
everything and sympathize with the farming community.
But at the same time, you know, I just don’t know if
we can provide all of the power and the hoppers up
there. Maybe they should increase the number of
trains up there.

But even if they increased it to the
amount that you talked about, would that be
sufficient, and I doubt it, to haul an extra 100
million bushels of corn at the appropriate time?

MR. DUNN: Honestly in the long term, that
would be something that we would like to look at in a
comprehensive plan. But at the present time, we know
that we have port facilities that cannot get grain to
load for export. So that very clearly, an immediate problem of transportation.

In addition to that, the same watershed Farm Bill 1996 that the Chair talked about, has done away with a lot of the farmer's own reserve and those type of programs which provided personal storage on the farm in the past. The Congress has said that it does not see the storage of grain to be something that the government ought to be doing. If you are going into a free market system, then that should be developed.

VICE CHAIRMAN OWEN: Sure, I'm just wondering, where do you get the locomotives and the grain car hoppers when it seems as though right now all the railroads are at maximum capacity?

MS. MOLITORIS: Just one comment. I did not in my testimony offer one of the recommendations that I think is in my written testimony, and that is a suggestion that this Board might convene the Grain Car Council because it would be a forum where everyone would get around the table and address suggestions not only for the immediate issues that are being suffered
right now, but also for the kinds of changes that may come out of the --

CHAIRMAN MORGAN: Thank you.

VICE CHAIRMAN OWEN: That’s a good suggestion. Thank you. I have no other questions.

CHAIRMAN MORGAN: Chairman Matthew?

MR. DUNN: Madam Chair, I have to excuse myself. I have to catch an airplane. I commend you for staying as close to schedule as you did and not going into that 12 hour session that you had the last time.

CHAIRMAN MORGAN: I made a commitment, I stick by it. It will not be 12 hours.

MR. DUNN: If you will excuse me, please.

CHAIRMAN MORGAN: Sure.

MR. MATTHEW: Thank you for the opportunity to again discuss with you ways to bring about a satisfactory end to the service transportation crises in the western United States.

The Board’s November 20th order requested the parties address three questions. The first was if the actions of the Board under Service Order 1518 had
helped to alleviate rail service problems in the West.

Two, whether these actions should be extended. And
three, whether more needs to be done.

My short answer to these questions is that
while the Board may start with its October 31st order,
much bolder steps are needed to resolve this crisis
and to prevent its reoccurrence.

It is critical that this rail crisis end
quickly and not be repeated. The November 24th, 1997
study prepared by Dr. Bernard Weinstein at the Center
of Economic Development and Research, University of
North Texas, conservatively estimates the costs to
date for Texas business, measured by lost sales,
reduced output and higher shipping charges, is $762
million. And that business, consumers and taxpayers
in Texas will incur $623 million, an additional cost
over the next several months, unless the service
problems are quickly resolved.

The answer to question number one, the
Railroad Commission’s position is that the Board’s
actions to date have been too little and too late. In
Texas the crisis is still with us. The congestion
morass crippling UP is affecting all of our carriers
and making it impossible for them to provide a
satisfactory level of service.

The Railroad Commission held hearings in
five separate locales around the state and we do not
see any appreciable improvement in service. Indeed,
the rail service emergency continues in Texas without
any significant abatement according to the
overwhelming weight of the comments we received, and
we continue to receive reports of substantial delays
on both TexMex and BNSF trains.

For example, last week employees of both
TexMex and Burlington Northern called to tell our
staff that it took nearly 24 hours for TexMex and
Burlington Northern trains to transverse the Houston
area on UP controlled trackage. Instead of a normal
two to three hours, which is the historical time. As
an alternative, Burlington Northern/Santa Fe is being
forced to use a circuitous route south to Alban and
north to Temple for most of its trains. The TexMex,
however, has no alternative route.

In short, to date the Railroad Commission

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has not received any convincing indication that either
UP’s service recovery plan or the Surface
Transportation Board’s Order No. 1518 has produced
results and improvement in Texas.

I would note that the Port of Houston
Authority filed statements reaching the same
conclusion. Clearly we agree with the Port of Houston
Authority that service crisis in Houston has not been
resolved by the measures taken thus far.

To the second question, should the Board’s
order declaring an emergency and directed limiting
action be extended? I believe the answer is yes. The
emergency is far from being over and will continue to
be repeated until the Board’s order is extended and
bolder and more substantial steps are taken.

Question number three, what further
actions should the Board take? The Board, I believe,
needs to take bold and decisive action along the lines
of the Commission’s proposal. In short, on an
emergency basis, the Railroad Commission urges the
Board to broaden its current emergency measures by
mandating an expansion of neutral switching in the
Houston terminal area and establishing a through route to be controlled by TexMex through Houston and on to Beaumont.

On a permanent basis, the Board should order divestiture of Pacific UP trackage necessary to fully implement this proposal.

Before describing our proposal in greater detail, I believe it is valuable to first discuss what the problem is we are trying to solve. The problem we have today is traceable to the merger, which in Texas involve a number of parallel lines.

UP proposed and this Board concurred that in Texas all of our eggs should be placed in one basket. That is particularly the case for Houston and the Gulf Coast. Let me stop and emphasize this point, probably the most important thing I am going to say all day. Houston and the Gulf Coast in essence has one carrier serving it.

If you look at the map number one that we provided in our filing, it shows that UP has nine lines and Burlington/Santa Fe with two that do not connect. UP now controls or has a virtual monopoly on
the rail infrastructure in the Houston/Gulf Coast area. And UP’s stranglehold on and their paralysis of rail operations in the Houston/Gulf Coast area has been very costly to Texas.

As the Weinstein report indicates, at the time of the merger the Railroad Commission urged that the Board impose sufficient conditions on UP to make some sort of competitive situation in Texas. At the time two questions, key questions existed and the answers to them were contested.

We now have a lot of experience with which to judge those questions, so let’s ask them again. The first question was could the service be any worse than SP’s? The second question was whether grants of trackage rights on an unprecedented scale would serve to effectively correct the anti-competitive aspects of the UP/SP merger or should divestiture be required?

The quality of UP’s service for the last several months answers the first question. From all the complaints we have received, the answer is clear. The yes, things could get worse than SP and they did.

Equally clear, the answer to the question
of whether trackage rights granted on the scale used for this merger can be effective is a resounding no. At least in this case, the trackage rights have not been effective to ensure competition.

The Board should require divestiture. You have the authority under Section 11327 of your statute to issue supplemental orders. And we believe you should use that order to request UP to divest certain lines.

This rail service crisis has taught us a lot. But the most important thing it has taught us is that shippers need alternatives or else you end up with a congestion morass like the one that now exists in the Houston and the Gulf Coast area.

The crisis on UP’s system has clearly shown the value of alternatives. If there had been a third railroad, such as TexMex serving Houston in June of 1997 and that railroad had operated over its own trackage and has its own switching yard in Houston, there would have been an alternative to UP and its co-dependent Burlington Northern/Santa Fe.

Rather than seeing their freight bogged
down, shippers on trackage owned by the Port of Houston Authority and the Houston Belt Terminal would have seen it moved into commerce in a reasonable manner.

Tex Mex is a fully fledged carrier in this area for the Commission's proposal, but also provide an alternative for any more shippers who's trackage can be picked up and delivered over the road. Similarly, an enhanced neutral switching capability in the Houston area providing services to scores of large captive petro-chemical shippers located on the UPSP Baytown and Bayport Branch would ensure that an alternative existed for hundreds of shippers located in the complex and normally very busy Houston Terminal area.

The ability of shippers to divert traffic to another carrier that can handle it, would have prevented the congestion pressures approaching the dangerous levels on the UP, or such pressures would have been released. In sum, I believe the Board needs to revisit the issue of control over the Houston rail structure which was seated to UP.

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The Railroad Commission urges that you provide shippers with competitive alternatives as contemplated by the National Transportation Policy. Our proposal does exactly that. It provides shippers with alternatives. The early Commission’s plan for three, has three essential parts.

One, an extended port terminal railroad, a clear path for Tex Mex through Houston, and an independent Houston/Beaumont route for Tex Mex. Let me briefly summarize and you’ve got maps in there and I’ll try to do this quickly because I know I’m running out of time.

The first is the extended port terminal railroad. The first important step to alleviating the UP crisis is the transfer of the UP port area industrial trackage to a new port terminal railroad. It would provide new neutral switching for the port area industries. I personally favor just expanding the current set up in Houston for the Port of Houston Authority and the Port Terminal Railroad.

In this regard, a very important change has occurred. And that is the position of the Port of
Houston Authority. In its filing with the Board November 26, 1997, the Houston Authority stated, the Board should require coordinating and dispatching of all railroad lines in the Houston area, assigning the dispatching responsibilities to a neutral entity such as the Port Terminal Railroad Association.

Coordinated operation of those tracks would increase the efficiency and through put of the Houston Terminal. Second, a clear path through Houston for Tex Mex. The second important step in alleviating the UP service crisis is to provide a clear path through the complex and congested Houston rail network for Tex Mex. The path we propose is depicted on Map No. 3.

Again, we ask for divestiture of UP trackage, as described, to fully implement this proposal. This proposal is to create an independent route for Tex Mex through Houston. It should have minimum negative impact on UP’s operations, because the line segments that would compromise the new Tex Mex route are of marginal value to UP.

To the extent that UP has the need to
operate over these line segments, it could have
trackage rights. Three, the transfer of the former MP
Houston/Beaumont line to Tex Mex. For six months, Tex
Mex trains have experienced huge delays operating over
UP's two lines between Houston and Beaumont. These
two lines are the former SP lines through Dayton and
the former Missouri Pacific line.

The delays substantially increased
operating costs for Tex Mex, while significantly
delaying shipments. Worse yet, the delays have
prevented Tex Mex from providing shippers with
alternatives to congestion and delayed services. The
-- I'm going to stop there because I know I've run out
of time. But I believe if the Board will take time to
look at this, what I believe is a very modest
proposal.

We have reduced its size and scope from
what we said last year. We've tried to build on your
Order 1518 and if you look at what we're doing, they
are merely building blocks on what you've suggested.
The Port Terminal in Houston has been very successful
for many, many years. I'm told it has the most
modern, up-to-date switching facilities and switching engines in the country.

We have never received a complaint on that switching system in Houston. And we're hopeful that you'll take time to look at it and I appreciate you listening.

CHAIRMAN MORGAN: Well first of all, we have looked at it already. So I can assure you that we have studied it. Let me just ask a couple of questions?

MR. MATTHEW: Sure.

CHAIRMAN MORGAN: First of all, I presume that the proposal that is before us from the Commission is a unanimous proposal of the three members -- you have three members that you're --

MR. MATTHEW: Yes ma'am, I have three members. I had one person who had a little boy operated on that morning, got there late, expressed to Commissioner Rylander and I his support.

CHAIRMAN MORGAN: Now in your proposal you essentially have a short proposal and a long term proposal.
MR. MATTHEW: Yes ma'am.

CHAIRMAN MORGAN: And both of them involve divestiture of some sort or another.

MR. MATTHEW: Right, exactly.

CHAIRMAN MORGAN: Now the short term proposal that involves divestiture, some might say, how does that really resolve the short term issue? Divestiture obviously is a complicated type of transaction revealing with a short term, presumably a short term solution, looking for a short term solution to the emergency. How do you see your short term divestiture proposal fitting into that?

MR. MATTHEW: Well there's two questions there. First we are trying to operate under the specs that you operate under when we filed this report. Secondly, my view on this is different. It is not a short range problem. You know we've gotten control back on the logistics a little bit. We believe that you people eventually cleaned us up.

I mean for one thing, shippers are trying to find other alternatives. Two, in January it normally slows down. So we know that eventually it's
going to be corrected. But what we’re worrying about
is the long term implications to the Texas economy.
You know, I’m here telling you that I believe that
what we need to have is competition. It is a basic
personal philosophy.

And what we have here is a total monopoly.
When you look at the total control of the 11 rail
lines in Houston. You look at the total control of
the switching yards there. You realize that we’ve
seated, and this is what we said in March of last
year, we’ve seated too much power in an area that, you
know we’re talking about an area that represents about
20 percent of the Texas economy, over 100 billion
dollars a year of a 500 billion dollar economy.

And you know these numbers of losses are
staggering. You know Texas feels a little bit, and
I’m giving you this not as my personal opinion but
things that were said to us in our hearings. You know
Texas, this was a little bit of an experiment. When
UP proposed this it was not the normal kind of merger.

The trackage rights, the massive amount of
trackage rights, we’ve had lots of discussion with
Dick Relaulder about these trackage rights and whether
or not they would work or not. Texas feels like it's
kind of been a guinea pig. And we've tried an
experiment and it didn't work. There is not any doubt
that it didn't work.

I mean the numbers are there, the
congestion is there and we, you know, we plead with
you to please take a look at this and to put in place
something that will make sure this does not happen
again. There's just an awful lot at stake here.

CHAIRMAN MORGAN: Now taking obviously,
and I understand your view that really this is a long
term problem --

MR. MATTHEW: Yes ma'am.

CHAIRMAN MORGAN: -- that you want to
solve with a long term solution --

MR. MATTHEW: That's right.

CHAIRMAN MORGAN: -- of divestiture. But
some would characterize that proposal as intrusive and
perhaps --

MR. MATTHEW: I've heard UP, I've heard
only UP say that.
CHAIRMAN MORGAN: Well, we had a witness earlier --

MR. MATTHEW: I've said I've only heard UP.

CHAIRMAN MORGAN: But it is intrusive and that perhaps it creates more congestion problem than --

MR. MATTHEW: I don't think, I don't think that's right. Because the way this thing has been designed, if you take time to look at the maps and you obviously have, it in no way impairs UP's ability to provide service to its customers. It does put them in a competitive risk in those areas where they now have captive shippers.

If they provide excellent service at a good rate, they won't lose a single car load. But if they provide service like they've provided in Texas in the last six months, they are going to lose some business. To me, that's the American way.

MR. OWEN: We've heard quite a bit of testimony today and some of the written documents have come in about the capacity of Houston and the lack of
capacity. And so if there is a lack of capacity, even if you transfer the ownership to someone else, you still have a problem with capacity.

So would it not be better to try to find some way to facilitate the building of putting parallel tracks or doing something else --

MR. MATTHEW: Sir --

MR. OWEN: -- if Tex Mex is in the yards there, evidently they are maxed right now? Is that right?

MR. MATTHEW: Well I mean they’re maxed out because they can’t the trains out of there. And I will suggest to you, as I have tried to suggest in my testimony, that if the Port Authority -- you know, the Port Authority in their area has no problems. I mean they are able to move their cars.

What we are asking for is an expansion of the Port Terminal Railway Association’s, the trackage that they control. Now you understand how that’s set up? Burlington Northern Santa Fe is on that Board along with UP. We’re suggesting that you would add Tex Mex to that and that you would add the Port. And
those four folks would sit down and control that
neutral switch in that area.

The Port tells me that they are perfectly
capable of dealing with that. And the Port, in their
area, I mean the Houston Port is the Number One Port
in the United States. I mean it is a very popular
operation.

MR. OWEN: It is? I thought that Long
Beach and Los Angeles --

MR. MATTHEW: Well, according to Houston
Chamber of Commerce --

(Laughter.)

MR. MATTHEW: -- in Texas where I've run
for office. They, we believe that the Port Authority
is quite capable of dealing with that. They have had
a long history of dealing with it. They believe they
can deal with it, more importantly, regardless of what
I think. And we think it is a great fix and we think
it's a long term fix. And it's an easy fix. It's
building on -- it's not something radical, it's not
something that hasn't been tried.

I mean these neutral terminals, there's
three of them in the country that work very well. The one in Houston, we think that works better than any one, one St. Louis and one in Chicago. They are all, it's a long term, I mean it's something that's been around for decades. So we're just talking about expanding that in an area where there's obviously a lot of shipping going on. I mean it is a highly intense area.

MR. OWEN: I have no other questions other than if you'll permit me to read through it again. I went through your testimony a couple of times and I have to get the map out.

MR. MATTHEW: Well, I'll tell you the map is really interesting. When you look at it and you see that those two Burlington Northern lines don't connect, you begin to understand some of the problems that Burlington Northern is having in the Fort Worth area and in some of the western parts of our state. They are having great difficulty getting across there.

MR. OWEN: I appreciate the problem you are having there and I understand it has been going on for a while and I was hoping it would be alleviated by
now.

MR. MATTHEW: Well the pressure on us at
the Railroad Commission is intense. I can tell you
the shippers are hot and they are expecting us to try
to help. And as you know, we have really no standing
here. You have been very kind to allow us to come and
talk and we're trying to represent the concerns of
those shippers and trying to amplify their concerns.

MR. OWEN: We've certainly heard you speak
today.

MR. MATTHEW: Yes sir.

MR. OWEN: Thank you very much.

CHAIRMAN MORGAN: We feel the pressure
too, on our end.

Mr. Koss.

MR. KOSS: Here. I have to excuse myself,
I have airplane throat. I am from San Francisco where
the Commission is headquartered. I'm here on behalf
of our Commission President, who testified before you
in October and also testified before you in a merger
proceeding last year. And California Governor Wilson
appointed the Public Utilities Commission as Agency to
represent the state in the merge proceeding and
continue on in this proceeding as well.

One important point is that our Commission
still supports the merger. We don’t think the merger
itself should be linked to the service problems that
Northwestern has had. Our five member Commission
appointed a two member Subcommittee to oversee this
whole process the service issues.

We, like everybody else that reviewed the
UP weekly updates, recognize the tremendous efforts
that the UP has taken upon so far. We also realize
they are doing everything measure they can think of to
ensure good service. However, California is still
lagging in service recovery. Not just per us and not
just per the shippers, but also per UP.

We held a hearing in Long Beach,
California on November 20th, I’d like to relate to you
some of the issues we learned in that hearing and
after that discuss some recommendations we came up
with after the hearing. During the hearing we heard
from the Board’s agricultural groups, lumber groups,
labor and also had some discussions from UP about
their computer system or electronic data transfer of
information.

All these issues led us to our conclusions
and recommendations. There were then reports that
could be termed anecdotal, but we also heard some
things that we think were systematic underlying
problems that exist today. I'll address those as we
complete this. As far as the Ports are concerned,
they differ, but Long Beach is the largest by far in
the United States.

(Laughter.)

CHAIRMAN MORGAN: You're sitting at
opposite sides of the table.

MR. KOSS: I believe Los Angeles, and Los
Angeles, I believe, is second place. So the two Ports
combined, which comprise San Pedro Bay are almost
double any other single Port.

MR. MATTHEW: Would you let us have third?

(Laughter.)

MR. KOSS: I believe Houston is third.

Houston is the largest in Texas.

MR. MATTHEW: Yeah.
MR. KROSS: The Port complex has 30 shipping companies with 13 terminals. They testified that this is the worst situation they've seen in 35 years as far as getting stuff out of the ports. During the crunch time of September, 16 ships were diverted to other places, mostly Oakland. They lost turnaround time, they've lost capacity on steam ships. The average capacity loss is about 20 percent reduction per ship and that was due partly to labor but also to terminal congestion.

They were close to losing a voyage, and that means a whole round trip of the Pacific which is usually a five week trip by one ship. They'd waste about 14 million in revenue. So losing a voyage was something of concern that didn't happen, but capacity was down.

As of November 20th, I wanted to read you a short portion of the testimony from our hearing from the Terminal Manager of the Long Beach Container Terminal. As of November 20th, he was saying, that we still plan to take three to four more ships north to
Oakland in the near future.

If we, at this moment, were to turn those ships back into Los Angeles, re-divert them to LA, that amount of cargo through the San Pedro Port, we would almost instantly bury ourselves and the railroads because, as far as we can see, they are getting back to where they can handle the normal volume of traffic in the sight of digging themselves out. But there is still such a back log of cargo that we could bury them like that again.

So it’s a very fragile balance now at the Port. And I was listening to what the Railroads said earlier, it has most likely gotten better since November 20th, but there is still containers there and there’s still shipments both eastbound and westbound that aren’t going to the Ports.

We heard from the lumber industry. I think that industry, those people who testified were the most upset. They said it was bad six months ago and it’s getting worse. One Lumber Association had 50 complaints from members about service. And they’re saying shipments from Oregon and southern California
are now six to eight weeks a trip that is normally one week.

Cars delivered from the midwest back to California used to be one week, it is now eight weeks. It's impacting construction costs, jobs and the whole economy of southern California. They also testified that there is a real problem with customer relations. And I think anytime you have a crisis is when your customer relations function is tested. A lot of explanations came back as, well, it was just a bad load, no return calls and it gets to be a lot of excuses.

UP stated and we certainly recognize that a lot of their people work very, very hard when it's crunch time and some of these folks were working 12 hours a day. But your customer relations function is tested during a crisis. In fact the lumber industry now calls the West Colten Yard the black hole, for obvious reasons.

One other entity in the lumber business was the North Post Railroad which is a publicly-owned 300 mile short line from Eureka down to the San
Francisco Bay area and their primary commodity is lumber. They are having a hard time moving lumber because of a car supply shortage.

In the agriculture area, we heard from a fertilizer group and a couple of other folks. As you know, California is the largest fruit producer in the country, it’s a 24 billion dollar a year industry in the state. So a lot of the good are transportation intensive and they are also time-sensitive. They’re feeling was that the merger resulted in inferior service to agriculture. This is what I’m reporting from the testimony.

Delivery times have doubled and transportation costs tripled. However, they still think the UP plan is working, but it is a little late. To give an example, production of phosphate and potash was cut 50 percent in some cases. That creates job losses and layoffs and production cuts. California isn’t so much looking at shipping goods out but also shipping in, particularly animal feed and fertilizer products.

In fact, the California Legislature, 120
members, have all been concerned about the service issue. The Agriculture Committee Chairman Cardoza held his own hearing on the matter. Transportation Committee Chair Murray will hold his own hearings on December 12th, in Long Beach. Some others have been interested and asked for briefings from us and briefings from their constituents.

California has 52 members in Congress and 14 of them are from LA County. These folks are all interested in this issue. The Ports of Long Beach and LA are both in LA County. We looked a lot though at systemic issues. These were anecdotal and I think I can share with you. Three of these systemic issues were labor, geographic problem areas and computer integration.

As far as labor, right now UP and SP crews are still working separately. There are no labor agreements in California. The work force is not integrated. The bulk of the work force is still under SP contract and SP territory and they don't intermingle. UP is not interchanged with SP work crews. In some cases you have equipment without
workers or staff in place to do it and other times it
is the opposite, but they can't intermingle because of
lack of labor agreement.

UP told us to expect that to happen in the
first part of '98, but there is not guarantees right
now. Nationwide agreements have been negotiated in
seriatim, meaning one after the other. The ones in
the east have been done or been working on and
California seems to be last, because ours isn't
expected to be done until, as I said, the end of the
first quarter.

In the old days of SP, as well, they
delayed hiring. I know when UP testified in our
hearings they talked about hiring delays the SP
experienced which also caused the current labor
shortages as well. As far as geographic problem
areas, the two big areas are the Harbor and the West
Colten Yard. They are only about 70 rail miles apart,
so they are linked.

Most of the Harbor traffic that leaves the
state goes out through West Colten Yard, at least on
UP. So they are obviously linked and they are the two
big problem areas of the state. And the northern part
of the state hasn't experienced as much serious
problems as those two areas.

The last systemic area we think is the
computer system. Like labor, there's two different
systems. They are not integrated today. The UP told
us they expect them to be integrated sometime around
March 1st. To their testimony it says the huge
problem, cars are shuffled throughout the system, some
drop off the system.

In West Colten as of November 20th, there
were 3,100 cars and there are supposed to be 1,800
normal. The UP Representative testified that 25 cars
are continually looping between West Colten and Yermo,
which is near Barstow. It is the inability of these
two systems to recognize a particular car and tell it
where to go when it goes to its system.

We did learn the integration in the Gulf
Coast system was accelerated and apparently then now,
December 1st was the cutoff date. But again,
California still waits. And I'm last on the list too,
of speakers. As far as the recommendations, we looked
at four different areas. One is computer systems, two
the labor agreements, three is customer relations,
four is personnel and equipment to run the railroad.

It’s true that this problem won’t go away
soon and at least until the end of the first quarter.
So we’re still looking at a couple of months. The
people testified in the area on grain, the grain can’t
wait three or four months to be moved. Something
probably needs to be done earlier than that, but it
looks like the general problem, if it goes away at
all, won’t go away until the end of the first quarter.

So our recommendations, we have four of
them. The first is that STB should continue its
oversight, but with some teeth. And that would be to
set performance goals, set milestones to reach those
goals. Include such things as labor agreements,
computer integration and hiring and training of
employees and delivery of new locomotives.

If no compliance to these milestones and
performance goals, then the STB should consider posing
some sanctions. The second recommendation is that we
believe more California data should be included in the

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weekly updates. Things like the number of cars at West Colten, the system velocity and number of stranded trains. The number of cars in the LA Basin, the number of cars requested and furnished to the North Coast Railroad, which is the publicly-owned short line in the northwest corner of the state.

And lastly, the number of containers at the major Ports, particularly LA and Long Beach. The third recommendation, and this is probably I think to me the most systemic one -- I'm almost finished -- is a management audit. We believe that the Union Pacific should submit to an independent management audit by an independent auditing firm to look at things like long term planning.

Looking at demand and needs, organizational culture, this is an important one. The organizational culture reflects in such things as customer service, employee relations and labor agreements. If the culture of the organization isn't sound, customer service isn't going to be sound. And it would also look at things like the computer system, car supply and the ability to provide a safe and
reliable system.

Our last recommendation, it relates to open access. We are not recommending that now, we are just saying that the STB should consider the open access or further open access for an interim period if the situation does not improve in the short term. Our short term would be year end, you may think it should be longer than that.

But we realize open access involves things like safety and planning and it can’t happen overnight, but this issue is in fact a long term issue that we are asking you to consider more open access. Now though, with the progress that UP is making, this problem might solve itself. We do believe, though, that the management audit should be done regardless of any other recommendation.

Overall this is a serious problem, it’s still a serious problem. UP is making tremendous effort. It is starting to work, but California is being short changed, particularly at the Ports and at West Colten. The merger is not the problem. We do think, though, that this won’t fix itself unless
everybody, not just the railroad, but everybody cooperates and works together. Thank you.

CHAIRMAN MORGAN: Thank you. What I hear from your testimony is that you see improvement out there. It's not, definitely not enough. And that possibly by the end of the first quarter of next year, things might be coming together. Is that a fair assumption of what you've said?

MR. KOSS: Pretty much. And the two issues of the integrated computer system and the integrated or finished labor agreement are very key. And both of those now seem to have a finish date, hopefully in March or so of next year. Will those things fix the situation overnight? No, but it will go a long way toward getting there.

CHAIRMAN MORGAN: And are you suggesting that we extend the service order in some way, that we have in place?

MR. KOSS: The current service order primarily is in the state of Texas. It generally has, we really have no comment on whether or not it fixed things in Texas or not. We realize that the track
reaches from Houston all the way to the Port of LA and Long Beach. We’ve been impacted and we haven’t seen anything -- but what we are suggesting we do though, is to consider your oversight asking for the weekly reports and scan the weekly reports and don’t just dismiss the thing, you know,

CHAIRMAN MORGAN: Stay on it?

MR. KOSS: Stay on it.

MR. OWEN: I was interested in your report and talking to your Chairman out there, I was grateful that he had the hearing that he did and you learned an awful lot in that particular hearing. One point, when you mentioned California occasionally it would be nice to toss in for those people from Texas that one out of every nine people in the nation live in California.

(Laughter.)

CHAIRMAN MORGAN: How about Texas? You’ve got a give Texas --

MR. OWEN: So I should get a little priority.

MR. MATTHEW: The highways are congested coming from --
MR. KOSS: I was going to say it was the most popular state, but I didn’t say that. But it is the largest business industry, 24 billion dollar a year industry.

MR. OWEN: I know that. I was just wondering how that was shaping up. I didn’t hear you touch upon that too much. I know you just touched --

MR. KOSS: One of the agricultural concerns were goods moving into the state from the east, fertilizers and animal feeds, because there is a lot of poultry and meat industries in the state. As far as moving goods out of the state, there hasn’t been than much heat that we’ve heard. Some of the goods stay, some go directly to Ports, mostly by truck.

Most of the rail shipments that involve California go into or out of the state, mostly to the east and right now most of the problem areas, problems we’ve heard about are in the two ports, which is to and from the port. We recognize the merger too is a long term thing, particularly with the infrastructure
improvements. We are watching UP right now build a huge yard near Roseville and they are planning to extend the Colten Yard.

I think they are going to double track the Colten line out to Yuma. They are going to improve the line -- which are big infrastructure projects that don't happen overnight. But they're not there yet.

CHAIRMAN MORGAN: I sense you would expect those project to help --

MR. KOSS: Certainly.

CHAIRMAN MORGAN: -- prevent the kind of situation we see.

MR. OWEN: The Union Representative just walked back in the room. We might ask him the question, Leroy, when do you think the implementing agreement will finalized for California? The California PUC is --

MR. JONES: Do you want me to come up?

CHAIRMAN MORGAN: Yes, please come up.

MR. OWEN: That's just -- sorry about that.

CHAIRMAN MORGAN: Broken rail, would you
put your coat on so you can -- no.

(Laughter.)

MR. JONES: Where do you want me to talk?

CHAIRMAN MORGAN: That's fine.

MR. OWEN: The California Public Utility Commission was just wondering when the labor agreements would be finalized for California?

MR. JONES: Well, I just told Dick Relaunder, I was in a while yesterday and this is one of the issues that we talked about is that West Colten is a big problem. And that the labor relations was contacting our General Chairman and the Vice General Chairman which happens to be out of West Colten, yesterday afternoon to immediately sit down and see what they can start working out right now.

I don't know how long it will take, but the UP has taken initiative to make that call yesterday.

MR. OWEN: Thank you.

CHAIRMAN MORGAN: Thank you all very much.

Our last speaker will be Mr. Relaunder for some clean up.
MR. RELAUNDER: Well Madame Chairman, once again I'm going to help you achieve your pledge to come in well under the 12 hours.

CHAIRMAN MORGAN: We're doing pretty well.

MR. RELAUNDER: And I think I said I only needed five minutes maybe to wrap up and I can probably do it in less than that, depending on the questions that you and the Vice Chairman might like to ask. First off, I don't want to leave the impression that we're finger pointing or being argumentative about "who shot John" here.

We are not trying to be defensive. There's enough problems on our side to last us forever. And I must tell you though that sometimes you feel like you are in the siege of London and when somebody does accuse you inappropriately, it is easy to stand back. So if I came across as defensive this morning, I apologize for that. I would further tell you that we have done our utmost to work with the other railroads to get on top of the situation as rapidly as we could.

We heeded what you said when we were hear
on October the 27th. And early November we convened
an all day meeting in Omaha comprised of the senior
operating forces of the railroad and our marketing
people and put everything out on the table once again
and said, where could we reach out and ask for help of
all the railroads in the country, big, small or
whatever?

And out of that came a series of letters
between Brad and his counterparts on the railroads, I
think comprising some 20 in number, if I remember
right, suggesting where help could be beneficial for
us. And some good things came out of that and some
things that we would have liked to happen didn't
happen, but I don't think it was vindictiveness on
anybody's part.

I think the transportation system in the
western part of the United States is strained and
people helped to the extent they could. And for that,
we're thankful and glad. We will continue to look at
opportunities out there. And if something does appear
as those it would be helpful, I would assure you we
will avail ourselves of it. The next point I'd like
to make hear is to discuss just a little bit the idea of joint control or joint dispatching.

With all due respect, you cannot dispatch trains by committee. You can’t vote on it and see is it going to be three to two that we run Tex Mex or two to one we run BNSF or should we not run UP today. Somebody has to be in charge. And what we’ve tried to do is account for expeditious handling of freight trains by dispatching conventions that we’ve agreed to would be in Santa Fe.

In fact, we went to the extent of agreeing to have a BN Santa Fe employee in our dispatching office in Omaha. We have an employee in every dispatching office in Fort Worth and additionally, the new dispatching center, and I don’t think I got into this sufficiently this morning, but we’ve set up to control the Houston area because it’s so big and complex. We’ve invited the BN Santa Fe to spend as much time there as they would like and keep an employee there if they would like.

And Mr. Buck Porter, who you met here on October 26th, has in deed spent time there and I think

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it's been educational for everybody. And when I said
that we have had this preliminary discussion with
Ralph Krebs about some sort of a joint operation, it
might be on this control center and we would look at
all rail line entering Houston, that's kind of a
circle around Houston where it would have been BN
Santa Fe rail lines or UP rail lines, everybody's rail
lines.

So there could be potential for better
coordination and better oversight. But that's still
very preliminary and we're looking. We have the
potential, at least, to pursue that perhaps. We also
have --

MR. OWEN: If I can interrupt for one
point. I think what I feared was you don't put an
under-powered train out in front of two other trains
that are coming along and all of a sudden you have an
under-powered train out there blocking traffic for a
couple of others. That was the only reason that I
thought that maybe, some way just to keep everybody
honest and from time to time we might get the diamond.

What I was talking about out there at West
Colten Yard where it is controlled by somebody else, will they hold up your train when it could easily have gone on through and holding it up because their’s is an hour or an hour and a half away. I think that’s the type of thing that

MR. RELAUNDER: Vice Chairman Owen, I would submit to you that that rarely ever happens. I wouldn’t say never, we might get an older, yellow dispatcher sometimes that would make a bad decision, but I think it is infrequent and I think with the balance of operations between Union Pacific and BN Santa Fe will be operating over each other so much you almost have to treat their trains like yours to get the maximum fluidity out of the railroad and to handle your operations efficiently.

MR. OWEN: I agree it probably never happens, but the problem is an awful lot of employees out on the rail line tell me that it happens.

MR. RELAUNDER: They think it happens, I know.

MR. OWEN: No, I know, maybe they’re thinking --
MR. RELAUNDER: If a UP train never has to take the siding for a BN Santa Fe train, clearly our employees think they are being discriminated against. But we do have this matching convention that the parties have agreed to and we do have management people from BN Santa Fe in our office and vice versa in Fort Worth. And we will be extending communications which the top guy down there have availed himself on one occasion and we think that will help a lot.

I'd like to touch on the directional running south of Houston. It sounded from the lack of the conversation today that you are going to be able to work that out after the comments of Larry Fields, and we're thankful for that. The only non-directional move in the Pacific we make under that convention would be to serve our local customers along the line. Otherwise everything else will run directionally as well.

We would also certainly be willing to extend the BN Santa Fe access from Caldwell to Franconia. There will need to be some additional
facilities built for interchange of the cars in the Franconia area and that will be something that we will work out with BN Santa Fe under the work facility arrangement.

I would say though that the proposals of BN Santa Fe to serve the Port customers they enumerated there and also the proposals of the -- would be counterproductive and would result in congestion that would be unwanted and would make things worse instead of better. The same thing would hold true in Brownsville, where the BRGI is asked to go directly into the TFM facility to interchange cars.

TFM is now blocking, as I understand it, for the BRGI and we're handling those interchange movements directly to them. If they were to try to make an interchange move on their own, once again it would just add additional congestion that we don't need at this point in time. However, the proposal about working something out with BNSF about using an alternate track or BNSF maybe using the former SP and Union Pacific, we are certainly willing to discuss that issue and see if we can work out something there.
that would be a benefit to either party.

So you need to fold that open and look and see that. Unless you have other questions, that would conclude our comments here and otherwise we would be glad to answer any questions you might have.

CHAIRMAN MORGAN: Do you have any further questions?

MR. OWEN: No.

CHAIRMAN MORGAN: Well, I don’t have any further questions either. Let me just close by saying that, first of all, I hope Mr. Martinez is enjoying his long day in Washington. Every time we come to Washington I always worry about what they walk away with. But I’m glad to have had you here all day and I also, as I’ve said before and I’ll say it again because I think it’s important to keep repeating, that we have all been dealing with a difficult situation. The Board has, the railroad has, the employees of the railroad has, the shippers have, the local communities have.

And I think you all have remained committed to getting the situation under control. The
employees have admitted to doing that. And you know
the Board remains committed to doing that. And I know
all the other sectors of the transportation community
also are committed to doing that. And I want to thank
you all for that continued commitment.

I want to thank all of the participants
who are left in the room. I think we’ve gathered
again a good deal of information about rail service
situation in the west and I think we’ve even tackled
a few interesting tough issues with some of the
witnesses. Also, I want to thank all the Board staff.
And I won’t go into all of them because I thanked them
before and they’re all around and they are constantly
working.

The Vice Chairman and I couldn’t be
without them, so thank you all very much. And then
lastly, as you know, the Board Order, Service Order,
expires midnight tomorrow. So you all will hear from
the Board one way or the other in accordance with that
deadline. With that, the hearing is adjourned.

(Whereupon, the Hearing in the foregoing
matter went off the record at 5:15 p.m.)